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**UNDISCLOSED SEASON 2: THE STATE VS. JOEY WATKINS**

**ADDENDUM 2: WHEN IN ROME**  
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**Jon Cryer:** Hello! And welcome to the *Undisclosed Addendum*. I am Jon Cryer and this is the podcast about all things *Undisclosed*.

Now, the *Addendum* is a chance for us avid listeners to take our thoughts, issues and questions straight to the team, as well as some very special guests. As you know, Season 2 of *Undisclosed* is investigating the mysterious, tragic death of Isaac Dawkins. On the night of Jan 11<sup>th</sup> in the year 2000, Isaac's trucked jumped the median and plunged of Highway 27 in Rome Georgia. When witnesses got to him, he was bleeding and unconscious. It wasn't until a CAT scan in a local hospital that they found Isaac had been shot. A young man named Joey Watkins was convicted of his murder. Joey has already served 16 years of a lifetime sentence for a crime he may not have committed.

Now with us today are all three of the *Undisclosed* team... "Yay! The band is back together!" And once again, a very special guest. So it's Rabia, Susan and Colin. Say hello, folks.

**Susan Simpson:** Hey guys.

**Colin Miller:** Hey!

**Rabia Chaudry:** Hi Jon.

**Jon Cryer:** And we also have Clare Gilbert from the Georgia Innocence Project. She's an attorney and the interim director, and prior to the GIP she worked several years as a public defender. She blogs at *Georgia Innocence Project.org*. And prior to the GIP she worked several years as a public defender and a policy lawyer with the Government Accountability Project. Hello, Clare!

**Clare Gilbert:** Hello!

[01:30]

**Jon Cryer:** Thank you so much for being here. So in this second episode, 'In Situ', we learned about how the case of Joey Watkins came before the *Undisclosed* team, their first trip to Rome, Georgia, 'murder coyotes', and the enormity of the task ahead. So Clare, you mentioned that Joey Watkins was wealthy, which I didn't picture from the first episode, and that he went around in fancy cars. Is it unusual for the Georgia Innocence Project to become involved with a subject that has a lot of monetary resources?

**Clare Gilbert:** It *is*, actually. We do have a couple of examples where it was professionals who had established careers or who were 'up and coming' and faced these charges, but for the most part the body of clients and people writing to us are people who are easy for the police to target. So there are often people of minority races – African-Americans, Latinos – with criminal histories, who've been on the streets, or who problems coming in contact with the law before, or who have poverty issues and have frequent encounters with law enforcement.

So, it is unusual and different from the mainstream cases that we get. In Joey's case in particular, I'm not sure 'wealthy' is the term, but the family had money. His father owned, I think it was, two used-car lots that his father had, and he sold used cars, and then went and 'repo-ed' those cars if people didn't make payments on them.

**Jon Cryer:** Well, that would explain why he had the fancy cars, then. I guess.

**Clare Gilbert:** Exactly. And the fancy cars, they were like drag-racing cars. Joey would buy cars and fix them up and then re-sell them, and he sort of had access to those resources through his family. And also he worked hard in doing that. But his family had a fairly large house, they had a pool... He had more money than most.

**Jon Cryer:** So, my understanding is that the family had more money at the time the crime occurred... But did I hear correctly? That his family spent more than a *million and a half dollars* on his defense, is that correct?

**Clare Gilbert:** That's what his father says, yes.

**Jon Cryer:** So, I imagine they don't have those resources anymore?

**Clare Gilbert:** Correct. They are struggling now.

[03:51]

**Rabia Chaudry:** How many teams of lawyers have they had to pay? How many appeals and stuff have they had to pay for out of pocket?

**Clare Gilbert:** The trial attorney, Rex Abernathy, was the Bobby Lee Cook firm. So that was tens of thousands of dollars for the trial. Then they had a direct appeal, which was another... I think it was \$35,000. Plus the cost of the transcripts. Then additional fees paid to the firm after that, according to Johnny. Then they apparently paid other attorneys to sort of help and consult along the way. They had a *habeus* attorney by the name of Chris Fraser, who was later disbarred, and they paid him a large sum of money to do the *habeus*.

And Mr Fraser was disbarred for taking money for *habeus* filings and then never actually pursuing them, which is what happened in Joey's case – his *habeus* was filed in 2002, and never went anywhere until they fired Mr Fraser years and years later and he got a new *habeus* attorney – Bud Siemon. The family also paid large sums of money – somewhere between 25 and 50 thousand dollars – for a private investigator to work on the case, and they also had to pay for the *habeus* attorney. By the time it got to Bud Siemon, Bud was recognizing that the family had basically been broken, financially. So he was paid for the state *habeus* but Bud did the federal *habeus, pro bono*.

**Rabia Chaudry:** Wow.

**Jon Cryer:** Do you think that in the town of Rome, Georgia, that Joey was perceived as a 'rich kid'?

**Clare Gilbert:** I would definitely say 'spoiled' and I would say more wealthy than most. I'm not sure about 'rich' – outside of the context of this case.

