

UNDISCLOSED, the State v. Adnan Syed

Episode 6 - The Suspect

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[00:52] Rabia Chaudry Hi, and welcome to the sixth episode of *Undisclosed*. Today's episode is "The Suspect". My name is Rabia Chaudry. I'm an attorney and national security fellow at the New America Foundation, and I'm joined with my colleagues Colin Miller, who's an associate dean and professor at the University of South Carolina School of Law and also is a blog editor of the *EvidenceProf* blog, and we're also joined with Susan Simpson, an associate with the Volkov Law Group in D.C. and a blogger at *The View from LL2*.

So, let's start with a timeline check just to refresh your memory. Hae Min Lee disappeared on January 13th, 1999, and her body was found a few weeks later on February 9th. Now, Jay's first official interview--and remember, Jay is the State's star witness, and his first official interview with the police happened on February 27th, after which he allegedly led the police to Hae's car, uh, in the early morning hours of the 28th, and a couple hours later Adnan was arrested.

Now, the question gets raised a lot about how the police actually got to Adnan, and the conclusion that a lot of people may come to, given the State's case, is that according to the police, three days after Hae's body was found on February 12th, an anonymous call came to the cops telling them to take a look at her ex-boyfriend. That look resulted in the police pulling Adnan's cell records, which showed numerous calls to Jenn, who led them to Jay, who handed them Adnan on a platter. But what if it wasn't the anonymous call that led them to Adnan? What if, long before this call and long before talking to Jay, they already had their suspect, and now all they needed was to build a case against him?

So, how do you do that?

You have to talk to witnesses. You have to collect evidence. And you have to do it in a way that supports the case against your suspect while looking the other way when things don't.

[2:48] Colin Miller After the discovery of Hae's body on February 9th, 1999, the first witness spoken to by police was a man we'll refer to on this podcast as "Mr. A". Here's the report of his statement:

"On [February 11th,] 1999, [Police Officer] Baumrin, Baltimore County [Police Department] Woodlawn Station, telephoned the Homicide Office and spoke to Lieutenant Keel. Officer Baumrin stated that a man had walked into the Woodlawn Stationhouse and stated he had observed a [black male] driving a light colored automobile behaving in a suspicious manner while in Leakin Park near some concrete road blocks. Sergeant Lehmann and Detective Ritz responded to the Woodlawn Station, arriving at 2145 hours.

Upon their arrival Sergeant Lehmann and Detective Ritz were met by Officer Baumrin and Detective O'Shea. The walk-in witness was identified as follows:

[Mr. A]

After interviewing [Mr. A] it was determined that he had witnessed a young male acting suspicious near the concrete barriers blocking southbound traffic onto Weatheredsville Road from Windsor Mill Road, which is approximately a mile from the site of the victim's recovery. [Mr. A] states he had heard of the recovery of a woman's body in Leakin Park on the TV news and wanted to help.

Your investigators believe that this observance is not connected to the murder of Hae Lee".

[Police report on Mr. A's interview, February 14, 1999]

[4:12] Susan Simpson While we have no idea why they concluded that, it certainly sounds relevant. And based on the information they've given in their brief memo of this interview, we have no reason to exclude it as relevant to the case. Just as way of background information, the place where Mr. A is talking about is, like they say, about a mile from where Hae's body was found. It's kind of in the heart of Leakin Park. It's at a place where a blocked-off road branches off from one of the main cut-throughs, so if someone had been able to get past the barrier there and onto the stretch of road, it would have been a very isolated spot and, in many ways, ideal for a place to dump a body. Unfortunately, it was barricaded by concrete roadblocks, so apparently whoever Mr. A saw couldn't get past them.

[4:55] Rabia Chaudry Well, you know, it's also interesting to me that this description includes a "light colored automobile" and, you know, Hae's car was light colored, and they had not found it yet. So, at a minimum, I think it's surprising that they would not have followed it up further. I mean, there's nothing in the report that explains why they decided that there's nothing there.

[5:17] Susan Simpson I mean, if they wanted to show why Mr. A's report was not relevant, there's one easy detail they could have included: the date on which he saw this. If he saw this

suspicious individual on February 5th or something, well then, there it's not relevant, so they can rule that out. But they didn't even bother to write the date down that Mr. A saw this event happen.

[5:36] Colin Miller Right, whereas if he saw this event on January 13th, then it would be very relevant. Another thing is, that I find to be troubling, is they just mention here a few times that he was behaving in a suspicious manner; he was driving suspiciously. There's no description of what that means, and I wish we had more detail about exactly what this person was doing that basically led this individual, Mr. A, to not only note it but go to the police once they'd found this body in the park.

[6:05] Susan Simpson Yeah, and he was there for a while. This was in Baltimore County where he was and where he came in to tell them his story. So, the Baltimore County police called the Baltimore City police and had them come out, so Mr. A was at the station for some time. He clearly thought it was important enough to be worth his time to go in there and wait and talk to them.

[6:23] Colin Miller And we know that the police got the cell tower pings from Adnan's phone, right? And we know that a big part of their case, which we'll discuss later, are these phone calls on January 13th that ping the tower that covers the area including Leakin Park. Well, let's say, for instance, Mr. A says this behavior occurred on January 28th. Well, did Adnan's cell phone ping that tower during that time? If so, that would help their case greatly, but if not, then that could lead to either another individual having some type of involvement with the body or it could be, as they say, irrelevant, but we just don't know from the lack of detail in this report.

[7:00] Susan Simpson Mm-hmm.

[7:01] Rabia Chaudry It seems like they dismissed it without investigating. But there had to be something behind that. Why would they dismiss it so quickly, right? And, uh, the obvious answer is because they already have an eye on another suspect, right?

[7:11] Susan Simpson It seems like at this point, they have already decided Adnan is their guy.

Just before the official interview with the Baltimore police with Mr. A, at about 8 o'clock that evening the Baltimore County officers were printing out Adnan's car records based on his license plate, which showed his car type, its color, make, and model.

So, why are they doing that? It seems to be connected to Mr. A's report based on the timing, and if so, why would they have been concerned with information like what color his car might have been? Well, it could have been to match up against Mr. A's report.

[7:49] Rabia Chaudry And that's not the first time, right, that the police have started looking at Adnan? We have documentation that, in fact, as early as February 3rd, they had already begun looking at Adnan, and this is even before her body was found.

[8:01] Susan Simpson Yeah, February 11th is the first date that the cops look at Adnan's car information, but on February 3rd they'd actually pulled his license information to see, for instance, what his record was, if he had any speeding tickets or other traffic violations on his record. But why were they pulling his license information on that date and no one else's? He was clearly already a person of interest, and based on the records, far more of interest than anyone else.

[8:31] Colin Miller Yeah, and this tunnel vision on Adnan i--is troubling because when they put the blinders on in that way, what it causes them to not do is to talk to any [of] Hae's friends. And so, if we look at the timeline, again, Hae's body is found on February 9th.

