

TRUE CONFESSIONS?

By Mike Giglio – Houston Press – Wednesday, January 13, 2010



No physical evidence tied Charles Raby to the murder. He and his lawyers found out only recently that someone else's blood was beneath the victim's fingernails.



When Charles Raby opened his eyes he was lying in a puddle of mud. It was night. Cars thundered overhead on the Hardy Toll Road, headed south toward the skyscrapers.

It was October 15, 1992, and Raby was 22. He had been back in town for two months after spending two years in prison for aggravated robbery with a knife.

Raby says his last memory, before waking up disoriented and alone under the overpass, is of looking for his friends Lee Rose and Eric Benge at their grandmother Edna Mae Franklin's house in the fading daylight. No one answered his knock at the door, so he left and walked down Irvington to a used car dealership, where he sat between two cars and, with his head spinning from malt liquor, Mad Dog, marijuana and valium, lay down on the pavement. And then he was in the mud puddle. He picked himself up and started hopping fences until he was home.





Two blocks west down Crosstimbers, then four south on Irvington, and at the far end of Westford, 71-year-old Franklin, whom everyone in the neighborhood called "Grandma," had just been savagely stabbed to death inside her living room.

She was found there by Benge around 10 p.m. just after he returned home from his girlfriend Donna Lynn Perras's house.



Benge remembers that the front and back doors were open. The house was dark, except for a lamp in Franklin's bedroom in back. Her dresser drawers were open. The contents of her purse — some credit cards, a life insurance card for policies totaling \$2,000, a checkbook — were scattered on the floor near her bed. Franklin was on the living room floor.

She was naked from the waist down. Blue pants, turned inside-out, lay nearby, along with a torn pair of panties. There was blood on the panties, blood on a towel near her head and blood soaked through her blouse. Blood had splattered onto the couch and the sheet that partitioned off the kitchen.



Franklin had been sliced and stabbed 15 times in all. She had defensive cuts on her left arm and hand, and puncture wounds in her chest that reached into her heart. A frail and undernourished woman of 72 pounds, who often needed help from her grandsons just to get around the house, nearly half of her ribs were broken, and her head had been battered so hard that her hair was falling out. Police would need to pry her right hand open to collect the hair inside her fist. Her long fingernails were caked with blood.



Benge was beside his grandmother when his cousin Lee Rose and their friend John Allen Phillips walked in. "Look, Lee, look," Benge said. "Grandma's dead! Grandma's dead!"

When Benge turned his grandmother onto her back and found that her windpipe was severed, one name, he says, jumped right into his head: Buster, as Raby was known. Only Buster could have done this.

Rose told police he thought the same. As Phillips sprinted down the street to his own grandmother's house, he also had Buster running through his mind.

Four days later, when police finally caught up with him, Raby said he did it, too. The trial that followed was short. Though no physical evidence tied Raby to the crime, with his confession it seemed like a simple case.

But, more than 17 years later, nothing seems certain.

Several figures from the trial have since been discredited. State District Judge Woody Densen was recently indicted for criminal mischief after keying a neighbor's car.



The autopsy work of Dr. Eduardo Bellas, the coroner who said Raby's two-inch pocket knife could have caused Franklin's four-inch-deep wounds, was involved in a controversy over his office's failure to identify infant homicides.

Walter Quijano, the defense psychologist who called Raby a "psychopath" on the stand, was found to use race as a primary factor in determining whether someone was a future threat; related convictions involving black or Hispanic defendants have been reopened. Even Deetrice Wallace, the Houston Police Department chemist who determined that Franklin's panties had been ripped off, was indicted last year for forging breathalyzer inspection records.

And in the wake of the HPD crime lab scandal that broke in 2002, DNA tests were done on Franklin's bloody fingernails. At Raby's trial, the crime lab's Joseph Chu had testified that the blood-typing tests he performed on them were inconclusive.

Only, this wasn't true. Chu found Franklin's Type B blood. Beneath the fingernails of her right hand, he also found Type A. This could come only from someone with A or AB blood. Raby is Type O.



Raby, sitting on Death Row, no longer believes he killed Franklin at all.

Soon after he confessed, the baby-faced Raby was caught on Channel 13's camera as he headed to his arraignment.

On the film, Raby is 5-7 and compact like a pit bull. He keeps his head down, but his eyes flash at the camera as he passes, and a thick wad of spit shoots from his lips.

He had made his confession to police on October 19, 1992:



I knocked on the door. I did not hear anyone answer. I just went inside. I sat down for a little bit on the couch. I called out when I got inside but I did not hear anyone say anything. I heard Edna in the kitchen. I walked into the kitchen and grabbed Edna. Edna's back was to me and I just grabbed Edna. I remember struggling with her and I was on top of her. I know I had my knife but I do not remember taking it out. We were in the living room when we went to the floor. I saw Edna covered in blood and underneath her. I went to the back of the house and went out the back door that leads into the back yard.

...I woke up later on the ground near the Hardy Toll Road and Crosstimbers....I remember feeling sticky and I had blood on my hands. I washed my hands off in a water puddle that is near the pipe line by the Hardy Toll Road. I do not remember what I did with my knife. The



next day I knew I had killed Edna. I remember being at her house and struggling with her and Edna was covered with blood when I left.

Sergeant Waymon Allen, the veteran detective who took the confession, tells Channel 13 reporter Carlos Aguilar: "It was a very gruesome scene."

Aguilar then interviews a shirtless Rose, who says Franklin had run Raby off about a week before the murder.

"I mean I've known him to beat up on his girlfriend," Rose says.



"She [Franklin] told him that — that he needed to leave, cuz she didn't like nobody beatin' up no woman. And, he got mad and threw a bottle on the porch, and he left. And that was the last time I seen him, and — and he come back and killed her."



The trial began in June of 1994 with a special hearing before Judge Densen on whether Raby's confession had been coerced. To this day, Raby claims that police threatened to charge his girlfriend, Merry Alice Wilkin, who had been brought to the police station with her baby, with aiding and abetting and to place her six-week-old son in foster care. So Raby says he agreed to say whatever Allen wanted.

On the stand that day, Raby testified that he wanted to get Wilkin home and knew that by confessing, things would move faster.



"Are you telling the judge that you would have come clean with the police anyway or not?" the prosecutor asked.

"I don't know. I don't know if I would then or not, because I was prepared to lie then. I was going to lie, whatever it took to try to convince them I didn't do it."

"And you're not telling the judge that the only reason you signed the confession was because you wanted to get her out of there? You signed it because you did it voluntarily and it's true, right?"



"Because it's true and — well, he didn't force me to do it, but I wanted her to go home," Raby said.



No physical evidence tied Raby to the crime. The case revolved around the confession and witness testimony placing Raby near Franklin's house on the night of the murder. The hair in Franklin's right hand belonged to Benge, who has never been a suspect, and the family dogs. The condom wrapper lying next to her on the floor had been Benge's from a few days before. The house was too dirty and disheveled for fingerprints. An apparent set of footprints on Benge's bed, beneath the window police believed the killer used to enter the house, was not

tested. Nothing was missing from Franklin's purse; in fact, her jewelry pouch was still inside. Franklin sometimes kept money in her pocket, but nobody knew if she had any that day. The rape kit returned no indication of sexual assault.

