
UNDISCLOSED SEASON 2: THE STATE VS. JOEY WATKINS**ADDENDUM 7:
POSTED: SUSPECT BEHAVIOR
AUGUST 25, 2016**

Jon Cryer:

Hello! And welcome to the *Undisclosed Addendum*. I am Jon Cryer, I'm back, and this is the podcast about all things *Undisclosed*. Now, if you're listening to this *Addendum*, it's probably because you're, like me, already knee-deep in Season 2 of *Undisclosed*.

In Episode 7, 'Unusual Suspects' the team examined all the possible perpetrators that the Rome Police considered in the murder of Isaac Dawkins on Highway 27 in that night in January of 2000. These are all people that they crossed *off* their list – all the roads not taken.

With us today are Susan Simpson and Colin Miller, hosts of *Undisclosed*.

Susan Simpson blogs at *View from LL2 .com* and she's an associate at the Volkov Law Group. How you doing, Susan?

Susan Simpson:

Good! I feel like I should change my intro now, because... I *used* to view from LL2!

Jon Cryer:

[laughs] Ah...! Okay!

Susan Simpson:

Because I don't know when I've last had time to actually blog there, but--

Jon Cryer:

[laughs] *Former* blogger at the *View from LL2*. People will be sad about the retirement of that particular website. But thank you for being here, Susan.

We also have Colin Miller, who's associate dean and professor of law at the of the University of South Carolina School of Law and blogs at *Evidence Prof Blog*. And, thanks for being here, Colin!

Colin Miller:

Yeah, welcome back, Jon. Look forward to talking about this episode with you.

Jon Cryer:

We also have a very special guest, Alison Sweeney. Who is, as many of you know, the host of *The Biggest Loser*. She's been on *Days of our Lives* for, I believe, *decades*. [laughs] She currently films and produces TV movies for Hallmark channel, and Hallmark Movies and Mysteries, and she's also busy writing novels, and being a mom... And all those things. Welcome to the show, Alison!

Alison Sweeney:

Hey! Thanks for having me. I'm *super* excited.

Jon Cryer:

Now, Alison – I ask this of all the new people on the show – what brought you to *Undisclosed*? What spurred your interest?

Alison Sweeney:

I think, probably like a lot of people, I started listening to *Serial* – obsessive-compulsively – and then *had* to know more. And caught on to *Undisclosed* from there. And *Truth & Justice*. And

my husband's like, "Oh no, again with the podcasting – you just don't stop!" I'm like, "I *can't*! I have to know what happened."

I was live-tweeting, listening to the PCR hearing, and then of course this new season has just caught me up again, and you guys are awesome. I love what you do. I feel like I'm learning so much, and I love that too. You know, you're like, my professor, Colin, and I like studying.

[laughter]

Should be a test coming up for me.

Jon Cryer:

[laughs] Now, have you developed coping strategies, like me? I double the speed of the podcast, and I do it when I drive, I do it when I'm in the bathroom. [laughs] And again, I don't know if *your* spouse thinks you're having an affair or not... [laughs]

Alison Sweeney:

Or at first, because I was listening with earbuds, and then, as I, like, cleaned up or whatever, and then it became more like, "No-no, I need to hear the whole thing". So I have noise-cancelling headphones that I listen to now. My whole family-- I have to give them the whole, like, one finger gesture, like, "Hold on" gesture and I pause it. Like I can't miss one word.

[laughter]

Alison Sweeney:

It's very serious.

Colin Miller:

That's hardcore!

Alison Sweeney:

Yeah! I'm not kidding around.

[5:36]

≈

Jon Cryer:

So, just to give a little re-cap of where Adnan Syed's case is right now, is, as you've probably heard, Judge Martin Welch has vacated the ruling convicting him of the murder of Hae Min Lee. And after that ruling was made public, the state attorney general let people know that they would be appealing that ruling.

So, the State's attorney general did, in fact, appeal, and in that appeal, they did something interesting. They mentioned that if the attorneys for Adnan were to cross-appeal – that being, appeal another aspect of the ruling in order to keep it in place – that he would be introducing some new evidence out of two sisters who refute the alibi claim that Asia McClain has made on Adnan's behalf.

So, as it turns out, Justin Brown, the defense attorney for Adnan Syed, *has* in fact filed a cross-appeal. So, as of last Monday, the Office of Attorney General, Maryland, filed an 'application of limited remand' in the Adnan Syed case. And I have *no* idea what that is. Colin? Could you chime in on what exactly that is?

Colin Miller:

Yeah. Basically, the attorney general wants to send the case back down to Judge Martin Welch once again, so that they can enter evidence of these two sisters, who they claim will, in essence, blow up Asia's alibi by saying back in 1999 she said because she thought Adnan was innocent, she decided she'd make up an alibi to support that case, even though it wasn't legitimate.

