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**UNDISCLOSED SEASON 2:  
ADDENDUM 4:**                    **THE STATE VS. JOEY WATKINS  
HARD EVIDENCE**

**POSTED:**                            **AUGUST 4, 2016**

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**Rabia Chaudry:**                    Hi and welcome to this week's *Addendum*, a panel show where we discuss issues related to the latest episode of *Undisclosed: The State vs. Joey Watkins*. We're going to do a real quick check in with our sponsor this week – Mack Weldon – Dennis, tell us all about them.

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**Rabia Chaudry:**                    I'm Rabia Chaudry, and I'm filling in this week for Jon Cryer, and there is *no* way I will be nearly as entertaining as him. So go ahead and lower your expectations for me. But lucky for me, we have a *great* panel who are going to more than make up for my inadequacies. We have, first of all, our very own Susan Simpson joining us today. We also have the US Honorable Congressman From Minnesota's Fifth Congressional District, Keith Ellison, and...

**Keith Ellison:**                    This is Keith! How you doing?

**Rabia Chaudry:**                    Just to let folks know, Congressman Ellison is *not only* a sitting legislator having served not only a decade in the US House of Representatives, he's also an attorney with a background in criminal law, and is the host of an *excellent* podcast called *We the Podcast*, which by the way, is a really good name. And in that podcast he talks to experts across an array of social justice issues, so I hope that you guys definitely tune into that podcast and check it out.

Finally, we have a very special guest with us today, multiple-award-nominated actor Reagan Pasternak. And Reagan is probably already well known to many of you because she has been the lead in the critically-acclaimed series, *Being Erica*, and has also appeared in *dozens* of hit television shows and films including *CSI Las Vegas*, *Masters of Sex* – who hasn't heard of that? – and *Welcome to Mooseport*, which by the way, I love, just to name a few. She's also a lovely singer, and this will be her third year performing at the annual ALS gala, 'One Starry Night', this very month – a very worthy cause indeed. So, welcome and thank you for joining us, Reagan.

**Reagan Pasternak:**                    Oh, I am *so* excited to be here, I am so in love with this show, so...

**Rabia Chaudry:**                    You know you, Reagan, said that you have been a big fan of the show, and I want to tell our listeners a little bit about why you are here today with us. I know that you have been really engaged with us online, on social media, but what got you interested as an actor on these kinds of issues?

**Reagan Pasternak:**                    I've been fascinated with true crime-- I remember my mom watching – who's also a huge fan of the show, by the way... She's freaking out right now – yeah my dad was saying he saw these credit card bills, like, a couple of months back, going, "What *is* that?" She goes, "Oh, it's for Adnan Trust, it's for Bob's shed and Adnan Trust..."

- Rabia Chaudry:** Oh, that's so sweet!
- Reagan Pasternak:** I know, it's the funniest thing. But it's-- She had me watch the Phil Spector Trial, I remember the trial from beginning to end, and I was *so* completely sucked in to every aspect of it – from just, the whole criminal/legal aspect of it, but the whole *human* aspect, and I don't know... I think as an actor you end up being super-empathetic and that's just like a trait that happens. But then with you guys-- And so I became obsessed and every time there was a giant trial on I couldn't think about anything else. I have a problem – it's my problem.
- Rabia Chaudry:** [laughs]
- Reagan Pasternak:** This is my vice, I guess. Which, you guys, I have to say, there's *so* much. There's so many layers to it. And I loved every single bonus episode, including yours, Congressman, which was just so inspiring, and your optimism, and I mean... I'm learning so much. I am representing the layman, here by the way. [laughs] So I'm learning as I listen, and I'm in love with it. I think it's so mindful, and is broadening our awareness and, that the prosecutors aren't always the good guys, the criminals aren't always the bad guys, and that there's so many layers. I think you guys are doing amazing, *amazing* work, and I'm so, I'm so honored to be here. So...
- Keith Ellison:** I also sort of see you as representing the artistic community, because that is a very important part of how we help Americans all over the country understand these criminal justice issues. I mean, whether it's film, TV, movies, plays, songs... Whatever. However artistically-expressed. It is critical to how people gain information, awareness and understanding about the issues in our criminal justice system. So I'm honored to be here with you and thank you for all the work you've done.
- Reagan Pasternak:** Oh, thank you.
- Susan Simpson:** I think you may also have the distinction of being our first non-American guest.
- Rabia Chaudry:** A foreigner!
- Reagan Pasternak:** Well, you know, I do have my American passport now. I am both.
- Susan Simpson:** Oh!
- Reagan Pasternak:** I'll always be Canadian at heart, but I'm, you know, I'm both.
- Rabia Chaudry:** Well, I want to echo what the congressman said, because it's absolutely true, and this is an issue that actually we've been kind of grappling with – Susan, Colin, and I – on the issue of, I mean the injection and the importance of *art* and in cases and in the podcast. Especially like this... The power of storytelling and the importance of it. Because for Season 1, we didn't *have* to tell the story of it. Everybody knew the story. *Serial* told it amazingly well. So we could just go right into it. But with this season it's been complicated because we have listeners who are like, "Well those are all, like, cute little narrative things but we want all the deep, weedy stuff that you do". And then other people are saying, "Well, no, we don't understand what's happening, we need more story". So... [laughs]

- Reagan Pasternak:** I love when Colin brings up the literary references and psychology terms. I find that adding a cinematic, storytelling... That whole ‘Illusion of Truth’ thing. I find it very *poetic* and if people want more entertainment, then that’s a part of it that’s – to me – making it very, very relatable.
- Rabia Chaudry:** Yeah. He’s kind of come up with this thing and it’s kind of-- I don’t even think, Susan, that we did it deliberately, but almost every episode now, it’s, “Okay, this will be the framing device”.
- Reagan Pasternak:** I love it. I feel like this case – and you guys picked a *good* case, ‘cause I got sucked-- I literally have been thinking in Brianne’s voice accidentally – I’ll be like, [with affectation] “Oh, I gotta go make some coffee!” and, I don’t know, it’s-- [laughs] yeah, and it’s like *Romeo and Juliet* meets *Slingblade* or something,
- Susan Simpson:** [laughs]
- Reagan Pasternak:** If you want to make it entertaining, you guys are doing it! So...
- [07:09]
- Rabia Chaudry:** Well, good. I’m glad we’re able to do that. But before we get into Episode 4, we would be remiss if we didn’t talk briefly about a new development yesterday in Adnan’s case: And that is the fact that the State of Maryland finally filed their brief in support of – and Susan correct me if I’m wrong, but I think this is where we are right now – is right now the State is basically *requesting* an application for leave to appeal. They’re actually asking the appellate court, “Hey, we want permission to appeal and this is our brief in support of that application”. Yes?
- Susan Simpson:** Yeah. You don’t get an appeal as a right, so they have to ask first and have the court say, “Yeah, you can go ahead and appeal”. So if they say “No”, it’s done.
- Rabia Chaudry:** Okay. So they have to have permission. Congressman did you hear about the appeal?
- Keith Ellison:** Yes I did. I definitely was a little disappointed in it. They don’t *have* to do it – for listeners who’ve been watching Adnan’s case – you know the prosecution can simply not appeal and they can go back to the trial court and take it up where the trial court judge left off as he ordered a new trial. But, you know, in a way I’m not surprised. It’s actually somewhat routine that a request for appeal in cases like this would happen. But, you know, probably is a good thing, because I think that the trial court decision is very solid, will be upheld, and the only sad part is that it will delay justice for Adnan. But what it *will* do is help, you know, sort of confirm the trial court’s thinking, which I think is important.
- [08:32]
- Rabia Chaudry:** Susan, you’ve read the appeal brief, right? What did you think of the brief?
- Susan Simpson:** It was-- I mean, it’s a *lot* of what they’ve done before. A lot of it’s just a re-hash of the facts. And since they don’t have the transcripts yet, all we get is like the *Thiru-ized* version of what happened at the PCR hearing. There’s no quotation, it’s as if the ruling from Judge Welsh never *happened*, almost.

