
UNDISCLOSED SEASON 2: THE STATE VS. JOEY WATKINS

ADDENDUM 24: WHAT LIES AHEAD
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Jon Cryer: Hello! And welcome to the *Undisclosed Addendum*. I am Jon Cryer, and you are listening to the podcast about all things *Undisclosed*.

Now, in the final episode of Season 2 of *Undisclosed*, the team revealed the explosive findings of their year-long investigation into the case against Joey Watkins. And broke the news that the Georgia Innocence Project had built a compelling case for, and was in fact filing court documents to get Joey, a new trial.

Now, I am here with two of the hosts of *Undisclosed* – we have Susan Simpson and Colin Miller.

Hey guys.

Susan Simpson: Hey.

Colin Miller: Hey.

Jon Cryer: Now, before I get into the microphone drop that was this last episode of *Undisclosed*, a couple of events have overtaken us: We have actually got a ruling from the Court of Special Appeals on the appeal that was filed by the State.

Now, actually I was under some amount of confusion because I thought that their filing for *leave* to appeal was the actual appeal. And I was kind of relieved about that, because it was kind of amateurish [laughs] And I thought: ‘Wow, that’s the worst they got?’

My *deep* misunderstanding of the legal system was showing its face and they were actually just filing for *permission* to file an appeal – is that correct Colin?

Colin Miller: That’s right. The State filed for permission to appeal the cell tower ruling. The defense filed for leave to appeal the ‘Asia issue’, and today in the order the Court of Special Appeals said, ‘We’re going to hear both of those claims’ so we’ll have additional briefings in February, March and April, and it’s scheduled for the June session that we’ll have oral arguments on both of these claims.

Jon Cryer: And this could go any number of ways, right? I mean they could turn down the appeal of the State, could they conceivably turn down *both*? Or could they grant both?

Susan Simpson: They could deny both, grant both, grant one not the other, it could be anything.

Jon Cryer: So if they grant *both*, what do you do?

Colin Miller: If they grant both then there’s still a new trial. Because--

- Susan Simpson:** Yeah.
- Colin Miller:** You're saying, for instance, the court grants the State's appeal and finds it's not ineffective assistance in the cell tower claim, but also grants the defense's cross-appeal on the Asia issue and finds that wasn't effective assistance, then for different reasons but the same result, we still have a new trial?
- Susan Simpson:** Adnan just has to win *one* of the two. The State has to win both.
- Jon Cryer:** Ah.
- Colin Miller:** And there's still the *third* claim, which is 'ineffective assistance' based upon failure to seek a plea bargain, which is also going to be heard by the Court of Special Appeals.
- Jon Cryer:** At the same time?
- Colin Miller:** Correct.
- Jon Cryer:** And this will all be part of one big hearing?
- Colin Miller:** Yes.
- Jon Cryer:** So it won't be a protracted thing like the PCR hearing was.
- Susan Simpson:** No. It'll be much cleaner.
- Colin Miller:** Yeah. No new witnesses, no new evidence, it's just legal arguments and then we're done, Jon. Probably... Losing party's going to appeal to the Court of Appeals of Maryland – which is the state's supreme court, so it's going to extend on even past that, in all likelihood.
- Jon Cryer:** So the State made a big show of talking about some new evidence that they had, that two sisters were apparently willing to testify that Asia McClain had been willing to fraudulently testify on Adnan's behalf many years ago. What happens to that evidence *that* they claim to have?
- Colin Miller:** Right. So, the Court of Special Appeals referred that to the three-judge panel hearing the appeal. So, there are going to be three judges. Majority rules on all the issues we just discussed, and they've referred this issue to the panel. So the panel has to decide: "Do we remand this again?" And send it back down to the circuit court to have these sisters testify.
- I think that legally, and timing-wise there's no way that they remand, but at least these three judges are going to consider whether we need to send it back down again to Welch to have this new evidence coming in. Because Court of Special Appeals can't hear new evidence. They can't testify in the appellate court. They'd have to send it back down again.

- Jon Cryer:** I'm sorry, this is just so confusing, because there's so many threads of possibility here. I have to imagine this is very difficult for Adnan and his family.
- Colin Miller:** Absolutely. I mean, if the court had denied leave to appeal, this is all over – we have a new trial and the State might drop charges. You might have a plea deal, and this is probably going to extend it at least a year and a half, maybe two years, before we get final resolution.
- Susan Simpson:** It's still moving forward though. As much as it's terrible that the waiting goes on. It's how it works for appeals. And this is still in the right direction.
- Jon Cryer:** Oh! And just joining us now is Rabia Chaudry – also a host of *Undisclosed*.
- How you doing, Rabia?
- Rabia Chaudry:** Hi Jon. I'm doing well. I hope you are too.
- Jon Cryer:** I'm doing well. I'm glad you can join us. Now just to catch you up: We just got finished talking about the COSA ruling on the State's leave to appeal, and how the State has to basically have them both turned down in order to avoid a new trial that, if Adnan wins one of either, he gets a new trial. And, is that correct, or...?
- Rabia Chaudry:** Yeah, and I think didn't COSA also reserve an issue, that they didn't pass down? Colin? Do you remember? There's another issue that--
- Susan Simpson:** The plea issue.
- Rabia Chaudry:** The *plea* issue.
- Jon Cryer:** Mm-hmm.
- Rabia Chaudry:** So I wonder if that's also in play? I don't see that-- It wasn't dismissed or anything, so I feel like that's also a third possible...
- Jon Cryer:** Mm-hmm
- Rabia Chaudry:** Issue. But I don't know if that's how it works or if they *only* look at what's coming back up in the appeal, or if they can still decide on that third issue.
- Colin Miller:** They can do the third issue. Yeah. Because they had the briefing on the plea issue and the Asia issue, and they remanded the Asia issue because they needed additional fact-findings. That plea issue is still there with Court of Special Appeals and that's an active issue that will be briefed and heard.
- Rabia Chaudry:** So that's three shots he's got.

