

UNDISCLOSED, the State v. Adnan Syed

Episode 10 - CrimeStoppers

Rabia Chaudry: [00:01:16] Hi and welcome to the tenth episode of Undisclosed The State versus Adnan Sayed. Today's episode is CrimeStoppers. My name is Rabia Chaudry and I'm an attorney and National Security fellow at the New America Foundation. And I blog at splitthemoon.com. And I'm joined, as always, with my colleagues Susan Simpson and Colin Miller. Susan is an associate, the Volkov Law Group in Washington, D.C. and she blogs at [The View from L2 \(viewfroml2.com\)](http://TheViewfromL2.com). And Colin is an Associate Dean and Professor at the University of South Carolina School of Law. And he's also the editor of the Evidence Prof. Blog.

Now, as many of you may know, but others might have missed, Adnan's attorney Justin Brown filed a supplement to their motion to reopen the appeal today (Aug. 23, 2015). Essentially, Justin is asking, as a matter of justice, that the judge consider the fact that the AT&T records given to the state, and which actually existed and Cristina Gutierrez filed in triplicate, explicitly said that incoming calls could not be used to determine the location of a cell phone, which, as we all know, is exactly what the state argued specifically with the alleged Leakin Park pings around the 7 p.m. hour. So not only does this information from AT&T undermined their entire case, it further points to yet another failure and point of ineffective assistance of counsel by Christina Gutierrez. I have to give a personal shout out to Susan for catching that fax cover sheet.

And now let's see if the court agrees to allow this evidence in. So I know it's been a long wait for our listeners since last week when I first mentioned that we had something big to talk about in this episode. Something we had been working on for a while now to verify. We did a lot of digging and finally managed to figure out a piece of this case that has been totally missing until now. A piece that explains so much about how this investigation happened and a piece that, along with the new filing today by Justin, makes this a really bad week for the state of Maryland. Just briefly, though, before we get to the heart of the matter, a quick reminder about how Brady violations operate in the law because, if what we reveal in today's episode, isn't Brady material, nothing is.

Colin Miller: [00:03:23] Discovery is the process by which the state and the defense exchange documents in advance of trial. Before I've discussed the Supreme Court's opinion in Brady vs. Maryland. And from it the Brady Doctrine. That's the rule that says regardless of a request by defense counsel, the prosecution has an affirmative obligation in advance of trial to turn over material exculpatory evidence. And again, evidence is material and exculpatory when it undermines our confidence in the jury's verdict. And the question we leave to you today, as you listen to this episode, is do you believe that the evidence that was not disclosed to the defense undermines your confidence in the jury's verdict?

Rabia Chaudry: [00:04:12] So how were Brady obligations treated by the Baltimore state's attorney's office? Back at the time of Adnan's trial? Well, in July 1999, which was just a couple of months after Adnan was arrested, The Baltimore Sun published an article about a man who'd been convicted of murder and then exonerated after it was later discovered that exculpatory evidence had been withheld from his defense, including a series of police reports and a witness statement.

This is what *The Baltimore Sun* wrote: "The Pettiford case is part of a pattern in Baltimore, where prosecutors and police have ignored state and federal laws by failing to turn over evidence to those accused of crimes. The pattern is confirmed by a review of criminal cases, a computer analysis of court records by the Sun, interviews with defense lawyers, judges and prosecutors, and a federally funded study of problems at the courthouse. Not revealing evidence has led to wrongful convictions, trial delays and freedom for suspected criminals.

Over the past two years, charges against at least eight defendants, including attempted murder and cocaine trafficking, have been dismissed because prosecutors violated laws requiring the disclosure of evidence known as discovery. Now, the problem was so serious that the following month, in August of 1999, hearings were actually held at Annapolis, at the statehouse on Baltimore, systematic failure to disclose Brady material to defendants.

And here's another quote from *The Baltimore Sun*: "The co-ordinator at council trying to reform Baltimore's courts told a legislative panel yesterday that the failure to disclose evidence to criminal defendants is part of a courthouse culture that leads to delays and undermines justice. And one of the examples cited was a triple homicide case in which the state failed to disclose a tip to police that someone else had committed the murders.

Susan Simpson: [00:05:52] That disregard for discovery obligations was present in Adnan's case as well. No question here. The prosecutors produced initial discovery to the defense months after was do, and they then continued to trickle produce documents up throughout both of Adnan's trials. So is it possible that the state would have knowingly withheld Brady materials in this case? Oh, yeah. It's not just a possibility. We know for a fact that they did. Take this exchange, for instance, from Adnan's very first trial.

The court: "State. Do you have Brady material, which you have not disclosed?"

Urick: "If there was Brady material, we would have given it up by now."

The court: "Well, the question is, do you have any Brady that you have not disclosed?"

Urick: "No."

That was on December 8th, before the state had handed over a single one of Jay's statements. Any criminal lawyer who is competent enough to be practicing knows that what Urick saying is not true because every single one of Jay's statements is textbook Brady material. There's no room for confusion on this point. No room for good faith legal argument that the material somehow did not constitute Brady.

Because those statements fall squarely within the rule. They were impeachment material that called Jay's testimony into question, because it showed he'd given four or five stories at point that we're all inconsistent with one another.

So if it was the position of the Baltimore state's attorney's office that Jay's statements were not Brady, then they were flagrantly thumbing their noses at the Constitution. Because this isn't just a case of reasonable minds disagree over the correct legal interpretation of the rule, because any attorney who genuinely thinks that those statements weren't Brady shouldn't be a prosecutor. They are. The end. No questions.

So it's not speculation to say that Urick would knowingly withhold Brady material, because we know he did and pretty blatantly too, also repeatedly. He didn't hand over Jen's statements at all during the first trial, nor did he hand over Adnan's statement from his February 26 interview, even though he had two different memos memorializing it and had been asked repeatedly. [Urick] kept responding to the defense that nope, they've all been handed over.

Actually, although the defense ultimately got at least two of Jay's statements during the course of the first trial, the prosecution didn't even hand over all of Jay's statements until midway through the second trial. During that trial, when Gutierrez brought it up again, Urick swore that all detective's notes had been produced. But when the court told the detectives to produce signed affidavits stating they had not in fact taken notes of Jay's interviews, well, suddenly, mysteriously, those notes appeared. The prosecution apologized, said they existed after all, and handed over the notes from Jay's pre interview on February 28 and the pre interview that differed from all of his other statements. And yet, that's Brady, too.

And again, we have Urick on the record swearing it didn't exist until magically it did. I know I might sound harsh here because withholding Brady material is a big deal, but I wouldn't be saying this if it wasn't right there in front of us in black and white. Urick informed the court that he had handed over all Brady material when he must have known very well that he had mountains of Brady still in his file that the defense had never seen. Despite direct request from the defense for specific witness statements, he refused to provide them, or falsely stated that they'd already been provided when they had not.

Colin Miller: [00:09:38] And it's important to note that Brady is not the only discovery rule that applied in this case. Maryland has a rule, Maryland rule 4-263A1 and back in 1999 it said that "any material information tending to negate or mitigate the guilt or punishment of the defendant as to the offense charged has to be turned over within 25 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court."

You might recall that in our "Charm City" episode we discussed the 1999 murder prosecution of Tony Williams. That was the case in which Williams had a first trial in 1999. That conviction was eventually thrown out. He was retried in 2007. Well it turns out, as we discussed before, Detective Massey, one of the detectives involved in Adnan's case, had taken an eyewitness statement from a woman who told him

that she was legally blind. He never disclosed that before the 1999 trial. That was a Brady violation. He did eventually disclose it before the 2007 retrial, but not within the twenty five day deadline. And therefore, the court found a violation of rule 4-263A1.

