IN THE CIRCUIT COURT
FOR BALTIMORE CITY, MARYLAND

ADNAN SYED, Petitioner,	*	
v.	*	Petition No. 10432 Original Case Nos. 199103042-46
STATE OF MARYLAND, Respondent	*	

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MOTION TO RE-OPEN POST-CONVICTION PROCEEDINGS

Petitioner Adnan Syed, by and through counsel, C. Justin Brown, hereby moves this Honorable Court, pursuant to Md. Code, Crim. Pro., § 7-104, to re-open his post-conviction proceeding. This Motion is premised upon the Remand Order issued by the Court of Special Appeals on May 18, 2015, for the purpose of "afford[ing] the parties the opportunity to supplement the record with relevant documents and even testimony pertinent to the issues raised by [the] appeal." Consistent with the Court of Special Appeals Remand Order, Syed seeks to introduce evidence to prove that, among other things, his trial attorney was constitutionally ineffective for failing to contact, investigate and present an alibi witness named Asia McClain.

It is in the interest of justice that this Court grant this Motion.

BACKGROUND

The murder of Hae Min Lee, a Woodlawn High School student who disappeared on January 13, 1999, initially confounded investigators. There were no witnesses. There

was no forensic evidence of any significance. The body was not found until nearly a month later, in Leakin Park, Baltimore.

The lynchpin of the State's case was Jay Wilds, a fellow Woodlawn student who would eventually become a cooperating witness. Wilds told police different stories, alternately inculpating and exculpating himself. Eventually, Wilds settled on a version of the story that led to first-degree murder charges against Lee's ex-boyfriend, Adnan Syed.[1]

Syed was arrested on February 28, 1999, and detained at the Baltimore City Detention Center. In the days immediately following his arrest, before details of the case were publically known, he received two letters from a potential witness named Asia McClain, who was also a Woodlawn honors student. Ex. 1, McClain's 3/1/1999 letter (admitted at post-conviction hearing as Defendant's Ex. 4); Ex. 2, McClain's 3/2/1999 letter (admitted at post-conviction hearing as Defendant's Ex. 5). In the March 1, 1999, letter, McClain wrote: "I'm not sure if you remember talking to me in the library on Jan. 13th, but I remembered chatting with you… I also called the Woodlawn Public Library and found that they have a survailance [*sic.*] system inside the building… I'm trying to reach your lawyer to schedule a possible meeting with the three of us… I will try my best to help you account for some of your unwitnessed, unaccountable lost time (2:15 – 8:00; Jan 13th)… My boyfriend and his best friend remember seeing you there too." Ex. 1.

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[1] Wilds' story changed multiple times. It changed during police interviews. It changed at trial. It even changed years after the trial, when he gave an interview with an online publication called *The Intercept*, and essentially admitted he had perjured himself when testifying during Syed's trial.

In the letter dated March 2, 1999, McClain restated her memory of being with Syed on the 13th. She wrote: "Why haven't you told anyone about talking to me in the library?... How long did you stay in the library that day? Your family will probably try to obtain the library's surveillance tape… It's weird, since I realized that I saw you in the public library that day, you've been on my mind. The conversation that we had, has been on my mind. Everything was cool that day, maybe if I would have stayed with you or something this entire situation could have been avoided." Ex. 2.

Syed informed his defense team multiple times that McClain had been with him the afternoon of January 13th and that she was willing to talk. This was proven by notes found in the file of Syed's trial attorney, Cristina Gutierrez. Ex. 3, notes of law clerk (admitted at post-conviction hearing as Defendant's Ex. 1); Ex. 4, notes in Gutierrez' handwriting. The alibi was in no way inconsistent with Syed's trial defense. But, for no explicable reason, Gutierrez failed to act on this information in any way. She did not even pick up the phone and call McClain, who had provided her number in the March 1 letter to Syed.

Syed was eventually convicted – he never could prove where he was at the time of the murder. Shortly after the conviction, Syed learned that Gutierrez had never followed up on his request to contact McClain about the alibi. He learned this because a friend of the Syed family, Rabia Chaudry, then a student at George Mason School of Law, made contact with McClain and obtained her affidavit, in which she stated that she had been with Syed right at the time when the State theorized the murder took place; she had been willing to testify; and she had never been contacted by the Syed defense team. Ex. 5,

McClain's 3/25/2000 Affidavit (admitted at post-conviction hearing as Defendant's Ex. 2). Upon learning of this information, Syed pleaded with Gutierrez to raise this information in a Motion for New Trial, but she never did. Ex. 6, letter from Syed parents to Gutierrez (admitted at post-conviction hearing as Defendant's Ex. 6).

Some ten years later, Syed raised the alibi issue at post-conviction, arguing that Gutierrez had been constitutionally ineffective for failing to even speak to McClain. When this argument was presented to the Circuit Court, the State contested it on two primary grounds. First, the State argued that, because Syed could not produce McClain at the post-conviction hearing, the credibility of the alibi could not be tested in court. Second, the former State prosecutor, Kevin Urick, took the witness stand and testified that he had spoken to McClain, just before the filing of the post-conviction petition, and she had told him that she had only written the affidavit "because she was getting pressure from the [Syed] family. And she basically wrote it to please them and get them off her back." Post-Conviction Transcript ("T."), 10/11/2012, at 30.

The Circuit Court denied the post-conviction, essentially concluding that Gutierrez, by then deceased, had "several reasonable strategic grounds . . . to forego pursuing Ms. McClain as an alibi witness." Post-Conviction Opinion at 11. McClain's letters, the court said, "did not clearly show [her] potential to provide a reliable alibi." *Id.* The Opinion also concluded – without explanation – that McClain's letters somehow contradicted Syed's version of events, *id.* at 12, even though Syed's post-conviction testimony dovetailed with McClain's. The Circuit Court opinion never answered the

essential question of how Gutierrez could have made a strategic decision not to use McClain as an alibi if nobody from the defense team ever spoke to McClain.[2]

Syed filed a timely Application for Leave to Appeal the Denial of Post-Conviction on January 27, 2014.

During the pendency of the Application for Leave to Appeal, something remarkable happened. Sarah Koenig, a reporter for *This American Life*, began an exhaustive investigation into the Syed case. In her 12-part podcast, called "Serial," she

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[2] Myriad published opinions indicate that the Circuit Court's conclusion was incorrect. The leading Court of Appeals case on ineffective assistance of counsel for failure to call an alibi witness is *In re Parris W.*, 363 Md. 717 (2000), which relies heavily upon *Griffin v. Warden*, 970 F.2d 1355 (4th Cir. 1992). In *Griffin*, the defense attorney failed to contact an alibi witness. Much like in *Syed*, the state in *Griffin* then attempted to manufacture a reason why counsel might not have done so (the state argued that the alibi witness was ruled out because he would have been a weak witness). The Fourth Circuit called this reasoning "thoroughly disingenuous," explaining that "[defense counsel] did not even talk to [the alibi witness], let alone make some strategic decision not to call him… [C]ourts should not conjure up tactical decision an attorney could have made, but plainly did not." *Id.* at 1358 (citing *Kimmelman v. Morrison*, 477 U.S. 365, 386-87 (1986) (hindsight cannot be used to justify a decision of counsel)); *see e.g.*, *Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir. 1991) ("Once a defendant identifies potential eyewitnesses, it is unreasonable not to make some effort to contact [alibi witnesses] to ascertain whether their testimony would aid the defense"); *Pavel v. Hollins*, 261 F.3d 210, 220 (2d Cir. 2001) (counsel's failure to call alibi witness was based on inadequate investigation because counsel should have spoken directly to witness to assess credibility); *Towns v. Smith*, 395 F.3d 251, 258 (6th Cir. 2005) ("A purportedly strategic decision is not objectively reasonable when the attorney has failed to investigate his options and make a reasonable choice between them") (internal quotes omitted); *Lawrence v. Armentrout*, 900 F.2d 127, 129 (8th Cir. 1990) ([o]nce [defendant] provided his trial counsel with the names of potential alibi witnesses, it was unreasonable of her not to make some effort to interview all these potential witnesses to ascertain whether their testimony would aid an alibi defense"); *Pena-Martinez v. Duncan*, 112 Fed. Appx. 113, 114 (2d. Cir. 2004) ("counsel's failure to investigate alibi witnesses is particularly egregious"); *Crisp v. Duckworth*, 743 F.2d 580, 584 (7th Cir. 1984) ("an attorney who fails even to interview a readily available witness whose noncumulative testimony may potentially aid the defense should not be allowed automatically to defend his omission simply by raising the shield of 'trial strategy and tactics'").

contacted Asia McClain and broadcasted her story. McClain, in an interview with Koenig, unambiguously affirmed what she had written some 13 years earlier: she had been with Syed, in the public library just on the edge of the school campus, at precisely the same time as the State claimed the murder took place. She affirmed that nobody from Syed's defense team contacted her prior to trial – despite her willingness to come forward as a witness.

