

# UNDISCLOSED, the State v. Adnan Syed

## Episode 9 - Charm City

**Rabia Chaudry:** [00:01:55] Hi and welcome to the ninth episode of Undisclosed The State versus Adnan Syed. My name is Rabia Chaudry. I'm a lawyer and National Security fellow at the New America Foundation. And I'm joining my colleagues, Susan Simpson, who is an attorney with a Volkov law group in Washington, D.C. and she blogs at The View from LL2 (viewfromLL2.). And we also have with us, as always, Colin Miller, who is an Associate Dean and Professor at the University of South Carolina, and Colin blogs at the Evidence Prof blog, where he's also the blog editor.

At the end of last week's addendum, I shared my theory that in this case the police had fixed on Adnan and then set off to build a case against him. Instead of properly investigating all leads and actually seeking out the truth of what happened to Hae. So as they began digging deeper into Adnan, they realized that while his car and phone were not with him all day, they were actually with Jay. And because of that, they had to bring Jay into the narrative.

Now, I recognize that when I say this, it sounds almost conspiratorial to some folks. We get this reaction quite often. I mean, why on earth would the police do that? What was in it for them? Did they have a vendetta against Adnan? And forget the police. What about Jay? Why on earth would Jay implicate himself in a crime unless he was actually involved in that crime? And by the way, the jury thought the same thing. Why would he cooperate with police to nail the crime on Adnan? And how on earth would the police get him to do that? What did they have over him, other than pot charges?

So we're going to discuss all that today. And by the end of this episode you'll understand exactly how any and all of this could happen. It could happen in this case because it's happened in plenty before it.

Before we talk about specific cases and investigations, we have to take a look at the system itself, because really it's when the system has flaws in it that those flaws then impact individual investigations and you end up with wrongful convictions. A prime example of that is some of the things that were happening in the Baltimore City crime lab itself.

A investigation and report in 2008 showed that in at least nine homicide, sex assault and burglary cases, the Baltimore police detective told the crime lab technicians not to follow up on convicted criminals' DNA that was found on evidence at crime scenes because they determined it was not relevant to their investigations. Let me say that again. Baltimore City detectives found DNA that was tied to convicted criminals in nine different investigations. And they told the crime lab technicians not to follow up on that DNA because it interfered in their theory of the case. A newspaper report from that time says the following: "The revelation that the police did not follow up in cases where DNA found on evidence collected at crime scenes was matched to the profiles of convicted criminals stored in the FBI database, is

likely to stir a great alarm. It raises the possibility that other suspects or co-defendants might not have been pursued, or that charges were dropped in cases where they ignored DNA might have offered a smoking gun."

In response to this then the Baltimore state's attorney, Patricia Jessamy, she requested a complete review of the cases handled by the lab, saying that, you know, both prosecutors and defense attorneys need to be made aware of all the evidence the police collect, which seems to indicate that they were not made aware of it. And are around the same time, the director of the city police crime lab, Edgar Koch, was actually fired after it was discovered that a dozen unknown genetic samples found in evidence actually turned out to be the DNA of lab employees themselves. Forensics experts said of course, that these kinds of flaws allowed such contamination and they indicated probably much more widespread problems in the lab. Then there were some systematic problems with the police and the prosecutor's office. For example, detectives were charging loser cases to boost her stats and leaving prosecutors with the burden of proceeding or having to dismiss bad cases.

For instance, in 1998 in 1999, Detective William Ritz, who is one of the detectives in Adnan's case, was involved in at least 42 homicide cases. Of those 42, 15 were dismissed prior to trial. That means out of those cleared murder cases, 35 percent never resulted in any prosecution. The state had to drop them because they were unable to pursue the charges. Detectives were doing things like charging before doing complete investigations. Kind of like in this case. And under the Speedy Trial Act, prosecutors didn't have enough time to investigate cases before having to either go to trial or dismiss. And if the phrase "speedy trial" rings a bell, That's because it's found in the Sixth Amendment to the U.S. Constitution, which guarantees a speedy trial to defendants in criminal cases. The reason for that is you don't want prosecutors and police abusing their rights, charging people, arresting them, jailing them, and then making them wait for inordinate amounts of time, unreasonable amounts of time before they actually are tried and the case is settled one way or the other. So when you have a situation in which police are not conducting thorough investigations, and they're just charging folks with cases that are really weak, it puts the prosecutors in a difficult position because they might not have the time to conduct thorough investigations to support those arrests. And then they have to decide, are we going to drop the charges or are we going to proceed with this case that's really weak.

Now, that system actually changed about a year later or so, that the charges had to be brought both by the prosecutors and the detectives. Those are just a couple of the many different systematic issues that were facing the Baltimore City criminal justice system. And one of the big ones actually is a systematic pattern of Brady violations.

Now, we talked about a Brady violation in a past episode. Colin explained that a Brady violation is when the police or prosecutors suppress or withhold evidence that's potentially exculpatory to a defendant. Which kind of takes you back to those earlier questions of, wow, would law enforcement really do that? Would state and prosecutors really do that? Withhold evidence that could show somebody is actually innocent? Well, we're going to take a look at a number of cases today, many of which not only have

Brady violations, but also reflect some deeply troubling and problematic police and investigatory tactics. Now, keep your ears peeled. You're going to hear some familiar sounding names. So let's start with the first we're going to look at, which is the *State of Maryland v James Owens* in 1987. A lady by the name of Colleen Wiliar was found dead in her home. She'd been stabbed, strangled and sexually assaulted. James Thompson lived near the victim and he approached the police with a knife that he said he found in a grassy area near her home. Now, according to Thompson, the knife belonged to him, but he claimed that it went missing in the days before her murder.

**Colin Miller:** [00:09:07] And film buffs might recall that this scenario of a person allegedly losing his knife right before a murder is the exact same one that's raised by the defendant in the classic film *Twelve Angry Men*.

**Rabia Chaudry:** [00:09:18] Thompson then later confesses to being an accomplice to the murder, which he claims was committed by James Owens, who told him that he had sex with and then copped dope from Wiliar. According to Thompson, it was Owens who told him the location of the knife. But later, Thompson's story changed as many as six times and often on key details. For instance, he later says that Owens actually brought him the knife as opposed to merely telling him where it was. Now, the court commented on this, and in their opinion, they said when Thompson finally testified at Owens's trials, his testimony was inconsistent with the chronology of events the morning after the murder, and appeared so untruthful that the prosecutor was worried about the prognosis of the case. Nonetheless, Owens was convicted of felony murder, even though he's not found guilty of rape. And Thompson himself is also convicted of felony murder. And he's also convicted of rape.

**Colin Miller:** [00:10:07] Right. Then you can fast forward to 2008. We've discussed Maryland's DNA testing statute a bit on earlier episodes under the new DNA statute Thompson moves for DNA testing because sperm were recovered from Wiliar's body. And they do the testing and the testing comes back. And what it determines is this sperm didn't come from Thompson and it also didn't come from Owens. So neither of them is the person who sexually assaulted Wiliar. It's some unknown third person. And in addition to this, as the appeal process goes along, it turns out that the state failed to disclose key evidence to Owens. So as Rabia mentioned before, according to Thompson, Owens brought him the knife used in the murder and confessed to the sexual assault and the murder. Well, it turns out that the police actually interviewed Owens's, his boss, and he told them that at the same time that Owens was supposedly confessing to Thompson, Owens was actually at work.

Result is Owen's conviction is thrown out, for obvious reasons. The state decides we can't re prosecute this case, namely the Brady violation and the DNA evidence. And recently, Owens has sued both the police officers and the prosecutors who handled the case. And the 4th Circuit Court of Appeals has recently said that that lawsuit can go forward. Rabia and Susan, I find this case so interesting because serial from the very beginning was framed as it's either Jay or Adnan it has to be one of them. Well, here's a case out of Maryland. You'll look at it and you say, well, Thompson came forward, he implicated

himself, he implicated Owens. Clearly, either he did it or Owens did it or in combination they did. And it turns out the DNA testing shows neither of them sexually assaulted the victim.