We have no interviews with any of her friends until March 1st, which is finally when Adnan is arrested. And, in fact, in that whole period between February 9th and March 1st, in addition to Mr. A, the only person that the police interview is Mr. Graham. Again, Mr. Graham was the athletic director of Woodlawn, and this relates to the question of whether Hae was filming her segment on January 13th. And so, on February 22nd, the police interview Graham, and this is where Graham tells them that Hae was filming on January 13th, again, the day that she disappeared. But, actually, if you look at Graham and you look at his statement, we've noticed before how we think Graham has the wrong day because Hae's note is referring to the Randallstown wrestling match, which again was January 5th and not January 13th.

But beyond that, if we looked at Graham's statement, what he says is on January 13th Hae was filming her segment for "Athlete of the Week" for the education channel. But an astute listener has pointed out to us the "Athlete of the Week" recording actually wasn't done by the educational channel. They only did "Athlete of the Month", and so the description given by Graham of the recording that Hae did on January 13th, as we've said before, it doesn't seem to match reality because it's not the correct body that is performing the recording of this interview.

[10:10] Susan Simpson Yeah, and Graham also describes how the interview on the 13th involves lots of students. Well, we know that TEC, The Education Channel, did the interview of Hae that we've seen 'cause you can see the reporter's microphone, which has the logo on it. But TEC only did "Athlete of the Month", which was just one male student and one female student, so there wouldn't be a big group. On the other hand, "Athlete of the Week" involved multiple students and a different channel entirely and not the local Baltimore County school cable show.

So Graham's description fits an interview for a different group entirely and not the one we know that Hae was doing.

[10:45] Colin Miller And it's just so strange. I mean, I don't understand why--what is it--about 20 days between her body being discovered and Adnan being arrested, none of these students are interviewed. And s--you find that Hae's been killed. Wouldn't you immediately then go to the students at Woodlawn to find her whereabouts and what she was doing on the afternoon of the 13th?

[11:05] Susan Simpson That's the obvious move to do. Apparently, it wasn't for them, though.

[11:08] Colin Miller Yeah, and so, basically, we have to jump then all the way to March 1st when we have these interviews starting in earnest. And so March 1st is the date on which they interview Krista. Again, Krista has appeared on this podcast before. She was a good friend to both Hae and Adnan. The interview notes, though, are post-dated to April 27th.

[11:29] Susan Simpson So, Krista is Hae's friend, and they are finally talking to one of Hae's friends, but they didn't talk to her because of that. They go to Krista because she was one of the people that was called on January 13th by Adnan's phone. They ask Krista, for instance, about the 5:38 call, which was two seconds long, and grilled her about why Adnan had been calling her then what they talked about.

Well nothing, obviously, because it was two seconds and not a real call, but even now their concern has nothing to do with what Hae was doing or what her plans were and all about what Adnan was doing.

[11:59] Rabia Chaudry So, I don't know how murder investigations generally happen, but--or even missing persons investigation [sic]--but I have always found it really weird and odd--and I will assume that, like, the average lay person will, too--that it's not until after they have arrested and charged a murder suspect that they start interviewing witnesses. Like, how does this make sense?

[12:19] Susan Simpson And people keep asking, "Well, how could they have gotten all this wrong about the date and what was going on that day?"

Well, this is probably a big part of why--because they didn't bother to look into it until weeks later.

[12:29] Colin Miller Memory degrades over time. And they, I think, should have interviewed people at the school even when it was a missing persons investigation, but certainly by February 9th, they should have talked to these people. But instead--right, exactly--they're waiting 'til March. They're waiting 'til after Adnan has been arrested. That's going to play a role in the memory because it's--you know, you already have the suspect. And so, it's basically the police building the case against Adnan as opposed to the police trying to build from the bottom up and figure out what actually happened to Hae.

[13:00] Susan Simpson Well, the Baltimore County police did interview Hae's friends during the missing persons case, so they had those statements from Detective O'Shea. But, again, those statements were about two sentences long each and tell nothing in terms of substance or detail about what Hae was doing and clearly were not enough for the Baltimore City police to figure out what had been going on that day.

[13:20] Colin Miller Yeah, but as you say, Susan, at least with the Baltimore County investigation they do have notes about these witnesses who were interviewed.

I did mention how, for Krista, they did after the fact--I mean, April 27th--record the notes. That's not the case for the three interviews the next day. So, again, Adnan is arrested on February 28th. Krista is interviewed March 1st.

[13:43] Susan Simpson Can I point out one thing, though?

[13:44] Colin Miller Sure.

[13:45] Susan Simpson I love the fact that in April when they *did* decide to write up the notes--or possibly re-write up the notes--of Krista's interview, they date it February 29th. That was not a leap year. There was no February 29th.

[13:56] Colin Miller Yeah, I mean, it just sort of shows the, the, the shoddy investigatory work, right? I mean, they, they're not even getting the day right of the very first person they interview after Adnan's arrest.

[14:05] Rabia Chaudry I--it's, it doesn't even seem like not even getting the day right. That's not even like a--I mean, that's, that is a deliberate attempt to change the date. I mean--

[14:14] Susan Simpson Oh, I think they were just careless. I think they thought, "Well, we talked to Krista the day after we talked to Jay. We talked to Jay February 28th. Therefore, we must have talked to Krista on February 29th" and totally forgot that date didn't exist.

[14:29] Colin Miller Yeah, it's--and then the next day, we have three people being interviewed by the police. So, this is March 2nd. We have Debbie being interviewed--again, a good friend to both Hae and Adnan. We have Aisha, who was Hae's best friend. And then we have a third person, "Ann", who you haven't heard of before.

Let's focus first on Ann. So, who is Ann? According to Debbie, Ann, Adnan, and she used to spend basically every lunch period in the library. Ann was someone that Debbie was trying to set up with Adnan, and Adnan basically shied away from that because Ann had previously dated a Muslim friend of his. And so he didn't want to date her after the fact and, in fact, Ann is the last person who appears in Adnan's call log on January 13th, the day that Hae disappears, at 10:30. And so that's probably why Ann was a person of interest and why she was interviewed there two days after Adnan was arrested. But no notes are taken, or at least no notes are turned over to Adnan. So, for these three interviews on March 2nd, there's no notes of anything these three witnesses had to say. Uh, Debbie and Aisha eventually are called at trial. They do testify as witnesses for the prosecution. Ann, though, after her interview is never contacted again by the prosecution or defense. She is not called as a witness at trial and, in fact, in one of Debbie's later statements, she says when she's asked, 'Why do you think Adnan is guilty?' she responds, 'Well,

he was arrested, and also Ann told me that the police said they had a bunch of evidence against him.'

So, my thinking is Ann actually maybe had something exculpatory to say about Adnan. That would explain why the police didn't follow up, and that would explain why she's not called. The question is, why didn't Gutierrez ever contact her?

