Proof: A True Crime Podcast
Season 1: Russian Roulette
Episode 9: Hearsay
Monday, May 2, 2022

> **Jacinda Davis:**
> When did Lee's name start coming up? When did you first hear that?
>
> **Kenneth Floyd:** Lee's name really come up when Wayne had told us Charlie…
>
> **Amanda Bowling:** …that Charlie, yeah…
>
> **Kenneth:** …had seen him that night.
>
> **Amanda:** Yeah.

Susan Simpson: Amanda and Kenneth, Brian's sister and brother-in-law, told us that it was Charlie Childers who had first made them think that Lee Clark had been involved in Brian's death.

Charlie and his brother Wayne were family friends of the Bowling's; they had been at the Bowling's trailer watching TV with the rest of Brian's family when the shooting occurred.

Glenn Clark, Lee's father, explained to us why Charlie was so important to the prosecution's case.

> **Glenn Clark:**
> Their theory is that Charlie Childers was standing at the glass door, looking outside.
>
> The theory is, he saw Lee running across the front yard. That's how they say they put Lee at the scene. Their theory is that Lee was at the bedroom window. He shot Brian through the window, throwed the gun in the bedroom and run off.

[01:17] Susan Simpson: This theory about Lee Clark being outside of Brian's bedroom window is based entirely on Charlie Childers. There is literally no other evidence that places Lee there.

But what exactly does Charlie say he saw that night? This question is harder to answer than you might think.

Kevin Fitzpatrick:
The thing that confuses me about Charlie is, so he's the only one who puts Lee at the house, right? Is that right?

Amanda Bowling: Mm-hmm.

Kenneth Floyd: Yes.

Kevin:
And do you guys feel certain that people can understand exactly what Charlie is saying?

Kenneth:
They had to bring in some special person for that at court and everything, because I can't understand him.

Amanda:
Some things you can get a sense of what he's saying, but I don't know. His sign language was basically not the sign language that you're taught now, I guess.

Kenneth: Yeah, they brought in some special person at court.

[02:12] Susan Simpson: Hi, my name is Susan Simpson. I'm an attorney and a podcaster and previously I hosted the Undisclosed podcast.

Jacinda Davis: Hi, I'm Jacinda Davis, and I'm a true crime TV producer.

Last year Susan and I decided to team up and re-investigate the murder of Brian Bowling. Along with Kevin Fitzpatrick, president of Red Marble Media, we decided to launch – *Proof.*

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Thanks for listening and welcome to *Proof.*

Jacinda Davis: On the night that Brian was shot, Charlie Childers and his brother Wayne had been at the Bowlings' trailer. Brian's uncle remembers seeing both brothers there, when he rushed over after receiving a call telling him that Brian had been shot.

Susan:
And when you got there, Wayne and Charlie were both just, do you know where they were sitting?

[03:25] Mikel Baker:
Charlie was sitting on the couch. And Wayne was standing in the bedroom doorway.

Susan Simpson: Did you communicate with them at all, or?

Mikel: No, not really. I just kind of pushed through, you know.

Susan: Were you familiar with them?

Mikel:
Oh, yeah. Yeah, I grew up with them, so. Yeah, he's deaf and he speaks sign language, but they're like really country people. And they kind of learned their own sign language. It's kind of like sign language slang or something.

Jacinda Davis: Even though Charlie and Wayne Childers had been at the trailer the night Brian was shot, investigators didn't speak to them until seven months later.

Susan:
The first record we have of them talking to the Childers is from May of '97.

Kenneth Floyd: That may be right. I mean, because I'm telling you...

Amanda Bowling:
That might have been right, because it was a while. It seemed like a little while.

Susan: So, but that was a long time after.

Kenneth: A long-

Amanda: Yeah, a long time… like, months.

[04:20] Jacinda Davis: In fact, Wayne and Charlie were not interviewed until *after* Lee and Cain had been arrested for Brian's murder.

Neither Amanda nor Kenneth remember talking directly to Wayne or Charlie about any of this. But they recall that someone in the Childers family had told someone in the Bowling family about Charlie seeing something important the night Brian was shot. They think it was likely Debra Bowling, Brian's and Amanda's mother, who had passed this information on to Sgt. Dallas Battle and Investigator David Stewart.

Amanda:
Mom would have called them and said, "Y'all probably need to go talk, talk to Wayne and Charlie." Mom probably did.

Kenneth:
Somebody, you know, Wayne had told somebody that Charlie had seen Lee that night.

[05:10] Susan Simpson: Sgt. Dallas Battle and Investigator David Stewart found themselves driving down to Silver Creek to speak to Wayne and Charlie. Sgt. Battle

testified that they hadn't brought a translator with them; they hadn't known Charlie was deaf until they got there. So, Wayne had been the one to translate for them.

