

UNDISCLOSED, the State v. Shaurn Thomas**Episode 3 - Exonerated**

October 2, 2017

[0:22] Rabia Chaudry Given the fact that Pennsylvania has one of the highest incarceration rates in the country and the some of the toughest discovery rules for defense attorneys, it's pretty remarkable that it wasn't until 2009 that an Innocence Project was established in the state. Originally housed at Temple University, it was staffed by a small team that was assisted by students from Temple Law School and Villanova University School of Law. Over the past 8 years, the Pennsylvania Innocence Project has multiplied and grown, and now has programs at Thomas R. Kline Drexel School of Law, The University of Pennsylvania Law School, Rutgers University Law School, and Penn State School of Law, and in 2016 they opened offices in Pittsburgh, housed by Duquesne University Law School.

The first time that I met the folks from the Pennsylvania Innocence Project was last year. I shared a panel with the very dynamic, charismatic Marissa Bluestine, who was, at that time, the legal director of the Innocence Project. After I gave my remarks I listened to her talk about some of the pressing cases that they were dealing with. One of them stunned me and haunted me for weeks after I left that event.

So later that year, as Susan, Colin, and I were exploring new possible wrongful conviction cases to cover *this* year, I remembered the case that Marissa spoke about. It was about a young man named Shaurn Thomas.

[1:58] Marissa Bluestine

My name is Marissa Bluestine. I am now the Executive Director for the Pennsylvania Innocence Project, as of about 3 weeks ago. Before that I was the Legal Director, and had been since the project started in April of 2009. And I've been Shaurn Thomas's attorney almost that entire time.

Rabia Chaudry

Since 2009?

Marissa Bluestine

Yes.

[2:15] Rabia Chaudry The Pennsylvania Innocence Project isn't like many others that only deal with cases that involve DNA evidence.

[2:20] Marissa Bluestine

I wish we had DNA. And now I kid them, I mean I kind of tease those guys, because for me DNA is easy.

Rabia Chaudry

Right.

Marissa Bluestine

Right? Uh, it's there or it's not. If it's there you test it -- it's him or it's not. And that's pretty much it. For our cases, we're the ones who are knocking on doors at 3rd and Indiana, in the, you know, the heart of the "badlands" in Philadelphia saying, "Were you around 20 years when Country got shot? Can you tell me what happened?" Right? So we're, to.., we're usually talking about witnesses who saw what happened, know what happened, have knowledge of what happened, know about who did it, all that -- and trying to put those pieces together, 5, 10, 15, 20 years after it happened. And that's not an easy job to do (laughing).

Rabia Chaudry

Yeah...

[3:03] Rabia Chaudry It's not easy stuff to do, but it didn't deter this Innocence Project, and Shaurn Thomas is certainly very thankful for that.

[3:12] Marissa Bluestine

He was one of the first people who really, when I started the organization, April 2009, when we first opened the doors, we had about 300 letters already waiting for us! I mean, the news had traveled fast. And so Shaurn's letter I know we got in 2009 -- I can't recall when exactly, but, um, around the time we opened, an attorney named Jim Figorski had called me and said, um, "You know, I'd love to volunteer with you guys." And it turns out that the reason he wanted to volunteer was that just because he'd been a law enforcement officer for 25 years in Philadelphia, and had seen his own cases come up where somebody...he worked on Narcotics, and he would work with somebody and they would confess to a murder, or confess to a crime, and he would call down to homicide and get, "no, no, no, no, no - we're good. We got our -- we got our guy. Don't worry your pretty little head about it." And Jim, understandably, was kind of upset by that (laughs), so he -- he knew from his own experience that we were locking up people who committed no crime. And so he volunteered with us. And so I would give him a bunch of cases to review and he kind of went through probably about 5 or 6, and then he got to Shaurn's to review for me, and it was probably the letter - the Superior Court opinion - the briefs, and he came, I remember -- I'll never forget this, he came into my office and he said, "You know, Marissa, this one -- there's something about this one. I think he may be innocent." I said, "Well, Jim, you're a lawyer -- what are you gonna do?" (laughter). And he says, "I guess I have a new client." (Laughter). I said, "I think you do!" And so, and that's kind of how it started. Jim, it's the case just so resonated with Jim's

experience as a law enforcement officer, and everything Shaurn was saying was true, or could be true. And, if what he said was true, than a gross miscarriage of justice had occurred. Because not only was he not at the crime, Shaurn's alibi is the Commonwealth of Pennsylvania itself. Because, he was either in the custody of the Philadelphia Police Department, or in standing in front of a magistrate judge in a juvenile court. This isn't "baby-mama" right? This isn't mom or dad who love you and might lie. This is the Commonwealth of Pennsylvania. And how that could have gone unnoticed and un... and not acted upon for 20 years, was astonishing to us!

Riley Ross

Yeah, seriously. It's crazy!

[5:23] Rabia Chaudry The case was turned over to Jim Figorski, who you've heard from on the past two episodes. Now what you might not have known, although we did discuss it just a bit on last week's addendum, until now, was what Marissa just said -- that Jim is an ex Philadelphia cop. And that in his career, he repeatedly witnessed the police department ignore evidence that they had arrested and charged an innocent person.