- Jon Cryer:** Got it. So you think it was more of his reputation of – as you say – a ‘loudmouth’ and a ‘punk’ that got him the amount of ill-will that seemed to metastasize at the trial.
- Clare Gilbert:** Right. And I also think there was an issue... Joey’s dad and mom have brought up a few times – and I’ve seen some photos – that his family was the ‘cool family’. And I grew up in a small town in Texas, and it sounds like Rabia grew up in a small town, and this may be common in big cities as well, but at least in small towns it seems like there’s always one or two kids whose parents are like the ‘party parents’, and allow the kids to come over and have parties at their house. They had a pool, and it sounds like there were constant... Kids in and out of the house and hanging around there regularly. So I think they were *that* type of family.
- Susan Simpson:** I’ve talked to a few witnesses now from, sort of, Joey’s group, or Tandi’s group from back then, and a *few* of them have talked about their fond memories of the Watkins, and talked about their growing up over at Joey’s house.
- Jon Cryer:** So it was largely known that they were considered a certain type of family.
- Clare Gilbert:** Yeah I think so. But it was a friendly, open kind of thing. Where they had the pool, they had the big house, like everyone would come and hang out there. They would have parties there. But Johnny and Cindy are very gracious people, and I think they were just welcoming to whoever wanted to come and hang out there. And I think that was well-known.
- Jon Cryer:** Now I had a procedural question: You mentioned in the *Undisclosed* podcast that the trial audio was not considered a public record. And I am baffled by that. I mean it was recorded in a public proceeding, by an official source. How on earth do they justify that the trial audio isn’t a public record?
- Clare Gilbert:** I agree with you. It *is* baffling. We have been consulting with some First Amendment lawyers who agree that it is baffling that they would take this position. There is a bit of a background to that story, factually and procedurally. Factually, as relevant to Joey’s case, and the *Undisclosed* podcast, we asked for the audio in Joey’s case, and it took months and months for it to actually be located. But when it *was* located, the court reporter – who was the court reporter at the time of the trial and still works for the same judge – found the tapes and gave them to me and said “Here you go, Merry Christmas, you can record these.” So we started recording them. The problem was that the audio was recorded in four-track. And so when we put the old-school cassette tapes into the player and tried to feed it into Audacity, they sounded all garbled, and it was unintelligible. And they were recorded at half speed, which made it sound extra fast.
- Jon Cryer:** Like Alvin and the Chipmunks were on trial, basically.
- Clare Gilbert:** Exactly! Exactly. [laughs]
- Susan Simpson:** Like their creepy cousins, maybe.
- Jon Cryer:** Yes, okay! [laughs]

**Clare Gilbert:**

Yeah, so we asked around the various different court reporters who were there, and we noted, this is a little bit uncomfortable, because we were recording right down the hall from Judge Colston's court reporter. And Judge Colston was *Tami* Colston, the prosecutor at the trial. But separate from that, we were having technical difficulties, so we told Judge Matthews' court reporter that we would be back once we figured out our technical issues. So we followed up on that and we tried to figure out what were we going to do.

And within a few days the court reporter contacted me and said, "You know what? Judge Matthews has decided that we're not going to release those tapes to you. You can't record them." She said, "Do you have a copy of the transcript?" and I said, "Yes, we have a copy of the transcript." And she said, "Oh, 'Cause if you didn't I would provide you a copy, but if you have a copy you don't need the tapes". And I explained to her, as I had previously explained, that we were working with a podcast team and that we need this for our investigation and to facilitate the podcast. And she said "No" you know, "because of that, we can't release you the tapes. There is a on-going court-case on this and the judge does not want to release you the tapes because of that."

At that point we kind of backed up a bit. Because from a trial attorney's perspective the audio of Joey's trial was not as important to us as the audio of Mark Free's trial. Because Mark Free was, you know, Joey's co-defendant, who was acquitted. And because he was acquitted, there was no trial transcript. And I also was not able to locate – neither was the court reporter – any of the court reporter documents associated with the trial.

So, for example the list of witnesses who actually testified and the times and the order that they testified. We didn't have *any* of that. We had *some* information about witnesses who testified in Free's trial, that was used by the appellate attorneys in the direct appeal, because one of the witnesses had conflicting testimony in Free's trial versus Joey's trial and that became a big issue. But other than that we really had very little idea what was going on in Mark Free's case and it was *very* important to us to listen to the audio there without having that shut down on us.

So we then took the tactic of trying to get Free's audio – which we ultimately did – they actually *gave us* the audio tapes in Free's case. They're in my office. [laughs] So we recorded those. We digitized those, and have those here and are protecting those. And we then went back and said "Okay, well it seems that you've changed your perspective on whether we can have access to the audio, so could we please have the audio in Joey's case? And she said, "No, I've already told you that Judge Matthews isn't going to release that."

**Jon Cryer:**

Yeah, they mentioned an on-going trial. What trial are they referring to?

[11:35]

**Clare Gilbert:**

So basically, there are two court cases that are pending – one in Fulton County, one in Cobb County. And the one in Fulton County concerns audio tapes, and the court in *that* case is refusing to release the audio. And then very recently, there was another case, where a reporter was attempting to get the audio trial tapes in a case and the judge denied that. The reporter filed an Open Records Request and the judge claimed that in the process of the Open Records Request the reporter was committing *identity* fraud – or something like that – and had the reporter *arrested* for the allegations made in the Open Records request! So, it is a very volatile situation right now in Georgia concerning the audio of trial tapes.