There's also another discovery rule. That's the *Jencks Act* at the federal level. That says that "if there's a witness for the prosecution and they've made a prior statement, regardless of whether that statement is material or exculpatory, it has to be turned over to the defense at the latest after that witnesses testified on direct examination."

Maryland has a similar rule. It has a case named *Carr*. And Maryland courts apply this rule called the *Jencks/Carr Rule* that has basically the same effect as the federal rule.

Now, we've discussed this a bit before. I'm going to discuss it a bit now. We have always said there's a good possibility of a number of discovery violations in this case. We've said how witnesses such as Ann and Petrieus were interviewed, and yet the notes from those interviews are missing. That might have been a Brady violation. The problem is talking to those witnesses, and having them [try to] remember 15 or 16 years later exactly what they told the police.

We know under rule 4-263A1 we have to discuss the issues with the state dragging its feet and turning over autopsy photos and the crime scene photos. That could have been a violation. The question is whether Gutierrez actually would have used that evidence and the lividity evidence if she had gotten it earlier.

Under *Jencks* and *Carr*, we know that witnesses testified such as Debbie in Aesha who made prior statements. We know those statements were not turned over. We're not sure, again, whether there was anything relevant in those statements that should lead to a new trial in this case.

So, again, we've hinted several times many possible discovery violations by the prosecution, but we've never been quite able to pin down something concrete that tells us this is definitely a discovery violation and it definitely entitles Adnan to a new trial. But Rabia, now it seems we're closer than ever to establishing a key violation of discovery and the constitutional rights of Adnan this case.

Rabia Chaudry: [00:12:41] One of our listeners whose online user name is "When the Worlds Collide," has a real knack for cutting through red tape when it comes to investigating government records. She found something really interesting. She found confirmation that the official story of the investigation into Hae Min Lee's murder doesn't match the reality.

If you remember the police's story was that on February 12th, a few days after Hae's body was found, they received an anonymous tip over the phone. And we always assumed that that was what set the police off in terms of their investigation to hone in on Adnan. Well, it turns out that the real anonymous tip, the one that actually made the cops zero in on Adnan happened two weeks earlier and was never known

about until now. Here's what really happened. On February 1st, 1999, eight days before Hae's body was found by Mr. S., someone called Baltimore's CrimeStoppers hotline and gave them a tip implicating Adnan in Hae's disappearance. From that day forward, Adnan became the one and only suspect in her disappearance and later murder. Nine months later, the tipster was paid a reward for their tip. \$3,075 to be exact.

Colin Miller: [00:13:55] So, Rabia, is this surprising information to you? Had you heard about this CrimeStoppers reward in this case?

Rabia Chaudry: [00:14:01] So, you know, back in '99, after Hae had disappeared, we, the community, had become aware there was some kind of reward offered. It was unclear to us exactly who was offering the reward. We knew that the Korean community, either through the church or some other organization, had come up with a reward. We did not know exactly whether the police were also offering one. And there were rumors. The rumor was that the Korean community had raised \$25,000 for information leading to finding Hae or, and then later finding information about her murder, and that there also was a rumor that Jay must have gotten the reward money. But again, it was just pure speculation, nothing that ever anybody had any solid information about, nothing that police ever shared with us. And it was not this amount. It was like a much bigger amount. But, but that was it. And I remember after Hae disappeared, the local media was doing a lot of coverage about her disappearance. There were, I think, almost weekly vigils that the Korean community was holding at the church. And that's around the time that they first started circulating the offer of the reward, from my recollection.

Colin Miller: [00:15:08] So, Susan, you said you were just listening back to Serial again and Adnan's speculated something similar.

Susan Simpson: [00:15:14] Yes. Sarah [Koenig] says that that's what Adnan thought at first, too. Maybe Jay was just doing it to get the money because he couldn't figure out why Jay would suddenly do this.

Colin Miller: [00:15:22] Right. And we can't confirm at this point that it was Jay who got the reward. We'll talk about our speculation in a second. But what we do know are the following facts. Obviously, police departments cannot pay witnesses in exchange for tips and testimony. That's for obvious reasons not allowed. And therefore, a CrimeStoppers organizations exist across the country in order to encourage witnesses to report crimes under both the shield of anonymity as well as with the promise of a possible payout.

Relevant CrimeStopper organization in this case is Metro CrimeStoppers and that is the source in this case who is giving us the relevant information. The rewards from CrimeStoppers can be made up of a combination of money that is publicly donated to CrimeStoppers as part of their general fund raising. It also can come from money that is privately donated by the victim's family or private groups. In this case, \$2,500 was put up by a group that was known as the Korean American Safety Council. That was then supplemented by \$575 put up from CrimeStoppers based upon its general fund raising, creating a total

award amount of \$3,075. And again, this isn't speculation. This information comes directly from a source within Metro CrimeStoppers.

The way it works in terms of collection of that award, based upon the tip being given, is the lead detective assigned to a case creates a flyer with the reward amount. CrimeStoppers then posts the flyers along with a number that a tipster can call. When a tipster makes a call, he's assigned a tip number which allows for him then to have further anonymous communications with CrimeStoppers. If that tip leads both to an arrest and an indictment. In other words, a grand jury finding there's probable cause for the case to proceed to trial. The tipster is entitled to reward. So it's not a conviction that triggers a reward. It's simply a grand jury indictment. Once that reward is triggered, the lead detective on the case uses a checklist to determine how much of the reward should be given. It's based upon things like the severity of the crime, the helpfulness of the tipster, etc. to determine whether it's a partial or a full payment. Once the detective has made this determination, he goes to a monthly meeting with CrimeStoppers, the CrimeStoppers board votes to either approve or deny the reward. Assuming it's approved when the tipster next calls CrimeStoppers, they arrange for a time and a place to meet and the tipster picks up his reward all in cash in an envelope. No questions asked. While that tipster, of course, is anonymous to the public, obviously his identity is known to the police. It's also known to the prosecutors.

According to the source at CrimeStoppers, tipsters are almost always witnesses for the prosecution and often participants in the crime. This, of course, makes sense because usually accomplices are among the few people who have direct knowledge and can give meaningful information to the state in a given case. You start to think about discovery, CrimeStoppers tips generally need to be disclosed under the Brady Doctrine based upon either Brady or one of the other discovery rules that we mentioned before. We'll discuss that in more detail in a second.

There have been a couple of efforts in Maryland to restrict the admissibility and discoverability of CrimeStoppers information. Every time it's been raised, it has been shot down because, of course, defendants had the right to confront witnesses against them. And you can obviously understand why it's essential for a defendant to be able to know who was collecting a reward in exchange for information against him in a criminal case. That, of course, prompts the question, who was the tipster who made the tip on February 1st in this case?

Susan Simpson: [00:19:02] But first, before we even get into who the tipster was, I want take a moment to point out how huge a deal this is. For a long time now I've been writing, and more recently podcasting, about how from the moment Hae's body was found, the Baltimore police never investigated any other suspect other than Adnan. Well, I was wrong about that. Adnan was the first and only suspect before Hae's body was found. As of February 1st, the investigation settled on him and him alone, and no one else was investigating as a suspect as a possible suspect, from that time on.