- Colin Miller:** Yeah.
- Rabia Chaudry:** We just need to win on any *one* of those and you know I can't say that I didn't cry when I heard it. Because it's just kind of exhausting. And also because all this time we've known that the ALAs are *mostly* dismissed and not often entertained, so this is just going to just drag out the process further. But, it is what it is.
- Jon Cryer:** Oh! So you're saying that leave to appeals are generally *not* accepted.
- Rabia Chaudry:** Yeah.
- Jon Cryer:** Oh, really. Oh. I did not know that.
- Rabia Chaudry:** I mean, even when we had filed our leave to appeal, after he was initially denied by Judge Welch, it was granted after *Serial* happened, and I don't know if that contributed to it, but when it was granted it was a big deal. The ALAs are not very often granted. I think Justin said something like it was like 2% or something, of the time. I mean very, very few are accepted.
- Jon Cryer:** But as Justin said, this case is not like any other.
- Rabia Chaudry:** Yeah. And also, the other thing is, I don't know if that statistic is true only for when defendants file it, versus when the State files it. Maybe they are more often accepted for review when the State files it. So...?
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- Jon Cryer:** Okay. Also with us is Clare Gilbert, of the Georgia Innocence Project, by phone! How are you doing, Clare?
- Clare Gilbert:** I'm great! Hi everybody.
- Jon Cryer:** So, I'm under the impression that you're literally calling us from having *just* dropped off the paperwork for this *habeus* filing?
- Clare Gilbert:** That is correct! We went to Rome this morning. We collected a couple last affidavits to accompany our filing then we went to Walker State Prison, met with Joey, went over everything, and got his signature and filing notarized, then we drove to the county courthouse in Walker County, and filed the *habeus*.
- Jon Cryer:** [crosstalk] And I'm sure--
- Clare Gilbert:** And now we are back at the prison.
- Jon Cryer:** I'm sure the clerk had no idea the world of hurt that was about to come down on the State, right? She wasn't like, *cringing* in terror as you thumped down the pile of papers!

Clare Gilbert: No. She seemed fairly unimpressed.

[laughter]

Clare Gilbert: I think we were the first *habeus* filing in 2017. They've had one transfer into Walker County, but we're the only *habeus* filed anew, so far, so... It's a small county that's-- I mean, today's the 17th but they're not hearing that many *habeuses* yet.

Jon Cryer: Well, congratulations. Now, what exactly *is* the process of a *habeus* filing? Just because as I've shown, I have enormous ignorance of actually what occurs when these things happen. So this *directly* seeks a new trial? Or does it seek a thing like a PCR-type hearing? Or how does it work?

Clare Gilbert: We are *not* directly seeking a new trial. We are raising several issues that we believe warrant reversal of the conviction. And from *there* it would be up to the prosecutor to determine whether or not to file a new trial-- Initiate a new trial and a new hearing.

What is happening now is that we've filed the *habeus*, we made four basic arguments in the filing, and now the prosecutor has roughly 30 days to respond. And from *there* we can set a hearing and call witnesses and try to prove the issues that we raised in the *habeus*.

We have a couple of concerns, initially, that we can talk about, and that you guys may have addressed before, about potential procedural bars. And so our *first* concern is clearing any kind of procedural bar. Joey has already had a *habeus*, which you know. And in Georgia it is especially difficult to get a second *habeus* – they consider it a 'successive *habeus*' and it's actually prohibited, except under certain circumstances.

So, we've worked hard to make the record that this does *not count* as a successive *habeus* that is raising new claims that the previous attorneys couldn't otherwise have been alerted to, and therefore we have a right to be heard by the court on the substantive issues of the matter.

Jon Cryer: So, I was going to ask Colin this: Because you do a terrific job in that last episode of telling us what case law actually supports, all the things that you're filing in the *habeus* filing – but what could the State conceivably use *against* all those things? To rebut those allegations?

Colin Miller: Yeah. Well there are cases on sort of both of the broad points made by the defense in Georgia that the State could cite.

So, on the juror misconduct issue there's a line of cases. The most recent I saw was a case called *Murphy vs. State* where a juror, just this year, the appellate court found he used a lighter to demonstrate a fire, and the court found this was an experiment, but it was pre-existing knowledge – he had been an arson investigator – and therefore that did not warrant a new trial.

And on the whole 'Brady and prosecutor making false claims', the most recent case I found was a case, *Washington vs. Hobson*, which was a rape case, and the prosecution didn't disclose that they had doubts about the victim's credibility *et cetera*, and there were questions about whether this would have changed the outcome at trial. So, there were cases the State can cite.

I think on the juror misconduct issue, there's *no* case more on point than the older Watkins case. And the cases the State would cite really don't have much relevance to *this* matter.

In terms of Brady, I think the actual misconduct here is pretty clear. I think the exculpatory nature of the evidence is clear. The tough part's going to be, the State, I'm sure, is going to

cite case laws saying this is a collateral matter – it's *not* directly related to the murder; it's related to the shooting of the dog and the placement on the grave.

So, they probably have some case law on that, but I think that really that Watkins case and the misconduct by the juror is the strongest argument, period. And I don't see the State rebutting it.

[12:56]

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Jon Cryer:

Now, one thing that I noticed, is that because the dog evidence – the Grave Dog evidence – was brought in under the rule of 'conditional relevance' – *who* is responsible to keep the prosecutors *honest* about that kind of stuff? Because it sounds like she never presented evidence that it *was* relevant, but yet the judge didn't call her on it, the defense attorney didn't call her on it. Who's job *was* it to do that?