**Rabia Chaudry:**

So the case that she is referring to is not about this particular crime, it's like, other litigation that's ongoing over this issue?

**Jon Cryer:**

But again, it still doesn't make sense they gave you the Mark Free trial audio?

- Clare Gilbert:** Right, right.
- Jon Cryer:** You mentioned that they didn't prepare a transcript because he was acquitted. Could it be because of that? Possibly?
- Clare Gilbert:** That's exactly what they're saying. Because he was acquitted, they had no requirement to even maintain those tapes anymore. They could have recorded over those tapes or thrown those tapes away. And because of that the court reporter made the decision to give us the tapes. But they are choosing not to do that. Even though the law seems pretty clear that recordings of court proceedings are public records and that they should be turned over.
- Jon Cryer:** Yeah. Another question I had was: You mentioned that Joey did not have access to the police notes when he was tried, but that you'd recently gotten them. How did you get the police notes from so long ago?
- Clare Gilbert:** We just filed an Open Records Request, and they were there, in the file.
- Jon Cryer:** So how did they get missed at the time?!
- Clare Gilbert:** I don't know. It could be that it was, in an active trial, pending investigations, active prosecution and at trial stage you don't normally file an Open Records Request to the Prosecutor's Office, you request these documents in the process of 'Discovery'. And they did that. There are very detailed requests from the defense wanting to see the investigator notes, however that was never provided by the State, and it appears that the defense never followed up for that and noted it for a motion and tried to argue to the judge that they should have it.
- Jon Cryer:** So of course, everybody who listens is thinking, [affects sing-song voice] "Brady violation!" I mean, that's a very bad impression of our listeners, but... [laughs] So that might constitute a Brady violation?
- Susan Simpson:** Well... Depends what's in the files.
- Jon Cryer:** Right.
- Susan Simpson:** Which we'll be covering. But there's a lot-- I mean they're big files. They're comprehensive files. And the investigators did take notes. And we have different sets of investigators who were taking simultaneous notes, which is interesting. So it's a good record to have, it's just kind of a shame that Joey's only getting it *now*.
- Colin Miller:** Yeah, I mean the question is: Is there anything in there that is both material and exculpatory? Meaning if it had been presented to the trial jury, there's a reasonable probability that Joey would have been acquitted... And we can't say anything certain now, but there definitely are one or two pretty good leads in the files that have been investigated that I think are possible Brady claims here.
- Jon Cryer:** Okay... [laughs] *Yeah!*

- Clare Gilbert:** I mean, I agree with that. There are many little tidbits that are in there, and a *few* that really stand out that it seems like the defense should have been given access to that information at the time. Whether that amounts to a successful Brady claim, we don't know. We're in the process of looking into that.
- Colin Miller:** Yeah, and Jon, while we were in Rome, Clare and I interviewed someone in Rome and we think, following up on the evidence there, that we might have discovered a Brady violation. That's something that we will be covering in a later episode and that you might be seeing in court someday soon.
- Jon Cryer:** Once again, the *Undisclosed* team comes up with a Brady violation. That's uh- you know it's interesting that we're coming across so many things that also affected Adnan Syed's case – we've got the cell towers, we've got a witness named *Jay*, we've got a lawyer who got disbarred, we're just checking them off as we go down.
- Susan Simpson:** There's a lot of, like, *really weird* overlaps between the cases. Again and again you're like, it's almost *déjà vu* sometimes.
- Colin Miller:** Yeah it's--
- Rabia Chaudry:** Even the relationship thing, right? It's like, ex-boyfriend who was, like, jealous... The whole way they shaped the theory of the case.
- Colin Miller:** Yeah, and it's weird in the sense that – I wanted to follow up on this thread from before – that both cases involved private attorneys, and they were at different stages, but there were disbarments in both of those. And Jon, you were talking with Clare about the typical client for the Georgia Innocence Project. Yeah. Innocence projects don't have income requirements, but public defenders offices, dealing with criminal charges and Legal Aid dealing primarily with civil issues – whether it be housing, child custody *et cetera* – those typically have income cut-offs. And that is, in most states, either 100% or 125% of the poverty level in that state. Which for a single person is around maybe 15-18 thousand dollars income a year, for a family of four maybe around 30 thousand.
- Now, in terms of criminal cases, about 80% of defendants qualify for public defenders. And when you look at those income numbers it gives you some type of an idea of who is being prosecuted in this country and then if you're not at those extreme poverty levels... You know, obviously we have the audio there from Joey's family about how much they put into this case, it's just almost inconceivable. If you're a person who is middle class, lower middle class, and you've been charged with a crime, what exactly you can do in terms of legal representation.
- Rabia Chaudry:** If you're a family of four, and let's say you're making 38 thousand... 40 thousand even, I mean you're still barely even getting by. And this probably has a connection to why there are such high rates of pleas, that you know, a *lot* of cases aren't actually prosecuted. They're just plead out. People can't afford it.
- Clare Gilbert:** That's very true. I mean I think especially if you have pretrial detention and incarceration for the lower-level misdemeanor crimes, I mean it's often you either plead guilty and get out right away, or you wait on trial, not being able to post bail, and potentially lose your job, and your family and your *house* and things like that in the process. So there's a strong incentive, at least in the misdemeanor cases to plead quickly and get out.
- Jon Cryer:** So Clare, do you feel like since you had a long history as a public defender, do you feel like there are real cases of wrongful conviction that maybe you ended up participating in? I

imagine as a public defender you're dealing with no resources, and a huge workload, and so I imagine you're dealing with a lot of people who plead on things they probably didn't do.

