
UNDISCLOSED SEASON 2: **THE STATE VS. JOEY WATKINS**
EPISODE 21: **TIME AND DISTANCE**

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Rabia Chaudry:

Organizations like the Innocence Project, and including the Georgia Innocence Project, where this case came from, are overwhelmed with requests from inmates every year asking that their case be reviewed, and of course, they're all claiming innocence. These organizations can only focus their extremely limited time and resources on the cases in which they really do believe the incarcerated person is innocent.

Now, when Susan presented this case to Colin and I, we both knew that a group like GIP wouldn't be involved unless there was something deeply flawed with the conviction. And we saw that it was pretty clear, there was no evidence to support, or even suggest, that Joey was guilty of the crime. But proving innocence? That's much harder. Today, we'll show you the evidence we think does exactly that.

Hi, and welcome to *Undisclosed: The State vs. Joey Watkins*. My name is Rabia Chaudry. I'm an attorney and a fellow at the US Institute of Peace, and the author of, *Adnan's Story*. I'm here with my colleagues, as always, Susan Simpson and Colin Miller.

Susan Simpson:

I'm Susan Simpson. I'm an attorney with the Volkov Law Group. And I blog at *View from LL2.com*.

Colin Miller:

I'm Colin Miller. I'm an associate dean and professor at the University of South Carolina's School of Law, and I blog at *Evidence Prof Blog*.

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Susan Simpson:

Almost exactly a year ago now, while I was back in Atlanta for the holidays, I took a look at the cell phone evidence in this case for the first time. We'd finally decided on taking Joey's case for Season 2 about a couple of weeks earlier. And I was still just trying to get my bearings in the case. To get all the files in one place and finally start going through them.

I'd known the case had involved cell phone evidence from the start, from when I'd first spoken to Clare about it, but I also knew that the cell phone evidence had been the basis of a *habeas* petition that Joey had brought in 2009. And that both Georgia and Federal courts had rejected. And the whole issue was, legally speaking, dead. So, the cell phone stuff wasn't a priority for me and I hadn't looked at it yet. I knew it legally irrelevant at this point. And I kind of just assumed that it wouldn't have much factual significance either. I was wrong about that.

Here's the update I recorded after reviewing the transcripts related to the cell phone evidence and mapping out all the locations involved:

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Susan Simpson:

So before now, I haven't really had a chance to get into the details. I've read the majority of the transcripts. But I don't yet have all the files. The bulk of the documents are coming tomorrow. Even without those documents, though, I decided to try and figure out what's going

on with the cell phone stuff, because I was curious. Like, what is the cell phone evidence in this case? And, what I know so far is based just on the transcripts and the few things that Clare has told me. But just from what data we do have available, and like, even assuming that all the missing data – the best possible way could be for the prosecution – going through these documents is making my head spin.

Because what the fuck?! What?! Why are we even here? Why are we even covering this case?! I am confused and frustrated because I don't understand why there could've possibly been in any universe a conviction here that led to us covering this case 15 years later. I don't understand how the prosecution brought this case forward. And I don't understand how the defense lost. And I don't understand. I don't understand.

Because, okay: Let's start with the phone call. The 7:15 phone call. So there's no area where I would reasonably expect it to be even a consideration that Kingston could connect to a cell phone that's within two and a half minutes of anywhere Isaac Dawkins would've been at that time period. In other words, there's no chance Joey could've made a call in Kingston at 7:15 and encountered Isaak Dawkins somewhere south of Walker Mountain Road.

I mean, that's it, that's game over. Like, why are we still even talking about this? Why am I still talking to myself about this? I don't know. Because maybe the transcripts are wrong. That's about all I can assume right now. Because, if the transcripts were right, there isn't a case for us to go on.

So, okay. You know, there'll probably be another update of me talking to myself later on saying, "Oh, okay here we go. Here's where the error was, the trial transcripts were totally wrong. And here's why it's within the realm of some kind of possibility for Joey to have committed the murder."

But still, even so. Even if that's the case, it still means that what the jury heard precluded any possibility that Joey was the murderer. And yet, here we are today.

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Susan Simpson:

Even after getting the rest of the documents though, and having over a year now to stew over it, my feelings on the issue haven't much changed. I still don't understand how so much could've gone wrong in this case. Because the cell phone evidence here isn't ambiguous. If Joey's cell phone was being transported at speeds that cars are typically capable of achieving, well, then his cell phone just couldn't have been at the site of the murder. And multiple witnesses can confirm that Joey was in fact with his cell phone during the calls made around that time. His sister, his grandmother, his uncle, his girlfriend. All of them agree it was Joey calling that night. So he was with his cell phone and his cell phone wasn't at the murder, so how could Joey have been?

Colin Miller:

But, Bud Siemon came on the case in 2009 as Joey's *habeas* attorney. And by way of review, a writ of *habeas corpus* is a way for a defendant to claim that he is being unlawfully detained in prison and *habeas corpus* is Latin for "you have the body". And in essence, it is a way to go before the court and say that a person is being unlawfully detained based upon evidence of unlawful procedure or evidence of innocence.

And when Bud started looking around into Joey's case, he quickly became troubled by what he saw. "The facts just didn't seem to add up right" he said. Still, Joey hadn't been left with any clear way forward with the post-conviction proceeding. There are a few different directions that *habeas* petition can go in. But even though there were troubling factual developments in Joey's case, like Barry Mullinax's recantation, that's something that an appeal's court usually doesn't want to hear about.

[06:47]

Bud Siemon:

You know, and so, I'm just thinking, you know? There's just nothing that I can do for this guy.

But then I think, well, you know they brought in this expert, Dr Steffes. Why don't I give him a call, and see why they bothered to bring him in. And so I call Paul, and Paul says, "I don't think he could've done it!"

Susan Simpson:

Dr Paul Steffes is a professor in Electrical Engineering at Georgia Tech. He's a specialist in radio systems engineering and in radio science. And back in 2001, he had 40 publications in the field. And while it doesn't really have anything to do with Joey's situation, he's also done this, which I'm including here, just because it's pretty cool:

[07:29]

Dr Steffes:

I'm deeply involved with the NASA planetary exploration program using radio systems to probe the atmospheres of other planets. Also to communicate and develop space communications systems orbiting the earth. And also involving work with detecting signals from deep space.

Rabia Chaudry:

He's testified as an expert witness in court cases many times. In fact, he was the expert witness in the case that led to the Supreme Court of Georgia ruling in favor of the admissibility of cell phone evidence. And he was the expert witness in both Joey's and Mark's trials.

[08:03]

Dr Paul Steffes:

When Bud first called me, I said "I have been waiting eight years to hear this call." Because you know, I just still... It just.. And I would, you know, follow the incarceration records and stuff because it just bothered me so much.

Susan Simpson:

Are there any other cases that have stuck with you like that?

Dr Paul Steffes:

Nope. In my 17 years of testifying on use of cell phone records for, you know, determination of handset locations in a crime. This is the only one that haunts me. This is the only one that haunts me because I feel that the evidence is pretty clear. And it's not consistent with the outcome of the trial.

Rabia Chaudry:

There are plenty of times when cell phone evidence isn't all that clear. And he sees those kinds of cases all the time:

[08:54]

Susan Simpson:

Did you often, or ever, encounter cases where it was ambiguous cell phone evidence?

