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

**ADDENDUM 5: WHEN INNOCENCE ISN'T ENOUGH  
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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*. The *Addendum* allow us avid listeners to take a deep dive into the latest episode. Season 2 of *Undisclosed* is investigating the case of *The State vs. Joey Watkins* – a case of a young man who may well have spent the last 16 years in prison for a crime he did not commit. With us today are Colin Miller and Susan Simpson, the hosts of *Undisclosed*. Say “Hello”, Colin.

**Colin Miller:** Hi Jon.

**Jon Cryer:** And... Susan...

**Susan Simpson:** Hey!

**Jon Cryer:** [laughs] You worked on that ‘Hey’! We also have with us a couple of very special guests: We have Julie Seaman, who is an associate professor at Emory University School of Law – she teaches courses and seminars in Evidence, Constitutional Law, and Freedom of Speech. She *also* serves as the president of the board of the Georgia Innocence Project. Hello, Julie.

**Julie Seaman:** Hi!

**Jon Cryer:** Thank you for being here today.

**Julie Seaman:** Of course, I’m happy to be here.

**Jon Cryer:** And we also have Brooke Giddings, who is a social worker, a therapist, a nanny, and the host of the *Actual Innocence* podcast – a podcast dedicated to telling the stories of people convicted and then exonerated of crimes they did not commit, in their own voices. She’s also a producer of *Undisclosed*. How are you doing, Brooke?

**Brooke Giddings:** I am amazing. I’m glad to be here.

**Jon Cryer:** Oh, well thank you, thank you! Now, Brooke I just wanted to start with a quick question for you: Why did you start the *Actual Innocence* podcast?

**Brooke Giddings:** That is a great question. I listened to *Serial*, and I listened to *Undisclosed*, and apparently I was a very naïve person, because I didn’t realize that people actually got wrongly convicted. And so, since I didn’t know, I assumed that there were lots of other people who didn’t know. And I feel like that needed to be changed. And so, my strength is talking to people, and so I thought by making a podcast – talking to people – I could help *more* people know about wrongful convictions and bring awareness to the cause.

- Jon Cryer:** I was curious, how do you get in touch and find the stories of these people?
- Brooke Giddings:** I would tell you, but I would have to kill you.
- Jon Cryer:** [laughs] Okay, sorry it's apparently a trade secret. [laughs]
- Brooke Giddings:** No, it's really-- It's interesting, it's... I have a lot of connections with Innocence Projects, and some people, they find *me*. You know, they hear about my podcast and they also want to be advocates because they don't want the same thing to happen to other people. And so they find me, and they want to tell their story.
- Jon Cryer:** Now, I find when I listen to the show, that it is just absolutely heartbreaking to me. And considering that you're a therapist, do you ever find yourself having to be your *own* therapist, after doing these interviews?
- Brooke Giddings:** Sometimes. In my job as a therapist, I actually work with children, so it's kind of a different population, but yeah. I mean, I use a lot of my own coping skills and self-care and relaxation, you know, after listening to these stories, for sure.
- Jon Cryer:** Because they are stories of exonerees, there's always obviously *something* of a happy ending. But to me, the tragedy of these stories is what gets me, and your show is so beautifully produced, and it's really remarkable what it does.
- Brooke Giddings:** Thank you very much. I was talking to someone just yesterday, and he was talking about how you don't give up hope, and you know? His morale had *armor* around it. And I was telling him, "When I wait 15 minutes in line at the pharmacy, you know, my morale is busted." And he waited 15 years for his appeals to go through, and he said, "No. I didn't lose my morale because I knew I was innocent." So, it's just *amazing*, the hope that these people have, and they *see* it as a happy ending.
- Jon Cryer:** Well also, I hope that you folks are understanding that you're bringing such a depth of knowledge to people, who listen to these podcasts, that if ever there's some way to help people from falling into this kind of situation in the future, it's because of what you guys are doing. You know, that, I think, is a huge service.
- Colin Miller:** Yeah. And I think Brooke's podcast really puts a face to the statistics. We often hear the numbers about false convictions, and whether they're based on faulty eyewitness testimony, or false confession. You sort of aggregate those, but then it's really great, I think, to be able to listen to Brooke's podcast and hear these stories. And the thing is, most of the people are not bitter. They have lost a lot of their lives to false incarceration, but they're so hopeful, and they really are able to lend a great perspective to this entire criminal justice complex that we have, and how individual people, families, lives are affected.
- Brooke Giddings:** There is this exoneree that I interviewed, his name is Derrick Bunkley, and he is a young black man, and he lives in Detroit. And oftentimes I ask the exonerees, "How are you doing now?" And I hear things like, you know, "I like to travel, I spend time with my family, I go on these vacations..." and it's because they've won these settlements. But Derrick Bunkley... His goals to me were, "I want to get my own place and I want to buy a car." And I *know* that he's working because I scheduled my interview around his job, but he has such a positive outlook on life. And so, that was so inspiring to me that this person who, it seems like the world is against him,

and his goals are to get his own place and to get a car. Is still hopeful, and has a positive outlook after all these things have happened to him.

**Jon Cryer:**

Actually, that was always something that struck me. That in some of these exonerees' cases, they do get fairly large cash payouts. And it's not in *all* cases, by any means, but my understanding is they've been given no skills to cope with those things financially. And I can't imagine they have the skills to handle that well.

And Julie, actually, because you work with the Georgia Innocence Project, I was curious if you'd observed that with the exonerees you've dealt with?

**Julie Seaman:**

Different cities have different procedures for compensating exonerees and not every state has any kind of *anything* for compensation. But in Georgia they do it through private bills. And so usually a law firm will take a case *pro bono* when we have an exoneration and they will help that person get a private bill passed to compensate them for some amount.