Here's the timeline of events. After Hae disappeared, it was announced through the media and possibly through flyers that a reward was being offered for information leading to her whereabouts. On February

1st, someone makes a call to CrimeStoppers and gives a tip which has yet to be disclosed. That same day, Detective O'Shea, the Baltimore County detective who was leading the missing persons investigation, goes to Woodlawn High School and talks to Hope Schab the French teacher. He gives her a list of questions for her to pass out to students and for the students to answer. And these questions concern things like Adnan's alibi and a knowledge of the relationship with Hae. He also calls Adnan again that same day. And this is where the statement comes in that on that call, on February 1st, Adnan allegedly told Detective O'Shea that he had not gotten a ride or asked for a ride with Hae on January 13th. On February 3rd, two days later, someone prints out Adnan's records from government databases and leaves them in the [police case] file. Now, no one else ever has their records obtained in this fashion. It's just Adnan, and it starts on February 3rd when this is still a missing persons case. On February 4th, the state makes its last and final contact with Don until midway through Adnan's trial. O'Shea determines, after talking to a manager at a different Lens Crafters, from where Don claims he was working January 13th, that Don had an alibi. He does this without ever checking with the store where Don actually is working that day. And he does so without ever looking at any records or obtaining any records. Simply from the word of a manager of a different store, he clears Don and he's never looked at again.

On February 9th, Hae's body is found and jurisdiction over the case goes to the Baltimore police. That day Detective O'Shea, Detective McGillivray, talk about what's been found so far and about the prior missing persons destination. Here's how McGillivray explained what he did after talking to O'Shea on February 9th:

Urick: "And were you the primary detective assigned to the investigation of the hame in the murder?"

McGillivray: "Yes, I was."

Urick: "Now, in the course of your investigation, did you have occasion to interview Detective O'Shea of the Baltimore County Police Force concerning his a missing persons investigation of Hae Min Lee?"

McGillivray: "Yes, I did."

Urick: "Based on information that you obtained from him, what, if anything, did you do?"

McGillivray: "I obtained cell phone records of a phone that Adnan Syed had."

Hear that? McGillivray didn't obtain Adnan's phone records based on anything he found in the course of the murder investigation. He did it because on February 9th, O'Shea told him something that made him think it was Adnan, and that he needed Adnan's phone records. And McGillivray also testified that he doesn't remember O'Shea telling him about any conversations that he had with Adnan. Which means that the only possible reason McGillivray had a suspect that Adnan was the killer was the anonymous tip on February 1st. On the weight of that alone investigation proceeded against Adnan and no one else was ever looked into. So the February 1st tip is why this case is so full of holes and why so many leads were never followed up on. And why the cops were so convinced from day one, actually, before day one, that Adnan was the killer and why they never looked anywhere else besides him. It's also why they knew how to shape Jay's statements once they got to him. They'd been investigating Adnan's alibi since February

1st, 1999. They knew where the holes were long before they ever talked to Jay, and they knew when Jay's story was inconsistent with the alibis that Adnan did have. How do we know this? Well, here's McGillivray says at trial about the information he obtained from Detective O'Shea and how not all of it was about Hae, some of it was about Adnan and his alibi.

Gutierrez: "Once that got confirmed, Detective O'Shea from Baltimore County shared all of his information with you. Did he not?"

McGillivray: "He did."

Gutierrez: "All the information that he'd collected when there was a formal missing persons investigation initiated into the disappearance of Hae Min Lee."

McGillivray: "Yes, he did."

Gutierrez: "And that included all the the substance of, if not the actual papers regarding every information, every bit of information he'd collected from whatever source?" [McGillivray] "I received reports that he had written, and information that he had obtained."

Gutierrez: "And all that information was related to tracking down Miss Lee's last known whereabouts?" **McGillivray:** "Some of it."

Gutierrez: "And the people who had last spoken to her?"

McGillivray: "Some of it."

Susan Simpson: [00:24:35] Some of it. In other words, some of it was about Adnan's whereabouts instead. What this means is that when they were interviewing Jay during the pre interview, they were able to correct Jay's story any time he mistakenly contradicted something that they knew Adnan would have an alibi for.

Colin Miller: [00:24:52] Yeah. So what we can see at this point is regardless of the identity of the anonymous caller, there is a pretty good argument that there was a Brady violation. If you look, for instance, at the strategy that Gutierrez took at trial, it was to claim tunnel vision, that the state honed in on Adnan and ignored all evidence to the contrary.

Gutierrez to the Judge: "In order to buttress our theory of defense is that the police, once having been led to Adnan through any source, then fixated on him, never looked elsewhere."

Here's Gutierrez talking to the judge about her strategy at trial.

Gutierrez to the Judge: "In order to attack that theory and to dispel any speculation that there was significant information about Adnan that the police had that the jury hasn't heard, we believe it's inherited...that it is it is imperative in our request to introduce our theory of defense, which includes that the police fixated on Adnan Sayed. Based on what's already before the jury, you know, the rumors at school among the students, speculation about Adnan. To establish that, in fact, they received telephone calls that suggested, well, they didn't..they named Adnan by name. Information that suggested that Adnan should be concentrated on as a suspect."

Colin Miller: [00:26:30] She was working off the theory that that started with the anonymous call on February 12th. Well, if it turns out that started on February 1st, that further bolsters the claim of tunnel vision and the fact that it wasn't disclosed to the defense certainly could qualify as material exculpatory information. Moreover, it could be used to impeach the officers in terms of explaining the course of their investigation. And absolutely evidence that contradicts the timeline of the investigation given by the state can be Brady material and therefore could easily support a finding of a Brady violation.

Moreover, what about the prosecution? Throughout trial and in closing argument, the prosecution says absolutely we focused on Adnan. We did it because of this anonymous call on the 12th. That anonymous call mentioned Yaser, who was called from Adnan's cell phone at 7:00 p.m. on January 13th. And what they tried to do basically, is to say, at least plant in the heads of the jurors, that when Adnan calls at 7:00, he might have confessed to Yaser that that leads to the anonymous call. And they tie everything up nicely in a bow. Well, a couple problems with that. One, we know from Susan's investigations that Yaser, in fact, never answered that call at 7 o'clock. But then, moreover, as you can see with this CrimeStoppers tip on February 1st, this entire narrative spun by the prosecution at trial does not match reality. And therefore, once again, regardless of the identity, the tipster or the content of that tip, there is a pretty decent argument that there's a Brady violation based upon non-disclosure of this tip to the defense.

Susan Simpson: [00:28:03] Because remember, there were three police officers who testified at Adnan's trial, Detective O'Shea Detective Ritz and Detective McGillivray. First we have O'Shea who handed over sanitized and possibly rewritten progress reports which were written five days after Hae's body was found, and contained, no references whatsoever to the anonymous tip that he'd received on February 1st. When he was asked why he'd suddenly taken interest in Adnan on February 1st, he makes no reference to the call in his response. And then we've got detectives Ritz and McGillivray from the Baltimore City Police who gave inconsistent answers about when and why Adnan became suspect, and who, oh, so carefully, carefully avoid mentioning the fact that Adnan was their suspect even before Hae's body was found, or that O'Shea had directed them to look at Adnan at the time the investigation was handed over to the PBD.

And perhaps even more significant is their testimony concerning the February 12th anonymous call, which we'll get more until later. But all three officers hid the fact that the investigation determined did Adnan was a suspect on February 1st, after an anonymous call came in, and that the caller of that tip received over three thousand dollars from CrimeStoppers for doing so. All three officers also evaded questions that might have revealed the existence of the tip, or they gave answers about the progress of their investigation, that, in light of the fact the tip was made and was taken seriously by the cops, do not appear to have been accurate. In short, they were trying to hide something, and their willingness to cover up aspects of their investigation calls into question the credibility of their testimony and the integrity of their investigation as a whole.