Colin Miller:

Both defense counsel and the judge. So, in this case, the judge allowed for a 'subject to admission', meaning that the prosecutor was in essence saying: "We don't have the evidence yet, but we're making an offer of proof and a proffer and we'll present it later".

And so it's incumbent upon the judge when that's *not* presented to say, "Well where's the evidence? Or I'm going to have to strike this and/or grant a mistrial". And of course the defense is aware of what's going on, and they could have and should have objected to the lack of the 'connecting-up' evidence.

Jon Cryer:

So is part of the *habeus* filing pointing out that the judge should have called her on that?

Susan Simpson:

Well it's a Brady issue, and it's raised here. So it's just saying that the prosecutor had a duty to give this evidence over to the defense, and she failed to do so. And it's more the *harm caused* by the failure to hand it over that makes this material. Because if the prosecutor *had* given it over, then the dog evidence didn't come in at all. Which makes Joey's case a lot stronger.

Colin Miller:

Right. Yeah, Jon it's more along the lines of: *if* the prosecution had disclosed this, *then* it's likelier the judge or the defense would have objected to the evidence at trial and had it excluded.

Clare Gilbert:

The defense *did* object to the evidence, arguing it was irrelevant and overly prejudicial, and should be kept out. And arguably if there was knowledge and evidence presented that the weapon that killed Grave Dog was different than the weapon that killed Isaac, that's yet another argument why this is irrelevant and should have been kept out.

And if you can keep Grave Dog evidence out *entirely*, then *that* is what the prosecutor-- That's what Tami Colston was arguing was indicative of a signature killing and the calling card and that was the *hatred* and the *depravity* manifested in this signature killing and shooting of the dogs and thereby revealing Joey's motive to murder Isaac – because he was basically a sociopath who would do anything once he got something in his mind.

If you could keep that out *altogether*, then that highly prejudicial, highly damaging evidence that many of the jurors recall about the trial – and there were factors in their decision, would arguably have been excluded and not presented to the jury at all.

Susan Simpson:

And to me, what is most prejudicial about the dog evidence is that if you believe it – if you accept that the dog found by the side of the road had been actually on the grave at some point,

at it was intentionally placed there it rules out the most *obvious* reasonable doubt in this case, which is that Isaac was murdered in a road-rage shooting. I mean it's hard to get rid of that doubt in this case, because everything about it looks like a road-rage shooting and the only way to get rid of that doubt is by showing actually it was a targeted *psychopath* who was doing this.

Rabia Chaudry:

As far as I remember, and correct me if I'm wrong, the prosecution did they said they were going to provide the evidence that there's a connection between Joey and Grave Dog but they actually *didn't*. And so, couldn't the State argue well, they didn't really actually, you know, follow through that evidence so it wasn't really prejudicial to him because it wasn't an argument that the State ended up actually making it a convincing way.

Susan Simpson:

But they *did* use the evidence – the dog itself was the evidence they got in. What they *hid* was the evidence that, well, it made it harder to get the dog in.

Clare Gilbert:

And they did use it in the convincing way by making that factor in so prominently in their closing argument.

Rabia Chaudry:

Okay.

Colin Miller:

And that ties us back to Adnan's case, which is that Supreme Court case, *Kyles v Whitley*, the same thing that Adnan is claiming. That the way the prosecution argued the cell tower pings and the Leakin Park pings in closing argument. That's the strongest evidence or prejudice... Sort of the same thing here.

Even if, Rabia, to your point, the actual evidence was somewhat weak, Tami Colston and really hammered home on that an opening closing to say as Clare noted: "This is a deprived person who killed the dog killed Isaac placed the dog in the grave."

Clare Gilbert:

And we know for a fact that made an impact through the conversations with the jurors. And especially the one juror that you guys featured in the previous episode who really clearly articulated that she couldn't understand why Joey would have *done* something like this until she realized that he is just truly an *evil* person, as demonstrated by what he did to the dogs.

Jon Cryer:

Just out of curiosity: Is it *possible* that your interviews with these jurors will actually come up as *evidence* if they do have a hearing?

Clare Gilbert:

Yes. It is possible. The process that you would use if you don't have an affidavit from the juror, then you would call them. Or you may call them anyway as a witness – you'd subpoena them could testify in the hearing. If they testify inconsistently with a previously-recorded statement then you can use that to impeach them.

Just as if they testify inconsistently with a documented conversation that they had with someone. For example, if Susan did an unrecorded interview with a juror, and the juror gets on the stand under subpoena and says something completely *opposite* of what she told – or *he* – told Susan in the interview, then we could call Susan as a witness to impeach that juror.

Jon Cryer:

And at this point, did Juror Number 8 actually give you an affidavit?

Clare Gilbert:

We *did* obtain an affidavit from the juror that did the timed drive, yes.