There was blood on the telephone in Benge's room, attributed to his 911 call, but no blood on any of the doors or on Franklin's scattered belongings. No blood was found on the jacket, shirt, shoes or jeans Raby wore on the night of the murder. No DNA tests were performed. Allen said on the stand that, to his knowledge, there "wasn't anything incriminating" about the blood beneath Franklin's fingernails.

Neither Raby nor his two court-appointed attorneys were aware of the actual results of Chu's blood tests. Chu's testimony was quick and uncontested, and the trial continued chugging along.

Raby's lawyers called no witnesses during the guilt-innocence phase of the trial. In their closing arguments, they conceded his guilt and focused on arguing that it hadn't been a capital offense.

During deliberations, the jurors sent a note to the judge asking whether they needed to agree on an aggravating offense — actual or attempted burglary, robbery or sexual assault — in order to rule capital. They were told that they did not.

In the punishment phase, the defense's own psychologist agreed with the prosecutor that Raby was a "psychopath."

"And the only guarantee," the prosecutor said, "in terms of a person such as Mr. Raby, not hurting anybody again ever...would be the death penalty. Would you agree with me?"

"That would do the work," the psychologist replied.

Karianne Wright, whom Raby dated as a teenager and who is the mother of his daughter, testified over two days, alleging brutal abuse far worse than Raby concedes or their friends had observed, saying she'd been afraid to speak out, and that her face doesn't easily bruise.

"And I feel that the world — everyone would be safer without him," she said.

By the time attorney Sarah Frazier was appointed, in the spring of 2001, to Raby's new legal team, he had tried to drop his defense and hurry along his execution. His appeals were almost finished and had been plagued by poor representation. When Frazier's firm, the multinational King & Spalding, took the case pro bono at the request of Federal District Judge Lynn Hughes, Frazier suspected that she and her colleagues would be little more than a rubber

stamp on the impending death sentence. "We all felt like it was too late to do all the stuff that needed to be done," she says.

And Frazier also knew that Raby had confessed more than once.

With few other options, Frazier, who has since moved to Berg & Androphy, made a failed bid for DNA testing in late 2002. Confessions can be a barrier to DNA review, although the Innocence Project claims that 25 percent of DNA exonerees have "made incriminating statements, delivered outright confessions or pled guilty." But in the wake of the Houston Crime Lab scandal, and with Frazier's firm offering to foot the bill, in 2005 the Court of Criminal Appeals overturned the ruling — in an unpublished decision — and allowed DNA tests on Franklin's fingernail clippings.

Frazier had obtained Chu's original lab report, which noted the foreign Type A or AB blood beneath Franklin's fingernails. But to her, "inconclusive" meant that the tests did not reach a definitive result — which is the proper understanding of the term. In late 2008 she came across the fourth of a series of reports from a team of independent investigators led by Michael Bromwich into Houston's crime lab that revealed the extent of the problems there. It noted, among other issues, that blood-test reports were being manipulated to help with convictions. Potentially exculpatory findings "either were not interpreted or were not presented in the Lab's final report."

It seemed that in Raby's case, Chu had done exactly that. Lynn Hardaway, who is handling the DNA challenge for the state, requested an outside review of Chu's report this summer. Patricia Hamby, who worked with the Bromwich investigation, found that Chu's "inconclusive" reporting clearly contradicted his results.



Chu, who now handles evidence intake, is a recurring character in the Bromwich investigations. An HPD spokesman said Chu could not comment due to ongoing litigation.

Frazier's DNA tests suggested something similar to Chu's original blood-typing. Two partial male profiles were found under the nails from Franklin's left hand. (Frazier's expert believes both profiles could have come from the same man; an independent testing lab stated that they must have come from at least two different men.) Both profiles exclude Raby, as well as Franklin's grandsons, who were the only men to have regular contact with her. Frazier has submitted research and an expert opinion supporting her position that the DNA most likely came from Franklin's killer, and the judge is expected to rule at any time.



Frazier hopes a favorable verdict will help her unlikely bid for a new trial, in which she must show that exculpatory evidence — Chu's blood tests — was withheld at the original trial. A loss in the DNA appeal could result in an execution date.

Hardaway, the prosecutor, says the DNA could have come from innocent contact.

"I do not want to retry this whole case," she says. "That's not our burden. At this point, he's been found guilty by a jury, so he is guilty. That's the starting point. As for the blood, I don't know. But I would say that just because there's a different blood type there, that doesn't mean that he's innocent of the offense."

And she points to Raby's admission on the witness stand that his confession is true — almost two years after Franklin's death.

In a visitation box on Death Row in Livingston's Polunsky Unit, just past the Walmart and down a farm-to-market road, Raby, now 39, leans back and sticks his wrists through a slot in the locked door so a guard can remove his handcuffs. He brings his thick arms forward, and there is a flash of the young man who seldom lost a street fight, carried a knife and, according to his best friend, would "walk across town to getcha"; who admits that, as a teenager, he hit, sexually assaulted and once even dragged his girlfriend Wright, pregnant, down the street by her hair; who took a shotgun blast of bird shot to the stomach and, weeks later, was said to have run down and beat a man on the sidewalk with fluid still draining from the tubes in his gut.

It is unclear — perhaps even to Raby — when he came to believe that he was innocent of Franklin's murder. He signed his confession after little more than two hours at the police station. Before confirming its accuracy on the stand, he did the same in his pre-trial sanity and competency evaluation. The county psychologist reported that Raby said he entered Franklin's house and used the telephone on the night of the murder: "After this he, 'tripped out, I guess.'" According to the report, Raby also said he did not read his confession, but, "he believes it is reasonably accurate."

"As the years went on...I don't know. It just don't feel right," Raby says, in an unhurried drawl that seems preserved in his isolation. "I done a lot of messed-up stuff. I'm not a good guy. I broke the laws. I just don't feel dirty, man. I just don't feel dirty. I just don't feel like there's blood on my hands."

Grim details of Raby's former life are scattered throughout trial transcripts, affidavits, county records and interviews. A family friend sneaks him food when he is made to live in a shed behind a stepfather's house. His grandmother sits in a chair and stares, for hours on end, then butchers a teddy bear with a kitchen knife. She and his mother drift in and out of nervous breakdowns and mental hospitals. A caseworker struggles to keep Raby in group homes and state-run schools. A schizophrenic uncle regularly threatens the family with knives and ninja

stars, and feeds 12-year-old Raby alcohol and weed. A police helicopter thunders overhead, and Raby flees to Franklin's house. Rose lets him in through his bedroom window.

Franklin was known as a friendly woman with a welcoming home where her grandsons and their friends, like Raby, could get away with drinking and smoking pot. Kenneth Gaddis

remembers Raby as a heavy drinker with a quick temper who stood out in a rough group.