But yeah, I mean, several of our exonerees are in really bad shape, financially, and *part* of it is that they don't really get that much. Kind of, swimming out there on their own without a lot of resources. And the Georgia Innocence Project has a program called 'Life After Exoneration' where we try to help people, because there are so many issues after exoneration. But, you know, we barely have any money to do our main mission. And that's something that we'd like to do, if we had more resources, but it's really, really hard.

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**Jon Cryer:**

Now Colin, this is the first time that I've had a chance to talk to you after the State's *appeal* was lodged in the Adnan Syed case. And I actually had a couple of questions about that. I know that Judge Welch cited the Curtis case, in terms of 'knowing and intelligent waiver' issue and then the State came back on the appeal and said that they didn't know of any cases where that had been cited. In cases of 'ineffective assistance of counsel'. First of all, can you explain to me *why* that would matter in the State's appeal, and then could you let me know how on earth you found a case in five minutes?

**Colin Miller:**

Yeah. So this goes back to the waiver issue in Adnan's case, and essentially Maryland courts have a dichotomy between fundamental rights and non-fundamental rights. And they say, if it's a fundamental right, the only way you can waive it and not raise it at a later point in time is if your waiver was knowing and intelligent. And in this case – *Curtis vs. State* in 1978 – which said this is a claim of ineffective assistance of counsel, you're guaranteed to the right of counsel under the Sixth Amendment, therefore it's a *fundamental* right that you have a effective assistance of counsel. And therefore the defendant, Curtis, couldn't waive that right unless it was knowing and intelligent. And as you know, the State – in their application of leave to appeal – says, as well, "In our search we haven't found any subsequent Maryland cases that have applied this 'knowing and intelligent waiver' rule to a claim of ineffective assistance of counsel."

As *you* say, "Why would that matter?" It wouldn't, really. For instance, Adnan cited a case out of Maryland, [inaudible], which dealt with ineffective assistance based upon the handling of alibi witnesses, there were no subsequent Maryland cases on that point, but Judge Welch easily found that Christina Gutierrez was unreasonable by failing to contact Asia McClain. So, it wouldn't really matter unless there was actually an opinion in Maryland saying, "We're overruling Curtis in finding knowing and intelligent rule doesn't apply to 'ineffective assistance'."

I just went on West Law search, and the very first result of a pretty basic West Law search of those terms came up with *State vs. Adams*. It was a case out of Maryland in 2008 and very

specifically, it was dealing with defense counsel not objecting to jury instructions at the end of trial, and the court, very clearly in that case found, as in that case found it was a case of ineffective assistance. It's a fundamental right, "We're applying the 'knowing and intelligent waiver' rule." So yeah, there is other Maryland precedent out there which directly refutes the State's point about lack of Maryland precedent.

**Susan Simpson:** I think we knew the State was in for a bad time when they had to preface their claim with, "Our *preliminary* search has not uncovered anything".

**Jon Cryer:** That's a 'cover your ass' phrase?

**Susan Simpson:** It means they haven't actually done enough of a search to actually be confident with what they found, and wanted it to sound good.

**Jon Cryer:** But, see now, does that indicate that the State is just not *trying* very hard? Or that they're *inept*? Or both? [laughs]

**Colin Miller:** I mean, I did what I thought was the clearest search you would do. And it was the very first result. There's a thing known as '*shepherdizing*' in the legal world, which is essentially, nowadays at least, you go into West Law or Lexis, which are the search engines for cases. You plug in a case like *Curtis vs. State*, and you click on a button and the fourth result for that was *State vs. Adams*.

So I mean, really, if they were doing even the most basic search, I don't see how they could have missed this case that was reaching the same conclusion as the Curtis case.

**Jon Cryer:** But doesn't this beg the question...? I mean, if this is the level of effort they're putting into this, is this moral and ethical for them to do this? And I say that because, there is a human being in jail, who is being deprived of their freedom at this moment, and the appeal that they are doing – it feels like they're just in lockstep, at this point. They're defending an original conviction that is very hollow. That doesn't seem to have any real evidence any more. And so I'm asking you, what is the State's obligation? Why would they keep doing this in this sort of odd, automatic, 'lockstep' when it doesn't even appear that they are necessarily trying all that hard?

**Colin Miller:** Yeah, the prosecutor in this case, the State attorney general's office, the client is the People of the State of Maryland. And, a little bit more specifically, although not directly, it is representing Hae Min Lee and her family. The claim by Maryland would be: "We are representing our state because we believe Adnan Syed is a murderer; he's a dangerous person, we believe this was a constitutionally-valid conviction, we're going to do everything we can to fight to secure it."

But as you know, Jon, it doesn't really seem that they have a legal leg to stand on. Judge Welch's opinion was very well researched and written, and *even if* they might have a claim of waiver with regard to the cell tower issue, the Asia McClain issue on appeal, I think, is almost a slam dunk for the defense becomes to a cross-appeal. So I mean they would claim, "We're representing the people of Maryland". Many people would say, "They're wasting tax-payer dollars, this is a person who has had his conviction rendered invalid, why are you fighting so hard to try to reverse this ruling that seems pretty ironclad?"

**Jon Cryer:** Exactly. And for them to retry the case, okay, that's fair in my opinion. If they honestly believe that they have the evidence, then by all means! Retry the case. If they say these two sisters

that have come forward to invalidate Asia's testimony are real, great. Bring them forward! And actually retry the case, and let this man either go, or be convicted. But the *appeal* to me is where it crosses an ethical line, because it's *just* a delaying tactic. Would they be doing that...?

And by the way, I'm trying to read into it to some degree that they're trying to do their job well, or you know, they *absolutely* believe that Adnan is guilty or *something*. Some actual moral way for them to wake up every morning and go to work, and feel like they're doing a good job. But in the appeal, I can't find that, because it seems like it's just a delaying tactic. Just a way to keep Adnan in jail as long as possible.