Dr Paul Steffes:

That's the typical case where the reported location that the defendant identifies themselves being at is close enough to the location of the crime that the tower evidence could discriminate between the two. So it would have been just as consistent for the tower sectors, as you can see in this are – especially back in the early part of the last decade – were relatively large.

The ambiguities usually occur when a crime scene is close to the location where the defendant says they were, and then we can't provide resolution as to what the actual location was.

Rabia Chaudry: But Joey's case isn't one of those cases. Something that Bud Siemon doesn't think that any of the attorneys involved in Joey's trial paid enough attention to:

[09:44]

Bud Siemon: *I don't think any of them really understood how conclusive this evidence was – would be – if it was all put together right. If it's all put together right, it's-- You know, it's airtight.*

Susan Simpson: *That was my reaction. I freaked out when I saw it because I hadn't looked at the cell phone stuff yet, I assumed it was kind of a wash.*

Bud Siemon: *No, not at all.*

Susan Simpson: *And then it wasn't.*

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Rabia Chaudry: Last season, in discussing the cell phone evidence at Adnan's trial, we discussed the problems in using cell phone evidence to draw conclusions about where a phone is. Call detail records or 'CDRs' are not tracking devices. They aren't designed for and not intended as a means to locate a phone in the real world. They're designed to build customers. And there are a lot of problems with using them as some kind of GPS that can track the phone's movement.

Here's Dr Steffes at Mark's trial, explaining on cross-examination why there's one thing about cell phone records that *can* be relied upon to conclusively show:

[10:56]

Lawyer: *I guess what I'm trying to say: There is no way that you, even as an expert in this case, can tell us for certainty that the call would've been picked up or would've been in a certain place.*

Dr Paul Steffes: *If there're certain terrain present, it is possible to unequivocally state whether or not a certain tower can make communication with that location. Even if it's near an edge or a junction. If there's some large terrain structure that blocks the radio waves, you can say, safely and unambiguously, that the radio signal is going to one tower rather than another.*

Rabia Chaudry: A large terrain structure like, say, a mountain, or several mountains. Because you can't make a cell phone call through mountains. Radio waves don't work that way. And that matters. Because if the cell phone records you're looking at are accurate, something that, like you saw in last season's case, isn't something that can just be assumed. But if they *are* accurate, there's one airtight conclusion that can drawn from those records alone: That at the time a phone made a call on a particular tower, that phone was in a location where radio waves from that tower could've actually reached. If there's no signal, there *is* no phone call.

At Joey's trial, the only evidence that was introduced was a testimony of the experts for both the State and the prosecution based on what they could see in Verizon's coverage map. But in working with Bud Siemon in the lead up to Joey's *habeas* petition, Dr Steffes had more than just a few days to prepare. He was able to do on-the-ground testing to confirm what the elevations of the mountains in the area had told them: That there's no way a call could've been made on the Kingston Tower anywhere past even the *first* of the three ridge lines between the tower and Highway 27 South.

[12:36]

Dr Paul Steffes: *When we did the measurements, we found that the signal from the Kingston Tower was completely inaccessible anywhere near the scene of the crime.*

- Susan Simpson:** *And when you say accessible, meaning...?*
- Dr Paul Steffes:** *Meaning that the cell phone would not even detect the presence of that tower.*
- Susan Simpson:** *So it's not that it was weaker, it just wasn't there?*
- Dr Paul Steffes:** *It wasn't even there. It wasn't even there until we got over the hill.*

Colin Miller: Now this is different from what the testing that was done in Adnan's case was able to show. The prosecutors in *that* case took their cell expert out to various locations that Jay pointed at, and recorded the strongest signal the expert found at the moment of his testing.

That testing wasn't showing what towers *could* provide coverage to that spot, just *which* tower out of all the towers that could reach there had the strongest signal at the moment of testing. For each location that was tested in Adnan's case, there could've been a half dozen towers it was possible to make a call from – it's just that one was found to be stronger than all the rest. And that's what was recorded. In other words, if you go to a spot, test it, and find the strongest signals from Tower 'X', all that tells you is that you can't *disprove* the theory that someone's whose call records show a call on Tower X could've likely made that call from that location. It *can't* tell you that they were at that location. It can't tell you that they were anymore likely to be at that location than any other place the tower signal reaches. And if the test gives you a different tower than what is shown in the logs, you *can't* conclude that the person hadn't been at that location when they made their call.

But here's the major difference in Joey's case: The records in *his* case don't present the question of whether a given phone call was *likely* to have been made on a particular tower, but whether it was *possible*. Full stop. For him to have made the phone call from where the State claims he made a phone call.

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Colin Miller: The most important fact in Joey's case is this: At 7:15 pm, he made a phone call to his girlfriend, and that phone call connected to the Kingston Tower. Unlike in Adnan's case, and unlike *most* cases, that's all we know about this call. We know that it originated on the Kingston Tower, but we don't know which sector – that would show you roughly more or less the direction the phone was in from the tower, whether it was picked up on the north-facing, east-facing, or west-facing antennas – we just know it was one of those three.

But we do know that the Kingston Tower is on the eastern border of Floyd County, way out on the county line as you're heading into Bartow. And we know that wherever Joey was at the moment, he pressed 'send' on his phone to make that call, it was somewhere that the radio waves from that tower could reach. According to Joey, he was stepping out of his house and into his truck when he made that call to let Aislinn know that he was on his way to Cedartown. There's no conflict there between Joey's story and the cell phone records, because Kingston Tower covered Joey's house. It was by far the closest tower to where he lived.

According to the State, though, Joey wasn't at home when he made that call. He was busy getting ready to commit a murder. And that's a problem for the State because the Kingston Tower can't reach any location relevant to the events of Isaac's murder. It's not a question of probabilities or preferred signals, or optimal network performance. The locations where Joey had to be to kill Isaac are 8-10 miles and three mountains away from where the Kingston Tower is. And physics just won't allow the tower to provide coverage there.

Susan Simpson: But here's where we run into a problem in trying to compare the prosecution's case against the cell phone evidence: Because the State's case is more like an overstuffed suggestion box than an actual theory. And since the prosecution has *dozens* of competing ideas about where

Joey was when, there's no easy way to hold him up for inspection to evaluate them and look at the cell phone records and say whether or not they mesh or don't mesh or tell us anything useful at all.

Here's what we do definitely know though:

Remember that 7:15 pm is the same time that Isaac got out of college that night. And he was shot while driving north from there to his home, heading along Highway 27 South.

According to the largest chunk of the State's witnesses, that's where Joey and Mark went find Isaac that night. Corey Jacobs, Josh Flemister, Winford Reece Ellis, Paul Cooley, Todd Beckstein – all of those witnesses claim that Joey and Mark teamed up to hunt Isaac down. And found him either at the college itself, or in the gas station just across the street.

Next we have Wayne Benson. He first encountered Isaac's truck south of Walker Mountain Road, when it was having some sort interaction with a dark-colored blueish four-doored car that looked like an old Honda. After the truck and the Honda had this little interaction that Wayne Benson saw, they continued north along Highway 27 South until just after the Coke plant, when Isaac's truck ran off the road. At the time, said Benson, the little Honda was the only other car around the truck. If Benson's right, this would require the shooter to have been in the Honda, and for the driver of the Honda to have first encountered Isaac somewhere between Floyd College and the location where Benson first saw them. Which is about a mile, a mile and a half along Highway 27 South.