"Gang members, drugs — bunch of drugs everywhere. It's just a bad neighborhood," Gaddis says. "I was wild, man. Buster, he just took it to the next level. He saw himself as an outlaw. I think he even got that tattooed on his stomach."

By late 1988 Raby and Wright had moved with their newborn daughter to Deer Park to be with Raby's mother and her new husband, and for a short time Raby had an apartment and a job. The next summer, he was drunk and holding a steak knife during an altercation with his stepfather. He knocked out four of the man's front teeth, and in the ensuing scuffle his mother's false teeth as well. He spent six months in jail, and was out about six weeks when, in February of 1990, he pulled a knife on a convenience-store manager who had caught his friend stealing two 12-packs of Budweiser. They sped off and, with a police cruiser chasing, ran through a red light and into a light pole. Raby, with cuts on his face, climbed out of the passenger's seat and tried to take off down the street.

"I do know I'm crazy. But killing crazy?" Raby says. "I'm not gonna lie. He [Sergeant Allen] planted the seed: Did I do that? A long time I was walking around with that guilt — did I do it?"

On the morning of the murder, Raby woke up at his grandmother's house, about five miles from the Franklin place, and began to drink. He walked a mile and a half closer to visit his half-brother Harry Robert Butler. Butler remembers lending Raby his pocket knife, which had a two-inch blade that he kept "real sharp." He pedaled Raby on the pegs of his bicycle to visit his friend James Parks, closer still to Westford Street.

Parks wasn't home. Parks's mother, Shirley Gunn, testified at trial that Raby visited twice that day, first around 3 p.m., with his brother, and then at 5 p.m. alone and on foot. She visited with him on the porch and noticed alcohol on his breath. He had a dark vinyl jacket slung over his shoulder and cleaned his fingernails with the pocket knife. He wondered aloud whether he might find Parks at "Grandma's house." He left at 6 p.m., when *Roseanne* was coming on TV.

Benge testified that he left for his evening shift at Ace K-9, where he transported guard dogs to and from local businesses, just before 4 p.m. He dropped Rose off at a corner store along the way.

Rose returned home with some new bike parts around 5 p.m. He and Phillips sat outside for about an hour, then left together for Phillips's house and spent the rest of the evening drinking and doing drugs at different spots around the neighborhood.

The neighbor across the street, Donna Espadas, told police that, as she was getting home from work just before 6 p.m., she saw a white male in jeans and a T-shirt at Benge's bedroom window. She thought nothing of it, since the house was being painted, and didn't get a good look. Espadas did not testify at the trial.

Around 6:30 p.m., according to a police statement from Karianne Wright's older brother, their father ran Raby off from their house on West Hardy Road, just a mile from the scene of the murder. Shortly afterward, he and his mother drove past Raby on the road, closer still to Franklin's house, and headed that way.

Linda McClain called her mother around 6:20 p.m. Franklin was alone in the house. She assured McClain that all the doors were locked. They spoke for about 25 minutes.

The sun set at 6:51 that day. Phillips lived down the street from Franklin with his grandmother, Mary Alice Scott. Scott heard a knock on the door as it was getting dark and, peering out her door, saw Raby step off her driveway and onto the street, wearing dark jeans and a black jacket.

Leo Truitt's house sits directly behind Franklin's. His brother-in-law, Martin Doyle, pulled into the driveway around 8 p.m. Doyle saw a white male in a dark jacket, with dark but not black hair, like Raby, and a similar build, walk through Truitt's yard. He hopped the chain-link fence in front, then headed east toward Irvington. Doyle and Truitt followed in Doyle's truck and confronted him.

The street was not well lit. The man turned his head to the side, as if to avoid being seen. He said he was taking a short cut, because there had been an "accident" on the next street. He put his hands in the pockets of his coat and opened it, to show he hadn't stolen anything. Then he walked off into the night.

Allen observed that the blinds on Benge's bedroom window were partly raised, as if someone had crawled through. He found fresh woodchips on the window sill. The bottom of the screen was pulled about two inches from the wall — and Benge said he had nailed it that afternoon.

The screen was off because a friend named Edward Bangs, who was intermittently staying on the couch, had recently painted the house. According to the offense report, Benge told police that Bangs and Raby were the only people who knew that his bedroom window had a broken pane and could easily be opened.

(Raby vehemently denies this, pointing out that he moved away in 1988. Rose and Bengé now say most of their friends, including Raby, knew of the window. "Some *very* shady people were becoming aware of the window," Bangs, who is in prison, said in a recent letter to the



Houston Press.)

Bengé testified that he finished work, stopped at a friend's house for a shower, then went to his girlfriend's house from 7 until 9:45 p.m.

He came home to an odd scene in the front yard. In addition to the open doors and dark house, the three dogs — two of which stayed behind a fence in back — were loose in the front.

As he walked in, Bengé stumbled on what he guessed were clothes. He entered Franklin's room. The dogs went straight out the back door, which was unlocked and open. He locked it, then noticed the contents of his grandmother's purse scattered on the ground. Thinking the dogs had knocked over the purse, and that his grandmother might be in the bathroom on the other side of the house, he said, he picked up the purse and its contents and placed them on the bed. He also closed the dresser drawers, which looked as if someone had rifled through them.

Bengé walked back into the kitchen and turned on the light, which, when he pulled back the partition, revealed his grandmother, lying on her side. He thought she had been shot and rolled her onto her back to check for bullet holes and try CPR.

"I jumped up and was getting ready to run off into the front bedroom. I was going to call the police and paramedics. About that time my cousin showed up at the door," Bengé testified.

"He came in and I started hollering to go call somebody, and I knelt back down beside her. He went kind of like, I guess, freaked out a little bit, too, but we managed to get to the phone and we, you know, dialed 911 for some help. And pretty much all I can remember is being — my



arms and hands all being covered in blood from trying to find out what was wrong with her."

On the night of the murder, Merry Alice Wilkin says, she received a call from Raby around 10 p.m. She could tell that Raby was drunk by the way he laughed and joked around.

Wilkin remembers Raby as a caring boyfriend who wanted to be a father to her newborn son. He stayed with her at the hospital and brought her a rocking chair that she has to this day. The two met through a mutual friend when Raby was in jail for the fight with his stepdad. They stayed in touch when he went back for the robbery. Wilkin says his release date — 8-10-92 — remains an anniversary for her.

"People could take it, well, 'They didn't have much time together.' But it was all these letters. All these years," she says.

Wilkin, a nurse, volunteers with prisoners and cries as she tries to explain why:

"It's my fault that he's in there, because of the confession that he signed, and the reason that he will never be released, and the reason that he may die, and they will kill him. And I will take that with me to the grave."

Wilkin has never asked Raby if he did kill Franklin. "I can't even answer that. I've never been able to say yes or no."

From time to time, Raby's cell fills with legal documents and case files. Then he tears them to shreds.

"I can't explain to you how much it bothers me not to remember that night. And it eats at me, man. I try and try and try. And it drives me crazy. I bounce off the walls," Raby says. "That blackout, it scares me. To this day it scares me."