[16:17] Susan Simpson Well, she must have said something of interest because as soon as they talked to Ann, they add Ann's boyfriend and ex-boyfriend to their witness list, people to talk to. We don't know if they ever talked to them actually because they don't list that in the notes, but they do have them listed on a "To Do" list with their names scratched out as if they had been talked to. So, why did Ann lead the cops to interview two other witnesses that, again, are considered to be talked to or are talked to and never heard from again?

[16:44] Colin Miller And one other piece of information we know about Ann is she was in that same final period AP Psychology class with Adnan and Hae. And so you recall that this is the last time, at least according to what we think now, that Hae was seen alive--was in this AP Psychology class. My big question is, did Ann see Hae at the end of class and maybe have information that contradicted the State's theory of the case?

[17:09] Susan Simpson And, Colin, you just mentioned how there are no notes from these three interviews on the record and how we don't know if they took them or not. Well, we actually do. There were statements from all three witnesses because they're listed on an index sheet in the police file.

[17:20] Colin Miller Right. Well, that had the timing of the interviews. They're, they're interviewed back to back to back. I think it's, like, 11:30, 12:30, 1:30. We have the exact times when they're interviewed.

[17:30] Susan Simpson And written statements were taken for all of them, so why were they never handed over? And why aren't they in the file now?

[17:35] Colin Miller Debbie gives a later statement at the end of March, and they're referencing things that were said in the prior interview. We know Aisha at least, via Krista, had some interesting things to say about that conversation between Hae and Adnan in the class. I, I just--I really wonder what was said in those conversations. I mean, you wouldn't think that those notes would just be lost from the interviews. You would think there's something useful in those notes.

[17:59] Rabia Chaudry Well, here's the way I would look at it: if it was useful to the police and to the State, we would probably have those notes. Uh, but since it's not, uh... y--you know, they're not there. I mean, they just don't appear. We have the MPIA files; we have the files that were, um, you know, given to us directly from the police that, um, it's, it's not in the case file at all. So I can

only assume that either they were just misplaced or--like on purpose--or accidentally. And if it was on purpose, it was because maybe they wouldn't have been so helpful to the State.

[18:27] Colin Miller Yeah, I mean, Ann's a big question mark. Aisha, we've heard from Krista i--in 2015, maybe has a very different story than what we have ever heard. As I said before, Debbie i--is maybe the most important person in this case. I've described before how she's given these various statements about: did she see Adnan at 2:45 at the guidance counselor's office on January 13th? Did she see Hae at 3 o'clock? Was she going to see Don? Was Takeria, their friend, there? Did she ask for a ride? A--and Debbie's story changes a lot. It changes between the first and second trial. I re--I'm really curious what she said in this interview because it's a big gap there. We don't know exactly how her story maybe was molded to eventually what it became.

[19:25] Susan Simpson So, we don't have the notes from those interviews, but after they talk to Debbie, Aisha, and Ann, it was three weeks before the cops ever talk to anyone else who knew Hae. Before that, though, they did talk to other witnesses. On March 9th, about a week later, they talk to "Not Her Real Name" Cathy-slash-Kristi. As we mentioned earlier, the fact they interviewed her at all is odd because, as of March 9th, there is no statement from Jay or Jenn which indicates that Cathy had known anything about the murder or had interacted with Adnan on that day, so why'd the cops go talk to her? How'd they find out that she was a person of importance to their case?

Well, my guess is that there were other statements from Jay and Jenn that weren't recorded or not in any official interview that was ever disclosed to the defense.

[20:08] Colin Miller Right, and we know, for instance, that Jenn met with the prosecutor on--what was it--March 4th? And we have no notes from that. We know from Sis, the boss of Jay at the adult video store, that before February 28th, he had gone in to talk to the police possibly about this case, or at least she says it was about this case, right? And we don't have any notes about anything that happened during those interviews.

[20:31] Susan Simpson And we know that during this time, the cops are also trying to learn Cell Phone Records 101 and poring over the addresses of the various towers and very likely also trying to compare locations of known places including Cathy's address, which they had, with nearby towers, which could also explain why they decide to talk to her.

[20:51] Colin Miller And then, Susan, two days later on March 11th, they follow up on talking to Cathy.

[20:55] Susan Simpson They talked to Jeff J. Jeff J. is Cathy's boyfriend, who was there that night. He's the one that said, "Aw snap!" when Jay told him about the murder, well, according to Jay anyway. But again, they get a written statement from him, they talk to him, and poof, he goes away. We have no idea what he said; we have no idea if he would have backed up Jay's and Jenn's and Cathy's stories or if he said something else entirely.

[21:18] Colin Miller Right, so then, Susan, there's also a second person the police interview on March 11th, and so for context, if we look to Adnan's call log on January 13th, there's a call placed at 3:59 p.m. to Patrick, and it's a call lasting 25 seconds. And so, with that context then, who is this other person they interview on March 11th?

[21:40] Susan Simpson Patrice, Patrick's sister.

[21:42] Colin Miller Right, and what do we know about that interview?

[21:44] Susan Simpson Nothing, because again, a written statement is taken, it's logged in the index, and it goes poof.

[21:49] Rabia Chaudry Just to be clear, when Susan said, "it goes poof," it means they're just not there. They've totally disappeared. We do not have copies of these statements. We just know that they were taken.

[21:59] Colin Miller Right, so if we're breaking that down then, we have eight witnesses interviewed in the days after Adnan is arrested. Out of those eight witnesses, we don't have interrogation notes for Jeffrey, Patrice, Debbie, or Aisha. So that's five out of the eight where the State does not turn over anything that these--a, a majority of the witnesses they interview in those first days of the investigation. They're nowhere.

There's a Supreme Court case, "Brady v. Maryland", that comes from a Maryland case. It says under the due process clause of the Constitution, prosecution has a duty to turn over material exculpatory evidence. Now, were any of these statements exculpatory? Do they tend to exonerate Adnan? We have no idea because they were never turned over. It's bizarre. I mean, again, I've handled a number of these appeals cases and appellate cases. I've never seen something where in a State disclosure we have all these witness statements being made and yet there's no documentation whatsoever of what these people said.

[23:04] Susan Simpson And let's take Patrice. In Jay's first interview on February 28th, Patrick's not mentioned; he's not part of the story. On March 15th, four days after the Patrice interview, Jay says that he called Patrick that day in order to find some weed, but Patrick wasn't home so when he called he got voice mail and then talked to Patrick's sister, Patrice. So, if Patrice in her interview told the cops something other than that Jay had called her that day and was trying to get Patrick, well, that contradicts what Jay told the police and should've been produced under Brady.

[23:34] Colin Miller Yeah, because Brady covers impeachment evidence. Impeachment evidence is evidence that contradicts and calls into question the credibility of a witness. Well, in this case let's look at the timeline. Jay says that he was with Adnan and didn't drop him off to track practice until after 4 o'clock, and so this is a key part of the case. 3:59 on January 13th, he's making this call to Patrick's house and he's saying, 'I had a conversation with Patrice.' If Patrice

contradicts that or has something to say that calls into question the credibility of Jay, that's huge. That's important evidence that Adnan could have used in his defense.