There wasn't a report made about what exactly Charlie had to say during this interview. But at trial, Battle was allowed to do something that witnesses are usually forbidden from doing. He was allowed to testify about what Charlie had said to him – which is hearsay. Double hearsay, actually. Battle couldn't speak to Charlie directly, so what he was testifying to was what he said, Wayne said, Charlie said.

> ***Kevin Fitzpatrick, narrating:***
> *I was informed that Charlie could read lips if you were looking directly at him to a certain extent, and his brother, Wayne, told us that he could sign to him, sign language and interpret. We asked [Charlie] [ ] what he knew about that night, [and] he communicated to us that he saw someone run by the front window of the residence where the shooting took place immediately after the shooting. I communicated to him, asked him if he could identify who ran by the window. He said yes or indicated yes.*

[06:21] Susan Simpson: This testimony should never have been allowed. And the defense did object to it. But the trial judge overruled their objections, and let Battle testify anyway.
Battle went on to describe how after Charlie told him about seeing someone out the window, he'd gone back to the police station and picked up a photo lineup.

> ***Kevin, narrating:***
> *I explained to Wayne that we needed Charlie to look at this photo lineup, and, if he recognized the person on the photo lineup that he saw go by the window the night of the shooting, we needed him to indicate what number it was. … [Charlie] circled [number] 2.*

Photo number 2 was a photo of Darrell Lee Clark.

Jacinda Davis: Thanks to Sgt. Battle, the jury heard that there was an eyewitness who had seen Lee Clark at the Bowlings' trailer when Brian was shot. So, case closed, right?

Except, there's something odd about Battle's description of this interview he had with Charlie Childers.

> **Susan:**
> One thing I do wonder about is how the police even got the story from hi-, like, how did -
>
> **Amanda Bowling:** How did they get that, yeah…
>
> **Susan:** How did they understand what Charlie was saying?
>
> **Kenneth Floyd:** The only other one that can really understand Charlie is Wayne.
>
> **Susan:** And Wayne says he can't really understand him.
>
> **Kenneth:** Yeah, I mean.

[07:38] Susan Simpson:
So, Wayne can't - so,.. Charlie can read and write to some degree.

Amanda Bowling: Yeah.

Susan: Wayne can't read or write?

Amanda: Wayne can't read or write, yeah.

Susan:
So, it's not like they can do that. So, and he doesn't speak sign language either.

Jacinda Davis: Sgt. Battle testified that he'd been able to interview Charlie because his brother Wayne had acted as an interpreter.

But Wayne Childers also testified. And Wayne told the court that he couldn't really communicate with Charlie either, not really anyway. In fact, Wayne said when Battle had interviewed Charlie, he couldn't understand what Charlie was trying to say – so Charlie had written his answers down on a piece of paper for Sgt. Battle to read.

And that piece of paper was still in the police file. Susan read to Dan and me what Charlie had told Sgt. Battle in his interview.

Susan: Well, here's a page of notes. I think they're written by Charlie Childers.

Jacinda: But Charlie can't write.

Susan: I think Charlie can write…

Jacinda: On the stand he said he never learned to read or write.

Susan:
He did say that, but I think he can write a little bit. So the notes say, "I am hear, H-E-A-R. One room in looking window. Night go to store are out in phone walk road. Our were in bedroom TV. Night all walk road car. Looking is night go to gate in house. I am looking. Cabin house here."

Jacinda: Maybe he was pointing at a picture and trying to explain?

Susan:
Storey is talk gun house in gun phone Bowling room bed night. Boy is walk in out through window. Go to store is house live, live something, New Hope Church. Car black-blue Buick, Buick. Black with blue. I ask in all looking talk policeman is park car. We will all time hear road all time. Night policeman road. Please is true, all is good, black with blue. Rockmart Rome morning and night. Thank you.

Jacinda: Wow.

Dan Whitrock: All righty-then.

Jacinda Davis: That explains everything.

Susan Simpson: Well, now it's all clear to me what happened here.

Jacinda: Case is solved.

Dan Whitrock:
Yeah. But the only name that's anywhere in that is "Storey," which is Cain, right?

[10:08] Susan Simpson: The name Storey appears twice on the page of notes – or rather, the name Stocy, S-T-O-C-Y. Which is, presumably, Cain Storey.

But the name Darrell Lee Clark doesn't appear anywhere. One line of the notes does say "Boy is walk in out window," but it's not clear if the boy being referred to here is Cain Storey, or someone else entirely.

So these notes are somewhat confusing. But what about Charlie's testimony at trial? I asked Lee Clark what had happened when Charlie testified.

Susan:
What was it like in the courtroom when they were trying to talk to him, to Charlie?

Darrell Lee Clark:
Oh, you, you ain't never seen a circus like this, I'm gonna tell you right now…

He's, they're signing. And he's sitting there, and He's up there one minute, he's saying that Cain Storey was the only one there, it was just Storey's, just Storey.

He was pointing at Cain saying Cain was the only one, just Cain, just Cain, that's what he was saying for the longest. And they go, oh, well, Charlie, let, let, we want to talk about what happened outside, who'd you see outside? And he was talking about, oh, Cain, Cain, Cain outside, Cain outside. it's all over the place. I, you, you'll have to read this testimony.