[5:45] Jim Figorski

I was a Philadelphia policeman for 25 years. Um, 1981-2006. I was assigned to two different districts, and then for 20 of those years I was in a Narcotics Unit. I was also in, you know for a short time, in the Intelligence Unit and DEA Task Force. When I retired, I went to the U.S. Attorney's office for 6 months as a law clerk, and then I came here to Dechert. When I was in the police department I saw some, ya know, well there were certain murder convictions that I had my doubts about. And, they were based, I told Marissa and Shaurn about many times, they were based upon certain things that happened when I was in the Intelligence Unit and DEA Task Force. When I was in the Intelligence Unit, we were mandated to do interviews with everyone in the city who was arrested, it was a really good idea. And we asked them a certain series of pre-formatted questions. And one of the questions that our people were supposed to ask was, ya know, "What do you know about murders?" And on several occasions we got information that the people who had been convicted didn't do it. And it was pretty good information by, you know, guys who said that they were there and witnessed it. And we turned it over to Homicide and nothing ever happened. Same thing happened when I was in DEA Task Force. I went there and we did proffers in the Federal System, where people would come forward and they were mandated to tell everything they knew, because they wanted to cooperate. And one of my standard questions that I had our people ask was, "What do you know about murders?" And there were times when we got the same answers, and many of those murders were from the same period of time, which was the late 80's to the early 90's, and I began to suspect that there might be problems with some of those convictions from that time period. And when I would ask Homicide what happened with these murders, I would inevitably get the answer -- they would say something along the lines of, you know, to "trust me, he's guilty." And at first I would accept that answer,

because these were the guys who did this for a living. But after awhile I started to question -- how did they know he's guilty if I'm telling them that there's a person who says it didn't happen that way and he was there? And it was, ya know, some of these, um, these murder convictions were based on nothing more than a snitch, or a jailhouse snitch, or something like that, and I thought that the evidence that I was bringing in, which was an eye-witness, was much more powerful than that. But they didn't want to hear it.

[8:07] Rabia Chaudry There's no doubt there was an uptick in the late 80s and early 90s in wrongful convictions, which makes sense because that was the time period in which incarceration rates, in general, skyrocketed across the nation. We became the "tough on crime", "three strikes you're out", "CSI effect" country, and the more arrests there were, well, the more wrongful arrests there were gonna be. That's why many of the exonerations we're seeing today are of convictions from that time period.

And Philadelphia, in particular, has a history that compounded these issues: from record levels of mass incarceration, to police violence, to stop and frisk, prison overcrowding, and even asset forfeiture -- a perfect storm of criminal injustice policies has existed in the city for decades. A legacy, many argue, of the notorious police officer, then commissioner, then mayor named Frank Rizzo. Known as "The General", he cut an intimidating figure at a bulky, thick 6'2 man. The ultimate tough guy, he rose in ranks through Philly offices, riding waves of white fear about black crime. During his time as commissioner, he raided Black Panther offices and repeatedly raided protests by black student activists with fully and heavily armed units -- officers he allegedly told, as they dispersed among student protesters, to get their black asses. Under his command the hiring of black cops plummeted from over 25% recruitment to under 8%. He advocated for the building of more prisons and proudly militarized his police force.

The resulting police brutality didn't go unnoticed by the feds. In 1979, 8 years after Rizzo became mayor, the Department of Justice brought charges against Rizzo and others for allowing, and indeed fostering, police abuse. In his career he faced dozens of lawsuits, often connected to racial discrimination, and decades after his death, the city still hasn't rolled back the damage.

In a 2015 VICE article on Rizzo, criminal defense and civil rights attorney Larry Krasner said:

"Rizzo kidnapped the fucking city, that's what he really did. He said, 'We're cops and we're in charge of the money, the pensions, race relations,' and he took us to the bottom of the fucking ocean. He was the strong man who dispenses with niceties like laws and constitutional protections and just gets the job done. And we still have a police department that feels they can do pretty much whatever they want. And they're right about that."

Larry Krasner knows something about police misconduct. In his career, he's sued the Philly police department 75 times. And this past June, he defeated 6 opponents in the Democratic primary for the election of the new Philadelphia District Attorney. On November 7, in just a few weeks, he stands a chance at becoming the new DA of the city. In a New York Times profile, Krasner is described as campaigning against mass incarceration and what he described as the "failed culture" of the Philadelphia district attorney's office.

And so, I figured, it was kind of important to talk to him.

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**[12:34] Rabia Chaudry** Krasner graduated from Stanford law school in 1987 where, as a student, he worked closely with indigenous, homeless, and impoverished communities on civil rights and criminal matters. After graduating from such a prestigious institution, he got the kind of job offers you'd expect: prominent positions across the country, including in DA offices.

**[12:52] Larry Krasner**

The truth is I came out of law school and I applied both to prosecutor's offices and, uh, public defenders offices. And I came from a pretty fancy law school and I had a ton of offers, all over the country. Um, Philly was a place where I couldn't be a prosecutor, because Philly was drunk on the death penalty, and frankly drunk on another whole pack of problems that persists in that office and flowed from the Frank Rizzo era. And so, it was not a place where I could have been a DA. I could have been a DA with Liz Holtzman in Brooklyn, if I'd matched the time and the location, and there were other DA's offices in the country where I could have done it, that were more progressive and more ethical than this one. But I chose to become a public defender in Philly, not because I was somehow born with a defense lawyer gene, but because that is where I could fit, and that's where the work really needed to be done because the system was so unfair, due in large part to the culture of the DA's office.