- Jon Cryer:** Was she ever able to remember exactly how she did the test?
- Susan Simpson:** So, again, looking at the record and looking at what a juror would have been likely to hear and understand that trial, it would be very difficult for Juror 8 to have actually known where the actual spot is here. Because consistently Tami Colston refers to it as *Chulio Road*, which isn't the right spot. It's a mile further to the west and closer to the crime scene. So, we don't know where she started, the juror started or where she entered the test but it's very likely that she *did not* choose the actual location involved in this case.
- Clare Gilbert:** The other thing is that the maps that the jury was looking at were not at all detailed – the cell phone maps. So it would have been you know even if she had a photographic memory and could remember the maps there were no real streets or details on those maps. So she could well have been starting in an inconsistent location with the maps.
- [19:45] ≈
- Jon Cryer:** I had a question for Susan: Has anybody *ever* figured out *any* simulation of how this supposedly happened that actually factored in him picking up a different *car*? Because to me, all those calculations you made... None of them even seem to take into account the extra time it would need to pick up *a different car*. Which made them all even *more* outside the bounds of possibility. Has that ever been tried?
- Susan Simpson:** By the police! There's a few times where they have jailhouse informants come up with the 'South Broad Street Car Lot Theory', which is something that comes up later in the investigation. It's not present at first, but at some point there comes an idea that Joey went to this car lot that his dad owned to get the little blue Honda that doesn't exist.
- So they try and push that theory and to *me* it looks very much like they developed it based on the timing they had. Like, they to just try to find a way to make it work where he could possibly swing by some kind of car lot. But it still doesn't work. It still doesn't fit the Kingston Tower call, it doesn't fit the actual directions we know that would have been- had been traveled. It's *closer*, so I do try and work that in there, but it's not a really viable theory whatsoever.
- Clare Gilbert:** Yeah, my sense is that they *did* find that drive and distance but they didn't link it to the towers.
- Susan Simpson:** Mm-hmm.
- Clare Gilbert:** But they kind of did it independently of the cell tower evidence. Which, if you do it independently of the cell tower evidence that works, but if you use that our evidence it doesn't come *close* to working.
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- Jon Cryer:** I had a question for Susan: At one point you were trying to figure out why the police focused on Joey so much. And you know, you went through was it just that he-- Did he have a record of more criminality than most of the other kids? What exactly *was* it?
- And it occurred to me that at first the police didn't. Detective Moser had come to the conclusion that Joey wasn't involved. It was *Detective Sutton* who went after Joey and continued that on.

Susan Simpson:

Well, Moser *was* geared in on Joey at first. During the very first days he was also gunning for Joey as well. He did look at other leads though. He did check out other possibilities, but it seems like Joey was consistent main suspect the whole time.

Until some point around March, it seems like Moser starts backing off in the case. He also does get *literally* backed off when the Floyd County Police join the team but he also seems to lose interest in Joey as a suspect. Like, there's the note from Sutton proposing investigation and Sutton writes: Moser didn't see the point. Which all times up pretty nicely with when they got the cell phone records and did this undisclosed drive test.

Which makes *me* think maybe Moser just realized, too, that the cell phone evidence couldn't work and decided Joey hadn't done it.

Jon Cryer:

Well, also I remember that Brianne had actually characterized Joey as *abusive*. Do you think that maybe *that's* why they zeroed in on him?

Susan Simpson:

Well, we don't know what happened that night at the hospital but we do know that Brianne was with Isaac's family when the cops were talking to them. So, from the very first moment she was there, and I don't think it's unfair to guess that she was telling the cops: "You know it had to be Joey. Joey would have done this Joey is so jealous over me it must have been this."

So, I think from the start that was a *very* strong factor in how the police did their investigation. Which I *definitely* didn't appreciate at first in this case. I came into this case because of what the various court opinions say what the court transcripts say, thinking that Joey was like, you know, *not* the sympathetic defendant. Someone who had done a lot of bad things and still got wrongfully convicted.

But as you get more into the files it becomes pretty clear that if this could happen to *anyone*. Joey we didn't stand out in any remarkable way that you would think would influence a wrongful conviction.

Jon Cryer:

I was struck that the juror had mentioned a couple of times that the *rest* of the jury was living in a *crime novel*. You know that implies that they were all sort of trying to dig into this case in a way that saw things in the light of, you know, things as 'good and evil' and, you know, they were being bombarded with a lot of character evidence. Brianne's accusations of Joey were never actually brought into the case... Am I correct?

Susan Simpson:

They were. Absolutely. And some of the jurors remember it. There's one juror who believes that he recalls for some reason that Joey held Brianne hostage for hours at gunpoint...? Which didn't actually get testified to. So, I'm not sure where he's getting that from. But she *did* talk about all kinds of stories that she claims that-- Things Joey had done, *supposedly*.

Although consistently we found a lack of any sort of corroboration for those events.

Jon Cryer:

One of my favorite moments of the last episode was the sound that Claire made when you called her and told her that the juror had done her own test:

[24:24]

Susan Simpson:

She went out into the drive test of her own.

Clare Gilbert:

What?!

Susan Simpson:

And it convinced her that the State's theory was plausible

Jon Cryer: There is this stifled tiny yelp. That--

Susan Simpson: Oh yeah.

Jon Cryer: I want that to be my ring tone from now on. You can hear her go, "What?!"

Clare Gilbert: [laughs]

Jon Cryer: But it's great because it's from a distance. You can hear just this tiny little, "What?!" And it was a wonderful moment I thought so you'll enjoy it.

Rabia Chaudry: It must have been a happy yelp, right? I must have, you know, it gives a little bit hope...

Clare Gilbert: Yes.

Rabia Chaudry: To revisiting the case.

Jon Cryer: It certainly sounded surprised.

Clare Gilbert: Yes. Yeah.

Jon Cryer: Yeah. You were very surprised it sounded like it,

Susan Simpson: It was more just being startled too, though.

Clare Gilbert: It's significant.

Rabia Chaudry: When Susan told us, not that anybody should rejoice at juror misconduct, but I was like, you know what? This is going to give him another shot, and hopefully a good shot. And so, I was kind of really excited to hear about it.

Susan Simpson: I think I still feel a little.. Not *conflicted*... That's the wrong word. But, you know, so we put, obviously, Juror 8 in a tough spot now. Which I never intended to do. And when I talked to her and she agreed to interview with me, it wasn't something I expected.

So I do wish that-- I don't know that I *wish* exactly.

I'm glad for Joey this happened, and I'm thrilled that he's got a strong claim to bring to court, but I do hope that this doesn't negatively impact Juror 8. Because she was just trying to do the right thing.