After reading it, you'll understand what I'm talking about.

Susan Simpson: When we finally got the transcript of Charlie's testimony, I did understand what Lee had meant. Without actually reading the transcript for yourself, it's hard to convey the sheer chaos of it. I can honestly say I have never seen another transcript like it.

And just reading through it is somewhat excruciating. I can only imagine how much worse it would have been actually sitting through it and hearing it in person.

Because Amanda and Kenneth had both been witnesses in this case, they had gotten to see the testimony for themselves. But I told them some of what Charlie had testified to.

[12:00] Susan Simpson: :
There's a half dozen times they ask him to say who he saw that night and he says Storey.

Kenneth Floyd:
Huh. See, we thought, I've, I've always heard that he said Lee. That he seen him running through the big window, the big, the front--

Amanda Bowling: The back, the front, living room.

Kenneth: …. the living room window in there has got a big window and I thought that he said he seen him runnin' right through there.

Susan:
That's what Dallas Battle says. But, Dallas Battle can't talk to Charlie either.

Amanda: No, he can't. Yeah.

Kenneth: Yeah.

Amanda: Yeah.

Jacinda Davis: In order for Charlie Childers to testify at trial, an interpreter had been brought in to translate for him. Her job had been to translate the attorneys' questions into American Sign Language, and then to speak Charlie's answers back to the court.

Susan and I went to speak to her about what the experience had been like.

[14:29] Susan:
So, when I, we walked up I asked you if you remember being an interpreter on a case and you instantly said Lindale.

Gola Burton:
Yeah. It was a- it was fairly traumatic for me. I mean, I--

Jacinda: Tell us why, like what… at what point did you realize you--

Burton:
Oh, pretty immediately. You know, but once you're into this kind of situation, I mean… how do you get out of it? And I was fairly young.

Gola Burton is a state-certified interpreter for American Sign Language, or ASL. She became interested in ASL at a young age.

[15:02] Burton:
So, I grew up in Cave Spring. Both of my parents worked at the school for the deaf. They're both hearing. After I graduated from high school, I became more interested in sign language. My dad was head of the interpreter training program

at Georgia Highlands so I participated in a lot of his classes. So, just growing up in Cave Spring and, and deciding that I wanted to be part of the deaf community.

Susan Simpson: And Cave Spring has a…

Gola Burton: Has the residential school for the deaf for the state of Georgia.

[15:34] Jacinda Davis: Cave Spring is the second biggest town in Floyd County, after Rome itself. It's at the south end of the county – not far from Silver Creek. And it's where the Georgia School for the Deaf is located.

Burton:
So, the gentleman that I was interpreting for, I believe he was a student at the school for the deaf. And then he was isolated from the deaf community. He was not a typical deaf adult. His communication was not typical. If he had met another deaf person, he would not have been able to communicate with another deaf person very well.

Susan:
I wonder if the court just heard the witness is deaf and just like, assumes he spoke ASL? Because I've to-, people we've talked to were like, "Oh no, he doesn't speak ASL."

Burton:
No, he, he didn't have, you can't label his communication style. He was using home signs. He was--

Susan: What does "home signs" mean?

Burton:
Okay, I'll give you an example. This gentleman told my dad, my dad was a teacher at the school, and this gentleman said, "I don't need to learn sign language. I can- my son understands me perfectly fine," and he says, "Watch."

"Hey, Johnny. Go over there to the truck and get my cigarettes and bring them to me."

Jacinda Davis: As Gola Burton was speaking to us, she demonstrated what the student's father had done – she pointed to her breast pocket, mimed smoking a cigarette, and gestured over towards her car.

Burton: Okay, that's not, none of that is sign language. It's like--

Susan: Except I kind of understood it, like -

Burton:
You did. You would have understood. But, that's not ASL. That's gesturing.

Susan: Right.

Burton: That's gesturing.

In court that day, much of what Charlie had been signing had not been language at all. It had been gestures that he used at home to communicate to his family.

> **[17:20] Susan Simpson:**
> That's walking into a nightmare. Like, you think you're gonna interpret for someone using ASL…
>
> **Gola Burton:**
> Well, and immediately, the defense called it into question, my ability, which shook my confidence a little bit.

Jacinda Davis: We showed Gola the transcript from Charlie's testimony, so that she could help us try to piece together what had actually happened in the courtroom.

> **Burton:** Yeah, see? It… just kind of, yeah. Definitely goes off the rails.

As Gola reviewed the transcript, she pointed out to us that much of Charlie's testimony had been neither ASL nor home signs. Instead, it was something much slower.