**[13:45] Rabia Chaudry** Now, Krasner may argue he wasn't born with a defense lawyer gene, but given his long history fighting for the underdog against the government, that's a bit hard to buy. But he's right about being drunk on the death penalty. Between the years of 1985 and 1995 the number of death sentences in the state spiked. And while it has steadily decreased since then, the death penalty still does exist in Pennsylvania, although since 2015 there has been a moratorium on carrying out any executions pending the completion of a long-awaited report on the impacts of the death penalty in the state.

Krasner served as a public defender for six years before starting his own practice in 1993, and since then he's tried not hundreds, but thousands of cases in both state and federal court, meaning he's had a lot of experience with, and knows well the history of, the very office he is now running for: Philadelphia DA.

**[14:36] Larry Krasner**

You know this is a city where a police officer rose to be police commissioner rose to be the mayor. And that was Frank Rizzo. He had a, kind of a brutal and racist approach to all of that, and his long shadow is still here. In fact his statue is right across from city hall, and he's the only modern mayor whose statue is across from city hall. And there are a lot of things that he did that frankly put us in a position where the less progressive, the less racist elements in law enforcement were beat down, and the leadership in law enforcement was more like him. So, you know, that carried over into the DA's office, which in some ways was really not leading the charge, they were running behind the police department because that's just the culture.

**[15:25] Rabia Chaudry** There is a long list of things DAs shouldn't be doing and one of them is feeding the mass incarceration beast by prosecuting ridiculously high proportions of arrests made by the police. In Philadelphia, that rate is 97%.

**[15:38] Larry Krasner**

The reality is that the Philadelphia DA's office has been transfixed by almost a stat-driven approach of trying to charge as many people as possible with the biggest charges possible, get the biggest convictions possible for the longest sentences possible. That has been their modus operandi -- I have referred to it at various times as kind of a sports mentality, where, you know, you're trying to run up the score as high as possible. And that's clearly not what they should be doing.

**[16:10] Rabia Chaudry** The task ahead, if elected, is no small one for Krasner. Among the many issues he's got his eye on is the one we spend our time here at Undisclosed on: wrongful convictions. And in Philadelphia, sometimes those wrongful convictions happened unintentionally. And sometimes they were intentional. And sometimes they get covered up.

**[16:29] Larry Krasner**

There have been periods of time, and I know this-- I'm not talkin' about what might be, I'm talking about what I know. There have been periods of time when that shredder was runnin' fast and hard over at the Homicide Division of the Philadelphia District Attorney's office. I have heard, with my own ears, some rather well-known prosecutors, especially from around the early '90s, when a lot of these wrongful convictions occurred, I had heard them say things to the effect of: "Why are you talking about innocence? If they didn't do this, they did something else and they must be separated from society." Uh, which to me demonstrates a...almost an eagerness to convict people even when there are ample indications of innocence, just because, in the opinion of the prosecutor, they're bad people so we may as well get 'em anyway. Um...

**Rabia Chaudry**

That's pretty reprehensible.

### **Larry Krasner**

Oh it's pretty reprehensible and some of those, you know, wrongful convictions were people who had no criminal record whatsoever! So exactly how they determined they were bad people based upon no criminal record whatsoever, I don't know. But I'm sure your listeners can probably figure out where that's comin' from.

**[17:39] Rabia Chaudry** I want to say I was shocked or surprised to hear both Larry Krasner and Jim Figorski say the same thing: that they personally experienced both police and prosecutors knowingly ignore evidence of innocence and put people away for crimes they didn't commit. But I'm *not* surprised anymore by this level of misconduct. Everyone agrees that most police officers and prosecutors are law abiding, ethical public servants doing their best to serve the interest of justice. But it's not unusual, when you dig a little deeper into a wrongful conviction, to find some level of misconduct on the part of authorities.

That stands true for Shaurn Thomas as well.

**[18:31] Rabia Chaudry** By the time Shaurn's case got to the Innocence Project, it already had a terrible failed procedural history. But not for lack of trying on Shaurn's part.

His first appeal was denied because his lawyer failed to file a brief in support of it. So he filed a pro se motion, a motion without an attorney, to reopen it based on prejudicial and untruthful statements by the prosecutor at trial, but in 1997, the appeal was denied.

In 1998 Shaurn filed his own PCR, or post-conviction relief petition, alleging ineffective assistance of counsel, because his trial attorney had failed to duly investigate whether he was at the Youth Study Center at the time of the murder, indeed his attorney hadn't even bothered to try and interview the actual intake officer, Doris Williams, and also failed to call his mother and sister, who had been with him at the Youth Study Center that day. Shaurn also challenged the constitutionality of his life sentence.

Before there was a decision in that petition, Shaurn was appointed a new attorney, who filed an amended petition alleging something extraordinary - that evidence which wasn't available at the trial had come to light. John Stallworth, one of the state's witnesses, had told other inmates, and word had gotten back to Shaurn, that he had lied in his confession. Now, they didn't have any documentation to offer to the court to prove John said this, and so, as expected, it didn't fly. The court did not find ineffective assistance of counsel and determined the information about John to be hearsay, so that petition was denied. And a year later the Superior Court affirmed the denial.

**[20:10] Rabia Chaudry** In 2004 Shaurn tried again. He filed a pro se petition for extraordinary relief with the Pennsylvania Supreme Court, seeking writ of mandamus ordering the Philadelphia family court to deliver juvenile records. A Writ of Mandamus (or man-DAY-mus, as some call it) is an order from a court to an inferior government official ordering the government official to properly fulfill their duties or correct an abuse of discretion. In other words, it's an order

of the court telling a government official to do something. Shaurn was asking the Pennsylvania Supreme Court to order the family court to turn over his own juvenile records and guess what, the petition was denied. Without even a hearing, the court dismissed his petition, finding no legal duty for the family court to give Shaurn his own records. Remember what I said about the ridiculously tough discovery and public information rules in Pennsylvania? Yeah.