**Colin Miller:**

I think that they realize that they have almost no chance of securing a conviction after a retrial, *especially* after some of the statements that Jay Wilds has made. Especially after some of the findings. Especially with regard to lividity, the cell tower pings, *et cetera*. They know this is their only shot. If they can *somehow* get a reversal of Judge Welch's opinion granting a new trial, that's their best shot. Because if it goes to a new trial, it's going to be a PR nightmare, it's going to be a jury nightmare. It is going to be an expert witness nightmare. There is just *no* legitimate chance they have of winning a conviction on retrial.

[15:30]

**Jon Cryer:**

And Julie, actually, I wanted to bring up something with you. You wrote a very interesting Op. Ed. In *The New York Times* about the fact that it doesn't seem like the Constitution protects an innocent person from being incarcerated, merely on the fact that they are, in fact, *innocent*. You mention a case of a man named Sandeep Bharadia. Could you tell us a little bit more about that case? And the implications of innocence and constitutional law?

**Julie Seaman:**

Mr Bharadia is one of the clients of the Georgia Innocence Project, and he didn't become our client, though, until a few years ago. So, at his original trial he was convicted of a sexual assault in a little town called Thunderbolt, Georgia, which is near Savannah. And it was a kind of home invasion. It started out, I think, as sort of a burglary, but then this young woman walked in on the person and he blindfolded her, and sexually assaulted her. And he used a glove. He wore a glove. And it was a very distinctive glove. It was a sort of baseball glove. I believe it was described as a blue and white baseball glove, and she was very specific about the glove.

So, so a little bit later, the police found her stuff and the glove at a woman's house. the woman's name is Ashley Dold. And Ashley Dold said, "My boyfriend, Sterling Flint, asked if he could put this stuff at my house." So the police went to Sterling Flint, and he said, "Oh yeah, I put it there, but it's not my stuff, it belonged to this guy Sandeep Bharadia, he gave it to me. He asked me to hold it for him."

So that's how they got to Bharadia. And at the time of the *trial* the trial counsel never asked for any DNA testing, so we don't really know why the lawyer didn't ask for DNA testing. But he did not. And so later, after the conviction, there was a request for DNA testing, there was a motion for a new trial, and the judge granted the request to test the glove. The other evidence has been lost.

But they tested the gloves, and at the time they tested the gloves, outside the gloves was a woman's DNA, we assume it was the victim, but the State didn't want to test *her* DNA, but we think it was her DNA. On the inside of the gloves was an unidentified male but it was *not* Bharadia's DNA inside the gloves. At that time, the judge said, "Well, that's not enough for a new trial – just the fact that there were cells inside the glove but they weren't his – not enough for a new trial.

So, *years* later, I think, 2008, or maybe even later than that, the Georgia Innocence Project comes on board, and we make another motion for testing of that DNA. And the judge says, "Well, I'm not going to re-test it." But in the alternative, they asked for it to be run through

the CODIS database. CODIS is a centralized database where all the DNA from all the states and the federal system goes in there, and it stays there and it gets indexed. So eventually the judge said, “Well, yeah we might as well run it through CODIS,” like, “I guess there’s no harm in running it through.”

They run it through CODIS, and lo and behold, whose DNA is that in the glove? It’s Sterling Flint. The witness who testified against Bharadia at the trial, you know? The one who gave his girlfriend the stuff. And so at that time, Bharadia moves for a new trial, based on this new evidence – this DNA – that’s not his, but is the co-defendant, who had testified against him – and the court *denied* it. And the court denied it based on a case law in Georgia that says that in order to get a new trial, one of the things you have to show in addition to showing that there would probably be a different result based on this new evidence – which the court said “Yes, you’ve satisfied *that* prong of the test”, but *another* prong of the test is a due diligence prong.

And that means that the defendant who is asking for a new trial based on new evidence has to show that they exercised diligence at the time. That they didn’t lack diligence in *not* asking for it at the time of the trial – they had some good reason not to ask for it then.

And they couldn’t show that. I mean there really wasn’t a good reason why they didn’t ask for it then. Or if there *was* a reason, we don’t really know what it was. And so they failed the due diligence prong. And so this goes all the way to the Georgia Supreme Court, which says, “Okay, right.” You know? “It doesn’t matter. You have to satisfy that prong of the test.” So even if you have-- I’m paraphrasing here--

**Jon Cryer:** Yes, one would hope. [laughs]

**Julie Seaman:** [laughs] Artistic license. Though, not all that much.

So this is a unanimous decision by the Georgia Supreme Court essentially saying, “*Even* if you satisfy every other prong of the test... So *even* if you show that you have new evidence that *proves* that you are innocent, it doesn’t matter, if you fail the ‘due diligence’ prong... You have to satisfy that prong.”

So if you don’t have a good reason why you didn’t test it *before*, even though it’s evidence of innocence, tough luck. And so, the Op. Ed. I wrote, I was *incensed*. So when that decision came down, like *that* minute, I started writing that Op. Ed.

**Jon Cryer:** Yeah, you can *feel* that when you read it, it’s-- [laughs] You can feel the seething rage.

**Julie Seaman:** Exactly! It’s just so frustrating, because, so the bottom line is that-- And this has been discussed in the, sort of legal academic literature quite a bit, but the Supreme Court has never decided the question whether there’s a constitutional right to be released upon a showing of actual innocence.

So this is what they call a ‘freestanding claim of innocence’, meaning that it’s not based on any procedural or any *additional* constitutional defect. So it wasn’t ineffective assistance of counsel. It wasn’t like, an invalid search and seizure, or Fifth Amendment violation, or any kind of specific defect in the trial that you can point to. It’s its *own* claim, kind of floating out there, it’s innocence, in and of itself. It’s own constitutional claim. And the Supreme Court has repeatedly sort of had the *opportunity* to answer that question, and it has always punted the question. And it’s always been able to decide a case on some *other* basis and not had to address that question.

