

UNDISCLOSED, The State v. Joseph Webster
Episode 2 - The Strahan Effect
August 5, 2019

[1:10] Colin Miller: You might have heard of an effect known as “The Streisand Effect.” It describes how an attempt to censor information often has the unintended consequence of bringing it to everyone’s attention. This clip from *It’s History* explains how the name of this effect has come to be associated with Barbra Streisand:

Narrator:

In 2003, photographer Kenneth Adelman took 12,000 photos of the California coastline to help document coastal erosion, right? One of those photos, one, was of Barbra Streisand’s Malibu mansion. Well, Streisand sued, unsuccessfully, to have the photo removed from the public collection. The effect was simple: before the lawsuit, the photo had been downloaded six times, two of those by Streisand’s attorney. In the first month after the lawsuit, the photo was downloaded nearly half a million times! Didn’t really work out the way Barbra planned.

In this episode, I’d like to propose a second, inverse effect: “The Strahan Effect.” Let’s say you’ve seen Michael Strahan commentating on football or hosting *Kelly and Michael*, *Good Morning America*, or *The \$100,000 Pyramid*. If someone asked you to describe his most distinctive feature, what would be your response? If you’re like the five people I asked in my informal poll, it would be the big gap between his two front teeth. Here, on GMA, Strahan and Sara Haines speak with Paul Sheer, another man with a big gap between his front teeth:

Michael Strahan:

The afro’s a great look, but you know what’s even a better look?

Paul Sheer:

Yeah. That gap, baby boy. That gap between in your teeth! Look we got this!

Michael Strahan:

Do you embrace it like I do?

Paul Sheer:

Of course I embrace it! Like, I mean, I have not changed it, but people tell me all the time, like, “Hey, you know you got a gap in your teeth?” I’m like, “Yeah, I know! I look everyday” (laughs)

Sara Haines:

I dare you to act surprised one time. There’s a gap!?!?

Paul Sheer:

No one told me! (Audience laughs). They’re like, “You can fix it.” I’m like, “I know! This is a choice that I’ve made!”

Michael Strahan:

You know what? I get that all the time, and one of my greatest moments is I was invited to a ... and I was a headliner at a dental convention (audience laughs). It was one of the best moments -- I got so many cards from dentists trying to fix my teeth.

Sara Haines:

You know there was money down on that -- if you land Strahan’s gap ... (laughs).

Paul Sheer:

Close it up! It’s so funny, and don’t you feel like people want to connect to you? They’ll be like, “Hey, I know a friend who has a gap in my teeth.” Yeah, it doesn’t mean that we’re like related or something like that.

According to Strahan, he came close to having the gap in his teeth closed, but ultimately decided against it, figuring that the gap was as much a part of his identity as his Hall of Fame pro football career and his fun-loving TV personality. If Strahan’s right, his success is in no small part due to his unique teeth, which make him stand out, and the career downswings of actors like Mickey Rourke and Jennifer Gray can be explained based upon changes to their previously recognizable facial features. And, if Strahan is right, it’s highly unlikely that Joseph Webster killed Leroy Owens.

[4:22] Rabia Chaudry: Hi and welcome to Undisclosed. This is “The Strahan Effect,” the second episode in our three episode series about Joseph Webster, a Nashville man who is in prison for the 1998 murder of Leroy Owens. My name Rabia Chaudry. I’m an attorney and author of the New York Times bestseller, *Adnan’s Story*. As always, I’m joined by my co-hosts and colleagues, Susan Simpson and Colin Miller.

Susan Simpson: Hi, I'm Susan Simpson. I'm an attorney in Washington DC at Clinton and Peed, PLLC, and I blog at TheViewFromLL2.

Colin Miller: Hi, this is Colin Miller. I'm an associate dean and professor at the University of South Carolina School Of Law and I blog at EvidenceProfBlog.