[24:19] Susan Simpson In addition to all the interviews that were definitely done but for which notes were not kept or went poof, there's lots of witnesses that the cops contemplated talking to and, arguably, should have talked to--at least didn't according to the records. For instance, other than Jeff J., Kathy's boyfriend, no one who Jay or Jenn say had any knowledge of the murder prior to their interviews was ever talked to. That includes, for instance, Tayyib; Jay's friend, Chris; Nicole, the one who Jenn says told her about the strangulation and later says told her about her mom finding Hae's body in the park; Josh, Nicole's boyfriend; and Mark, possibly two Marks. There's Mark, Jenn's brother, and there's Mark, may-or-may-not-be Jenn's brother, who was in the car with Jenn, Josh, and Nicole when they were discussing Hae's murder.

[25:08] Rabia Chaudry Now, Mark, Jenn's brother, I can't even imagine that, you know, this is somebody who could have easily corroborated that Jay spent the afternoon at Jenn's house. I mean, his entire narrative is that, 'I went over there to play video games with this guy.' Like, the police never once--not only do they not interview him, um, Gutierrez also does not subpoena him.

[25:25] Susan Simpson Yeah, and this is part of why I never buy the whole claim that Jay's story changed to protect his friends because in his first statement he was so willing to make Mark his alibi witness. And if Mark wasn't actually an alibi, why is he going ahead and throwing Jenn's brother under the bus just to save his own skin? That's not the statement of a guy who's lying to protect friends. It's someone who, at best, is lying to protect himself and, at worst, just lying for God knows why.

[25:50] Rabia Chaudry You know, I can't help but wonder, though, if one of the reasons that they did not follow up with Mark was because, okay, it was a school day and he was, what, 13 or 14--

[25:57] Susan Simpson Fifteen.

[25:57] Rabia Chaudry He was supposed--15, okay. So he was supposed to be in school. I mean, what if there was actually documentation that he actually was in school and then that would totally undermine Jay's story.

[26:06] Susan Simpson Jenn says she dropped Mark off at school that day, that morning.

[26:09] Colin Miller And there, there's another thing too and Rabia, I believe, mentioned this in an earlier episode. I think there's a good reason why the police might have had concerns about Mark corroborating the story because we've been mentioning Jay's first official interview. Well, before his interview was recorded, he had his pre-interview. And, Rabia, I think you mentioned this before: in that pre-interview, Jay says on January 13th--again, the day that Hae

disappears--there's an individual by the name of Jeff G., and Jays says in the pre-interview, 'Jeff G. drove me to Woodlawn at 2:40 p.m. on January 13th to see Stephanie.'

Now, what do we make of that?

It contradicts the Jenn and Mark story, but also Jay supposedly has Adnan's car. Are we to believe that he gave someone else the car, and why is he going to Woodlawn? What did he do at Woodlawn?

[27:00] Susan Simpson Isn't that the last place he'd want to say he was going if he knew what actually had happened?

[27:04] Colin Miller We mentioned it before, but it's just seeing this again in the notes, it just shocks me that the very first thing on record that we have--it's a pre-interview but it's still, it's him talking to the police--he's saying, someone in their car 'drove me to Woodlawn at 2:40 on 1/13', and that person's never interviewed. That story is, is never mentioned again. But it's just, it's so strange.

[27:28] Susan Simpson Jeff G. does come back. Jeff G. is the one whose house Jay was driving to when Adnan made the "come and get me call". That's it. After that, Jeff's just gone from the record like everyone else.

The first subpoena issued in this case was issued on February 16th, one week after Hae's body was found in Lincoln Park. That subpoena was for Adnan's cell phone records. It's interesting first of all that they're even subpoenaing his cell phone records at this point because it shows how focused they were on Adnan already in the investigation. It's also interesting because that subpoena gives a very strong indication that that wasn't the first information the police had about Adnan's cell phone records. In the subpoena it says:

"To: AT&T Wireless

[...]

You are therefore directed this 16th day of February, 1999, to furnish the name(s) [and] address(s) for the following telephone number and (13) cell site locations, from January 1, 1999 to the present..."

[February 16, 1999, subpoena]

Thirteen cell site locations. If this is the first subpoena that they've issued and the first cell phone records they receive, supposedly, how do they already know how many cell site locations they need addresses for?

[28:51] Colin Miller Right, because Adnan's cell phone pings thirteen cell towers on January 13th.

[28:56] Susan Simpson From the Jay call onwards, yes.

[28:57] Colin Miller So they must've known that to include it, right? I mean, they--they must've already before February 16th, gotten information about the cell towers.

[29:07] Susan Simpson I can't think of another explanation for how the police would know the number of cell site locations it wanted addresses for unless it had already obtained some kind of information.

What happened, though, in response to that subpoena is that on February 17th, they got a list of all the call records from Adnan's cell phone, including the numbers of all the calls that Adnan had made and indications of the incoming calls he'd received, although not the actual phone numbers that the incoming calls came from. Uh, they could've obtained that information if they'd wanted to. I presume they knew that because they did obtain incoming call numbers in other cases, but they chose not to do that here.

[29:47] Colin Miller Maybe the most frustrating part of this case, right? I mean, if we knew those incoming calls and who they--I mean, I would just... It would make the case so much clearer, which maybe they didn't want it. Uh, that's--they, they wanted it ambiguous. But, I mean, if we knew who these calls were from, that would just tell us so much more about January 13th.

[30:04] Susan Simpson If they had done their job and gotten information they should've gotten, this whole debate over what call was the "come and get me" call would never have happened. And in the current appeal in the State's brief, they argue that Asia doesn't matter as an alibi because if they'd wanted to, they could have just changed the time of the "come and get me" call at trial because, you know, there's other calls it could have been. Well, if they'd gotten information they should have, that wouldn't have been an option. So perhaps it was strategic. They didn't want to narrow down their choices of when to make the time of the murder or when things had to have happened. If that's the case, it was a smart play because it worked out pretty well for 'em.

[30:39] Rabia Chaudry Is it also fair to say that if Gutierrez had tried, she probably could have gotten the records from the payphone at Best Buy if it actually existed?

[30:47] Susan Simpson ...or the incoming calls and their numbers. Um, I guess in her defense, slightly, she would not have been as familiar with the cell phone records and wouldn't have necessarily known that it was possible to get the incoming call numbers, whereas the cops should've.

[31:00] Colin Miller I mean, again, just comparing this to other cases that I've handled, I, I've never seen a case where they've only had the records of the outgoing calls and they haven't had

this incoming call information. It's just baffling to me that they didn't get this information. It's--it had to be a conscious decision where they didn't want the information.

[31:27] Susan Simpson Under the Stored Communications Act, there are various requirements that law enforcement and prosecutors have to abide by in obtaining certain records, such as telephone or computer records, including cell phone records. Some data like BSI, Basic Subscriber Info, they can obtain with just a subpoena. Other information, however, requires a court order, and that includes information like historic cell site location data, such as what cell sites calls originated on from a given cell phone.