- Rabia Chaudry:** So what would happen going forward is the *transcripts* from the PCR hearing also would be provided to the Court of Special Appeals, so they can look at that and, and then kind of compare it to what's being argued here? Is that what's going to happen?
- Susan Simpson:** Yeah.
- Rabia Chaudry:** It was predictable. Oh look it was... I *knew* yesterday it was a deadline and, like at 4:00 pm I still hadn't heard any news and I thought, "Well *maybe*... Wouldn't it be amazing if they didn't file an appeal and we could just either go to trial or handle it in a different way". When it happened it was a little bit disappointing, but I will say: One thing I thought was really fascinating and I didn't expect at *all* in this appeal brief is that – and they know very well that if they were gonna appeal, we were gonna *cross*-appeal, which means we were gonna appeal on the issue that we *lost* on, which was Asia – but they made a *really* interesting, almost like a threat, I think, in this. And that is this: They said that they have two witnesses, who happen to be Asia's classmates, I guess from back in '99, who are siblings, I think sisters, who will come and testify that they had an argument with her back then about her offer to *lie* for Adnan. But, they say, basically, that if we don't cross-appeal, that they will drop it. But if we cross-appeal, they're going to bring this witness. Isn't that weird?
- Keith Ellison:** Well, in a way it's not weird. I mean, let me tell you. You know, when it comes to these convictions that are based on faulty evidence, it's *common* for the State to simply try to maintain the status quo. I can tell you, I had a death penalty case in Union Parish, Louisiana, years ago, involving a defendant by the name of Albert Borrell. And when we got down there we talked to the district attorney in the parish, and the first meeting, when we sit down, he says to us, "Now, you *know*, if you boys are willing to just *not* appeal on the issue of innocence, we'll let him out of the death penalty and let him back into general population. But if you push forward, we're going to push to see this boy executed". These kind of threats are not unusual. And by the way, this guy didn't just get into population and off death row, he got out on the basis of *innocence*. So...
- Rabia Chaudry:** That's fantastic.
- Keith Ellison:** So, these threats are often idle, I don't want to say they *always* are. But they often are just designed to sort of drive up the tension and make you back down. But here's the *good* thing about the appeal: It's not on the basis of Asia's testimony, it's on the basis of the failure of the defense to effectively cross-examine on the cell phone information. So, in a way, if that cell phone information falls, then it really kind of helps destroy the whole State's case. Because it's premised *on* that. That's *how* they place him there. In some ways, the Asia stuff is just reinforcement of that basic argument that Syed was improperly convicted. Because it doesn't rest on her testimony.
- Susan Simpson:** I think *that's* why they're bringing it up now, though. Because Judge Welsh found that there was no prejudice on the Asia issue, due to the cell phone records, and how important *they* were. So in order for them to argue now that the cell phone records weren't really important, like they are... Well that reopens up the Asia stuff, because that's Judge Welsh's counter-finding. So they kind of have to try and, like, thread this needle, where they're going to find a way to argue that, "Oh no, the cell phone records didn't matter, they weren't really our case, all that was kind of irrelevant". But then *not* have that open up Judge Welsh's prejudice argument again, on Asia, where he said he only found, essentially, no prejudice because the cell phone was so important. And that's why they're bringing the threat now.
- Rabia Chaudry:** But here's my question: I mean, even procedurally, can they even, like, *bring* you two new witnesses out of nowhere for COSA. I mean wouldn't that be, like, something that you would want to present, like, at the PCR hearing? Can they even *do* that?

- Keith Ellison:** Let me tell you. At the appellate level, they may well be foreclosed if they did *not* already present this at the PCR hearing. Because it's just, it's brand new. But, if you go to trial, I think the door's wide open for anybody--
- Rabia Chaudry:** Right.
- Keith Ellison:** To bring in, uh, these two witnesses.
- Reagan Pasternak:** At the trial
- Keith Ellison:** But I think they are foreclosed at the appellate level, because they hadn't *raised* it already, and there really wouldn't *be* any record at the trial court level of these two witnesses that were essentially gonna rebut the credibility of Asia. So I think that, you know, how would the appellate court even evaluate that? But it's sort of one of those threats that's hanging out there. It's just sort of to cool the defense side's jets a little bit. That's how I see it.
- [13:14]
- Reagan Pasternak:** The one thing I will say that makes me feel a little bit more confident is, you know, based on the PCR hearing, the prosecution's witnesses were just so lame – for lack of a better word – that they were *so* ineffective. And so you just go, "Who are these girls?" All of a sudden these two girls are going to-- I mean, that doesn't phase me – from afar. [laughs]
- Rabia Chaudry:** I was angry-tweeting yesterday, of course, after the-- [laughs] One of my angry tweets was, "Hey! If you've got a couple of witnesses then fine, let's take it to trial!" I mean, that makes more sense. You know you're not going to be able to bring new witnesses in front of COSA. I don't *think* you will... But, you know, then if you think you've got this locked-down then let's go to trial. But that will be the one thing they avoid the most, so...
- Susan Simpson:** What I *don't* like thought, is that it seems like he is essentially accusing numerous Woodlawn students of either, in some cases, lying under oath, or in others, being complicit all this time in an attempt to, like, give a false alibi for a murder. Because if Asia's going around, telling people all the time about how she's going to lie for Adnan, it's *not* going to be just one person. It's not-- Whoever these sisters are, they're not like her 'BFFs'. So if she's telling them, she's telling everyone. She's telling J'uan, she's telling the Staceys... And none of them came forward. So why are these girls coming forward?
- Keith Ellison:** Good question. Because Asia is *not* some sort of brand new element of this case. I mean, her name has been floating around for quite a while. And so to now just hear about these two witnesses who are simply going to rebut her and sort of undermine and question her motive for her testimony... They're not going to be able to stop her from testifying. They're just going to be one more element for the jury to consider. I say bring it on, man. You know, you got a *lot* of stuff that's going to-- I'll tell you this, Rabia, don't be surprised if, even when this case goes back to trial, you don't see those two witnesses.
- Rabia Chaudry:** Well... But yeah, well...
- Susan Simpson:** Nobody's going to be surprised if we don't see them again.
- Rabia Chaudry:** [laughs] I desperate-- You know though, my...