[5:22] Rabia Chaudry: As we noted last episode, there was one eyewitness identification in this case. The day after the murder, Tammy Nelson picked out the photo of Joseph Webster as one of the men who had come by her apartment the day of the murder and 5-6 times in the weeks before the murder. Nelson also gave a general description of Joseph Webster: African-American, somewhat heavy-set, not as tall as the other guy he was with. But in all of her police statements and her trial testimony, there's an important feature that Nelson did NOT mention:

Webster's Attorney:

And even at the time of arrest, Tammy Nelson didn't notice Joseph Webster had a gold grill. 12 gold teeth that family says you can see from 30 yards away. Even when she identified him, she admitted she didn't see any gold.

2nd Attorney:

She made the claim that the person that she saw in broad daylight multiple times, before this murder took place, did not have gold teeth and that she would sure remember gold.

Now, it's always difficult to Monday morning quarterback, but, given that the murder was in 1998 and the trial wasn't held until 2006, what do you think you would do with regard to Webster's gold teeth at trial if you were defense counsel? The seeming likely answer would be to establish *when* Webster got his gold teeth and defang Nelson's identification by hammering her on cross-examination over the fact that she never mentioned that the perpetrator having gold teeth. Webster's trial counsel did neither.

This was an omission that Joseph Webster still remembers 13 years later:

Joseph Webster:

The questions that I wrote down on paper for him to ask, he never asked. He never asked the witness none of that. And he was telling me, "Nah, we can't ask that right now. We can't ask that type of question." And I'm telling him, that dude, this is my life that I'm fighting for!

Colin Miller:

And I know that it's been 13 years since that trial, but do you remember some of the questions you wanted him to ask?

Joseph Webster:

Uh, I wanted him to ask specifically about how did she know me? And describe me. And he didn't want to do that because I have gold teeth and I know ... and she specifically said in trial that, "he didn't have gold teeth in his mouth."

Colin Miller:

Right.

Joseph Webster:

And I have 12 of 'em which I've been havin' since 1995. Three years prior to this case, and I still have 'em to this day.

[7:58] Susan Simpson: When Webster brought a claim of ineffective assistance of counsel, his trial counsel "admitted that the [trial] transcript reflected that he did not question Tammy Nelson about the gold teeth. Further, trial counsel admitted that he did not call a dentist to testify about when the teeth had been mounted."

Appellate counsel rectified this latter omission. He:

presented the testimony of Dr. Ulysses Walls, a Nashville dentist. Dr. Walls testified that in 1995 or 1996, he placed six permanent gold teeth in [Webster]'s upper jaw. The teeth were distinct in that they had the initials "JW" on them.

Moreover, Webster testified at the hearing that by the end of 1996 he had a total of twelve gold teeth, six on the upper jaw and six on the lower jaw, and the defense even had a school photo of Webster from 1996 that showed him with a full set of gold teeth.

So, what's the legal significance here of trial counsel failing to address the issue? In a Kansas case, the primary evidence in the prosecution of Kapelle Simpson was the identifications by two officers, who never mentioned the fact that Simpson had numerous gold teeth. Because the trial judge refused to give a cautionary jury instruction about the issues with eyewitness identifications, the Court of Appeals of Kansas granted Simpson a new trial "[b]ecause identification of Simpson was a key issue in the case."

But in Joseph Webster's case, the Tennessee court found that his trial counsel's failure to raise issues related to his gold teeth did not undermine confidence in the jury's verdict and was not enough to award him a new trial.

So, what can eyewitness identifications tell us about "The Strahan Effect"? Colin reached out to Shari Berkowitz, she's an Assistant Professor of Criminal Justice Administration at California State University, Dominguez Hills, and also an expert in eyewitness identifications. She's testified in many criminal trials, and here's what she had to say about research related to eyewitnesses failing to mention distinctive facial features:

Shari Berkowitz:

I cannot think of any research on this area, but I do think that in general, when it comes to a perpetrator having what we'd call a distinguishing feature - whether it's the gold teeth or a Harry Potter scar, things like this, that ultimately I think this would really depend on the context of the interaction between then the witness and the perpetrator. So things I'd be interested in knowing is how close the people were when they were having their interaction, what the lighting was like when this interaction occurred, were they speaking for just a few seconds, were they speaking for a few minutes, for an hour? What's the context in terms of the stress of the interaction, whether or not these interactions were stressful or even violence must also influence what we perceive and ultimately what we remember.