> **Burton:**
> Evidently, he could fingerspell because I'm- obviously I had to spell the proper name, "Brian Bowling," I had to sign that.
>
> **Susan:** What does fingerspelling mean?
>
> **Burton:**
> So, obviously, I'm trying to see if he has any speech, any lip-reading. I'm trying to see if there's another way, you know, to communicate with him.
>
> I'm trying to get something from him through this and- oh, see? He fingerspelled up here.
>
> Must have fingerspelled "gun."
>
> And I, you know, now that I'm a little older and have a little more experience, I probably would have just said, "We can't do this." You know, in hindsight.

Some communication with Charlie *was* possible. There were questions he was asked that he was able to answer.

But Charlie's level of fluency doesn't seem to have been the only problem here. Even when Charlie understood the questions he was being asked, his answers didn't always make sense.

> **[19:15] Jacinda:**
> Did you feel like it was just a communication issue with him or was there a cognitive impairment?
>
> **Burton:**
> So, when, when you isolate someone from communication, you know, is it, I

mean, what causes it? You know, if you take someone and they're raised by gorillas in the forest, is it because they act the way they do, is it cognition or the way they were isolated?

I mean, he was isolated from communication. I would say just guessing, he probably, second grade reading level?

He just did not have the language skills. I mean, that- I vividly remember him not having communication and, and language skills to communicate with someone other than his family.

[20:03] Jacinda Davis: Finger spelling provided some method of communication with Charlie. But even that was limited. Because in order to finger spell successfully, you need to be able to read and write.

Jacinda:
And how much could he, he might know the alphabet but if he doesn't know how to read, spelling out the signs really doesn't help.

Gola Burton: … doesn't really help. No.

Jacinda:
Like, you can spell out "outside," but you might not know what those letters put together mean.

Susan:
I mean the only way they really would have got this information that they wanted was to go to the scene. And say, act out what you saw.

Burton:
I mean, if they had videoed him at the scene, having him, "Okay, Charlie. Let's go through this again."

Jacinda Davis: That's not how trials work, though. In most cases, witnesses can only give evidence by answering questions, under oath, on the witness stand.

But this was not an effective way of communicating with Charlie Childers.

Susan: He could answer some questions.

Burton:
He could answer some questions, some of the very literal questions or from the very beginning, it looks like questions that –

Jacinda: He knew.

Susan: He'd gone through...

Burton:
It seems like he had this, this plan, you know? "These are the things you're gonna tell. This is what happened in this order, that's just what they want you to say."

On the witness stand, Charlie had been able to describe what had happened that night leading up to the shooting.

> **[21:33] Gola Burton:**
> *I was just sitting there. Watching TV. I heard the sound, I turned around, I was scared. It was a gunshot in the bedroom. I didn't see what happened in the room because I was just sitting there. I stayed there in my seat, just waiting, watching everybody. Wayne went in there. Then everybody else got up and went in there.*

Jacinda Davis: This part of Charlie's testimony made sense. But the problems began as soon as Charlie was asked any questions about what had happened after this point in his story.

Like when the prosecutor asked Charlie if he had seen someone named Darrell before or after the gunshot had gone off.

> **Gola Burton:**
> *Darrell went this way. Storey was in the room, and I could hear the pop. And after that, but Storey, I saw Storey come through the room, walk through the room, saying hello to everyone and talking.*
>
> **Susan Simpson:** Boy, he's starting back at the start of the story there.
>
> **Burton:**
> I know. See, and then it's, to me, after I read it at this point, it's like, okay. 'This is the story. I've rehearsed the story. I'm gonna tell the story. I start here, I go through everything that I experienced. That's what they told me to do. So, okay, I've told it a couple of times, they didn't get it... Let me start again.'
>
> It's like I could not communicate the question to him.

When Charlie was asked a question, more often than not, he couldn't answer it. Instead, he just retold the entire story of what happened that night.

> **Burton:**
> 'And then later on it started to get dark. We went home. Brian went to his parents' house and stayed. We went in and sat with our friends, talked about, talking. We stayed for a while.'
>
> **Davis:** He's starting over.
>
> **Burton:**
> 'After a while, sitting, watching TV, my brother, all of us talking.'
>
> He's talking, starting all over again.
>
> 'I saw one person walking past and I walked and watched this person walk past the window.'

“Was that person outside?” ‘Outside. Darrell was outside. Storey was inside. Storey, he walked by inside into the room. I was sitting there with all the people, friends, family,’ and so forth.

Susan Simpson: Started over again. He's back at the beginning.

Burton: Ask him who Darrell is.

[23:41] Jacinda Davis: In the transcript of Charlie’s testimony, the name ‘Darrell’ appears dozens of times. This is important, because the prosecutor tells the jury that Charlie is talking about Lee, whose legal name is Darrell Lee Clark. But Lee has never gone by Darrell – everyone just calls him Lee.

And in fact, when Charlie was asked if he knew Darrell’s name, Charlie answered no, he didn’t.

So why, in the transcript, does Charlie keep saying the name Darrell?

Susan Simpson:
And he does say Darrell or he, well no, he, somehow identifies or -

Gola Burton:
So, I don’t know if there was a name sign. So, like right here. I say, “Charlie, where was Darrell?”