**Susan Simpson:**

Or *ever*.

**Rabia Chaudry:**

When I get a little bit of time to take a breather, I'm going to sit down and go through the yearbook and look for whatever siblings existed. Who could it be? Although, I mean it's out of curiosity, because I mean, look – for *me*, I always try to take a step back and try to think about what the State is actually alleging. And in this case, what they're alleging is that, you had Asia, who is planning to *do* this, right? Like to *lie* for Adnan. Adnan on his end is complicit because they're *planning* this whole thing. *But*, their plan, basically, what happened? They just decided, "Oh never mind. We'll just let him go ahead and get convicted. I won't show up, I won't say anything, I won't reach out to him..." I'm like, what kind of *plan* is that?! If you're going to-- *Why* would they not execute the plan? I guess is what I'm trying to say. Explain that to me. But--

**Reagan Pasternak:**

I think it's bizarre that they're even bringing this up. I think even Judge Welsh, even though he didn't rule on the Asia issue, he still-- Everybody kind of found her very credible and I don't...

**Rabia Chaudry:**

Oh, he found her *credible*!

**Reagan Pasternak:**

Yeah, exactly. So, I mean, that to me is it just seems so ridiculous.

**Rabia Chaudry:**

Oh, I think that's just their way of saying, "Hey, Justin Brown, and Hogan Lovells, you guys, just leave that alone". Probably because they'll lose on that too, but we'll find out. Let's see how things go. I *think*, Susan, do we have-- Does Justin have like 30 days to respond? Is that how it works? Do you know?

**Susan Simpson:**

Well you know, they don't *have* to respond. This is just a motion for our--

**Rabia Chaudry:**

Oh, I thought maybe the *cross*-appeal has to be filed within 30 days. But you know, once we get a little bit more information... I know Justin's working through the brief today, then, you know, we'll probably continue to talk about this further on. But let's now move to *The State vs. Joey Watkins*, and Episode 4 of *Undisclosed* that dropped a few days ago.

[16:38]

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**Rabia Chaudry:**

Now in this episode, 'The Night Of', Susan and Colin and I went over the victim, Isaac Dawkins' last known movements on the night he was killed. We went over the statements of the witnesses who saw the incident, and the car crash, and we also went over details of the crime scene. I wanted to kind of open it up with Reagan, since you-- As you said you feel like kind of the *layperson*, the audience here. What kind of struck you about this episode?

**Reagan Pasternak:**

I think the *main* thing that struck me is, *again*, the rumor mill. That's first of all. The fact that, I think it was Amy, who was with Isaac. The last known person we really know who was with Isaac, right?

**Susan Simpson:**

Well... Last one that's testified, the last one we have on the record.

- Reagan Pasternak:** Right. The last one that was on the record. And that by the *next* day at the school – that Joey didn't *go* to – the thing that struck me was that again, within a *day*, it was already that Joey did it. And I have to go back to Brianne again. Because she was the one who was at the hospital the day before. And you kind of go, "How did that rumor get so quickly...?" I mean she was at the hospital with Isaac's sister, probably, right?
- Susan Simpson:** Mm-hmm. It started that night. On the 11<sup>th</sup>.
- Reagan Pasternak:** I mean, that's fascinating to me. It makes me go back to, I don't know. To *me*, you know, I remember in Season 1, in the 'Tap Tap Tap' episode, I think it was, where, Rabia you said, "We all know Jay lies but we don't know *why* he lies". And I have to kind of go back to... Some of Brianne's lies I guess could be white lies, but some of them are so *huge*. I don't know, obviously, as much as you guys already know about the case, but for me, it gets me wondering is she *starting* that rumor? Is that what's going on?
- Rabia Chaudry:** Oh...
- Reagan Pasternak:** Because by the next day people at his school, everybody knows... I mean, this is a woman who is telling the police – or girl, whatever you wanna call it – or somebody--
- Susan Simpson:** She was 17.
- Reagan Pasternak:** So she was young. And listen, I'm reluctant to, you know, *go* there. Because, you know, I don't all the details that you guys know. But after she *knew* already that six months before that Joey Watkins could *not* have done, you know, the whole 'Panama City incident', with *that* shooting. She *knows* that that was impossible that he could have done that. And yet she's *still* talking about it as if he did that. You know, six months later. Like, [with affectation] "You know, there *was* that shooting..." And I don't know, I'm wondering if she started that rumor...
- Rabia Chaudry:** One thing I was wondering about, about Amy Suddeth. Amy was Isaac's classmate who apparently was the last one who had any recollection of seeing him leave class that night before he was killed...
- Susan Simpson:** She was not, actually, the only one. There is also-- So from Moser's notes-- So there's another note we didn't talk about on the show. But there's another stray rumor talking about how Isaac was 'detained' in the parking lot at Floyd College on the night of the 11<sup>th</sup>. That's all we know, because it's just a rumor that Moser wrote down. But he also wrote, "This is..." like, "...contrary to what the white male witness said, who saw Isaac pull out in front of them, leaving the parking lot."
- Reagan Pasternak:** Hmm.
- Susan Simpson:** So, theoretically there's a white male witness that actually saw Isaac, in his truck, pulling out of the college. But we don't know who it is.
- Rabia Chaudry:** Well, if somebody out there is that white male witness, or happens to know them, please ask them to contact us. Even given that, I guess my question is, I mean, we're saying that the very next *day*, like these people are starting to talk about *Joey*. And it's coming from this place of...

There seems to be this really... It goes back for months and *months* that there's this rivalry between them. So it's kind of like they're pegging it on this story, which may or may not be true, that there's this rivalry between them. Do you think, Susan, that that colored statements of people? Like even starting the very next *day*, as police were talking to them? Like, you know, the misinformation effect that happens with witnesses?

**Susan Simpson:**

Yeah, because they hadn't actually interacted in months – Isaac and Joey. So it wasn't even as if there was this rivalry from months back, because they hadn't *seen* each other. There hadn't been-- They just hadn't had any interactions. So, of course, there's other rumors that come out, and other rumors that there were other problems between them. And as we'll get into they were also, equally, just not true. But there are other stories that start circulating about how Isaac and Joey had something that happened, or another thing that happened, or *another* thing that happened, all back in '99.