**Susan Simpson:** [00:11:56] And Colin, what's happened to Thompson since Owens was released?

**Colin Miller:** [00:12:00] That's interesting. So as I said before, the charges against Owens were dropped and actually the state supported the dropping of the charges and they decided not to re prosecute. Thompson, of course, he's a bit shadier he clearly didn't sexually assault the victim, but that doesn't mean he wasn't involved. And so eventually, while certain charges against him are dropped, he eventually entered an Alford plea and an Alford plea we've discussed before I believe it's a plea where Thompson basically said, I'm not confessing my guilt to any part of the crime, but I acknowledge you have evidence against me, namely my own statements, that tend to show that I had some involvement in the crime.

**Susan Simpson:** [00:12:38] In some respects, it kind of resembles the Ryan Ferguson case in which Ferguson was allegedly IDed by his accomplice. Ferguson was later exonerated, but his accomplice, who seems to have falsely confessed, remains in jail.

**Rabia Chaudry:** [00:12:50] I'm quite interested though that the state actually offered him an Alford plea, considering that they did have his own, not just his own testimony, but he came forward with a murder weapon. Right? So it's odd to me that they would even offer him the option of taking an Alford plea, which means essentially he was released.

**Colin Miller:** [00:13:08] Yeah, and well, as I said before, Owens has his civil case against the police and prosecutors. My guess is that the state had no interest in a trial and a factual record being created of exactly what happened with Thompson, because then Owens could use that against them. So Rabia, if I had to guess what they're doing is basically to say with an Alford plea, there's no factual record and that can't be used by Owens to basically prove our malfeasance in this case.

**Rabia Chaudry:** [00:13:45] Now, the next case where to look at is the case of state of Maryland versus Tony Williams. In February of 1998, a one by the name of Dana Rochelle Drake was killed by being fatally shot outside of apartment complex in northeast Baltimore. She died because of a gunshot wound to her head and then another gunshot wound to her back. And the police discovered her body on the morning of February 21st. They had gotten a call from the person who was eventually charged in the crime, Tony Williams. Officer Richard Gibson, he testified that he went and he met Williams at a payphone and then followed him to the location of the victim's body. Now, Williams at the time told Officer Gibson that he and the victim had previously been romantically involved, but they weren't currently involved. He also said the victim's new boyfriend had threatened to kill her. Moreover, the officer said that Williams didn't seem sad or unhappy. He didn't inquire as to whether the victim was still alive. But his demeanor was very calm, polite and cooperative.

**Rabia Chaudry:** [00:14:52] So Williams was then arrested a couple of months later and charged with both first and second degree murder in this case. He was in jail and he happened to be in a cell next to somebody named Sean Williams. Now, Sean then comes forward to the police and to the state and says, hey, I have some information, this guy Williams actually confessed the crime to me. Now, based on that confession and also based on the theory of the state that Tony Williams killed this woman for insurance money, he was actually convicted of the crime in 2003.

**Susan Simpson:** [00:15:28] Sean Williams said that he was only giving information against Tony Williams out of the goodness of his own heart and because he disliked violence and guns. Detective Massey, who was the lead detective in this case, testified that Sean Williams had received nothing in exchange for his testimony against Tony Williams. You may recognize the name Detective Massey. That's the detective that supposedly took the anonymous phone call on February 12th, 1999, the one that said the police should look at Adnan Syed and "Basser" Ali a.k.a. Yasser Ali, because apparently Yasser and Adnan had discussed what Adnan would do with his girlfriend's car if something ever happened to her.

In the Tony Williams case after his conviction a few years later, a post conviction motion was filed on the grounds that, in fact, Sean Williams had been a paid informant and this evidence had been withheld from the defense. It was determined that Sean Williams had been a paid informant who was offering testimony in exchange for benefits based on the trial records. The court records and some letters that Sean had sent to a judge in one of his pending cases. In ruling on Tony Williams's post conviction relief, the court noted, "although the prosecuting attorney in the case and homicide Detective Massey testified that they did not know of Sean Williams informant status and denied giving him anything for his testimony, in fact, Massey even indicated that Sean Williams never asked for anything in exchange for the information he provided. The case file and an earlier case involving Sean Williams suggested that Sean Williams had a different mindset that he wanted and had actively sought consideration for his cooperation."

**Rabia Chaudry:** [00:17:10] Yeah, in fact, that letter that he wrote to the judge, he actually says that a case against him for the theft of a police cruiser had actually been stettled by the state's attorney, Gary Shanker, because of his cooperation with the police specifically.

**Colin Miller:** [00:17:23] Now, as you might recall, in this case, Adnan's case, Jay had been arrested in late January for disorderly conduct and resisting arrest. And eventually those charges against him were stettled again, stettled in Maryland means those charges were placed on the inactive docket and were not thereafter prosecuted against Jay.

**Susan Simpson:** [00:17:44] Yeah. And these letters that Sean Williams was writing to the judge made it very clear that he expected and wanted some kind of kickback in exchange for the testimony he was willing to offer. For instance, in another letter Sean Williams wrote: "Your Honor, I have been very helpful to officers in homicide since my arrest. I have told them very important things in cases that are to be tried soon. They are Detective Raymond Jones, Daryl Massey, William Ritz and others." In another letter Sean

Williams wrote to the judge: "Also, I have done some work for Detective Darrell Massey. Raymond Jones, Carroll Ofer and other people in the homicide unit." That's the same letter that Rabia mentioned, the one where he noted that he had a stet entered in his case for stealing a police cruiser. So, yeah, this guy's a serial informant who has his own confidential informant number and has regularly assisted police in homicide investigations.

One has to wonder what the odds are that all these charge murderers happened to confess to the same person in the jailhouse. Despite the fact that Sean Williams's usefulness was well known and documented, at Tony Williams's trial, it was repeatedly asserted that, again, Sean Williams was helping out of the goodness of his heart and that he wanted nothing in exchange. So Tony Williams's conviction was reversed due to this information about Sean Williams's informant status being withheld.

**Rabia Chaudry:** [00:19:13] I mean, when we say withheld not only was it withheld, but I mean, you have here a detective that's lying under oath in a court of law about this.

**Colin Miller:** [00:19:22] Yeah, and it's interesting because you look at the court's opinion--and this is pretty important in terms of Adnan's case--we've discussed how we have the missing notes from a lot of these interviews. The court's very clear and they cite a U.S. Supreme Court case *Kyles v Whitley*, which says: it doesn't matter what the prosecutor did or didn't know, if the police/detectives had this information, there was an obligation for the prosecutor to find that evidence. And so even if the prosecutor is in Adnan's case, were in the dark and there was misconduct by the police, that would still be enough for a Brady violation and certainly was in the Williams case.

**Susan Simpson:** [00:19:58] And in this case, at least one attorney had known of Sean's confidential informant status. And in fact, the judge who those letters from Sean were directed to had forwarded at least two of them to the state's attorney's office. So we had people in the state's attorney's office who knew that Sean was a confidential informant, and the police unquestionably knew that he was a confidential informant. So even if the direct prosecutor in Tony Williams's case did not know that there was still an obligation to disclose that information to the defense. Now, in 2007, Tony Williams was tried again and convicted again for the murder.

However, once again, that conviction was reversed because it came out just before the second trial that the other witness in the case, the one who says that she saw Tony Williams from a distance after the shooting, had told Detective Massey that she was legally blind and Massey had never disclosed this to the defense. That witness died before the second trial. And although Massey did finally tell the defense right before the second trial that that witness had said she was legally blind. Her testimony from the first trial was replayed for the jurors in the second trial. And because the defense had no way to impeach that witness now, because she passed away, the court ruled that second conviction, too, should be overturned. Tony Williams was then tried a third time in 2011. This time, another jailhouse informant testified for the prosecution and said that Tony Williams had confessed to him.

**Rabia Chaudry:** [00:21:31] Man, this guy can't stop confessing, I'm sorry.

**Susan Simpson:** [00:21:33] You'd think he'd learn either.

**Rabia Chaudry:** [00:21:35] He has to stop confessing of the state has to stop using these people.

**Rabia Chaudry:** [00:21:38] Yeah, well, there's a great quote from one of the Court of Appeals decision in Tony Williams's that says: "In an article titled 'Words of Warning for Prosecutors Using Criminals as Witnesses' the honorable Steven S. Trott caution that the most dangerous informer of all is the jailhouse snitch who claims another prisoner has confessed to him." But the Baltimore state's attorney's office ignored this warning in twice using jailhouse snitches to convict Tony Williams.