Finally, we have a testimony of Joey's girlfriend Aislinn and Joey's family. All of whom agree that Joey had left his house in a white truck that night and showed up at Aislinn's in a white truck.

Adding all that evidence together and there's only *one* conclusion that any prosecutor acting in good faith could've asked the jury to believe: That the crime had been planned out in advance, and committed as part of a conspiracy. Joey had learned somehow that Isaac got out of class at 7:15 pm that evening. And he'd picked up Mark somewhere so that he could find Isaac together and kill him. But before doing all of that, Joey had traded out his white truck for a blue car. In order to avoid being recognized at the crime scene. That's *not* something that could happen as part of a spur of the moment crime – it indicates a plan. That this was something that they thought out and did in advance. And if Isaac got out of class at 7:15 pm, and if Joey and Mark were intercepting Isaac at the college, that means Joey should've been at Floyd College at 7:15, right?

[19:23]

Lawyer:

In your professional experience and opinion, is there anyway that call could originate from around the Floyd College area?

Dr Paul Steffes:

No, sir. The Floyd College area is obstructed by a roll of hills so that no radio signal operating, like cell phones operate, could propagate or make its way through the hills. The hills blocked that radio wave. So that tower could not be used used to make a cell phone call if you were in the vicinity of Floyd College on US 27 there.

Susan Simpson:

And sure. Dr Steffes was a defense expert. But the things is, what he testified about... This isn't a point of dispute. The State's *own* expert witness, an RF engineer from Verizon, agreed with Dr Steffes.

Here's the State's expert on cross-examination at Joey's trial:

Colin Miller:

Question:

If someone made a call anywhere within below Walker Mountain but above the college is it possible for the Kingston tower to pick up

a call originating from right there? If someone was making a call at 7:15?

Answer: No, Kingston is red and it's very-- 99% sure you would not be on Kingston here. At all. You could not originate a call. It's the-- There's terrain here, Bill. And that terrain significantly blocks Kingston from getting across to Highway 27.

Question: So essentially a call cannot originate from down there and be picked up at Kingston at 7:15 as you were showing on that call?

Answer: Correct.

Susan Simpson:

So, the defense expert agrees, and the prosecution expert agrees. Joey was *not* at Floyd College at 7:15. No way, no how, couldn't happen. In fact, the State's expert and the defense expert both agree that Joey wasn't anywhere *near* Floyd College. He wasn't even anywhere on Highway 27 South. He couldn't have been. But as important as this might seem to Joey's case, it doesn't seem like his defense counsel was actually prepared or ready to present this issue to jury at the time of his trial.

[21:14]

Dr Steffes:

On the 18th of June I got a call from Rex Abernathy. And Bill O'Dell also came on board and we discussed the case. I spent an hour that day. Again, this only 11 days before trial.

Then I traveled to Rome on the 19th, which is exactly 10 days before trial. Met with Bill and Rex at Bill's office. We discussed the case. And I told them that all the evidence indicated to me that there was no way that that phone could have been at the scene of the crime at the time suggested.

So we went and visited the Floyd County DA's Office. And that's the first time I met Tami Colston. And I told her, I said-- She had the same maps set up by her expert who was from what later would be Verizon. I think at the time it might've been Air Touch Cellular, I can't remember they all got- But it was Verizon. A [inaudible] of Verizon.

And I said well you know, your expert's going to say the same thing I'm going to say. Which is that, the connections were to a tower that was too far away and did not cover the area of the crime.

Susan Simpson:

Dr Steffes was wrong, by the way, about the timeline of when the defense attorneys first contacted him. June 18th was 11 days before he testified, but it was only one week before Joey's trial began, on June 25th 2001. So even though the cell phone records provide what looks like just positive evidence of Joey's innocence, the defense waited until seven days before trial before even *trying* to contact any kind of cell expert.

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Rabia Chaudry:

But Dr Steffes was right in his prediction of Tami Colston – of what her expert would say. The prosecution expert did indeed reach the exact same conclusion Dr Steffes had. That's not necessarily something the jury would've realized, though. Dr Steffes didn't even know *himself* what the expert from Verizon had said until after the trial. Because in Georgia, experts are sequestered like fact witnesses. And they can't hear the other testimony in the trial. But if Dr Steffes had been able to hear the Verizon expert testify, he'd have been able to point out that actually the two of them were in complete agreement about what the cell records showed.

[23:40]

Dr Paul Steffes: *No, it would have helped, because then I could've, you know, I could've restated the consistency between my testimony and the expert for the other side during the--*

Susan Simpson: *Yeah.*

Dr Paul Steffes: *During the, you know, Joey Watkins trial. Now, of course again, there was no expert for the other side in the Mark Free trial. So...*

Susan Simpson: *Yeah, you know it's not as if there was dueling experts.*

Dr Paul Steffes: *No, no. No, not at all.*

Bud Siemon: *But they did, actually, they did a fair job of making it look like that they were dueling experts.*

Dr Paul Steffes: *Right, right.*

Bud Siemon: *At Joey's trial.*

Dr Paul Steffes: *Mm-hmm.*

Rabia Chaudry: We think Bud Siemon's right about that. The transcripts from the testimony of the cell experts are kind of all over the place. The individual pieces are in there – the experts' agreement that the phone could *not* have ten miles and three mountain ridges from Kingston Tower at the time of the 7:15 pm call is *in* there, but all that is buried among a confusing series of segues and side stories... And there's never a point where the defense gets up and says, “Hey, jury, you know the place the prosecution is telling you that Joey intercepted Isaac? All the experts agree there's no way that happened.”

[24:45]

Dr Paul Steffes: *I didn't feel as if the jury really was getting what I was saying. Whereas in the trial for Mark Free, I felt that the jury got it. Also, there was a prosecution testimony made by the Verizon expert who was consistent with my testimony.*

Susan Simpson: *Yeah!*

Dr Paul Steffes: *But, it was almost as if somehow it was not presented in a smooth way to the the jurors. In my opinion.*

Rabia Chaudry: It must not have been because as whole, the jury took home the *opposite* message from what had presented at trial.

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Susan Simpson: For the most part, with a couple of exceptions, the jurors I've spoken to, that were able to recall the trial at all, remembered exactly two things: That Joey had killed dogs, and that the cell phone evidence proved he was guilty. That the cell phone records had shown that he'd been at the crime scene. The first time a juror told me that, I was blown away. I didn't get how they'd reached that conclusion or how that was what they recalled after looking at the evidence. But it's also the exact same opinion that the appeals courts that have looked at Joey's case over the years, have come to as well.

Dr Paul Steffes: *I mean, they believed that the phone records were inculcated! And if you read the Georgia Supreme Court opinion affirming the conviction, the Georgia Supreme Court says the evidence show that his cell phone was in the vicinity of the crime at the time it occurred. Well that's right... But he was three or four miles up the road.*

Rabia Chaudry: Joey was in the vicinity of the crime in the same way everyone else driving on a Rome highway that night was also in the vicinity of the crime. But he wasn't at the crime scene when the crime happened.

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Colin Miller: Let's take a look now at what exactly this cell evidence in the case consisted of. Now a podcast isn't exactly the ideal way of conveying this kind of information because it depends on keeping track of a lot of locations. So if you can, it may be worth going to our website now and taking a look at the maps the one and only Ballookey put together, illustrating all the key points involved here.