Memories change, according to Dr. Christian Meissner, and are inherently unreliable things. He has been hired by the U.S. Army with exactly that in mind.

A cognitive and behavioral scientist at the University of Texas-El Paso who specializes in false confessions, Meissner is helping interrogators to produce more reliable information. The key is understanding how unreliable human sources can be.

"Memory evolves over time. It's a product of how we tell the story over time, a product of what we hear about other stories and how that changes our own. It's a product of simple memory loss, and us filling in some of the details of what should have happened, or would have happened, given where we were," he says. "But even these memories that we think we have complete control over, and have high confidence in, are in fact inaccurate for a variety of reasons."

Faulty memory can corrode witnesses and alibis. It can also, Meissner says, lead a person to confess to a crime he didn't commit — and even begin to believe his confession.

"Here's an individual who did commit crimes previously," Meissner says of Raby. "He's probably wrestling with his persona. With his own perception of himself."

Meissner points to two main factors for what he calls a coerced-internalized false confession. The suspect's memory for the time frame in question must be vulnerable in some way. And he must be faced with perceived evidence of his guilt. It also helps, Meissner says, if the suspect's friends and family, and even the suspect himself, believe he is capable of the crime.

From here, common interrogation tactics, such as leading questions and minimizing guilt, can backfire. Police may have little idea that the information they're getting could be unreliable.

"I think they underestimate the power of their authority," Meissner says. "I think they underestimate the power of their techniques."

Allen, who is now a private investigator, did not respond to requests to comment for this article. Raby initially denied even visiting the neighborhood that day, but Allen had already interviewed all the people who'd seen him. In the offense report, Allen writes that when he told Raby he had been seen jumping Leo Truitt's fence, Raby teared up and began to confess.

In Raby's version, he told Allen everything "all the way until I blacked out." But Allen insisted there was more to the story:

"You blacked out so you might not know."

Allen tried to hold his hand:

"You might not remember this, but it's possible you done it."

Allen told him he'd been seen jumping the fence.

"Okay, I jumped the fence then."

"You got out the back door."

"Then I went out the back door."

Since human evidence is always suspect, Meissner says, a reliable confession should provide new information about the crime, or volunteer something that only the person who committed it could possibly know.

"The only thing that you can get an innocent person to confess to is your version of events," he says.

The confession should also be supported by the rest of the investigation. But too often, Meissner says, it stops with the statement, leaving questions that become harder and harder to answer.

"The story of what happened has evolved over time," he says. "I had a memory for some of the event, other people had a memory for other parts of it, and now it's been shaped by the trial record, by having discussed it with other people, by having told it, and so forth. You may actually never get back to the truth."


And it isn't only Raby's memories that have shifted and scrambled over time.

When Benge first told police about Raby's argument with Franklin, he said he and Rose weren't there at the time. He'd heard from his grandmother that Raby got mad when she tried to run him off and swore and broke a beer bottle on the porch. The argument took place five days before the murder.

Rose told the television camera he was there that day. Raby broke the bottle on the porch and stormed off, and that was the last he'd seen of him. In trial, Rose added that he went with Raby to make sure he left.

Raby swears that Benge was there. He greeted Raby when he arrived — "long time no see" — and stood behind Franklin in the doorway as she told Raby to go. Raby says that as he and Lee were leaving, Bangs, the man who painted Franklin's house, arrived in a red pickup and shook Raby's hand. Raby continued on his way, finished his beer and, as was his custom, lobbed the bottle into the air. It broke on the street.

Phillips remembers Raby throwing the bottle against the side of the house, just inches from Franklin. He was surprised, he says, that Benge and Rose both left with Raby after he insulted their grandmother like that.

Bangs remembers drinking on the porch with Benge, Rose and possibly Phillips during the altercation. In his version, "Right at nightfall, a maroon red Chevy truck pulled up in the street. Someone got out and the truck pulled away. It was Charles (Buster). He came struttin  up, with his shirt over his shoulder. We asked where he had been? He said prison."

On the night of the murder, Officer C.C. Coleman arrived first at the scene. She noted that the bathroom sink was running and splashing water on the floor.

According to her report, Benge said that after he turned his grandmother over and found the cuts on her throat, he "freaked and went to call the police, but washed his hands real quick in the bathroom. Benge stated that at that time his cousin Lee showed up."

Benge's police statement says that, after Rose arrived, Benge went into his room and dialed 911, then went to the sink and turned on the water but didn't wash his hands. He went back to the phone and called his girlfriend, then went outside and washed his hands with a neighbor's hose.

Benge's testimony at trial doesn't mention him washing his hands, but says that he and Lee made the 911 call together. As in his statement, he had just discovered his grandmother and her wounds when Rose and Phillips walked inside.

Rose now remembers walking in just as Benge flipped on the kitchen light but, in his statement, said simply that Benge "was already home." Phillips did the same in his: "When we got there Eric was already there. He had found Mrs. Franklin dead on the floor."

Phillips says he is surprised that, ever since, no one has contacted him about the case.

"When me and Lee was walking up through the yard, we could see Eric coming out the [front] bedroom, you know, going back to the back den [Franklin's] room," Phillips says. "Then by the time that me and Lee had walked up on the porch and opened the door, well, we could see her laying on the floor, and then that was when Eric was coming back out from the back den [Franklin's] room, you know, and then he seen us and was like 'Look, look, Grandma's dead, Grandma's dead.'"



Phillips says Benge had been rummaging through Franklin's purse in search of \$300. Frazier says that, if Phillips's version is true, it "totally discredits" Benge as a witness and casts doubt on the case for a capital offense, which relied heavily on his version of how he found the crime scene.

("The last thing I was thinking about is money," Benge says, adding that Franklin used checks to buy food, which friends recall as well.)

"Nobody really knows that but me and Lee," Phillips says. "We already knew that he was just back there getting the money out of her purse, you know, because he knew that she had \$300 in her purse back there. And then that night, later on that night he pulled the money out and said, you know, 'Well, she gave me the \$300.'"



Benge and Rose say Phillips is mistaken and point out that he scarcely entered the house.

"The first thing that popped in my head is the person's still in the house," Phillips says. "So I took off."

Perras — who now claims Benge "had a misconstrued concept of our relationship" and says she had to repeatedly ask him to leave that night — says she received a hysterical call from Benge shortly after he left her house and came right to the scene.

"I called Donna. Like a dumbass. I don't know why I called her first," Benge says now, adding that it was Rose who eventually called police.

"As soon as I dropped the phone, I ran back over [into the living room], and that's when [Rose] walked in the door...I guess the best way to put this, man, is that when this shit was going on — there's still parts to me that are hazy. As far as freaking out."

In a signed affidavit, Perras says that after she arrived, Benge told her the killer must have been a junkie looking for money to buy drugs, and seemed to have an idea of who it was. She believed it was someone to whom he owed money.