But, so, this is the kind of thing where I think, regular people, like people who aren’t lawyers – they are *appalled* that this could be the constitutional law, or that it could even possibly *might* be. And even law students – I always bring this up in Evidence every year – I tell my second

year students, “You know, you’re not fully brainwashed yet, you’re not done with law school, and so what do you think about this? Do you think that this is legal?” And they’re generally, you know, completely appalled. So, for example, I’ll read you a quote from Justice Scalia, from an old case – “This court” – meaning the Supreme Court, the US Supreme Court – “has never held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a *habeus* court that he is,” quote, *actually*, close-quote, innocent.”

There’s a lot of quotations like that, that I could read you and so far the Supreme Court has not answered the question.

**Jon Cryer:**

Well it appears that, constitutionally, it’s just about guarding the integrity of the *process*. And not at *all* about the integrity of what in reality occurred. Does that differ from state to state? Do all the states have different ways of dealing with actual innocence?

**Julie Seaman:**

Yeah, they do. So the *US* Constitution, if the Supreme Court decided this question, that would apply everywhere, right? But the states have their own constitutions as well, and the state constitution could provide higher protection than the *US* Constitution, and often the state constitutions *do* do that.

And so some state courts have held that their own state constitution does provide an ‘actual innocence’ claim. And then some lower federal courts-- I’m sure Colin knows the answer to this, because, Colin, you know *everything*... I don’t have the specifics, but I know that *some* lower courts – federal courts – have held that there *is* a federal freestanding innocence constitutional claim. But that hasn’t been decided by the Supreme Court. So we don’t know what the Supreme Court would say about it. But depending on what *state* you’re in, you might have a claim, but it’s not guaranteed by the-- At least, we don’t know yet, whether it’s guaranteed by the *US* Constitution.

**Brooke Giddings:**

As a non-attorney I want to say you’re right – I *am* appalled.

**Jon Cryer:**

[laughs] Thank you, Brooke.

**Julie Seaman:**

Oh yeah. It’s just-- One more thing: When I wrote that Op. Ed. I got a *lot* of email. And one email was from a guy who teaches some sort of criminal justice course at a college, like, I think it was in Wisconsin. And he gave me an article that he was working on – a comparative article about Germany versus the *US*, and he basically said he wanted to use the Op. Ed. as part of his syllabus and he said in Germany they much more look at the substantive truth. Let’s say--

**Jon Cryer:**

[crosstalk] As opposed to the process.

**Julie Seaman:**

As opposed to the process. So the *US* is very ‘proceduralist,’ and other systems are much more substantive. And I think that that’s probably true. And we protect procedure in *order* to protect substance, among *other* values. So, it’s not that our system doesn’t *care* about the truth, but that’s what all the procedures are for – or largely for – but, it’s like, when you have this clear conflict, then our system sometimes prefers finality over truth.

**Jon Cryer:**

Well your Op. Ed. actually hinted that the worry was that by opening up the thing to things other than procedural errors, it was opening up Pandora’s Box and allowing people to endlessly contradict their rulings. Do you think *that* played into it?

**Julie Seaman:**

Yeah. I mean, I think that that's the main worry, and I think that the concern about finality is legitimate, but it's like taking it to its most ridiculous, illogical extreme. Because there are ways that you can protect against every single convicted person raising every single kind of claim versus, "We have DNA evidence that is pretty conclusive. And we have no forum to present it."

**Jon Cryer:**

Colin, do you have any idea how this would have *arose*, in terms of-- Because you know a lot more about the history of the legal system in the United States than I do. [laughs] How would this particular type of logic arise in the system?

[25:42]

**Colin Miller:**

Well, I can say specifically, and I wanted to sort of follow up with Julie on this, is my understanding is that in Georgia this was a 2011 law with regard to DNA testing, and it was Stephanie Benfield who sponsored it. And there was a lot of pushback, and she wanted, basically, for it to be *easier* to appeal on DNA grounds, but there was a lot of opposition. And that led to Georgia having a pretty restrictive avenue of relief for people claiming to be DNA exonerees.

And this isn't isolated, because there's *another* case. And actually there's going to be a podcast premiering on this case, and it's the Devonia Inman case. And Inman was convicted of murdering a Taco Bell worker during a robbery and there was a viable alternate suspect, and eventually DNA testing was done. There was a ski mask found in the victim's car and it turned back as a match for this alternate suspect in the case, but *despite* that... Julie, you're right, there was no relief granted to Inman, and he's still incarcerated.

**Julie Seaman:**

That's right. And so, Devonia Inman is also one of the Georgia Innocence Project's clients, and a law professor at Georgia State Law School named Jessie Cino is the *pro bono* lawyer who's working on that, and working on that podcast. And it's a very similar situation, actually, where you have DNA evidence that points to this alternate suspect, and there's sort of no forum in which to present it.

But in terms of the law, Stephanie Benfield says it was sort of a compromise and we didn't clarify it because we had pushback from the prosecutors. But if you look at the DNA testing law, Georgia was pretty out front on that – we had one of the earlier DNA testing laws and it seems pretty clear that the purpose of it was to allow innocent defendants to be able to show evidence of their evidence.

But what happened in this case of the Georgia Supreme Court is that *another* law, a more general law, just about new evidence and new trials... And the court sort of read those two together. So, where it *seems* like it would make sense for the later law, the DNA law, to sort of override the earlier law in terms of the diligence requirement – since they're sort of slightly different – the court didn't do that. It said the *general* test – the Timberlake test - it's a case from 1980, way before DNA, that test applies to *any* new evidence – including DNA evidence – and regardless of what the DNA statute really says.