**Clare Gilbert:**

I think that happens a lot. I was a victim's advocate in a prosecutor's office after college and before law school, and ended up in the Serious Felony Family Violence Section and essentially worked with the victims and taught them Court School, and things like that.

And one of the biggest cases that I worked on involved four women who were prosecuted for ritualistic, satanic sex abuse and they ended up getting convicted. I had some serious concerns about that at the time. And they've fairly recently have become clients of the Texas Innocence Project, who has fought *really* hard to prove their innocence, and managed to convince the prosecutor to agree to release them from prison.

And that was all brought forward under Texas' 'Junk Science Statute', which has recently gone into effect. So not only have I seen it as a public defender, in the misdemeanor context, and of course it happens at the felony level too, but also as a victim advocate – kind of *inside* the system.

**Colin Miller:**

Clare, is that the 'San Antonio Four' case?

**Clare Miller:**

It is.

**Jon Cryer:**

Also Clare, I have kind of a dumb question: You mentioned in the podcast that there was a volunteer called Rick Latta, who put together a lot of valuable information and timelines for you before you began working on Joey's case, but at one point you say he left, "Because he was working for free, and he had to eat, and the Georgia Innocence Project did not have enough money to pay him, so he moved to Belgium." Now, I'm hoping that he understands that there are other options, other than moving to Belgium, to eat. We do eat here in...

**Clare Gilbert:**

[laughs] Yes.

**Rabia Chaudry:**

Belgium is beautiful.

**Jon Cryer:**

Belgium *is* fantastic. Oh my gosh, don't get me started on Belgium. And the beer?! Have you had the *Chimay*?!

**Rabia Chaudry:**

The beer's amazing.

**Susan Simpson:**

[laughs]

**Jon Cryer:**

But I'm hoping he's discovered that you *can* eat in the United States of America.

**Clare Gilbert:**

Yes, I think he's actually back in Texas now. And he pops in every now and then to volunteer and check on Joey's case.

**Jon Cryer:**

Well that is good to hear.

- Susan Simpson:** The things that GIP's managed to do on a – I think it's fair to say – a shoestring budget, have been amazing but y'all are trying to move mountains with nothing. I'm grateful to y'all for sticking with Joey's case all this long so we could be here now. But it's been a considerable sacrifice for GIP. You have hundreds of cases, and trying to keep someone on Joey's case just shows your commitment to it and how much you've believed in it.
- Jon Cryer:** So is the actual workload at GIP *hundreds* of cases?
- Clare Gilbert:** Oh, it's... Yes. It is.
- Jon Cryer:** That's remarkable.
- Clare Gilbert:** It is very, very large. We probably have 500 open files right now. Which are anywhere in the process from initial letter to exoneration. But that's how many we're juggling. We have one paid staff attorney, which is me. [laughs]
- Rabia Chaudry:** Wow.
- Clare Gilbert:** And we have an annual budget of around \$150,000.
- Jon Cryer:** Yeah, that's tiny. How many hours would you estimate you've spent on Joey's case alone?
- Clare Gilbert:** Oh, thousands. I mean, definitely in the thousands. That's *unusual*. That is because I was working largely as a volunteer and they – GIP – managed to give me a *little* bit of money to keep working on the case, so, I was kind of coming in from the outside and really committed to working on this one case. Were we to do that again, unless we could get an outside volunteer to come in and work for pennies on the dollar, we just don't have the resources to dedicate that many hours to certain cases.
- The *good* news is that these cases are absolutely fascinating and intriguing and compelling, and we have *lots* of people who want to volunteer. So in many of our cases we co-counsel with volunteer attorneys and then we certainly have for example the streams of interns coming through and other people from the community offering to volunteer and help us out.
- Jon Cryer:** So I've also got a question for the *Undisclosed* team – how does the Georgia Bureau of Tourism feel about you guys publicizing the 'murder coyotes'?!
- Susan Simpson:** [laughs]
- Jon Cryer:** Um...
- Rabia Chaudry:** You know--?
- Susan Simpson:** The real bad ones are up north, and they're not that bad--
- Jon Cryer:** [laughs]