"I know it was drug-related. It had to be," she said in a recent interview, adding that on an earlier visit to Benge's house, she had found it in disarray and the neighborhood full of shady people.



"She can swear that all she wants," Benge says. "That is bullshit."

At the trial, Rose admitted to smoking crack and being an alcoholic during that time period. Benge had recently been convicted of misdemeanor possession of marijuana.



"Everybody was hooked on coke at the time, and you know, drinking, smoking weed every day," Phillips says.

Benge says that he has never suspected Bangs of anything and remembers that Bangs and his grandmother got along well. At the scene of the murder, according to the offense report, he told police that Bangs was a drug addict who had recently stolen his paycheck and shotgun and was the only person he knew other than Raby who could have committed the crime.

In his letter, Bangs said he was with his girlfriend Alicia Overstreet on the night of the murder. Overstreet says this is impossible, since the two had been separated for months, in part because she says Bangs had threatened to kill her. "He was psychotic," she says. "And he was just like the other one [Raby]."



In 1993, Bangs was convicted of robbing and threatening an old woman acquaintance. They were walking to a restaurant together when he grabbed her purse and threatened to kill her if she fought back. Bangs is now serving time for robbery in Lovelady's Eastham Unit, a maximum security prison known to house problem offenders.

The Texas Department of Criminal Justice denied repeated requests to interview Bangs in person for this story, saying he had been assaultive to the prison staff. Bangs currently receives one hour of recreation three times per week, TDCJ spokeswoman Michelle Lyons says, which takes place just outside his cell.



There has been only one suspect in Franklin's murder, however, and, standing in the yard outside her home, which Benge now owns, her grandsons think it should stay that way.

"Maybe they screwed that up too," Rose says of the blood tests.

He and Benge have no doubt about Raby's guilt.



"Cuz I mean everybody else was here but him," Rose says.



"Everybody had an alibi but him," Bengie says. "Everybody was accounted for."

mike.giglio@houstonpress.com

I knocked on the door. I did not hear anyone answer. I went inside. I sat

at down for a while

on the couch. I called out when I got inside but I did not hear anyone say anything. I heard

in the kitchen. I walked into the kitchen and grabbed Edna. Edna's back was to me and I just

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ICI() HOF remember taking it out. We were in the living room when we went to the floor. I

Echki covered in blood and underneath her. I went to the back of the house and went out the

door that leads into the back yard

..I woke up later on the ground near the Hardy Tree Rota and Crosstimbers....I remember

feeling sticky cold I had blood on my hands. I washed my hands off in a water puddle down is near

the pipe line on the Hardy 7611 Road I do not remember what I did with my knife. The next day I

..... /

knew I had killed Edna, I remember being at her house and struggling with her and Edna um-

-,

0

covered with blood When I left..Y.'

/ .. .

Sergeant Waymon Allen, the veteran detective who took the confession, tells Channel 13 reporter Carlos Aguilar. "It was a very gruesome scene

Aguilar then interviews a shirtless Rose, who says Franklin had run Raby off about a week before the murder.

"I mean I've known him to beat up on his girlfriend," Rose says.

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"She [Franklin] told him that - that he needed to leave, but she didn't like nobody beatin' up no

woman. And, he got mad and threw a bottle on the porch. and he left. And that was the last time

10-

I seen him, and -- and he come back and killed her."

4

The trial began in June of 1994 with special hearing before Judge Densen on whether Raby's confession had been coerced To this day, Raby claims that police threatened to charge his

girlfriend. Merry Alice Wilkin, who had been brought to the police station with her baby, with aiding and abetting and to place her six-week-old son in foster care. So Raby says he agreed to

say whatever Allen wanted.

On the stand that day. Raby testified that he wanted to get Wilkin home and knew that by confessing, things would move faster.

"Are you telling the judge that you would have come clean with the police anyway or not" the prosecutor asked.

"I don't know. I don't know if it would be or not. because I was prepared to lie then. it was going

to lie, whatever it took to try to convince them I didn't do it

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"And you're not telling the judge that the only reason you signed the confession was because you

wanted to get her out of there? You signed it because you did it voluntarily and it's true, right".

"Because it's true and -- well, he didn't force me to do it. but I wanted her to go home," Raby said if

No physical evidence tied Raby to the crime The case revolved around the confession and witness testimony placing Raby near Franklin's house on the night of the murder: The hair in Franklin's right hand belonged to Benge. who has never been a suspect, and the family dogs. The

condom wrapper lying next to her on the floor had been Benge's from a few days before The house was too dirty and disheveled for fingerprints. An apparent set of footprints on Benge's bed,

beneath the window police believed the killer used to enter the house, was not tested.
Nothing

was missing from Franklin's purse in fact, her jewelry pouch was still inside. Franklin sometimes kept money in her pocket, but nobody knew if she had any that day. The rape kit returned no indication of sexual assault.

There was blood on the telephone in Benge's room, attributed to his 911 call, but no blood on any of the doors or on Franklin's scattered belonging. No blood was found on the jacket, shirt,

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-hoses or jeans Raby wore on the night of the murder. No DNA tests were performed. Atien said

on the stand that, to his knowledge, there "wasn't anything incriminating" about the blood beneath Franklin's fingernails.

Neither Raby nor his two court-appointed attorneys were aware of the actual results of the blood test. His testimony was quick and uncontested, and the trial continued chugging along.

Raby's lawyers called no witnesses during the guilt-innocence phase of the trial. In their closing

arguments, they conceded his guilt and focused on arguing that it had not been a capital offense.

During deliberations, the jurors sent a note to the judge asking whether they needed to agree on

an aggravating offense -- actual or attempted burglary, robbery or sexual assault - in order to rule capital. They were told that they did not.

In the punishment phase, the defense's own psychologist agreed with the prosecutor that Raby

was a "psychopath."

"And tbc only guarantee." tbc prosecutor said. "in terms of a person such as Mr. Raby, not hurting anybody again ever. would be tbc death penalty. Would you agree with me'?"

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"That would do the work," the psychologist replied.

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Karianne Wright, whom Rahy dated as a teenager and who is the mother of his daughter, testified over two days, alleging brutal abuse far worse than Raby concedes or their friends had

observed, saying she'd been afraid to speak out, and that her face doesn't easily bruise.

41,

"And I feel that the world — everyone would be safer without him," she said

By the time attorney Sarah Frazier was appointed, in the spring of 2001, to Raby's new legal team. he had tried to drop his defense and hurry along his execution. His appeals were almost

finished and had been plagued by poor representation.. When Frazier's firm, the multinational

King & Spalding, took the case pro bono at the request of Federal District Judge Lynn Ilughes,

Frazier suspected that she and her colleagues would be little more than a rubber stamp on the

impending death sentence "We all felt like it was too late to do all the stutihat needed to be done," she says

And Frazier also knew that Raby had confessed more than once.