But in case you can't look at the maps right now, here's a basic outline of what's involved:

Joey's house was in north-east Rome. To get to Aislinn's house, he had to head west himself along the Kingston highway and the bypass. Then west along 411 which took him to 27 South, which took him to 20 miles to Aislinn's home in Cedartown. Floyd College is about five miles down 27 South. And the wreck site is two miles down 27 South.

So in order for Joey to have committed the murder the way the State claims, Joey had to drive south from his place and head down 27 South until they got to Floyd College. And then head back up *north* again following Isaac along 27 South until they reached the wreck site.

Last spring, Susan met with Bud Siemon and Paul Steffes to talk about Joey's case. Here's their summary of what the maps show:

[27:30]

Dr Paul Steffes: *This is where the Kingston Tower is. It's on the east side of town. It's right on the border here, the very east edge of metro Rome.*

Bud Siemon: *Yeah. So. Joey left home. Joey was living up here at the time. Joey left home, he's coming down what's called the bypass.*

Dr Paul Steffes: *Right.*

Bud Siemon: *He gets down here to...*

Dr Paul Steffes: *411.*

Bud Siemon: *411. And he turns right. Now, there's Callier Springs. That's the last point that you can pick up the Kingston Tower.*

Dr Paul Steffes: *That's correct.*

Bud Siemon: *Because it's mountainous up around Rome. I don't whether you've ever been there?*

Susan Simpson: *I've been there.*

Bud Siemon: *Okay. It's pretty mountainous. But, Callier Springs Road is the furthest west that you could pick up the Kingston Tower.*

Susan Simpson:

That spot at the junction of Callier Springs and 411, it's what I've been calling the 'LCKT' – Last Chance Kingston Tower. Its location that's farthest to the west where Joey possibly could've been in any version of the multiverse. And *still* made a call that connected through the Kingston Tower.

On the maps that the prosecution used at trial, prepared by Verizon, it looks like a lumpy red comma that crosses 411 at Callier Springs.

In real life, that represents a rise, where 411 goes up over a range of hills and, for a brief moment, gets high enough and has a clear enough view back to the east for there to be a line of sight with Kingston Tower. Which is 5.3 miles away on the county line.

And that brings us back to the State's case: The State has always claimed that Joey *must've* been at the LKCT when he made that 7:15 pm call to Aislinn. They don't have a choice about that, really, because the next closest red blob, the next closest area where those maps show the Kingston tower could cover, is 1.3 miles away back to the east. So, basically, unless Joey was in that tiny little crescent that makes up the LKCT, their entire case only gets more absurd.

And it is this LCKT, and the theory that Joey was there when he made that call, that is the foundation of the State's case. And consequently, Joey's defense.

Now the cell phone records can't show where Joey *was* from that call. Just where it was possible for him to have been. Which means the State kind of gets a benefit there because, it can choose the location of where Joey was that's most beneficial to its case.

[30:00]

Bud Siemon:

Well in our case, and the habeas, basically depended-- Was based on him heading the send button just as he was crossing Callier Springs road.

Susan Simpson:

Mm-hmm.

Bud Siemon:

The reality is, he was probably miles from Callier Springs Road when he made the call.

Susan Simpson:

Mm-hmm.

Bud Siemon:

So even if from the prosecution's best argument--

Susan Simpson:

Mm-hmm.

Bud Siemon:

From their best perspective, if he hit the send button, just before he crossed Callier Springs Road, then he would have to have done all that in four minutes at the most. Probably less because of the reasons I said before.

Susan Simpson:

The "all that" that Bud was referring to is the crux of the case. Because the LCKT may have been the State's best case for Joey's guilt, but it's still *miles* away from the murder. This was something that was raised by Joey's *habeas* in 2009. Arguing that only *part* of the evidence had come in at trial. And that the jury had never heard all the facts assembled together in a way that could be understood.

And never got to hear the results of Dr Steffes's testing which confirmed that no – no coverage could've possibly been had anywhere else along the route, from the Kingston Tower.

The State rejected these claims, though, on the grounds that the jury had already heard at least part of the evidence at Joey's trial. And, they could've puzzled out the rest of it for themselves if they'd wanted to. They convicted him anyway, so his conviction stands.

[31:21]

Bud Siemon:

You read the, uh-- Like I said I read the Federal opinion this morning. Felt like pulling my hair out! They're saying, "Yeah well, he says that he couldn't have driven 8.2 miles in four minutes, but, [inaudible]." You know--

Dr Paul Steffes:

Yes, they just were dismissive. Like as if, you know, physical reality didn't play a role.

[33:56]

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Rabia Chaudry:

In the face of these limitations in the State's case, the prosecution's strategy at trial was to maximize every inference in its favor, while obscuring the fact that the resulting case was still impossible.

Step 1: Find a location that's as few miles away as close to the murder location that they can argue that there's a chance that a signal from the Kingston Tower can still reach, in order to minimize the distance that Joey had to travel between his 7:15 pm call to Aislinn and the time of the murder – that's the LCKT. That's the spot at 411 and Callier Springs.

Step 2: Argue that Isaac was murdered at the *latest* time they could possibly get away with, in order maximize the time that Joey would have to travel from a location where the Kingston Tower could reach. Now the State caught a couple of huge breaks here: The first is that the cell phone records that Stanley Sutton obtained from Joey's cell phone carrier weren't the kind of records that have many details. They don't, for instance, tell us for instance at what *second* a call was made. So we know the call to Aislinn was at 7:15 pm. But it could be anywhere from 7:15 and zero seconds to 7:15 pm and 59 seconds.

Which means the State can maximize its time by claiming an extra minute of leeway time based on this ambiguity. And the second break for the State is the missing E-911 records that we talked about last week. In discussing our inability to put together an accurate timeline as it applies to Heath's case. We can't put together a precise timeline in Joey's case *either*, because we don't even know exactly when 911 was called. But some of the paperwork has the time 7:20 on it. Which is the time that the State went with.

Susan Simpson:

But both of these claims have big problems. And by 'problems', I mean reasons they couldn't have happened: First, the time of Joey's call to Aislinn probably wasn't 7:15 and zero seconds like the State claims because, no, Joey's records *don't* show what second the call was made in, and technically, from his records, it could be anywhere in that 60 second period, but we do have a benefit in this case of having records from Aislinn's home phone – the number he was calling. Which show that that call was received by her at 7:16 pm, which shows us something important. That in the time between the moment that Joey pressed 'send' on his cell phone and the moment that Aislinn answered, the clock ticked over from 7:15 pm to 7:16 pm. Which tells us that Joey's call was likely not made at 7:15 and zero seconds like the State claims, but much closer to 7:15 and 30 seconds to 7:15 and 59 seconds.

Because, for the State's theory to work, what that would mean is that Joey would have had to have called Aislinn at 7:15, zero seconds, and listen to a ringing phone without Aislinn answering and without the voicemail picking it up for 60 seconds, until finally the clock reads 7:16. But hey, that *could've* happened... I guess. Maybe?

But the State's case has so many problems that for at least this one, we'll give them the benefit of the doubt. And assume Joey did indeed wait 60 seconds for that phone to ring before Aislinn finally answered.

Colin Miller:

The State's second claim is a little more impossible to justify. There's no actual way the shooting happened at 7:20 pm, even though some paperwork has that time listed, because

there's plenty of paperwork that lists an earlier time. In the days after Isaac's wreck, the *Rome News* reported that the wreck had occurred at 7:18 pm and the Rome Police Department issued an announcement that also said 7:18 pm was the time of Isaac's wreck. But by the time of Joey's trial, that had morphed into 7:20 pm on the basis of the handwritten logs showing that that's when police were dispatched to the scene of the wreck.