After speaking with Koenig, and after the Serial podcast was completed, McClain retained an attorney in Baltimore. She provided an affidavit explaining her story, and she agreed to testify if the courts would allow. Ex. 7, McClain's 1/13/2015 Affidavit.

McClain's affidavit was significant for numerous reasons. First, she repeated, unambiguously, that she was with Syed at the time of the murder and nobody contacted her. Second, she explained that State prosecutor Kevin Urick was incorrect when he said at the post-conviction hearing that she was pressured into signing the affidavit. Third, she explained that Urick's comments to her prior to the post-conviction hearing convinced her not to participate in the post-conviction proceeding. Lastly, she confirmed that, if given the chance, she would come to Baltimore to testify. Ex. 7.

Based on the new information in McClain's affidavit, Syed, on January 20, 2015, filed a Supplement to his Application for Leave to Appeal, which, among other things, requested a remand. The State responded to the Supplement by filing a Motion to Strike. The Motion to Strike was denied.

On February 6, 2015, the Court of Special Appeals granted Syed's Application for Leave to Appeal, and issued an order requiring the parties to file formal appellate briefs.

That same order stated that the issues raised in the Supplement would be referred to the Court of Special Appeals panel that was considering the appeal as a whole.

As briefing in the appeal was underway – both parties filed initial arguments – the Court of Special Appeals on May 18, 2015, issued the Order granting the remand. Ex. 8 ("Remand Order"). The Remand Order stayed the appeal and remanded the case to the Circuit Court "to afford the parties the opportunity to supplement the record with relevant documents and even testimony pertinent to the issues raised by the appeal." Remand Order at 4. The Order, giving Syed 45 days to file a motion to re-open post-conviction, stated that "we believe that a stay of this appeal and a limited remand to the circuit court is in the interest of justice." *Id.* at 3.

This Motion is timely filed.

LEGAL ARGUMENT

This Court should grant this Motion because it is in the interests of justice that Syed be allowed to present evidence of his alibi witness and establish a record for future proceedings. To deny this motion, furthermore, would frustrate the efforts of the Court of Special Appeals, which has taken the extraordinary step of ordering a remand so that a complete record may be generated.

First, procedurally, under the doctrine of the law of the case, this Court is bound by the Court of Special Appeals Remand Order, which invokes the "interest of justice" standard that applies to both a remand and to a motion to re-open post-conviction. Remand Order at 3. Second, substantively, it is a matter of fundamental fairness that Syed be allowed to supplement the record with alibi evidence that includes the testimony

of Asia McClain. If he is allowed to do this, there is a reasonable probability that the outcome of the proceeding will be different.

a. Standard for Re-Opening a Post-Conviction Proceeding

The Maryland Code sets forth a concise standard for the re-opening of a post-conviction proceeding: "The court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice." Md. Code, Crim. Pro., § 7-104.

The phrase "in the interests of justice" is explained in *Love v. State*, 95 Md. App. 420, 427 (1993), a case that considered the same standard as applied to a motion for new trial under Rule 4-331(a). In *Love*, the Court of Special Appeals stated that the grounds for the granting of a new trial "[are] virtually open-ended," including the following circumstances: "that the verdict was contrary to the evidence; newly discovered evidence; accident and surprise; . . . misconduct or error of the judge; fraud or misconduct of the prosecution." *Id.* This standard was adopted by *Gray v. State*, 158 Md. App. 635, 646 n.3 (2004), and applied to a motion to re-open post-conviction. Thus, the *Love* standard applies to the matter now before this Court.

b. The Law of the Case Doctrine

The Court of Special Appeals has already ruled that it is in the "interest of justice" that Syed be allowed to re-open his post-conviction in the Circuit Court. Based on the law of the case doctrine, the Circuit Court must follow that mandate and grant this Motion.

The law of the case doctrine states that a trial court must follow an appellate judgment and cannot allow the re-litigation of a matter already resolved by the appellate

court. As articulated in *Tu v. State*, 336 Md. 406, 416 (1994), the mandate of a superior court must be followed by an inferior court:

> The law of the case, like *stare decisis*, deals with the circumstances that permit reconsideration of issues of law. The difference is that while *stare decisis* is concerned with the effect of a final judgment as establishing a legal principle that is binding as a precedent in other pending and future cases, the law of the case doctrine is concerned with the extent to which the law applied in decisions at various stages of the same litigation becomes the governing principle in later stages. As applied to interlocutory decisions by the trial court, the principal purpose of the doctrine is efficiency of disposition. It encourages the court to get on with the proceedings, leaving earlier errors, if any, to be corrected on post-trial motion or on appeal. As applied to appellate court decisions, it serves the dual function of enforcing the mandate and precluding multiple appeals to review the same error. Like stare decisis, the doctrine of the law of the case is quite rigidly applied to force obedience of an inferior court, but more flexibly in its application to reconsideration by the court that made the earlier decision.

Id. at 416 (1994) (quoting J.W. Moore, J.D. Lucas & T.S. Currier, Moore's Federal Practice ¶ 0.401, at I–2 to I–3 (2d ed. 1993) (footnotes omitted)).

The doctrine of the law of the case is reflected in the Maryland Rule that permitted the remand here. The Court of Special Appeals remanded this case pursuant to Rule 8-604. Section (a)(5) permits remand "in accordance with section (d) of this Rule." Section (d) allows remand when "justice will be served" by doing so, and it states that "[t]he order of remand and the opinion upon which the order is based are conclusive as to the points decided."

One of the "points decided" by the Court of Special Appeals is the interest-of-justice standard. In its Order, the Court of Special Appeals concluded: "Having reviewed the briefs filed in the appeal, and having considered Syed's supplement to his application for leave to appeal and his request for a remand, as well as other pleadings filed in this

Court, we believe that a stay of this appeal and a limited remand to the circuit court is *in the interest of justice*." Opinion at 3 (italics added for emphasis).

Furthermore, the Court of Special Appeals has specified the purpose of granting the remand: to "afford the parties the opportunity to supplement the record with relevant documents and even testimony pertinent to the issues raised by this appeal." *Id.* at 4. The appellate court did not remand for any reason other than to supplement the record on the issues presented; it would not have taken this extraordinary measure if it had not concluded that justice would be served by allowing Syed to expand the record with regard to his alibi issue and, "the issues raised by this appeal." *Id.*

Because the Court of Special Appeals has reached a conclusion on this point, under the doctrine of the law of the case, the Circuit Court must apply this finding to this Motion. As described above, the Circuit Court may re-open a post-conviction proceeding if it is in the "interests of justice" to do so. Md. Code Ann., Crim. Pro., § 7-104. The superior court has determined that the "interest of justice" warrant an expansion of the record, and now the Circuit Court must abide by this finding.

c. The Merits of Reopening Syed's Post-conviction Proceeding

This Court should re-open Syed's post-conviction proceeding so it may consider Syed's alibi issue with the benefit of new evidence that has emerged since the time of the original post-conviction hearing.

There are two reasons why the Court should exercise its power to re-open the post-conviction "in the interests of justice." First, if McClain's allegations are correct – and a State prosecutor convinced her not to participate in the post-conviction process, then

misrepresented her position at the post-conviction hearing – Syed deserves another opportunity to present his witness to the Circuit Court. Second, the presentation of Syed's alibi witness to the Circuit Court is reasonably likely to change the outcome of the post-conviction proceeding.

1. If a prosecutor dissuaded McClain from testifying at his post-conviction hearing, then gave false testimony, Syed's due process rights were violated and he deserves another opportunity to support his alibi issue.

McClain states in her affidavit that (1) the State discouraged her from participating in the post-conviction proceeding, and (2) a State prosecutor gave false testimony about the circumstances under which she provided alibi information around the time of Syed's trial. If this is true – and there is good reason to think it is – this post-conviction proceeding should be re-opened to allow Syed to re-establish his alibi issue.

Under *Gray v. State* and *Love v. State*, certain circumstances give rise to the "interests of justice" standard and merit further fact-finding in the Circuit Court. *See Gray*, 158 Md. App. 635, 646 n.3 (2004) (explaining that "interests of justice standard" can be met by a "verdict [] contrary to the evidence; newly discovered evidence; accident and surprise; . . . misconduct or error of the judge; fraud or misconduct of the prosecution") (quoting *Love v. State*, 95 Md. App. 420, 427 (1993)). These are precisely the type of issues brought into play by McClain's affidavit.