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\With lw other options. Frazier, who bas since moved to Berg & Androphy, made a failed bid

for DNA testing in late 2002. Confessions can be a barrier to DNA review, although the Innocence Project claims that 25 percent of DNA exonerees have "made incriminating statements, delivered outright confessions or pled guilty." But in the wake of the Houston Crime

Lab scandal, after with Frazier's firm offering to foot the bill, in 2005 the Court of Criminal Appeals overturned the ruling in an unpublished decision and allowed DNA tests on Franklin's fingernail clippings

Frazier had obtained Chu's original lab report, which noted the foreign Type A or AB blood beneath Franklin's fingernails. But to her, "inconclusive" meant that the tests did not reach a definitive result which is the proper understanding of the term In late 2008 she came across

the birth of a series of reports from a team of independent investigators led by Michael Bromwich into Houston's crime lab that revealed the extent of the problems there It noted, among other issues, that blood-test reports were being manipulated to help with convictions Potentially exculpatory findings "either were not interpreted or were not presented in the Lab's final report."

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It seemed that in Raby's case, Chu had done exactly that Lynn Hardaway, who is handling the

DNA challenge for the state, requested an outside review of Chu's report this summer. Patricia

Hamby, who worked with the Bromwich investigation, found that Chu's "inconclusive" reporting

clearly contradicted his results.

Chu, who now handles evidence intake, is a recurring character in the Bromwich investigations.

,a4), An HPD spokesman said Chu could not comment due to ongoing litigation

Frazier's DNA tests suggested something similar to Chu's original blood-typing. Two partial male profiles were found under the nails from Franklin's left hand (Frazier's expert believes both

profiles could have come from the same man; an independent testing lab stated that they must

have come from at least two different men.) Both profiles exclude Raby, as well as Franklin's grandsons. who were the only men to have regular contact with her. Frazier has submitted research and an expert opinion supporting her position that the DNA most likely came from Franklin's killer, and the judge is expected to rule at any time;,-

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Frazier hopes a favorable verdict will help her unlikely bid for a new trial, in which she must show that exculpatory evidence - Chu's blood tests - was withheld at the original trial. A toss in the DNA appeal could result in an execution date.

Haidaway, the prosecutor, says the DNA could have come from innocent contact.

"I do not want to retry this whole case," she says, "That's not our burden. At this point, he's been

found guilty by a jury. so he is guilty. That's the starting point. As for the blood, I don't know.

But I would say that just because there's a different blood type there. that doesn't mean that he's

innocent of the offense'

And she points to Raby's admission on the witness stand that his confession is true - almost two

years after Franklin's death.

In a visitation box on Death Row in Livingston's Polunsky Unit, just past the Walmart and down

a farm-to-market road, Raby, now 39, leans back and sticks his wrists through a slot in the locked door so a guard can remove his handcuffs. He brings his thick anus forward, and there is

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a flash of the young man who seldom lost a street fight, carried a knife and, according to his best

friend, would "walk across town to getcha", who admits that, as a teenager, he hit, sexually ..., assaulted and once even dragged his girlfriend Wright, pregnant, down the street by her hair,

who took a shotgun blast of bird shot to the stomach and, weeks later, was said to have run down

and beat a man on the sidewalk with fluid still draining from the tubes in his urethra,

It is unclear -- perhaps even to Raby — when he came to believe that he was innocent of Franklin's murder. He signed his confession after little more than two hours at the police station.

Before confirming its accuracy on the stand, he did the same in his pre-trial sanity and competency evaluation. The county psychologist reported that Raby said he entered Franklin's

house and used the telephone on the night of the murder "After this he, 'tripped out, I guess

-

According to the report, Raby also said he did not read his confession, but, "he believes it is

reasonably accurate.'-'

"As the years went on I don't know It just don't feel right," Raby says, in an unhurried drawl that seems preserved in his isolation. "I done a lot of messed-up stuff. I'm not a good guy. I broke

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the laws. I just don't feel dirty. man. I just don't feel dirty I just don't feel like there's blood in my hands

Grim details of Raby's former life are scattered throughout trial transcripts, affidavits, county records and interviews. A family friend sneaks him food when he is made to live in a shed behind a stepfather's house for his grandmother sits in a chair and stares, for hours in a row, then

hutches a teddy bear with a kitchen knife. She and his mother drift in and out of nervous breakdowns and mental hospitals. A caseworker struggles to keep Raby in group homes and state-run schools. A schizophrenic uncle regularly threatens the family with knives and ninja stars, and feeds the 2-year-old Raby alcohol and weed. A police helicopter thunders overhead, and

Raby flees to Franklin's house. Rose lets him in through his bedroom window.

Franklin was known as a friendly woman with a welcoming home where her grandsons and their

friends like Raby, could get away with drinking and smoking pot Kenneth Gaddis remembers

Raby as a heavy drinker with a quick temper who stood out from a rough group

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"Gang members, drugs -- bunch of drugs everywhere. It's just a bad neighborhood," Gaddis says "I was wild, man. Buster, he just took it to the next level He saw himself as an outlaw. I think he even got that tattooed on his stomach " I

By late 1988 Raby and Wright had moved with their newborn daughter to Deer Park to be with

Raby's mother and her new husband, and for a short time Raby had an apartment and a job. The

next summer, he was drunk and holding a steak knife during an altercation with his stepfather.

He knocked out four of the man's front teeth, and in the ensuing scuffle his mother's false teeth as

well,, e spent six months in jail, and was out about six weeks when, in February of 1990, he putted a knife on a convenience-store manager who had caught his friend stealing two 12-packs

of Budweiser They sped off and, with a police cruiser chasing, ran through a red light and into a

light pole. Raby, with cuts on his face, climbed out of the passenger's seat and tried to take off

down the street.

"I do know I'm crazy. But killing crazy?" Raby says. "I'm not gonna lie. He [Sergeant Allen] aViegef

planted the seed: Did I do that? A long time 1 was walking around with that guilt -- did I do it?"

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On the morning of the murder. Raby woke up at bis grandmothers house, about tive miles from

tbc Franklin place, and began to drink He walked a miie and a half closer to visit bis halt-brother

Harry Robert Butler. Butler remembers tending Raby his pocket knife, which had a two-inch blade that he kept "real sharp" He pedaled Raby on the pegs of his bicycle to visit his friend James Parks, closer still to Westford Street.

Parks wasn't home. Parks's mother, Shirley Gunn, testified at trial that Raby visited twice that

day, first around 3 pm. with his brother, and then at 5 pm. alone and on foot. She visited with him on the porch and noticed alcohol on his breath. He had a dark vinyl jacket slung over his shoulder and cleaned his fingernails with the pocket knife. He wondered aloud whether he might

find Parks at "Grancima's house." He left at 6 p.m., when Roseanne was coming on TV.

Renge testified that he left for his evening shift at Ace K.9, where he transported guard dogs to

and from local businesses, just before 4 pm. He dropped Rose off at a corner store along the way.

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Rose returned home with some new bike parts around 5 p.m. He and Phillips sat outside for about an hour, then left together for Phillips's house and spent the rest of the evening drinking

and doing drugs at different spots around the neighborhood.