- Jon Cryer:** So, he's asking that they not – the Court of Special Appeals – not listen to this particular appeal and send it back?
- Colin Miller:** Right. Because the Court of Special Appeals can't receive new evidence. That's why, initially, they sent the case right back down in the first place – to have Asia and the other witnesses testify. So now the State is saying, "Despite the fact we had, like the defense, had the opportunity to provide our best evidence, we didn't have these sisters. So we want you to send the case back down *again*, so that now Judge Welch can hear from these sisters and maybe reconsider his opinion."
- Jon Cryer:** But my understanding is that appellate courts aren't supposed to consider new evidence, *anyway*. So it seems like they're saying, "Okay, don't consider the appeal, just forget that it was filed at all." If I sound confused, it's because I am. [laughs]
- Alison Sweeney:** I was going to say, if I may, in my completely uneducated place here, I don't understand how they get to make that argument that they can get these two sisters who, like... Where have they been for 20 years? And then Adnan's attorney doesn't get to bring up Tina? All of those issues with her incompetency and her health? I don't understand how that's different.
- Colin Miller:** Yeah, it's a great point, and actually, the State doesn't have a leg to stand on. Because there's a case out of Maryland – it's the Alston case – and it says we're concerned about defendants who are wrongfully convicted, and so as a special dispensation we'll allow – in rare cases – for defendants to reopen post-conviction review proceedings to present new evidence.
- And that's why the cell tower evidence was presented. That's why Asia was allowed to testify. But in that case they specifically say we do *not* afford that same dispensation to the State. So, you're exactly right. For the State to argue, "We should be given the same right the defendant is given", especially when Adnan was limited in what he could present – it's not really an argument that's going to hold water. It's not really a legal strategy – it's more PR than anything.
- Jon Cryer:** So, it would seem that it's just a strategy to get the affidavits of these two sisters out in the public eye, and discussed in terms of the case. But it seems like the affidavits are self-contradictory. It doesn't seem to make sense that at one point they state that they didn't understand that she was so into this case, but they also state that they argued about it all the way back when the case first occurred. So, which is it? If you didn't know, then why are you arguing about it?
- Susan Simpson:** The way Thiru is trying to play it off is that, first of all, they didn't actually know that Asia went ahead and sent her letters. They apparently assumed that their arguments were so good in class that day that Asia gave up this whole plan and... The end.
- But what *happened* was, in November, I think probably, like, right after, Episode 1 or 2 of *Serial*, in 2014, one of the sisters send a message on Facebook to Asia, saying: "I had no idea you were involved like that back then. Here's a link to the show." Just a friendly-seeming message.
- But what Thiru argues now, is that this was an attempt to call out Asia – to seek out a reaction. As in, this affiant was trying to bait Asia into, like, admitting that she lied, or something...? But that's not what the letter is at all saying.
- Jon Cryer:** And also the notes *again* contradict themselves, because there is no way that Asia could have known at that time that that particular point in time would be so important to the case. And she also says – supposedly at that time – she says, "I'm going to lie a little to prove him

innocent, because I think he's innocent, but if he's proven guilty well then he must be guilty." That, of course, doesn't make any sense at all.

Alison Sweeney: [crosstalk] Yeah.

Susan Simpson: [crosstalk] When all the news articles out at that time said it was 3:00 pm that Hae left school, why is Asia trying to lie to make an alibi to prove Adnan innocent, and she very specifically makes it before the murder could have occurred – based on everything she knew.

Alison Sweeney: Well, and at that time, the murder could have happened at *any* time. I mean, it's such a terrible thing to imagine, but there's really not anything to validate, especially not the lividity evidence, right? There's nothing really that says concretely that she died that day. At the time, especially. They didn't know – they didn't find her for a month.

Jon Cryer: Yeah. I'm just baffled because you file an appeal, but then you're saying, "Don't consider this appeal – send it back". [laughs] You know? It seems a very twisted legal maneuver.

[10:56]

Susan Simpson: And if you read the actual exchanges between everyone, between the sisters and Asia, it's *not* what Thiru's trying to portray it as. I mean, I read Thiru's brief first. The way he describes the Facebook exchange between Sister 1 and Asia, was as if Asia responded angrily, or sarcastically said, "Okay honey, I hadn't forgotten what you told me". And that's how I read it in the brief! It's what I thought that's what Asia's response meant, because that's the way he portrays it.

But when you look at the actual letters, and what happens is that after Sister 1 sends a link to *Serial* and says, "Wow, I had no idea..." Asia waits about a month and after Christmas she writes back and said, "Sorry it took so long to get back to you, I've been so busy. But look what I found." And she sends this generic, high-school girl, end-of-senior-year letter full of, like, "Stay sweet! Love you like a sister!" – the crap everyone wrote back then. And it's clearly Asia being, like, "Hey, I was thinking of you, here's this cute letter you sent me back in 1999.

And now Thiru's here trying to portray it like a snap back at the sister for catching her in a lie.

Alison Sweeney: He's misrepresentation of *everything* that was written down in the PCR hearing is preposterous. I feel like that was his whole game... Was to spin things all on every level.

Jon Cryer: [crosstalk] And it's--

Susan Simpson: [crosstalk] And it succeeded in a way, though, because... It was *his* attack.

So one of his big arguments at the hearing was that Asia had to be lying because her letter says, "I gotta go to third period now". So he has this whole tirade about, "Of course Asia's lying. Why would she have possibly have said she was going to third period when she did *not* go to third period during this time period. She went to her after-school job, work-thing, so she didn't have a class then, and she's lying."

And so Asia, after the hearing, when she can see the messages from the other girls, is that, she's trying to reconfirm what happened back then. Because *she* thought she went to a third period, and now she's in a court, and the prosecutor's telling her, "Nope! You didn't have a third period, you're a liar." And she's like, "Well, am I a liar, or what?" So she goes through her photos, finds a photo of her in third period, with one of the sisters, and then writes to them and says, "Hey, we had third period together, right? We went there after second period

until we were released to go to our work-study stuff.” And the girls write back, “Yep! That’s what happened.”

And they are now arguing-- The girls are saying that Asia writing to them about that was that *she* was confirming that they knew that she had lied.

Jon Cryer:

Yeah. So, I have read some of those interactions and they just seem to me like she was trying to confirm her memory. It read much more innocently than it’s portrayed in the briefing. So in terms of this filing, of course, a lot of people are wondering, does this have any real possibility of *success*? I mean, it’s a very unusual request.

Colin Miller:

So, what happens next is, Justin has cross-appealed, he still needs to file his opposition to the State’s appeal. And my odds... I place them less than 1%. The Maryland precedent is clear – the State *cannot* file a motion to reopen. The Alston case says they can’t file a motion to reopen and the case-- There’s one case cited by Thiru in his brief, and it doesn’t support his position at all. So there’s pretty much no way the Court of Special Appeals is going to send this back down again. They’re going to decide whether or not to take the appeal, but it’s not going back for more evidence.