In the affidavit, McClain narrates what happened in 2010 when she was contacted by Syed's post-conviction defense team. She was caught off guard and, not understanding

why she was being sought, she called Kevin Urick, the State's prosecutor from the original trial. She explains:

> I had a telephone conversation with Urick in which I asked him why I was being contacted and what was going on in the case.
>
> He told me there was no merit to any claims that Syed did not get a fair trial. Urick discussed the evidence of the case in a manner that seemed designed to get me to think Syed was guilty and that I should not bother participating in the case, by telling what I knew about January 13, 1999. Urick convinced me into believing that I should not participate in any ongoing proceedings. Based on my conversation with Kevin Urick, the comments made by him and what he conveyed to me during that conversation, I determined that I wished to have no further involvement with the Syed defense team, at that time.

Ex. 7 at ¶¶ 27–28.

McClain goes on to explain that Urick's post-conviction testimony characterizing their phone conversation – in which he claimed she said she was pressured into coming forward as an alibi witness – was simply false. McClain states:

> Urick and I discussed the affidavit that I had previously provided to [Rabia] Chaudry. I wanted to know why I was being contacted if they already had the affidavit on file and what the ramifications of the document were. I never told Urick that I recanted my story or affidavit about January 13, 1999. In addition I did not write the March 1999 letters or the affidavit because of pressure from Syed's family. I did not write them to please Syed's family or to get them off my back. What actually happened is that I wrote the affidavit because I wanted to provide the truth about what I remembered. My only goal has always been, to provide the truth about what I remembered.

Ex. 7 at ¶ 29.

These comments by McClain – regarding the conduct of Urick – constitute "newly discovered evidence" and they potentially show "fraud or misconduct of the prosecution." *Love*, 95 Md. App. at 427.

First, if it is true that the State prosecutor discouraged McClain from testifying, that would amount to a violation of Syed's due process rights in that he was prevented from calling his witness at the post-conviction hearing. *See Campbell v. State*, 37 Md. App. 89 (1977) (ordering new trial on due process grounds when prosecutor discouraged the testimony of a potential defense witness and caused that witness to not testify); *Webb v. Texas*, 409 U.S. 95 (1972) (reversing conviction when judge discouraged defense witness from testifying).

It is also cause for re-opening the post-conviction that, according to McClain, the prosecutor misrepresented to the post-conviction court what she said in a phone conversation. Urick testified that McClain said she signed the original affidavit under pressure from Syed's family – but McClain states in her January 13, 2015, affidavit that this is absolutely untrue. She was never pressured to sign the affidavit. Moreover, she wrote two alibi-related letters to Syed the day after he was arrested, and it is clear from the tone of those letters that they were anything but coerced. This misrepresentation by the State, if believed, also invokes the "interests of justice." *See Curry v. State*, 54 Md. App. 250 (1983) (remanding for new trial when, among other reasons, prosecutor made misrepresentation to jury about the backgrounds of State witnesses).

There is considerable reason to believe that these allegations by McClain are correct. First, McClain's affidavit is consistent with her previous statement and letters; her story has not changed in 17 years.

Second, Urick has made public statements indicating that he is either severely mistaken about his conversation with McClain, or he is not telling the truth. On January

7, 2015, around the height of Serial's popularity, an internet publication called *The Intercept* published an interview with Urick. Ex. 9, Natasha Vargas-Cooper & Ken Silverstein, *Exclusive: Prosecutor in 'Serial' Case Goes on the Record*, THE INTERCEPT, Jan. 7, 2015. In that interview, Urick made at least two statements about his interaction with McClain that are false. First, Urick told *The Intercept* that Asia McClain's letters to Syed "were also sent in March of 2000, two months after Syed was charged." Ex. 9. Actually, Syed was arrested on February 28, 1999, and the McClain letters are dated March 1, 1999, and March 2, 1999. The significance of this is that, at the time when McClain sent the letters, she could not have known the State's timeline for the murder – whereas if the letters had been sent two months later, or in March of 2000, she might have been exposed to this information.

Third, and similarly, Urick told *The Intercept* that McClain telephoned him prior to the post-conviction hearing and "told me she was under a lot of pressure from Adnan's family and to get them off her back she wrote him a couple letters." Ex. 9. Again, this is almost certainly false. To begin with, McClain vehemently denies it, and the tone of her letters makes it clear that the letters were not written under duress. In addition, as mentioned before, McClain wrote the first letter the day after Syed was arrested – far too quickly to have come as a result of pressure from Syed's family.[3]

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[3] Urick also made a public statement about the case in a letter to the *Maryland Daily Record*. The letter expressed his apparent frustration with the legal process that was allowing Syed to pursue his constitutional claim. "The law allows a convicted felon a nearly never ending ability to continually attack the results we obtained," he wrote. Kevin Urick, *Letter to the Editor*, MARYLAND DAILY RECORD, Feb. 11, 2015. Ex. 10.

Either Urick is horribly mistaken about the circumstances of the McClain letters, or he is intentionally presenting false information. Whatever the reason, Urick's transgressions give credibility to McClain's claims that (1) Urick misled her about the proceedings to prevent her from testifying; and (2) Urick misrepresented to the Circuit Court, under oath, what had occurred in their telephone conversation. These circumstances amount to a violation of Syed's due process rights, and they must be remedied. The proper remedy is to re-open Syed's post-conviction proceeding and allow him to introduce evidence related to the issues he raised in his appeal – and to allow Asia McClain to testify.

2. Remand is reasonably likely to affect the outcome of the post-conviction proceeding.

Remanding Syed's case for further fact-finding would create a reasonable probability that the Circuit Court would reverse its decision and grant Syed's post-conviction petition. The new information related to McClain is truly material to this case.

In *In re Parris W.*, 363 Md. 717 (2001), the Court of Appeals granted the defendant a new trial based upon defense counsel's failure to present alibi witnesses, including one who could have contradicted the State's timeline for the crime charged. The Court of Appeals granted a new trial because there was a proffer about when the key alibi witness saw the defendant on the afternoon of the crime. *Id.* at 720–21. In support of its opinion, the Court of Appeals cited several cases, all of which held that defendants received ineffective assistance of counsel when two factors were present: (a) the failure to contact and/or investigate alibi witnesses, and (b) the testimony of those witnesses that

they saw the defendant around the time of the crime. *See Griffin v. Warden, Md. Corr. Adjustment Center*, 970 F.2d 1355 (4th Cir. 1992) (ineffective assistance based upon failure to contact alibi witnesses who later testified at a post-conviction proceeding to seeing defendant at time of crime); *Montgomery v. Petersen*, 846 F.2d 407 (7th Cir. 1988) (ineffective assistance based upon failure to investigate alibi witness who testified at another trial consistent with seeing defendant at time of crime); *Grooms v. Solem*, 923 F.2d 88 (8th Cir. 1991) (ineffective assistance based upon failure to contact alibi witnesses who later testified at habeas corpus proceeding consistent with seeing defendant at time of crime); *Tosh v. Lockhart*, 879 F.2d 412 (8th Cir. 1989) (ineffective assistance based on failure to contact alibi witnesses who later testified at an evidentiary hearing consistent with seeing defendant at time of crime).

The main difference between those cases and the present case is that McClain did not testify at the post-conviction hearing. Instead, the Circuit Court heard from Urick, who falsely claimed that McClain told him she was pressured into writing her prior affidavit – something we now know to be untrue. McClain's new affidavit states that this testimony was inaccurate and that she stands by her prior affidavit.

If this Court re-opens the post-conviction proceeding and McClain provides testimony consistent with her affidavits, her testimony would establish that (1) she saw Syed between 2:20 and 2:40 at the Woodlawn Library, which directly contradicts the State's theory that Syed killed the victim between 2:15 and 2:36 in the Best Buy parking lot; and (2) McClain was never contacted by Syed's lawyer, despite her willingness to

come forward as a witness. This testimony would allow the Circuit Court to grant Syed a new trial.

CONCLUSION

For the reasons explained above, Syed respectfully requests that this Court follow the Remand Order of the Court of Special Appeals and re-open the post-conviction proceedings so that he may have the opportunity to "supplement the record with relevant documents and even testimony pertinent to the issues raised by [his] appeal."