Rabia Chaudry: [00:29:45] So let's go back to figuring out who the tipster was. Because, you know, the identity of the tipster could also potentially be Brady material. In order to figure that out, or at least come to some conclusion, let's take a look at what we have in front of us, what we know about the tip and the payout itself. First, there is the timing, which is kind of odd. Remember, even though the tip came in February of 1999, the payout wasn't until November 1999. We know that the February 1st tipster implicated Adnan, but if so, the November payout doesn't really make sense. CrimeStoppers rewards payout upon arrest and indictment, not conviction. So why did the police wait till November of 1999 to pay out this reward? Was there something significant about that date? Did something just happen that made them move forward on it? Well, in September of 1999, Jay, after months of the prosecutor saying that he would not be charged, was, in fact actually charged in the case, which means there's no conceivable way that the CrimeStoppers payout would have been dependent on when Jay's case would be resolved, because there was no Jay's case until then, according to your Urick's repeated instances to the court.

Susan Simpson: [00:30:50] So, yeah, this payout for the February 1st tip was due April 13th, 1999. At that point, the detectives should have authorized a reward. It should have gone to CrimeStoppers. And at the next monthly meeting CrimeStoppers had, they should have voted on whether or not to pay it out. That didn't happen. Instead, we had the reward being collected in November, which is consistent with the detectives authorizing the reward in September or October, and then at the next meeting, October 1st or whenever they had it, they would authorize the payout. And then November 1st, the payout is made. But again, there's no reason to do this unless the detectives wanted to wait until after Jay was charged, until after he pled guilty, before they authorized the payout. They weren't trying to make sure that the tipster got everything he was due, because that tip on February 1st wasn't going to be increased due to whatever happened with Jay's case. The prosecution had been adamant for months that Jay was not going to be charged. The Jay was not part of the crime. He was not going to have charges against him, which means that there'd be no payout based on his arrest, based on his charging. And there's no reason to wait for a CrimeStoppers payout until after Jay was charged.

Colin Miller: [00:31:58] Yeah, I've looked into this a bit in other cases, and I really can't see any good reason why this tip wouldn't have been paid out until November. If it were anyone else who was involved in the case would typically be indictment, next CrimeStoppers meeting its reported, person gets the money. The only seemingly rational explanation is detectives waited to report this reward until after we had the September 7th plea deal that Jay entered into. It's possible there could be some other weird explanation that explains it. But by far the likeliest scenario is this would explain why it wasn't until November that the tip was claimed.

Rabia Chaudry: [00:32:47] But it's not just the timing of the tip that points towards Jay. There are some strange documents and notes that showed up in police files that may also help explain this oddly specific amount of the reward--\$3,075--and what it may have been meant for, because, frankly, this seems like no other explanation.

Colin Miller: [00:33:05] Yes. Let's go through the timeline. You might recall that Jay officially was interviewed four times. The fourth time was April 13th after the indictment. The first two were February 28th, early in the morning, and March 15th. Thereafter, his third interview was on March 18th. And that interview was in the form of a ride along where basically he was driven around according to the route that he claimed that he took on January 13th, 1999. Detective McGillivray took notes of that ride along. And in the middle of those notes there's a notation that says that Mr. Brown is selling a 1994 Suzuki 600CC with 9,000 miles. Thereafter at the very end of the ride along notes, the very last thing written in the notes by Detective McGillivray, is the word in all capitals REWARD. So March 18th, we have Mr. Brown, his motorcycle notes, reward at the end of the notes.

Susan Simpson: [00:34:08] And you know, Colin, I also find significant, potentially, what's also on that last page. It's not just reward. The very last lines are "Private investigator. Going to discredit. Reward." It may or may not be part of the same train of thought, but it seems like the detectives may have been concerned about someone being discredited on the basis of a reward.

Colin Miller: [00:34:31] Right. They might be anticipating it. I've come across quite a few cases. Often times defense counsel, during discovery, will request CrimeStoppers information. Prosecutions should be provided regardless. But absolutely, if the private investigator uncovered this, the monetary payout could have been used to discredit, which might be what McGillivray is writing in the notes. What we do know is that, a few days later, on March 23rd and March 24th, the detectives go to Woodlawn High School and they prepare a schedule for interviewing various faculty and staff at the school. One of the people on the schedule was Carl Brown. He was the soccer coach at the school. In fact, he coached Jay on the soccer team. On the interview itinerary, the detectives note the purpose for speaking to Carl Brown is in regard to a motorcycle. Now, we know in 2015 that the only purpose for this interview could have been the motorcycle, because the private investigator talked to Coach Brown. He said he didn't know either Hae or Adnan. He had no relevant information as to the case, which made him, unlike anyone else who was interviewed on the 23rd or the 24th, they were either Hae or Adnan's teachers. They knew something about the case. Brown, according to him, knew absolutely nothing about Hae, Adnan or the case.

Susan Simpson: [00:35:45] It's worth pointing out that this list of teachers they interviewed on the 23rd and 24th of March is very targeted and very focused. For instance, they spoke to every single one of Adnan's teachers. His homeroom teacher, his free period advisor. However, they only spoke to a single one of Hae's teachers that was not also one of Adnan's teachers, and that was Hope Schab, the one who was asking questions about Adnan for the police. They also asked other teachers who had very specific information relevant to investigation, like one teacher who knew whether or not Hae had a locker and where it'd be, or the librarians who could have verified Adnan's alibi, apparently. But everyone on there has a reason. They're not just asking random teachers questions.

Colin Miller: [00:36:26] And what we also know is that the detectives had a very clear purpose going into the interview with Coach Brown. And that's because in the NPIA (National Policing Improvement Agency)

files, there are Kelly Blue Book entries for the exact same Suzuki motorcycle that was described in Jay's ride along notes. They in fact were printed out the same morning that coach Brown was interviewed. There's actually two printouts and one of those printouts is for the Suzuki RF 600, the exact same model of motorcycle that Brown has said he owned and sold at some point either 1998 or 1999.

Susan Simpson: [00:37:04] So from the police notes from the March 18th interview, Jay only mentioned that Coach Brown was selling a '94, Yuki with 600 CCs. It turns out Suzuki had exactly two models that met this description and they printed out Blue Book entries for both of those models.

Colin Miller: [00:37:19] Again, those Blue Book entries are in the state's NPIA files. Also in the files are the interview notes from the 18 or 19 other faculty and staff members interviewed on March 23rd or 24th. I can't say with certainty because Adnan's homeroom teacher was listed, she is listed as absent one of the days, so it's possible her notes are missing, too. Or maybe she was absent. But basically there are 18 copies of notes of interviews with the teachers and staff at Woodlawn on March 23rd and 24th. The only set of notes not in the file are the interview notes for Coach Brown. Again, in their place are the Kelly Blue Book printouts. Now when the PI (Private Investigator) talked to Brown, there's a bit of a monkey wrench in that Brown doesn't recall the detectives asking about the motorcycle. Maybe that's because he had already sold it. Maybe they briefly asked him about it and he doesn't remember it. It's not entirely clear. What we do know is when Stephanie, Jay's girlfriend, was interviewed on April 7th, she told the detectives that Jay was buying a motorcycle. That he was financing it. We also know that two days later, Carl Brown's Suzuki was titled under the name of the new owner, although the purchase date for that motorcycle remains unknown.

Susan Simpson: [00:38:34] And here's my guess about what might have happened. We know from the list of teachers that the cops put together, that they were talking to Mr. Brown because the motorcycle. However, we also know from the info sheets of the witnesses they talked to, that it wasn't just the detectives who were present at the interview. Instead, it was Detective McGillivray and attorney Vickie Wash who attended the Woodlawn teacher interviews. It's possible that, since an attorney was coming along to the interviews too, the detectives ultimately decided to not question Mr. Brown about their original purpose, which was the motorcycle.

Rabia Chaudry: [00:39:09] Now, if you recall in his Intercept interview, just this past December (2014), Jay says that in 1998 or 1999, he learned to ride a motorcycle. Jay, however, has never had any motorcycle or car registered in his name. So did Jay ever buy Brown's motorcycle? It doesn't seem like it. Did he ever buy a motorcycle, period? We don't know.