**Reagan Pasternak:**

[crosstalk] So--

**Susan Simpson:**

So *that* pattern continues. Although it's also worth noting that although we've been focusing, obviously, on Joey, he wasn't the *only one* that they were having rumors about. I mean, all kinds of people were getting accused. It wasn't just like, "Oh, Joey did it". He was the one they focused on the most, and I think in large part because of the, you know, the 'high school relationship/friendship' dynamics going on. But people all through the town were getting accused randomly.

[20:59]

**Rabia Chaudry:**

So, you know, Congressman, you practiced criminal defense law for a very long time, And so my question to you is, we're talking about rumors here. We're talking about stories... And you know how rumors work – by the time they get from Person A to Person D, like, it's like, the story's changed. But how can that have any kind of impact on a court of *law*? Because rumors are not *evidence*. Have you had this experience? Or how does a court encounter these issues?

**Keith Ellison:**

Well, sometimes rumors *are* evidence, right? There *is* an exception to the hearsay rule. There's all types of ways that assumptions and rumors get into a trial and get in front of the jury. For example: If the defense attorney doesn't *object*, you can have hearsay just flying all in front of the jury. Good lawyering is very important to make sure that the jury is *only* deciding the case on legitimate evidence. So this is why, you know, it's so important to try to get evidence that is not subject to rumor. Like, you know, and I was sort of interested in what was going on with the truck, and the bullet hole in the truck, and where it came through, and what the evidence was that could sort of help us identify exactly where the shooter must have come from. So that's what I read through this case about Isaac's murder – or *killing* – because, honestly I'm not even *sure* if it was a murder.

**Rabia Chaudry:**

Mm.

**Keith Ellison:**

I'm looking for things that can really hang my hat on. That don't necessarily turn on someone's memory, someone's perspective, someone just repeating what they heard from somebody, perhaps even *years* ago, in Joey's case. So, that's kind of what I'm looking at. I guess the main point is, *yes*, rumor affects a trial, good lawyers keep it out, but if often somehow finds a way in there.

**Susan Simpson:**

Yeah... You're not going to like this case, sorry!

[laughter]

- Rabia Chaudry:** I mean, I have a couple of thoughts: Number one, I always find it fascinating that if somebody is testifying in court and they just throw out some hearsay, rumors, whatever, and a defense attorney *objects*, or the State objects, that it's almost like, do they really think that the jury didn't hear that? Of course the jury heard that. How does that not...? You know what I mean? Like, it *shouldn't*, theoretically, obviously, legally, like, be considered by the jury, but I feel like it's *impossible*, from just knowing human nature that it's hard to--
- Keith Ellison:** Hard to un-ring the bell.
- Rabia Chaudry:** Yeah, right.
- Keith Ellison:** So what you do is you say, "Objection!" Then you state the basis for your, hearsay, or of assuming facts not in evidence, and, "Judge, move to strike the witness's last statement". Right?
- Rabia Chaudry:** Right.
- Keith Ellison:** So then the judge is supposed to look at the jury and say, "This witness just said, they heard *blah blah blah* from so-and-so who heard it from *blah-blah-blah*. You must disregard this. It's not evidence. It's not lawful, and there are rules of evidence control that preclude me from allowing *you* to consider that". Now, that's an ideal situation. The fact of the matter is, you can't un-ring the bell.
- Rabia Chaudry:** Yeah.
- Keith Ellison:** You can't get- un-hear stuff! But a lot of times jurors... You that's why *voir dire's* very important. When I question witnesses, I say, you know, in the course of this case, you guys, there will be rulings by the judge and the judge is going to say not to listen to certain things that may come in. "Explain to me *how* you're going to not regard those things". And they'll talk about it. They'll say, "If I'm taking notes I'll just scratch that out". Or...
- Rabia Chaudry:** Okay.
- Keith Ellison:** You know, whatever. But once that jury room is closed, once that jury is charged and they're in that room, anything and *everything* can happen, including them considering evidence that has been- that has been ruled impermissible.
- Rabia Chaudry:** Yeah. That's kind of hard to avoid. Well, okay so the other thing I wanted to-- That you mentioned was that you're looking for something to hang your *hat* on. Which to me sounds like you're looking for, like, scientific evidence, right?
- Keith Ellison:** Witness testimony that is some indicia of reliability – somebody who was there, and who saw it, who heard it, who experienced it, even that can be really unreliable. I'm sure you guys know all about the problems with eyewitness testimony?

- Rabia Chaudry:** Yeah.
- Keith Ellison:** But yeah. Something you can hang your hat on.
- Susan Simpson:** We got Wayne Benson. But that's the only real witness in this case. And he's a good witness. He's asked a lot of times to give a statement, and there are some changes, over the course of two years--
- Rabia Chaudry:** Just a real quick reminder – Wayne Benson is the guy who apparently saw the little blue car that was driving around and then saw Isaac's truck go off the road. So he's apparently the only eyewitness to the actual crash, right?
- Susan Simpson:** Yeah, and he's the only eyewitness to what happened before, at least in the mile-and-a-half, mile, seven-tenths-of-a-mile before the wreck site. Because he's just driving north, up Cedartown Highway AKA Highway 27, when he sees that truck just stopped in the right hand lane. And then sees the little blue car veering around, and dashing off to the shoulder before going back on the road again.
- Reagan Pasternak:** I have a question: So you had said yesterday that Wayne Benson thought that it might have been like a girlfriend-boyfriend tiff occurring between the cars. You said something like that, right?
- Susan Simpson:** Yeah, that's what he says. He describes it like in his head, that's what his thoughts were – maybe it was a boyfriend and a girlfriend driving away from the college and having a little bit of a spat with one another.
- Reagan Pasternak:** Interesting.
- Susan Simpson:** Yeah! So driving aggressive--  
[crosstalk]
- Susan Simpson:** I actually spoke to him and asked him to describe more about what he meant by that. I mean, I *guess* that was just the thought at that moment that popped in his head.
- Reagan Pasternak:** Okay.
- Susan Simpson:** He didn't see it as overly aggressive, necessarily. But he saw that someone was pissed at someone else.
- Reagan Pasternak:** Interesting. Do we know if Isaac had a girlfriend at the time?
- Susan Simpson:** He did, but she was not really a factor in this.
- Reagan Pasternak:** Right. And then of course the obvious question is, "Who drives the little blue car?" [laughs]

**Susan Simpson:**

Yes.

[26:22]

**Rabia Chaudry:**

That's the *big* one. And I think we're going to be getting a little more into the possibilities later. But I want to ask you, Susan, with Wayne Benson's statements and testimony – to me he seems like a completely neutral party. I don't think he *knows* any of these people involved. He wouldn't be privy to any of these *rumors* even, so it seems for all intents and purposes his testimony and statements would be kind of like neutral and sound and *not* impacted by the biases and misinformation--

**Susan Simpson:**

No, that's not true, because the rumors were *everywhere*. I mean he had no direct connection to anyone in the case, he was just driving home. But he knows people, who knows people, and he has *some* connections. I mean, just by chance.

**Rabia Chaudry:**

And he *said* that?

