

00:02.09

astudyincrime24

Hey, Ben, welcome to the show.

00:04.55

Ben Cotterill

Thank you for having me. Nice to meet you.

00:06.91

astudyincrime24

It is my pleasure. Well, let's get to it. To understand what happened to Clarence Elkins, I want to start with the events that occurred in Barberton, Ohio in the very early morning hours of June 7th, 1998. Can you walk me through what happened?

00:25.01

Ben Cotterill

Sure. So, Brooke Sutton. was six years old and she was staying with her grandmother and Judy Johnson and and then she was sleeping upstairs and then was woken up during the night. Heard a disturbance downstairs so she went down to investigate. um Unfortunately A man had broken into the house and was physically and sexually assaulting and the grandmother. And and then Brooke Sutton herself was also struck across the head so by this man. And then she was knocked unconscious. and When she woke up in the early hours of the morning, um she had been stripped of her clothes. She too had been sexually assaulted. and There was blood ah dripping from the wound on her head.

01:13.52

Ben Cotterill

And her grandmother lay dead and just a few away from her. um She went for the phone and she called the only number that she knew, which was a friend from school. It was early, so no one picked up. And she left a voicemail basically saying, um sorry to tell you this, but someone's killed my grandmother. I need help. Can you call my mother? Thank you. And then she hung up. and And then from there, she went next door and asked for help from the next door neighbor and knocked on their door.

01:47.00

astudyincrime24

So, and what we, what we learned is at that point is that she says that the perpetrator looked like uncle Clarence, which is her, her aunt's husband, obviously. And as I already said in my intro, he's, he's been sentenced to life in prison. He was convicted June 4th, 1999, which is about an a year after the original incident, after a year after the crime. He was convicted, sentenced to life in prison with no chance of parole till I think 2054.

02:20.80

Ben Cotterill

Yeah.

02:20.86

astudyincrime24

Now, you're an expert not only on eyewitness, this is all based on just her her testimony. you're you're You're an expert not only on eyewitness testimony, but also on child witnesses. I'd like to put the child witness testimony aside for a second, just ask you, just in general, What kind of ah issues are there with eyewitness testimony or with eyewitnesses?

02:44.49

Ben Cotterill

Sure. Well, we know it's an issue because, you know, by this point, there's so many cases of wrongful imprisonment that we know were wrongful cases because we've subsequently been able to find out who actually was responsible. So the Innocence Project alone, for example, has helped over 300 people and who were wrongfully imprisoned. So these are people who spent 10, 20, 30 plus years for a crime they didn't do in prison. And then DNA testing has proved their innocence. And what we find is that in about 75% of those cases, and there was eyewitness testimony present. and And we find this really across the board. So the the national and registry of exonerations here in the US has about 3,500 cases now. And again, about 75% of those cases involved eyewitness testimony.

03:39.10

Ben Cotterill

So it seems to be the leading cause of wrongful imprisonment. It's the most recurring and piece of evidence that we find in these cases of wrongful imprisonment. And and from a psychological point of view, you know, it makes sense because and what we know from cognitive psychology is that memory is you know really quite vulnerable. It's not like a and video recorder. It's not as though you you know capture an event as it happens and then play it back exactly in your mind later. and Memory is a reconstructive process. You know, you're building this and memory up as you remember from various pieces of information. And so that process is vulnerable to a number of factors, right? It could be impacted by how long ago it occurred. It can be impacted by the current state of mind that you're in, your level of arousal, your level of anxiety. It can be impacted by and the questions that you're asked when you're asked to retrieve this memory.

04:37.53

Ben Cotterill

and And what we find is that false memories are much more common than people realize, even you know when it comes to major events that people think they remember really very well. and you know Even surveys about 9-11 here in the US, though this was a number of years ago and and and similar in the UK, the terrorist attacks in London in 2005,

when people were surveyed only a couple of years after those events, What we found is that they've incorporated a number of false details based upon what they have been told subsequently. So post-event information you know can really have a large impact on the memories that we think are real. And this can come from you know talking to family members about stories from long ago, from looking at family photographs. and There's an interesting book by Hopwood. and It's a collection of false memories that people have given to the

05:33.36

Ben Cotterill

the writer. and And, you know, these cover even kind of mundane and events that people really believe were real memories, but they've actually remembered them wrong. So for example, one of the and memories in the book is that someone remembered playing Joseph in the school nativity play when he was a boy and he was ah really, and really needing to go to the bathroom and between his scenes he, you know, ran down the hallway to get to the bathroom and then he collided with the girl who was playing Mary, had an accident and had to go to hospital. And he'd been telling this story for years and it wasn't until much, much later that his mother told him

06:11.84

Ben Cotterill

It wasn't the girl playing Mary, it was an older woman called Mary that you collided into. And you know the books feel of stories such as that.