I don’t know if there was a name sign established for Darrell. Or if I’m fingerspelling Darryl each time.

Susan:
So, he was identifying Darrell but pro-, it could have been a number of different ways.

Burton:
A number of different ways. See, and then here. “Is Darrell in the courtroom today?”

‘I know I’ve seen Storey, I’ve seen him.’ So, obviously we were able to differentiate between Storey and Darrell. Because now he’s talking about Storey.

Jacinda Davis: When Cain’s attorney cross-examined Charlie, he asked Charlie why he kept saying the name Darrell. But Gola struggled to make Charlie understand the question.

Burton: “So where did you come up with the name Darrell?”

Susan: Yes, where?

Burton:
‘I did, I did tell Storey and I put that down. I put down Storey.

‘No, not Darrell. Just the one, just the one, Storey. That's all. One time Storey. I put down Storey. I write down Storey. I told about Storey.’

See I'm, I'm obviously frustrated at this point because I'm not using complete sentences. I'm probably matching what he's-

Jacinda: What he's saying.

Burton:
“And you didn't tell about any other person that you named, did you?”

‘No, I didn't.’

“So where did Darrell come from?”

‘Nope.’

“You don't know where you came up with the name Darrell?”

‘I don't know about Darrell.’

[25:40] Susan Simpson: At times in his testimony, Charlie denied knowing anything about any Darrell. He insisted that he was only talking about Cain Storey. But other times, Charlie *does* describe seeing a second boy named Darrell at the trailer that night.

Gola Burton:
‘I told the boss man, I know about Storey and Darrell, the two of them, what happened before. I know I saw it two times that Storey shot Brian.’

“You saw Storey shoot Brian?”

‘No. First Storey walked around. He said, hello.’

So he's telling the story again.

‘I watched him walk by. I was watching TV. My brother and I talking to the parents, the Bowling parents. They were meeting and talking and I heard something that made me jump. It scared me, a loud boom. Storey came running out of the room. He walked past. I watched him like what was going on. The other boy? I don't know.'

“Did you see the other boy?”

‘Yeah, the other boy, yeah, there was another boy.’

“Do you remember his name?”

‘His wife is Ms…I don't know, I don't know. Black boy black hair.’

Susan Simpson: His wife?

Jacinda Davis: So there was another person there.

Susan: There’s no one with--

Burton: His wife is Ms… I don't know.

Susan: These boys are like, 15-16 years old. There's no wives.

Susan Simpson: Just to state the obvious: Lee Clark was not married, he's not black, and he has brown hair. We don't know who Charlie could've been describing here.

Susan:
Like this, reading this it's hard, he does later, he says Darrell a lot, but I just don't think he actually identified Darrell Lee Clark.

Burton:
So, you've been asking him repeatedly if he sees Darrell at the trailer. And now you're asking him if he sees Darrell here today.

[27:28] Jacinda: And he can't tell the difference.

Burton: And he can't, and he could not shift to the present.

[27:36] Susan Simpson: Reading the transcript, you can feel the confusion and frustration from everyone in the courtroom. Especially when Prosecutor Steve Cox was trying to get Charlie to identify Lee Clark.

Steve Cox seems to have thought that the problem might be that Charlie was just looking in the wrong direction. He couldn't identify Lee, because he hadn't looked over and seen where he was sitting. So, he said to Gola, "Tell Charlie to look around the courtroom."

The transcript shows that Gola had done her best to interpret Charlie's response to this instruction.

Gola Burton:
He said, 'No, I didn't. I didn't look around. No, I will not look around. No, I didn't.'

Jacinda Davis: You can tell you're getting frustrated, too. Like, I -

Burton:
I mean, you know. Do you really want me to say exactly what he's saying? Because it makes no sense.

Jacinda:
Well, the prosecutor is getting frustrated, too. Like, :This isn't going the way I thought it would go."

Susan Simpson:
All he needs this guy to do is to say "Yeah, I saw Darrell there," and this is not working.

Jacinda: And all he, and he--

Burton: He's saying Storey again.

[28:38] Susan Simpson: No matter how many times Charlie was asked to identify Darrell, he couldn't do it. He kept saying Darrell wasn't there. Storey, only Storey. So, as Lee Clark remembers, eventually the prosecutor came up with a new plan.

> **Darrell Lee Clark:**
> In that courtroom, that district attorney, Steve Cox, at the time that they were trying to get Charlie to identify me, he sit there and asked the judge, he said, "Your Honor, I would like to ask permission at this time to step behind defense counsel's table, and for Mr. Childers to tell me if it's, to stop behind the person he seen that night."
>
> And he comes right behind the defense counsel table and walks right behind me. And he's standing right there, and he's, like, "Is this the man you saw?"
>
> And then, then all of a sudden, they said, "Oh, yeah, this is the guy I seen."
>
> **Susan:** Oh, so, he did you get in the end?
>
> **Lee:** Yeah. I mean, what is that?