Jon Cryer:

So, it’ll be based on how that particular Martin Welch ruling came down. They won’t be introducing any *new* things.

Colin Miller:

Right. They are stuck with the record as it exists. There’s not going to be any new evidence on *either* side to either support or rebut the claim of ineffective assistance.

Alison Sweeney:

And for those of us who just need to hear it again, how long does something like that take? I know that that question came up a lot, but it continues to baffle me, and he’s sitting there, not guilty, at this point, still in *prison*. So...?

Colin Miller:

Yeah, there’s no prescribed deadline for the Court of Special Appeals, either to deny or give leave to appeal. I would guess to look for an opinion probably in the next two or three months.

Susan Simpson:

Colin, have you read through the rest of the brief?

Colin Miller:

Yeah.

Susan Simpson:

I mean, what did you think about the arguments? Not even the arguments, but the factual presentations that Thiru makes throughout of it?

Colin Miller:

Yeah. I mean, this is something that Alison just brought up a minute ago, and I blogged about it yesterday. Thiru promised at the hearing that Officer Steve would say that Adnan was not in the library on January 13th, and you saw how when he testified he said something very different – said that Billy Martin would testify that Christina Gutierrez acted reasonably in her handling of the alibi issue. That witness was never called. There was Chad Fitzgerald, who was supposed to rebut the AT&T disclaimer, and as I said in my post, his testimony sort of went over like the Hindenburg.

And it’s this constant pattern of Thiru over-promising and under-delivering and you just really can’t trust anything that’s written in these briefs. And I think both of you have mentioned reading through it and said it’s completely different than the way he represents it, as opposed

to actually going to the source documents. And so, it's really troubling the way the State is currently making certain assertions.

Ashley Sweeney:

Is he supposed to be championing for the State, like, to any lengths? "Do anything you can"? Convince anyone of anything? Or is he supposed to be defending, *knowing* that that's not the law, and you're not supposed to misrepresent things like that?

Susan Simpson:

In real life, I think most attorneys have something in them that makes them not write blatantly, factually untrue things and feel comfortable doing it. Thiru does *not* have whatever that is. He repeatedly has, throughout the course of this litigation – and in previous cases – he just has no problem presenting something that is factually untrue, and just carrying on as if nothing happened. For instance, at the PCR hearing, he is telling the court – I have my notes, he did argue to the court – in his closing, that Asia had to be a liar, because she wrote about going to third period, and third period didn't happen.

Well, of course, that's not true. And now that he has these witnesses that say they heard a confession that Asia lied *in* third period, he's happy to say there was third period after all. But let's take what Colin just mentioned about Officer Steve: Everyone knows that Thiru is not telling the truth in his brief when he writes they only called Officer Steve to prove what 'Wackenhut' was. No one's fooled by that. No one out there reading this brief thinks that Thiru is not lying when he said that. Because Thiru clearly called Steve for two purposes: One, to say that there were *no* cameras in the library, therefore Asia's a liar, and two, that Adnan's attorneys talked to Steve, who told them that Adnan was lying because he was not in the library on January 13th.

So, despite the fact that the truth is obvious, Thiru goes ahead and writes in his brief, "I only called Officer Steve because I just wanted to see what Wackenhut really was". And that's the security company he worked for.

Jon Cryer:

Why would *that* be material?

[laughter]

Susan Simpson:

Why would your- your one fact witness in the whole hearing, "Oh, can you define 'Wackenhut' for us?"

[laughter]

Jon Cryer:

It's a painfully obvious tactic. But again, the point that Alison seemed to be making is, he seems to be trying harder than usual to do this, and I can only guess at this point it is to win the case in the court of public opinion, in some respect. You know, because, you know, it doesn't sound like he's going to win in the actual court.

Colin Miller:

That pretty much sums it up perfectly. It's an appeal to the public opinion as opposed to the Court of Special Appeals, which is pretty much going to look at this and reject it out of hand.

Alison Sweeney:

It just breaks my heart for Hae's family, that they listened to that. And I know where they must be coming from and how hard it must be for them to drag it all out again. But to not know who really did it. I can understand how they want it to feel *resolved*. But they don't know it, and we're never going to know it if it carries on this way and peeps dragging it out this way.

- Jon Cryer:** Yes, actually we got a Twitter question recently, with somebody asking, “Why is it that families of victims always seem to buy into prosecution theories of how crimes happen and who committed them?” And why do you think that is?
- Susan Simpson:** Because it’s the worst moment of their lives, and they’re desperate for any hope, or answers they can have.
- Jon Cryer:** Also, I imagine the prosecutors provide order. They provide order and knowledge and information, and you want to hope that they are competent in what they do and that they are the good guys working on behalf of justice.
- Colin Miller:** Yeah, and this is something that, Jon, I know you donated your proceeds to the Jeff Deskovic Foundation in a prior episode. One thing that he always talks about is, there’s not enough victims’ advocates out there. Those are individuals who exist, who are supposed to be neutral – outside of the litigation process – who can help the family and the victim – if they are still alive – through the process.
- But those are sort of few and far between, and that’s something where, I think, additional funding to have that neutral party who really can be a shoulder and support for the victim and their families, essentially.
- Alison Sweeney:** Yeah, Jon, I love that you do that. It’s really opened my eyes to so many different avenues to reach out to people and help.
- Jon Cryer:** Well, I did not know that there were so many organizations that were doing this. I’d heard of the Innocence Project, obviously, they’re very high-profile, but I didn’t know that there were so many on *local* levels. And you know, they’re all doing this for-- They’re *not* doing this for the money, that’s for sure. [laughs] So, I just wanted a moment to highlight them.
- Guys, we’ve got to get to Episode 7, actually, but before that I want to take a moment to thank the folks that sponsor the show and let you hear some words from them. Here they go.
- [21:26] ≈
- Jon Cryer:** And we are back. And in Episode 7 of *Undisclosed* – ‘Unusual Suspects’ – we looked at many of the suspects that the police had in the case of Isaac Dawkins, and at first it appeared that the police considered Paul Allen a suspect. But they later pivoted to Joey Watkins. Just out of curiosity – did the Floyd Police investigate Paul Allen? Or were they *all* about Joey Watkins?
- Susan Simpson:** The Floyd Police never looked back – it was always going to be Joey and who ever else they needed to make it stick. Because he needed an accomplice – he couldn’t have done it himself, so... I mean, they had no choice but to find someone else to charge.
- But the police kept the pressure on Paul. The Floyd County Police didn’t just let Paul walk away... They were at his house, at his work – from talking to him it sounds like a dozen times, at least – pressuring him, and eventually he’s the one that comes forward with information from Josh about how Joey did it.
- Now the information he gives is actually-- They don’t ever use it, because it’s obviously just rumors and hearsay, but they just needed that break to make the arrest. And that happened because they put the pressure on Paul for those 10 months.