**Susan Simpson:**

Yeah! I mean the *jurors* had connections to people in this case. Just, there's no way to avoid it.

**Rabia Chaudry:**

Wow. So do you *think* that impacted his statements at all? Or do you think, did you see a consistency with his...

**Susan Simpson:**

I don't think that impacted his statements. I do think that impacted his personal belief in Joey's guilt, but I *don't* think that impacted what he... I really do think that he is a good witness. That doesn't mean that everything he saw is what actually *happened* that night, but I think, in terms of some witnesses, they're not lying; they're just not very *good* at, you know, remembering things, what they saw. I think he's on the *better* end of that, but again we cannot take his word as fact because it's a witness. And he *may* have mis-remembered details.

**Rabia Chaudry:**

Well I want to talk a little bit about the framing device that Colin used at the beginning of the episode, which was the Sherlock Holmes story, the *Boscombe Valley Mystery*. And in that story, witnesses had seen the victim's like, son follow him into this area and then later he was found dead, and so they assumed that he was the killer. But really, the point of that framing device was to show how the police, *because* of thinking about the crime in a certain way, with a certain suspect in *mind*, they're actually analyzing the evidence and the forensics using that frame of mind. We want to think that scientific evidence – evidence that is measurable, quantifiable, you know, verifiable, it's going through someone in a lab – this has a lot more weight than other types of things. But in an Innocence Project analysis of wrongful conviction cases, they found a *leading factor* in wrongful convictions is actually faulty forensics. That's kind of *crazy* to me. And that's also terrifying, by the way.

**Keith Ellison:**

It's totally understandable in *my* view. Because the jurors see witnesses testify and they think, "Okay, that person is sort of like me, like other people I know, and I can assess whether I believe them based on my own experience". Now, that's not the best barometer, but it is something. But if somebody gets up there and they're 'Doctor So-and-So' and you take 20 minutes to put in the foundation for them to be an expert, and to offer expert opinions, *then* they start talking about stuff that you don't understand, but at the *end* of that testimony they say, "And that's why this person was here" or "not here," or, "*this* blood", or, "*that*", or whatever. People just tend to believe it. And I'm telling you, one of the big things that any decent defense attorney *better* do, is to take the science seriously. Because the State is going to come across with, "This is the big...", you know, "...*bad* thing that convicts your client, and oftentimes it absolutely is not reliable. And I, you know, I've seen it. I've actually had a case

one time, where they were trying to say that the bullets in the body of the victim were shot from my client's gun because even though they couldn't match the lanes and grooves of the bullets, they said the chemical composition of the bullets was matched.

**Rabia Chaudry:**

Hmm.

**Keith Ellison:**

And we showed that the manufacturer of these bullets makes them in such massive quantities that anybody who purchased bullets within, like, this *huge* period of time could have bullets that have the same basic chemical composition as the bullets that were in this person's body. It's like saying, well, you know, "We know that the perpetrator had on red Converse All Stars, and this person was found to have red Converse All Stars, so therefore they did it". Absurd! These shoes are mass-manufactured! And yet *because* of them trying to pass off this evidence as being really high-level, hard to understand, it almost got in. Rabia, do you remember all those years ago when the FBI lab was revealed to have *all* kinds of problems with contamination?

**Rabia Chaudry:**

Yeah.

**Keith Ellison:**

I mean the *truth* is, this scientific evidence needs to be scrutinized just as thoroughly as any other.

**Rabia Chaudry:**

[crosstalk] Well I--

**Susan Simpson:**

You could even have a museum of forensic sciences that have been discarded as meaningless.

**Reagan Pasternak:**

In the Kerry Max Cook case, the one that Bob Ruff has been exploring a lot, they had the 'dated fingerprint'. That was pretty much was the *only* thing they had against him, which was, you know--

**Rabia Chaudry:**

[crosstalk] They da--

**Reagan Pasternak:**

There's no such thing. You can't date a fingerprint. You can't say how old a fingerprint is -- whether it's--

**Keith Ellison:**

No you cannot do that.

**Reagan Pasternak:**

But, you know, he went to Death Row because of it. So, it's crazy.

**Rabia Chaudry:**

And it also kind of reminds me of the response from the prosecutor after the *Making a Murderer* thing happened, like, "Oh the filmmakers left out this incredibly damning evidence, which was like his DNA, like, 'sweat DNA'. [laughs] And it's like, oh, it doesn't *exist*. There's no DNA in sweat. But you know, my first reaction when I heard that was like, "Oh *hey*. There's sweat DNA and nobody talked about it". It's hard when, you know, we tend to privilege statements of science, but I wanted to touch on what you were talking about, Congressman, which is the issue of contamination. And turn to Susan and say, in the crime scene in Joey's case, like, how do you think that comes into play, or does it?

[31:50]

- Susan Simpson:** Well, it comes into play because contamination was unavoidable here. There was *no way* it wasn't going to happen, because no one knew it was a crime scene for an hour and a half. That's no one's fault. It's an unavoidable fact of what occurred here.
- Keith Ellison:** Why do we know it's a crime scene, even today? I mean, as a person who sometimes shoots firearms and hunts occasionally. To me, this is a ten million dollar shot. I mean, can you *imagine*? Standing at a roadside, shooting a gun, and then hitting somebody and killing them that way? To me that's sort of, *so unlikely* that I kind of would tend to think it's more likely an accident. Am I totally off-base here?
- Susan Simpson:** It was either the world's most *luckiest* shot, or the world's most *unluckiest*.
- Reagan Pasternak:** But wasn't the blue car right there? It couldn't have been the blue car that was, parked right in front of him? Like, it's impossible?
- Susan Simpson:** It could have been. If I had to put a probability on it I think that's most likely the source of the gunshot, but we *can't* rule out it came from somewhere else, I don't think.
- Rabia Chaudry:** Yeah, but think about what the Congressman is saying – he's saying, like, if a person is standing still and the car's driving past you, and you're going to take a shot to try to kill the driver, and you're going to hit him in the head, like a fatal shot, I mean, you're going to-- *That's* a lucky shot. And imagine the difficulty of doing that while you are in a moving vehicle, next to the other car.
- Keith Ellison:** But it undermines the theory of the case – that it was a murder – to me. I mean...
- Susan Simpson:** Yes.
- Keith Ellison:** I mean...
- Reagan Pasternak:** First Degree Murder, yeah. But the hard part then, that I have a hard time reconciling is the Panama City incident, you know, shooting – alleged shooting – I mean, that's a huge coincidence, then. That there was somebody who apparently shot at Isaac and Brianne, and then six months later Isaac ends up *shot*? I don't know, is that just some sort of crazy coincidence that six months later he was shot? I mean it just seems so strange.
- Susan Simpson:** I think so.
- Reagan Pasternak:** Really?! That's so crazy.
- Susan Simpson:** The story was that it was actually someone shooting – possibly, probably, maybe – at Isaac and *Paul*. But no one who would have been there that night would have known that Isaac would even have been coming over – because *no one* was supposed to be there. They went over after, I don't know, hanging out, to pick up some clothes for Brianne. But there was no plan to go there – there was no way anyone could have possibly predicted to see Isaac there.