So, yeah, if you focus on just this one exchange from the transcript and ignore everything else that came before and after it, then sure, it is accurate to say that Charlie Childers identified Lee Clark at trial.

But Gola told us that if the prosecutor had actually wanted to find out if Charlie knew who Darrell Lee Clark was, this was not the way he should've gone about it.

> **[29:47] Gola Burton:**
> What they should have done is said, "Okay, Charlie, who is this? Give me this person's name. Charlie, who is this? Give me this person's name."
>
> I mean, he- they should have done everybody at the table. "Do you know these people? And what are their names? Can you do that?"
>
> **Jacinda Davis:** And he would have said, "Yes, no, yes…"
>
> **Susan Simpson:**
> What the prosecutor does next is he walks behind the defense bench. So you got the two defense attorneys. You got the two defendants there. He walks up and grabs Darrell Lee Clark by the shoulders.
>
> **Burton:** Okay.
>
> **Jacinda:** And I guess you ask, "Is this Darrell?"
>
> **Burton:**
> Okay. "Is that the person you saw outside the bed-", see, "Your honor, let the record show that he's, that he knows Darrell Clark."

Susan Simpson: After we spoke to Gola Burton, Jacinda and I updated Kevin on how it had gone.

[30:45] Kevin Fitzpatrick:
Does she remember at the time, thinking how absurd this was, that this was the eyewitness?

Susan:
And she was laughing when we showed her the transcript now, but like, back then I think she was like, freaked out, over her head, and she – she was early in her career and she didn't have the confidence to be like, "Your Honor, we can't – I cannot do this. This is not a thing that can be – we can't communicate with him."

Jacinda:
She also remembers being told, "Don't worry about it, the conviction won't hinge on his testimony."

Kevin: But he's the eye witness placing him at the scene.

Jacinda: He's the only one who can place him at the scene.

Kevin:
So now she's probably like, going back inside and having guilt, you know?

Susan:
She said she's going to call her dad, who she says is more experienced translating than her with this kind of issue and see what he thinks of that transcript.

Susan Simpson: We had known since we'd begun working on this case that we needed to speak to Charlie Childers. But after talking to Gola Burton, we now knew how difficult communicating with Charlie was going to be.

Susan:
And it really is a shame that Charlie - There's a deaf community in Cave Spring. Like, he's really close to a place where he could have lots of resources. And yet, he's been isolated.

Kevin Fitzpatrick:
Yeah, it's a little perplexing when you get right down to it, right?

Jacinda Davis: Yeah.

Kevin: Like, if he's going, if you're going to be in a sort of rural Georgia –

Susan: This, this is where you want to be.

Kevin: This, this is where you want to be.

-

Jacinda Davis: Gola put us in touch with her father, Mike Burton. He has decades of experience interpreting and teaching ASL, as well as teaching ASL interpreters.

Gola thought he might be able to help us make sense of Charlie's confusing testimony. And she turned out to be right about that.

> **[34:07] Susan Simpson:** You taught Charlie Childers.
>
> **Mike Burton:** I taught Charlie Childers.

Mike Burton had been Charlie's high school teacher. And he's remained in contact with Charlie off and on in the years since, acting as an interpreter for him on a number of occasions.

> **Jacinda Davis:**
> Did you find it hard to communicate with Charlie? Were you able to with Charlie or was it difficult?
>
> **Mike Burton:**
> Charlie's extremely difficult to communicate with. He left Georgia School for the Deaf in, I'm thinking '75, maybe? '74, '75.
>
> His mother took him to Silver Creek, and he never saw another deaf person. He actually looked me up. He wanted somebody to take him to church. This guy Tom, another deaf guy, took him to church. And the mother stopped that. She did not want him interacting with any other deaf people.
>
> So, it's like, you know, you can learn to ride a bicycle and you can keep that skill, but it ain't the same. And that's sort of the way I see it with Charlie. He never was a great signer. But over time, it really deteriorated.

Jacinda Davis: When we met Mike Burton, we'd been surprised to find out that he actually knew Charlie Childers.

And we were even more surprised to find out that he'd once interpreted for Charlie in connection with the Brian Bowling case.

> **Susan Simpson:**
> So, we're down in Booger Holler with Mike Burton, who is the father of Gola Burton, the interpreter who was used at the trial of Lee and Cain, defendants in this case. And he was just telling us that he remembers, at some point, interpreting for Charlie Childers. Tell me what you remember about that.
>
> **Mike Burton:**
> Well, I'll be honest with you. It was a while back and I'm getting a little fuzzy. I do remember talk about the trailer. I do remember Charlie talking about seeing this guy walk by the window. I do remember him talking about the plywood over the window. That's what I remember.

There's no record of this interview in the files we've been able to obtain, so it's not entirely clear what Mike Burton is remembering. He didn't know if he'd been brought in by the DA, or by a public defender, or what. He just remembers that, at some point, he had interpreted for Charlie when he was interviewed about Brian's death.