A court can only issue that kind of order "if the government [sic] entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation," i.e. in order to get this information, the cops have to explain with "specific and articulable facts" why they think it's going to show who did the crime or something else material to the investigation. In the court order that the grand jury issued in order to obtain the cell site location data, the only specific and articulable fact that the State's order included was that Hae had been buried in Leakin Park. This leaves the conclusion that the phone records were relevant and material to the investigation because they showed a link to Leakin Park. It's almost as if the State already knew what it'd find.

[32:41] Colin Miller Based on looking at this, this is my general theory of this investigation. I'm not sure exactly when it happened, but at some point in February 1999, the police realize that Adnan's cell phone pinged the tower that covers Leakin Park at 7:09 and 7:16, and from that moment on, whether consciously or unconsciously, they in talking to witnesses and building their cases, they built their entire theory of the case around Adnan being in Leakin Park at 7:09 and 7:16. As we said in the prior episode, it doesn't meet with the medical evidence; it contradicts it. But I, that's--my theory is whenever they found that the 7:09 and 7:16 pings, that is what formed the foundation of this entire investigation and prosecution.

[33:25] Susan Simpson And there's one thing that could explain how this came to be, and that's if a tower dump was done. A tower dump is basically taking a certain cell site and obtaining all the calls and all the phone numbers of all the calls that were made through that tower for a given time range.

If the cops had done that for the Leakin Park tower L689, which they could have done without an order, they would have found that two calls had been made to Adnan's cell phone through the Leakin Park tower on January 13th, a little after 7 p.m. So if that happened, say February 11th, February 10th, it would explain what went on in this investigation, why they knew the cell phone records were important, why they knew where to look, why they knew what the connections were, why they knew what cell sites they needed addresses for. There's other explanations, too, but that's one I'd be very curious to find out more about.

[34:14] Colin Miller Right, yeah, there's been a lot about this in the news recently about these cell tower dumps, right? So that's, the tower is L689 and what they would have done is--no requirement of a warrant, although that's being challenged a bit now--they would say, January 13th, maybe January 14th, give us every single phone that pinged the L689 tower. From that they get the 7:09 and 7:16 pings to Adnan's phone and then that's the launching pad for this entire case.

[34:41] Susan Simpson Now, tower dumps were relatively new at this time period. They were not in common use. They were still the kind of a rarity. But there was one agency that was kind of leading the pack when it came to, well, cell record information in general and tower dumps in particular, and that's the DEA, the Drug Enforcement Administration.

So, would the Baltimore City police have known to do a tower dump in February '99 in a murder case they were investigating? Probably not. It's not something that was very common at a local level, but the Baltimore police had ties to the DEA, and if they needed information about how to conduct a cell record investigation, the DEA could've helped them and the DEA could have told them easily how to find a tower dump and why it was important for the investigation.

[35:27] Rabia Chaudry And the DEA did, right?

[35:29] Susan Simpson Well, we don't know if the DEA was involved in a tower dump or a tower dump was done, but we know the DEA was helping the Baltimore police in conducting their investigation as it pertained to the cell phone records.

We know the DEA was involved very early on because on February 18th, the day after the Baltimore police had received the call records from Adnan's cell phone, the DEA was issuing a subpoena for the subscriber information for every phone number that Adnan had called during the first 72 hours that he'd had the cell phone. Again, the DEA was more familiar with cell phone records; they knew what they were doing in a way that the Baltimore police clearly did not. They were a useful resource for the Baltimore police to use, but it shows how and why the DEA could have been assisting even earlier on and help them attain other information that we don't [have] access to today. And this isn't speculation. We know it's possible that the DEA could've submitted subpoenas on behalf of the Baltimore police and we would not have those records because that happened: later on, the DEA submitted a subpoena for Bilal's cell phone records.

[36:34] Rabia Chaudry Just as a reminder, Bilal was a, was a community member and kind of a youth leader who knew Adnan very well and also was, in fact, the person who helped get Adnan his cell phone because Adnan wasn't old enough to get one, and so Bilal helped him do that.

[36:47] Susan Simpson And the only reason we know that the DEA issued a subpoena for this is that in the cover letter from Bilal's phone service provider, they mention it's in response to a DEA subpoena, which we don't have a copy of. So it's not speculation to say that the DEA

could've been issuing subpoenas that were never provided to the defense or produced in the police file because that definitely happened. The question is how many times it happened?

[37:10] Colin Miller Right, did they subpoena Jenn's phone records, for instance, where those 7:09 and 7:16 calls are supposedly from her? Did they subpoena her records and find out they weren't from her? Well, we don't know because they didn't turn over the DEA subpoenas, right? And, as you say, the only reason we know from Bilal is paperwork from the response, not from the actual DEA subpoena.

[37:33] Susan Simpson I mean, did they request a tower dump? It's things we can't answer and frankly concerns the hell out of me if a police agency can get away with not producing paperwork about subpoenas by routing them through a federal agency.

[37:45] Rabia Chaudry Now, you know, when I first saw the paperwork on the DEA stuff, I was a little bit shocked because I thought this immediately meant that there was some connection to, like, this case was connected to, like, a narcotics crime or something. And then there's also the connection of Kevin Urick having been a prosecutor in the Narcotics division and not Homicide before. And I, I, I admit that I did wonder for a bit if we had a case of there being, like, a, a police informant here who was being protected then by the police, um, but it seems like that this was something that was just really a way for Baltimore to take a shortcut and get the records they wanted.

[38:21] Susan Simpson ...which isn't a problem itself; they have resources that Baltimore police didn't have. It's the lack of disclosure and the failure to acknowledge or produce subpoenas that were being issued on behalf of Baltimore police that's the problem here.

Aside from the fact of *who* was issuing the subpoenas, either the DEA or the Baltimore City police, there's a question of *who* these subpoenas were directed towards. Whose cell phone records were being produced? Now, the subscriber information for a lot of people was produced, which is just the phone number, the name of the subscriber, and various other account details. But for actual toll records, the actual call logs, the police only subpoenaed records for Pakistani and Muslim individuals. They didn't get Jay's, they didn't get Jenn's, they didn't get Patrick's, anyone else's... other than, well, Adnan, Adnan's home phone, Yasser's cell phone, Bilal's cell phone records, and lastly the Gil's phone records.

[39:21] Rabia Chaudry Yes, I thought this was really fascinating. When Susan first told me--and, actually, Susan asked me, um, "Who's Alfreda Gill?" And I said, "Alfreda Gill, where did that name come from?" uh, because I know who Alfreda Gill is. Alfreda Gill is a lady who is a Pakistani Christian who is based in the area and she's been a [sic] activist and kind of a, um, community organizer and a social event organizer, really, since I was a kid. I mean, we called her Auntie Alfreda, and I didn't know her connection at all to the case, but it seems like they subpoenaed her phone records because of something, um, kind of minor, right, Susan?