And also... [laughs] I just can't imagine it was targeted at Isaac for a lot of reasons. But not even *Paul* recalls this ever happening.

**Rabia Chaudry:**

You're talking about an area where I'm presuming there's a *lot* of hunting – a lot of people own guns, and I don't think it's *that* uncommon to *hear* shots, you know?

So I think *one* of the things that struck me as we were kind of preparing for this episode, was how *hard* it was to just nail down things you think it would be *easy* to nail down – like what time class ended that night, and the students left. Things like whether or not the photographer was *on* the scene or not... How many pictures were taken? I mean, these are things that seem like, it's not about, like, somebody heard something or thought something... These are facts that shouldn't be so hard to nail down. Crime scene 101. And so, *how* and *why* does this happen? I mean I know there were a *lot* of different people on the scene, people weren't thinking of it as a crime, like, what was going *on* here? Like how come you couldn't even figure out what time class let *out* that night?

**Susan Simpson:**

That one, they had to figure it out. We just don't have notes about it. But I'm *sure* they figured that out pretty quick. We just don't know, because it's not in the notes. As for the photographer, I... [sighs] Everyone who was there that night almost has a different story. And we have almost four hours there, so they're not all talking about the same *time period*. So, it's *really* hard to figure out how they all fit into one hole, though.

**Reagan Pasternak:**

Clyde Collier? *Collier*? Clyde Collier?

**Susan Simpson:**

Collier.

**Reagan Pasternak:**

Yeah, it just seemed like, he wasn't *there*. It seems like everybody *meant* to call him, but I mean – don't you think? Like it just, like, where are all the pictures? Where everybody says he's this prolific photographer where he's taking, you know, so many pictures of the scene and nobody has the pictures, it just seems like – well it seems like, well it seems like he never showed *up*.

[crosstalk]

**Susan Simpson:**

He was there. I think he was there.

**Reagan Pasternak:**

You think he *was* there!

**Susan Simpson:**

I do.

**Reagan Pasternak:**

So where are his pictures?

**Susan Simpson:**

Well... That's the big question.

**Reagan Pasternak:**

Okay.

**Rabia Chaudry:** Well Susan, you seemed to be implying, in the episode, that the pictures we have might *not* be his pictures – were you saying that? Or was I imagining that?

[35:49]

**Susan Simpson:** Some of the photos we have, I do *not* think could be taken from him. They were taking that night. Well we think. It's hard to tell because you can't really see a background or anything. But I just don't really see a possibility... For instance one shot we have of the gunshot hole, is one person holding up the pane next to the frame. And, based on the stories we have, there's no time in which Clyde Collier would have been there to be able to take that photo. It doesn't match *any* story that Clyde was ever there at a time when someone was holding up this glass pane. So it's hard to see how he could have taken that one. Also, it's a really terrible photo. My mom called last night, and she's like, "Did you know Clyde Collier took our wedding photos?!"

[laughter]

**Rabia Chaudry:** That is really a small place.

**Susan Simpson:** He did a good job on those!

**Reagan Pasternak:** That is awesome.

**Rabia Chaudry:** Well, this was the time before, you know, lovely smartphone cameras, and stuff like that, so it had to be somebody, I assume, from the police department who had a camera with them, or... I mean it's not going to be somebody *random*.

**Reagan Pasternak:** Do you think these were *intentional*? Like, so you're thinking that all the stories about the window, and then the, you know, the photographer – everybody knows – is a good photographer, there's no pictures to be-- You think that's suspicious? Like, you think there's something more to it?

**Rabia Chaudry:** Yes.

**Reagan Pasternak:** I see...

**Susan Simpson:** Well... We'll get into more. The photos have more significance to the case.

**Reagan Pasternak:** Okay.

**Susan Simpson:** What bothers me the most, I think, is... *Marshall Smith*. Because he-- The reason those photos come into evidence at Joey's trial, is because Marshall Smith says, "That is how it looked at the time. Right after the wreck, before anything had been changed. This is how the scene *looked*, in the photos, before *anything* had been changed at all". And then we have the tow-truck driver who says, "Well, that's not true, because I was loading up the truck, and then Marshall Smith came hollering like, 'Get it down! Get it down! It's a crime scene!'"

And then we *call* Marshall Smith, and he says, "I have nothing to tell you. I never even *got* there until after Isaac's truck was already on the tow-truck". Like, well, that's very much not

what you testified to repeatedly at Joey and Mark's trials in order to get all of those photos admitted. And without you *saying* that, they never would have got admitted in the first place, to be used *against* him. So that bothers me.

**Keith Ellison:** All I want to say about that is this: So like, I got Adnan's case in the back of my head, right?

**Susan Simpson:** Mm-hmm.

**Keith Ellison:** I believe that the environment – the *cultural* environment that we are in, in the United States, at this time, has reversed the presumption of innocence. I think that most people figure that if the cops think you did it, and the prosecutors think you did it, then you're sitting at that table, then probably you did it. And we know the judge is going to tell us that the person is presumed innocent and the State needs to prove, beyond a reasonable doubt. But we're not stupid and this person isn't here for no reason at all...

**Rabia Chaudry:** You know this reminds me, and I've written about it in the book, *Adnan's Story*, that at the time that Gutierrez was preparing for trial, the community went to her repeatedly and said, "Listen, how can we help? What can we provide you? What do you need? How do we figure out where he was, and prove it?" and she repeatedly insisted that, "Listen, this is the State's burden. Adnan is innocent and it's the *State's* burden. And we don't have to do *anything*. They have to make their case, and I'm not going to let them". But you're completely right, Congressman, that's *not* how it works. And I mean it was really that incredible failure of not providing an alternative narrative and really *proving* his innocence that really hurt Adnan, and *does* hurt a lot of defendants.

**Reagan Pasternak:** That *is* why these shows are so incredibly important for your average, you know, listener who is going to be on the jury! You know, to understand that that's actually *true*. The prosecutor does have the burden, and that *is* the way it should be.

Can I ask a totally separate question? I feel like it was the very first episode, or one of the ones- I feel like Susan said that Joey allegedly shot Isaac's dog. And I can't get that out of my *head*. I want to move forward from there, but I need to get it out of my head.