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2015, a copy of the foregoing was provided to the following:

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Baltimore, MD 21202

Michael Schatzow
Office of the State's Attorney
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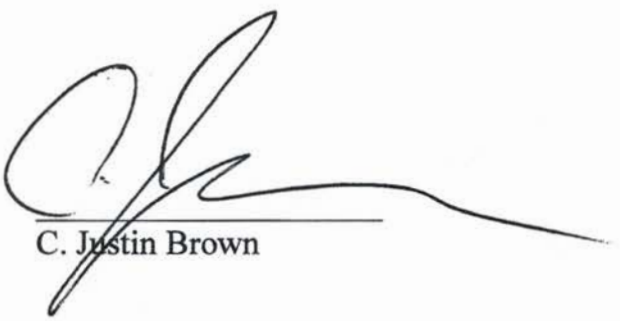
Baltimore, MD 21202



C. Justin Brown

PETITIONER'S EXHIBIT 1

it's late.

I just came from your house an hour ago. March 1, 1999

Dear Adnon, (hope I sp. it right)

I know that you can't visiters, so I decided to write you a letter. I'm not sure if you remember talking to me in the library on Jan. 13th, but I remembered chatting with you. Throughout your actions that day I have reason to believe in your innocense. I went to your family's house and discussed your "calm" manner towards them. I also called the Woodlawn Public library and found that they have a survailance system inside the building. Depending on the amount of time you spend in the library that afternoon; it might help in your defense. I really would appreciate it if you would contact me between 1:00pm - 4pm or 8:45pm -> until... My number is (410) 486-7655. More importantly I'm trying to reach your lawyer to schedule a possible meeting with the three of us. We aren't really close friends, but I want you to look into my eyes and tell me of your innocense. If I ever find otherwise I will hunt you down and wip your ass, ok-friend..// ☺

EXHIBIT 4

I hope that you're not guilty and ~~I never~~ I hope to death that you have nothing to do with it. If so I will try my best to help you account for some of your unwitnessed, unaccountable lost time (2:15 - 8:00; Jan 13th). The police have not been notified Yet to my knowledge maybe it will give your side of the story a particle head start. I hope that you appreciate this, seeing as though I really would like to stay out of this whole thing. Thank Justin, he gave me a little more faith in you, through his friendship and faith. I'll pray for you and that the "REAL TRUTH" comes out in the end.

"I hope it will set you free." only trying to hel

Asia McClain

P.S. If necessary my grandparents line number is 653-2957. Do not call that line after 11:00 O.K

Like I told Justin if your innocent I do my best to help you.

But if you're not only God can help you.

If you were in the library for awhile tell the police and I'll continue ~~to tell what I know~~ even kinder than I am. My boyfriend and his best friend remember seeing you there too.

Your Amiga

Asia McClain

PETITIONER'S EXHIBIT 2

Adnon Syed #992005477
301 East Eager Street
Baltimore, MD. 21202

Dear Adnon,

How is everything? I know that we haven't been best friends in the past, however I believe in your innocence. I know that central booking is probably not the best place to make friends, so I'll attempt to be the best friend possible. I hope that nobody has attempted to harm you (not that they will). Just remember that if someone says something to you, that their just f**king with your emotions. I know that my first letter was probably a little harsh, but I just wanted you to know where I stode in this entire issue (on the centerline). I don't know you very well, however I didn't know Hae very well. The information that I know about you being in the library could helpful, unimportant or unhelpful to your case. I've been think a few things lately, that I wanted to ask you:

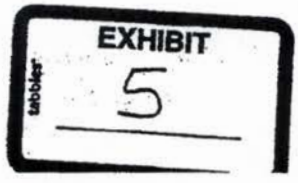
1. Why haven't you told anyone about talking to me in the library? Did you think it was unimportant, you didn't think that I would remember? Or did you just totally forget yourself?

2. How long did you stay in the library that day? Your family will probably try to obtain the library's surveillance tape.

3. Where exactly did you do and go that day? What is the so-called evidence that my statement is up against? And who are these WITNESSES?

Anyway, everything in school is somewhat the same. The ignorant (and some underclassmen) think that you're guilty, while others (mostly those that know you) think you're innocent. I talked to Emron today, he looked like crap. He's upset, most of your "CRUCHES" are. We love you, I guess that inside I know that you're innocent too. It's just that the so-called evidence looks very negative. However I'm positive that

March 2, 1999



It's weird, since I realized that I saw you in the public library that day, you've been on my mind. The conversation that we had, has been on my mind. Everything was cool that day, maybe if I would have stayed with you or something this entire situation could have been avoided. Did you cut school that day? Someone told me that you cut school to play video games at someone's house. Is that what you told the police? This entire case puzzles me, you see I have an analytical mind. I want to be a criminal psychologist for the FBI one day. I don't understand how it took the police three weeks to find Hae's car, if it was found in the same park. I don't understand how you would even know about Leakin Park or how the police expect you to follow Hae in your car, kill her and take her car to Leakin Park, dig a grave and find you way back home. As well how come you don't have any markings on your body from Hae's struggle. I know that if I was her, I would have struggled. I guess that's where the
SO-CALLED witnesses. White girl Stacie just mentioned that she thinks you did it. Something about your fibers on Hae's body…something like that (evidence). I don't mean to make you upset talking about it…if I am. I just thought that maybe you should know. Anyway I have to go to third period. I'll write you again. Maybe tomorrow.

Hope this letter brightens your day… Your Friend,

Asia R. McClain

P.S: Your brother said that he going to tell you to maybe call me, it's not necessary, save the phone call for your family. You could attempt to write back though. So I can tell everyone how you're doing (and so I'll know too).

Asia R. McClain
6603 Marott Drive
Baltimore, MD 21207

Apparently a whole bunch of girl were crying for you at the jail…Big Playa Playa (ha ha ha he he he).

March 2, 1999

PETITIONER'S EXHIBIT 3

Debbie Hansen work w/ Adnan to pull Hae's school records together

7/13

E-mail → syed__adnan @ hotmail.com password → poppy

1/14 - 1/15 snow days

Asia McClean → saw him in the library @ 3:00 (Library study room connected)
→ Asia boyfriend saw him too

Track starts @ 3:30

school starts @ 7:50 bell rings 7:45 school start

s. M. Hase	1ST Pd.	Photography	7:50 - 9:15	take role
s. Jane Ehrom	3 English	AP English / Social Studies (A day B day)	9:20 - 10:45	
r. Cliff Tomlin	3 Soc.	on the 1/13		
		Lunch	10:50 - 11:15	on premises lunch
				left school w/ friends
				went to Jay's house
		Free Period	11:20 - 12:45	stayed @ Jay's house
Guidance Office 1/13 recommendation letter Donna Paoletti →		AP Psychology	12:50 - 2:15	

school end 2:15

EXHIBIT 1

PETITIONER'S EXHIBIT 4

Stephanie like me & his boys

Jay = If anyone ever tried to get between her & I I'd kill her

Stephanie dead like Hae at all

"

friends w/ her = Stephanie & who they wanted to "make up" can police get for her

Alicia + boy friend I saw him in February

went to Library often. 2:15 - 3:15

3:30 Practice started

Memorial Service

PETITIONER'S EXHIBIT 5

Affidavit

A. R. M.

Asia McClain having been duly sworne, do depose and state:

I am 18 years old. I attend college at Catonsville Community College of Baltimore County. In January of 1999, I attended high school at Woodlawn Senior High. I have known Adrian Syed since my 9th grade freshmen year (at high school). On 1/13/99, I was waiting in the Woodlawn Branch Public Library. I was waiting for a ride from my boyfriend (2:20), when I spotted Mr. Syed and held a 15-20 minute conversation. We talked about his girlfriend and he seemed extremely calm and very caring. He explained to me that he just wanted her to be happy. Soon after my boyfriend (Derrick Banks) and his best-friend (Jerrod Johnson) came to pick me up. Spoke to Adrian (briefly) and we left around 2:40.

EXHIBIT 2

A.R.M.

No attorney has ever contacted me about January 13, 1999 and the above information

Asia McClain 3/25/00

Affidavit

Asia McClain, having been duly sworn, do depose and state:

I am 18 years old. I attend college at Catonsville Community College of Baltimore County. In January of 1999, I attended high school at Woodlawn High School. I have known Adnan Syed since my 9th grade freshmen year (at high school). On 01/13/99, I was waiting in the Woodlawn Branch Public Library. I was waiting for a ride from my boyfriend (2:20) when I spotted Mr. Syed and held a 15-20 minute conversation. We talked about his girlfriend and he seemed extremely calm and very caring. He explained to me that he just wanted her to be happy. Soon after my boyfriend (Derrick Banks) and his best friend (Gerrad Johnson) came to pick me up. I spoke to Adnan (briefly) and we left around 2:40. No attorney has ever contacted me about January 13, 1999 and the above information.