- Jon Cryer:** Now the 'Josh' you're mentioning is Josh *Flemster*...? Who is a friend--
- Susan Simpson:** Josh Flemister.
- Jon Cryer:** Flemister. Yes, okay. Now, I feel so terrible, because it feels like if we didn't have a person like Brianne in your life, and this 'Josh Flemster' character, things might have gone so wildly different for Joey Watkins. Am I right?
- Susan Simpson:** I think so. I think it's hard. And you never know, what the 'but for' causation is, looking back on a case. But without Brianne, and without Josh, I think it's very unlikely that Joey's in prison today.
- Jon Cryer:** Well, it appears that Josh was for some reason deciding to be an armchair detective and trying to somehow set off Paul against Joey by telling either one that they were responsible for Isaac Dawkins' death.
- And it appears, by the way, from your talking with Joey that *he* was doing some amateur investigation himself. He was recording conversations with Paul, which, of course, obviously, points to him not being guilty of this crime. Because why would he investigate a crime that he supposedly committed?
- Alison Sweeney:** To me there's very much a 'Salem Witch Trials' thing happening here with these kids who are playing games about something so serious. And yet, to them, it's like gossip and rumors and, "He said this to me" and "I'm going to get you at the MacDonald's parking lot," and, you know? I mean, I think that's part of being a teen... Is you don't recognize the consequences of the stories you tell, but *God*. It just really-- It took away so many years of this guy's life, and it all seems to be about gossip and innuendo.
- Susan Simpson:** There's at least two other times in the file when someone came to the police with a totally bullshit story and saying, "Oh, so-and-so confessed to me they did it." And of course it turns out to be that the person who said they got the confession had some other reason for wanting to turn the person in.
- But, it's not just the ones we talk about in the show where this happened. And after I just said that I think without Josh and Brianne, this wouldn't have happened -- I think I have to take that back. Because it would have happened; it would have happened in a different way.
- Because if the cops hadn't gotten to Josh, or gone to Josh, they would have found another friend. And Joey did have a few friends in his life that were more vulnerable. They were in a position where they couldn't resist police pressure while they were struggling. I think eventually one of them would have caved. If not Josh, someone else would have.
- Alison Sweeney:** But don't we think the police's influence and their determination to go after him was so clearly motivated by -- I mean, I'm just guessing, we haven't gotten Episode 8 yet -- but, seems to me there's a lot of relationship with the family that seemed to really encourage them to pick one guilty party and go after it.
- Susan Simpson:** Oh yeah. I know one of Joey's friends -- a guy called Adam Cagle -- he has since passed away, but I think he could have been -- or they wanted him to be -- the 'Josh' figure, who goes around accusing everyone. And he ended up sort of packing up and leaving Rome. Just, probably the safest play to do.

But, I think they would have kept going until they found someone or ‘*someones*’... And that’s what they *did* do: They just kept going for 10 months until they finally got enough people – enough snitches – to make a case.

[26:27]

≈

Jon Cryer:

So in Episode 7, we go through the many avenues that the police went down, searching for the guilty party. There’s the ‘Kingston Bypass Shooter’ case, that you mentioned. There’s Elizabeth ‘Loco’ Lambert, Stanley Brumit and Joseph Boyd, and eventually, Heath Wilson.

And in each of these cases there are reasons that the police stopped investigating. But all of these things – in listening to the podcast – seem pretty tenuous. It always seems like we’re basically leaving it up to the police to decide when they stop investigating. And I think – you know, as a listener – I think, “Gosh, I wish they had investigated things further”.

But is it fair to expect that of the police? You know, they have limited resources. Is it completely left up to the detectives how deeply they search?

Susan Simpson:

I think *that’s* totally fair. What should also be required, though, is that this be a public record. They’re not allowed to do this and then not ever reveal what they did and did not do. If they make a determination that this lead is not a good one, and they want to cease pursuing it, that’s great – they’re going to have to do that a hundred times a case. But that should be documented and part of the record.

Colin Miller:

Yeah. We talked about a case first season – it was the case of Sabein Burgess, and that was the case where the actual killer of the victim – was it Burgess’ wife or girlfriend? One of the two – and Detective Ritz – the same detective from Adnan’s case – took that confession. He determined it wasn’t reliable, didn’t pass it along to the defense, and then years later it turned out this person actually committed the murder.

And that’s-- I mean, Susan hits it *exactly*, which is to say, yeah. I mean, it’s up to the police what leads they want to investigate or not, but if they’re given a lead, unless they can 100% rule it out, that needs to be something the defense is aware of so that they can use their *own* resources, and look into possible alternate suspects.

Jon Cryer:

Got it. So you’re saying that it *is* unreasonable to expect that police can investigate every possible detail of things, but if at least they’re *transparent*, those things can be investigated by others.