[39:57] Susan Simpson Yeah, in March Adnan's dad went to Woodlawn High School to pick up his school records so that he could continue his studies while in jail. Alfreda Gill came with him to act as moral support and to help him get the records. A Woodlawn High School official wrote down Alfreda Gill's name and license plate number and later told the police about this event and gave them Alfreda Gill's information. The police then decided to go and subpoena all of her call records. Why? Well, it's unclear why. I mean, she clearly, other than being a friend of the Syed family, has no connection to this case, and they don't bother to get Jay's or Jenn's numbers, but they want *hers*?

[40:36] Rabia Chaudry Well, the connection she has, of course, not just being their friends, she, she's--you know, Adnan has other friends, too--but she happens to be someone who's Pakistani. Maybe she's Muslim. Maybe they don't know. Um, but, you know, this is an issue that was raised briefly, um, by *Serial*, but it is an issue that has troubled me a lot about this case over the last 16 years, and that's the angle the police took because really, like, the theory of the case in terms of Adnan's motive was that he was a Muslim male who, in a fit of rage or feeling dishonored, uh, killed Hae and that this was actually part of--the culture allowed this to happen and was okay with it to happen. We're going to hear about the bail hearing later and how the community reacted when the State kind of offered this.

There's, um, this cultural consultant memo that was shown to me first a few months before *Serial* aired, and I hadn't seen this before that because it was not in the files that I had. And this was, um, a memo written by an agency that, uh, does a lot of different things, but one of the things they do is, like, kind of, cultural competency consulting, and what's interesting is that w--it seems their first interaction with the police was on February 15th of 1999.

[41:48] Susan Simpson This agency actually did consult with the Baltimore County police as part of the missing person investigation, and they got in contact with the Baltimore City police as part of the murder investigation in February.

[41:57] Rabia Chaudry So, can I ask you, Susan, why do you think they would get involved in a missing persons investigation? I mean, what is it this agency, this firm did or does that would make sense?

[42:05] Susan Simpson They do lots of things. They do--I'll read you their--they do business investigation, missing person investigation, computer fraud, industrial counterespionage, translation, software design, and market trend analysis.

[42:16] Rabia Chaudry That's what their website says right now?

[42:17] Susan Simpson That's what their record says in the MPIA.

[42:16] Rabia Chaudry So, a portion of a document, a police report says: "On February 15th of 1999 at approximately 1405 hours your investigator had the occasion to respond to [] Annapolis,

Maryland, and speak with a consultant with [] The Enehey Group.” So it seems on February 15th of 1999--and remember this is a few days after Hae’s body is found--um, Baltimore City police actually meet with a consultant with a group called The Enehey Group.

This person is a consultant that works out of Annapolis and also happens to be a friend of Hae’s uncle. Now, Hae’s uncle contacted his friend, this consultant, who does missing persons investigation in an attempt to gain additional information. Apparently, um, you know, th--this consulting firm was part of the missing persons investigation then worked further on with the homicide investigation and also is the firm that’s responsible for the cultural memo that shocked me and shocked a lot of people because it, basically, kind of was this really poorly informed primer on Islam and Muslims and Pakistanis that was just, not just inaccurate but highly inflammatory and, I would say, really bigoted and just wrong on so many counts.

And so, you know, from February 15th is the earliest that, you know, they’re already kind of part of the homicide stuff. But, you know, if [sic] seems to me that might’ve been when, kind of, the seeds for framing this as a Muslim honor killing type of thing might have begun because we know sometime in March there’s police notes to call the consultant for “letters” and “veil”. Although we’re not sure about what letters they mean, the veil they seem to be, uh, referring to is a scarf that Adnan had purchased for Hae when they were going out as a gift. And that scarf, which they’re calling a veil, figures kind of importantly in the cultural memo that was later, I guess, uh, drafted.

So, I’m going to read from a portion of that memo just to remind you of how they interpreted that gift of a scarf:

“Clearly Mr. Syed faced almost insurmountable odds to meet with this ‘infidel’ or ‘devil’ in secret. Ownership is not outside of his cultural belief system. After giving her a veil, literally covering her so that only he could have her, he set her apart from all others and for him alone. For all intents and purpose he marked his territory by giving her a gift of great value within his culture, and in doing so he sealed her fate with his. By receiving it, perhaps unwittingly, Hae Min Lee accepted his standard of decorum. To have later been let down by her relationship with another man would certainly [have] been an obvious violation of his culture, and a reason to destroy her. For her to have another man dishonored both Adnan Syed and his belief structure. It is acceptable for a Muslim man to control the actions of a woman by completely eliminating her and still remains possible under this system to find peace and forgiveness with God at the same time. Within this harsh culture, he has not violated any code, he has defended his honor. Hae Min Lee’s womanhood diminished both her worth and the act of violence resulting in her death. Under Islamic law her murder was sanctioned. For many ‘ethnic’ Pakistanis incidents like this are common-place and in Pakistan this would not have been a crime but probably a matter of honor.”

[The Enehey Group, “[Report on Islamic thought and culture with emphasis on Pakistan. A comparative study relevant to the upcoming trial of Adnan Syed](#)”, 1999]

[45:53] Rabia Chaudry So, you know, the memo goes on. It's much longer. I mean, it has a really ridiculous preface, uh, about just Pakistan in general, and, uh, we can put that up on our website. But I, I'll tell you that every time I revisit this, uh, I don't know if I should laugh or cry because it is such a pile of horseshit, I can't even tell you. *[laughs]*

A--and this became the basis of the State's theory. I, I know that, uh, Sarah didn't necessarily feel that it was really, like, instrumental to their case, but I really do think it was. I think this is what drove them to fix on Adnan more so than him even being the ex. But I don't know, maybe because it's much more, uh, painful and personal to me to read this and to think that police and prosecutors and the State that, you know, our tax dollars fund would frame this case in this way, and it's just so bigoted and unconstitutional.

[46:47] Susan Simpson I'm probably being over-optimistic or I don't know, but I would like to believe that no one believed this in their hearts. They just saw it as a convenient way to frame their case and get a conviction and that they didn't actually believe stuff they were saying.

But, again, does that make it worse or better?

[47:05] Colin Miller I--if it were just this private document they never shared, that might be one thing but--and we'll get to the bail hearing in, in a couple episodes--and, and that's a huge part of this case is that they're claiming, you know, this is justified under his religion and culture. And that, I mean, that's just high--probably the most awful thing I've ever seen in a file on a case is, is this document. It's just terrible. It's complete stereotyping. It's Islamophobia, and it, it, it, it informs our understanding of exactly what the State was doing in this case.

[47:43] Susan Simpson In addition to filing subpoenas for the cell phone records, subpoenas were issued for other documentary records in this case. But the timing of these subpoenas raises some red flags for me, for instance, the dumpsters, the ones where Jay says he threw away the shovels and his clothes and Adnan threw away Hae's property. They wait until March 19th to even look for those items. They file a subpoena for the dumpster company to look for it, but before that they never even attempt to find those items.