[13:20] Colin Miller: So, while there's not specific research on this subject, a lot of the factors that Professor Berkowitz mentions makes it likelier that Nelson should have noticed gold teeth. She saw the perpetrator 6-7 times at close range in broad daylight, she saw him in both stressful and unstressful situations, and she describes speaking to the perpetrator at length on a couple of occasions. And while the research can't tell us definitively whether Tammy Nelson would have noticed Joseph Webster's teeth if he were the perpetrator, there are two people who are convinced she would have. One is Webster's mother, Marie Burns:

Colin Miller:

Your son Joseph has the 12 gold teeth, right?

Marie Burns:

Then had 'em, yes. Even the doctor that put 'em in said he's the one that put 'em in.

Colin Miller:

And when you talk to him, how obvious would it be to a person that he has gold teeth?

Marie Burns:

You can't miss 'em! You can't miss 'em, you can't miss 'em, period. This is just a brim? Brim, grill, whatever you call them things, but they, they his teeth. He can't take 'em off and he can't put 'em back on. He can't take 'em outta his mouth, period.

The second is Joseph Webster himself:

Joseph Webster:

I mean, if I speak to you or talk to you, it's very obvious that you can tell. I can't hide 'em. There's 12 of 'em.

Colin Miller:

Right. And so when this witness, Tammy Nelson, gives police statements and takes the stand and says, "This is the guy I talked to", and she doesn't say that he has gold teeth, or doesn't mention the gold teeth, that leaves you to conclude what?

Joseph Webster:

Uh, that I knew at the time, I knew that she had the wrong person because she particularly stated that these people came to her house on multiple occasions. More than once, more than 3 or 4 times, she stated that they came in the daytime, the night time -- she said she seen their faces, you know, clearly. And that's the thing about my situation -- if you seen my face clearly and I've spoken to you, and we had any type of conversation, then you most definitely ... that would be the first thing that you would remember.

In other words, The Strahan Effect. If you talk to Michael Strahan, you're going to remember the gap between his front teeth. If you talk to Joseph Webster, you're going to remember his mouthful of gold teeth. So, does this mean that Tammy Nelson didn't talk with Joseph Webster?

[15:48] Rabia Chaudry: One person who might be able to answer this question is Lakeeta Smith. If you've been taking notes on these first two episodes and looking for her name, you'd be in the same position as Joseph Webster's appellate counsel: you wouldn't find it. Webster's current counsel would not get the documents revealing her existence until years later. So, who is Lakeeta Smith?

According to those documents, Lakeeta Smith was present when the two perpetrators came to Tammy Nelson's place and started attacking Leroy Owens on the day of the murder. Tammy Nelson said that one of the perpetrators got a stick from the white station wagon and started hitting Owens, but Lakeeta Smith said that the perpetrator grabbed the stick out of Nelson's hand and started hitting Owens. And while Tammy Nelson claimed that she paged the perpetrators in good faith to tell them that Owens was home because she thought they were his cousins, Lakeeta Smith apparently said that Nelson was setting Owens up and she knew that the men meant to do him harm.

If this story is true, it might explain a troubling part of Nelson's story. In her first two police statements, Tammy Nelson didn't mention a pager. Instead, she said she *called* the perpetrators to tell them that Leroy Owens was home. It wasn't until her third police interview, months later, that she said that the men gave her their pager number on a piece of paper and that she *paged* them to say that Owens was home. And, at this point, Nelson said she had thrown out the piece of paper with the pager number. If Tammy Nelson was an innocent dupe, this behavior makes no sense because it would hinder the investigation into her friend's murder. But, if Nelson were complicit in the crime, then her behavior makes all the sense in the world.

And her behavior worked. Even though Joseph Webster claimed at trial that he didn't have a pager, it didn't matter. Without a pager number, the police and prosecutors couldn't corroborate or dispel the claims by Nelson and Webster. But now, over a decade later, that may no longer be the case. As we noted in Episode One, the prevailing theory is that Joseph Webster's brother, Kenny Neal, committed the crime with his friend and right hand man, Phillip Cotton. This is a theory subscribed to by Joseph Webster:

Joseph Webster:

And she stated at trial that there's something wrong with my eye. Something wrong with one of my eyes, or something, and that's how she knows ... that's how she remembered me that day. Well, there's nothing wrong with my eye, period.