- Susan Simpson:** In terms of danger they're, like, way behind mold on your bread.
- Rabia Chaudry:** But Jon, you don't understand. The way Susan said it, I was just like, "Tell me about the wildlife in the area" you know? I'm not an animal kind of person. She's like, "Oh we we've got, like, possum, we've got murder coyote..." I'm like, "Wait, what?!"
- Susan Simpson:** [laughs]
- Rabia Chaudry:** Is that how they're *known*? Do like local people wouldn't call them? I mean is that like a Susan thing?
- Susan Simpson:** That's a Susan thing?
- Rabia Chaudry:** I knew. [laughs]
- Jon Cryer:** But I think from now on, that any murders that happen in Georgia, regardless of how they *happen*, we should blame on the murder coyotes. That's my thinking.
- Susan Simpson:** [laughs]
- [23:42]
- Jon Cryer:** [laughs] Okay guys so I'm gonna go to some Twitter questions, actually. The first one is 'By The Lake 23', and they ask: "Can you do a segment on the history of Crime Stoppers issues re: anonymity, rewards, etc. on the next *Addendum*?"
- Susan Simpson:** I think we'd need *more* than the next *Addendum* to do that... It's just that it's something that's hard to investigate, by the nature of the beast, which is probably why it's not been covered in detail before. But there's definitely-- If there's someone that has the time and resources to dedicate to it, I think there'd be a very interesting story there.
- Rabia Chaudry:** Is there any relevance to--? I mean, in terms of Joey's case, I don't think there's any Crime Stoppers stuff happening. Or did it?
- Clare Gilbert:** There's the Parents of Murdered Children.
- Jon Cryer:** So it's a different organization? But the same type of thing?
- Clare Gilbert:** There's a reward that's offered, and then it is promoted by the Parents of Murdered Children.
- Colin Miller:** Jon, in terms of the history of Crime Stoppers, it was in 1976, and it was Albuquerque, New Mexico, and it was actually a college student. There was a robbery at a gas station. They had been investigating the death of this college student for about six weeks, and they really didn't have any leads as to who may have committed the crime, and through the investigation they sort of had the sense it was someone local, but they didn't have a great idea what was going on. And Albuquerque was kind of a high crime area at the time and they decided, "What we're going to do, we're going to film a re-enactment of the crime, we're going to air it on TV and

hopefully someone will see it and have some information". But the concern is, the whole 'stop snitching' culture. And so they thought "Okay so let's do this, we're going to entice people in the Albuquerque area with the reward, and we think that if they're given this shield of anonymity they'll come forward". And in fact that's what happened: A caller called in, the very next day after seeing the re-enactment, and led the police to the two people who were responsible, and within 72 hours the murder was solved.

And then eventually that has led to, I think, it's almost 1,000 Crime Stoppers organizations worldwide. And that's the thinking: Is, you have people who are afraid to speak and you think, "Okay we're gonna dangle the carrot of the reward and we're going to have a shield of anonymity" and in many cases it *does*. It leads to the apprehension of criminals and in other cases, though, it leads to people who, *again* going back to the poverty situation or not, that they see a way to make a quick dollar, they say, "This person did it". And in fact they're making it up, the person's not responsible.

- Jon Cryer:** Okay we've got another question – actually we've got a couple of 'Brienne' questions – one is from 'Sammy Sal', who says, "Has *Undisclosed* changed any names involved? GIP has Joey's girlfriend as 'Ailinn' [sic], and not Shay, and is Brienne a real name?"
- Susan Simpson:** It's 'Aislinn,' actually.
- Jon Cryer:** Oh, thank you. [laughs]
- Susan Simpson:** And they are all different girlfriends that Joey had at various times.
- Jon Cryer:** So these *are* the real names.
- Susan Simpson:** Yes.
- Colin Miller:** Right.
- Jon Cryer:** Okay.
- Colin Miller:** *Shay* was the girlfriend at the time of the Panama City incident in July of '99, and then Aislinn was the girlfriend at the time of the death of Isaac Dawkins.
- Jon Cryer:** Got it. And we have another one from 'Yurch', who says, "Why was Brienne at the hospital on January 12<sup>th</sup>? Who called the short-term ex-girlfriend from four months earlier?"
- Rabia Chaudry:** It's a great question.
- Jon Cryer:** Yeah, very good question.
- Susan Simpson:** So Brienne was very close friends with Isaac's sister. Which I suspect is the connection there.

- Jon Cryer:** Okay we've got another one from 'Stephanie Bow' who says, "I think when Brianne and the rest thought they were being shot at, it was a firework. It was July".
- Colin Miller:** It was July, but it was... What was it Susan? Like the last week, or the beginning of the last week, so well past July 4<sup>th</sup>
- Susan Simpson:** That doesn't stop people from doing that.  
[crosstalk]
- Jon Cryer:** In rural Georgia you still... You have some fun! [laughs]
- Susan Simpson:** They do it in DC, I still hear them going off sometimes.  
**Rabia Chaudry:** Yeah. [laughs]
- Jon Cryer:** Sure.
- Rabia Chaudry:** And I think there's like a lot of possibilities to me. It could have been a car backfiring. It could have been somebody like, hunting. It's really hard to figure out what happened, or if anything even happened.
- Jon Cryer:** Well it seemed like, by the way in the first episode, that Susan was kind of dismissing it out of hand that it likely never happened, but *Colin*, you seemed to think that it well could have. Is there *any* evidence to suggest that it actually did, or did I misunderstand that?
- Susan Simpson:** Oh I think it's like, happened for sure. I just don't necessarily believe someone was like, shooting at Isaac, as in trying to shoot and kill Isaac, or actually shooting at people.
- Jon Cryer:** Well it doesn't make any sense as a crime, I mean if Joey is there... So he just wants to wait there, supposedly? Until they come, then fire a gun, then *leave*? I don't get the point of that.
- Susan Simpson:** And Brianne wasn't supposed to be home at all. She was staying somewhere else, and apparently just stopped by the home to like, randomly pick some stuff up there. So if Joey was there... Like, he's just lying in wait at a house where his ex is not meant to be?
- Colin Miller:** And also I'll say this. Since we talked about it before, my opinion might have changed a bit. We'll hear more about this in Episode 3. I thought, there's no way that they could jump to the conclusion that someone was shooting at them – and specifically Joey – if it weren't in fact a shooter, but I now have a good deal more uncertainty about the veracity and credibility of some of these claims that have been made in this case. And the jumping to conclusions and assumptions... It's a bit more plausible for me now.
- Jon Cryer:** Yeah, I just fee like, any time there's a group of teenagers, things sometimes get rowdy, and stories just get elaborated on. And things just get amplified. And considering that there was no casing from a bullet, there was no sign of a break-in, it was just an Arby's cup in the backyard, it begs any plausibility from me.