Susan Simpson: [00:39:39] So, yeah. Here's what we know. Jay wanted a motorcycle. He was trying to buy one, and told Stephanie he's going to finance it. And he also told the detectives, during an interview, that he knew of someone who was selling a motorcycle that just happened to be for sale for about \$3,000. Could there be another explanation for this, that does not involve the CrimeStoppers money? Sure. I'm very open to that. But I have wracked my brains trying to get something that could explain how all this fit

together in a way that does not involve a reward. And it's hard to come up with something. I don't know about you guys, but....

Rabia Chaudry: [00:40:11] Other than the notes that keep bringing up the motorcycle, over and over again, in different contexts, you know, there's kind of the really odd reward money amount, too. It's not like it's a, you know...\$3,075...it's a very specific amount. It's almost like this Korean organization was offering \$2,500. But it wasn't quite enough. So they had to throw a little bit more just to make sure somebody got what they needed for whatever it is they wanted to purchase. And then, of course, there's also the timing of the payout.

Susan Simpson: [00:40:38] And then there's the fact that Jay suddenly has a vehicle by the time of the second trial. I don't know where it came from, but he didn't own one before, clearly. And after November he does.

Colin Miller: [00:40:50] Yeah. I mean, the only thing I think, Susan, you were the one who had raised this before, is I guess it's possible the detectives themselves possibly wanted to buy a motorcycle. I don't know how much water that holds. But I mean, I guess if you're trying to figure out another reason to be asking about it is they want it for themselves. But that seems a bit tenuous as a possibility.

Susan Simpson: [00:41:10] It's all I got.

Rabia Chaudry: [00:41:11] And Mr. Brown didn't know Hae or Adnan.

Colin Miller: [00:41:14] You said they rode the bus together to one sporting event and that was it. No other connection whatsoever. It's tough to see the detectives, when there are many people who weren't interviewed, like Hae's computer teacher, that key class right before AP Psychology, wasn't interviewed. And yet they're taking one of those precious slots to interview the soccer coach who has no connection whatsoever to Hae and Adnan, with a stated purpose being motorcycle, it's just certainly suggests something. And, if we're right, legally, this is huge. This is what we've been looking for this entire time. It's what's been searched for since all the way back to 1999.

There's actually a Supreme Court case, the United States Supreme Court case that is basically directly on point. That case is *Kyles v. Whitley* in college versus Whitley, Curtis Whitley was charged with the murder of Dolores Dye. There was then a man who went by the name Beanie. He went to the police and told the police that he had purchased the victim's car from Kyles for \$400. When Beanie then went to talk to the police. He said he wanted to be reimbursed for the car, which, of course, had now been impounded, and he was paid \$600. When the state was making disclosures to the defense, though, they only reported that they had paid \$400 for the car to reimburse him, and the state also failed to disclose that Beanie had claimed a \$1,000 dollar CrimeStoppers reward. At trial, the state's claim, like the state's claim in Adnan's case was, there was no good reason for this witness to come forward and insert himself into the case. And, in fact, when the case reached the Supreme Court, Justice Scalia wrote a dissenting

opinion saying a similar thing, that would've been stupid for being to insert himself into this investigation. The majority disagreed, though, and the majority of the Supreme Court said that Beanie's interest in the reward money and his reimbursement was clearly a motive for him to insert himself into the case and possibly fabricate this entire narrative of Kyles being guilty of a crime. And so, in part based upon this Brady violation, the court awarded Kyles new trial. Now, what I'll say is, I said this case is directly on point. You can obviously look it up and see there were other Brady violations in the case. On the other hand, there were also six eyewitnesses, some of whom said that they clearly saw Kyles committing the crime. It's really the key point from Kyles, though, that applies to [Adnan's] case.

It's fairly simple. If someone who is key to this state's investigation and/or prosecution of the case is paid, it has to be disclosed, period. Full stop. Again, we can go back to the Williams case that I discussed before. That was the case we discussed in which a key witness for the prosecution was a jailhouse snitch and he was a confidential informant. In that case, the state failed to disclose he was a confidential informant and thus being paid for his testimony in this case. As a result, the court of appeals of Maryland cited the *Kyles v. Whitley*. It granted a new trial. It found a Brady violation. And it had some very important things to say about Brady and how it operates in Maryland and across the country. One: good faith/bad faith doesn't matter. The state could have the best of intentions, the worst of intentions, in not disclosing the evidence, it's still a Brady violation.

If we're trying to determine whether the evidence was material, the cover up can be just as bad as the crime. I noted before how the only set of interview notes missing from the teachers and staff at Woodlawn are Brown's notes. That seems to clearly indicate that these notes were intentionally withheld, that cover up and support the finding of materiality. And then finally, if it's the detectives who were doing this, they never told the prosecution about the motorcycle, the reward, et cetera. Doesn't matter, according to Kyles, according to the court of appeals in Maryland, it's enough that the detectives know, prosecutors don't have to know. Simply put, in [Adnan's] case, if Jay is the tipster, if he got paid and the prosecution didn't disclose it, A.) that's a new trial. And B.) there's no way the state can re prosecute. That's the legal side. What about the factual side? I think just as importantly, this tip could very well give us essential factual information about the identity of the person who killed Hae Min Lee.

Rabia Chaudry: [00:45:33] We don't know what the tip said. Right? We don't have the content of it. There's a couple of potential places that should have the source of the tip and the content of the tip. And that would be the state's attorney's office, the Baltimore City Police, and the county police. And the way to get information from those sources is either to file something called an NPIA, which is a Maryland Public Information Act, or they can be subpoenaed, which has to be done through an attorney and a legal proceeding. Now, one of the interesting coincidences that has happened is that while there are some people who have tried to get the documents from the Baltimore County Police, because remember on February 1st, when the tip came in, the case was still a missing persons investigation, so it was still with Baltimore County. But the head of the legal section in Baltimore County right now is a former prosecutor on the case, Vickie Wash. And I don't know, it's for that reason or not, but so far, we've had no success in

getting any of the documentation or a response to the NPIAs that have been filed so far with Baltimore County.

Susan Simpson: [00:46:30] And we know the county has it. The tip first went to the county police before it went to the city police. So somewhere in their files, unless they have tossed them, this info is there. And if they were actually responding to NPIA requests, they'd have to give it over. But they're not.

Rabia Chaudry: [00:46:45] Unfortunately, though, we also know that CrimeStoppers apparently does not retain the information. So, I thought initially that, perhaps if the case is reopened, you know, Baltimore CrimeStoppers could also be subpoenaed. But apparently they don't keep it. They turn it over to the police and they're done with it. So if you don't have the content of the tip, what can we extrapolate, at least from what we know? Right. It's clear that whoever their February 1st tipster was, they didn't actually know anything specific about the case itself. They didn't give the cops any useful information about what happened to Hae, about where the crime occurred, where the body was or where the car was. From what we can tell, the only real information that tipster gave was, hey, look at Adnan. And the reason we come to that conclusion is because if the tipster had given any real information about the crime itself, for example, the location of her body or the car, the police immediately would have set out to find either her body or the car.