Colin Miller:

And your brother, Kenny, had a friend, Phillip Cotton. Did you ever meet or know Phillip Cotton?

Joseph Webster:

Yeah, I know him.

Colin Miller:

And he has something wrong with his eye, right?

Joseph Webster:

Yes. Yep.

Colin Miller:

And so do you think when she was making that statement she was talking about Phillip Cotton and his eye?

Joseph Webster:

I knew she was because, like I said, I knew if my brother had committed the crime, and the person that he was hangin' around at the time was him and Phillip Cotton. And she just ... the description that she described to the jury and to the court was a description of my brother and Phillip Cotton. I'm much heavier than my brother and Phillip Cotton, so the pounds that she was describing, described both of them.

[19:00] Susan Simpson: Other people in the courtroom who knew both Kenny Neal and Joseph Webster had the same takeaway.

Shawanna Norman:

The description that they gave in court was (laughs), like, I just don't ... I don't understand how the legal system works. Ya know, I'd have been in trouble before and I didn't ... justice isn't for everyone.

If Tammy Nelson was describing Kenny Neal, and if he committed the crime with Phillip Cotton, it stands to reason that the pager number they gave her was either Neal's number or Cotton's number. Well, guess what? Webster's current attorney was able to obtain records that were connected to a controlled drug buy that took place less than a

year after the murder, which involved a confidential informant setting up Phillip Cotton. And, in those records, it notes that to contact Phillip Cotton, the CI paged him.

At this point, you might imagine the next steps in the investigation: First - ask Tammy Nelson whether this was the pager number she was given; and two, track down Lakeeta Smith and ask her about the crime, show her the photos of Webster, Neal, and Cotton, and ask *her* about the pager number, because...guess what: the police records show that she, too, was given the pager number. And we'd certainly hope and believe that these steps are being taken, they're not being taken by us. As we'll discuss in Episode 3, there is, in fact, a current investigation into the Joseph Webster case, and we've understandably been asked not to interfere with it. But it's entirely possible that these leads have already turned up exculpatory evidence.

And there's also already other exculpatory evidence in the case. The first is the location of the drug deal in this case, on the *south* side of Nashville. Again, here's Shawanna Norman:

Investigator:

How big of a drug dealer was Kenny Neal?

Shawanna Norman:

He ... I mean, he had had a little weight. He had a little weight.

Investigator:

And was Joseph dealing with him, too?

Shawanna Norman:

Not *with* him. Joseph stayed on the east side of town. That's the thing -- my sister used to catch cabs and stuff out east with Joseph. Joseph really didn't fool around out south unless he came to my granny's house.

Investigator:

So, Kenny -

Shawanna Norman:

Kenny was the one who fooled around ... Kenny like, I used to go to a house in Vine Hill with Kenny, ya know, Vine Hill is in South Nashville ... Kenny dealt around out south.

Investigator:

Edgehill, Vine Hill?

Shawanna Norman:

Yeah and other areas, but he ... Kenny didn't discriminate. He came to whatever part of town the money was at.

Investigator:

Right. And Joseph just hung out, what around [undecipherable].

Shawanna Norman:

Out east.

Investigator:

Out east?

Shawanna Norman:

Yeah, out east.

Investigator:

Over on Casey and that area?

Shawanna Norman:

Uh, North 2nd and all that area.

And then there's Tammy Nelson's initial identification of Joseph Webster. From the record, it's unclear whether the detective who showed Nelson the photo array used any of the modern techniques that many jurisdictions have adopted to increase the reliability of eyewitness identifications. And it's 100% clear that this identification wasn't what's called a double blind eyewitness identification. Again, here's Shari Berkowitz:

Shari Berkowitz:

When it comes to how to present these lineups, we have advocated for what's called double blind lineup procedures. These are procedures where, presumably, the eyewitness doesn't know coming into the lineup who they're going to see, but also the same should be true for the investigator or officer administering the lineup. And so, when a witness is viewing the lineup, whether it's a photo lineup or whether it's what we call a live lineup, of six actual people, or the number may vary, what ultimately we would prefer to see is that the officer who's there with

the witness, collecting their identification evidence, is not familiar with who the suspect is. And the reason for this is because we don't want the officer to clue the witness as to who to pick. And, of course, this could happen maliciously, but we see in our studies and in real live cases, that this could even happen inadvertently.