**Colin Miller:**

Yeah. And Jon... Bigger picture. If we're talking about, "Why would states place these limitations on appeals?" I was actually just at a conference and we were discussing sentencing reform, and this goes back to the episode I did on bipartisan justice – there's a lot of bipartisan support for sentencing reform, getting rid of mandatory minimums, decreasing criminal sentences. And you always wonder, well, what's guiding bipartisan work? It is *budget*. And that is, a state like Georgia is very conscious of the state budget, and how much money they're spending. And if they're approving a wide-ranging DNA appeal bill that allows people to more readily to appeal, to prove their innocence, to get compensation from the state, obviously that's going to be a hit on the state budget.

So, financially speaking, of course, states have an incentive to limit the avenues for relief. You might look at that on an ethical basis and say that it doesn't make sense but... Now unfortunately unlike sentencing reform, which generally dovetails with budget consciousness, in terms of appellate relief, that's something where if you're looking at the state pocketbook, you're not going to want to approve wider avenues for appeal.

**Jon Cryer:**

Okay. But there's all kinds of issues where the State has budgetary reasons for pursuing certain laws – or *not* pursuing certain laws – but they forgo them in the interests of justice. So I would have to hope that in the future they reconsider that.

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**Jon Cryer:**

Now, I wanted to actually get into the fifth episode of *Undisclosed*, which was 'The Drive to Cedartown' episode. And the team dug into the *minutiae* of the Joey Watkins timeline and how it could have possibly intercepted with Isaac Dawkins' shooting.

And it seemed to me and listening to it, that the details actually much more supported an alibi than some way to find Joey Watkins guilty. So I wondered how-- Obviously the prosecution in the case framed it as, "This is the work of a criminal mastermind", you know? That Joey Watkins had planned all this out, or not – they seemed to suggest that it was the work of somebody who was just rashly *angry*. And in going over the details, it's hard to avoid the conclusion that if Joey Watkins was actually *intending* to kill Isaac Dawkins, the crime was either meticulously planned, really *poorly* planned, ineptly carried out, or just a miracle of timing. And how can the prosecution possibly argue all those things at *once*? Now, obviously, I'm sure we'll get into it in later episodes, but how did they do it?

**Susan Simpson:**

It doesn't matter how Joey did it. They didn't care about that. Their case consisted of showing how terrible a person Joey supposedly was. And how he hated Isaac more than anyone should possibly be able to hate anything. And therefore draw your own conclusions. They didn't *care* how it happened, they didn't focus on that, because, well, what are they gonna focus on?

So, I mean, literally, not *one* person has *ever* been able to tell me... How do you think Joey committed this crime? What do you think actually happened? No one can answer that because there *is* no answer.

**Jon Cryer:**

Well, yes. He either had to know exactly where Isaac Dawkins was, where and when he was leaving school... So he would have had to wait there. But obviously he *wasn't* there because at 6:48 he was at home, either about to take a shower or about to leave. But either way, he doesn't know where Isaac Dawkins is.

Then, he has to hope that he's going to have to *follow* him, or hope that he runs *into* him. [laughs] Which, either way, is not a very good plan. See, this was the same thing that when I was looking over the Adnan Syed case, when everybody, you know, along with the world, and *Serial*, and listening to *Undisclosed*, the *actual plan* of the crime seems so... *dumb!* [laughs] You know? Who would possibly *work* that way? And I'm just amazed that prosecutions can get around this issue to juries.

Susan can you speculate on how the jury could have put that together? Because you've actually read the transcripts.

[33:32]

**Susan Simpson:**

They didn't need to. Because that really wasn't something that concerned them. I've spoken to jurors, and so far, not *one* of them can tell me even if they thought this was a premeditated crime, or a spur-of-the-moment crime. Could have been either. The prosecution in their

closing and opening arguments does argue it both ways. So it's just not an issue in this case how Joey did it. The only issue is that Joey is a terrible person, and he hated Isaac. The defense should have done *better*, at actually presenting what happened here. That's where things went horribly-- Well, *one* of the places where it went horribly awry.

**Jon Cryer:** Yeah. And I had a couple of very specific questions about the episode. There was a couple of things: First of all, I was looking at the evidence photographs, and if you can get a chance, folks, do log onto *Undisclosed Podcast.com* and check out the evidence photos. Because something that was unclear to me is that big silver box, that is laying near Isaac Dawkins' truck – his pickup truck – is that the toolbox that everybody's been talking about?

**Susan Simpson:** Yeah, that's the toolbox.

**Jon Cryer:** Okay. And at *some* point, I believe it was *Tandi*, Joey's sister, who talks about the fact that he saw Isaac Dawkins' toolbox – or rather, Joey *asked* her if Isaac Dawkins' pickup had a toolbox in it. But the prosecution rests it's 'Joey lied' assertion on the fact that he didn't see the brush guard in the front, or--

**Susan Simpson:** Or the toolbox, actually.

**Jon Cryer:** Oh, oh, really? Oh, okay. So, I did not hear that part of it.

**Susan Simpson:** Well, we didn't include it because it seems so silly. In the photos, you can see the toolbox. I don't even know why they tried to claim that Joey couldn't see the toolbox. It's front and center.

**Jon Cryer:** Yeah. The toolbox looks like it's *right* next to the road. I don't know, perhaps it's hard to tell the geography of the photos at times.

**Colin Miller:** Yeah, you're right. It's easily visible for someone on 27.

**Jon Cryer:** And *plus*, as he claimed, if the police had shut down one of the lanes and had slowed down the traffic, he would have even *more* time to see those things.