Susan Simpson: [00:47:35] So even though we don't have the record of the February 1st tip's contents, I think we actually know what tipster said, because remember that second anonymous tip? The one that came in on February 12th from some anonymous caller? I don't think there was a second tip at all. That February 12th tip and the February 1st tip are one and the same. Only the later tip was rewritten to fit the investigation. Let's review. What did the "February 12th" tip say? Well, we know about the tip from a one page memo written by Detective Massey. Two calls supposedly came in a little after 3:00 o'clock on the afternoon of February 12th. Those calls could not be traced by *57, which means they were either made from out of the area, or they were made from a cell phone or payphone. For any of those options, the *57 would not have worked, and the caller could not be traced. What Massey writes this memo, though, is odd in a number of respects. First of all, we have Massey misspelling the name Adnan Syed. He spells it Adna Ansyed, perhaps an honest mistake, but it seems a little bit like a forced pretense to me. Feigned ignorance, if you will, because Adnan had been the one and only suspect in the case from the start. If Massey had even glanced at the case file, he would have known how to spell Adnan's name.

Rabia Chaudry: [00:48:53] There's a possibility that the person who called in the tip, whenever that tip was called in, didn't know how to spell Adnan's name. And if it was somebody who knew Adnan and somebody who is South Asian, like Adnan, from the mosque like Adnan, they would definitely know how to spell his name, which is a very, very common name.

Susan Simpson: [00:49:09] Yeah. And then Massey actually refers to Adnan as "the suspect" in this memo. Unless someone becomes a suspect in Baltimore, the second anonymous calls made implicating them, Massey had to have known more about the case and he was letting on. Otherwise he would not

have called Adnan "the suspect." But, you know, we couldn't actually clarify what's going on here, or how Massey knew the caller was an Asian 18 to 21 years old, because despite intensive efforts by Gutierrez, Massey could not be located to testify at trial. Somehow a Baltimore police officer just couldn't be found when a defense attorney want to call him to the stand.

Colin Miller: [00:49:45] Again, here's Gutierrez discussing these issues with the judge.

Gutierrez: "We've had difficulty in tracking down Detective Massey, who is now assigned [to] I think it's northern district. It could be Northwestern. We've spoken to his supervisor. I understand he was on midnight, but then off. I've had difficulty in. since we were told last night, that spoke to a supervisor and the night before that he would be given the summons which has been faxed to him and notified and asked us to fax this sheet so that he'd have recollection of it. We've been unable to serve or locate or speak to Detective Massey. We have no home number for him. I've asked his supervisor for it and I believe that I can finish today. But if I have to, I'll just stand at Northwestern District and serve Detective Massey, who for whatever reason notwithstanding, and our speaking to his supervisor, we've been unable to serve with a summons to appear."

Susan Simpson: [00:50:45] Because Gutierrez wanted to get the February 12th memo admitted, she wanted to argue to the jury that the police officers had wrongfully focused on Adnan on February 12th and not looked back. But without Massey there, she couldn't get it in. So she told the court while she'll get her investigator to sit at the precinct and basically wait Massey out, eventually has to show up and she can serve him then. The court is obviously kind of frustrated by this. And [the Judge] tells Urick to assist Gutierrez in finding Massey, because [Gutierrez] should be able to get a police officer into court to testify for her case. Urick initially starts object, saying that he doesn't think Massey can help Gutierrez get the memo in. So it doesn't matter. And the court says, I don't care, that doesn't matter. Just help her find Massey.

Of course, at the next opportunity, Urick offers to admit the memo without Massey's testimony, thereby avoiding the problem of needing Massey to testify at court. It's almost as if Urick was afraid to have Massey testify. One of the reasons being he knew that what Massey was going to say was not going to match the truth. Either way, it's clear that there were some oddness going on and that Massey was doing his best to dodge service and [not] appear in the court. However, once again, whoever made the February 12th tip, assuming it actually existed, didn't know much at all. The caller describes Adnan as Hae's boyfriend and thought that they'd broken up only a week before Hae disappeared. In reality, they'd been broken up for at least three weeks. But you know who thought that not and hey had only been broken up for a week at the time that she went missing? Jay. That's right. In his Intercept interview, he states that and Adnan and Hae had been broken up for a week as of January 13th. The February 12th caller, according the Massey's memo, also states that Adnan and Hae had gone to Leakin Park to hook up. That's not true. They didn't. There's no evidence for that. And it doesn't make sense. But it's in the memo.

Massey also writes down that the caller said that about a year earlier, so early 1998, Adnan had told his friend Yaser that if he ever hurt his girlfriend, he'd drive her car into a lake. This makes no sense either. Hae, had not gotten a car until September or October of '98, only four months earlier. So Adnan would have had no basis for telling anyone about what he would do with Hae's car as of spring '98 because she didn't have a car and there was no reason she'd be getting one. So the whole conversation this caller is describing is nonsensical. Besides, there's also good reason to think the tip wasn't real based on the fact the cops made no effort whatsoever to follow up on it. If they actually got a tip that they thought was credible, saying that Adnan would put her car in a lake, you'd think they'd start searching lakes, but they don't. So it looks like the cops themselves knew that this tip was not the real deal. The last thing the caller knew was that Adnan was friends with Yaser, and where Yaser went to high school and his home phone number. But the home phone number for Yaser was available in the phone book, which doesn't mean that much of the caller knew it. Moreover, Jay knew Yaser. They had a mutual friend in common. They were at a party together in January.

And if the anonymous caller was Jay, it's no surprise that he was trying to name one of Adnan's Muslim friends, he'd come up with Yaser. The outline of the February 12th tip is the same as the February 1st tip. They just updated it a bit. They needed an excuse for why they were obtaining Adnan's cell phone records and interviewing Yaser and sanitizing and reinventing the February 1st tip provided it. Why do I think this? First thing is that on February 1st, right after the tip is received, O'Shea books it to Woodlawn High School, where he talks to Hope Schab. He gives her a list of questions to pass out to students about things like Adnan's alibis. But one of the questions that Hope Schab recalls is "Where Adnan and Hae go to be together? Did they have a special place where they went?" That's weird, right? I find that super weird that a teacher is passing out questions to her students about where two other students would go to hook up. Why on earth would O'Shea do that?

Well, remember the second line of Massey's memo saying the caller further advised the boyfriend has taken the victim to _____ on past occasions for sexual encounter. Well, in the February 12th memo, it says Leakin Park. But like I just mentioned, that makes no sense. What if the anonymous caller had called in the same thing only they gave a different location, one that they actually knew of where Adnan and Hae had gone together? Like, say, Best Buy. Or possibly other areas that were mentioned by other students. This could be, ultimately, how the cops knew about Best Buy long before they got to either Jay or Jen. The anonymous tip suggested that the murder happened somewhere that Hae and Adnan had gone together, and when Schab questioned students about it, she got a list together to pass on to O'Shea.

But again, if that's what happened, we know whatever location that was named in the February 1st tip wasn't actually Leakin Park because the detectives never search there. They never go there until after her body is found. So that's not part of that February 1st tip either. And lastly, what else did the February 12th tip say? According to Massey's memo, the caller said that the suspect informed a friend of his Basra Lee, Asian male, 17, that if he ever hurt his girlfriend, he would drive her car into a lake. Again, as I mentioned, that makes no sense. Hae didn't have a car a year ago and Adnan would not be talking about where to

dispose of it. But that's because the original tip hadn't talked about Hae's car. It talked about where Adnan would have disposed of Hae's body. And how do we know this? What I refer to as the "orphaned interview notes." It's a single page of notes. It was tacked on to the very last page of the file of the collected police notes from interviews, and it's out of context from everything around it and of uncertain origin. There's no header, no indication of when it was taken, and its placement and general content is unlike all the rest of the police notes that we have. So the orphaned note was apparently taken during an interview of Yaser, and possibly during his February 15th interview, because we don't have notes for either. Wherever they came from, the last line of those notes is striking. It reads, "If Adnan ever harmed Hae, would dump body in Lake. Per Anonymous caller, Yaser said this." That's right. "Would dump body in lake." One of the detectives believe the anonymous caller had been talking about where Adnan would dump Hae's body and not her car. Well, if the February 12th call was a rewritten version of the February 1st call, then it makes sense that the cops would change original tip, because Hae wasn't found in a lake, and having a tip that says Adnan would have done that means the tips not corroborated and not based on actual knowledge.