06:21.74

astudyincrime24

Are you familiar with the Mandela effect?

06:25.43

Ben Cotterill

Sure, and yeah.

06:27.65

astudyincrime24

So, yeah I mean, that's kind of the same thing to some extent. People either swear certain things are one way and they're actually not.

06:33.14

Ben Cotterill

Right. Exactly, yes.

06:35.35

astudyincrime24

um and The other other thing I was thinking of is I'm a big fan of Seinfeld, the TV show. And George Costanza has this saying, he says, it's not a lie if you believe it.

06:47.27
Ben Cotterill
Right, exactly.

06:47.18
astudyincrime24
But of course, In this case, people, they honestly just are and are are misremembering. If there's a better term for that, I don't know. but Well, when it comes to this particular case, it's it's it's actually very egregious because there was other evidence available for the police to look at.

06:56.52
Ben Cotterill
That's right, yeah.

07:05.89
astudyincrime24
We will talk about the other evidence here in a second, but I want to turn to your expertise. In your book, Are Children Reliable Witnesses? ah Clarence Elkins is one of your case studies. and with regards to Brooke's testimony, and I have to reminder remind you, she was six years old at the time. And to me, that seems really young to take her word for it, especially at the exclusion of all other evidence. So want to I want to draw on your expertise and your research and ask you, first of all, six years old, is that too young to testify? And second, what kind of problems do child witnesses present?

07:43.74
Ben Cotterill
Yeah, so I mean, determining if a child's too young is is difficult. In the US in the UK, there's no minimum age requirement. It's kind of decided it on a case-by-case basis whether the child is competent to give testimony. In the UK the bar is pretty low, they just need to be able to give a coherent narrative. So there's been many cases of children as young as two and three years old giving testimony in the yeah UK. and In the US the bar in Furies higher, and the judge needs to determine two things.

08:17.06
Ben Cotterill
First of all, does the child know the difference between a truth and a lie? Second, do they know fact from fiction? So it's really up to the judge's discretion to work this out. They can ask simple questions such as, you know, is Mickey Mouse real or not real? and But in re- Yeah, yeah, much more so than adults.

08:32.61
astudyincrime24

I mean, they're particularly susceptible to suggestion too, aren't they?

08:41.71

Ben Cotterill

So they can um incorporate post-event information even more so than adults do. and You know, their memory already is generally weaker, meaning that they encode less information. You know, if you ask children and adults and so on to remember a list of words or any other source of information, children typically remember less. and

09:08.48

astudyincrime24

Mhmm.

09:09.49

Ben Cotterill

And if they're remembering less, then you're going to be more likely to give in to suggestive questions, more likely to, you know, and listen to an authority figure. and They're also going to be more easily confused because, you know, the questions being asked are going to be on topics that are not really very known to them, right? Especially that it's usually sexual assault that children are most victim to and so more likely to be given testimony on. and And children are generally very compliant as well. So, you know, for example, they often answer close ended questions. Yes, no questions, even if they don't know the answer or even if they don't understand the question. So a number of studies have found that ah children about five years old will answer even ridiculous questions like what's heavy or red or yellow.

10:04.66

Ben Cotterill

and you know, questions that don't make sense, but just they feel like they're supposed to give an answer, an answer is expected of them. And, and you know, also, if it's a child that young, then they're maybe not yet at the stage of development in which they understand that they know things that other people don't know. um And, you know, in their normal lives, they're used to, for example, being asked a question, and then if they get it wrong, the adult tells them the right answer. Now, a lot of this um can be somewhat dealt with by explaining the rules of a police interview carefully to a child by telling them that, you know, you're the one who knows the information here, don't answer questions you don't understand, or if you don't understand something, ask us to repeat it, don't make any guesses. And by explaining a lot of these rules, some of these program problems can be lessened, but there's still

11:00.48

Ben Cotterill

you know obvious and difficulties. If it's a child, particularly young, then you know the language skills are going to be somewhat limited. They're limited in how much they can express themselves, how much they can understand. and They won't possibly fully understand the kind of implications of what's happening here and what the consequences might be of giving testimony. They might be much more easily distracted um in the police interview, for example, when giving their initial statement. and So all of that can make it, you know, incredibly hard when it comes to a child witness in particular.