It was very clear to me that she was probably the *one juror* in the jury room that was trying to do her job right, and trying to evaluate things in a very objective and clear way.

And she just felt *overwhelmed* with the resistance she was meeting from other jurors who didn't even want to talk about it. They just wanted to talk about the you know the 'crazy, evil

things' Joey did. And she couldn't hardly get anyone to listen to her when she started telling them: "But wait, the cell phone of him shows that he could have done it."

Clare Gilbert: Ben Goldberg and I spoke with her as well and that was... I mean we got that very clear sense as well that it was a difficult process that she was taking *very*, very seriously. She very much believed in and understood the cellphone evidence to mean what *we* all understand the cell phone evidence to mean. And she couldn't understand why the other jurors just didn't get it. And...

Susan Simpson: Didn't care!

Clare Gilbert: Unfortunately... Yeah.

And unfortunately it was this test, which Ben Goldberg keeps saying you know this is why jurors should not go out and do their own experiments because, you know, it's not a controlled situation. And she wouldn't have known exactly *how and where* to do the tests to conduct it properly. But it was enough to convince her to change her verdict.

So, it's difficult for her because she didn't realize she was doing anything outside the bounds of what a juror is supposed to do. She thought she was being thorough and deliberative and really trying to reach a fair decision. And now she's gotten involved in this. But she has been very co-operative and honest and communicative about her feelings. She said what happened and then stuck with it and has been willing to sign an affidavit, which pulls her into this process that I'm sure most people would not want to be involved in.

So, we're very grateful that she was open minded and honest with not only Susan but also with us and moving forward.

Susan Simpson: I think the need that she felt to go and do this test speaks directly to Joey's direct appeal. And what Rex Abernathy did and did not do. Because they *had* someone who had driven the routes and timed them, and who could have presented the evidence that Juror 8 was really searching for and really felt she needed to make a decision.

But, Rex Abernathy chose *not* to introduce that guy – the guy who could have testified: "Here's what I drove, here's how I drove it, here's the speed they were taken to make it in time." – I mean, if that had happened Juror 8's questions would have been answered. She would not have needed to do it herself, and she would have been convinced that-- I believe very strongly she would have been convinced that it wasn't possible for Joey to be guilty

Rabia Chaudry: You know, in almost feel like she is this case is Asian McLain and the fact that she's standing by what happened, what she did... And even though it's going to be maybe a personal inconvenience to her, it isn't deterring her from just being honest and being willing to provide an affidavit and come to court and do this.

And I just want be *clear* though, I mean, for her to not have followed the judge's instructions doesn't necessarily mean there would be any kind of legal repercussions towards her, right? Like from the court or anything like that?

Clare Gilbert: There would *not* be. There would not be, no.

Susan Simpson: She had no idea. She very much was not aware or had *no idea* that she was not supposed to have done what she did. She was very offhand when she told me about it. She kind of just threw it in there casually. She was like: "Yeah I even checked it out and it didn't work."

Clare Gilbert: And even then, it's not any kind of criminal behavior. There would be no sanctions or consequences because of that. Other than getting subpoenaed to court to testify about it.

And then there's one other thing that we just wanted to mention. We ended up getting affidavits from all of Joey's living and still...

Susan Simpson: [crosstalk] Non-disbarred?

Clare Gilbert: Non-disbarred attorneys. And so Rex Abernathy submitted an affidavit on Joey's behalf, and so did Bobby Lee Cook, on Joey's behalf. Both of which are helpful in a number of ways, particularly in potentially clearing this procedural bar.

So, we're also grateful for that and glad that they were able to come forward and support Joey in this. As well as affidavits from Bill O'Dell and Bud Siemon.

Jon Cryer: What are these affidavits swearing to?

Clare Gilbert: So, the affidavits basically say: "I was Joey's attorney at this point in his trial and/or appeal and at no point in my representation of Joey Watkins did I ever become aware of a juror irregularity or a juror misconduct issue. At no point did I become aware that there was actually a bullet in the dog's head, and that that bullet had been extracted and identified."

So, then the rest of the affidavits say that they had no way to know about the bullet in the grave dog's head being extracted or identified as a different caliber than the murder weapon or that the Floyd County Police Department had specifically requested that that be done. And they also had no idea that there was an investigative file by the GBI or evidence of a cell test conducted by the Floyd County Police Department. And that if they *had* known this information they would have used it to more effectively defend Joey and impeach witnesses.

And Rex's also says that he had noticed a change in the jury when the dog evidence came in. That they looked at Joey with, sort of revulsion and disgust.

Susan Simpson: In this episode, Joey talks about that as well.

Clare Gilbert: Yeah. Yeah. So, you know, it's been kind of a long difficult process with prior defense attorneys – as these are when you allege things like ineffective assistance of counsel – but we're comforted and reassured by the fact that they've come forward and are helping out Joey now, so that's great.

[33:10]

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Jon Cryer: Now this brings us to a bunch of things: The show raises some actually very troubling questions in terms of the conduct of Floyd County Police and the prosecutors. And it's similar to the Adnan case in that it doesn't feel like there's any impetus for that to get *dealt* with. Because some of the questions you brought up from the first season of *Undisclosed...* If the police were in fact coaching Jay through his testimony, that's a big deal! You know, and obviously I have no proof that they were but that *does* need to be investigated.

In this case we've got things that are *very*, very troubling. We've got the secret GBI case number you know, Sutton's use of jailhouse informants and, you know, *was* he pressuring witnesses? You know, we've got the DA who you know obviously we've got the Brady violation that's brought up in the *habeus* filing. But it doesn't feel like any of this is ever going to get *dealt* with. I mean, when do these kind of investigations ever actually *occur*?