[48:14] Colin Miller Yeah, I mean, if they thought it was a dead end, fine, they never subpoena it. But, yeah, why wait from the 28th all the way to March 19th? I mean, if you think there's any possibility it's fruitful--and this is important evidence; this is a connection between Jay and the crime scene--why wait 20 days before you decide to serve these subpoenas for the dumpsters?

[48:34] Susan Simpson And it wasn't a lost cause if, for instance, Jay says he threw away the pick and the shovel in a recycling dumpster. That's not going to get overlooked. Someone's going to notice that, at the facility or somewhere, that in addition to cardboard boxes they've got shovels and a pick--or a shovel, who knows? Those items could have been found if they existed. Why didn't they look earlier?

[48:52] Colin Miller They were afraid that...

[48:53] Susan Simpson ...they weren't there? May--maybe. And then let's take Best Buy. On February 27th, Jenn tells them that the murder took place at Best Buy. Jay says that it took place down by Poplar Grove, but later on on March 15th, he too says the murder happened in Best Buy. You'd think the obvious course of action would be to maybe go to Best Buy and ask if anyone saw anything or if something was amiss.

The video footage--the security cameras--were probably already recycled, so that's probably a no go. But still, if someone gets murdered in a parking lot and the body is moved from the passenger or driver seat to the trunk in broad daylight at 3 p.m., I mean, there's a good chance someone might, might've noticed something.

They wait until April 13th to go look at Best Buy and find out what was going on and to subpoena the records from that day to find out if anything was recorded, who was working there that day. I mean [*sighs*], a month and a half after they first learn of where the murder scene may have been, they finally decide to go check it out.

[49:49] Colin Miller Yeah, and the heart of this case--I mean, this is a first degree murder with premeditation; it is kidnapping by fraud and false imprisonment by fraud--and the State's, the crux of the State's case is, Adnan gave Jay his cell phone so he could call him and that he called him from Best Buy. And so, yet looking at Best Buy, getting those incoming phone numbers to determine was there in fact a phone call placed to Adnan's cell phone from the Best Buy payphone--assuming there even was one and it was in the location that Jay said--I mean, that's just, it's fundamental to the case. I mean, that's, that's the heart of it. You have to confirm that.

[50:25] Susan Simpson If you're not checking out a murder scene 'cause you think your witness lied to you, don't present that story at trial as the real story.

[50:30] Colin Miller And we know from Jay's *Intercept* interview last winter, right, now he says Hae's car wasn't in the Best Buy parking lot, that Adnan just walked up, the trunk pop occurred later, and so...

[50:41] Susan Simpson And that he learned that the murder probably didn't happened there either.

[50:44] Colin Miller Right.

[50:45] Susan Simpson He didn't say where. He wouldn't offer that up. But he did say, 'Oh, by the way, it wasn't at Best Buy after all.'

[50:50] Colin Miller Right, so in terms of building a case, they probably did it the right way because, in fact, whoever committed this murder likely wasn't at Best Buy, or at least Jay has no knowledge of it occurring at Best Buy.

[50:59] Susan Simpson So, again, the only way I can explain and excuse the detectives' failure to search there, is that they didn't actually believe it had anything to do with the murder in the first place.

What's also frustrating about the subpoenas is that a lot of them we know are issued, we have the documents that show the subpoenas were sent out, but we don't have the returns. We don't have whatever the recipient of the subpoena sent back to the police. And those subpoenas include: a subpoena to the dumpster company, subpoena to the Best Buy, subpoena for Jay's employment records, subpoena for Jenn's employment records other than the ones for her lifeguard job; and--perhaps for me the most interesting and frustrating and aggravating--the subpoena for Jenn's pager.

So, the cops did subpoena through the DEA the number that Jay identified as Jenn's pager number. The results they got back said, 'This is a number we assigned to another pager company,' which is pretty common. They often trade numbers among themselves. So just because one number was originally registered to one company didn't mean that it was actually the same company that gave it to the final consumer.

So, the police have to follow a bit of a chain to find out where Jenn's pager actually ended up and who actually was the subscriber for it. And they do follow it up, they eventually find out that the person who issued that pager number was a company called PennSel, and they send a subpoena out to find out the subscriber data. Those returns are not in the file. We have no idea what that pager company said to the police about whose pager that was. And that wouldn't be a big deal except for the fact that there's good reason to question whether it was really Jenn's pager in the first place.

We have tried to look into this now. We cannot find out who the subscriber was in early 1999, but we do know that the number seems to have been issued from Ocean City, Maryland--not sure of the connection there with Jenn. But we also know that at trial and in his early police statements, Jay does not identify that pager number with Jenn's pager.

In fact, in the first trial he's asked, 'Do you know who placed that page...?' to the number that's being called Jenn's pager number, and he says, 'That was me. I did that while I was sitting in the car waiting for him. I was supposed to meet somebody at some place at 7 o'clock so I paged *him* and told *him* I was probably going to be late' [emphasis added]. Male pronouns. Why is he using male pronouns to refer to Jenn's pager?

And perhaps more telling is Cathy's testimony. Also in the first trial, she is shown a list of the calls that were made from Adnan's phone on the 13th, and she's asked, 'I'm going to show you what's

been pre-marked as State's Exhibit 34. This is a compilation of the defendant's cell phone records, and I ask you to take a look at the phone numbers in the second column and see if you recognize any of those numbers.' Cathy says in reference to the Pusateri home residence number, 'That's Jenn's. That's her number that shows up a couple of times on here, but I don't know any of the other numbers on here.'

Again, three of those numbers were Jenn's pager. Cathy's looking at them and says, 'I don't recognize any number here but Jenn's home number.' And she's Cathy's best friend. Why can't she recognize Jenn's pager if it's actually Jenn's pager?

[54:13] Rabia Chaudry And Jenn's pager is important because it's kind of instrumental, I mean, in the narrative of that evening, how Jay then contacts Jenn from Leakin Park and then she calls him back. And for it to make sense for the State's case, it had to have been her pager, but we're just not sure of that now.

[54:31] Colin Miller The number identified as Jenn's pager is called at 7 o'clock p.m. so right before the Leakin pings, 8:04 p.m. and 8:05 p.m. Very important times on January 13th, and we have significant doubt about whether in fact that was Jenn's pager.

[54:55] Susan Simpson One thing that's also in the records is that the police were issuing grand jury subpoenas after Adnan had been indicted. That's not allowed. It's not cool, but they got away with it because, obviously, the defense didn't know it was happening, and people receiving those subpoenas didn't know that they were invalid because a grand jury subpoena, obviously, is only issued in connection with the grand jury proceeding, which terminates once an indictment has been issued, in this case April 13th. However, up until late April the police were still issuing grand jury subpoenas to obtain information in this case.