This 7:20 pm theory, though, has a small hiccup. On the Floyd County radio log, there's an entry showing a dispatch which was sent out at 7:19 pm. So there are a series of long, convoluted and tedious witness examinations at trial about this 7:19 pm entry with Tami Colson saying "It's just a mistake! Obviously the wreck was at 7:20 pm." And the defense saying, "Well, they wrote 7:19 pm, so maybe it was really at 7:19 pm".

To cut to the chase, though, there are two reasons to reject the State's 7:20 pm theory: The first, is the police department's own press release. That 7:18 pm time had to come from somewhere, so where? And the second is more concrete: It's a record from one of the two ambulances sent out to the wreck that night. We don't know what time the other ambulance was dispatched but the Floyd Medical Center ambulance wrote down that it left the hospital at 7:19 pm. As far as I can tell, no one back at the time of the trial ever read the ambulance paperwork. But combined with the FCPD paperwork, I don't see much point in humoring the State's 7:20 pm timeline.

So out of the dispatch records that weren't thrown away, we *know* dispatches were occurring by 7:19 pm at the latest.

[38:36]

Bud Siemon: *If the 911 vehicle was dispatched at 7:19, that means that the wreck might've happened as early as 7:17 or...*

Dr Paul Steffes: *Mm-hmm. Mm-hmm.*

Bud Siemon: *7:18. So I mean, that shaves it down even more! I mean, he would have to have driven 200 miles an hour to have done it.*

Dr Steffes: *Right. And that was not the least bit possible, because of the nature of that road. And the construction going on.*

Bud Siemon: *Yeah. There was road construction going on.*

And, I just don't think-- I think by the time the second trial, by the time Mark Free's trial, I think the lawyers understood the evidence.

And Bill O'Dell says he understood at the first trial. Bill's a good guy. I don't know whether he did or he didn't. But Rex Abernathy clearly didn't understand it.

Colin Miller: We know Floyd County Medical Center was informed of the wreck before 7:20 pm. So let's assume that Floyd Medical Center received that call at *exactly* 7:19 and 59 seconds. And thanks to the recordings of Wayne Benson's 911 call, we know exactly how long it took from his call before Virginia Thurmond was able to radio for an ambulance. Because we can hear her at the end of the recording calling in dispatch:

[39:41]

Virginia Thurman: *27 South just past Alcan. He's up in the woods. He's-- He's going to be in the media, it's going to be a 10-50-I. Uh huh. Dispatch service responder unit to 27 South at Alcan.*

Colin Miller:

That took place 47 seconds after Benson's call connected, and there's no way the ambulance company could've received notification of the wreck before that moment. Assuming that like other 911 calls that night, it took one or two seconds for Benson's call to connect to 911 and one or two seconds for the Floyd Medical Center staff to write down the time. That's 50 seconds.

And let's assume it took at least three seconds after Isaac's truck wrecked before Benson was able pull his truck to the side of the road, dig out his phone and call 911.

Based on these estimates, all of which give the State the massive benefit of any doubt, the absolute *latest* moment that Isaac wreck happened was 7:19 and six seconds.

Using this as the starting point, how did the possible timeline to the case actually work out? To show that, we're going to look at three possible scenarios: The first involves a scenario in which the State accepts the testimony of all its witnesses. The second involves a scenario in which the State tosses out the testimony of every witness with a personal interest in the outcome of the trial, and the third involves a scenario in which all evidence is tossed out in favor of constructing a timeline that focuses *only* on finding a way to put Joey as close to crime scene as possible when the murder occurred.

[41:06]

Rabia Chaudry:

The first is the 'College Scenario', where consistent with the testimony of all the jailhouse informants, plus Josh Flemister and Cory Jacobs, Joey intercepted Isaac at the college. Here's what *had* to have occurred for those witnesses to be right:

The drive Isaac made that night from Floyd College to the wreck site is 2.7 miles in all. Wayne Benson and the southbound witnesses who saw Isaac's truck cross the median *all* say that he wasn't going particularly fast. He wasn't speeding or anything. So if we assume Isaac was going 60 miles per hour, five miles over the speed limit, then it would've taken him two minutes, 42 seconds to reach the wreck site after leaving the college. Subtracting that from the latest possible wreck time based on Benson's 911 call, that means the *latest* Isaac could've pulled out of the college is 7:16 and 24 seconds.

Now, if we assumed that Joey pressed 'send' on his cell phone at exactly 7:15 and 0 seconds pm, because that's what the State is arguing, and then he sat listening to his phone, ringing for 60 seconds, until Aislinn answered, and if we also assumed that the very moment that Joey hit send, he was driving past the LCKT, meaning he was driving past the geographical location that was *farthest* to the west that the Kingston Tower could *possibly* provide coverage, no matter how weak that coverage was, *and* if we assume that he didn't hit a single stop light during this drive, then for him to travel that 6.4 mile distance in one minute and 24 seconds that he had remaining, Joey had to be traveling at 274 miles per hour.

And again, this isn't using a realistic scenario. It's just using a scenario in which every break lands in favor of the State's timeline. And every known fact is assumed in the State's favor. If we tweak any detail, it only gets worse. If we assume for instance that Isaac was driving the speed limit before he was shot, then Joey had to drive 333 *miles* per hour. Or if we make the assumption that Joey only listened to his cell phone ringing for 30 seconds before Aislinn picked up, instead of 60 seconds like the State would have you believe, then Joey had to have been driving at 426 *miles* per hour to get to the college on time.

Now, even if we pretend facts don't even exist, it doesn't much help the State. Let's pretend for instance, that despite the fact that two different agencies have paperwork showing that they were taking actions in response to Isaac's wreck no later than 7:19 pm, that in fact Tami Colston is right, and it was really 7:20 pm that Benson's call was made... In fact, let's go ahead and pretend that the call was at 7:20 pm and 59 seconds, like Colston argues, even though that number has no basis in reality. But even with those two imaginary minutes extra, in order for there to have been *any* chance of Joey encountering Isaac at Floyd College, he *had* to have been driving there at a 116 miles per hour.

And he also had to have the time to pick up Mark and switch out cars. Well, you get the idea. The point being, there's no tweaking that can bring this into the realm of sub-NASCAR speeds.

In other words, there's *no possible universe* in which Joey could've encountered Isaac at or near Floyd College. And Tami Colston knew this. Despite that, Colston decide to bring on a series of witnesses that she *had* to have known were *not* telling the truth. Because they all put Joey at a location he couldn't have ever been.

[44:49]

Colin Miller:

Scenario 2 is what we'll call the 'Comfort Housing Scenario.' The question here is what happens if we start from the assumption that all the jailhouse informants and Corey Jacobs and Josh Flemister were not telling the truth about Joey intercepting Isaac at Floyd College.

What does that leave us with? Maybe Joey didn't encounter Isaac at the college. Maybe he and Mark were running late for the murder and instead were speeding down 27 South in the hopes of getting there before Isaac left, only to see him heading north as they approached the college. Could that have happened? Wayne Benson first saw Isaac's truck and a mysterious blue Honda just south of a Comfort Housing along 27 South about a mile north of the college, and a little bit south of the red light at Walker Mountain Road. Which means Joey had to have intercepted Isaac no later than there or 4.9 miles from the LCKT point.