11:37.29

astudyincrime24

Well, I know they also want to please adults. That's another issue. So, you know, they may

11:41.82

Ben Cotterill

Yeah. and and And, you know, we know that's a a real issue, this compliance issue, because I'll tell you about one study. and You know, children were um showing a line-up of his photographs of cartoon characters from a cartoon that they watched. And if they were asked, you know, ah tell me this cartoon character and the cartoon character was there, their success would be 100%. But if you removed that character and then from the remaining characters to the child, and pick out this character, a significant number of them

12:19.90

Ben Cotterill

picked it or wrong character, even though the right character was no longer there. And they had to know in that case that they were giving a wrong answer. So and and that's similar to when children will answer kind of non-tickle questions. There's so many examples we have from the research that children feel kind of compelled to give a response in these sorts of situations.

12:40.93

astudyincrime24

Well, let's fast forward to 2002 and Brooke is now 10 years old and she recants her testimony. She was over at her aunt's house, uh, playing in the garage with her cousins. And there was photos of Clarence up there and one of them she looked at and he has these, he had these very piercing blue eyes.

13:04.03

Ben Cotterill

yeah

13:04.12

astudyincrime24

And that's when she remembered that Brooke, Brooke remembers that the

perp had brown eyes. And so she recants her testimony. Is it common to have children you know recanting or changing or going back and forth on their testimony? And if if if they do that, why would they do that?

13:23.04

Ben Cotterill

and Recanting is actually pretty unusual amongst witnesses. and The opposite usually occurs. They usually become more confident and their identification after making it, even if it was the wrong one. and So more generally the correlation or relationship between how accurate your memory actually is and how confident you are in being right. It's already a fairly weak relationship, but it becomes weaker over time. What usually happens is that

13:57.06

Ben Cotterill

people's confidence becomes inflated. They become more convinced that this was the right person that they have identified. and There's so many cases of wrongful imprisonment that involve eyewitness testimony in which we can see the initial identification was made somewhat more hesitantly. and But then by the time of getting testimony in the courtroom, they're much, much more confident. They've become really quite convinced that this person they identified and is the right person.

14:30.62

Ben Cotterill

and Probably the most famous example of that is Jennifer Thompson. and So for anyone who's interested in this, there's a good book called Picking Cotton. um So Jennifer Thompson was

14:41.21

astudyincrime24

Mm hmm.

14:43.25

Ben Cotterill

and the victim of a sexual assault and she identified and Ronald Cotton as her rapist. and He was actually innocent and but again in this case she was somewhat hesitant making the initial identification by the time of um the courtroom testimony. She was very, very confident. But what's interesting in this case was she was actually shown the real rapist, Bobby Poole, between the initial identification and giving testimony. And she said confidently, no, that's not the person. Her memory had actually become the face of and ah and Ronald Cotton, even though he was innocent. um And along those lines,

15:26.96

Ben Cotterill

you know Elizabeth Loftus is probably the most well-known researcher

in this field and she's done experiments in which participants have been shown a face, they've been asked to remember face rather and then somewhat later they're given a somewhat similar face to look at and then later on at the actual time of testing they're told, pick out the face that you initially saw and about half of them pick the subsequent face that they saw that had actually kind of tainted their initial memory.

15:59.83

astudyincrime24

Well, and as in the case of Brooke, it's it's about four years after the crime. she has She's 10 years old and now she has recanted. ah Let's take a quick break, Ben, and I will be right back.

16:15.59

astudyincrime24

I am back with Ben Kotterill. He is a lecturer in forensic psychology at Clemson and the author of Our Children, Reliable Witnesses. I know I'm pulling out a lot of weird things out of the bag here, but ah let's keep at it. What about hypnosis? I know that Clarence's attorney's hypnotized Brooke and the prosecution had an issue with that. Is hypnosis of children, how does that work with their memory? Is it problematic?

16:43.89

Ben Cotterill

and Hypnosis can always be problematic um because there's been so many cases of false memories being implanted and during um hypnosis. um and we would expect children to be even more vulnerable to this sort of influence. and you know That's why for psychologists, there's very, very strict guidelines when using hypnosis. and In the US, it can only be used to enhance a memory.

17:14.32

Ben Cotterill

It's not allowed to be used to uncover a memory. and In other countries like the UK, it's much more strict.

17:16.75

astudyincrime24

Mhmm.

17:20.68

Ben Cotterill

Psychologists can't even use it to enhance a memory. and and And there's been many cases you know of um repressed memories um being brought to the surface through hypnosis and then they've actually been found out to be fictitious. and you know A good or fairly well-known example is Paul Ingram from 1988 Washington State. and He was a minister at a church and one of the people at his church was a

specialist in hypnosis and

17:53.11

Ben Cotterill

Paul Ingram underwent hypnosis and then he came out convinced that he had sexually assaulted his three daughters. He had a memory that had been uncovered and through this and then he confessed to doing this and was sent to prison for it um and then subsequently became convinced that actually that was a false memory that he had developed during this hypnosis and and then you know he's widely used now as an example of how hypnosis can lead to these sorts of false memories, but at that time there was a number of quite similar and cases and examples.