**Colin Miller:** [00:22:07] And the reason for the warning is that these people in prison have nothing to lose and they're looking for any type of leniency on their sentence. And so, yeah, I mean, if you're in prison and you're serving a life sentence, 20 years, etc. Why not come forward and try to talk and say, I know information, I got a confession and hopefully lighten the load that you have in terms of the sentence you're serving?

**Rabia Chaudry:** [00:22:50] Now we have the case of the state of Maryland versus Raymond Brown. And in this case, like in the last one, you're going to hear the name of a detective that might sound familiar. Raymond Brown is charged with first degree murder in 1995 in connection with the shooting death of somebody named Michael Kent. Very shortly thereafter, in October of 1995, a man by the name of Carlos Austin is arrested and he is charged with a murder in a totally unrelated case.

Now, the very following month, in November 1995, Detective McGillivray goes to speak to Carlos Austin in the office of his own attorney. So then arrangements are made with the attorney by which Austin's father drives Austin to the homicide unit and Austin cooperates with the police. And he makes a recorded statement and he identifies, through a photograph, Raymond Brown as Michael Kent's murder.

**Colin Miller:** [00:23:42] So the trial is scheduled, but then go to March 14th, 1996 and Carlos Austin decides I'm going to go to the office of Michael Kent's attorney, Thomas Kane. And while there, he completes the following statement: "I, Carlos Austin, hereby make an oath and say, on November 10th, 1995, I, Carlos Austin, spoke with Detective Gregory McGillivray about the shooting of Michael Kent on September 12th, 1995. I told him I saw Ramon Brown come around in a station wagon black and shoot Michael Kent. I picked out Ramon Brown's photo as the person I saw do this shooting. In reality, I did not see the shooting. I did not see Ramon Brown shoot anyone. I was in the area and I heard a bunch of shots. That's all. The reason I said Ramon Brown did it is because I heard that Ramon was trying to get Valjean Austin's friends to tell the police that I killed Valjean. Valjean was killed on September 30th, 1995. I figured I'd get even with Ramon by telling the police that he shot Michael Kent, even though I do not know who shot Michael Kent because I did not see it. This statement is being written by Mr. Thomas Kane. As I've explained it to him."

So he recants. He comes in and says, and by the way, there's not really substantiation on this claim, but I was getting back at Ramon because I heard through the grapevine that he was trying to pin another murder on me. Therefore I completely made up my identification in my statement saying that he is the person who committed this crime. Nonetheless, the state decides we're gonna go forward and we're going to prosecute this case and we're going to try Ramon Brown for the murder. And at trial for obvious reasons, the prosecution does not call Carlos Austin as a witness. They do, however, call McGillivray and over a repeated and strenuous objection by the defense McGillivray is allowed to testify about both the statement and the identification made by Carlos Austin on November 10th.

And while Austin's letter to the defense attorney is admitted into evidence, the court does not allow defense counsel to ask McGillivray whether Austin was charged with murder, that other murder of Valjean Austin at the time that he made this statement and the identification. It's really troubling the fact that they are introducing this into evidence, despite the fact that this witness subsequently comes forward and says, I made the entire thing up. I didn't see anything. I was sort of vindictive based upon what I heard. But I have actually no knowledge whatsoever of this defendant shooting the victim.

**Susan Simpson:** [00:26:17] And one wonders where this rumor through the grapevine came from that could have come from the police?

**Rabia Chaudry:** [00:26:23] For me, less troubling than McGillivray actually testifying as to what happened when he took the statement, because that is actually what happened, however, it came about, is the fact the prosecutor in the case now has this statement saying that none of it is true, and they decide to still, instead of dropping charges, to still prosecute the case. Now, can I ask you, Collin, what happened in this case? Was Ramon Brown convicted of the murder?

**Colin Miller:** [00:26:48] He was convicted.

**Rabia Chaudry:** [00:26:49] And I'm assuming there also was no forensic evidence tying him to the murder?

**Colin Miller:** [00:26:53] Correct.

**Rabia Chaudry:** [00:26:54] One thing that strikes me also about this case is the fact that, I mean, I've heard this numerous times, with Adnan's case is well, you know, a jury heard all the information and and they came to a decision. And so, I mean, it's just the veracity of jury decisions. In this case, you know, you have the only witness in the case recanting his statement saying none of it happened. And yet a jury still found this man guilty.

**Colin Miller:** [00:27:19] And Rabia, also, people always wonder, well, if Adnan's innocent, why is Jay pointing the finger at him? Well. I mean, look at this case. For all we know, it wasn't even a case where this defendant actually did anything wrong. It's just this individual, Carlos Austin, hears a rumor...Who



knows? Maybe Jay heard something about Adnan when we don't even know. I mean, some type of rumor. And based upon that rumor, he decides, I'm going to pin this on Adnan. I mean, certainly possible based upon cases like this one.

**Rabia Chaudry:** [00:27:49] I'm recalling the statement that Jay apparently made to Jen where he said that I just I'm telling you, because I want you to know that I had nothing to do with this murder. I want you to know what really happened. So maybe he was told that there is a possibility that there is either that people are pointing the finger at you or somebody might point the thing at you.

**Rabia Chaudry:** [00:28:20] Now we're gonna discuss a case that has recently made some headlines in Maryland, and that is the case the *State of Maryland vs. Sabein Burgess*. Burgess was recently exonerated and released from prison in February of 2014. So a little over a year ago. One interesting thing to note is actually that Burgess and Adnan were incarcerated in the same place, I think early on when Adnan after he was arrested and Adnan got to know him because in prison, which happens more often than you might expect, Burgess had converted to Islam. He became a Muslim. And so Adnan knew all of the Muslim inmates. And so they came to know one another. But in terms of the facts of the case, in 1995, the Sabein lived with his girlfriend, whose name was Michelle Dyson, and her four kids, and one evening he left the house, and when he returned, he found her dead in the basement. She was dead from multiple gunshot wounds. So he ran to a neighbor for help and he asked her to call 9-1-1. Then he went back to the house to Michelle, and he tried to save her by clearing her airway. So at the time, The Baltimore Sun reported that the police arrived at the home in the 2700 block of Barkley Street and found the house's basement door ajar with the smell of gunpowder wafting up the stairs. An officer ordered Burgess, who was downstairs with Dyson, to come out with his hands where a policeman could see them. Burgess was then cuffed and his hands were swabbed for gunshot residue.

So the crime scene technician actually swabbed the inside of the palms of both of Burgess's hands. And then a month later, this test came back positive. It's called a gunshot residue or GSR test. It came back positive. This test was conducted by Daniel Van Gelder, who worked for the state. And he testified at trial that he found GSR particles in the webbing of Sabein's fingers, and this only could have happened if he had fired a gun because otherwise it just wouldn't be found on that part of the hand. He also testified that the GSR presence could not be explained by transfer. Based on this testimony, based on this evidence Sabein Burgess was convicted of the murder of his girlfriend.

**Susan Simpson:** [00:30:32] The GSR evidence was one of the primary pieces in the state's case against Sabein. However, the way that evidence was represented at trial was misleading in several respects. First, it was not the webbing of Sabein's fingers that was tested. In fact, the technician who took the samples had taken swabs from the palms of his hands. So when Van Gelder testified that the GSR residue was found on the webbing and that could only get there if Sabein had fired a gun that wasn't consistent with the actual testing.

Secondly, when Van Gelder testified that transfer could not explain the presence of the GSR particles on Sabein's hands, that's just not supported by science. GSR transfer does happen, as we'll discuss in a moment. It happens pretty easily. So again, the fact that you have Sabein with his girlfriend's body trying to clear her airway and in close contact with her, the fact that she had been shot in the head and the fact that Sabein ended up with GSR particles on his palms doesn't prove anything, because you'd expect that based on what he was doing after he came home and found her body.