Starting again from the assumption that Joey's call to Aislinn was at 7:15 and 0 seconds, then in order to intercept Isaac at Comfort Housing at the last possible moment, then Joey only had to be driving at the not-impossible speed of 105 miles per hour. There's another catch, though: That's only what it would take to put Joey in a southbound lane while Isaac was at the same spot heading north. When Benson saw them, Isaac's truck was *behind* the little Honda heading northbound. Which means not only did Joey need to be driving to Comfort Housing, he needed to intercept Isaac, south of Comfort Housing, with time to do a U-turn, catch up to Isaac, pass him and get in front of him.

Now I'm going to give the State a 10-second penalty here to allow all that to take place before Benson encounters them. That brings Joey's total driving speed prior to intercepting Isaac at 111.5 miles per hour. That's more plausible, I *guess*, than the 274 miles per hour that the college scenario requires. But it's just as factually impossible. Why would someone on their way to commit a murder draw attention to themselves by driving there at 56 miles over the 55 mile per hour speed limit? And how could someone have driven that fast at 7:00 pm on a decently-trafficked highway for five miles without a single person noticing it, or calling it into 911?

And don't forget, even to get to that 111-mile-per-hour figure, you have to give the State the benefit of every doubt with every possible second maximized in the State's favor. Just by tossing out the 60 second unanswered phone call, and assuming it only took 30 seconds for Aislinn to answer, Joey's minimum speed goes up to 138 miles per hour.

[47:08]

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Susan Simpson:

That brings us now to what I've been calling the 'State's Best Case Scenario'. And by 'best case', I don't mean in terms of plausibility exactly. I just mean in terms of inventing a scenario that brings Joey's required speed to below 100 miles per hour.

To do so, though, requires us to toss out the testimony of every single witness with knowledge of how the crime was committed – Josh Flemister, Corey Jacobs, Tom Beckstein, Reece Ellis, Paul Cooley, Barry Mullinax – all unnecessarily gave statements with no connection to reality, if we're to believe this scenario. Which, well, that isn't very hard of an assumption to start from because, again, their stories are pretty nonsensical from the beginning.

But it's *not just* the informants that you have to toss out here. Because in order to believe that the State's best case scenario could've existed, you have to pretend that Wayne Benson doesn't exist. Or at least, you have to assume Wayne Benson either made his story up or hallucinated it or something. That nothing he saw is actually what *happened*. In fact, you also have to dismiss all the southbound witnesses because for this scenario to have happened, Joey would've had to speed past *most* of them. While driving southbound to the Coke plant before doing a U-Turn to chase Isaac for 20-30 seconds before firing the fatal shot. And none of those witnesses reported seeing anyone driving the way that would've required.

So once that little housekeeping measure is taken care of and all the available witnesses have been tossed out, what are we left with? If we focus *only* on inventing a scenario that would allow Joey to get from Point A to Point B before time expires, what options are available to us?

Before I get into that though, it's worth noting that, in itself, this is a pretty absurd scenario to be considering at all. Clare, perhaps rightly, was a bit skeptical of my efforts to investigate this hypothetical, since it doesn't actually have anything to do with the known facts of the murder. It's just a theory that I made up in an effort to bend over backwards in order to find *some* way the State's case could've possibly worked.

Still, even though it's probably just a wild goose chase, I made her go with me on a drive down 27 South to get a chance to look and better visualize how this would've worked out *if* it could've happened.

[49:23]

Susan Simpson: *Okay, so there's Angelica at the left. Coke plant's up here to the right. You have to see Isaac and turn right there at the right exact moment. There's no way! I can't even see inside those trucks from here. Can you? Even when they're right on us I can't see inside the trucks.*

Clare Gilbert: *Well and it was night time.*

Susan Simpson: *And Isaac's had tinting.*

Clare Gilbert: *Like-- There's no evidence for that theory.*

Susan Simpson: *I know.*

Clare Gilbert: *I mean...*

Susan Simpson: *That's never stopped the State before. I mean I feel like it's definitively ruled out, that anything like what the State said happened, happened. So they're going to move to the next thing, which is the craziest thing theory that can make fit the facts, that still kind of works.*

Clare Gilbert: *Well, I think you have to-- I mean, you have to pass... I mean you have to have...*

Susan Simpson: *Reality? Do they?*

Clare Gilbert: *No, they don't have to have reality, but they have to have sufficient evidence to support the conviction! I mean there is-- They don't have any eye-witnesses. They don't have-- I mean it doesn't support Mullinax, it doesn't support Benson, it doesn't support a single snitch.*

Susan Simpson: *Why would that stop them?*

Clare Gilbert: *But... They have to have some evidence!*

Susan Simpson: I guess on this point, I'm just more cynical than Clare is. Because I *don't* think that Floyd County has any problem in presenting a theory that has no evidence to support it. And from what

we've seen so far in Joey's case, I just don't think Georgia Courts are going to care that Joey is in prison for life on a theory that was invented to try and help the State's case, even though it requires discarding all the evidence the State presented.

Which means, in order to make sure, in order to show that, no, Joey really *couldn't* have been there, I wanted to look at the State's best case scenario. Just to see if there's any chance of it being possible.

[51:20]

Colin Miller:

Anyway, if you tweak the numbers enough and pad out the timing with a series of generous assumptions, you actually can get Joey's required speed down to about 74 miles per hour. That's by imagining a scenario where Joey encounters Isaac at the Coke plant moments before the shot was fired.

And that's not as realistic in the sense that Joey's truck could've driven that fast and something going 20 miles per hour over the speed limit isn't especially odd. But that's the *only* sense in which it is realistic because in addition to throwing out all witness testimony and sprouting the State extra time, that scenario also requires the following:

- One: That Mark wasn't involved in the murder at all. He had nothing to do with anything at any point. Joey was alone that night.
- Two: That everyone near the wreck failed to notice a speeding, weaving, erratically driving white truck.
- Three: That *every single witness* with information relating to the murder itself was lying or had hallucinated what they'd seen and the prosecution knew it, but put them on the stand anyway.
- Four: That Joey's call to Aislinn consisted of at least 60 seconds of him listening to the phone ring without being answered. And finally,
- Five: The timing of every call happened in such a way as to maximize every possible second of wiggle room available to the State. That's what it takes to invent a scenario where Joey committed the murder while driving at sub-100-mile-per-hour speeds.

And after all of that, you still only get a scenario where Joey is driving southbound at the same time and on the same stretch of road while Isaac is driving northbound. But for Joey to be the murderer, that's not enough. He has to be able to somehow be going *northbound* at the time of the shooting. Which means the State's best case scenario requires the State to invent one more step: The magic U-turn.

North of Walker Mountain Road, the north and southbound lanes are divided by a deep grassy median. There's exactly one location where Joey could've made a U-turn and started going northbound as required in order for him to be the murderer. That's at Sanders Road at the Coke plant. Joey had to recognize Isaac's car while Isaac was south of Sanders and Joey was still north of Sanders, so he would be able to slow in time to do a U-turn and fall in line behind Isaac.

If we once more give the State a 10-second penalty to allow time for Joey to slow down and make the U-turn, that raises Joey's required speed for the whole distance from the LCKT to 77 miles per hour. But this whole scenario requires one very critical assumption: That Joey could've recognized Isaac's truck in time to make the U-turn.