When it comes to a witness, if they're darting their eyes back and forth between let's say, photograph two and three in a photo lineup, we really don't want the officer to make any comments whatsoever about, "Oh, I notice you're really looking a lot at number two and three. Does two look more familiar?" Because even comments like this can clue a witness as to who to pick.

[24:45] Colin Miller: What's also clear is that Nelson's identification wasn't recorded and wasn't accompanied by a confidence statement, both techniques that Professor Berkowitz says are now among best practices.

Shari Berkowitz:

Recording the eyewitness's immediate confidence statement -- so, when the eyewitness does finally say, or quickly say, "That person right there. Number four", it's important that we obtain, in the witness's own words, how confident they are in that identification and, of course, because sometimes police reports can be less thorough than eyewitness memory researchers might like, it's also important that we videotape the entire identification procedure so that we can understand and see what it is that the officer ultimately did with the witness, and really get the opportunity to really observe the witness in their own words, with their emotions, with their confidence -- understand how did they come to this identification. Did they do so very quickly? Did they stare at these photos for a full minute? What's the context there?

So, what would a confidence statement by Tammy Nelson have looked like? Of course, it's impossible to tell, but we do know that Joseph Webster's private investigator interviewed Tammy Nelson before trial. The interview was recorded, and, while we don't have that recording, we have the transcript, and here's the pertinent portion:

LYONS: Do you know Joseph Webster?

NELSON: No.

LYONS: You don't know Joseph Djuan Webster? Were you ever shown any lineups, any photo lineups?

NELSON: I showed - like a day or the next day after this here happened, they showed me some mug shots and it was two fat boys that I picked out. I don't know the guys.

LYONS: Well, when you picked them out, were those one's you picked out - were they the one's that you...

NELSON: I couldn't be accurate on it.

So, first, Nelson saying she just picked out fat boys doesn't show much confidence in her identification. But, second, there's the fact that Nelson said she picked out *two* fat boys. And during defense counsel's cross-examination of her, this does not appear to have been a misstatement:

Q (By Mr. Gibson) Isn't it true you told Bob Owens (sic) that, in that interview you had with him, that you just picked out mug shots of two guys that looked like somebody that might be there?

A No, I told him, in that interview I told him when I picked out number five, Joseph Webster, that I knowed that was him. And then the other guy that I picked out I was sure, for sure that was the other guy that was with him.

So, yeah, Tammy Nelson is saying that she picked out *two* men as the perpetrators of the crime, and yet, there's nothing in the discovery documents about a second identification, and nobody else has ever been arrested, charged, or prosecuted for the murder of Leroy Owens. Defense counsel never followed up on this point, and it's one of the many unanswered questions in this case.

[27:44] Rabia Chaudry: Of course, the biggest unanswered question is whether Tammy Nelson could have mistakenly identified Joseph Webster as his brother Kenny Neal. And while there is no research specifically on the likelihood of misidentifying one brother as the other, Shari Berkowitz notes that there is recent research that bears upon this issue:

Shari Berkowitz:

I'd point your listeners to a recent article, a 2017 article, by John Lichtenstein and Gary Wells. In this article they have some great discussion about why it is that misidentifications can happen and, in particular, the role, in at least part of this article, they talk about the role similar features would have on a misidentification. So, for instance, suppose then in the scenario that you described, that an individual is accused of a murder and police start to focus their attention on one individual, and that individual happens to look a lot like the actual perpetrator, but is innocent. In that kind of scenario, then the concern becomes does that innocent person look the most like the actual perpetrator? And when an innocent person, whether it's by happenstance or in this case, you're saying this actual genetics thing shared by these individuals, then ultimately, the concern is, and we do see this in actual real live cases of mistaken identification, that when the innocent person most closely resembles the perpetrator, but the actual perpetrator is not there, that witnesses can in these contexts come to make highly confident identification, and make mistaken identifications of this similar looking person.