This all brings us to 2009, when the Innocence Project took on Shaurn's case. At this point he had already been fighting in the appellate courts for over a decade.

When the Innocence Project got Shaurn's case, they knew one thing: that he had been at the Youth Study Center at the time Martinez was killed. Jim Figorski knew exactly how arrest, detention and intake worked for juveniles and everything Shaurn told him sounded right, and most importantly, he believed him. Based on that belief, the Innocence Project started digging, searching for witnesses and evidence that could get Shaurn back in court with a new appellate claim or help prove Shaurn's actual innocence.

Jim started by finding the people Shaurn's trial attorney should have put on the stand, the ones who could prove Shaurn was at the Youth Study Center on the morning of November 13, 1990. He began with Doris Williams, the woman who had done the intake interview. And as we discussed in a previous episode, Williams confirmed that while she couldn't remember Shaurn specifically after all these years, there is no way he would have been late without her either delaying his intake until the next day, or issuing a bench warrant for his arrest. The fact that he had a signed subpoena from that day proves he was on time. She also confirmed that there was a stenographer present during the intake, just like Shaurn had been saying all along. Which means, that entire intake interview was transcribed. If Doris Williams had testified to these things at trial, maybe things would have been different. And she could have, if she had been contacted at all. Speaking to Jim was the first time she ever heard of the murder, or of Shaurn's trial. No one had ever gotten in touch with her before. Not Shaurn's defense counsel from trial, and no one from the State.

Next, Jim got in touch with someone who actually had testified at the trial: Brian Coen. Coen, who was now in a nursing home in 2011, when Jim contacted him, had no recollection of the case at all or even of testifying at the trial. But what he could tell Jim was this: if Shaurn had been late that day, his intake would have been rescheduled. That he was certain of. And if it had been rescheduled, well that would be easy to find out, because it would be recorded in his juvenile file.

Except the problem was, Jim explained, no one had the J file. Despite trying every avenue, the Innocence Project was told that it had disappeared, no one could find it. Coen was surprised, he had never before heard of a J file going missing. Maybe, he suggested, the DA had subpoenaed it, and Jim should check with them.



Well, Jim did, and they didn't have it either. The J file would have had a lot of information, as retired Philadelphia police officer Charles McCloskey confirmed to Jim in an affidavit. McCloskey, whose job included overseeing the detention and processing of juveniles, explained how Shaurn would have been processed given the late time of his arrest the night before:

In his affidavit he said that:

*"When an investigator arrived at the detaining district, he or she would usually attempt to interview the offender. The investigator then had to prepare a Complaint Fact Sheet, which was faxed to the District Attorney's Juvenile Charging Unit. This document consisted of a narrative provided by the arresting officers of the facts leading up to the offender's arrest, and was also based on an interview with the complainant ... The investigator was also required to prepare an arrest report, a juvenile release form, and an investigation report. In 1990, all of these forms were prepared using manual typewriters. The investigation report is a lengthy document with multiple sections, very little of which was pre-formatted, and most of the document required narrative writing, again using a manual typewriter. All of this paperwork was required to be completed while the juvenile was still in police custody, because the investigator needed to send all the paperwork via facsimile [Rabia comments, "Yup, a fax machine!"] to the duty intake officer at the Youth Study Center. And then the investigator would have to await a decision determining if the offender would be released or transported to the Youth Study Center for immediate detention."*

**[24:57] Rabia Chaudry** According to McCloskey, by the time it was all over, it would have been close to dawn. Which is exactly, again, what Shaurn had been saying all along - that around dawn, his mother came and picked him up. And all those documents he mentioned, those would all be in the J file. They would have been timestamped by the fax machine. But too bad that nobody could find that file.

And that wasn't the only thing missing. No one, it seemed, could find the police homicide file either. It wasn't with the police, it wasn't with the DA, it wasn't anywhere.

So Jim kept digging. He called up Ron Smith, the witness who was in the car right behind the car that sidelined Martinez. In 2011 when he spoke to Jim, he couldn't recall the color of the car after all these years, but he did seem to recall more details than were in his 1990 statement to the police. He confirmed being directly behind the perps' car, seeing it hit Martinez, saw one man in a long red winter jacket get out of that car, shoot Martinez, and pull him out of his vehicle. When Smith realized what was going on, he slouched down in his seat and drove quickly off. He told Jim the police eventually told him he wasn't needed, which surprised him, given him being the closest witness to the murder, but going forward he'd be available to help Jim out.

Now, while Jim was interviewing old witnesses and investigating new leads in the spring and summer of 2011, in the background Shaurn had yet another pro se post-conviction relief petition

pending from the *previous* year that again challenged the constitutionality of his life sentence as a juvenile offender.

But thanks to his ongoing investigation, and what it would yield, Jim would have to twice amend the pending petition in August and November of 2011 because of shocking new evidence that made Shaurn's innocence clear.

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[28:28] Rabia Chaudry In June of 2011, a new piece of evidence was turned over to Jim by the State - a criminalistics laboratory report that had been withheld from the defense all this time.