Colin Miller:

Right. Yeah, I mean they have limited resources, just like defense counsel, just like prosecutors’ offices. But *right*, if you get a lead – if a preacher comes to you multiple times and says, “My neighbor confessed to killing my guineas and also killing Isaac Dawkins” – even if you can’t find something to corroborate that, that’s something where you *need* to tell the defense.

And eventually someone finally did. That, “Look, here is someone that has good standing in the community and they’ve given this story about killing the victim. We can’t corroborate it but we’ll give it over to you and if you want to investigate it, so be it.”

Jon Cryer:

Is there any specific criteria for detectives? You know, I don’t know what they go through at the academy, but has anybody actually created an actual investigative methodology for this?

- Alison Sweeney:** Well, I think it's probably department by department, right? And, I mean, my husband is a detective-- [laughs] But I know that they spend six months in the academy training, and there's all sorts of ongoing investigation training that they undergo. I don't know that to be true in Rome.
- Jon Cryer:** Well, look. For instance, in the case of the Kingston Bypass Shooter. It seems like the reason they ruled that out was just geographical distance – that they felt that it was just a little too far from the highway to possibly have had anything to do with Isaac Dawkins' death. Well that seems completely arbitrary. You know, serial killers strike all over. And the geographic location – we were talking what, seven minutes away? Eight minutes away?
- Susan Simpson:** Six minutes.
- Jon Cryer:** Six minutes! Okay.
- Susan Simpson:** [crosstalk] But also, what bothers me the most is okay, maybe it's not part of the Isaac Dawkins murder, but you got some crazy shooting at trucks on a highway. Like, investigate this!
- Alison Sweeney:** Right!
[laughter]
- Jon Cryer:** Is this completely normal?
- Susan Simpson:** I just-- Why is no one still-- I don't care if they were 1000% certain it had nothing to do with Isaac. Why did no one follow up on this?! There was someone *shooting at cars* on the Highway. [crosstalk] For sure.
- Jon Cryer:** Oh, well, Susan, I think you brought up that it might have been kids on the highway throwing things at cars – and that I believe is probably a fairly common occurrence. *Shootings*, however, and, you know, one of the witnesses claimed that she absolutely *knew* it was a shooting, seems absolutely alarming.

But you know, police officers have to look through this *fog* of information all the time; they get reports of incidents *all* the time. Your husband, Alison, I imagine, sees all *kinds* of incidents happen, and they have to pick what they reply to.
- Alison Sweeney:** Yeah. I mean, I think there's-- Especially somewhere, like, Los Angeles, where there's going to be a, tremendous difference in reaction in what they can handle and when. And obviously they strive to do the best they possibly can. And I want to believe that of everyone who chooses to go into that profession.

But, unfortunately, like everyone else, they're human. And you find the ones that are valuable to you or the ones that your sergeant tells you you have to pursue, or *not* – to walk away from. And luckily on TV it's very different. [laughs] The ones that are fancy and drama-filled we get to follow up on.

But the part that boggles my mind is like you said, Susan, it's the safety of the people who are driving around on the freeway. And whether it's the crazy kid with the shotgun who's just trying to shoot at cars, or someone who was really seeking to kill people on the road, I don't know how you don't follow up on that. And the method of that being a way of murdering

Isaac, is still *mind-boggling* to me – that that would be thought out and intentional to kill him in that way.

Susan Simpson: I just-- Looking at this, the amount of stretching you have to do to make it an intentional killing... *Nothing* about this... Obviously someone shot a gun and, I mean, it's still an intentional killing in terms of the *law*, but the idea that this was, like, a *planned*...

Ashley Sweeney: Premeditated... Yeah.

Susan Simpson: Yeah! Like a planned-- No one intentionally kills someone in this way.

Jon Cryer: [crosstalk] It's a terrible plan.

Susan Simpson: [crosstalk] Not like planning out like this in advance.

Ashley Sweeney: [crosstalk] It's a terrible plan, yeah. Can you explain a little more simply, for me, *which* things you get to bring up as the defense as to what, other possible suspects there could be? Because it *did* seem that there are rules about when you can introduce someone else as a possible, potential suspect, or person of interest, or when you're not allowed to do that. I didn't understand the difference.

[32:06]

Colin Miller: Yeah, and it really is a blurry line. Georgia essentially says you need evidence directly tying this alternate suspect to the crime to be able to present to the jury this alternate suspect as someone else who could have committed the crime.

And, that's a fairly high standard in terms of what exactly is required. Other states would allow just for circumstantial evidence – you know, evidence that maybe the person had a motive, or maybe evidence that showed that they were in the general area, but Georgia is basically saying that without evidence that directly ties this alternate suspect to the murder, you as the defendant cannot present evidence to the jury that someone else could have committed the crime.

Whereas it's weird in that sense, because the prosecution is allowed to rely upon all sorts of circumstantial evidence to prove the *defendant's* guilt, and it's a bit of a double standard in Georgia, I think, of how high they have that standard set.

Ashley Sweeney: And I do understand that you can't just go around accusing random people just to muddy the waters. But would a preacher, for example, who says that someone confessed to them be a reasonable 'tying directly to the crime'-type situation? If they had--

Colin Miller: Yeah. Yeah. I mean, that *would* be. In this case, obviously, the State did not turn this over before trial, and therefore they didn't have a chance to argue that this should be presented.

But absolutely. That the preacher saying, "My neighbor, Joey Boyd, confessed to this" would be enough. But there's a *lot* of things in Georgia that wouldn't be enough. Like with Steven Avery in *Making a Murderer* in Wisconsin – that test in Wisconsin is: "Is there evidence that shows there is a legitimate tendency that someone else might have committed the crime?"