Asia McClain

PETITIONER'S EXHIBIT 6

Mr. and Mrs. Syed Rahman
7034 Johnnycake Road
Baltimore, Maryland 21207

Christina Gutierrez
Redmond & Gutierrez, P.A.
1301 Fidelity Building
210 North Charles Street
Baltimore, Maryland 21201

March 30, 2000

Dear Ms. Gutierrez,

We would like for you to include in the motion for new trial the newly discovered evidence provided by Ms. Asia McClain. We are aware that under Maryland laws, the evidence is considered newly discovered only when it is indeed newly discovered. We feel, however, that Asia's information falls into a gray area because in fact no body contacted her for her story, and that until now her story was undiscovered. Attached please find a copy of an affidavit signed and sworn to by Ms. Asia McClain. According to her, the other two eyewitness alibis are also willing to submit affidavits.

Furthermore, for sentencing we would like to have mitigating witnesses address the court. Please contact us to arrange for this.

Thank you,

Mr. and Mrs. Syed Rahman

EXHIBIT
6

PETITIONER'S EXHIBIT 7

ASIA MCCLAIN

1. I swear to the following, to the best of my recollection, under penalty of perjury:
2. I am 33years old and competent to testify in a court of law.
3. I currently reside in Washington State.
4. I grew up in Baltimore County, MD, and attended high school at Woodlawn High School. I graduated in 1999 and attended college at Catonsville Community College.
5. While a senior at Woodlawn, I knew both Adnan Syed and Hae Min Lee. I was not particularly close friends with either.
6. On January 13, 1999, I got out of school early. At some point in the early afternoon, I went to Woodlawn Public Library, which was right next to the high school.
7. I was in the library when school let out around 2:15 p.m. I was waiting for my boyfriend, Derrick Banks, to pick me up. He was running late.
8. At around 2:30 p.m., I saw Adnan Syed enter the library. Syed and I had a conversation. We talked about his ex-girlfriend Hae Min Lee and he seemed extremely calm and caring. He explained that he wanted her to be happy and that he had no ill will towards her.
9. Eventually my boyfriend arrived to pick me up. He was with his best friend, Jerrod Johnson. We left the library around 2:40. Syed was still at the library when we left.
10. I remember that my boyfriend seemed jealous that I had been talking to Syed. I was angry at him for being extremely late.
11. The 13th of January 1999 was memorable because the following two school days were cancelled due to hazardous winter weather.
12. I did not think much of this interaction with Syed until he was later arrested and charged in the murder of Hae Min Lee.
13. Upon learning that he was charged with murder related to Lee's disappearance on the 13th, I promptly attempted to contact him.
14. I mailed him two letters to the Baltimore City Jail, one dated March 1, the other dated March 2. (See letters, attached). In these letters I reminded him that we had been in the library together after school. At the time when I wrote these letters, I did not know that the State theorized that the murder took place just before 2:36 pm on January 13, 1999.
15. I also made it clear in those letters that I wanted to speak to Syed's lawyer about what I remembered, and that I would have been willing to help his defense if necessary.
16. The content of both of those letters was true and accurate to the best of my recollection.

17. After sending those letters to Syed in early March, 1999, I never heard from anybody from the legal team representing Syed. Nobody ever contacted me to find out my story.
18. If someone had contacted me, I would have been willing to tell my story and testify at trial. My testimony would have been consistent with the letters described above, as well as the affidavit I would later provide. *See below.*
19. After Syed was convicted at trial, I was contacted by a friend of the Syed family named Rabia Chaudry.
20. I told my story to Chaudry on March 25, 2000, and wrote out an affidavit, which we had notarized. (Affidavit attached).
21. The affidavit was entirely accurate to the best of my recollection and I gave it by my own free will. I was not pressured into writing it.
22. At the time when I wrote the affidavit I did not know that the State had argued at trial that the murder took place just before 2:36 pm on January 13, 1999.
23. After writing the affidavit and giving it to Chaudry, I did not think much about the Syed case, although I was aware he had been convicted and he was in prison.
24. Eventually I left Maryland and moved to North Carolina and then out west.
25. In the late spring of 2010, I learned that members of the Syed defense team were attempting to contact me. I was initially caught off guard by this and I did not talk to them.
26. After encountering the Syed defense team, I began to have many case questions that I did not want to ask the Syed defense team. After not knowing who else to contact, I made telephone contact with one of the State prosecutors from the case, Kevin Urick.
27. I had a telephone conversation with Urick in which I asked him why I was being contacted and what was going on in the case.
28. He told me there was no merit to any claims that Syed did not get a fair trial. Urick discussed the evidence of the case in a manner that seemed designed to get me to think Syed was guilty and that I should not bother participating in the case, by telling what I knew about January 13, 1999. Urick convinced me into believing that I should not participate in any ongoing proceedings. Based on my conversation with Kevin Urick, the comments made by him and what he conveyed to me during that conversation, I determined that I wished to have no further involvement with the Syed defense team, at that time.
29. Urick and I discussed the affidavit that I had previously provided to Chaudry. I wanted to know why I was being contacted if they already had the affidavit on file and what the ramifications of that document were. I never told Urick that I recanted my story or affidavit about January 13, 1999. In, addition I did not write the March 1999 letters or the affidavit because of pressure from Syed's family. I did not write them to please Syed's family or to get them off my back. What actually happened is that I wrote the affidavit because I wanted to provide the truth about what I remembered. My only goal has always been, to provide the truth about what I remembered.

30. I took, and retained, contemporaneous notations of the telephone conversation with Urick.
31. Sometime in January of 2014, I had a conversation with Sarah Koenig, a reporter for National Public Radio. I spoke to her on the phone and she recorded the conversation. It was an impromptu conversation and I misunderstood her reasons for the interview and did not expect it to be broadcasted to so many people. While Ms. Koenig did not misrepresent herself or the purpose of the conversation and interview, it is fair to say that I misconstrued that it was a formal interview that would be played on the Serial Podcast. I rather thought that it was a meticulous means of information gathering, for a future (typed) online news article. Due to dialogue with Jerrod Johnson in 2011 concerning Derrick Banks, I recommended that Sarah Koenig reach out to both Jerrod Johnson and Derrick Banks, to see if they remember January 13, 1999. Later on, when Sarah Koenig asked to re-record my statement in a professional sound studio, I became confused and unwilling to participate in any further interview activity. As a result my interview with Sarah Koenig was incomplete in the Serial Podcast.
32. After I learned about the podcast, I learned more about Koenig's reporting, and more about the Syed case. I was shocked by the testimony of Kevin Urick and the podcast itself; however I came to understand my importance to the case. I realized I needed to step forward and make my story known to the court system.
33. I contacted Syed's lawyer, Justin Brown, on December 15, 2014, and told him my story. I told him I would be willing to provide this affidavit.
34. I am also willing to appear in court in Maryland to testify, if subpoenaed.
35. I am now married, and my legal surname is no longer McClain. However, due to the wealth of publicity that this case has had, and the fact that all previous mention of my name has been with my maiden name, I am signing below as Asia McClain.
36. I have retained counsel in Baltimore, Gary Proctor, and I respectfully ask that any attempts to contact me be made through him.
37. I have reviewed this affidavit with my attorney before providing it to Syed's attorney, Justin Brown.

Asia McClain

ASIA McCLAIN

DATE 1/13/15

PETITIONER'S EXHIBIT 8

ADNAN SYED,	*	IN THE
Appellant,	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
STATE OF MARYLAND,	*	No. 2519, September Term, 2013
Appellee.	*	(CC# 199103042)

* * * * * * * * * * * * * *

ORDER

Following a jury trial which concluded on February 25, 2000, Adnan Syed, Appellant, was convicted in the Circuit Court for Baltimore City of first-degree murder, robbery, kidnapping, and false imprisonment. On June 6, 2000, the circuit court denied his motion for a new trial and sentenced Syed to imprisonment for life for murder, to thirty years' imprisonment for kidnapping, to run consecutive to the life sentence, and to ten years' imprisonment for robbery, to run concurrently with the sentence for kidnapping. Syed appealed and in an unreported opinion this Court affirmed. *Adnan Syed v. State of Maryland*, No. 923, September Term, 2000 (filed March 19, 2003). The Court of Appeals denied Syed's subsequently filed petition for writ of certiorari. *Adnan Syed v. State of Maryland*, 376 Md. 52 (2003).

On May 28, 2010, Syed filed a petition for post-conviction relief in the Circuit Court for Baltimore City. On June 27, 2011, he filed a supplement to that petition. On October 11 and October 25, 2012, the circuit court held hearings on the petition. On

January 6, 2014, the circuit court filed a memorandum opinion denying Syed's request for post-conviction relief.