- Colin Miller:** Yeah. Almost never. I think the Innocence Project that last year where it was *one prosecutor* actually being disciplined in hundreds or thousands of cases where this misconduct had occurred.
- Jon Cryer:** Oh, right.
- Clare Gilbert:** There was that recent legislation in California, where now a prosecutor can go to prison for three years for a Brady violation but whether that's ever actually used, I would be surprised if it was. But I do think...
- Rabia Chaudry:** [crosstalk] Right. This legislation says that it would be a felony.
- Clare Gilbert:** Right. Right. Whether it will make a difference to Joey remains to be seen. But I do think that courts do not look kindly on this type of behavior, whether intentional or not, by the prosecutor's office. Because even if by some just *bizarre* set of freak circumstances that the prosecutor herself did not *know* that there was a bullet sitting at counsel table during the trial, she certainly had an obligation to find that out from her own investigators, the police department and the GBI – all of which she should have inquired before affirmatively representing the *opposite* to the court and the jury.
- Jon Cryer:** But the investigator *also* affirmed it. Who actually brought the stuff over. Is it possible that he didn't *notice* that there was a bullet amongst the evidence?
- Susan Simpson:** At first he said “*No*” and then he said “*Yes*”.
- Jon Cryer:** Because I mean, seriously. I don't know how these things are carried. I don't know how they're-- Do they just throw them in a banker's box? How does it work, you know?
- Susan Simpson:** He had four bags. He had four bags with four kinds of bullet evidence one was the dog bullets and three bags were other kinds of ballistics. So, I guess, I mean, he can *say* he wouldn't have...

When Clare first asked about it he told her, “Oh yeah, Tami would have seen that because it's written right on the bag.” But then when he started to realize it was going on he suggested that, “Well, you know that bunch of bags... Who looked at all the bags...?”

But the *other* thing is Sutton was sitting there at the table. He was in the court. He was listening to this he heard everything and he *knew* that he'd submitted that dog for testing a ballistics recovery, so. Someone in that courtroom from the State knew exactly what was going on said nothing.
- Jon Cryer:** Well somebody got it its own case number!
- Susan Simpson:** Yes.
- Jon Cryer:** That's very telling as well.
- Susan Simpson:** Yes.

Rabia Chaudry: You raised an important point about this lack of accountability, and the lack of mechanisms to get the accountability. So the question is, and I've gotten questions so many times and I'm sure Susan and Colin have: *What can people do* when you are faced with such egregious conduct by a State actors?

Because you know, if you're represented by counsel and they mess up your case you can file an ethics complaint, right? And so, I've been asked over it, "Well what can you do about like, some of the attorneys that were, like on the State's side in Adnan's case?" I think we can also file a bar complaint, though is that really going to achieve anything? That's highly unlikely.

And so, even in the case of this Californian legislation where a prosecutor *could* get charged with a felony for withholding-- Not just withholding, but I think there's more to the calculus of whether or not he can be charged with it.

The question is: If we can't get indictments for police officers who are caught on camera very badly hurting civilians then how are *we* going to get a DA's Office to charge a prosecutor? Right? It's like, will the law actually ever be used will anybody actually ever be prosecuted under this? And that's the frustration.

Susan Simpson: [crosstalk] I'm not taking that bet. [laughs]

Rabia Chaudry: Yeah, I'm not taking it either.

Jon Cryer: But I wonder why that is? Because I mean, obviously I have enormous empathy for police officers and for prosecutors – it's incredibly hard job you know the rules are *incredibly* complex they're dealing with gray situations you know, situations where it's not 100% clear exactly what the right thing to do is at that moment. And they know that it will be under court scrutiny.

So, you know I have enormous empathy for people with that job they're human beings are going to make mistakes they're going to cut corners just like anybody in any job. I imagine police are going to: "If I coach this guy *just* a little bit he's going to be a great witness. And I know what I'm doing is right because I know this guy *did* it."

But all those little things *add up* and great injustices are done. And *plus* there are the occasional *bad apples* – there are people who-- There are prosecutors are trying to pad their resumé... There's cops who are cops for the wrong reasons. It's rare but it *happens*.

But it seems to me like there's no mechanism anymore it's like I don't know if it's the atmosphere that we're all working together, you know, that they feel like they can't do that to a coworker...? Because this happens so rarely I don't know if any prosecutors experience--

Susan Simpson: [crosstalk] Well, it's not so rarely – that's the sad thing.

Jon Cryer: Yeah. Yeah now that you mention it... This show is proof. But has any prosecutor lost their career over something like this? I don't know...

Susan Simpson: Just one. Just one in Texas.

Jon Cryer: Okay

Susan Simpson: And he was actually a judge by the time the Brady violation came out.

- Rabia Chaudry:** The Morton case?
- Susan Simpson:** Yeah
- Rabia Chaudry:** But, I didn't know that he actually *lost* his career. I just heard that he spent 10 days in prison for it.
- Susan Simpson:** Oh. Yeah.
- Rabia Chaudry:** 10 days, which is *nothing*.
- Susan Simpson:** It's nothing. And that's the one example we have.
- In terms of how the system is worked out here, it's hard to prosecute prosecutors because obviously if it's your colleagues and coworkers. That never goes well. I really don't think anything short of a cultural commitment to norms of due process can help here. It *has* to be understood that you *cannot* toe the line on this kind of stuff.
- Whereas right now, I think there's a lot of agencies a lot of DA's offices there's kind of an understanding that you can fudge the numbers a bit and that's okay. As long as you're just fudging, it's not cheating... It's not depriving defendants of their rights.
- But, until they know that everything should be handed over that I think should be available is firmly ingrained in our prosecutors I don't see much changing.
- Rabia Chaudry:** Right. Along with prosecutors, what about *witnesses*? I mean, there are *countless* stories that I know, and I've personally – I mean obviously in Adnan's case and others too – been in a courtroom where it's we *know* the witness is lying. You know, witnesses lie *all* the time. Sometimes because... Maybe they're misremembering things, maybe they've been coached information, or they've been fed information. And sometimes they're just lying. Because they're trying to get benefit...
- And there's no-- I don't think there's any repercussion for any of them, either. I mean I can't I don't know of any case where look perjury really comes back to bite a witness in the rear end. How is Joey doing by the way?
- Clare Gilbert:** [crosstalk] Apparently you're not allowed to...
- He's doing well, he looks well. Well he is cautiously optimistic. I think he's hopeful but recognizes that we have an uphill battle. So he's doing great!
- And Ben got to meet him for the first time in person as well as Rick, for the first time in person.
- Rabia Chaudry:** Right. Send him our best.
- Clare Gilbert:** Will do.