18:29.07

astudyincrime24

That's crazy. i Everything you're saying, I'm thinking, that's crazy. ah Have you ever been hypnotized?

18:37.00

Ben Cotterill

No, I don't think I'd want to be.

18:39.28

astudyincrime24

No, I haven't either. i i I don't know how people, I say fall for it. I mean, I've seen it on TV, but whatever. Some things I just don't understand. We'll just leave it at that. So despite this new development, the state in Clarence's case, the prosecution ah denies his motion for a new trial. So I want to go back and look at the original trial and add some details here. Again, Clarence was convicted solely on Brooks testimony. He had an alibi.

19:09.32

astudyincrime24

He was 40 miles away with his wife and, uh, and another person.

19:12.38

Ben Cotterill

No.

19:14.76

astudyincrime24

they The hairs that were recovered on on Judy Johnson's body and Brooke's clothing, they did not match Clarence. In fact, there's no there was no physical evidence at the crime scene connecting Clarence to the crime.

19:25.82

Ben Cotterill

No.

19:28.90

astudyincrime24

So it seems to me that once Brooke ID'd her uncle, the police just stopped looking. And I'm wondering, in similar cases, is this typical to have a suspect convicted solely on witness testimony alone, just despite evidence to the contrary?

19:45.14

Ben Cotterill

I would say it's not common. I mean proving beyond reasonable doubt that someone's guilty based purely upon one witness's testimony is actually very difficult and and people who are becoming more ah aware over the downfalls of eyewitness testimony and that includes and jury members and lawyers and judges. um but But even though people generally recognize that children have perhaps weaker memories than adults, they typically view them as being more honest, um especially when they've been a victim to a crime such as this of sexual abuse.

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astudyincrime24

Mm hmm.

20:27.21

Ben Cotterill

And I think also because um it was her uncle that she was identifying, I think for the prosecutor that seemed like very compelling and persuasive evidence and clearly it was for the jury as well and keeping in mind this was a ah close family right they saw each other regularly um and so to many might seem quite far-fetched that she would miss identify her uncle and as being the um perpetrator if he wasn't

20:58.80

astudyincrime24

Well, and of course it's easy for us to come in Monday morning quarterback and. you know, we're looking at the whole thing, the whole perspective afterwards. So I understand that.

21:07.38

Ben Cotterill

Right.

21:08.64

astudyincrime24

So as time moves on, Melinda, Clarence's wife, Melinda learns that hours after the attack, and you had mentioned this already, when you're talking about the crime that brook wakes up in the morning, ah you know, from from being unconscious, I believe, and realizes her

grandmother is is been killed, she makes that phone call, and then she goes and knocks on a house at a next door neighbor's to get some help. And Melinda learns some details about this that are kind of strange. So it was the home of a woman named Tony Brazel. What happens at this point when Brooke goes and knocks on the door at the Brazel house?

21:48.85

Ben Cotterill

Sure. and So she knocks on the door, she explains what what's happened. You know, she's still got blood on her from this um attack on her head and she's still been stripped of her clothes. um And the next door neighbour says, wait here, I need to get my kids ready for school. And then she disappears and just leaves Brooke Sutton and on the doorstep and then doesn't return for nearly an hour. And and then she further questions Brooke over what happened. and It's at that point that then Brooke describes the perpetrators having a mustache and looking like our uncle Clarence. And then the next door neighbour offers to drive Brooke to our parents' house. and And then apparently during this car ride,

22:37.69

Ben Cotterill

and It was there that Brooke told the next-door neighbour that it was indeed her uncle Clarence who attacked her. And then this is what the next-door neighbour tells Brooke's parents and when she drops her off in our parents' house, and that Brooke tells me that she's been attacked and her grandmother's been attacked by her uncle Clarence. um So the parents go to Judy Johnson's house. to investigate and then tragically they find that um Judy Johnson is dead. They call police and then when police arrive and ask Brooke what happened, she immediately tells them that her uncle Clarence attacked her and her grandmother and so they then go and arrest Clarence Elkins for this, who at first thinks this is just a terrible misunderstanding. It's very quickly going to be cleared up because like you said, he has an alibi.

23:28.58

Ben Cotterill

There is no physical evidence tying him to the scene, and but despite all of that, and he's still found guilty and convicted based upon and Brick's and testimony in Courtland.