However, aside from how it was used in Sabein's case, GSR in general is a very problematic piece of forensic science. It's no longer used by the FBI. And a big part of why is that contamination is a big problem. Moreover, Van Gelder himself seems to have a somewhat troubled history when it comes to the use of GSR evidence. In fact, in the case of Tyrone Jones, Van Gelder had falsely exaggerated that in his testing of the GSR particles, he had found 17 unique particles, when in reality the paperwork showed only a single particle was found, thereby dramatically increasing the likelihood or even probability that the transfer was due to a secondary transfer, and not because Tyrone Jones had fired a gun.

In another case, Van Gelder's GSR testing had also resulted in the dismissal of a manslaughter charge against a Baltimore police officer. Officer Edward Gorwell shot and killed a 14 year old boy in 1993. The boy, Sam Thomas, and his friends had been running away from the officer at the time the shooting. Although he was found to be unarmed Officer Gorwell claimed that as the boys were fleeing, he'd been shot upon and he fired back. There was no evidence other than Gorwell's own word that he'd been fired upon before he shot and killed Sam Thomas. But six years later, Van Gelder arrived and did some more testing. This time, he found that a GSR test on Sam Thomas's hands came up positive. The case against Gorwell was dismissed as a result of Van Gelder's findings. Gorwell's attorney responded to the GSR results by saying "We had divine intervention, as far as I'm concerned," and the chief of the investigative bureau said of Van Gelder: "It speaks of the good credit of the lab technician who on his own initiative, knew of a test that is more accurate and more up to date."

It sounds less like divine intervention and more like extremely convenient forensic results based on a largely discredited field of forensic investigation. Again, no gun was found on Sam Thomas's body. Where the GSR came from is anybody's guess. But there's an obvious source of how it could have gotten there, assuming Van Gelder did find it.

According to one article, in 2001, an internal study by the Baltimore City Police Department had revealed background GSR contamination at high levels in areas of police stations where suspects and witnesses were processed for GSR collection. The article continued "On June 6, 2001, the police collected a few samples from the furniture and ambient air in the processing area at four stations. Unique GSR particles and many more associated GSR particles were found in the air or on surfaces at virtually every police station that was sampled over the course of the summer of 2001." In other words, where these samples were being taken, there were ambient GSR particles floating all around. Moreover, even after GSR testing was removed from the police stations due to this contamination and conducted in the headquarters, a later audit that was performed found that and I quote "the cleaning buckets, floor in the testing room and

police officers handcuffs all had GSR particles on them." So, yeah, unless that bucket or the handcuffs had fired a gun, the whole claim that GSR particles only show up if someone is fired a weapon is false.

**Colin Miller:** [00:35:07] Yeah, and this sorta speaks to the chain of custody and contamination issues we've discussed in this case. You'll recall when they were testing the red fluid on the t shirt that in Hae's car the blood samples for Hae and Adnan had been opened without any explanation. You recall how there is either the broken turn signal lever or the windshield wiper lever, that was videotaped after the car had been released to Hae's family. You recall that it was Van Gelder, the same person we're talking about here, who did the fracture examination on that wiper wand lever and, yes, that same type of thing we see here where the way this investigation seemingly are done, what happens to this piece of evidence when it goes from person A to B to C? Is there contamination? What's done in between? Creates very real issues in trying to determine what happens to this piece of evidence. At what point is it in its original state? Has it been altered? Is it reliable enough to support guilt beyond a reasonable doubt?

**Susan Simpson:** [00:36:10] And it definitely happens to DNA evidence, too. In 2008, the head of the Baltimore Crime Lab was fired because it was discovered that his technicians were repeatedly contaminating their DNA samples with their own DNA.

**Rabia Chaudry:** [00:36:31] Now, beyond the forensic evidence and contamination issues in this case, there's some other key details that were really important in the case, and that is this, that when Michelle was murdered, four of her children were at home at the time. Now, police reports said that all of her children were asleep at the time of the murder, but an eyewitness, her own son, actually told police on the night of the murder the Sabein was not responsible. However, the police falsely reported that the kids were all asleep and they never reported the statement of this child.

**Susan Simpson:** [00:37:00] Yet her son had seen someone barge into the house on the night she was killed. And he told the officers that someone was not Sabein Burgess. But again, this was not handed over to the defense. And it was many years later that Sabein's defense team discovered through an NPIA request that the son had made the statement and it was recorded, but it was not included in the files handed over, which again stated that all the children were asleep at the time of the murder and had seen nothing.

**Rabia Chaudry:** [00:37:29] But that's not even the most shocking aspect of the case to me. The most shocking thing about this case is this that Sabein, after a two day trial, he was convicted of Michelle's murder. He was sentenced to life in prison. OK, now, two years later, in October 1998, the real perpetrator of her murder, Charles Dorsey, wrote a letter confessing to the crime. And Dorsey stated that Sabein was doing time for a murder that he himself had committed. He repeated this admission several times in letters to Sabein's criminal defense attorney, and he acknowledged that he knew that he could face charges for first degree murder. So he sends his letters out, and a year later, Detective Ritz and another Baltimore police detective interviewed Dorsey in prison, but they did no additional follow up because according to the report, Dorsey's confession lacked details of the real killer would know. But the

claim was totally false because Dorsey not only told a detective Ritz about the caliber of the weapon that he used, but also the correct number and location of the gunshot wounds. He correctly told Detective Ritz that he moved a safe with money and personal papers from a second story bedroom. So according to Dorsey, he and another person, Howard Rice, were the sole perpetrators of Michelle's murder that Rice forced his way into Michelle's home, Dorsey followed behind, and they both shot and killed her in her basement. Now, all of these details actually are found in Sabein Burgess as his own civil complaint that he's filed against Baltimore, including Detective Ritz.

**Susan Simpson:** [00:38:57] Beyond that, it's not just that we have Dorsey confessing to the murder. We also know that Dorsey was on the detective's radar even before he confessed to the crime. In 1996, prior to Sabein's conviction, the police asked a witness if Dorsey had been involved in Michelle Dyson's death. So somehow they knew that there was a possible connection there and they never pursued it. And when that person later confesses to the crime, Ritz interviews him and concludes, this guy knows nothing about the murder. Now, Dorsey did it. So either Ritz was unable to determine that an actual killer was confessing to him or he realized that the murderer was confessing to him and he decided to ignore it.

**Colin Miller:** [00:39:40] And this probably sounds very familiar to anyone who is listening to our podcast or Serial. When the prosecution is presenting its theory of the case to the jury, they say, of course, the boyfriend did it, who else would have? And it's sort of this tunnel vision. The state finds the path of least resistance. They say, here is the most obvious suspect, and anything that comes in that confirms that confirmation bias they collect and they use. Anything that tends to dispute that or to cast doubt upon the case, it's sort of swept under the rug. Sometimes it's not turned over to the defendant and eventually it comes to light and we see the consequence of this type of tunnel vision is that in many of these cases, we have glaring evidence that points both the innocence of the defendant and the guilt of someone else. And it's just not disclosed. For Burgess, who was, what, 19, 20 years that he was in prison based upon this crime when they had information right away that tended to show he wasn't the responsible party.

**Susan Simpson:** [00:40:42] And what was Sabein supposed to do to defend against this? The jury hears scientific evidence saying that, well, if Burgess is claiming that he has particles on his hand because he was holding the victim, he's lying because according to science, that can't happen. I mean, it can happen, but the jury was told otherwise. So Sabein has the forensic evidence that is allegedly conclusive. He has no evidence that there are witnesses to the crime. And the police simply say, well, whatever gun he used to commit the crime, he disposed of it before going to call 9-1-1. That leaves him with nothing to work with to defend himself except for the fact there was a witness and that witness identified someone else, and he was never told that.

You know, something similar happened in an Adnan's case because the police notes that were taken of the interviews at Woodlawn in March and April of 1999 were not handed over to the defense. Those notes include things like the statements given by Adnan's track coach in which he describes a day when Adnan was at practice on time and left on time and described a day that could only be January 13th. It also

includes things like Becky's statements that Hae said she couldn't give Adnan a ride that day and walked away in a different direction from Adnan.