**Rabia Chaudry:** Ah. I'll let Susan answer that.

**Reagan Pasternak:** [crosstalk] Did he shoot the dog?

**Susan Simpson:** I underestimated the dog stuff.

**Reagan Pasternak:** Mm-hmm.

**Susan Simpson:** When I first started this case. I just didn't care about it, because to me it seemed so irrelevant, and like, "Whatever, this is just some nonsense about some dogs" – like, who cares? Because it's just so tangential and – we'll cover this a *lot* in later episodes – and I didn't even think to focus on it. Because, who *cares* if it's true or not? It has nothing to do with anything! And then, I would talk to people about the case, and they would mention... This fact would come out that there were dogs, that died, allegedly, and allegedly Joey may have done it, or something. Or Joey knew something. There are a lot of '*allegedlys*' here, a lot of versions of what could have happened to the dogs. But when they hear that in *some possible way* that

Joey may have been connected, *somehow*, to a dog's death... It's like a light switch goes off, and they're like, "Ah, I don't want this case anymore." I don't--

**Reagan Pasternak:**

It's true, it's true.

**Susan Simpson:**

"A dog murderer? He probably killed a human... If not, I don't care anyway".

**Rabia Chaudry:**

The leap that people can make because of that... It's really interesting to me that you say that, Reagan, that you can't get past that. We are going to go pretty deep into the whole 'dog' issue, but it also reminds me of in the Steven Avery case, where it was introduced into *evidence* that, you know, he had – I think – hurt an animal, like a *cat*, or something. Like thrown a cat into a fire. And from that leap, something like *that*, people just can't get over what that means about this *person*. If it's actually true.

**Reagan Pasternak:**

I know, legally, it might not be, you know, relevant. But you *can't*, you know, for these stories... I mean, Adnan was such a *likeable* character, so for a listener, you're listening and you're going, "No, this person is..." And I *know*, legally, it shouldn't matter, but you go, "Somebody shot somebody's *dog*". That's *so crazy* to me-

[crosstalk]

**Reagan Pasternak:**

It just seems so... Crazy.

**Susan Simpson:**

Well, it's not even, 'legal', because legally, yes, it's relevant if they can find out a way to connect it to Joey--

**Reagan Pasternak:**

Right, right.

**Susan Simpson:**

It's a big 'if' here. But factually, I just don't think I appreciated how important and how *strong* evidence it was. I didn't appreciate that this is likely one of the overwhelming reasons that Joey was convicted.

**Reagan Pasternak:**

Right.

**Susan Simpson:**

*Until* I started talking to people-

**Reagan Pasternak:**

Ah...

**Susan Simpson:**

I finally realized, like, "Wait". They hear the word 'dead dog' and it's over for Joey. *Game over*.

**Rabia Chaudry:**

Well this goes very much to, I mean, this idea of like, telling a story about a person. I had a Twitter exchange with one of our listeners about a week ago, and I apologized to that listener because I didn't mean to come across a little sharp, *but* this listener was saying, "You know what? Adnan was a great guy, and I liked him and I cared about him, and so I was invested. Joey doesn't seem like a great guy. Why do I care?" And I said, and I was like, "Does it matter

or not whether he is a great person?" Although I'm not conceding that he *wasn't*, but I'm saying, "Does it *matter*? What does that have to do with him being wrongfully convicted?" Like, terrible people are also wrongfully convicted people, you know? I said that the issue here is whether or not he was wrongfully convicted of a crime he didn't commit. But this is something I've seen a few times, where listeners were like... And the dog thing is *exactly* what I'm talking about. People are like...

**Reagan Pasternak:**

Because you guys are teaching us about the legal system but it *is* a human interest story as well. It just is... You can't help but have these emotions of going, "Wait, I want to know if Joey's capable of killing a dog as well". Like, because not everybody is capable of killing a dog. And when you're sitting back evaluating a case – and you know, I have the 'Illusion of Truth' with you guys, and I trust, you know, you guys are going to be taking on a case that there's going to be a *lot* of evidence that this person is innocent. In my mind, that's my bias happens like that, right away, when I hear that you guys are going to do a story. But those are things that I want to understand about him. Like, I want to understand if those are just rumors, if those are just, you know? If there's any truth to that.

**Rabia Chaudry:**

So how do you overcome something like this, Congressman? When you had to have a defendant who might not be the most savory character?

[43:08]

**Keith Ellison:**

Well, you know, it starts in jury selection. Maybe it even starts before that, in your emotion practice. If your client is alleged to have hurt an *animal*, you've got to know that people are going to use that for the kind of person that person is. So you have to consider what they call '404-B evidence', which is evidence of prior bad acts, and you have to move to exclude it on the grounds that it doesn't illuminate any try-able fact, but it sure does prejudice the jury against this person, so you've got to try and get it out. If you cannot get it out, then you're going to have to talk to the jury about it and say, "Look, you may hear evidence that my client has done some things that you wouldn't necessarily condone. But my question to you is this – "*He's* on trial for murder. Will you focus your attention on that?" Why not? Talk about that, and just let them sort of... Does my client have to be what you consider a good person, in order for you to be fair to him?

**Rabia Chaudry:**

Right.

**Keith Ellison:**

And then, they will see, actually *no*. And most people say "No". Some people will say "Yes" – of course you kick them off – but, you know, you want people to just sort of come to the realization that, you know, we're not asking you to solve a 'whodunnit'. We're not asking you to say who's a good person and who's a bad one. We're saying under this American flag, and you pledge your oath to do fair justice, in this American court room, will *you* try the case on the facts *before* you and make the state prove it? That's what you've got to keep on doing because it's very easy, particularly when a person is, accused of hurting something *innocent*, like an animal, to have that slip into some sort of assessment as to whether they are the *kind of person* who would do this or do that. And of course you can't convict someone on the 'kind of person' that they are, you have to convict them on what they *actually* did.

**Reagan Pasternak:**

Right.

**Susan Simpson:**

Here's the problem: When that's thrown out there, it's in their minds--

[crosstalk]

And they start assuming... But you can't-- You almost have to have a trial within a trial. You have the murder trial going on, but then you'd have to have, like, the 'dog murder' trial, where you independently produce evidence to prove that, *no*, Joey had nothing to do with *anything* in this.

**Keith Ellison:** See, that's one argument to the *court*. So if you know your case going in...

**Susan Simpson:** Well, they didn't know about the dogs, or they... It was kind of a surprise thing they pulled.

**Keith Ellison:** So, if the dog thing surprises people and you *cannot* anticipate it, then what you've got to do... You have to either get an instruction not to consider it, and of course we all understand the problems with that. If *my* client was accused of killing a dog, in a murder case, *I* would maybe move for a mistrial. Because that's damaging, man! You know, it is. People are *very* sympathetic to animals, particularly dogs. And if the court doesn't grant that motion, you still want the record to reflect it, to preserve it for appeal. But let's just say, you know, *none* of that works. You're now going to have to have a trial within a trial on whether the--

**Susan Simpson:** Mm-hmm.

**Keith Ellison:** He said, "Look, you know, my client didn't kill a dog. This is *not true*". And of course--

**Susan Simpson:** In this case it's *dogs* plural. They just kept adding dogs to it.

**Rabia Chaudry:** Oh boy.

**Keith Ellison:** Yeah, and see that's the problem with the court ever letting that mess in, because it's a complete distraction. I mean, if I was a *judge*, I would probably exclude that kind of evidence because it takes the jury's attention off of the issues that need to be tried. And...