23:43.66

astudyincrime24

You know, it's interesting. Melinda learns that, you know, Brooke goes to this house, knocks on the door. She makes her wait for almost an hour. This this is a six-year-old child covered in blood not with no clothes basically on. Tony Brazel doesn't call 911. She doesn't call the police. She doesn't take Brooke to the hospital. She doesn't call EMS. She basically puts her in the car, drops her off, and says, oh,

by the way, she said Uncle Clarence did it. So Melinda finds this odd because this is not the kind of normal behavior up of you know people like you and me. we would not Most people would not react that way.

24:21.93

Ben Cotterill

Absolutely, yeah.

24:22.36

astudyincrime24

And then, and then she learns that Tony's common law husband is a convicted sex offender named Earl Mann. And as I said in my introduction, Clarence and Earl astonishingly, you know, there's 28 prisons in Ohio. They happen to be in the same one. And of course, I had already mentioned the intro that Clarence grabs one of Earl's ah cigarette butts, he sends it to his wife. She is wife Melinda is working with the Ohio Innocence Project. And they find out that Earl's DNA is a match for the DNA found at the crime scene. So after six and a half years of state prison, Clarence is released and his sentence is vacated. is Is this a cautionary tale then when it comes to child witnesses?

25:08.61

Ben Cotterill

Um, I believe in this case, it's kind of, I mean, first of all, the cautionary tale might come from seeing how easily, um, Brooke Sutton's memory I think was tainted. Cause if you look at the series of events, you know, she made that phone call. She said somebody has killed her grandmother. That's all she said. She then initially told the next door neighbor they had a mustache, looked a little bit like Uncle Clarence.

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astudyincrime24

Mm hmm.

25:39.91

Ben Cotterill

And then apparently during that, and during that caravite, disclosed that it was her Uncle Clarence. um But I don't think it's too far-fetched to imagine that the next door neighbor might have been kind of pushing her in that direction. and And I think also from this, you know, Brooke Sutton recanted and that should have been dealt with very differently than how it was. You know, I think most people would probably think that the district attorney in this case, Michael Carroll, would have released the charges or released Clarence Elkins much earlier than he did.

26:24.66

Ben Cotterill

you know He had multiple opportunities to do so.

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astudyincrime24

Well, yeah.

26:27.77

Ben Cotterill

The first appeal was when Brooke recanted. He refused then because he believed that she had been pushed into recanting by her family. and But then, you know, Belinda went to great efforts to um do DNA testing with the help of the Innocence Project. She managed to exclude Clarence Elkins um from the DNA at the crime scene. um And even then, Michael Clarence refused. And and bearing in mind, at this point, he has nothing. You know, he has recounted eyewitness testimony. He has physical evidence telling him that this isn't the perpetrator.

27:02.84

Ben Cotterill

um So I think it's quite worrying actually and how you know one person can kind of disrupt the justice process in such a significant way.

27:13.35

astudyincrime24

Oh yeah. I mean, as it, as it goes, uh, the Ohio innocence project had to make some calls to the state attorney general and and try to get, I mean, the attorney general didn't tell the prosecutor what to do, but said, you know what, you may want to take another look at this. And I think it was that political pressure that helped, but uh, Earl Mann is, is, uh, found guilty of the crime. And so I have to wonder when This child comes to Tony Brazel's door. She had to have, it had to have been in her mind that, you know what?

27:45.73

astudyincrime24

I think my common law husband may be responsible for this, which is crazy, but, and I think you're right. I think that on the way home, taking Brooke home, she may have tried to convince her cause she starts out as you said, looked like and is are two different, you know, very different phrases. He looked like uncle Clarence.

28:03.93

Ben Cotterill

provides.

28:04.94

astudyincrime24

He is uncle Clarence. Those are certainly two different things. Well, ah Ben, I'm going to give you the last word. What lessons can we take from from this, from the wrongful conviction of Clarence Elkins?

28:19.26

Ben Cotterill

I mean, certainly, and children's testimony should be dealt with very, very carefully. You know, in many cases, children's testimony is necessary for justice because quite often, unfortunately, their testimony is the only evidence that there is. And so you know I would say that the conclusions of the book you mentioned and really is that children's testimony can be accurate, but certain precautions have to be taken, certain steps have to be followed, best practice has to be followed.

28:50.26

Ben Cotterill

and so that one's careful not to taint that testimony, not so asking them and suggestive questions, not subjecting them to post-event information and so on, asking but the appropriate open-ended questions and so on. and But you know in many cases, children's testimony can be trusted and so long as the certain the right steps are followed.

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astudyincrime24

you