**Susan Simpson:** Yeah. And we know that Joey, according to *his* timeline – according to the call to his sister – the time when he would have passed Isaac's truck, that door would have been closed still. The driver's side door. Which means he would have had an unobstructed view to the front of where the brush guard and the headlights would have been. So, the fact their only picture of that view has the door open and blocking it, well...

**Brooke Giddings:** I struggle with the *photographer*. I've heard you say so many times that the photographer's named Clyde? He took, you know, hundreds of pictures every time, and you have, like, less than 20? So it's just a big struggle for me... Where do all these pictures that he normally takes, *go*?

**Susan Simpson:** Clyde has gotta be *so* sick of Clare and me by this point.

[laughter]

- Susan Simpson:** Because that's what we keep asking! For months and months and months! And we're getting nowhere.
- [36:16]
- Jon Cryer:** Now, I wanted to go through some Twitter questions, actually. Because we've got one from, uh, Twitter user 'Olive', who asks, "Can you re-explain the choreography of Isaac's truck and the blue Honda in the moments before the shooting?" We've also got questions about, Mr Benson, who was, I believe the witness, asking if there might-- Had he seem somebody else in either car? Did he have any idea how many people were in either car?
- Susan Simpson:** [laughs] My husband was saying that we should have done like a GTA reenactment of this.
- Jon Cryer:** [laughs] Actually, I would really love if somebody could do some graphics, because, as you said, there were so many different versions that the prosecution told of Joey either driving past or driving north, then driving south, then turning back *around*, and I would love to see some explanation of those scenarios, because it is very hard for me to understand them.
- Susan Simpson:** I made a little image of what Benson saw. I can post that. Trying to sort of graph out what the prosecution's arguing is... It almost-- Basically you have to make the argument *for* them. Because they never did it. So I mean, I could make a bunch of squiggly lines on a map and say, "Hey, this is how Joey did it." But the prosecution never actually did that. They never actually decided how it happened.
- Jon Cryer:** Oh, so that would be a fool's errand to try and scope those things out?
- Colin Miller:** Yeah. Was he parked at the college? Was he parked at the gas station across the street? Was he driving south on 27 when he saw Isaac's truck and make a quick U-turn and started following him? Were they at one point stopped, and then started driving? Were they always doing a 'cat and mouse' where they were driving back and forth and jockeying? Yeah, after the shooting, does the truck – with Isaac unconscious – veer off into the other lane? Or does it stop and then people get out and push it across the median and into the woods? So, there are just so many different permutations, it's tough to say exactly what the state's theory would look like, because there's just a multitude of options.
- Susan Simpson:** And you have to add in too, it's not just *that* – you have to add in the timeline – and there's many permutations *here*: Where Joey picked up his accomplice, where Joey switched out the cars, where Joey dropped off the accomplice, how he got to Cedartown afterwards, where he went after-- Like, did he take the accomplice home? Did he take him to...? Yeah. So there's, like, probably, if you added up all the combinations of stories... God. It's got to be at least 100.
- Julie Seaman:** Can I ask a question? I hope I'm not jumping ahead to something you're going to do later, but how did the bullet enter Isaac's head? Like, was it the back of his head? The side? Do they think the bullet came through the back window? Or through the driver's side window or what?
- Susan Simpson:** It went-- Well we know where it hit the right side of his head. Above the ear, and went left and up.
- Julie Seaman:** Kind of the back of his head? Or the side?

- Susan Simpson:** Mostly the side. Above the ear. But in terms of which window it went through, I mean, there's a lot of versions. I mean, the witnesses give all *kinds* of stories about which window. There's not really a consensus there. I think the prosecution theory – the one they *both* go to eventually – I mean, in the preliminary hearing, it's a different theory altogether, but by the time they get to trial, they're saying that the bullet hit the back window. The sliding pane – the one in the driver's side, closer to Isaac.
- Julie Seaman:** Hmm...
- Susan Simpson:** But, I am very skeptical of that because there's no evidence of it, and if you look at the windows, it very much seems like it is the *passenger* side window that got hit. The *back* passenger side window.
- Jon Cryer:** And, well, we also have no idea what angle his head was. I mean, if he was looking to the side, then it could have hit his right side.
- Another Twitter question was from 'Donna Scott', who is, I believe, one of our followers from the UK. She says, "We know there are only a few terrible photos, but just what is State's exhibit number 23-62601. That's not even *in situ*!" And I love the exclamation point – she's getting indignant about it. [laughs] Like, "What is that doing there?!" She's probably right, but do you have any memory of that, Susan?
- Susan Simpson:** I *wish* I could say that I know this case well enough whereby I know--
- Colin Miller:** Just the number on--
- Susan Simpson:** I think, I'm *pretty* sure she's talking about the one taken at Joey's house? Maybe? That was taken about a week later. Detective Moser of Rome Police Department...
- So basically there's this whole-- They want to make it Joey, so they've got to find a way Joey could have done it. So they go on a hunt for a blue Honda-ish car that he could have been in. And so for a while the closest they get is his sister Tandi's car. Which is a greenish Sunfire. So Moser, like, went to their house all like, *incognito*, and like, took photos of Tandi's car at the Watkins' house. And it's *that* photo.
- Jon Cryer:** Because there were people questioning whether – I think it was Benson – was sure that the Honda was *blue*. And it was at night, so it is a difficult color to discern at that time?
- Susan Simpson:** Yeah... There's definitely a lot-- *He* thinks it's blue, but I mean, it very well could *not* be blue, too.
- Colin Miller:** Yeah. Sunset was at 5:50 pm that day. Obviously the shooting was about 7:19 pm, so it was well after sunset. I know, I think Susan you disagree with this and you've talked to Wayne Benson, but there's *some* question of whether he's colorblind or not, so that's another issue. But then also, if you're seeing something as stressful as someone driving off the road to their death, you know, the color of the vehicle probably isn't foremost in your mind. It's easy to see the mind playing tricks. So I'm not convinced at all it's a blue car. I think it's a possibility but I think it's easily possible it's another color.