And, according to Professor Berkowitz, there's also new research that might bear upon the second crime scene in this case: the scene of the murder. As we noted in Episode One, the State presented one eyewitness to the Leroy Owens murder at trial: Fred Thomas McClain, a concrete worker who was building steps for the barbecue restaurant where the killing occurred. As we noted, McClain told police in 1998 that he didn't get a good look at the perpetrators' faces and he couldn't make an identification.

But McClain didn't only speak to police in 1998; he also spoke to them in 2005, when Joseph Webster was finally arrested for Owens's murder. What he said might surprise

not only you, but also the jurors at Webster's trial, who never heard it. Here's the pertinent part of the report of McClain's second interaction with police:

The purpose of this interview; to introduce myself, to obtain facts first hand from Mr. McClain. During the course of the interview I asked Mr. McClain to describe the subjects involved. He states the subject who struck the victim was a large male black, driving a white station wagon. He states he did not get a good look at the subjects face but has seen the same subject in the area before always driving the white station wagon that was used the day of the assault. I asked if after this amount of time if he would be able to identify the subject who assaulted the subject. He advised he did not know but would try. I showed him a group of photo's including Mr. Webster's. He viewed the photos but was not able to make a selection.

This seems huge. While McClain didn't get a great look at the suspects' faces at the time of the murder, he was able to conclude that the driver of the station wagon that day was the same man he had *always* seen driving that same station wagon. And McClain was *not* able to identify Joseph Webster as that man.

Perhaps unsurprisingly, up until now, all of the research has focused on the reliability and importance of *positive* identifications, when an eyewitness identifies the suspect. But how much can a *non-identification*, in which an eyewitness does not identify a suspect, tell us about that suspect's innocence? Colin asked this question to Professor Berkowitz:

Shari Berkowitz:

That's what we call a non-ID, and unfortunately this is an area of research that's generally understudied. Some initial research has suggested that maybe though, these non-ID's, the failure to identify anybody, particularly the suspect, should be taken as more proof of the suspect's innocence. And it's certainly an interesting idea, and it's something that we need to understand more about and actually a doctoral student I know at UC Irvine, Jennifer Teicher, is looking at some of these issues as part of her dissertation research, and I know that she has a concern that in addition to the fact that non-ID's might actually be some evidence of the suspect's innocence, that she also has concerns that the jurors, themselves, may not really appreciate the probative value of the non-ID itself. So, some interesting research going on in this area and I hope that I have a better answer for you soon.

[32:55] Susan Simpson: So experts currently have questions about how much weight jurors put on non-identifications and how much weight jurors should put on

non-identifications, and both of these questions will hopefully be addressed in future research. But this wasn't even an issue in Joseph Webster's trial because defense counsel never asked McClain about his 2005 statement.

That decision seems indefensible, but there was another omission that was definitely defensible. Defense counsel never referenced *five* other witnesses to the murder. And the reason this was defensible is that defense counsel didn't know about them. And Webster's post conviction counsel didn't know about them either. At Webster's post conviction hearing, the trial prosecutor testified that Fred McClain was "the only eyewitness that the State ever mentioned or that, I believe, is known in this case to have actually seen Mr. Owens being killed."

It wasn't until years later that Webster's current counsel got access to a Supplemental Report that listed five more eyewitnesses to the Owens murder. Now, in fairness, other police notes state that two of these witnesses told police that they didn't see anything useful, and a third witness is simply listed by the last name of Jordan, and we have no idea what he or she actually saw. But that does leave two other undisclosed eyewitnesses: Richard Henderson and Anthony Boyce. There's also a police note that states, "Mr. Henderson told Anthony Boyce to call police and that he saw everything."

So, what did Henderson say when Webster's investigator tracked him down in 2017? Unfortunately, not too much. This might be due to the fact that Henderson admitted to the investigator that "all of his friends and family told him not to speak with me and not to get involved in this." Henderson did agree to talk to the PI, but didn't agree to be recorded. And what he said generally lined up with McClain's story. Two guys in a white station wagon tracked down Leroy Owens and one tackled him and hit him in the head with a cinder block while asking, "Where's my goddamn money?"