**Rabia Chaudry:** [00:41:56] Another similarity to me is the fact that I'm assuming that at his trial, Sabein was unable to produce an alibi witness, right? To account for every single bit of time, which is what happened with Adnan. They took advantage of that.

**Susan Simpson:** [00:42:07] In fact after Sabein was released, one of the detectives in this case, now retired Detective Goldstein, said every single thing that Sabein told us, we proved he was lying. They must have really had the evidence against him for a Baltimore city jury to convict him. Goldstein continued to maintain his belief in Sabein's guilt, citing the fact that Sabein had given inconsistent statements on where he'd been at the time of the murder. But that's it. The GSR wasn't actual evidence because it was presented wrong and based on faulty science. There was a witness who said that Sabein didn't do it. There's the perpetrator who's saying that he did it, not Sabein. All that's left to get Sabein is his allegedly inconsistent statements about what happened and where he was at the time of the murder. And that was enough for Goldstein to maintain his belief in Sabein's guilt.

**Colin Miller:** [00:42:55] And Susan, you mentioned the GSR evidence. The analog basically in Adnan's case is the cell tower pings. And it's interesting because a lot of people discuss the so-called "CSI effect" from the TV show CSI. The thinking with the CSI effect always was, based upon shows like CSI, jurors expect forensic evidence. When it's not there, they tend to exonerate at a rate that doesn't match reality. Well it turns out studies have shown that CSI effect, in fact, does not exist and jurors do not require this forensic evidence. What studies have shown, though, is there's a so-called "reverse CSI effect," and that is when people watch CSI, NCIS, etc. they actually tend to overvalue this scientific evidence, whether it's GSR or cell tower pings, fingerprints, etc..

And so I think a lot of these cases we're looking at, including Sabein's case and Adnan's case, as we discussed last episode, I think a lot of it is this evidence that we might call it junk science. You might say it's at best ambiguous, but I think the jurors and a lot of these cases overvalue it, and they don't understand the limitations that apply. They think, well, this is objective scientific evidence, it trumps anything else. Well, no, in a lot of cases there's contamination. It can't tell us what we think it can tell us. And so in a Sabein's case is a great example of something where the GSR evidence was at the heart of the state's case, and yet it turns out that heart was completely lacking in any vitality based upon how the testing was done.

**Susan Simpson:** [00:44:28] Yeah, describing it as science gives it an almost an unimpeachable credibility that isn't warranted and is often based on very faulty factual assumptions.

**Rabia Chaudry:** [00:44:51] So let's move on now to the Ezra Mable case. Ezra Mable was convicted of killing a drug dealer named Kevin Dukes in August 2000. We talked about this a bit before, but the details of this case are really interesting and very instructive in terms of Adnan's case. So, the man that Ezra was

convicted of killing, Kevin Dukes, he was a drug dealer in the Cherry Hill neighborhood of Baltimore. And shortly before he was killed, Dukes had apparently learned that one of his dealers, a man named Eddie, had been cutting the drugs that were supplied by Dukes, and pocketing the money from the extra sales. So the relationship between Eddie and Dukes went downhill from there. And Mr. Dukes thereafter told some of his friends that he was trying to get a gun for his protection because Eddie was going to kill him for his drugs. Now, the day of Mr. Duke's murder, he met up with his drug dealers for their weekly meeting. And immediately thereafter, Eddie was seen getting into Dukes's motor vehicle, where Dukes was found soon after dead. And he had been shot multiple times at close range.

Now, this case was supervised by Detective Ritz and Detective Hastings. And when they arrived at the crime scene, the officers very quickly concluded that Dukes had been murdered while he was sitting in his car, even though it seems in a complaint detailed later that the physical evidence wasn't exactly consistent with this. But anyway, the police didn't find any witnesses at the crime scene. However, in the days following the murder, they received numerous tips identifying Eddie as the shooter.

Now, a few weeks later, two officers ran into Eddie on the street. They determined that he was the man that tipsters had identified in the Dukes murder. And so they picked him up for questioning. But oddly enough, when the officers took him back to the station, their supervisor said that Eddie was not wanted as a suspect. So Detective Ritz was contacted and he was told that Eddie actually had scars on the back of his neck and that these scars were consistent with the tips that they had gotten, that Eddie was scratched on his neck before he killed Dukes.

But Detective Ritz, after acknowledging that somebody had said that Eddie was scratched on the back of the neck before he was shot, still advised one of the other officers to release him. So Eddie was never questioned and there was never a DNA test ordered. Now, despite reports that Dukes scratched his killer before his death and scrapings from his fingernails were actually taken, they were not tested for DNA.

Ezra Mable was later was exonerated and filed a complaint against the Baltimore City Police. And in his complaint, he noted that the police department routinely order the crime lab not to conduct DNA tests, which we've discussed earlier. So the state had no forensic evidence linking Mable to the crime and no witnesses who saw him at the crime scene. Right. No evidence that he had any motive to kill Dukes. So, if the state had no forensic evidence linking Mable to the crime and they had no evidence that he had any motive to kill Duke's, how did the state end up getting a conviction of Mable of Duke's murder? They did it by inventing eyewitnesses, two of them, in fact.

**Colin Miller:** [00:47:57] The first of these witnesses was Ms. Frasier. Now, early in the investigation, another woman had informed the police that Frasier might know something about the Dukes murder. So two months later, they contact Miss Frasier. But at that point, she's not interested in meeting with the police. In the days that followed, as a result, the officers repeatedly phone Mrs. Frasier, and when it becomes clear that she's ignoring them, they start to stake out her residence. And eventually through this stake out, they're able to pull her motor vehicle over to the side of the road. It's a pitch black night in

mid-November. At that point, they search it for any incriminating evidence and find some drugs. It's unclear exactly the quantity of the drugs that belonged to her. And there's an allegation in the case that possibly the police planted the drugs, although obviously that's something we can't prove. While they're at the side of the road, and it's turning from the middle of the night into the next morning, Frasier is presented with mug shots in a photo book that contains black and white copies of African-American men's faces. So basically, she's given a choice. According to the allegation in this, she could either identify someone in the photo book as the shooter of Mr. Dukes or she'd be arrested for possession of illegal narcotics that were recovered from the car. And so then the allegation that's made in this complaint is because Frasier has her children in the car, because she's being threatened with either identifying someone or being prosecuted for drug possession and having her kids taken away, she decides, I'm going to pick a photo out of the photo book. And the photo turns out to be that of Ezra Mable.

Thereafter, though, 10 minutes later, when she is signing the picture of the person who committed the crime, she signs another picture, and this picture is of another African-American man. However, his skin is lighter. He is not chubby like Ezra Mable. Unlike Mable, he has hair that extends beyond his ears. And he's about 10 years older than Mable. And in fact, it turns out this person whose picture she signs is Eddie. And in fact, she writes next to the picture, she is sure that this person is the shooter.

So then go to the next day, the next day, Frasier is interviewed again. Here's a description of her statement in the complaint. "Frasier's stated recollections were so basic that anyone who knew even the most minuscule amount about Mr. Dukes's murderer, could have come up with her story. She also stated that she had not clearly seen Duke's killer informing the detectives that, quote, 'I saw the shooter get out of the passenger side of a gold vehicle but didn't get a good look.'"

**Susan Simpson:** [00:50:51] There was a second eye witness that was found during the course of the investigation into Dukes murder. This second eye witness, Taylor, was another local woman. However, there was no apparent evidence that Taylor was even a witness to Duke's murder, and it's unclear why she was identified by police as someone of interest. Once again, though, in a story much like the one Miss Frasier gave, the detectives made her an offer that she couldn't refuse. Make an identification in Dukes's murder, and you will not be arrested for possession of narcotics. Taylor's statement, however, didn't match Frasier's. And Taylor couldn't even provide basic details about what she'd seen of the shooting or what had happened. In addition to getting facts wrong about what she'd witnessed, facts about how she'd witnessed it or what she was doing at the time of the murder, kept changing. At first she saw it through a window. Then she saw it through a screen door. She says that wherever she was in the house, she was at a friend's house when she witnessed the murder. However, she couldn't actually locate the friend's house. Again, there were more factual problems which she stated, and things that conflicted with both Frasier's statement and the other evidence in the case. For instance, she was insisting that the killer got out of the driver's side door, whereas Frasier had said that the killer got out of the passenger door. But despite all these problems, she was given a photo array just like Frasier had then. And when Taylor picked out the killer that she'd witnessed, she picked out Eddie. So we've got two witnesses

supposedly to the murder, one who eventually identifies Mable and also identifies Eddie and another who identifies Eddie.