- Jon Cryer:** So Clare, it's fascinating to me that to courts in the American legal system, the *process* is the most important thing. Even to the point where the *actual innocence* of the human being involved here is less important than the process. And with that in mind, how come we don't have some sort of repercussions when it *appears* that police officers have committed misconduct-- Prosecutors have committed misconduct? You know there doesn't seem to be any mechanism or repercussions for *them*. Is the Georgia Innocence Project going to be pressing any kind of issues in terms of that?
- Clare Gilbert:** Well, I think that that is certainly a factor that you see over and over and *over* again in wrongful convictions and false conviction cases involving innocent people. The Georgia Innocence Project has a policy program, as well as the litigation work that we do. And so, when we get cases like, for example, if we are able to exonerate a client like Joey, or any number of our *other* clients who have issues of Brady violations and prosecutorial misconduct, that is a particularly good time to come forward and push the legislature to make changes in the laws to bring awareness to these issues and make the laws more protective of defendant's rights and prevent these things from occurring.
- Jon Cryer:** Yes, I don't know *why* here in California we suddenly got this law where committing Brady violations by prosecutors is a felony. I would love to know the political process that brought that about. It all happened sort of behind the scenes. It wasn't you know blaring in the headlines here in Los Angeles. Although we have crazy headlines. In their defense. [laughs] There's always crazy stuff happening here that's kind of distracting from the legal stuff.
- So Rabia and Susan and Colin, do you guys have any questions for Claire now that you've been at this for a year?
- Susan Simpson:** It's hard to think that we've come this far and done the whole season already. It's been a marathon.
- Rabia Chaudry:** It's a marathon that Susan really has been carrying the torch on for much of our end, and she's done really tremendous work.
- The question I actually have and I apologize if Clare's actually addressed this before, is: What are the expectations in terms of the length of the *habeus* process? How long does it normally take to get it heard? And a decision?
- Clare Gilbert:** It depends. It depends on several factors. I mean, we could *realistically* get to a hearing probably within six months. Whether we *want* to do that, as opposed to take some time and do additional discovery, see if we can find or develop any additional claims that may lie in anything that we haven't been able to uncover yet... Stuff like that.
- And things like coordinating witnesses for trial, you know, you have to juggle a lot of schedules... All that kind of stuff can push the *habeus* out further and further.
- Our *goal* is to-- You know, Joey's been in for an awfully long time. And, thanks to the work that *you* guys have done, we have just a *tremendous* amount of investigation and documentation *already*. So in *our* opinion we should be able to get this done fairly quickly.
- Once we have the *hearing*, then there's an opportunity for briefing following the hearing and Ben's in the car here, and he's the *habeus* expert so I'm just going to ask him: Let's say you get to the end of the process, Ben, how long does it take for the judge to issue a ruling, usually?
- Ben Goldberg:** It could be a couple months, it could be more than that. It depends on the complexity of the issues... Depends on how fast the parties submit proposed orders. And it depends on how

long it takes for the transcript from the hearing to be prepared. Because the judges typically wait for that to require the parties to submit their proposed order.

Rabia Chaudry: It's a really tough decision for attorneys to ever make a case public and make records public and trust a third party with their client and so, really on behalf of the *Undisclosed* team and our listeners, Clare, thank *you* very much and *all* the lawyers who have helped us get through this case and given us all the access to it and brought Joey's case to our listeners.

Susan Simpson: It's amazing how many people have contributed so much to get us where we are now. Without the efforts of everyone on the call now, our staff on the podcast... It's inspiring in some ways, but also just overwhelming to think that this what *takes* to challenge a wrongful conviction. Without *dozens* of people spending so many hours working *this* hard, you can't do anything.

Clare Gilbert: Right--

Rabia Chaudry: And John Cryer – it takes Jon Cryer!

Jon Cryer: [laughs]

Clare Gilbert: Yes!

But the just absolutely *amazing* thing about addressing these issues through the forum of the podcast, and the way that you guys present it, and get *so* into the weeds on all the issues, and break it down and all the legal and factual analyses... I just think *yes*, these case take a tremendous amount of work but you not only *did* that work and *do* that work, but then present it in a way that educates everybody about how complex these issues are, and how many issues underlie these types of decisions.

And I think it just really increases awareness about the roots of the problem and how these things happen in the first place. And *we*, the Georgia Innocence Project, are just *tremendously* grateful for all of your help.

I mean, *Joey*, I mean he says it every single time I talk to him. He's just *so* extremely grateful, and I don't know what we would have done without you guys. I mean, we were really kind of at the end of the road with him and the resources that George Innocence Project had, and it's just been a fantastic experience working with you all, and we're incredibly grateful for everything that you've done. And you know that this is not the last time we're ever going to talk to you.

Susan Simpson: [laughs]

Clare Gilbert: But we are just very grateful.