[55:26] Colin Miller A subpoena, it's issued by the clerk of court; it's either telling someone to appear before the grand jury or to produce documents for that grand jury proceeding. And so, if you're having a grand jury subpoena, it has to be before the indictment, which is the grand jury deciding there's probable cause to take the case to trial. And, right, exactly, you can't have grand jury subpoenas after indictment, which is what they were doing in this case. Was it an oversight like many things in this case? Possibly. Was it misconduct? It's also a possibility.

[55:54] Susan Simpson It, it's mild misconduct. They were getting away with it because they could, and it was easier to do it that way.

So, there's one last witness that the police interviewed that we haven't talked about yet, and that's Adnan himself.

[56:16] Rabia Chaudry Adnan was only interviewed in person once, and that was on February 26th, 1999, the day before we know Jay had his first official taped interview... um--

[56:26] Susan Simpson And about an hour before Jenn's first interview.

[56:26] Rabia Chaudry ...uh, but, uh, the police had called him on January 13th, according to Officer Adcock's notes and also Adnan himself remembering that phone call.

[56:36] Susan Simpson We actually have two write-ups of this interview. The first one's dated February 27th, the day after the interview. And it says only that during this interview Mr. Syed provided personal information along with information as to his relationship with Hae Min Lee. This was not produced to the defense, and it's pretty innocuous. It doesn't say anything in particular about the interview, and it was written a day after the interview took place, so it was still fresh in the detectives' minds.

However, on September 3rd, shortly before trial the prosecution informed the defense that a report is being written, which documents the last known interview of the defendant prior to his arrest. No report was actually produced, however, and on November 9th the prosecution wrote a new disclosure. This time stating:

"The State erred in its Amended Disclosure of September [3rd] ... when it said a report was being prepared concerning an interview conducted with the defendant; in fact, that report concerned an interview with a different witness;

All required discovery concerning statements made by or interviews conducted with the defendant [have] been made."

[Amended State's Disclosure, Nov 9, 1999]

[57:36] Rabia Chaudry So, November 9th is, like, literally about a month before Adnan's first trial, and at this point his attorney has no documentation of that interview that Adnan gave to the police on the 26th of February. But, finally, um, you know, the State does turn something over, right? When do they do that, Susan?

[57:55] Susan Simpson January 18th, just before the second trial.

[57:57] Rabia Chaudry So, on January 18th, the prosecution, the State, turns over before the second trial--now, mind you, again the, the defense counsel did not have this statement before the first trial--they turn over a statement that's actually dated for September 14th.

So, on September 14th, somebody decided to sit down and do a summary of the interview that was taken with Adnan on the 26th of February, and this is how it reads:

"On 26 February 1999 at approximately 1900 hours, your investigator along with Detective William F. Ritz had the occasion to respond to [Adnan's house] and interview [Adnan Syed] in the presence of his father.

During this interview Syed relayed the following information:

Syed indicated that he knew the victim Hae Min Lee and that she was a friend of his. He also indicated that he had known the victim for several years.

On [January 13th] 1999, he had the occasion to be at school (Woodlawn Senior High), however doesn't remember the events that occurred in school that day.

When asked if Syed had a relationship with Hae Min Lee, Syed replied in a soft voice 'yes', however he didn't want his father to know.

Syed indicated that he had [occasion] to be a passenger in the victim's auto, however not on the date in question.

Syed stated that he had no idea who would want to have hurt Hae Min Lee and that he could provide no information on suspects.

Syed indicated that Hae Lee had been seeing an individual named [Don] who apparently worked with the victim at LensCrafters.

Your investigators asked Syed's father if it would be possible to speak with Syed at school on a later date. Same indicated that it would be possible if he was present.

Investigation to continue.

Respectfully,

[Detective MacGillivray]"

[Adnan's February 26th police statement, documented September 14, 1999]

[59:31] Susan Simpson This memo bugs me on two fronts. First, why is it so much more detailed than the memo that was written the day after Adnan's interview? And, second, why wasn't it produced earlier? Now, it's dated September 14th, which is shortly after the prosecution's September 3rd disclosure in which they stated that a report was being prepared of Adnan's interview. So that kind of matches. It seems like this September 14th memo was written in conjunction with that disclosure. Why then in November does the prosecution inform the defense that it was mistaken? 'There's no memo. In fact, the memo we were talking about was for a different witness entirely.' Now, there is no other memo produced of a witness statement from September of 1999. I mean, it's hard to see how this could just be a mistake on the prosecution's part.

[1:00:20] Colin Miller Ah, yeah, that's the biggest thing for me because, I mean, the strange thing is this statement that Adnan gives, it's completely innocuous, right? I mean, doesn't really remember the day; he wasn't in her car. I mean, there's nothing that incriminates him. The most interesting thing to me is--right, what you say--where, actually, we have this other report concerning an interview with a different witness. Well, who's this witness, and what happens to their interview? That's, that's what's important to me because, yes, this is shady and it violates the rules of discovery, but what they actually produced doesn't hurt Adnan in any way.

[1:00:50] Susan Simpson So, we either have the prosecution making a bizarre lie about how there really was no memo of Adnan's interview, or we have there actually being some other memo of another witness that was never produced.

[1:01:02] Colin Miller Again, those five out of eight witnesses who were interviewed those few days after his arrest, they're never produced. Was it one of them? All of them are pretty important.

[1:01:10] Susan Simpson I could see it going either way. I don't know why the prosecution would've lied here, but maybe they did or maybe it really did exist. And who knows what it was?

[1:01:27] Rabia Chaudry So, the way that I see it, the police actually never bothered to investigate this crime to find out what really happened to Hae. They limited their investigation to what they could use to build a case against Adnan. They zoned in on their suspect early. They interviewed schoolmates and teachers *after* he was already arrested. They nailed down a motive using the cultural consultant. And they pulled phone records for only Pakistanis or Muslims connected to Adnan and not records for Jay, Jenn, Patrick, Phil--people actually connected to the case that the police had developed themselves. They wait for three weeks to attempt to find the burial tools Jay said that he disposed of and then another month before sending a subpoena to Best Buy. And they failed to contemporaneously document--and then refused to hand over until the second trial--notes from the only in-person interview with Adnan.

Of course, there was a second interview, and that interview happened two days later on the 28th of February, 1999, when Adnan was finally arrested. Next time on *Undisclosed*.

[1:02:36] Many thanks to Ramiro Marquez for our theme music and photography, to Christie Williams for our website, and to Ballokey, who designed our logo. Our production consultant is Rebecca Lavoie. She's a true crime author and hosts the podcast *Crime Writers on Serial*. Dennis Robinson is our producer. And you can find us online on social media on both Facebook and Twitter. Our Twitter handle is [@Undisclosedpod](#). Make sure to tweet us your comments and questions using the hashtag #Undisclosed.

[1:03:08] Do you own a car? Then you know how expensive it is. From a recent AAA study, your car costs you \$9,000 a year. Ouch. But what if your car paid *you* instead? Enter RelayRides. RelayRides is a peer-to-peer car rental company. You can rent out your car on RelayRides and earn as much as \$1,000 a month. RelayRides pre-screens each renter and offers \$1,000,000

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