**Colin Miller:** [00:52:50] Yeah, but despite that, when we have the grand jury proceeding the case, Detective Ritz tells the grand jurors that two witnesses identified Ezra Mable as the shooter, one of those being Miss Frasier. And there is no disclosure to the grand jury about statements regarding Eddie, the exculpatory statements that were made by these two witnesses obviously, at least in part of pointing the finger at Eddie as opposed to Ezra Mable are never disclosed to the state's attorney. They're not ever disclosed to the court. They're never disclosed to Mabel's attorneys. So these are statements that are taken by the Baltimore police, and yet they're never turned over to anyone in a case. And so the result is what then?

**Susan Simpson:** [00:53:34] Based on the strength of the state's case? Ezra Mable, on the advice of her attorney pled guilty to second degree murder. He was sentenced to 25 years. However, seven years later, in 2009, Mable wrote his own petition for post conviction relief. That's a petition filed seeking to have a sentence reduced or overturned based on some grounds that can be raised after a case is over and a conviction has been entered.

What's unusual here, though, is that even though Mable was writing his own motion without support of an attorney, the Baltimore City State's Attorney's Office decided to join in with his motion and requested that he be released. That motion was granted in 2010. Now, just to clarify. Highly unusual doesn't even begin to cut it. You do not have a jail mail motion in which a defendant is asking to be released from prison, where he is serving time for murder, and the prosecutor's office joins that motion and asks the court to give the defendant what he's asking for. That only happens if something was so horrible and so egregious in that case file that the prosecutors who received Mabel's handwritten motion felt they had no choice but to deal with it as quickly as possible by letting him out.

**Colin Miller:** [00:54:47] Yeah, and it's similar to the Owens case. And I had the same question here that I have there, which is did the state's attorney's office decide not to contest this and to agree because they didn't want to create a factual record, and they didn't want to have to go on the record as to what was done and not done in this case? And that's significant, because then in 2013, Mable files a civil lawsuit against Baltimore, the police department and detective Ritz for their role in securing the conviction. And that's what we've been reading from.

And so, again, as I mentioned before, we can't necessarily take any of these as definitive facts. These are allegations by Mable. But certainly it's a case where the state attorney's office didn't contest his post conviction relief petition and they allowed for his release. So these allegations. But they're fairly serious allegations, right. Susan, there's one particular thing when he summarizes the events and says, what about his arrest and conviction?



**Susan Simpson:** [00:55:40] As Mable puts forth in his complaint, "The detective's resolved to focus entirely on Mr. Mable and did not attempt to determine the actual truth in their investigation, or to develop a case based on truthful facts. Motivated by a desire to quickly solve Mr. Duke's murder and make an arrest in this highly publicized case, the defendants, that is the Baltimore Police Department, adopted a theory and then abused their investigation and authority to construct a case to fit it. Again, there is strong reason to believe that's exactly what happened here, because if there had not been overwhelming evidence to support it in the case file, the prosecutor's office would not have decided to ask for the court to release him.

**Colin Miller:** [00:56:18] The thing is, though, a lot of people look at this and are hesitant to think this is a wrongful conviction of Adnan. They sort of hold the position of what what is this, a grand conspiracy that's being conducted and why would they choose to do all this just to get a conviction against Adnan? It's you know, you look at a case like Mable, they think the suspect is guilty. They have some circumstantial evidence that might tend to support it, and may decide to cut some corners. We have some square pegs and round holes. Well, let's hammer that a bit and let's see if we can squeeze that in. It's the path of least resistance or some confirmation bias. It's not something where necessarily the cops are saying we're going to frame an innocent man. That's not what would be claimed in a typical malfeasance case. It's something where they think they have the right person. They have some evidence, some parts fit, many don't, and they just decide, we're going to streamline this. We're going to ignore exculpatory evidence and we're going to do the best to construct some narrative that can hold together enough for a jury of 12 men and women to return with that conviction.

**Susan Simpson:** [00:57:25] That was a case handled by Detective Ritz. Here's one that was handled by Detective McGillivray.

**Rabia Chaudry:** [00:57:35] So this is the King of the State of Maryland versus Rodney Addison and Rodney Addison, he was 23 years old when he was convicted of the second degree murder of Lewis Jackson in October 1996 in northwest Baltimore. Addison was sentenced to 30 years of imprisonment. But after nine years of being wrongfully incarcerated, he was released.

**Susan Simpson:** [00:57:56] Yet Addison was convicted on the strength of a single eyewitness who said that she had witnessed the shooting from her apartment bathroom window, and she identified Addison from a lineup. However, there were also three other witnesses to the crime, and their statements conflicted with the eyewitness's statements and didn't support that Addison was, in fact, the shooter. However, these three statements were not provided to the defense. At trial the eyewitness testified about how she'd seen the murder from her window. And in fact, at trial in '98, Addison had interjected to the court: "I think I can prove that the witness was lying on the stand yesterday when she said she looked out her window." Two days later, he was convicted.

But Addison was right. The witness's apartment window did not give a view of the shooting. And in fact, in 2005, at his PCR hearing, the eyewitness and her mother testified that the eyewitness hadn't seen the

murder. Instead, she was busy getting high on cocaine at the time the shooting occurred and that that window did not actually show the place where the shooting happened. For me, one of the most striking parts of this case is that after Addison's conviction was overturned, the prosecutor's office declined to recharge. However, they stated that this does not expunge an arrest for first degree murder and that it was not an exoneration. All that it meant, according to prosecutor's office, is that there simply was no evidence that Addison had committed the crime. That didn't mean he didn't do it.

**Colin Miller:** [00:59:23] This reminds me of a case I teach this case, actually, to my criminal [law] students. It's a South Carolina case, Supreme Court in South Carolina, called *Gibson v. State*, and it's very similar. It's a murder case. And Howard Gibson, the defendant, pleads guilty because the police tell him: we have an eyewitness and she saw this shooting out the window of her apartment. And it turns out the police actually went to her apartment. They looked out the window with her. And from her window in the apartment, in the bar, there was a Donkey Kong video game that was blocking the view evidence. There is no way she could have seen the murder. And, well, what does Gibson do? He pleads guilty. There's an eyewitness who says she saw the shooting and the police failed to disclose. He pleads guilty.

There's later PCR. Of course, the conviction is thrown out. There's a Brady violation. It's, it's just you know, it's it's shocking to see these cases where these alleged eyewitnesses couldn't have seen what they claim to see. And yet the information is not disclosed. You can see I mean, what would you do in that situation if you're a juror or hearing the case for if you're a defendant, hearing about this eyewitness identification? And yet objective facts show this didn't happen. They didn't see the crime in question.

**Rabia Chaudry:** [01:00:45] That takes us to the case of Terry Jones. Now, in March of 2004, the body of a 15 year old girl named Antiona Mills was found battered, naked, wrapped in a sheet in the middle of Talbot Road in northwest Baltimore. Now, Mills was a ninth grader at a local high school, and about a year after her body was found, Terry Jones was charged in her death. The police allege that they found what they believed to be his DNA on the belt around her ankles. So the police said that Jones was her boyfriend and the two may have met up the day before her body was found because the phone records show that they exchanged phone calls that day.

Another person, Eric Barksdale, also was charged with the murder, and Jones's defense lawyers said the Barksdale's DNA was also found on the belt and the two men were together about the time Mills was killed. So both Jones and Barksdale were charged in 2005, but they were eventually acquitted.

**Susan Simpson:** [01:01:48] And the reason they were acquitted is because the state's case was premised pretty much entirely on the DNA evidence and the DNA evidence ended up not coming in. The reason why is that the prosecution, contrary to precedent and trial court orders, did not hand over the protocols for how the DNA testing was conducted until the day before trial. They also seem to have disguised the truth about when and how they'd produce the protocols to the defense, and when the court figured out that the defense had not been given that information at the time that the prosecution was alleging, she decided to throw out all of the DNA evidence.