Susan Simpson:

To test this out, I recruited two of my friends from Atlanta. For another one of my unscientific experiments. Cameron and Marika are roommates and they know each others' cars very well. They could recognize them instantly if they saw them in the daylight, at least. But what about

driving in opposite directions along a divided highway at night? The next time that you're driving at night along a divided highway, trying taking a glance at the traffic heading in the other direction. And see if you can identify the make and model of the passenger cars passing by. Spoiler – you probably can't. And Marika and Cameron couldn't either.

[54:16]

Susan Simpson: *So I got Marika in the car with me. I'm driving. We got Cameron down at Georgia Highlands, AKA Floyd College. So I got the Go Pro running. To test out-- But feel really silly because even here in like the area with the streetlights, you cannot tell what car is passing on the left. So is that a truck or a van?*

Marika: *I don't know! I still don't know...*

Susan Simpson: *Actually, that's a giant truck. That one's like a little car. I'm gonna guess that's a little car right there.*

Marika: *I don't think it is, I think it's an SUV.*

Susan Simpson: *All right, that's a semi – I was totally right. I called that one.*

Marika: *Good job. We got one down. One correct!*

Susan Simpson: *It also had giant lines outlining all of it, so that helped. [pause] A small car.*

Marika: *Uh, middle... Middle.*

Susan Simpson: *Oh!*

[laughter]

Susan Simpson: *It was a giant pickup truck with a trailer.*

Cameron (on speaker): *I'm looking for you guys, too.*

Susan Simpson: *Yeah, good luck with that. Okay, so wait. Technically I'm pretty sure you're supposed to, like, pass--*

Marika: *I think we've already passed her, really.*

Susan Simpson: *Cameron, where are you?*

Cameron (on speaker): *I've crossed to an exit, so I'm close to like-*

Susan Simpson: *Oh. Okay, yeah. We've definitely passed you.*

Marika: *Yeah, we did not see you at all. Like, if you're planning on killing someone, you don't only have to identify the car, you have to be like 100% sure that's the right car.*

Susan Simpson: *I mean do you?*

Marika: *I mean unless you're just like in it for the LOLs. Like--*

Susan Simpson: *I mean. You can just--*

Marika: *Then why would you turn around?*

Susan Simpson: *You can do it again later, if it's the wrong one.*

Marika: *Like, oops!*

Susan Simpson: The thing is, the State's been arguing that Joey's guilty because he *did* recognize Isaac's truck in the woods. And that he couldn't have recognized it, so therefore he definitely is the murderer somehow...?

But in order for Joey to have gotten anywhere near Isaac's truck that night, in order for him to have been *possibly* close to somewhere Isaac could've been, well he would've had to recognize Isaac's truck in the dark across a divided highway at fast speeds with very few seconds for air... At the exact right moment for him to do a U-turn, follow Isaac and shoot him.

It's not realistic and the idea that Joey could've recognized this truck to me just ignores the fact that such a thing is impossible.

[56:34]

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Rabia Chaudry: And, oh yeah. After all that, there's another paradox this timeline has to confront: This whole theory doesn't just require Benson to have hallucinated the Honda Accord, it also requires Benson to have been close enough to the shooting to stop his truck across from where Isaac's truck wrecked. And dial 911 within three seconds this timeline allows for. And yet somehow fail to notice the white truck that did a squealing high speed U-turn and then accelerated fast enough speed to catch up with Isaac's truck within a third of a mile to make the shot in time. A very, very difficult shot, from moving car to moving car. Despite the fact that Joey had no experience in firing handguns.

Then, there's one final hurdle, facing the State's best case scenario: Joey had to do *all* of this while driving his truck carrying on a casual phone conversation with Aislinn, and without her noticing that anything was going on. At trial, Tami Colston dismissed all this on account of Aislinn being home sick – she just hadn't been able to hear what was going on.

I don't care how sick you are though. Even over the phone, hearing a gun go off is *loud*. And distinctive. If a gun was shot in Joey's truck during his phone call with Aislinn, we have to believe that she would've heard it.

[57:52]

Susan Simpson: To try and approximate this, it was time for another experiment. I recorded a clip of a family friend firing his 9mm on an outdoor range from farther away than Joey's phone would've been from the gun if it had gone off in his truck that night.

Hearing him on the phone or on the podcast is not as loud as it would be in real life, of course. But it's also not a sound you wouldn't take notice of if you heard it in the background of the phone call.

[58:15]

Susan Simpson: *All right, I'm going to get about five yards away? Here we go.*

[gun shot fires 11 times]

Susan Simpson: *What do you think the odds are of someone-- On a cell phone wouldn't hear it?*

Friend: *Slim to none. Absolutely slim to none.*

Susan Simpson:

But, "Sure" he might say. "Maybe Joey just muted the phone while firing?" But now you have to assume that Joey was driving a car a 77 miles per hour, maneuvering into position behind Isaac, muting the phone, firing the shot and unmuting the phone, all without missing a beat in the conversation. While also imagining all the other impossible things that this scenario requires.

So yeah, if that's the State's best case scenario, they don't have a leg to stand on.

[59:23]

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Colin Miller:

Now the cell phone evidence in this case is a little bit complicated, and has a few moving pieces that can make it hard to conceptualize. And the prosecution took advantage of the defense's failure to adequately untangle the confusion of the State's claims. Which is why the prosecutor got away with making this closing argument:

Rabia Chaudry:

Let's go through the scenario. All right. If you made the call right here at the Chulio Road area and he traveled four minutes. And he got down around somewhere around Floyd College and he saw Isaac Dawkins and turned around like he's not on the phone at the time. He hangs up with Aislinn. He's not on the phone for at least two minutes and we could say possibly three, because the seconds difference that we don't know about.

So he's down here and he is around through here and he sees Isaac and he turns around on him. He is in this Turner McCall calling area at the time. The wreck happens about – let me get mine where I marked here – about right here. That is where Isaac left the road, about right here.

Colin Miller:

Tami Colston's argument here has no known connection to reality.

First: The whole 'Chulio Road' thing. That something she continually harped on at trial even though it's unrelated to the actual cell phone records. Chulio Road is 0.8 miles further west from where the LCKT is, which means that if the jury was relying on her representations of the locations involved, they would've thought that Joey was at least a mile *closer* to the crime scene that he actually could've been.

And also Tami Colston is once again using the mythical 7:20 and 59 second claim for Benson's phone call. Except the way Tami Colston spins the story, she somehow gets a bonus three minutes. Which is a figure she's making up.

Even if Joey's car really did begin at 7:15 and zero seconds, and even if that dispatch was at 7:20:59, that's only one minute, 36 seconds between the end of the call and the dispatch. Yet Tami Colston invented an extra possible minute and a half for the jury to consider.

Still, as we discussed earlier, even if we give the State an imaginary two bonus minutes to work with, that still would've required Joey to drive at 116 miles per hour. But even if the issue was confusing at trial, during its investigation and trial preparation, the State should've come to its own understanding of how the cell records work, right?

So why didn't the State realize that there were these problems with the evidence? At first we thought it might be because the State waited so long even to obtain the addresses of the cell sites. Maybe by the point that they even knew where the towers were, it was too late to reverse course.

[1:01:42]

Susan Simpson:

So, it looks like – from the documents – the State itself actually didn't get the cell site locations until September 24th. So about a couple weeks before they-- A month before they actually go ahead and arrest Joey and Mark.