On January 27, 2014, Syed filed a timely application for leave to appeal seeking appellate review of the circuit court's decision denying his petition for post-conviction relief. Syed requested appellate review of two issues he contends were wrongly decided by the circuit court: (1) whether his trial counsel rendered ineffective assistance by failing to interview or even contact Asia McClain, a potential alibi witness; and (2) whether trial counsel was ineffective for failing to pursue a plea offer and purportedly misrepresenting to Syed that she had. By order dated September 10, 2014, this Court directed the State to file a response to Syed's application for leave to appeal, which the State did on January 15, 2015.

On January 20, 2015, Syed filed with this Court a "supplement" to his application for leave to appeal in which, among other things, he requested that this Court remand the case to the Circuit Court for Baltimore City for additional fact-finding on the alibi witness issue regarding Asia McClain. He set forth reasons why Ms. McClain had not testified at the post-conviction hearings held in October 2012. He attached to the supplement an affidavit by Ms. McClain, dated January 13, 2015, reaffirming her recollection of seeing Syed at or around the time the State had alleged that Syed had committed the murder. In her affidavit, Ms. McClain also stated, in essence, that, in a telephone conversation with an Assistant State's Attorney involved in the case, she was discouraged from attending the post-conviction hearings. In light of this "new evidence," Syed asserts that a remand to the circuit court would be "in the interest of justice", that it

would promote "judicial economy" and that Ms. McClain's testimony "is reasonably likely to change the outcome of the post-conviction proceeding." On January 27, 2015, the State filed a motion to strike Syed's supplement to the application for leave to appeal and urged this Court to deny his request for a remand.

On February 6, 2015, this Court granted Syed's application for leave to appeal and directed the parties to file briefs. The order granting the application for leave to appeal also stated that "a decision" on Syed's request for a remand to the circuit court for additional fact-finding on the alibi witness issue would be "referred to the panel of judges to be assigned" to hear the appeal.

Syed filed his brief with this Court on March 23, 2015, and the State filed its brief on May 6, 2015.

Having now reviewed the briefs filed in this appeal, and having considered Syed's supplement to his application for leave to appeal and his request for a remand, as well as other pleadings filed in this Court, we believe that a stay of this appeal and a limited remand to the circuit court is in the interest of justice. *See* Md. Rule 8-604(a)(5) & (d) (authorizing the Court to remand a case on appeal to the lower court when "justice will be served by permitting further proceedings"); Md. Rule 8-204(f)(4) (authorizing the Court to grant an application for leave to appeal and remand to the lower court); Section 7-109(b)(3)(ii)(2) of Criminal Procedure Article of the Md. Code (authorizing the Court to grant an application for leave to appeal in a post-conviction matter and remand the case for further proceedings).

The purpose of the stay and the remand is to provide Syed with the opportunity to file with the circuit court a request, pursuant to § 7-104 of the Criminal Procedure Article of the Md. Code, to re-open the previously concluded post-conviction proceeding in light of Ms. McClain's January 13, 2015, affidavit, which has not heretofore been reviewed or considered by the circuit court. Moreover, because the affidavit was not presented to the circuit court during Syed's post-conviction proceedings, as it did not then exist, it is not a part of the record and, therefore, this Court may not properly consider it in addressing the merits of this appeal. This remand, among other things, will afford the parties the opportunity to supplement the record with relevant documents and even testimony pertinent to the issues raised by this appeal.

We shall, therefore, remand the case to the circuit court, without affirmance or reversal, to afford Syed the opportunity to file such a request to re-open the post-conviction proceedings. In the event that the circuit court grants a request to re-open the post-conviction proceedings, the circuit court may, in its discretion, conduct any further proceedings it deems appropriate. If that occurs, the parties will be given, if and when this matter returns to this Court, an opportunity to supplement their briefs and the record.

Accordingly, it is this _____ day of May 2015, by the Court of Special Appeals,

ORDERED that the above-captioned appeal be and hereby is STAYED; and it is further

ORDERED that the Appellant's request for a remand to the circuit court is GRANTED and the case be and hereby is REMANDED to the Circuit Court for

Baltimore City, without affirmance or reversal, for the purpose set forth in this Order; and it is further

ORDERED that Appellant shall file his motion to re-open the closed post-conviction proceeding within 45 days of the date of this Order and, if he fails to do so, the stay shall be lifted and this Court will proceed with the appeal without any reference to or consideration of the Appellant's Supplement to Application for Leave to Appeal or any documents not presently a part of the circuit court's record; and it is further

ORDERED that, after taking any action it deems appropriate, the circuit court shall forthwith re-transmit the record to this Court for further proceedings.

FOR A PANEL OF THIS COURT
CONSISTING OF KRAUSER, C.J.,
WOODWARD, AND WRIGHT, JJ.

PETER B. KRAUSER, CHIEF JUDGE

PETITIONER'S EXHIBIT 9

EXCLUSIVE: PROSECUTOR IN 'SERIAL' CASE GOES ON THE RECORD

BY NATASHA VARGAS-COOPER AND KEN SILVERSTEIN @natashavc @KenSilverstein1 01/07/2015

It was "pretty much a run-of-the-mill domestic violence murder," prosecutor Kevin Urick said in an exclusive interview with *The Intercept*.

By this, he means, Adnan Syed murdered Hae Min Lee in 1999. Reddit may have its doubts. Sarah Koenig, creator of the wildly popular "Serial" podcast, may have her doubts. Those who rightly question the fairness of the notoriously biased American justice system may have their doubts.

But Urick, who prosecuted the case in 2000, remains certain that Adnan Syed is a murderer—and 15 years later, no new facts have emerged to change this conclusion.

Last year, radio host and producer Sarah Koenig revisited the case in the hopes of finding a miscarriage of justice. The result was "Serial," the 12-part podcast.

The unprecedented popularity of the show can be explained, in part, by the appeal of its narrative to a progressively-minded public radio audience. "Serial" presented an archetype of the wrongful conviction story: the accused is railroaded, the lawyers are corrupt, and the jurors are manipulated by racially-charged rhetoric. All these problems, sadly, occur often in the criminal justice system but there's no indication they impacted this case.

The basic facts of the case are simple. Hae Min Lee, a high school student in Baltimore County, disappeared on Jan. 13, 1999. Police found her body in the city's Leakin Park about a month later; she'd been strangled, the subsequent autopsy showed. An anonymous tip led police to 17-year-old Syed, Lee's ex-boyfriend.

Syed was arrested for Lee's murder. He was charged and tried, a jury of 12 people convicted him in 2000, and a judge sentenced him to life in prison.

"Serial" portrayed the case as a combination of overzealous prosecution and incompetent defense counsel. This viewpoint infused the entire podcast. While Koenig never proclaimed Syed to be innocent, she insisted the evidence didn't support his conviction. "It's not enough, to me, to send anyone to prison for life," she said in the closing of the last episode.

When a jury of 12 people comes back with a guilty verdict in two hours, you'd think that rejecting their decision would require fresh evidence. Yet the show did not produce new evidence, and mostly repeated prior claims, such as an unconfirmed alibi, charges of incompetence against Adnan's deceased lawyer, and allegations that information derived from cellphone records is unreliable.

None of these charges has survived scrutiny. That was the conclusion of a circuit court judge, who dismissed a defense motion that claimed such issues compromised the fairness of the trial. Nevertheless, the "Serial" series largely mirrored the defense petition.

The reality is that "Serial" only worked if it could demonstrate that there were serious doubts about the fairness of Syed's trial and conviction. If he were guilty, there was no story. The storytelling device was to amplify claims that favored Syed's defense and contrast that with a watered-down version of the state's case. There is supposed to be a presumption of innocence for people accused of a crime. But for those convicted, like Syed, there is already a determination of guilt.

In Episode 12, Koenig allowed Dana Chivvis, a "Serial" producer, to express serious reservations about Syed's innocence. "[Y]ou just have to think 'God, that is—you had so many terrible coincidences that day," Chivvis says. "There were so many, 'You had such bad luck that day, Adnan.'"

Had "Serial" accepted the jury's conclusion—that Adnan strangled a teenage girl—there would be no storyline, no general interest in the case, and hence no audience. So, Koenig dismissed the decision of the 12 jurors who heard the case, and even though she found nothing that would exonerate Syed, she shifted the burden of proof back onto the state.

The most troubling part of "Serial" is Koenig's underwhelming efforts to speak with Urick, the state's lead prosecutor. He told us that she only emailed him on Dec. 12, less than a week before the podcast concluded, to ask about an allegation that he had badgered a witness against Syed for not

making the defendant look "creepy" enough. That charge was aired on the show. (Urick vociferously denies it.)

We ran his account by Julie Snyder, "Serial's" executive producer. "We reached out to Kevin Urick multiple times, at multiple locations, during the winter of 2014, about nine months before the podcast began airing," she said. "Urick did not respond to any of those interview requests."