After the judge gave her ruling, the prosecutors' office pled with the court to reconsider. "This is simply and finally a DNA case." State's Attorney Sharon R. Holback said. "Your ruling, in effect, will cause the end of this murder prosecution." Shortly thereafter, the court slightly relaxed its holding, it still held that the state crime lab results couldn't be admitted to the prosecution's failure to hand over protocols on how the DNA was tested. But they did allow limited testing, that was conducted by an independent agency to be admitted. Nevertheless, the jury did not find this evidence convincing. And both Barksdale and Jones were acquitted.

Turns out it's a really good thing they were, because the state's DNA evidence was bogus. We know that because they had an actual DNA match a couple of years later, it turns out that Antiona Mills had been murdered by serial killer William Vincent Brown, who was responsible for murdering, or attempting to murder, at least three women and dumping their bodies in Leakin Park. William Vincent Brown was convicted in the death of Antiona Mills, as well as another murder and another attempted murder, and those cases were based on, this time, sound DNA evidence that conclusively matched him to those killings.

What we don't know is why and how the prosecution came to believe it had Barksdale's and Jones's DNA on Antiona Mills's body. It's especially concerning when you consider that the protocols for how the testing was done were not handed over until the day before trial, which suggests that something about the way those labs conducted the testing made the results unreliable, which they clearly were. And the prosecution didn't want the defense to know that.

**Rabia Chaudry:** [01:04:25] Now, another case in which Detective McGillivray makes an appearance is the case of state of *Maryland v Tony Dewitt*. On July 5th, 2002, a woman by the name of Shireen Moore died from a single gunshot wound to her chest in what seems like a drive by shooting. Somebody named Maurice Booker was also shot, but survived, and the shooting took place on the porch of a house. Maurice's sister, whose name is Tasha, testified at trial that she had been on the porch but went inside to make a phone call before the shooting. So according to her, she did not see the shooting. And when she heard the gunshots, she fell to the floor and waited. And now the state's case was that that's not actually true and that she actually picked out Tony Dewitt's photo out of a photo array and that she made a statement indicating that she actually saw him jump out of a car with a gun and run through that alley next to the house. That's not what Tasha says though.

**Colin Miller:** [01:05:16] Yes. When Tasha Booker testified, she testified that she only signs the photo of Dewitt in the photo array because the prosecutor said to sign it if you know him. She also testified at the police, told her they knew that Dewitt had shot Maurice Booker and Shireen Moore, and that she should tell them that. And she said she was scared. She felt threatened by Detective McGillivray. And she testified that she only signed the array so that they would let her go. McGillivray, of course, denies threatening Tasha.

But here's the weird part to me, McGillivray said "I was fully aware that Tasha Booker was not an eyewitness to the shooting," and he admitted that he merely asked her whether she recognized Dewitt when she pointed him out in the photo array, which that's kind of baffling to me. You do a photo array and you points to someone in the photo array because you're an eyewitness and you saw something. I don't know why would McGillivray be doing a photo array and simply asking her to point to: do you know anyone in this array? That's that's not why you would do a photo array in the case.

Tasha, that was not the only one who is an alleged eyewitness. Her brother Maurice, who was shot, was also shown a photo array. And in the photo array next to Dewitt's picture, he writes, "He shot me." According to Maurice, though, he only wrote that because the police told him that unless he identified Dewitt as his shooter, his mothers and sisters would be detained and his sister and nieces would be placed in foster care and his brother would be prosecuted. And so the detectives who did the photo array--it wasn't McGillivray, it was Detectives Turner and Green--they, of course, denied any threats or promises being made to Maurice Booker.

However, Turner, one of the detectives, he acknowledged that Maurice Booker had indicated the other officers in the case, had made promises to say Dewitt was the shooter. I'm not sure who those other officers were. But, you know, certainly we have two different witnesses, including the victim who was shot. I don't know why the victim who was shot in the case would come forward and say, I was told to point to this picture if, in fact, it weren't true. It seems that the person who was shot would have every reason to say, you know, this is a legitimate identification if, in fact, he did think that Dewitt was his shooter.

**Susan Simpson:** [01:07:32] Now Dewitt had a hearing in his post conviction relief last month. So we should know before too long how the court's going to rule on his current PCR proceeding.

**Rabia Chaudry:** [01:08:15] That brings us to our last case of the state of Maryland versus Brian Cooper. Brian was 18 years old when he was arrested for murder in connection with the stabbing of somebody named Elliot Scott in 2002. What's interesting is that in May of 2002, Cooper was arrested. He arrived at the homicide unit. He was put in a secured interview room. Again, this is an 18 year old, and Detective Ritz started his interview of Cooper that evening with no Miranda warning given. Ritz apparently started by giving a rambling discourse about the crime and what his investigation had disclosed. Now, when he was asked to describe this procedure or process of his interrogation, Ritz said several things.

[Ritz said] *"It's just kind of rambling on. Like I said, I told him about my investigation. I had arrest, a warrant for him for the homicide of Scott. That occurred on April 17th. I told him the location. I told him that I had spoken with several people during my investigation and that those individuals I had spoken with identified him as a person involved in the incident. I gave him some background information on the victim. Portraying the victim is not necessarily a nice guy, that there's two sides to every story. That I had, people that had seen him arguing with the victim that evening. I had witnesses that saw him getting out of a vehicle, chasing the victim that evening. And I kept reiterating that there's two sides to every story. At that*

*time, he just sat there. It wasn't a question and answer type thing. Like I said, I'm just rambling on and talking and talking for possibly an hour and a half."*

So at this date of the interview, Detective Ritz showed the suspect the face page of the arrest warrant. Kind of like Adnan was shown his arrest warrant. And detective also had about two and a half inch file, a murder file that was sitting on a desk in the room where Cooper could see it. So Ritz gives this rambling statement. Cooper says he wants to tell his side the story and Ritz doesn't tell him to stop or give him a Miranda warning. Cooper goes on then to explain how he was arguing with the victim at one point during the night, and saw him later in the night, but did not stab him.

Then Ritz gives Cooper the Miranda warnings, and he sets things up to record the interview. He starts by saying: "OK, what I said before about there's two sides to every story. It's extremely important. I wasn't there when all this took place. My responsibility in investigating is recreating what happened that night." Cooper then gives a more detailed account of the night which introduced at trial. And according to Ritz, he used this technique because he didn't want Cooper to shut down and wanted to gain his trust before giving the Miranda warnings.

**Colin Miller:** [01:10:44] So in large part, based upon the statement that Cooper gives, he is convicted of this murder. But later, the Court of Special Appeals of Maryland reverses his conviction. And what they say is that basically Ritz engaged in a so-called "two step interrogation technique." In other words, having this initial hour and a half or so interrogation without the Miranda warnings, once the cat's out of the bag and Cooper has already partially incriminated himself, at that point, Ritz comes in and gives them the Miranda warnings and the court says, no, that's improper, that violates Miranda. And in fact, they can point very easily to a U.S. Supreme Court case, *Missouri v Seibert*, which says that this two step interrogation process is improper.

And you can probably imagine why this is improper. It's improper because it creates a huge possibility, if not a probability, of false confessions, especially when, as in this case, Ritz himself admits [he] was feeding the suspect all the key details of the case before he eventually went on record and made his statement. And so in this case, we have the conviction being thrown out based upon the process used by Ritz.

Now, why is this case so important in terms of the prosecution of Adnan? Well, we have several key facts that we know about Jay and his interrogation. He was taken to the police station on February 27th. He was interviewed by Detective Ritz again and McGillavray. And again, it's a two step process. First, we had the pre interview, which we have the notes from, but we don't have it recorded. There is no Miranda warning given before he makes this statement. And we know during this pre interview, Jay tells the police officers, the detectives, Jeff G. drove me to Woodlawn High School at 3:00 p.m. on January 13th. And we know based upon the investigation timeline at this point in time, the state believes that Debbie saw Hae at 3:00 p.m. at Woodlawn, about to leave to go to the parking lot to get in her car. And we also know that

based upon Jay's own testimony at trial, when he's making these statements during his pre interview, he eventually says, "I come clean." He's given the Miranda warnings and he implicates Adnan.