Susan Simpson: Yeah, we're ending Season 2, but we're not at *all* ending our coverage of Joey's case.

As things go on we will update the podcast, obviously, and hopefully Clare can come back again.

Clare Gilbert: I would love that.

- Jon Cryer:** Thanks Clare, and if you *do* get arrested today, we'll be your witnesses.
- Clare Gilbert:** [laughs] Thanks Jon. And thank you too. We're just very honored to be in your presence and have you educate everyone along the way on this process.
- Jon Cryer:** And get educated myself. So thank you, thank you.
- Rabia Chaudry:** Thank you for everything you've done this season, and for hosting all these *addenda*, you've been incredible.
- Jon Cryer:** Well thank you. And I just have to say as a fan of *Undisclosed*, this was my dream shot. You guys, I'm serious. You know to be able to talk with you guys every week after I heard the episode was just so incredibly fulfilling, and I have such high hopes for Joey.
- You come away sort of disheartened about the system but heartened at people's reaction to it every week, so thank you guys for giving me the opportunity to be a part of it.
- Susan Simpson:** And I want listeners to know that we told Jon at the start that if he *wanted* to hear spoilers, and *wanted* to hear anything that was coming, he could, but he declined for your sake so that y'all could be on equal footing.
- [laughter]
- Jon Cryer:** But *now* you can tell me the bombshell! Now!
- [laughter]
- You see, I did a whole season, Colin, but he just disappears! He slinks off!
- All I heard was a little [makes a Skype noise] 'bloop-bloop'!
- Rabia Chaudry:** He just swallowed the little piece of paper. He just swallowed the piece of paper that he had written it down on.
- Jon Cryer:** Oh, this is *torture*. I'd have to do a whole other season! Oh...!
- Susan Simpson:** Maybe that was the plan all along.
- Jon Cryer:** Thank you guys so much.
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- Jon Cryer:** Well, that is it for the *Addendum*. No, really that's it. We are done for the season. I don't know if I'm going to be able to come back, but I want to say one of the many things that I am grateful for has been the opportunity to discuss and highlight the many, many people and organizations that help incarcerated people and the wrongfully convicted with a special emphasis on the Georgia Innocence Project.

And I just want to take this moment to announce that I'm going to be matching every donation made to the Georgia Innocence Project by texting 'Joey' to 91999 since the last episode of *Undisclosed* drops, up to \$5000. So if you donate \$5, I'm going to make it 10 if you donate \$100, I want to make it \$200. If you donate \$500, which is incredibly generous, and the *Undisclosed* listeners have been beyond generous so far, but \$500 would bring \$1000 to the Georgia Innocence Project. They are trying to hire a new lawyer, they're \$9000, away from their goal and I want to help them get there and I want to help you help them get there, so please if you can, text the word 'Joey' to 91999 and donate to the Georgia Innocence Project.

Now, working with the *Undisclosed* team has been a transformative experience. I was a fan when I started, but actually interacting with Colin, Susan, Rabia, Dennis, Rebecca, Methal, Brooke and Hannah on a weekly basis has left me speechless. The diligence, the intelligence and care that you all bring to bear on making the show is awe inspiring.

And I also want to thank every guest who's been on the addendum That's: Congressman Keith Ellison Marcia Chatelain, Alison Sweeney, Rebecca Lavoie, Reagan Pasternak, Julie Seaman, Brooke Giddings, Seema Iyer, Darby Dickerson, Madeline Baran, Jim Clemente, Bill Rankin, Amber Hunt, Amanda Rosman, James Weirick, W. Kamau Bell, Bob Ruff, Amelia MacDonald Perry, Chris Flor, Jill Twist, Brendan Kenny, Shannon Murphy, Payne Lindsay, Sarah Brewerton-Palmer, Kay Levine, Rick Latta, Connie Walker, Monica Bell and Scott Ritter. You all have educated me and changed my view of the legal system and you've given me hope.

So thank you, thank you, thank you. Thank you to the fans of the show, I am one of you, thank you for listening to all this and letting my clear lack of professionalism not stop you from listening to this! And please continue to discuss the show on Twitter at #Undisclosed and if you want to talk about the case of Joey Watkins that's #JusticeForJoey.

All the case documents and photos are still posted at Undisclosed-podcast.com – if you get a brainstorm let us know. You can follow *Undisclosed* on Facebook, Twitter and Instagram at the handle @UndisclosedPod and also our key partner, the Georgia Innocence Project, at GA innocence I want to thank Hannah McCarthy for one last time – thank goodness you made me sound like a reasonable human being.

Thank you Rebecca Lavoie of Partners in Crime media for audio production. Thanks Patrick Cortez for the wonderful music for the show and Methal, Methal, Methal, Methal. Thank you for your wonderful prep packets every week they prepared me and made doing the show a joy. Now, I don't know if Joe Watkins will ever get a chance to hear this but there are a *million* people out there who care that you get justice I believe you are innocent Joey, and I hope someday you'll be free.

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Jon Cryer:

Well, okay guys, did we ever get Colin back?

Susan Simpson:

No, he had to run to a meeting, I think.

Jon Cryer:

Oh... Okay, because I was going to ask him what the bombshell was.

Susan Simpson:

Oh. [laughs]

Jon Cryer:

But I guess not anymore. *Oh...* I missed my chance!

- Susan Simpson:** He planned it! He planned it.
- Jon Cryer:** I know! *Ahhh...* That [bleep]!
[laughter]
- Jon Cryer:** Oh my god!
- Rabia Chaudry:** That's it.
- Jon Cryer:** I know! I know!
- Susan Simpson:** That was your one chance, and you blew it.
- Jon Cryer:** Yeah, exactly. Because once you finish your last podcast you're not allowed to speak, after that. That's how it works.

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