[28:39] Jim Figorski

I saw that they, you know, the police had sent evidence to the lab, but there was no scientific report. So, I um, I called people in the police department, and asked them if they could find out if any lab tests had ever been done on the evidence in the Martinez murder. And about a month later, they get back to me, and they sent me, which I have it here, sent me the criminalistics report. And it's dated December 16, 1994, during Shaurn Thomas's trial. And apparently, what happened was, during trial, someone at the, at the criminalistics laboratory named Ronald McCroy had done a comparison between, you know, the evidence that was submitted by the police, to what was found at the crime scene. And the blue car, that had been introduced at, um, on the first day of trial, as the murder car, did not match the evidence at the scene of the crime. So, as a result, on the last day of trial, um, police introduced 2 other photos of another blue car. And it was never explained other than the fact that this was a mistake- why the blue car that had been photographed 2 or 3 years before- and was offered up to the court as the murder car on day one- um, was actually withdrawn without a... you know, quietly withdrawn, they never said anything and another car was introduced at the end of the trial.

Rabia Chaudry

Because you didn't see this until 2011?

Jim Figorski

Did not see it. Did not- we saw- in, in the transcript that something strange had happened, but we couldn't understand what it was. There seemed to be 2 different cars. Until we saw this, and went, oh- the first car failed scientific comparison during trial.

[30:13] Rabia Chaudry Remember last week, when we talked about the trial. On the very first day, the prosecutor introduced 14 photographs of a car, and then, mysteriously, those 14 photographs disappeared. No one ever mentioned them again. That's because The State learned during the trial, and never bothered to tell the defense, that car didn't match the samples from the crime scene at all. So two photos of a different car ended up being introduced at the end of the trial. A car that the detective didn't know who it belonged to and one the

Stallworths testified had been towed away long ago. A car that no one could locate, and conveniently couldn't be tested.

Now, you may be thinking, what difference does it make, whether it was this car or that car, doesn't prove any more or any less that Shaurn was in one of those cars. But here's the thing. In the hands of a capable attorney, this kind of evidence could have destroyed the credibility of the only real evidence the State had: the Stallworth brothers. As the Innocence Project so deftly laid out for the court in one of their briefs, had this report been turned over earlier, both brothers could have been cross examined about the first set of photos. If they confirmed that these were indeed pictures of the car used in the crime, *bam*, introduce the criminalistic report to show there was no way that could have been the car. Catching them in a lie right in front of the jury, well that could have destroyed their credibility, and it could have been exculpatory. And we all know what withholding exculpatory information means; it's a Brady violation.

I'm going to stress again, that this evidence was withheld from Shaurn's defense from 1994, the time of the trial, to 2011. 17 years. But remember what I said about how notoriously hard it is to have access to criminal records in PA? Here's why:

[31:58] Marissa Bluestine

You can go across the river, to New Jersey, and do a Freedom of Information Act request, I think they call it, in Jersey, we call it a Right To Know Law in Pennsylvania, and in Jersey, you can get anything regarding a criminal investigation, you can get the entire homicide file, the entire police file. In Pennsylvania, we have a Right to Know Law, which supposedly upholds public agencies accountable, and gives us their information, but anything to do with a "criminal investigation" is exempt from that. Doesn't mean it's confidential and it CAN'T be turned over, it's always within the discretion of the agency to turn it over or not, but they can always hide behind the Right to Know Law.

Riley Ross

Right. And they do.

Marissa Bluestine

They do.

Riley Ross

If you... you see in, like, many cases to make it more common that, something happens, you see automatically on the news or on YouTube dashcam footage. You don't see that here in Pennsylvania, because that footage does not have to be turned over, it's part of the criminal investigation, so you know, and I get envious when I'm seeing what happened, within hours of something happening, or days of something happening, you're seeing the dashcam video. You're seeing actual proof of what happened.

[33:04] Rabia Chaudry That's attorney Riley Ross, who is not only on the board of the Pennsylvania Innocence Project, he's an experienced criminal defense and civil rights lawyer in the state. I admit, I was frankly shocked to learn about the fact that a defendant doesn't have an actual right to records related the very criminal investigation that put him behind bars, not even in the years after the case is closed. And I was shocked, because that's not true in most states.

And this is a huge problem for defendants and attorneys in Pennsylvania:

[33:30] Riley Ross

Some of the difficulties are just with regards to, uh, a lack of open discovery, I mean, I think that that's ... that's what it comes down to. You don't really know what you're getting, because no one's there to tell the government: "Hey! Turn over everything," you have the government in state and federal cases that the prosecutor makes the decisions on what's Brady. Brady means if there's anything that's helpful to the defense, you have to turn it over. And, uh, they have the right to consider, and that could be helpful in the sense of, you know, they have, uh, a witness saying that, if my client is John, and the witness is saying that Joe did it, obviously that's, that's pretty obvious that I should, that I should know that someone else is saying someone other than my client did it. But, if there is evidence that, let's say, Susan is the witness against my client, and Susan's saying that my client did it, yet she's going around telling other people that, you know what- I've got something in for John, and I don't really like John. I'm entitled to know that as well, because I'm entitled to know information that may be biased, and that may not be so clear cut. So when you have a prosecutor that can make a decision or determination by looking at all his or her files and say, you know what, I don't think this is really Brady, I don't think this really has anything to do with the case, that makes it problematic because they're the ones making that determination. Obviously, they're the ones bringing the charges. They could be a little biased, and so... The lack of--

Rabia Chaudry

So, what does open discovery look like? Can you explain what that would look like if you had that here.