So the rewritten version from Massey's memo would change the tip to provide that Hae's car would be in a lake instead, as they still didn't know the car's location. But again, if the February 12th call were real, the cops didn't believe it, because they didn't start searching lakes for his car.

Rabia Chaudry: [00:58:26] So what does Yaser have to say about this? Well, the detective progress report of what Yaser said in his interview doesn't actually match what Yaser said he told the police. The progress report says that Yaser was asked how Adnan would get rid of Hae's car, if he had to, and Yaser said he would probably leave it in the woods or maybe Centennial Lake or the Inner Harbor. Seriously? The Inner Harbor is Baltimore's central tourist location. You don't just dump a car there. Not without one hundred people watching you do it. And Centennial Lake, that's in Ellicott City, which is a bit of a distance from the school and where all the kids lived. Also, it's a shallow lake with a single boat ramp that isn't open in the winter. And okay, maybe Yaser is just a guy with really terrible ideas at where to ditch a car.

Except here's the thing. When Yaser was asked back in 1999 about what he said when the police interviewed him, he said something completely different. He said they asked him whether he and Adnan thought alike. When Yaser agreed that they did, they asked him where he would abandon a car if he was going to get rid of it. Yaser says he told the police that he would probably leave it in the city. Not that he would dump it in Centennial Lake or the Inner Harbor. Anyway, sure, Yaser could be lying about what he told the cops, but hard to see why he would have any reason to do so. Now, the cops, on the other hand, they do have a motive to try and corroborate their anonymous tip by having Yaser's statements supposedly confirm its authenticity.

Colin Miller: [00:59:44] Yeah, so if we're first summing all of this up, if we're correct that A.) tipster is Jay, and B.) he either tells CrimeStoppers: "I don't know where the car is. I don't know where the body is," or he gives them incorrect information about the location of the car, the body, cause of death, etc., I think factually we're pretty much done with the idea that Jay is involved in this crime. And then, by extension,

Adnan was involved at least under Jay's theory. And so, yeah, if we can get discovery on this tip, we can get the content, this could definitely show us we can exclude these two, let's turn our focus to people who could be involved in this crime. If the tip comes back and it's Jay and in fact he has knowledge it was a strangulation, etc., that was not reported to the public, and, in fact, Hae's body hadn't been found yet, that would tend to show Jay has direct knowledge. Maybe he was involved, maybe not. The question then becomes, was Adnan involved as well? If it's not Jay, I guess that's the question. If it's not Jay, Rabia and Susan is there anyone else it could reasonably be in this case?

Susan Simpson: [01:00:51] It could be someone Jay told. But we're back to the same result. It's evidence that could be used to impeach Jay and should've been disclosed.

Colin Miller: [01:00:59] Now, a skeptic might say, could it be someone that Adnan confessed to? The issue I have with that is, if that's the case, how in the world is the state not calling this person as a witness at trial? How in the world, during all of Serial, and the aftermath and the public outcry, are they not coming forward and saying: "Well, we didn't call this person. We have this source who Adnan confessed to." Yeah, I don't see that happening. I guess it's a possibility we have to consider. But, now really, all signs are just sort of pointing to Jay as being the source of this tip. And then the content of that tip could be the biggest piece of the puzzle that tells us we either look in this direction or that direction. But it's one of the other.

Susan Simpson: [01:01:36] And it doesn't seem like the person and called on February 1st even knew Hae was dead. I mean, if it is, in fact, based on the February 12th tip, the person just says, "If Adnan ever hurt Hae, they would do this." Not that he had hurt Hae, just that, "well if [Adnan] did, I think he would do this." But they don't know anything. This caller, on February 1st, had no idea of any useful information that could be corroborated by actually assisting the police in finding the car, finding the body, or finding evidence of the crime. It just said, "I think Adnan did it."

Rabia Chaudry: [01:02:07] I think whoever called in the tip thought that just by pointing the police in Adnan's direction that they would be eligible for this reward that was being announced. Right? I mean, the Korean community had already announced it. And they thought that, you know, this is just one way maybe they could make a little bit of money. There was no other reason to call in CrimeStoppers.

Susan Simpson: [01:02:26] If you're the first one, then you have better chance getting a reward.

Colin Miller: [01:02:28] And this person did, right? They got the full reward of \$3,075, which means, if we're correct, that on February 1st they made a call and they lacked any meaningful information about the death, and, in fact, might have had misinformation. And then fast forward to November 1st. They're getting the full \$3,075, you have to ask yourself what happened to get from A to Z? How did this person, with no knowledge on February 1st, suddenly have, throughout the course the investigation, enough relevant facts to get this full CrimeStoppers reward?

Susan Simpson: [01:03:00] Yeah, because you don't get a CrimeStoppers payout just for saying, "I think that guy I did it." Something else had to be going on here.

Colin Miller: [01:03:08] And that's one of the big problems with CrimeStoppers. Right? And so that takes us in to some of the issues that we see with CrimeStoppers overall and with particular cases.

Susan Simpson: [01:03:19] Yeah, I know people are going to say "That makes no sense. Why would they have ended up confessing to a crime he didn't commit? If he was just trying to get money from a CrimeStoppers reward?" Well, that happens a lot more often than you think. It's actually a frequent theme in exonerations.

Rabia Chaudry: [01:03:36] So let's look at some similar instances of this exact thing happening, of defendants who try to claim a reward and ended up falsely confessing.

Susan Simpson: [01:03:45] One very similar case is the case of Rolando Cruz and Alejandro Hernandez. It was a murder case involving a 10 year old girl. A \$10,000 reward was put up, and it got the attention of Cruz, who, at the time, was 20 years old, and thought that he could make some money. So he made up a story about how two other men, Alejandro Hernandez and Steven Buckley, had done the crime. And he went to the police and told them this, hoping to claim the reward for himself. Of course, it didn't go well because he ended up giving statements that falsely implicated himself as well as the two other men. Buckley ultimately did not get convicted, but both Hernandez and Cruz ended up on death row. So, yeah, again, we have a case where a guy who just wanted to claim reward ended up confessing to the crime himself and getting them both on death row.

Colin Miller: [01:04:36] Right. And you might recall the Frye case. This is the case out of a DC from the 1920s where Frye was accused of murdering a police officer. Eventually, he passed a polygraph test in which he claims he had no involvement in the crime. Well, part of his defense was that the detectives on the case told him to confess to the crimes, that they could split the reward money, and that thereafter the detectives would exonerate him. He fell for it. He confessed. His claim was, "I didn't do it. I only confessed to get the reward money." Obviously, he passed the polygraph. Obviously, those results were inadmissible. Was it a false confession? Was it not? We're not sure. What we do know is Frye himself claimed "I only confessed for the reward money."

Rabia Chaudry: [01:05:18] And it happens outside the US as well. In New Zealand, 17 year old Teina Pora falsely confessed to being present while two others murdered a woman after being told there's a \$20,000 reward on the table. The two men he identified were ultimately cleared, but Pora was convicted. And then there is the case of LaMonte Armstrong. A CrimeStoppers caller [named Blackwell], who was a later codefendant and principal witness, tried to claim a reward, but ended up confessing to the crime himself. By the time it went to trial, the tipster, a man named Blackwell, had written several letters recanting his claims that Armstrong had done it, saying he lied in order to get payment from CrimeStoppers. Blackwell nevertheless testified at Armstrong's trial, however. Later he explained that he

only did it because he was told he would face a murder charge alone unless he agreed to testify against Armstrong. And this part should sound familiar. Blackwell's testimony at trial was the sixth different version of the crime that he'd given. Armstrong was sentenced to life in prison, but was exonerated 17 years later in 2013.