[41:51]

- Jon Cryer:** I got another question, from 'Sahar', who says, "Do we know for a fact that Isaac was alone in the truck? What if a passenger shot him, then fled?"
- Susan Simpson:** I think that's one we can actually be *totally* confident about. He was alone in the truck.
- Jon Cryer:** Also, I have to say, it would be *kind of* unwise if you're in the truck with somebody else driving, to actually *shoot* the driver.
- [laughter]
- Colin Miller:** Yeah.
- Jon Cryer:** I don't know. I might think twice before I did that. [laughs] I mean, things would have to be going pretty badly in the car--
- Susan Simpson:** [laughs] Before that's your 'go-to' strategy.
- Jon Cryer:** Yes, exactly! But you never know. I'm known to act rashly. A lot of people are also asking, "What on earth is a brush guard?" I have to say, I'm from New York City. I've *never* come in contact with one of those.
- Susan Simpson:** I didn't realize we needed to explain it but clearly we did. [laughs]
- A brush guard is the metal grill thingy on the front of a truck – a car. It depends what you're using it for. But it's to, sort of, keep the bumper from getting torn up by heavy brush, or whatever. They're also called 'bull bars' or 'roo bars' in Australia. And apparently, according to Wikipedia, 'moose bumpers', in Canada.
- [laughter]
- Jon Cryer:** Yes. We have those in New York. [laughs]
- We also got a Twitter question from 'The-View-from-LL2' who asks, "Why does Susan talk so fast?" Oh wait! That's The View From LL2. Oh, okay. [laughs] Now I understand that. By the way, I thoroughly enjoy your particular delivery, Susan, I'm going to say that on my behalf. But it's great because you talk absolutely normally, and then you speed up like three words, you pack them all into one syllable. It's actually remarkably efficient. We should be grateful that you can do that.
- Brooke Giddings:** I agree.
- Jon Cryer:** I had one other very specific question for Susan: At one point you mention that Aislinn has no reason to lie on Joey's behalf, because by the time the trial rolled around, they had become estranged. Am I reading into that or-- What happened between them?

- Susan Simpson:** They had an ugly breakup. And, as we'll get into-- I mean, they dated, I think until August. So, eight months after Isaac's murder. They were still together. But, there were some heavy influences – against a *lot* of people, but including Aislinn and her family, which, I think, were a big contributor to why they had a falling out.
- Jon Cryer:** Okay. Well, I mean, it's understandable that a relationship would be under pressure with that type of investigation going on. And Joey, as you pointed out, he knew that he was under investigation pretty quickly, am I right?
- Susan Simpson:** The next day. Very early, yes.
- Jon Cryer:** But you seemed to hint that the police went in and out of suspecting him. Is that something that we'll get into in a future episode?
- Susan Simpson:** Yeah! Well it's... I mean the police aren't a monolith. Even on the same force you're going to have different views on different things. And here, we have the complication of *two* different police forces working on the case. And they weren't always on the same page about things.
- Jon Cryer:** Well, one of them, Mike Key, was into *helping* suspects from making incriminating statements! [laughs] I thought that was fascinating. That it seemed... Well, at least according to Joey, that there was an officer who seemed to be trying to keep him from saying things that might come back to haunt him.
- Susan Simpson:** Yeah! It seems like that, again, the police aren't a monolith. And *this* police officer didn't think Joey had done it. So when he's taking Joey's statement, and Joey starts getting into, like, a very full account of his day, he's like, "Whoa, whoa, *whoa*. Let's make this a more generalized statement and prevent you from talking yourself into trouble."
- Jon Cryer:** Which is *really* unusual. I mean...
- Susan Simpson:** Oh, is it?
- Jon Cryer:** I don't know?! [laughs]
- Brooke, have any of your exonerees run into that? It would seem like the opposite was, by and large, true.
- Brooke Giddings:** I have *rarely* heard an exoneree say, "No, the police were trying to help me."
- Jon Cryer:** So it's fascinating to me. I'm hoping-- Do you ever get a chance to actually *talk* with Mike Kee?
- Susan Simpson:** I have not spoken to him, no. We've spoken to *some* officers. But, at this point, as you might imagine, Rome and Floyd County aren't exactly receptive to us.

- Colin Miller:** Yeah but, Jon, to your point, I think either Episode 6 or 7 is the next episode, or the following episode. We'll get into those hand-off issues with Floyd County and Rome, and I think it'll be pretty illuminating for the audience to hear what exactly was going on.
- Susan Simpson:** Yeah, Julie. So you're familiar with the case, you've heard us talk about it before, I know--
- Julie Seaman:** Uh-huh.
- Susan Simpson:** But you don't know all the details... You're not in the weeds, like Clare is?
- Julie Seaman:** Right.
- Susan Simpson:** Is there anything in this episode that was surprising to you?
- Julie Seaman:** No, I don't think so, but I *do* have, just this one thing that's bugging me about, I'm like really directionally-challenged, but the truck was facing-- It was driving northbound but ends up facing *southbound*? So it spins around? It does a 180?
- Susan Simpson:** Yeah. It also rolls over and does a 180.
- Julie Seaman:** Oh...!
- Susan Simpson:** I'm still not really clear on how it happened, but when you get enough force going, weird things can happen in a wreck.
- Julie Seaman:** [crosstalk] And like rolls over upside down?
- Susan Simpson:** Yeah... Or at least it did, like, one total roll.
- Colin Miller:** Mm-hmm.
- Susan Simpson:** My guess is it was like doing a 180, and like in the middle of the 180 it does a barrel roll.
- Jon Cryer:** It appears that – because the toolbox was ejected from the back of the pickup – you can see that there's a wire *from* the toolbox *to*, what I guess is some sort of electrical outlet in the back of the pickup, and I'm assuming that – I've been an actor since I was 18, so my proficiency with power tools is limited. [laughs]
- But I guess it is some sort of electrical outlet to charge power tools, or charge batteries, or something like that. But at any rate, you can see that the *wire*- the truck must have rolled so violently that the back part of- the portion must have actually separated slightly from the cab, because the wire is actually stuck *between* the cab and the truck bed apparatus. Which to me indicates to me that it must have been an *incredibly* violent rollover. I don't know how somebody would have survived even that.