Riley Ross

In its pure sense, that means, here's my file. Come and take a look at it. Make copies of whatever you want. Or, hey, I'm going to copy the whole file and send it over to you. Without going through and picking through, and that file, meaning, what the prosecutor's gotten from his or her investigators- what they've been able to compile or what they've used in order to charge my client. So, everything that they're going to be using to- that they've used so far to bring the charges against him, against my client, is gonna be, I'm gonna have access to. And that's open discovery in its pure sense, which- if you think that that's how, you know, it, the goal here is justice, and making sure justice is served, than everything you have access to, let me have access to.

[35:35] Rabia Chaudry Adding to the problem of relying on prosecutors to decide what is helpful to your client or not, even when the prosecutors acting in good faith, is this:

[35:44] Marissa Bluestine

In Pennsylvania, in particular in the state system, it's very different from the way the federal is run on discovery because in the federal system the prosecutors are very often involved in the investigation from the very get go, like from the time that a search warrant is done, or they're even just gathering information against a particular defendant. In the state system, the police do all of that, and then only after they've issued an arrest warrant or made an arrest, then they hand over what they think they need to under Brady to the prosecutor. So it's this very bizarre game of Go Fish, right, so the prosecutor says to the police, "Do you have any witness statements?" They say, "I've got one of those." Right, so they choose what they think is relevant and necessary.

Rabia Chaudry

So the whole police files are not even turned over to the prosecutor?

Marissa Bluestine

No! They don't get it, they don't get it. In any jurisdiction we've ever been in, I've never seen, that I'm confident, that the police file becomes the prosecutor's file, and then the prosecutor's file goes to the defense. That's not, it is a winnowing of information from the investigation to defense counsel.

[37:06] Rabia Chaudry The criminalistics report gave Jim another issue to raise for the PCR, and he amended the petition to reflect this new evidence, but not long after he found himself having to amend the petition once again.

That's because Mustafa, Shaurn's brother, had provided them with some documents from his trial attorney's file. Remember, he had been tried with Shaurn, but he was represented by a different lawyer.

These documents were handwritten statements by Nathaniel Stallworth, the self admitted alcoholic, heroin and cocaine addict, who had led the police to his cousins John and William.

The letters were written in 1994, before Mustafa and Shaurn went to trial. And here is what Nathaniel had to say:

"I'm writing on behalf of Mustafa and Shaurn Thomas. I lied about everything I said about Mustafa and Shaurn, only because the detective said that they did it, that Mustafa had shot a man. The detective tried to say that I did it! So I got scared and started to say anything. I was under duress, I did not want to go to jail again. I am very sorry that I lied. I wish I could tell Mustafa that I am sorry for lying on him. At night I can't sleep knowing

that I got a man in jail for nothing at all. If possible I would like to testify on the behalf of Mustafa to declare the allegations I've made. Thank you. Nathaniel"

Dear Teresa Carr Denn

This is MR. Nathaniel Stullworth

I'm writing on behalf of Mustafa and Shawn Thomas...

I lied about every thing I said about Mustafa and Shawn, only because the Detective said that they did it, that Mustafa had shot a man. The detective try'd to say I did it! So I got scared and started to say anything I was under duress, I did not want to go to jail again.

I am very sorry that I lied
 I wish I could tell Mustafa
 that I am sorry for lying
 on him. at night I can't
 sleep knowing I got a man
 in jail for nothing at all.

If possible I would
 like to testify in the
 behalf of Mustafa to
 declare the allegations I've
 made.

Thank you

[38:30] Rabia Chaudry But Nathaniel never testified, the State never called him. And for some reason, neither did Mustafa's attorney. So his recantation never made it into court. Not through his personal testimony and not through those letters, which couldn't be introduced into evidence without him.

These letters weren't the only other reason the PCR petition had to be amended. Jim sent a letter to William Stallworth, the brother who originally told the police he had no idea what this crime was about. And William wrote him back, and in that letter he said that Shaurn Thomas had nothing to do with the crime, and that he was willing to meet and discuss it.

So Marissa went with an investigator to meet William, who had been released after serving time for the Martinez murder, but ended up violating his probation and was back in prison.

[39:14] Jim Figorski Actually, Marissa Bluestine went to see him with an investigator. And what she expected to hear, I don't want to, you know, say it for her, but I think what she expected to hear was, because of what he had said in his letter, that Shaurn Thomas was wrongly convicted, that he was going to say "look, I was there, they made me say Shaurn was there, but he wasn't". But what he actually said was, "I don't know what happened because I wasn't there". And it sort of stunned everybody who heard it, myself, then later that day. Because then we didn't know what we had. I mean how is it possible that none of these people did this murder? And he said "I don't know, I mean, I said what I said to save my brother and to make a deal for myself, but I don't know who did this murder." And he said, "I don't know if Shaurn did it because I wasn't there." And, and that was the only person who said that Shaurn Thomas was at the scene of the murder. He later uh, also recanted to the parole board and was held in prison for an additional 4 years or 3 years after that as a result, because he said he would no longer take responsibility.

[40:21] Rabia Chaudry According to William, he said that after he provided the police with his first statement in which he denied any involvement,

[William Stallworth claimed that months after he provided his first statement to police,] he was brought into a room at the Philadelphia Police Homicide Division with his cousin, Nathaniel Stallworth, and his brother, John Stallworth, who had already confessed to the murder and agreed to testify against others. Homicide investigators showed William a copy of John Stallworth's statement and told William that he had to tell the same story that his brother, John, was telling in order for John to receive the deal to which they agreed.