So they didn't even know where the towers were, until very late in the game. By that point, it seems like they already knew who did it so who cares?

I wonder how different it would've been if they had from the very beginning those tower locations.

Bud Siemon:

Well they may not, because they may not have revealed it to the defense. [laughs] Then we'd be talking about a whole different issue. Now that case, we would've won on habeas.

Dr Paul Steffes:

Yeah.

Susan Simpson:

When I recorded this interview with Bud Siemon, my reference to the state not learning about the locations of the cell sites until September was based on the facts in the file. Sent from Joey's service provider to Stanley Sutton and listing out the addresses of the Rome, Turner McCall and Kingston towers. And the three towers that covered the Rome area in January of 2000.

That was not long before Joey's arrest, about 10 months after the murder. So, based on the records we had, this seemed to be the first time that the police in this case had ever learned where those towers were.

That fax *did* have a handwritten notation in the cover sheet show that, while not conclusive, was kind of suggestive in hindsight. It said: "Here is the cell site info that I sent you before." The cover letter didn't specify what "before" was though, so, I let it go at that. At least at the time. Because maybe the service provider had faxed it over earlier that morning or something, and the fax hadn't gone through, so... They were just resending it. Maybe that's all the cover letter was referencing. Something innocuous like that.

A few months later though, Clare finally got the full documentation back from her Open Records Request to the GBI. Like we discussed in the earlier episode, the GBI file in this case was inexplicably thin. Almost ridiculously so. Agent Garmon, who was the agent on the case, had barely done more than record updates from a few meetings with Stanley Sutton. And he hadn't done much, if *any*, investigation on his own.

But, one of these updates that Agent Garmon wrote down and recorded in his file is *not* something that's been preserved at any other file we've seen. And it's not been mentioned by anyone in the case we've spoken to. That update from Garmon is dated April 3rd 2000, and says the following:

Colin Miller:

Investigator Sutton stated that Captain Tommy Shiflett of the Floyd County Police Department, using a cellular phone, had made several test calls starting at the residents of Joey Watkins, and traveling to the crime scene where Isaac Dawkins was shot. Investigator Sutton stated that the calls were linked to several different cellular towers in the Rome Floyd County area, some overlapping, and would furnish a copy of his report upon receipt.

Susan Simpson:

This update shouldn't be in the file. It shouldn't exist in the first place and I guess no one told Garmon that he shouldn't be recording it. We don't have those reports that are referenced. We don't have the overlapping tower record that Sutton's talking about. That wasn't in the

GBI's file. But what this is saying and I can't think of *any* possible reason why it doesn't mean exactly what it *says*, is that the Floyd County Police Department did its *own* drive test. Three months after Isaac's murder. And they recorded the results, and then those results got ghosted. Out of every file we've seen.

Susan Simpson:

The fact that Stanley Sutton and Tommy Shiflett did their own drive test of Joey's route to try and map out where he could've been that night, it hasn't left a trace anywhere in the FCPD's files.

It seems to point to the fact that someone must've gone through in an effort to purge this drive test from the files. Because it's hard to imagine how the GBI's file could note this had happened. And yet the Floyd County file doesn't mention it. Unless someone deliberately took it out.

And it's hard to imagine why anyone would've taken the trouble to do that, if the results of the drive test weren't in conflict with the Floyd County Police Department's desire to prosecute Joey for Isaac's murder.

[1:06:16]

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Colin Miller:

And there's one more reason to think that the problems with his cell phone evidence in this case would've come as no surprise to Floyd County Investigators:

Clare Gilbert:

You know what's interesting is... I made some calls and I spoke with Jennifer Connolly. She was the 911 records custodian at the time. And I also spoke with Cynthia Cooper, who was also at 911 and ultimately became the director of 911. And they both, independently said, "Yeah, yeah, I remember that case. There was something weird about the cell phone stuff in that case, wasn't it?" And they both said something along the lines of, "Yeah, didn't he like, loan his cell phone to someone else and have that person make a call from some place where he wasn't, so it would look like he wasn't there?" But they both separately said that!

Susan Simpson:

That's really interesting.

Clare Gilbert:

And I was like, "I wonder if the State realized how bad the cell phone evidence was and so this was there little rumor..." This is how they were going to address it at the beginning saying Joey wasn't actually on his cell phone.

Colin Miller:

And that's not the only time this rumor has come up. A third person with connections to law enforcement but no connections we know of to the E-911 dispatchers mentioned the same thing, made a comment about how, quote: "It's not like the cell evidence really proves anything because your phone can be one place and you can be in another."

Which doesn't tell us the source of these rumors, but makes us think that wherever it came from, it was pretty well known at least among some. But at the same time, it's hard to think law enforcement themselves believed this to be the case. Because of a very simple problem: Who Joey was making was those cell phone calls too.

[1:08:09]

Susan Simpson:

Did Clare tell you she was talking to the 911 people? And they were saying, "Oh, he got someone to borrow his phone to make it look like he was somewhere else."

Joey Watkins:

Wow. Huh. Really? Well how do you- my grandmother's dead now. God bless her soul, but. How do you explain I mean. My sixty-something year old grandmother. Aislinn, my sister. My

uncle Toby, you know, how do you explain all these people? And all the people in the background, you're going to tell me all these people were lying? I mean, come on, man.

Susan Simpson: *They're family! They'll lie for you.*

Joey Watkins: *Yeah, they're family. They'll lie for me. Wow.*

Susan Simpson: *It's hard to imagine someone you could've gotten to take your phone for you and make calls to pretend you were somewhere else? They would call your grandmother.*

Joey Watkins: *I... Really.*

Susan Simpson: *To me, when I heard that I was like, "Oh, they know something's wrong." They realized-- I was thinking they just hadn't understood what the record showed. When I heard that I was like, Oh someone knew. And they're trying to explain it away.*

Joey Watkins: *Right. They didn't care. When they-- They took a jump at me from the start. They were so they had tunnel vision on me. And, they put so much into me, I think. And then when they finally got to the meat of the situation, to the heart of the situation, they seen it: "We screwed up. But, yet, we've took all this time. Directing toward him. And somebody's gotta pay."*

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Rabia Chaudry:

Time and time again, we find a common feature in wrongful convictions – tunnel vision by law enforcement on a single defendant, with all resources focused around building a case against that person.

In Adnan's case, I like to remind people that the police began pulling his records before Hae Min Lee's body was even *found*, before they even knew a crime had been committed. And they continued to focus on him even after his hair didn't match the hair found at the crime scene, after they found no soil matches in his clothing, shoes, or car to Leakin Park, after no shovel or shovels were found... But the problem was that they were in too deep. They had made their decision and stuck with it, even when the evidence they looked for simply didn't exist.

And with Joey, it was no different. Stanley Sutton had the cell phone records. He knew they didn't support any reasonable theory that would have allowed Joey to commit the crime. So out of thin air, the rumor began spreading that the phone wasn't even *with* him, because it was a clear sign that the State realized that if the phone was with Joey that night, it meant he was innocent.

But they pressed ahead with charging him anyway. And he went to trial. As we explained today, the jury completely misunderstood the cell phone evidence, but they were also convinced of Joey's guilt because of two other big factors: Those dead dogs, and a surprise witness that came out of nowhere the weekend before Joey's trial began.

Next time, on *Undisclosed*.

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