Mike Burton:
You know, a possibility - I don't think this is right, but it's possible. You know, his mother was so controlling and so involved. It's possible, she asked me to interpret for somebody. I mean, that's possible. She did that all the time, you know. And I'd always try to help Charlie out. Because Charlie was in trouble a lot over the years, you know. And with his neighbors and people around.

Charlie is difficult to communicate with. But Mike Burton has known him for more than 40 years. And if there's anyone in Floyd County who could help us speak with Charlie, it was Mike.

He volunteered to go with us when we went to interview Charlie.

Susan Simpson:
Alright. Well, should we head over to the Silver Creek Mini-Mart?

Jacinda Davis: Let's go find Charlie.

Mike Burton: All right, we'll just meet you over there.

Susan: Alrighty, thank you so much, sir.

Jacinda: Thank you.

Jacinda Davis: On our way back to Silver Creek, Susan, Dan, and I talked about what we'd just learned from Mike Burton.

Susan:
All right, so we're on the way to the Silver Creek Mini Mart. Taking the back roads because the bridge is out in Booger Holler. And I am really curious about what Mike Burton told us about his memory of some - I think the first word he used was deposition, which wouldn't be right, but some kind of like court connected proceeding that was - what makes the most sense to me, just guessing, is that the DA asked him in because the DA needed to hear from Charlie.

Jacinda:
So basically what he said is that he was - he was asked to come interpret for Charlie, and this was before the trial.

Susan: Mm-hmm. We think.

Jacinda: We think.

Susan:
Well, it sounds pretty sure. He thought it was before the trial, but he recalled Charlie saying there were people in the house and there was plywood on the window, and he saw someone else outside.

[38:21] Jacinda Davis: According to Dallas Battle, Charlie told him that, on the night Brian had been shot, he'd seen someone outside of the living room window.

But the window with plywood over it isn’t the living room window – that’s the window in Brian’s bedroom.

Susan:
I don't think Charlie was saying he saw someone through a window. I think he's saying the boys went in and out through the window.

Jacinda: That's what I think he's saying too

Susan:
Boy- Boys would go in out window. Boys walk in out through window. Go to store. The boys would go in and out of the window and then walk to the store, the mini mart.

Jacinda: Mm-hmm.

Susan:
That's the window. That's why - that's why he couldn't figure out the inside outside because it's both. He sees boys going in through the window and out through the win-, so he -

Charlie's confusion isn't that he can't tell inside outside apart, it's that he's like well, obviously, it's both. What - how do you focus on inside and outside when what you're describing someone going from in to out?

Jacinda Davis: Charlie could not have seen Brian’s bedroom window on the night Brian was shot. He was in the Bowling’s living room, facing towards the window that overlooked their front yard. There is no possibility that he observed anything at Brian’s bedroom window that night.

But it’s very possible - likely, even - that, on previous occasions, Charlie had seen boys going in and out of Brian’s bedroom window.

[39:42] Susan Simpson:
I get the sense too that Charlie struggles to convey concepts in time.

Dan Whitrock: And that really Charlie's - yeah.

Susan: Or to orient where, where and when, when things take place.

Dan: I mean, basically, Charlie was just saying the same thing that Jamie said-

Susan: Mm-hmm.

Dan: Which was--

Jacinda: People went in and out all the time.

Dan:
People would - yeah. People would always go in and out because that's just like, you know, how they got in to hang out in the room. They were just like, I just hop in through the window.

Susan:
So he gives answers that are true for certain subsets of time, but he doesn't orient his answers and doesn't understand the questions are focused on certain time periods either.

Dan: Right.

[40:25] Jacinda Davis: To find out if this could really be what happened, we needed to hear from Charlie himself.

And thanks to Mike Burton, it seemed like that was going to be possible.

But for that to happen, we'd have to find Charlie first.

Susan: Well this is frustrating.

Jacinda: Where's Charlie?

Susan Simpson: We tried every address in Silver Creek that Charlie had ever been associated with. He wasn't anywhere we could find.

While trying to figure out what to do, I stopped into the Silver Creek Mini-Mart to get some snacks and asked someone at the store if they happened to know where I could find Charlie. They didn't, but they pointed across a field outside the mini-mart. That guy over there might know, I was told.

Susan Simpson:
I'm sorry to bother you -- looking for a guy named Charlie Childers-- someone at the store told us that you might know where he is.

The man had in fact known Charlie and Wayne. But he wasn't able to tell me where I could find them.

Susan: So… something happened.

Jacinda: Oh no.

Susan:
They're largely homeless now. He knows them pretty well, and he said like as of a week ago, they were staying at this house right up the road here. But he also said they were homeless. I guess they lost the house? And now they're just staying--

Jacinda: Their mom died, so.

Burton: And she controlled everything.

Susan Simpson: While in Floyd County, we'd heard a few stories about Wayne and Charlie's mother, Patti Childers. And we'd come to learn that she'd had a personal interest in this case.