- Susan Simpson:** My mom got fixated on that Arby's cup. She was like, "There was no Arby's around there when I was growing up. I bet that's a clue. Someone from out of town must have done it!"
- Jon Cryer:** [laughs]
- Susan Simpson:** I'm like, "Mom, there is an Arby's there now".
- [laughter]
- Jon Cryer:** Thank goodness! By the way, the Jamocha shakes are unbelievable.
- [laughter]
- Jon Cryer:** I'm just... I'm going to put that in there.
- Colin Miller:** Clare, do *you* have any thoughts? I mean, I guess all of *us* discussed it on the episode. Do you have any thoughts about whether you think this was a shooting? Or some completely blown-out-of-proportion incident?
- Clare Gilbert:** Well, I have a hard time imagining that *nothing* happened, but I've never actually thought there was really a shooting. Many years before the shooting of Isaac, Joey had received a call from a few people saying, "We're coming over to your house to beat you up". And they came over and Joey met them in the garage and said, "Get off my property!" and fired a gun up in the air to scare them off, and they got in the car and they left. So I always thought that maybe this incident was a blending of that incident with whatever they saw that night. But I never believed--
- Susan Simpson:** [crosstalk] And that was in like 1995.
- Clare Gilbert:** Yeah! That was a long, long time ago.
- Susan Simpson:** And Clare, I'm not sure I told you this but one thing I found really interesting when I talked to Paul. He he didn't *remember* the 'Brienne house shooting'. He just flat-out didn't recall it. He told me that, I mean, if he told Moser that it happened then... He didn't remember it *now*, but he had a crystal clear memory of the '95 shooting.
- Clare Gilbert:** See, that's what fascinating to me. Also with the other person that we spoke with about the knife incident. You know you *ask* people these things 16 years later, and they *don't* remember what you would think are the traumatic incidents, but they do remember small, unrelated things, or things from different points in time. And it makes you wonder where the truth actually lies.
- Jon Cryer:** Well, wasn't there an actual court proceeding about the second shooting? I mean it would seem like *that* would cement it in your mind. If you're actually getting dragged to court to testify about this stuff.
- Clare Gilbert:** From what we can gather, there was an arrest warrant issued by Brienne, and then there was a hearing associated with *that*, but in her citizen's arrest warrant she doesn't mention a

shooting. She doesn't mention this incident at *all*. And my understanding is that Joey came to the hearing for it and that it was brought up at the hearing by her father and then also by Brianne, so I'm not sure the hearing was specifically convened over that. My understanding is that they were then able to prove that they were in Panama City. So the logistics of how that worked, I'm not quite sure.

- Jon Cryer:** We've got another one from 'Wish Us Donna', and she says, "Arrest affidavits are puzzling. Shooting him in the head and leaving him on the side of the road. Would the police theory about what happened be just too complex for this?"
- Susan Simpson:** There *is* no police theory.
- Rabia Chaudry:** Surprise!
- Jon Cryer:** [laughs] We shouldn't be surprised, but we are. Also she asked, "Mark Free arrest log. No notes for Joey but appears they were getting them to blame one another. And what is meant by the three names and mention of reward?"
- Susan Simpson:** I guess in *both* versions you'd call him the shooter – Mark Free. And eventually Mark and Joey are the combination they mostly settle on. Although at trial they kind of expand the circle of this little conspiracy – sort of, kind of. But when Mark and Joey are arrested at the same time, they bring them *both* back at separate times, and tell *each* of them, "Confess on the other and walk free". And neither did it.
- Colin Miller:** It's a classic prisoner's dilemma. Where they pit the two suspects against one another, you have usually a 'god cop, bad cop' and in this case neither of them cracked – neither Mark nor Joey said the other was involved, and they maintain to this day that neither of them had anything to do with this.
- Susan Simpson:** Yeah. They were each told they would get immunity. As in, they would walk away, like Jay.
- Rabia Chaudry:** It says a lot about both of them. I have to say.
- Clare Gilbert:** The question about the police theory is interesting, because, we laugh with the answer that the police *didn't* have a theory, but they really didn't! Like, Rome Police Department never really had a theory of how this occurred or *why* and then the Floyd *County* theory largely seemed to change depending on the 'snitch of the day'. I don't know if it came directly from the mouth of Stanley Sutton, or through a witness that Stanley was interviewing, but there was a suggestion that it was actually the defense attorney that was planting all of these different stories for the snitches to confuse the police.
- Susan Simpson:** To make Stanley look *stupid*, I think is what they said. We'll play that clip:
- [33:32]
- Stanley Sutton:** *What-- What else did you say that Rex- that Joey said that Rex was doing about...?*
- Young Man:** *Joey said that Rex was planting false information, false stories, different places. That way when he went to court he could prove all of them wrong, and just make everybody look foolish and get them off that way.*