- Susan Simpson:** I mean, Isaac's only injury, really, other than a couple of bruises, *was* the gunshot wound. So he wasn't really hurt in the accident itself. And they *never* did an accident reconstruction. They never did a crime scene reconstruction here, so it's hard to tell what happened with the car. But one detail's always struck me as bizarre, is a note about evidence recovery, and how they recovered *change* from the cupholder. I'm like, how is there change in the cupholder?
- Julie Seaman:** Oh...!
- Brooke Giddings:** My cupholder has a lot of Diet Coke in it.  
[laughter]
- Julie Seaman:** What about-- Were the phones hands-free then, or would Joey have been talking on the phone holding the phone in one of his hands?
- Susan Simpson:** Yeah.
- Julie Seaman:** Okay.
- Jon Cryer:** Now, despite the fact that that is, you know, unwise to do, but I don't believe there were actually *laws* against that at that point. I think it was just what everybody did, you know?
- Julie Seaman:** Right, but he clearly couldn't be holding the steering wheel and the phone and a gun.
- Colin Miller:** Right.
- Julie Seaman:** So, if that's the case, there had to be another person. If the bullet came from his car.
- Susan Simpson:** Yeah.
- Colin Miller:** And the State's theory is, I mean, because Aislinn didn't hear the gunshot, he'd somehow had to use his hands to cover the cell phone so that she wouldn't hear the gunshot, unless they're claiming, again, that she's sick and because of that, somehow she wouldn't be able to hear a gunshot right next to the phone.
- Susan Simpson:** Yeah, like I love the idea that he, like, calls his girlfriend up and is, chatting to her randomly, casual like, "Oh, when I see you, hope you're feeling better." Then he like, asks her a question that he knows is going to get her started, "So tell me what your friend Brenda said at school today." And she starts going off, he puts it on mute, fires the gun--  
[laughter]
- Susan Simpson:** And then, like, puts her back on talk and keeps going.
- Jon Cryer:** Well, again, very often prosecutions – and they did this in the Adnan Syed case, they present ordinary things that people do every day as the acts of a sociopath. Because they're put in the

context of supposedly committing a murder. Like, Adnan going back to the mosque that night, “Oh, what a sociopath”. You know?

And we actually have a Twitter question from ‘Sarada’ who says, “OK, for real, question: Why does the mastermind/sociopath explanation fly in these cases?” and I actually have a theory if you guys wanna hear it?

**All:** Yeah, yeah, sure!

**Jon Cryer:** [laughs] Okay! Thanks guys. It is because when you’re on a jury, you don’t want to feel like you’re being a party to the crime. That you’re actually making the crime *worse*. And if you feel like, this *is* somebody genuinely dangerous, that is being tried here, for whatever set of reasons – and I guess the prosecution in *this* case set it up that Joey was just this very angry guy who was super enraged at Isaac Dawkins – but you feel like you don’t want to be taken for a fool. In some respect. Like if somebody *was* a criminal mastermind, you would be the one who would catch on to it. And *that’s* it – guilty. You know? That’s my theory. I don’t know if you guys have other ones.

**Susan Simpson:** I think in this case it absolutely applies. I think there was a very real sense that this type of ‘evil’ – and that’s the word multiple jurors have used – this kind of “evil” is *not* something that they could let go, and let be free on the street again.

**Julie Seaman:** Hmm...

**Brooke Giddings:** Well, I think that like, working in the mental health profession, we don’t use the word ‘psychopath’ or ‘sociopath’ very often. We use a lot of personality disorders, which are very similar, and actually Joey isn’t the one who sends me those signals – it’s actually *Brianne*.

And I think that, you know, a personality disorder is something that is similar to, like, a mood disorder, but it comes from upbringing. So I would really like to know more about the life circumstances of these people before saying that they’re a sociopath or that they are a psychopath, or someone without a conscience.

**Julie Seaman:** One of the things, kind of like the pop culture things that permeate about sociopaths or psychopaths is that they’re charming – it’s like the Ted Bundy – you know? He’s charming. And I think part of it is when you listen to whether it’s Adnan and the tapes, or Joey, you know? He sounds like a nice guy, he sounds normal, he sounds charming, he sounds like he’s really trying to tell the truth, and I think what Jon said about, like, you don’t want-- A juror doesn’t want to feel like something’s being put over on them. Like, you could think, “Oh well, sociopaths are good at that – they’re good at *sounding* like they’re charming.”

And it kind of goes to what you all were saying about the alibi on the episode, which is, it didn’t matter *what* he said, they were going to use it against him if he was specific or he was general. If he, you know, had a really good alibi, that was going to be evidence against him, or if he had no alibi, it’s kind of like, just this whole confirmation bias. It’s like, once you decide what you think happened, then you’re going to read *everything* through that lens. You’re going to filter it through. And you are going to make it fit with what you think happened.

**Jon Cryer:**

Thank you guys so much for being here today, I appreciate it so much, it's always fascinating. And I'm very excited about the *future* episodes of *Undisclosed*, and hopefully you all will get a chance to come back, and we will talk some more.

Thank you.

**All:**

Thank you, thanks! Thanks Jon.

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