5. William Stallworth claimed that months after he provided his first statement to police, he was brought into a room at the Philadelphia Police Homicide Division with his cousin, Nathaniel Stallworth, and his brother, John Stallworth, who had already confessed to the murder and agreed to testify against others. Homicide investigators showed William a copy of John Stallworth's statement and told William that he had to tell the same story that his brother, John, was telling in order for John to receive the deal to which they agreed.

A few months after getting William Stallworth's recantation, Jim was able to secure the statements of two handwriting experts who compared Shaurn's signature to the signature on the subpoena he had signed the morning of the murder, something that could have certainly been done at the time of the trial, and something the jury actually requested, but it was never done.

All of this new evidence went into an amended PCRA petition filed by Jim with the PA Court of Common Pleas in an attempt to get Shaurn's conviction overturned.

Now you'd think, given the clear recantations by Nathaniel and William, coupled with nearly irrefutable evidence that Shaurn had been at the YSC at the time of the murder, his appeal would be a slam dunk. But on June 13, 2014, the court found that some of the issues raised by Shaurn had no merit, and others were untimely, and his petition for PCR was dismissed.

When I first encountered this case last year, at that event in Philadelphia with Marissa, there was an ongoing appeal for Shaurn in the PA Supreme Court - it was the appeal of the dismissal of his PCRA. Sometime last year, late in late the fall, after being briefed on the facts, the Undisclosed team decided that we would investigate and report on Shaurn's case the following year, meaning this year, and we let the PAIP know, so they could start to share the case files with us, and we could get started.

Not long after that though, there was a new development in the Philadelphia criminal justice scene: a major upgrade to the city's three year old Conviction Review Unit, which had been established by former DA Seth Williams. The purpose of the, Conviction Review Unit, or the CRU, was to take a look at cases where actual innocence was being claimed outside of the court system. It didn't start off so great though.

[42:49] Marissa Bluestine

Well it's an interesting history with that. So, Seth originally put it up, I think in 2015 or 2014, and he assigned one district attorney to do it, who had been a homicide prosecutor for about 20 years. It was kind of shocking to me when, down with Mark, down with me, anytime I asked, he was absolutely open about that. But I would ask him, "What are your protocols, what are your...you know, how are you going to proceed?" And he had no...he didn't have any, he wasn't given any marching orders, any directive. So we would try and kind of develop sort of a working relationship with that. Within about six weeks of him being appointed to the CRU, Seth also appointed him to run the investigations against a group of state legislators in Harrisburg who were accused of graft, essentially. So you went from one full-time to one part-time. And at the time, when people asked me about that, I said well, you know, it's like Vice President Biden says: "Don't tell me your values, show me your budget, and I'll tell you your values." All right, so to me the fact that they were willing to halve the unit showed me what level of priority that administration had into truly delving into these cases. So Mark really was pulled in two different directions. Once Kathy Martin became, came on the staff, I think with Integrity Officer Chief of Staff, she helped to integrate a new era of the Conviction Unit,

and she and I started meeting, I think she said on the record [laugh] kind of in secret - that's only half joking - to try to talk about how could this unit be restructured, what kind of protocols would they have, what would be the way that they would flow cases, what standard of proof that they would need - [Rabia: Sure] I mean a critical, critical question. How would...what level of convincing would we have to do with them to be able to reverse a conviction. What could they do. And over several months of working with Kathy, and Kathy reached out to John Hallway at the Quatern Center for the Fair Administration of Justice, we put together protocols for the unit, and then they hired two full-time prosecutors, they hired an outside investigator, they hired a para - well they re-routed the two DAs and the paralegal, but they hired an investigator into the unit. And they started in January. And we started - we sat down with them in January. And we presented several cases, Shaurn Thomas being one.

[45:04] Rabia Chaudry By January, Marissa means this past January, 2017. They presented Shaurn's case to the CRU and also gave them a heads up that the case would be covered this year by Undisclosed. Now I'm not saying our potential investigation and reporting had any impact on the decisions made by the CRU, but I'm also not saying it definitely didn't.

After reviewing Shaurn's case and realizing his attorneys still had been unable to get his juvenile and homicide file for all these years, the folks at the CRU did everything they could to remedy that.

[45:36] Marissa Bluestine

They took an objective view, and they looked at the case. You know, ironically, even though the Commonwealth was his alibi witness, there was no records we could get to verify that, to show that. And they tried. And they looked - they pulled their files, they were able to get the homicide file out, they interviewed witnesses, they talked with us about the case, they tried to keep us updated on the progress

[45:58] Rabia Chaudry One of those updates came in April of this year, just a few months after the CRU began investigating the case.

[46:04] Jim Figorski

Well, the first thing that happened was in April, they called us - myself and Marissa Bluestine - and told us they had finished their investigation into Shaurn's alibi, and they, their, the team's consensus was that they believed that Shaurn was most likely - ot you know, more likely than not - at the Youth Study Center the morning of the murder. I thought, well that means he's innocent, and then they also said that William Stallworth had recanted his testimony to them as well.

[46:33] Rabia Chaudry And then, on May 12, 2017, this:

[46:38] Marissa Bluestine

And then one day, Andrew Relrock, who's the assistant director of the unit, he and I were doing a presentation down at the Bar Association, and he came in to see me, and he said "You're going to want to read this." and he handed me a letter, and it was a letter from Kathy Martin, who is the, I guess at that point the acting District Attorney, and it said: We have received information from the homicide file, which we believe should have been turned over 22 years ago. On the strength of that, we agree to vacate his conviction.