- Stanley Sutton:** *This is what Rex is planning to do?*
- Young Man:** *Yeah. That's his strategy.*
- Jon Cryer:** But that's a remarkable bit of *Jiu-Jitsu* there. [laughs] "We sound stupid because you're making us sound stupid"!
- Susan Simpson:** Yes. That that was the 'grand plan' from Joey – he would confess in so many different ways that it would make Stanley Sutton look like an idiot.
- Rabia Chaudry:** Why didn't *Adnan* think of that?
- Susan Simpson:** [laughs]
- Rabia Chaudry:** You know, I was gonna say about the theory of the case thing, like, I can't help draw parallels to *Adnan's* case. Which is that even as recently as the PCR you have the state saying, "Well we can just change the timeline, we can change how we think the crime happened..." And I think that it *should* be mind-boggling for people, that a State can get a conviction without actually *deciding for good* how the crime took place. Like, I didn't know that could even happen! 'Cause I never practiced criminal defense law, so... It's just crazy to me! I guess my question to Clare – 'cause you're the one who *has* practiced it, and Susan and Colin if you guys know – is that: Does that *happen* in criminal cases? That the State can just *not* have to stick to one theory?
- Clare Gilbert:** Well it *does* happen, frequently, that the theories change over time, or even during the trial. Depending on what the witnesses say, and you can say, "Well, you know, you don't have to pay attention to this witness, but if you listen to *this* witness..." Yes, that happens. But the number one thing that you learn in prepping for your case is from both the defense *and* the prosecution perspective, from what I understand, is that you need a *story*. You need a theory of the case and you need to be able to put the pieces together to *give* the jury something to take away. Something that they can remember, and that they can use to make it all make sense.
- And here, there was no story, either by the state – other than: "The fact that Joey is an evil, psychotic person who was just determined to murder Isaac and then make his family pay for it" – but other than that, how that happened, and the logistics of it just isn't there. The defense wasn't able to give a story either.
- Jon Cryer:** Does Joey have a narrative for the night that this occurred?
- Clare Gilbert:** Oh yeah!
- Susan Simpson:** The next morning they asked him. So he has a good memory of events.
- Clare Gilbert:** And I mean for me, when I first read the case, when I first read the transcript all the way through, the story really stuck out to me. I was like, "Wow! If this was *my* case..." – and granted, hindsight is 20/20 – but if this was my case I would have focused on Stanley Sutton and how things changed when he entered the picture. And how all of the pieces, when you filter them through the lens of 'Stanley Sutton', all of the testimony and everything that's

occurring begins to make sense. But that story wasn't put forward by the defense, and the prosecution was able to go through the whole trial without calling Stanley Sutton as a witness.

[36:47]

**Colin Miller:**

Basically, what the State is doing here... It's known as 'argument in the alternative'. And the point, I think we've discussed this a bit already, we'll discuss it more, is they paint in broad strokes. And they would say, "Joey was jealous of Isaac because he was dating Brianne after he had dated her". Joey had a history of being a 'bad boy', maybe having a 'hot head', having a temper. And then, or even the alternative, which happens a decent amount, especially in cases where they're claiming accomplice liability as well, "We're not sure, was it Joey who shot Isaac? Was it Mark Free? Was it someone else? We're not sure. What we can tell you is we have this whole motive for the crime. He is the right person for this. We're not entirely sure *how* it took place but you can believe any one of these theories and the alternative, and that's enough to convict him".

Many times that's not good enough because it confuses the jury, but obviously in Joey's case they are able to say, through painting this broad picture, "One of these scenarios was likely the truth." But when you really dig into it, none of them make sense.

**Jon Cryer:**

So, prosecutors are allowed to be very general about that thing? There's no rule governing what they can do?

**Clare Gilbert:**

That's correct.

**Colin Miller:**

Right. They don't have to have a timeline. They don't have to have a specific theory of who the actual killer was, so for instance you could say, "Look there are these four guys, and they all hated the victim, and our theory is they planned to kill him, and kill him. It was on this date, or maybe the next day, or maybe the night, or the morning. We're not sure who fired the gun, but we're sure one of them did it. We're sure they planned it together". In *that* case you can get a conviction of all four.

**Rabia Chaudry:**

I think that's crazy.

**Clare Gilbert:**

Well, I mean if you're a defense attorney and the prosecution has no theory and is arguing multiple things in the alternative and has no idea how it happened... That kind of just screams reasonable doubt. And you just come in and you point out to the jury, "It's not good enough for them to just argue, 'It could have been any number of these things. We don't know *how*.'" they have to prove to you, beyond a reasonable doubt – you cannot have *any* kind of doubt – based in reason, as to my client's guilt." And...

**Rabia Chaudry:**

Right. But you still have-- I mean to get to that point, you're gonna be at trial. I mean like the fact that somebody can get charged, and arraigned, and, you know what I mean? Like even have to face trial? When there's like a, "Oh, somebody did it, and it happened somehow, and we're going to charge you". I just feel like there should be another standard before you get to the trial and reasonable... I don't know.