And again, that's sort of fuzzy with the definition, but that in Wisconsin, for instance, allows for much *lesser* evidence to allow you to present a theory of an alternate suspect. In Georgia...

Yeah, I mean, the preacher would be enough, but there's lots of cases, I think, where that standard is set too high.

Jon Cryer: Yeah, a *legitimate tendency*? To me, 'tendency' sounds like something you do repeatedly. I don't understand that use of language at all. [laughs]

Alison Sweeney: Me neither.

Jon Cryer: The actors chime in. [laughs]

Alison Sweeney: How do I say that?! [laughs]

Jon Cryer: Yes, exactly. I got nothing. I got no clue! [laughs]

Colin Miller: Well, here's the definition: "The legitimate tendency test", this is from the opinion of Court of Appeals of Wisconsin, "...asked whether the proffered evidence is so remote in time, place or circumstance that a direct connection cannot be made between the third person and the crime." [takes a deep breath]

So, I mean, it's still a bit nebulous, but, I think, we far too often preclude defense from presenting this alternate suspect theory.

Jon Cryer: But very often, defense attorneys will present it in very subtle means – it's like in the OJ Simpson case, where they brought up the 'Columbian necktie' aspect. You know, the idea being that we're inferring that this could have been done a whole other way. Is that a tactic that defense attorneys use a lot?

Colin Miller: Yeah. I mean, they could say this looks like, and has all the markings of, a road rage killing that randomly happened when maybe he cut someone off. *That* would be fine. It's the pinning it on a specific individual where the courts have a much harsher test for doing that type of direct association.

Susan Simpson: Of course, the investigation is done by the cops themselves – and the cops obviously decided that the current defendant was the one who *did* it. So... Trying to get this kind of information out of them at trial... You're probably not going to be able to do it.

So either you need to have the kind of resources to conduct your *own* complete murder investigation, which-- That doesn't happen. Like, one in 100 defendants can do that. Or else, you're out of luck. Because all the cops have to do here is get on the stand and say, "We looked at Heath and we ruled him out". Okay! The jury's going to believe that.

Jon Cryer: And to your knowledge did Joey's defense attorney bring up the possibility of road rage in this incident?

Susan Simpson: They *tried* to bring up Heath. The cops get up there and say, "Nahh... He was busy across town doing another shooting. He didn't do it."

Jon Cryer: [laughs] Yeah... Because he was busy shooting other people. That's... Yeah.

- Susan Simpson:** At the exact same time of this shooting, he was doing another shooting. So we know he's innocent.
- Colin Miller:** With the same caliber bullet, in a similar looking car. About 10 miles away.
- Jon Cryer:** That's...
- Susan Simpson:** And seriously, a few inches and the other driver would be dead, too.
- Alison Sweeney:** That's crazy.
- [36:19] ≈
- Jon Cryer:** Now I wanted to get to some, Twitter questions, because there's actually one that pertains to this last thing you mentioned. We've got one from 'Nicky Burkhart-Brooks' who says, "Okay. 1999 wasn't the frigging dawn of computer land--" [laughs] "but what is it with all these hand-written logs from 911 calls? Minutes, even seconds, matter so much in this case. Why in the bloody hell weren't the computerized time stamped 911 calls pulled? Maddening."
- Susan Simpson:** Good question!
- Colin Miller:** [crosstalk] Yeah!
- Susan Simpson:** I wish I had an answer! [laughs]
- Colin Miller:** Yeah, it's military time, too, which – I don't know about you – but it always trips me up. Like, I see, like, 20:20 and I think 10:20 immediately, but it's not – that's 8:20 – so you look at these times and it's like 19:19 or something, and I think it's very easy for people to make mistakes on that.
- Jon Cryer:** Yes. *Another* question that we've got is from '@Attorney Ross,' who says, "After the cops linked Wilson to the second shooting, couldn't Joey's lawyer have tracked down Wilson's car?"
- Susan Simpson:** Yeah, but the cops were out there saying he didn't do it, without really explaining why... And the jury just hears the cops saying they looked into it, didn't check out, the end. They knew what the car was – they knew *that*. It's just that they were at the mercy of the hand-written time logs. Because no one pulled the computer records.
- Jon Cryer:** And because of Georgia's specific law saying you can't present another possible suspect for this without proving that they're somehow connected? That he couldn't present that? That...
- Susan Simpson:** [crosstalk] No, there were allowed to – for Heath Wilson they weren't *able* to. They lacked any means to effectively do so. And they never did basic steps like freaking calling them out for not getting the 911 computer records.