Well, what leads Jay to come clean? Well, we have testimony by Jay at trial indicating what led him to, quote, unquote, "come clean."

Question [from Gutierrez]: "And they made it clear that if you didn't come clean with them about Adnan, that you were going to get charged?"

Answer [from Jay]: "Yes, ma'm."

Question [from Gutierrez]: "Yes, and there is no equivocation about that, was there?"

Answer [from Jay]: "No, ma'am."

Question [from Gutierrez]: "He knew exactly what they meant?"

Answer [from Jay]: "Yes, ma'am."

Question [from Gutierrez]: "Did you not? And by getting charged, that meant getting charged with the murder Hae Min Lee, did it not?:

Answer [from Jay]: "Yes, ma'm."

And so here we have this exact same two step interrogation technique. You bring Jay in. You don't read the Miranda warnings. You get his trust. You get him to partially incriminate himself. You then say, OK, you've incriminated yourself. You either come clean. We believe Adnan did this. You either tell us how he did it or you're getting charged for the murder. He says, I come clean. He's given the Miranda warnings. He gives that statement, which we've played clips from at various points during this podcast. The only question that would sort of make this exactly like that Cooper case we mentioned is did Ritz do what he did to Cooper? Did he engage or did McGillavray engaged in a rambling discourse in which he relayed to Jay all the facts they knew about the case, thereby, when the tape is turned on and Jay is giving this statement, he's giving not his own narrative, but the narrative that's been given to him by the detectives in this case?

**Susan Simpson:** [01:14:33] We've got Ritz on the record explaining how he doesn't interrogations and how he gives the people he's talking to lots of information about the crime before taking their statement. We know that that happened here with Jay and we know that in addition to whatever information Jay may have obtained from detectives, Ritz and MacGillivray, he also had information about the crime scene from what he'd seen on the news.

**Detective Ritz:** [01:14:56] When did you realize? Somebody found Hae's remains?

**Jay Wilds:** [01:15:01] I was sitting at work, or about to leave. I was sitting at work.

**Detective Ritz:** [01:15:10] Do you remember what day that was?

**Jay Wilds:** [01:15:11] No, no I don't.

**Detective Ritz:** [01:15:13] And do you recall what the news broadcasts said?

**Jay Wilds:** [01:15:17] It just said that they search for it over down there. They showed the crime scene that was it.

**Detective MacGillivray:** [01:15:24] They showed it on TV? Is that the location that you described to me with the concrete barriers?

**Jay Wilds:** [01:15:28] Yes.

**Detective MacGillivray:** [01:15:29] All of that's right?

**Jay Wilds:** [01:15:30] Yeah.

**Susan Simpson:** [01:15:31] So, yeah, between those two things, it's very hard to determine what information, if any, Jay knew before the crime was reported in the news and before you talked to the detectives investigating it.

**Colin Miller:** [01:15:43] In the Cooper case, Ritz says, "I told him, [meaning Cooper], the location." I mean, he told him where this murder took place. What are the odds that he told Jay the location of Hae's car? What are the odds that he told him it was strangulation? I don't know. I mean, it's certainly possible that Jay had involvement in the case. And when he came clean, he was truly coming clean, at least as to certain aspects of the case, but certainly plausible based upon a case like Cooper and a technique that's been recognized to be suggestive and to facilitate false confessions, that Jay's story is not, in fact, Jay's story, and he was, whether intentionally or not, fed the information that allowed for this conviction to proceed.

**Rabia Chaudry:** [01:16:27] It makes me wonder actually about Adnan's interrogation. We talked about this before. How after like a six hour interrogation, there's almost no notes written up, which would suggest that Adnan really had nothing to offer of value to the detectives. But I wonder if they also did something similar. I think they did, because we know from notes taken by Gutierrez's clerks later on that Adnan had said that the police had told him certain things like, you know, you had red gloves. We know they were red gloves involved. And there were other...They did give him some details, but..

**Susan Simpson:** [01:16:59] [They said] the car was at the park and ride.

**Rabia Chaudry:** [01:17:01] Right, the car was...But in return, they really got nothing from Adnan.

**Susan Simpson:** [01:17:04] Yeah. So looking at these cases, there are a lot of common themes between them. And I'm not just talking about the officers involved. We have in many of these cases, witnesses

being offered deals I can't refuse, like the witnesses Mable's case. We have the police ignoring witnesses and leads that could have been very fruitful with no explanation or obvious reason for why they'd be ignored. Like in the Sabein Burgess case, where the police had some reason to suspect and didn't follow up on even after he confessed. We also have either a failure to test forensic evidence or a very selective testing of forensic evidence, such as the failure to test DNA and the Mable case. We also have almost across the board the withholding of exculpatory materials that should have been given to the defense and weren't.

**Colin Miller:** [01:17:54] It is interesting. I mean, obviously in this podcast we're looking at this from the perspective of three attorneys who have very much an outside view, and we're relying upon case documents, complaints, etc. But you don't have to take our word for what's going on in the Baltimore Police Department. Obviously, there's the Freddie Gray case and the entire dialogue that's created, but there is also very much Baltimore's own Frank Serpico [the famous police officer whistleblower], and that is a man named Michael A. Wood Jr. And he basically is a former Baltimore police officer. He served from 2003 to 2014. And he has gone public as a sort of whistleblower and said, here is all the misconduct that I observed in my time on the job in terms of obtaining false confessions, manufacturing evidence, creating this narrative that doesn't exist. And so you can take our word for it, certainly, but you can take the word of Michael A. Wood, and certainly look at what he is saying about all of the abuses of power that took place during his tenure on the Baltimore Police Department.

**Susan Simpson:** [01:19:03] And although it was a fictional [TV] series, [The Wire] was based on actual experiences with the Baltimore Homicide Unit. And in many respects, it's more like a documentary of Baltimore police practices during this time period. And that's The Wire. David Simon, who wrote The Wire and wrote Homicide Life in the Streets. He spent a year with the Baltimore Police Department's homicide unit before he wrote either his book or The Wire, and he drew on what he'd actually witnessed while embedded with them when writing the show and his book. You know, and you've got to wonder how much of what we're seeing in Adnan's case is directly reflected in The Wire. There is that one scene from season one where they try and get Greggs to identify her shooter and they tap on the person who they know or think they know who did it, trying to get Greggs to point him out. It's just another scene where I end up wondering if perhaps Simon had witnessed this tapping, suggestion form of communication with witnesses, and that's what is being expressed in that scene.

**Rabia Chaudry:** [01:20:19] As most of you know, the investigation and appeal in Adnan's case is alive and active. This is an ongoing case. So not only do we have plenty to go through this case in terms of what happened in the past, we'll have plenty to discuss in the future as new evidence is brought to light and the case moves to the court. Having said that, we realize that Adnan is not alone, according to the Innocence Project.

There are tens of thousands of wrongfully convicted people in prison in this country, most of whom have none of the resources or attention that Adnan's case has gotten. Now, we've gotten the question numerous times about whether we'll ever work on another case or do another season of undisclosed.



Well, the answer is yes. While we will always continue to update our listeners on Adnan's case, once we wrap up our planned episodes, we will continue with the new case and a new season. So here is our call to listeners to send suggestions for cases that need a closer look. These have to be cases in which there has been a potential wrongful conviction in a serious crime. And we have to have access at a minimum at least to defense and court files.

So you can e-mail us your case suggestions to [undisclosedpodcast@gmail.com](mailto:undisclosedpodcast@gmail.com). Now, we've spent this episode illustrating the many different times that detectives from Adnan's case were involved in other wrongful convictions due to a number of reasons, including neglecting leads, leads as strong as another person confessing to the crime and leaning on witnesses to the statements they want in a nonce case, like in most wrongful convictions, not only are the police and prosecutors successful at getting away with such things, it also means defense counsel either couldn't or didn't do their job. Now imagine a case in which one of our familiar detectives, crime lab personality and Christina Gutierrez all collided. Next time on the Undisclosed addendum. [end credits...]