Urick disputed this account, saying the first time he heard from Koenig was in that mid-December email, which was sent through the contact form on his personal website. "They did not make multiple attempts to reach me," he said. "They never showed up at my office. They may have left a voicemail that I didn't return but I am not sure of that." [*Ed. note*: In the editing process, Urick's quote was shortened. When provided originally with Urick's full statement, "Serial" producer Julie Snyder declined to respond beyond her original comments. "Serial" now, via Twitter, says, "Koenig left numerous messages for Urick, starting last winter and into the spring, many months before the podcast started airing."] (Koenig did interview the second prosecutor, Kathleen Murphy. "Serial" was not allowed to air the interview, but Murphy made a few cameo appearances in audio clips from the original trial.)

We met Urick last Saturday at his law office in Elkton, Maryland, about an hour north of Baltimore. He was not hard to find. Urick's personal website — with his work address — shows up first in a Google search of his name. There's a large sign advertising his legal services outside of his office.

Urick told us he did not and would not have agreed to be interviewed by Koenig because he didn't trust her to report fairly based on accounts from people who had met with her. He was also concerned about the effect on Hae's family. "This was a young girl killed at about age eighteen," he said. "When you deal with victims as a prosecutor, sometimes you have to put [their families through a lot]. But this was fourteen years after the fact. I did not want to be responsible for causing any further anguish for the family."

Urick didn't have new facts to tell us—just as "Serial" didn't uncover any new evidence. But his concise recounting of the main points in the case, without the podcast's diversions and distractions, explains why the jury convicted Adnan after such brief deliberations.

The key evidence in the case were cellphone records that showed Syed's movements on the night that Lee disappeared, and the testimony of Jay Wilds, a former classmate who confessed to police that he helped Syed dispose of Lee's body. Wilds cooperated with police and prosecutors and after pleading guilty to being an accessory to murder after the fact, received two years probation.

Urick acknowledged that Jay had told conflicting versions of events. But he pointed out that even after five days on the stand, the defense was only able to challenge "collateral facts," and not "material facts" directly related to the question of Syed's guilt or innocence.

The focus on Jay's changing story misses a larger point, Urick says, which is that criminal accomplices, by their nature, change their stories, and it is the job of the state to peel back the layers–and use corroborating evidence–to get to the truth. "We did not pick Jay to be Adnan's accomplice," Urick said. "Adnan picked Jay."

Early on in the case, Urick said, the defense sent a disclosure to the state saying it had more than 80 witnesses who would testify about Adnan's whereabouts on the day he allegedly killed Hae and buried her body. But when the defense found out that the cellphone records showed that Adnan was nowhere near the mosque, it killed that alibi and those witnesses were never called to testify at the trial, according to Urick.

Those same cellphone records also corroborated Jay's testimony about Adnan's movements on the night of the crime.

"Jay's testimony by itself, would that have been proof beyond a reasonable doubt?" Urick asked rhetorically. "Probably not. Cellphone evidence by itself? Probably not."

But, he said, when you put together cellphone records and Jay's testimony, "they corroborate and feed off each other–it's a very strong evidentiary case."

Syed did not testify at the trial, but had he done so, Urick said, he would have run through his cellphone records: "And my very last question would be, what is your explanation for why you either received or made a call from Leakin Park the evening that Hae Min Lee disappeared, the very park that her body was found in five weeks later?"

The justice system in America frequently doesn't work. This is not one of those cases.

The first part of our interview with Urick is published below. It has been edited for length and clarity.

The Intercept: The podcast "Serial" has focused enormous attention on the murder trial of Adnan Syed. Before all this, was there anything that stood out to you about the case?

Kevin Urick: The case itself I would say was pretty much a run-of-the-mill domestic violence murder. Fortunately a lot of relationships do not end in domestic violence, do not end in murder. But it happens often enough that you can identify it as a domestic violence case resulting in murder. That was the whole problem the defense had with the trial. They could not come up with a defense to that evidence. At the time the case was going on, there was no local press coverage. When

the appeal was argued, there was no press coverage of that either. And the court of special appeals felt there was nothing new or novel about the arguments that were made in the appellate brief. It was not even a published opinion.

TI: Do you have any doubts about the outcome of the trial?

KU: No. The reason is: once you understood the cellphone records–that killed any alibi defense that Syed had. I think when you take that in conjunction with Jay's testimony, it became a very strong case.

TI: There were plenty of inconsistencies in Jay's confession, his testimony, and his statements to The Intercept after trial. Don't all those inconsistencies discredit him?

KU: People have to realize, we try cases in the real world. We take our witnesses as we find them. We did not pick Jay to be Adnan's accomplice. Adnan picked Jay. Remember, Jay committed a crime here. He was an accomplice after the fact in a murder. A very serious crime.

And there is almost always during a trial when you're dealing with people out of a criminal milieu, that they have a lot of things they don't want to talk about. They had some involvement with crime. There are always prior existing statements, even when you're dealing with non-criminals.

People can very seldom tell the same story the same way twice. If they did, I'd be very suspicious of it because that would look like it was rehearsed. So all the time, you take your witnesses as they are, you try it in the real world, we put it on, we let the jury judge credibility. Jay was on the stand for five days.

TI: In our Interview with Jay, he said he saw Hae's body for the first time at his grandmother's house not in the Best Buy parking lot. He said the time of the burial took place several hours after the time he gave under oath. Again, do these inconsistencies alarm you?

KU: Like I said, people who are engaged in criminal activity, it's like peeling an onion. The initial thing they say is, 'I don't know a thing about this.' And then 'Well, I sort of saw this.' You get different stories as you go along. This is the real world. We don't pick our witnesses, we have to put them on as they are. There were a lot of inconsistencies throughout Jay's prior statements. Almost all of them involve what we would call collateral facts.

A material fact is something directly related to the question of guilt or innocence. A material fact would have been, 'I was with Adnan,' and then you've got the cellphone corroborating that material fact. A collateral fact would be, We were at Joe's Sub Shop,' but then you find out actually they were

at the auto repair store. That's a collateral fact. It's not necessarily material to the question of guilt or innocence. So, many of the material facts were corroborated through the cellphone records including being in Leakin Park.

TI: Was there ever a moment where you felt like there was an alternative suspect? Is there any scenario by which Adnan Syed is not the guilty party?

KU: No. The reason is that once you understood the cellphone records, in conjunction with Jay's testimony, it became a very strong case. Even with Jay on the stand for five days, with the defense presenting Jay's prior inconsistent statements–they presented all that. The problem was that the cellphone records corroborated so much of Jay's testimony. He said, 'We were in this place,' and it checked out with the cellphone records. And he said that in the police interviews prior to obtaining the cellphone evidence. A lot of what he said was corroborated by the cellphone evidence, including that the two of them were at Leakin Park.

TI: In "Serial," Koenig raises the question of whether the state used the cellphone records accurately and if they really corroborated Jay's story. [*Ed. note*: *The Intercept* provided a copy of the transcript of the "Serial" podcast episodes discussing cellphone records for Urick to review.]

KU: Koenig's presentation of the cellphone evidence is designed to try to implant doubts by sleight of hand rather than to accurately portray what we had and how we presented it.

She starts off noting that there are recent attacks on the use of cellphone evidence but does not inform the listener that the technology used today is different from that in use at the time of the trial, and most of the attacks today are due to that difference.

Today's towers have switching technology such that if all the cells on a tower are in use it can switch the call to a different tower, sometimes one quite a distance away. Thus, today, it may not be accurate to state that because a call goes through a particular tower it has to be in physical proximity to that tower, thus fixing the phone user in a geographical location. A highly trained expert is needed to sort through all the technical data to be able to state the evidence accurately as to what it does and does not reveal.

The second most common type of attack today is when the state calls a police officer to testify from cellphone records as to a person's physical location, asking to have him qualified as an expert so he can so testify, and the court accepts the officer as an expert. Courts are starting to state that police officers lack the necessary expertise to testify that way. They are saying a greater degree of expertise is required before a person can testify to physical location from cellphone records. That is, they are not saying that it is not possible to use the records that way, but rather that a true "expert" is required for the testimony to be reliable.

Neither of those two criticisms are relevant to what we did. It was an earlier technology that only operated when a cellphone was in physical proximity to the tower. And we had a true 'expert,' an engineer from AT&T whose area of expertise was cellphone technology and cell towers and who was fully conversant with the technology, the capabilities of that technology, its operation, and what the records revealed.

As I said, it is disingenuous of Koenig to cite those criticisms of current cellphone technology and its use as courtroom evidence to try and imply that what we did was doubtful.