Susan Simpson: [01:06:13] And a defendant who falsely confessed in order to try and claim reward, also featured prominently in the West Memphis Three case. In that case, three teenagers were convicted of killing three young boys who were found murdered out by a creek in Arkansas. A major part of the case against them was based on a confession given by Jessie Misskelley. Jessie Misskelley had agreed to be interviewed by the cops after being told that there was a \$35,000 reward for information about the murder of the three children. And while trying to talk to the police, he eventually gave statements and crooning himself. Over several hours. The cops were able to tweak his story so the times fit the actual crime. And eventually, by the end, he gave a statement incriminating not only himself, but also Damien Echols and Jason Baldwin. Misskelley's statement denied actual involvement in the murder. However, by the end of his statement, the cops had him saying that he was there at the time of the crime, and while he hadn't taken part in the actual killings, he'd witness Echols and Baldwin committing the crimes.

Colin Miller: [01:07:12] Then there's the case of Max Soffar. Max Soffar is currently on death row in Texas [update: He died of liver cancer on death row on April, 24, 2016]. He was convicted of a [1980] murder based solely on the weight of his own confession. Pretty general consensus is it's a false confession. It certainly doesn't match the evidence and other witness statements in the case. What we do know is the confession was made after Soffar came in and tried to claim a \$15,000 reward by implicating two other men in the crime. However, eventually, after three days of interrogation, he ended up signing his own confession to the crime. Is he guilty or not? We're not sure. What we do know is his entire process started with trying to claim the reward money.

Rabia Chaudry: [01:07:50] There's also a false tip cases without accomplice confessions. For example, Michael Evans and Paul Terry. Both Michael and Paul were 17 at the time of the crime that they were convicted of--which was a rape and murder that they knew nothing about--after a neighborhood woman, seeking to claim reward money, testified that they were guilty. After 27 years, they were exonerated by DNA evidence.

Susan Simpson: [01:08:12] Another case is Shareef Cousin. He was wrongfully convicted of murder in Louisiana and placed on death row at 17 after an anonymous tip identified him as the shooter. After his exoneration, it was discovered that one of the homicide detectives had made the original anonymous tip implicating Cousin and had collected the reward for himself.

Colin Miller: [01:08:31] Then we have the very much in the news case of Chuck Erickson and Ryan Ferguson. In that case, there was a CrimeStoppers tip that resulted from Erickson telling friends about his dreams. Eventually, this led to police bringing in Erickson for questioning. During his taped interrogation Detectives could be heard providing unknown details about the crime to Erickson to help him shape his

narrative. He's asked, for instance, about what weapon was used in the murder and has absolutely no idea at that point. The detective tells him that, in fact, the victim was strangled using his own belt. Eventually, the detectives convinced Erickson to confess to the crime by lying to him and saying that Ryan Ferguson is in another room and about to himself, confess, to the crime and turn on Erickson in the case. So he's told he better admit to his own involvement if he wants to save himself. Based upon the high pressured interrogation that leads Erickson to implicate Ferguson in the murder after making a full confession of his own, which very much seems to be a false confession that was fed to him by the police.

Susan Simpson: [01:09:47] There are big problems with having a system that anonymously rewards tipsters for giving information about crimes. CrimeStoppers does have a very useful role in our justice system. But the abuses are all too frequent. And because they're anonymous, there's no way to have an adequate check on them.

Colin Miller: [01:10:04] And the only check that does exist is that prosecution is supposed to disclose the information, so at least the defense is able to see who made the tip, when they made it, what its content was, and if it has exculpatory evidence, if it could be used to impeach the witness or undermine the state's narrative, that can be done. The big problem here isn't CrimeStoppers. The big problem is the state failing to disclose this information to the defense, allowing them to present a false narrative of the case, and quite possibly, depending upon the identity of the tipster and the content of a tip, to allow an entirely false narrative to be presented to the jury.

Rabia Chaudry: [01:10:41] So says that even though you mentioned that, you know, the system of anonymous tipsters, it's risky, it can be dangerous sometimes, maybe it can be abused. The thing about this system is that anonymity is key. And someone familiar with Metro CrimeStoppers actually noted that in Baltimore, if someone is suspected of claiming a reward, there's all sorts of retribution possible. We've seen it and it's unfortunate. If you snitch and get paid and that becomes known, you're going to end up hurt or dead. So they don't keep names on record, that way, there's nothing to get subpoenaed for court.

Susan Simpson: [01:11:10] And if the February 12th tip was actually a rewritten version of the February 1st tip, why would the cops be okay doing that? Well, it seems like this is not that unusual of a technique that the police were using back then and probably now, too. As the CrimeStoppers source [spoken to for this episode] noted, they have seen police publish stories that they're acting on an anonymous tip, which in reality was to give cover to an informant. So it's a way to compensate a known and possibly reluctant witness by giving them a reward, and giving it under the cover of an anonymous system like CrimeStoppers. As [our] source also noted, sometimes the payout might get a bit unconventional, which means police are using the CrimeStoppers reward system to disguise informants and to disguise payments that would compromise a witness and possibly put them in danger, but possibly also because it might leave them open to impeachment.

Rabia Chaudry: [01:12:28] Before we wrap up, Susan, Colin and I want to thank the user When the Worlds Collide for being instrumental in uncovering evidence of this tip and payout, we never could have

connected these dots without them. So, at the end of the day, here's where we are. We know that someone called in a tip, about Hae's disappearance, on February 1st, about a week before her body was found. We know this person was paid for their tip, meaning they were able to provide information that led to the arrest and indictment of Adnan, because otherwise they would not have gotten the reward, but that they didn't have enough information to help the police actually find, Hae, her car, or even know for sure that she had been killed. We know that while the payout should have been paid in April, it wasn't paid until November, 7 months after it was due, which means the police and prosecutors were waiting for something to happen, like Jay's guilty plea in front of a judge in September, before actually paying up. And then, of course, there's the funny business with a motorcycle. Now, it's not like the police and the state didn't know what a mess the situation was. They helped create it. They facilitated the tipster getting a payout. They facilitated a cover up. And they deliberately withheld the information from defense counsel. The information about the anonymous caller on February 1st was so damaging to the prosecution's case that three police officers felt the need to hide it in their testimony. Detectives O'Shea, McGillivray and Ritz all testified about how their investigation had progressed and all three of them hid the fact that on February 1st, somebody had called in the tip, and that someone had been paid for it.

And of course, they also hid the fact that they had settled in Adnan as a suspect much earlier than their official version. Now, it's important to note that regardless of who made the February 1st call, the existence of the call and the fact that it was covered up itself undermines all the police's testimony, and is therefore impeachment material under Brady. This is a full blown Brady violation. There is no two ways about it. And this might be the reason a new trial is cinched for Adnan.

Now, it seems highly unlikely that anyone other than Jay made that call and collected the reward. But we won't know for certain if Jay was the one who made the tip until Adnan's attorney subpoenas that information, which I am certain he will. We'll also know something just as important as whether it was Jay who made the call, and that will be the content of the tip itself. Did Jay call in a tip that had no correct details about the crime? It would seem so, because the police had no leads on Hae's whereabouts after the call. Imagine that, that a person would make up a story implicating an innocent person in a murder for the sake of a motorcycle, or the sake of a few thousand dollars. You know what I call that? Pathetic. Just pathetic.

But there is one last thing that points to Jay being the recipient of the deal with CrimeStoppers. And that's Jay's other deal. The plea deal...Next time, on Undisclosed...[end credits]