- Jon Cryer:** Okay. So, we've also got a question from 'Karen Moses' who says, "What is a guinea fowl? I'm from Georgia and I've never heard of it." [laughs] Does anybody know?
- Susan Simpson:** Yeah, I guess, they're just like a chicken – is the closest comparison. But they're not chickens – they're a different animal entirely. They're small, sort of black and white checkerboard, and they're not totally domesticated like chickens are. I know when I was growing up in Atlanta we had a guinea fowl that lived, I think for like, *years*. It just lived in the neighborhood. It was cool on it's own. It flew away. It was fine.
- Which is why Joey Boyd was upset about his roosters. Because, although the guinea fowl are pretty small, a rooster is a domesticated bird, and guinea are going to take them on, every day.
- [laughs]
- Jon Cryer:** Oh, okay! So he was protecting-- Yeah, it was unclear to me why somebody would shoot somebody else's guinea fowl... [laughs] As they say.
- You know, in New York we just didn't *do* that kind of thing. [laughs] But it makes sense in the context of protecting your own livestock. That being said, to then add, "Oh, by the way, I shot a guy recently..." All seems a little odd as a justification. You know, it's like, "I'll shoot anything" [laughs] "I'll shoot anything around."
- In terms of Joseph Boyd's confession, it sounded to *me*-- Again, you know, getting back to Detective Moser making the decision not to follow up further on that particular thing, it *did* sound like he was bragging. Like, if in fact this was said, he was bragging about how tough he was. Because, you know, the context of it didn't sound like a truthful confession.
- Colin Miller:** Yeah. I mean, I took it a different way. In terms of the way that I read and listened to what was said, and Susan, I don't know if you agree, but I thought what the preacher was saying was that Joey Boyd was coming clean. He was saying, "I sinned by shooting your guinea fowl, and you know, you as a preacher, I'm also seeking absolution because I'm going to admit to you that I also shot that Isaac Dawkins boy."
- That was the way *I* took it. What the preacher was passing along, as opposed to boastful taunts, almost, by Joey Boyd.
- Jon Cryer:** Oh, yeah.
- Susan Simpson:** [crosstalk] I don't think boastful, but...
- Jon Cryer:** Oh, it didn't sound like that to me – it sounded sort of like they were in the midst of an *argument*. I don't know if that's when I would seek absolution...
- Susan Simpson:** But the way the State portrayed the Joey Boyd thing is *totally* disconnected from the actual facts of the matter. Joey Boyd lived about 0.3 miles from where the shooting probably occurred. It was *super* close. Like basically one of the closest houses you could possibly *be* to the shooting. And of course they'd try to play it off, like, one to two miles... And a lot of the facts-- They argue it at the hearing, the post-conviction hearing, that, "Oh, how could Joey Boyd have possibly shot the truck from two miles away over hills".
- Well, *no*, that's never what Hudgens is really saying. He's just saying the guy confessed, not that he did it from his house.

Jon Cryer: Yes, it seemed like an odd thing for an actual court document to cite. You know, it seems like they're looking for reasons – no matter how tenuous – to reject it, at that point.

Colin Miller: Yeah. I think it's part of the inertia of the court system and that's what's tough, is oftentimes appellate courts are looking for any reason not to reverse a conviction or a sentence. I mean, there was the recent case that the supreme court just overturned – the Chapman case – where you literally had a prosecutor putting a 'B' next to the African-American juror's names and engaging in racial discrimination, and the Georgia Supreme Court found that that did not violate the constitution. Of course, the Supreme Court just reversed it, but it's *tough* to get a conviction or a sentence overturned in Georgia. They are not very eager to find fault with what happened at that initial trial.

[41:07]

Jon Cryer: So, the next question was from '@Calla Odem', who says, "Are we going to talk more about Josh? What's his motive for having Paul and Joey point fingers at each other? And a possible suicide attempt?" And I'm just going to continue this question, just because it gets really cool for *me* – it says, "By the way, obsessed with how you guys are rolling out Season 2. Jon Cryer is great, and so right-on how you are changing the way people view freedom and justice in this country. *Thank you.*" Okay, I had to finish that. [laughs] But let's get back to Josh. What could possibly be his motive for setting off his friends this way?

Susan Simpson: I mean, Josh is a complicated figure. He's acted on different motivations at different times. But at the start of it – at the core of it, I think Josh just wanted attention, and was just saying things to get attention, and it got *way* over his head.

Jon Cryer: There's also a possible reading of events that he's actually, legitimately, trying to figure out who *did* this. You know, again, I tend to generalize about people in these particular stories because I don't know these people, and you kind of need a handle to hold on to who they are. But they're people. And he could well have had good reasons for what he was doing, but he hasn't had a chance, yet, to explain himself.

Alison Sweeney: You do kind of identify people in your mind. Or, I think you mentioned earlier that juries do this too, and I don't know how you *not* do it. But I said earlier, and I thought it from the beginning – Brianne is a character I understand, and I certainly feel, it explains a lot to me.

But again, that's such a hypothetical thing in my own conclusions based on *my* life. And is that fair? And is that the law? No. But I mean, what *is* the change in our justice system to make it more about innocent versus – like Colin said – Georgia just protecting the conclusion that's already been drawn? I mean... I don't know.

Susan Simpson: You bring up Brianne. I think she's a good sort of example of what happened here a lot. Because, there's a *lot* more going on with Brianne and her stories. Which, talking the case files, talking to witnesses – it's pretty clear there's more going on here.

But at trial, what the jury gets to see is a very, very limited window of the world. They get to see what the prosecutors decide to put in front of them, and to a lesser extent, what the defense does. And the jury never saw any of that.

I talked to one juror who told me – I asked her what she thought about Brianne's testimony – and she commented, "Brianne was so much meeker and milder than I expected". As in, like, she thought maybe that since she was dating a 'hot head,' crazy psycho like Joey, maybe she'd be a little bit hot-headed *too*. But she just remembered being kind of surprised at how 'mild' Brianne seemed. And I'm like-- [sighs]. That's not the word I'd *ever* have used for Brianne.

[laughs]