**Clare Gilbert:**

You know, they have to have probable cause, and there's various different standards along the way, it's just that at trial it's the highest standard of proof reasonable doubt.

**Jon Cryer:**

But I think that at trial what you run into is a general juror bias toward the prosecution and law enforcement. I think they're generally they're going to give the benefit of the doubt to the prosecutor. They're going to say, "Well he *generally* thinks that this *sort of* happened this

way.” You know? “Somebody’s dead, it must have happened, this is the person who hated him...” And I think that’s why you’re gonna end up with convictions where there *is* a very tenuous timeline.

**Colin Miller:**

Right. Yeah, and I think that a *lot* of what prosecutors do is, process of elimination. Which is to say, “This is the best candidate, and who else could it be?” And that’s good enough for many juries. When really, the standard should be, not, “Is he the best candidate for this murder?” instead, “Look at the case here. Is there a coherent narrative that you can say, not only that you *think* this person is guilty but that really you have no reasonable doubt”. You’re in, according to the Supreme Court, “A subjective state of near-certitude”. That’s the test for beyond a reasonable doubt. And I think that, that gets lost in a lot of criminal cases.

[40:24]

**Jon Cryer:**

So I’ve got one last Twitter question, this is from ‘Tiffany Snook’, and she says, “What is the ultimate goal for Joey’s case right now? Is it a PCR hearing like Adnan’s?”

**Clare Gilbert:**

Well, in Georgia, it would be either an extraordinary motion for a new trial, or a subsequent *habeus* hearing. Both would need to be based on considerable new evidence. So right *now* – new evidence, or for example, a strong Brady violation recently discovered, which is also, technically, new evidence – so, right *now*, our goal through the podcast is for new evidence. We really reached out to the podcast team because they do a fantastic job of getting the word out, hopefully to the local community of people who might remember things and call in information. But even through the process since November, working with the *Undisclosed* team, who are just fantastic investigators, we’ve unearthed quite a bit of new evidence, and we do anticipate that we will be going back into court sometime in the not-too-distant future.

**Jon Cryer:**

So, one last thing that I wanted to ask, and it’s actually still about Adnan’s case. I’ve been giving Colin a huge amount of agita about the ‘bombshell’ for a while. He tweeted that a “bombshell” had been found, and it was *months* ago, and he’s never revealed it, and he’s made it clear that there are sound legal reasons for him not to. As well as the fact that there appears to be more than one of them.

And of course, you know, I respect the strategic reasoning of Adnan’s lawyer, Justin Brown, but I also wanted to ask: Wouldn’t it serve Adnan well for the attorney general to really understand the weakness of his case right *now* when he’s considering his options? When he can actually release Adnan a lot sooner? I know that that’s not generally how things are done, but wouldn’t it be good for them to understand how behind the eight ball they are at this stage?

**Rabia Chaudry:**

Yeah, this is one of the big complications here, and it’s been a complication the entire time we’re working on Adnan’s case, is how much do you reveal and how much do you hold back? What could be very, very useful in court, whereas other things are maybe issues that raise eyebrows, or they can’t procedurally be raised. I mean I’ve thought about this a *lot*. I’ve thought about – even with the two investigators working on it, and I’m not gonna say who, but there’s folks like, running the investigation – I’ve said, “Hmm, is this something we should make public? Maybe this will, like, really sway the State one way or the other?”

But again, you know, we have to defer to his lead counsel on these issues. Having said that, if people keep asking the question: “What if there’s a new trial, or he’s offered a plea, or if these charges are dropped, will it just be buried forever?” It *won’t* be buried forever. Eventually... We’ll probably do like a couple of episodes on just the bombshells.

**Jon Cryer:**

I’ve gotta tell you, just the level of anticipation for those is huge. [laughs] Those are going to get like, ‘Superbowl’ downloads.



**Colin Miller:**

You do always have that retrial in the back of your mind, and then there's certain things where, as we've said, they're bombshells, and it might be that you want that witness on the stand for the State, and, it's the first that the State is hearing about this in cross-examination, as opposed to, "Oh, okay", they're aware of this and it's out there in the public eye and they can decide a way around that, so there's strategic reasons and understandably yes, you *would* maybe in terms of leverage for trying to get an exoneration or have the State mount an appeal maybe disclose that and maybe Justin *will*, if there *are* plea negotiations between the State and him. But there are reasons why you might want to hold certain things back, and not give the State notice of exactly what you have.

**Rabia Chaudry:**

I mean a prime example is what happened with Asia. And this is one consideration as we were waiting to file the post-conviction was, "Should we go to the media?" Well, if we go to media now, before post-conviction is filed, that might like, make Asia, like, prominent, right? And the State could maybe *do* something that could maybe hurt our chances of getting Asia in front of to testify. It happened anyways, when they *did*, you know, get wind of it. And so that's the kind of fear you don't want any interference.

**Jon Cryer:**

And actually I just learned that Asia suffered a recent health scare, so, we're thinking of you, Asia, and and please be well. Well, thank you guys! I just wanted to say, it's been a pleasure talking to you, Clare. Thank you for bringing the case to the *Undisclosed* team. And thank you team! It's always great to talk with you guys.

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