**Susan Simpson:** Well in this case what happened, the big dog issue was sprung, *new*, on the defense at trial, and they were like, "Uh... You can't do this right now". And the prosecutor says, "Well, I didn't know about it until the day before the trial, so I couldn't have told you sooner". And the judge...

**Keith Ellison:** Well--

**Susan Simpson:** "Well, okay then! If you didn't know then you couldn't have told them, so it's fine".

**Keith Ellison:** See, that's a classic case of people not doing their job. I mean, the judge should have *never* allowed it in--

**Susan Simpson:** Yeah.

**Keith Ellison:** Because it's actually irrelevant, right? And it's highly prejudicial. And if the prosecutor didn't know, the prosecutor *should* have known. And I think it actually borders on prosecutorial

misconduct. Because the prosecutor *knows*. Knows good and well that this is going to inflame the jury. They know it! They did it for that reason, right?!

**Reagan Pasternak:**

Oh yeah.

[47:13]

**Rabia Chaudry:**

I'm going to, now, finally take some listener questions. The *most* questions we got were about that little blue car. Number one is from a Twitter user, 'Echo Zeus' and the tweet says, "Brianna lying to get her new boyfriend enraged against old boyfriend a pattern. Do we know what car Chad drove? Possibly a small blue Honda?" Somebody else asks, "Okay my first question after hearing 'little blue Honda' is, did Mark or Joey own a little car?" Another tweet is, "Any info on blue car? Number of bullets found? *Seems* like blue car did it, so bullet from the *passenger* side?" – question mark.

**Susan Simpson:**

Short answer is *no one* connected to Isaac or Joey has a little blue Honda. That we know of. *No one* in that mix, with a little blue Honda. Of course, I mean, it's a Honda – it's a common car. There are people connected that do have *Hondas*, but there's never *any* evidence at all, remotely, that suggests they could have actually been involved in the shooting. So... And we'll go through this more because the cops try *really*, really hard to try and find a car so they can link it to Joey. So there's-- They put some effort in there. But they can't. And it's not like-- well, definitely not Brianna or somebody, but there's *no* blue Honda in that crowd.

**Rabia Chaudry:**

There isn't, but, again, remember--

**Susan Simpson:**

And Mark too. Mark also does not have a blue Honda. [laughs]

**Rabia Chaudry:**

Mark Free, who was the co-defendant--

**Susan Simpson:**

Or anyone.

**Rabia Chaudry:**

Yeah, who was acquitted.

**Susan Simpson:**

And over the course of the ten month investigation, there are a *lot* of people they try and paint as Joey's accomplice or *accomplices*... I can't even think of *one* that had a Honda, or a blue Honda.

**Rabia Chaudry:**

And yet, they got their conviction. They somehow convinced the jury that Joey had access to a blue Honda. Either through an accomplice or-- I know we're going to explore maybe the possibility of his father's auto lot.

Another question is this, from Kristy Clarke it's '@\_Kristy Lynn' from Twitter, "The witness account of the wreck – did he see a muzzle flash? It seems as if he would be close enough to see that".

**Susan Simpson:**

[sighs] He doesn't ever mention one explicitly. And at some points he kind of waffles, and says, "I saw something as the car left the road, but it might have been dust being kicked up." But talking to him today, he does not remember a muzzle flash. I don't think he saw one.

**Rabia Chaudry:** Okay. We have a question, actually, not about Episode 4, but about Episode 3. Episode 3 raised *a lot* of questions for people – especially with the issue at the end, with the phone calls, and Brienne... And one of the questions is, from '@K K Sorrell', which says, "Episode 3 phone calls. A call from prison wouldn't go to voicemail, would it? I think the receiver of a call has to accept charges before the call goes through. So the calls *couldn't* be from Joey, right?"

[49:42]

**Susan Simpson:** So if you look at the case file on this, they noted at some point that the prison Joey was at did have a problem with prisoner cell phones. So theoretically, Joey *could* have had access to a cell phone. There could have been cell phones other prisoners had, or he had, or *someone* had. So it's not impossible for him to have made a call. Of course, they couldn't trace these to a cell phone, so it's not...

**Rabia Chaudry:** And there's no number? They couldn't trace it to any known number at all?

**Susan Simpson:** INo... There's not enough records there to determine why they concluded they couldn't trace it, but they decided they couldn't.

**Rabia Chaudry:** Okay. Last question right now, is from '@S T Grant', okay, "After listening now to Episode 3, I just realized Joey was driving on the opposite side of the road as Isaac passed his crash site, twice. Can you have the team explain that a little more?" I think it was a little confusing to people – who was driving in what direction. "And also..." the question goes on, "...was Mark Free in the car with Joey? Has Joey confirmed that?"

**Susan Simpson:** The reason we haven't talked about Mark yet, is he has no appearance in the case, until after Floyd County takes over. He is not even a... No one's mentioned Mark's name, at least not until a month and a half into it. So he won't come into this until later.

**Rabia Chaudry:** And, uh, we did mention this earlier though, that both these defendants, Joey and Mark, were told, or asked, to testify against each other and *both* of them actually declined to do it. They said "It's not true". Mark was never with Joey. Joey says it and Mark says it too. But can you talk a little bit about, like, which way they were driving, and...

**Susan Simpson:** Yeah, so, what was confusing for the investigators at first, was that when Isaac was driving *north*, he ultimately, during the wreck, his car flipped, spun around. It was facing *southbound* on the southbound side of the road. Which is the way Joey was going, a little while after, when *he* passed it. So he – Joey – drove south to Cedartown, passed it on *his* right side, then an hour, or two hours later – probably an hour and a half later, roughly – he was driving *north*, back to Rome, and would have passed it this time on his left side.

**Rabia Chaudry:** Any last thoughts, guys?

**Keith Ellison:** I'm so grateful to be invited to offer views on things with you guys, because I think that we literally have thousands of people in our US criminal justice system who are wrongfully convicted. You know? Even a *small* percentage is literally thousands of people, given the fact that we have about 2.5 million people who are in prison, a small percentage would mean a *lot* of people who are wrongfully convicted. So, exploring this case, using Joey's case and Adnan's case, just as a way to help people understand that, you know, not everyone who's charged is guilty, not everybody who is *convicted* is guilty, and a *lot* of people are convicted on very thin evidence. I think it's really important. So, thanks for including me, and I'll see you next time.

**Rabia Chaudry:**

Thank you so much, Congressman, appreciate it and people like you, people like Reagan, and folks like even Jon Cryer, help elevate these issues and take them to a mainstream audience. So thanks so much for being part of it. I want to thank *all* of our panelists.

**Reagan Pasternak:**

Thank you, thank you.

**Rabia Chaudry:**

Susan, Reagan, Congressman Ellison, and we will see you guys online soon!

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