- Alison Sweeney:** But that's a performance too! Right? I mean, you're not a-- Unless it's on TV, once again, like, the performance you give on the witness stand, unless the defense attorney is really breaking you down, or trying to get to the truth, or providing another side of that story, it's how *you* put yourself over. And if you're good at that, I'm sure you could do a *lot* of persuasive testimony, right?
- Jon Cryer:** Or even if, by the way, you're *not* good at that. Like, I remember when I was serving jury duty, a defendant who was a crack addict came and was incredibly quiet. He was scared just to approach the microphone and speak. And, you know, that somebody with that particular addiction problem – you know, I grew up at the height of the crack epidemic in New York City – and you have a bunch of ideas about people with that particular problem. And this guy was shy, and inhibited, and not at *all* the people that I'd run into in the street.
- And I was sort of swayed just because of who *he* was – just that what he presented was just so subtly different from what I had expected. I imagine that happens all the time – not even on purpose. I imagine, you know, perhaps Brianne was nervous about giving testimony and so she was... Seemed quiet and demure in that situation... Perhaps.
- Susan Simpson:** It could be true! And we have no way of knowing. The article Colin cited in Episode 3 – depending on who you *talk* to, and what view you have of *Brianne* – we can't know her motivations, we can't know her thoughts. And it looks different however you view her.
- I *will* say, there is one photo in the case file that I was confused about for a long time. And it's just Brianne, sitting on a bed, and she looks like she is crying, kind of...? Like her eyes are red, and puffy, and she's talking on the phone, but she has a big smile, and she's pointing at the phone, like, laughing.
- And it's a weird photo, and I was confused by it. And I was talking to someone later, and they mentioned it. And what happened is that Brianne was on the phone with *Joey*, and she was trying to be upset to, like, make him think that she was crying. So she was *making herself cry* while talking on the phone. And then a friend snapped her picture of her, like, laughing at what she was doing at the same time.
- Alison Sweeney:** Wow.
- Susan Simpson:** Trying to, like, deconstruct Brianne is I don't know, it's like a task that I don't think a podcast can do.
- Alison Sweeney:** Yeah. Because, the interesting thing about Brianne, in particular, to me is the tone of voice and the way she represents herself to police in those interviews – at least, you know, what you hear in her *voice*. And how that differs from what the juror, that you spoke to, discusses how she was on the stand. I mean...
- Susan Simpson:** Yeah!
- Jon Cryer:** [crosstalk] The impression I got was of--
- Susan Simpson:** She doesn't sound mild in those interviews.
- Jon Cryer:** No! She sounds like a well-spoken victim. You know, she's very clear about how she's been victimized. And for all we know, she may well have been. We don't know for sure.

- Alison Sweeney:** And they had to proceed with that under-- I mean, I *totally* understand that they had to move forward with her story the way that it was heard, to them. I get it.
- Susan Simpson:** Well... Not necessarily. Because remember that Rome Police didn't seem to find her credible. They never had a formal interview with her. They don't seem to rely on her. It's not until Stanley Sutton and the Floyd County gets in that they start using her as the basis of a lot of what they're going to do at the trial.
- So, to me, I can't say that this *happened*. Because, again, I can't read into the detectives' minds, either. But looking at the Moser files, from the Rome Police Department, it does not seem that he found what Brianne was saying to be credible.
- Jon Cryer:** It seems that Detective Moser comes at this from a different angle. He seemed to dismiss things at a certain level. Again, like the Kingston Bypass Shooter, the Elizabeth 'Loco' Lambert story. There's no definitive line.
- As you were telling the story, it becomes apparent that Sandra Stocks – the woman who accused her of confessing to the crime – may well have had an ulterior motive, but we don't *know* that, for sure. Apparently Elizabeth said she had an alibi, but it's not proven – at least in his notes – that he followed up on it, or was certain of it.
- So again, where is the line where police *stop*? You know? I think it's unfair to expect them to go to the ends of the earth for every possible lead, because some of the leads probably seem stupid to them. [laughs] You know, I mean--
- Susan Simpson:** [crosstalk] Yeah! And some of them *were* stupid here.
- Jon Cryer:** Yeah.
- Susan Simpson:** That was certainly true. There were some stupid leads. But Moser-- He did not have a one track mind, he did not have the tunnel vision that's so characteristic of wrongful convictions. But if he got a lead that was remotely plausible, he was like, "Yeah, I'll check this out".
- But then he just... Stops. And I'm not really clear why. Like, with Heath Wilson. I mean, someone said, "Hey, he was busy doing another shooting". Moser says, "Cool" and closes the books on him...?
- Jon Cryer:** Yeah. It's remarkable.
- So, Alison, do you have any last questions for Susan here?
- Alison Sweeney:** Yeah! I mean, is this still an ongoing investigation? Are you still talking to people in Rome? Or is it what you are reporting to us week-by-week something you've already sort of gotten to the end of the season in your mind? Do you know where this ends? [laughs]
- Susan Simpson:** No. It is very much an active investigation with, like, new updates by the day. And I would love to hear from more people in Rome. I mean, even if you think that nothing you know is important or relevant, I can't even count how many times I've had a witness start off by saying, "Nothing I know matters or can help, but here's what I *know*..." And half way through you're like, "This is *huge*. Why did you think this didn't matter?"

Alison Sweeney: That's a great--

Susan Simpson: So, seriously. People out there that know anything, get in touch, we'd love to hear from you.

Alison Sweeney: Yeah.

[48:44]

Jon Cryer: Yes, and actually we got a Twitter question from '@Laurie Claire' who says, "Is it possible to have a brief recap of Joey's legal situation, and what's needed moving forward? New evidence, *et cetera*?"

Susan Simpson: A minor miracle.

Jon Cryer: Because he's exhausted all of his legal possibilities at this point?

Susan Simpson: He needs new evidence, he needs... [sighs] Joey *is* at the end of the line. I mean, it's to the point where without *extreme* evidence, the system does not *care* if Joey's innocent unless he can prove it by overwhelming odds.

So, that's why the investigation still goes on, and why we are, I think, just starting this thing.

Jon Cryer: Uh, well, thank you guys, and I have million *Days of Our Lives* questions that I'll get to on another podcast?

Alison Sweeney: [laughs]

Jon Cryer: I'll get to on another podcast.

Susan Simpson: Can we do, like, a soap opera version of, like, Joey's case?

Jon Cryer: [laughs] Yes!

Susan Simpson: It kind of already is.

Alison Sweeney: Totally!

Susan Simpson: Someone called it, like, a 'Southern gothic' soap opera. I'm like, 'Yep, that kind of sums it up'.

Alison Sweeney: All you need is the music, and like, fade to blacks on the cliffhangers, you guys.

Susan Simpson: [laughs]

Alison Sweeney: And you *have* it. It's happening!

Jon Cryer:

Well, thank you, Susan, and thank you so much, Alison! This has been another great episode and I'm so grateful you guys could make time for it.

≈