The neighbor across the street, Donna Espadas, told police that, as she was getting home from

work just before 6 p.m., she saw a white male in jeans and a T-shirt at Benge's bedroom window

She thought nothing of it, since the house was being painted, and didn't get a good look. Espadas

„?ir did not testify at the trial.

Around 6.30 p m., according to a police statement from Karianne Wright's older brother, their father ran Raby off from their house on West Hardy Road, just a mile from the scene of the murder. Shortly afterward, he and his mother drove past Raby on the road, closer still to Franklin's house, and headed that way.

Linda McClain called her mother around 6:20 p.m. Franklin was alone in the house. She assured

McClain that all the doors were lockefr They spoke for about 25 minutes.

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The sun set at 6:51 that day. Phillips lived down the street from Franklin with his grandmother,

Mary Alice Scott Scott heard a knock on the door as it was getting dark and, peering out her door, saw Raby step off her driveway and onto the street, wearing dark jeans and a black jacket.

Leo •ruitt's house sits directly behind Franklin's. His brother-in-law, Martin Doyle, pulled into the driveway around 8 p m Doyle saw a white male in a dark jacket, with dark but not black hair, like Raby, and a similar build, walk through Truitt's yard He hopped the chain-link fence in

front, then headed east toward Irvington. Doyle and Truitt followed in Doyle's truck and

oir

confronted him

The street was not well lit. The man turned his head to the side, as if to avoid being seen. He said

he was taking a short cut, because there had been an "accident" on the next street. He put his

hands in the pockets of his coat and opened it, to show he hadn't stolen anything. Then he walked

off into the night.

Allen observed that the blinds on Bengie's bedroom window were partly raised, as if someone had crawled through. He found fresh woodchips on the window sill. The bottom of the screen was pulled about two inches from the wall — and Bengie said he had nailed it that afternoon. 4.3

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The screen was off because a friend named Edward Bangs, who was intermittently staying on the

couch, had recently painted the house. According to the Otterbein report, Bengie told police that

Bangs and Raby were the only people who knew that his bedroom window had a broken pane

and could easily be opened. 99

Raby vehemently denies this, pointing out that he moved away in 1988. Rose and Bengie now

say most of their friends, including Raby, knew of the window. "Some of our shady people were becoming aware of the window," Bangs, who is in prison, said in a recent letter to the Houston

Press

Bengie testified that after finished work, stopped at a friend's house for a shower, then went to his

friend's house from 7 until 9:45 p. m.

He came home to an odd scene in the front yard. In addition to the open doors and dark house,

the three dogs - two of which stayed behind a fence in back were loose in the front.

As lie walked in. Benge slun%bled on what lie guessed were clothes. He enteied Franklin's room.

The dogs went straight out tbc back door, which was unlocked and open. He locked it. then

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noticed the contents of his grandmother's purse scattered on the ground. Thinking the dogs had

knocked over the purse, and that his grandmother might be in the bathroom on the other side of

the house, he said, he picked up the purse and its contents and placed them on the bed. He also

closed the dresser drawers, which looked as if someone had rifled through them.

Benge walked back into the kitchen and turned on the light, which, when he pulled back the partition, revealed his grandmother, lying on her side. He thought she had been shot and rolled

her onto her back to check for bullet holes and try CPR.

"I jumped up and was getting ready to run off into the front bedroom. I was going to call the police and paramedics About that time my cousin showed up at the door," Benge testified "He

came in and I started hollering to go call somebody, and I knelt back down beside her. He went

kind of like, I guess, freaked out a little bit, too, but we managed to get to the phone and we. you

know, dialed 9i l for some help. And pretty much all I can remember is being my arms and hands all being covered in blood from trying to find out what was wrong with her "

On the night of the murder, Meny Alice Wilkin says, she received a eaU from Raby around 10

p.m. She could teil that Raby was drunk bv thc way he laughed and joked around.

Wilkin remembers Raby as a caring boyfriend who wanted to be a father to her newborn son. 1 I

stayed with her at tbc hospital and brought her a rocking chair that she bas to this day. The two

met through a mutual friend when Raby was in jail tor the fight with his stepdad. They staycd in

touch when he went back tor tbc robbery. Wilkin says bis release date 8-10-92 - rernains an anniversary lor her.

"People could take it, welt, 'They didnt have much time together.' flut it was all these letters. All

these years," she says.

Wilkin, a nurse, volunteers witli piisoners and cries as she tries to explain why.

"it's my fault that he's in there, because of the confession that he signed. and the reason that he

wilt never be released. and the reason that he may die, and ihey wilt kilt him. And 1 wilt take that

wuli me to the gi-ave.

Wilkin has never asked Raby if he did kill Franklin. "I can't even answer that. I've never been 14.1'

able to say yes or no"

From time to time, Raby's cell fills with legal documents and case files. Then he tears them to shreds.

"I can't explain to you how much it bothers me not to remember that night. And it eats at me, man. I try and try and try. And it drives me crazy. I bounce off the walls," Raby says. "That blackout, it scares me. To this day it scares me.",//

Memories change, according to Dr. Christian Meissner, and are inherently unreliable things. He

00- has been hired by the U.S. Army with exactly that in mind.,

A cognitive and behavioral scientist at the University of Texas-EI Paso who specializes in false

confessions. Meissner is helping interrogators to produce more reliable information The key is

understanding how unreliable human sources can be.

"Memory evolves over time. It's a product of how we tell the story over time, a product of what

we hear about other stories and how that changes our own. It's a product of simple memory loss,

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and us fihlin in some of tbc details of whai should have happened, or would have happened.

given whcre we were," he says "flut even these memories that we think we have complete control over, and have high conlidence in. are in fact inaccurate for a variety of reasons."

Faulty memory eau corrode witnesses and alibis. Ir can also. Meissner says. lead a person to

confcss to a crime he didn't commit - and even begin to believe bis confession.

"t (ere's an individual who did commit crimes previously," Meissner says of Raby. "Ite's probably wrestling with bis persona. With bis owu perception of himself"

Meissner points to two main factors for what he calls a coerced-internalized false confession.

The suspect's memory for the time frame in question must be vulnerable in some way. And he

must be faced with perceived evidence of his guilt. (It also helps, Meissner says, if the suspect's

friends and family, and even the suspect himself believe he is capable of the crime

Interrogation here. common interrogation

tactics. such as leading questions and minimizing guilt, can

backfire. Police may have little idea that the information they're getting could be unreliable.

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"I think they underestimate the power of their authority," Meissner says. "I think they

often underestimate the power of their techniques." - 6./

Allen, who is now a private investigator, did not respond to requests to comment for this article.

Raby initially denied even visiting the neighborhood that day, but Allen had already interviewed

all the people who'd seen him in the offense report. Allen writes that when he told Raby he had

been seen jumping Leo Truitt's fence, Raby teared up and began to confess.

In Raby's version, he told Allen everything "all the way until I blacked out." But Allen insisted there was more to the story:

"You blacked out so you might not know."

Allen tried to hold his hand:

"You might not remember this, but it's possible you did it."