[47:05] Rabia Chaudry I got a text from Marissa not long after telling me the DA had agreed to throw out Shaurn's conviction. Now I can be a bit of a blubbery fool so I cried happy tears along with her, even as she joked about Undisclosed was not going to have a case to do anymore. Which, by the way, was fine with all of us.

[47:22] Marissa Bluestine

Just, it was such an emotional release, because we had been fighting *so hard*. And having nobody listen - at all! Not giving any kind of objective view - not the DAs, not the courts, not the Superior Court, as far as we knew. And so to see those words...was..it was cathartic.

[47:43] Rabia Chaudry Jim, having developed a deep friendship with Shaurn over these many years, had the honor of telling him that he was going to be a free man.

[47:49] Jim Figorski

Well I called him up and I read the letter, because we had gotten a letter from the DA's office and it said that as a result of the investigation we completed, we no longer have confidence in the verdict, and we're going to vacate this conviction. So I called him up and I told him, I said "Shaurn, I got" ...I read it to him, and he didn't say anything. And I said "Shaurn, this means you're getting out, they're going to let you go". And he said "I'm getting out?" I said "Yeah", and he laughed, he laughed, and I said "No, this is serious." and he said "Really, I'm getting out?", and I said "Yeah". And it was May, I think it was 3 days before mother's Day, and he said "Don't tell my mother". And he said "I want to tell her myself, I want to bring her up here on Mother's Day".

[48:25] Rabia Chaudry It was a terrible, long, hard road for Shaurn. 24 years. He was convicted at the age of 19. And today he is 42 years old.

[48:33] Shaurn Thomas

Our whole way, it's just been a struggle, right? We find evidence, they hide it. We gotta play hide and seek. You know I been doin' this for 24 years, so, I said "Jim - I'll believe when I walk out." like, I said "I don't trust these people", right? and he's "Well, it's gonna happen Shaurn". And I said "Well, as long as you be at the door waitin' for me", I mean at the door and I'm goin' out, you know. And we waited, I mean, then we went upstairs,

we had to wait. You know, it was a waiting process, I still was calm though. I wasn't like - a lot of stuff was going through my mind. They made me pack up my stuff. I was like you're going home. Okay. Boy, boy, boy. I mean it's a lot, you know cuz I was real thankful, you know, that's really proper, you know, and being a Muslim, it's something, and I'm real thankful, after 25 years, you know the Lord blessed me with help, with Jim, and the Innocence Project...

[49:42] Rabia Chaudry But the struggle was over, and perhaps the sweetest moment of it all came when he got to tell his mother

[49:47] Shaurn Thomas

She just came - I said 'Yo, I need to see you for Mother's Day'. She said "All right, that would be nice, I'll be..." I told her 'I need to see ya', I never told her what it was about or nothin'. So as we was into the visit, I said "Ma, let me ask you a question -when you gonna stop smokin'?", She said "well, when you come home, I'll stop smoking. [Rabia: laughs] I just was laughin'. I said "You sure you gonna stop? She said "Yeah, when you come home, I'll stop smokin'. "I said well B, you got about a week to stop smokin'!" She looked at me. "Ha ha ha, stop playin' with me". Cuz she's real funny. She laughin'. She looked at me and my sister, all right. I said "yo, it's gonna really happen." She just got quiet for a minute. She looked at my sister like, "Stop playin' with me". And my sister like "No, the joke's on you." and I told her - she said "Jim ain't called me." And I said "He wasn't gonna call you until I talked to you". Then after I told her she's still like, stuck. And I just grabbed her and hugged her. I was like "Everything's gonna be alright B."

[50:52] Rabia Chaudry Nine days after Mother's Day, Shaurn walked out, a free man.

We at Undisclosed did debate whether or not to still cover Shaurn's case. After all, his conviction had been thrown out, but the story itself deserved telling. But at Undisclosed one of the most important factors we consider in covering a case is this: can it help free an innocent person? Shaurn is now free, completely so. In June the DA announced that it was completely dropping all charges, and that he would not be retried for this murder.

But, remember, there *was* a murder. And that homicide file that showed up this spring, after more than two decades of being lost, had some very important information. Information about who might have killed Domingo Martinez.

[51:58] Riley Ross

The underlying thing that always astonishes me when we're facing prosecutors who don't want to look at this, especially when there's DNA: If my guy didn't do it, the person that did do it is still out there.

[52:13] Rabia Chaudry Next time, on Undisclosed

A very big Thank you to everyone who made this show and this series possible, starting with the Pennsylvania Innocence Project. Thank you guys for everything you do and for working with us on this case. Thank you to our amazing producer Mital Telhan for keeping it all together. Thank you to Baluki for our original and this new logo. Thanks for our fantastic sponsors who make it possible for us to come back week after week with new episodes for you guys. Thanks to all of you listeners for your continued support. Lots of gratitude to audio producer extraordinaire Rebecca LaVoie of Partners in Crime Media, and also the host of the fantastic podcast Crime Writers On. Please do follow us on social media. You'll find us on Instagram, Facebook, and Twitter, the handle is @undisclosedpod, and don't forget to tweet your questions at us. Every week Jon Cryer will be back to host our addendum, very excited about that, thank you to Jon for doing that again for us. But make sure you use the hashtag #udaddendum so we can find your questions. We'll be back next week with a brand new episode of Undisclosed.