Shortly after trial, Brian's mother, Debra Bowling, had written a letter to the Rome News Tribune. The letter was lengthy and covered a variety of topics, but it closed by thanking a few people by name for their help in securing Cain's and Lee's conviction.

The following week, the paper ran another letter. This time under the heading "Friend offers views in Brian Bowling case." It was signed by Wayne Childers.

> **Kevin Fitzpatrick, narrating:**
> *[I] AM A CITIZEN of Floyd County and I would like to respond to the letter in the Feb. 19 paper. … My brother and I testified for the Bowling family in court, but our names weren't mentioned even once, in this letter as a thank you. What everyone doesn't know is that Brian Bowling had come to me numerous times about (redacted). ... I responded by saying, "This is a family matter," and that I wouldn't get involved. … As far as friends are concerned they want you when they need you, but when you need them they slap you in the face. ... Brian will be truly missed by myself and my family. He was a good kid and didn't deserve to die, but I believe he will be better off and get the attention he needed from his Father in heaven*.

Susan Simpson: The redaction was done by the Rome News Tribune -- the editor decided that whatever the family matter was it should be removed before the letter ran in the paper.

But when I stumbled across this letter in the newspaper's archives, its harsh tone stood out to me. What could have possibly motivated Wayne to write a public letter declaring Brian was better off dead, because God would give him more attention than his family did?

We asked Brian's uncle if he'd known what this letter was about.

> **Mikel Baker:** Yep, I know exactly what that is. It's--
>
> **Susan:** Okay.
>
> **Mikel:**
> The reason for it is the Childers, that's Wayne and Charlie, their mom and dad was Patty and James. Deborah had mentioned all these people, you know, thanked this person, this person, this person, and she didn't thank the Childers. So, Patty Childers was calling, cussing, raising all kind of Cain because we didn't thank them.
>
> **Susan:** So, that's what-
>
> **Mikel:** That's what that's about.
>
> **Jacinda:** That's why they wrote a letter.
>
> **Mikel:** That is correct.
>
> **Jacinda:** Okay.
>
> **Susan:** That's what they're upset about.

Mikel: Yep. That's it.

Susan:
Also, he, but - I, I've been told several times now that Wayne could not read or write.

Mikel: Correct.

Susan: Who do you think wrote that letter?

[44:25] Mikel: Patti.

Susan: Okay.

Mikel:
Yeah, the mom. And that's what it was. She was upset because she didn't call them by name to thank them in the newspaper.

Susan Simpson: When we spoke to Amanda and Kenneth, they remembered this letter as well.

Susan: And, what the consensus seems to be is that Patti wrote it.

Kenneth Floyd: That would be about right.

Susan:
Does that, that, that makes sense to you? That Patti would have written that?

Amanda Bowling: Yeah.

Kenneth:
Yeah, because she just, she would get mad about certain things like that, you know. And, and, because their names wasn't mentioned. The reason why their names wasn't mentioned is because they didn't want their names mentioned. Wayne and Charlie and, and Patti didn't want their names mentioned, you know, because they was so nervous. They was scared to death, I mean.

Amanda:
They was so scared. He thought Lee, I guess, Lee was gonna come and kill him.

Kenneth:
Yes, he, Charlie was scared to death. I mean, absolutely really wanted to be put on, what do you call that, where, you know, the witness protection, you know.

Amanda: Witness protection.

Jacinda: Oh, really?

Kenneth: Yeah, I mean, he was scared to death.

Susan Simpson: Amanda and Kenneth remember that Charlie had been nervous about his role in this case. And they think now that it may have been Lee Clark that he'd been worried about.

But Lee had been arrested before Charlie was ever interviewed and he's been behind bars ever since.

And from Charlie's trial testimony, it's far from clear that he has any idea who Lee Clark even is.

So, was Charlie really scared of Lee? Or could there have been something else that he'd been afraid of?

With Mike Burton's help, we'd be able to ask Charlie that ourselves. And while we hadn't found him yet, we knew now, at least, that he was still somewhere in Floyd County.

Next week, on *Proof:*

***

"They put me on trial with Cain because they know if they tried me separate, they was never going to get a guilty verdict. They used Cain's circumstance to convict me."

*

"What do you think was the most compelling evidence against them, in your mind?"

"Josh's testimony."

"You think if he hadn't taken the stand-"

"I think they would have got off the hook. Yeah."

*

"Let me tell you something. I ain't got no money. If I had money back then, Bobby Lee Cook, well known attorney, well around here. If I had had $50,000 or $60,000, he probably never would have went to prison. Lee wouldn't have."

***

Jacinda Davis: You've been listening to *Proof,* a podcast by Red Marble Media.

We'll be back next Monday for episode 10. Send us your questions and comments at proofcrimepod@gmail.com. We'll respond during our bonus episodes – *PROOF: SIDEBAR* – on Thursdays.

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That’s all for this week... thanks for listening.

Transcribed by Skylar Park