Allen told him he'd been seen jumping the fence.

"Okay. I jumped the fence then."

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"You got out the back door."

"Then I went out the back door"

Since human evidence is always suspect, Meissner says, a reliable confession should provide

new information about the crime, or volunteer something that only the person who committed it

could possibly know.

"The only thing that you can get an innocent person to confess to is your version of events," he

says.

r.;r

The confession should also be supported by the rest of the investigation. But too often, Meissner

says, it stops with the statement, leaving questions that become harder and harder to answer.

"The story of what happened has evolved over time," he says. "I had a memory for some of the

event, other people had a memory for other parts of it, and now it's been shaped by the trial record, by having discussed it with other people, by having told it, and so forth. You may actually never get back to the truth."

And it isn't only Ruby's memories that have shifted and scrambled over time.

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When Benge first told police about Raby's argument with Franklin, he said he and Rose weren't

there at the time. He heard from his grandmother that Raby got mad when she tried to run him

off and swore and broke a beer bottle on the porch. The argument took place five days before the

murder.

Rose told the television camera he was there that day. Raby broke the bottle on the porch and

stormed off, and that was the last he'd seen of him. In trial, Rose added that he went with Raby to

make sure he left.

Raby swears that Benge was there. He greeted Raby when he arrived - long time no see -

and stood behind Franklin in the doorway as she told Raby to go. Raby says that as he and Lee

were leaving. Bangs, the man who painted Franklin's house, arrived in a red pickup and shook

Raby's hand. Raby continued on his way, finished his beer and, as was his custom, lobbed the

bottle into the air. It broke on the street.

Phillips remembers Raby throwing the bottle against the side of the house, just inches from

Franklin. He was surprised, he says, that Benge and Rose both left with Raby after he insulted their grandmother like that.

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Bangs remembers drinking on the porch with Benge, Rose and possibly Phillips during the altercation. In his version, "Right at nightfall, a maroon red Chevy truck pulled up in the street.

Someone got out and the truck pulled away. It was Charles (Buster). He came struttin up, with

his shirt over his shoulder. We asked where he had been/ He said prison." .-f,rtAtill

On the night of the murder, Officer C C Coleman arrived first at the scene She noted that the bathroom sink was running and splashing water on the floor.

According to her report. Benge said that after he turned his grandmother over and tbund the cuts

on her throat, he "freaked and went to call the police, but washed his hands real quick in the bathroom. Benge stated that at that time his cousin Lee showed up."

Benge's police statement says that, after Rose arrived, Benge went into his room and dialed 911.

then went to the sink and turned on the water but didn't wash his hands Fie went back to the phone and called his girlfriend, then went outside and washed his hands with a neighbor's hose.

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Benge's testimony at trial doesn't mention him washing his hands, but says that he and Lee made

the 911 call together. As in his statement, he had just discovered his grandmother and her wounds when Rose and Phillips walked inside.

Rose now remembers walking in just as Benge flipped on the kitchen light but, in his statement.

said simply that Benge "was already home" Phillips did the same in his "When we got there Eric was already there. He had found Mrs. Franklin dead on the floor."

Phillips says he is surprised that, ever since, no one has contacted him about the case.

"When me and Lee was walking up through the yard, we could see Eric coming out the [front] bedroom, you know, going back to the back den [Franklin's] room," Phillips says. "Then by the time that me and Lee had walked up on the porch and opened the door, well, we could see her laying on the floor, and then that was when Eric was coming back out from the back den [Franklin's] room, you know, and then he seen us and was like 'Look, look, Grandma's dead, Grandma's dead.'"

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Phillips says Benge had been rummaging through Franklin's purse in search of \$300 rather says

that. If Phillips's version is true, it 'totally discredits' Benge as a witness and casts doubt on the

case for a capital offense, which relied heavily on his version of how he found the crime scene.

("The last thing it was thinking about is money." Benge says, adding that Franklin used checks to

buy food, which friends recall as well.)

Nobody really knows that but me and Lee." Phillips says. "We already knew that he was just back there getting the money out of her purse, you know, because he knew that she had \$300 in

her purse back there. And then that night, later on that night he pulled the money out and said,

you know, 'Well, she gave me the \$300'

Benge and Rose say Phillips is mistaken and point out that he scarcely entered the house.

"The first thing that popped in my head is tbc person's stil in tbc house." Phillips says. "So 1 took off"

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Perras —who now claims Benge "had a misconstrued concept or our relationship" and says she

had to repeatedly ask him to leave that night ---- says she received a hysterical call from Benge

shortly after he left her house and came right to the scene.

"I called Donna. Like a dumbass. I don't know why I called her first," Benge says now, adding that it was Rose who eventually called police

"As soon as 1 dropped the phone, I ran back over [into the living room], and that's when [Rose]

walked in the door...I guess the best way to put this, man, is that when this shit was going on -

there's still parts to me that are hazy_ As fitr as freaking out_ "

In a signed affidavit. Perras says that after she arrived, Benge told her the killer must have been a

junkie looking for money to buy drugs, and seemed to have an idea of who it was. She believed

it was someone to whom he owed money.

"I know it was drug-related. It had to be," she said in a recent interview, adding that on an earlier

visit to Benge's house, she had found it in disarray and the neighborhood full of shady people.

"She can swear that all she wants," Benge says. "That is bullshit,"

At the trial. Rose admitted to smoking crack and being an alcoholic during that time period.

Benge had recently been convicted of misdemeanor possession of marijuana.

'Everybody was hooked on coke at the time, and you know, drinking, smoking weed every day,'

Phillips says.

Benge says that he has never suspected Bangs of anything and remembers that Bangs and his

grandmother got along well. At the scene of the murder, according to the offense report, he told

police that Bangs was a drug addict who had recently stolen his paycheck and shotgun and was

the only person he knew other than Raby who could have committed the crime,

In his letter, Bangs said he was with his girlfriend Alicia Overstreet on the night of the murder.

Overstreet says this is impossible, since the two had been separated for months, in part because

she says Bangs had threatened to kill her "He was psychotic," she says "And he was just like the other one [Raby]."

In 1903. Bangs was convicted of robbing and threatening an old woman acquaintance. They were walking to a restaurant together when he grabbed her purse and threatened to kill her if she

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fought back. Bangs is now serving time for robbery in Lovelady's Eastham Unit, a maximum security prison known to house problem offenders

The Texas Department of Criminal Justice denied repeated requests to interview Bangs in person

for this story, saying he had been assaultive to the prison staff Bangs currently receives one hour

of recreation three times per week, TDCJ spokeswoman Michelle Lyons says, which takes place

616-

just outside his cell. 616-

There has been only one suspect in Franklin's murder, however, and, standing in the yard outside

her home, which 'lunge now owns, her grandsons think it should stay that way

"Maybe they screwed that up too," Rose says of the blood tests.

He and Bengie have no doubt about Raby's guilt.

"('Liz I mean everybody else was here but him," Rose says.

• ", "

"Everybody had an alibi but him," Bengie says. "Everybody was accounted for."