Henderson said that he was unable to make an identification in 2017 but did give one piece of information that will become very important in Episode Three: that neither of the perpetrators were wearing gloves.

And that leaves us with the fifth undisclosed eyewitness: Anthony Boyce. Unlike Henderson, he was willing to be recorded, and what he said was pretty interesting. According to Boyce he was walking to a store when he saw the same general sequence of events that were described by McClain and also by Henderson:

Anthony Boyce:

We just walking down the street and this guy jumped outta the car and apparently any words were said and he just cracked him upside of the head with a brick.

But Boyce's story then deviates from McClain's story in ways that are important for Joseph Webster's innocence. McClain said the murderer was the man driving the station wagon and he gave a description of a man who was three inches taller and 25 pounds lighter than Joseph Webster, who was 5'6" and 250 pounds. Meanwhile, here's what Boyce had to say:

Anthony Boyce:

Whoever hit him in the head, it was one person.

Private Investigator:

Do you remember if the one that hit him in the head was the driver or was he a passenger in the car?

Anthony Boyce:

He was a passenger.

Private Investigator:

Okay. Do you remember how big ...

Anthony Boyce:

I think he was sitting in the back seat.

Private Investigator:

You remember how big of a guy he was?

Anthony Boyce:

Uhh, I'd say around 6 foot, or a little bit better.

Private Investigator:

Okay.

Anthony Boyce:

He wasn't that big, he was kinda skinny build.

[36:48] Colin Miller: Yes, that's right. Boyce described the murderer as six feet tall or a little bigger and with a skinny build. There's simply no way that this man could be Joseph Webster. Of course, unlike McClain, Boyce also said that the murder was the passenger and not the driver of the vehicle. This is interesting because Phillip Cotton is exactly six feet tall and was known to be a frequent passenger in Kenny Neal's white station wagon. Here's Shawanna Norman:

Investigator:

Who woulda been driving the car? Phillip or Kenny?

Shawanna Norman:

I'm thinking Kenny was driving the car.

Investigator:

Okay, you think, you don't know for sure?

Shawanna Norman:

If Kenny's car than Phillip ... Phil didn't never drive it, so ...

Investigator:

Okay.

Shawanna Norman:

He was always on the passenger side.

Now, in fairness, while Phillip Cotton is six feet tall, he's not just tall, but also wide, and not someone you'd describe as having a skinny build. So, it's unclear whether Anthony Boyce is describing Phillip Cotton. But wouldn't it have been nice if the police showed a photo array to Boyce back in 1998? Unfortunately, they didn't:

Private Investigator:

But you never were re-contacted by any follow up, or nobody asked you, ever showed you any photographs or anything?

Anthony Boyce:

Uh, nah, I ain't ever seen any photographs or anything.

Private Investigator:

Do you think if you'd have seen photographs at the time -- would it have assisted you, do you think that you might have been able to pick somebody out? Did you see the guy well enough that you could've made an identification?

Anthony Boyce:

I mean, maybe back at that time. At this time, I don't know.

Private Investigator:

I understand that.

Anthony Boyce:

Like I said, you know it's just any little thing.

But while memories fade, something else in this case did not. DNA evidence from the cinder block used to murder Leroy Owens. Next time...on Undisclosed.

[39:09] Rabia Chaudry: A big thank you to everybody who makes Undisclosed possible. Thank you to our sponsors who help us put on our episodes week after week. Thank you to Mital Telhan, our executive producer, for helping keep this ship afloat. Thank you to Rebecca LaVoie, our fantastic audio producer, and also the co-host and producer of a couple of my favorite podcasts, including Crime Writers On, do not miss her podcast. Thank you to Baluki for our logo, to Christie for maintaining our website. Also a big thank you to our listeners, thanks for coming back week after week. Check us out and make sure to follow us online on Twitter, Instagram, and Facebook. Our handle is @Undisclosedpod. And, please, do not forget, subscribe to us on iTunes and rate us. Thanks so much, see you in a week.