Only after she plants that seed of doubt does she acknowledge that the experts she consulted state the science–as we presented it and used it–was accurate.

She then tries to discredit our presentation by focusing on areas we did not [focus on]; areas we did not consider relevant, and never spent any real time analyzing and preparing for presentation.

The only time period we considered relevant was from the time Adnan called Jay [*Ed. note*: calling his own cellphone from a pay phone] to join him until later that evening/night after they left Leakin park.

For the period during the day, before that call, we only checked to be sure that for every call that we could identify the caller or recipient, and could contact him or her, that that person verified that in fact it was Jay who had Adnan's phone and was the one using it.

We did not spend any real time trying to verify any of the statements Jay made about where he was during the day with the cellphone records because we never considered that time period relevant. Remember, there were numerous calls made over the course of that day. We had to be selective about which ones we presented to the jury or the case would have gone on forever. We only focused on the information or the period we determined to be relevant, i.e. the fact Jay was in possession of Adnan's phone during the day, and then the evidence of their locations from the time they joined up until after leaving Leakin Park, along with the evidence that during that time period they both either received or made calls, thus confirming their being together.

Most of Koenig's line of attack is to concentrate on areas we did not consider relevant and never really developed.

I do not remember that at any time we had any dissatisfaction with the evidence of the cellphone records and how it meshed with Jay's story. No one is capable of perfectly remembering exactly what time they were at a particular place, or even where they were every time a call is made or received. Some discrepancies would be expected.

You will notice that for what is perhaps the most crucial period, from the time of [Detective] Adcock's call to after the body is buried, Koenig's own expert states we were completely accurate. Koenig cannot dispute that so she uses sleight of hand to try to call into question our presentation by turning the listener's attention elsewhere, dwelling on irrelevant arguments and evidence while quickly skimming over the proof we presented of the material facts of the case.

I also question Koenig putting in there that [Syed's defense attorney Cristina] Gutierrez said she did not have all the cellphone evidence. If she actually said that in court she was being less than truthful to try and support an argument. We provided open file discovery in the case, that is, anything we had we provided to the defense. And we told the defense what our exhibits were going to be and gave them as much time as they desired in our office to examine them. And remember, we presented all this evidence in the first trial, the one that ended in a mistrial, so by the time we got to the second trial the defense was fully aware of all of our evidence. There was nothing she was not aware of and nothing that was a surprise.

For the relevant time period and the relevant events Koenig is unable to discredit us.

TI: Syed never testified. What would you have asked him if he had?

KU: I would've gone through the cellphone records. You called this person at this time. Jay talked to this person at this time. And my very last question would be: What is your explanation for why you either received or made a call from Leakin Park the evening that Hae Min Lee disappeared, the very park that her body was found in five weeks later? I think that was the stumbling block for the defense. They have no explanation for that. They went to extreme lengths to try to discredit Jay's testimony. This was not an ill prepared defense. This was a well-funded defense. They had a private detective. Cristina Gutierrez had at least two paralegals, who I think were law students waiting for their bar results, working for her. They subpoenaed Jay's school [records], criminal [records], all sorts of records about Jay. And they had a test run because this was really two trials. The first trial ended in mistrial right at the end of the state's case. So they got a chance to view the state's case as we were going to present it. They had everything. There were no surprises going into the second trial. They knew everything. And they tried for five days to do everything [to discredit Jay's testimony]. Jay's prior inconsistent statements, they presented all that. The problem was that the cellphone records corroborated so much of Jay's testimony. He said we were at this place, and [they] were. And he said that in the police interviews prior to obtaining the cellphone evidence. A lot of what he said was corroborated by the cellphone evidence, including that the two of them were at Leakin Park.

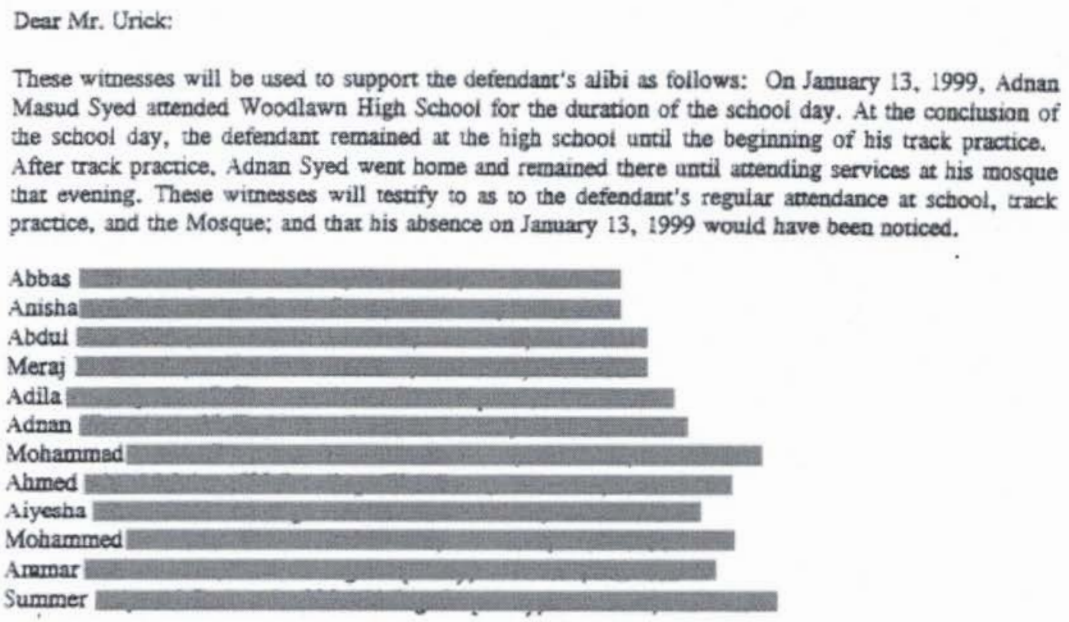
TI: A central piece of the post-conviction petition for Adnan Syed and "Serial" is evidence of a possible new alibi for Adnan's whereabouts the day of Hae's disappearance. According to the petition, Asia McClain says she was with Adnan in the library during the time of the murder.

KU: I think the judge in the post-conviction trial does a very good job of pointing out that in the letters to Syed, she is very vague and indifferent about what she's doing. The difficulty comes from Syed. In all his statements about his whereabouts the day of the case he says that he was at the school from 2:15pm to 3:30pm. He never once, in any statement, at any time, made any reference about being in the public library. His defense was that he was at the school from 2:30 to 3:30. So [Asia McClain's] reporting seeing him at the public library contradicts what he says he was doing. The letters were also sent in March of 2000, two months after Syed was charged. [*Ed. note*: the letters were actually dated March 1999, in the days after Adnan's arrest.]

Asia contacted me before the post-conviction hearing, she got my number and called me and expressed to me a great deal of concern about whether or not she would have to testify at the post-conviction hearing. She told me she was under a lot of pressure from Adnan's family and to get them off her back she wrote him a couple letters. The implication was she was trying to appease them and she didn't want to have to stick by it at that time. And I testified to that when I appeared in the post-conviction hearing.

Now the thing about the cellphone records [is that they] corroborate Jay, his statements that he got a call around 2:45 p.m. or around that time from Adnan to come pick him up. And the cellphone records show that there was an incoming call around that time. So there's corroboration of Jay's statements to the police and the cell records. Like I said, Syed never made mention of the library before those letters.

TI: In terms of potential alibis, according to the state's response to Syed's post conviction petition, there were dozens potential alibi witnesses that Syed's defense counsel did not call.



Dear Mr. Urick:

These witnesses will be used to support the defendant's alibi as follows: On January 13, 1999, Adnan Masud Syed attended Woodlawn High School for the duration of the school day. At the conclusion of the school day, the defendant remained at the high school until the beginning of his track practice. After track practice, Adnan Syed went home and remained there until attending services at his mosque that evening. These witnesses will testify to as to the defendant's regular attendance at school, track practice, and the Mosque; and that his absence on January 13, 1999 would have been noticed.

Abbas [redacted]
Anisha [redacted]
Abdul [redacted]
Meraj [redacted]
Adila [redacted]
Adnan [redacted]
Mohammad [redacted]
Ahmed [redacted]
Aiyesha [redacted]
Mohammed [redacted]
Ammar [redacted]
Summer [redacted]

KU: Yes. Early on in the Syed case, the defense sent us a disclosure of about eighty names stating that these were witnesses that were going to testify that Syed was at the mosque because it was Ramadan. He was praying all evening and that's where he was [*Ed. note*: We have corrected this in the introduction]. If they called those eighty witnesses, they would've obviously been testifying falsely, because the cellphone records in conjunction with all the evidence we gathered about the cellphone towers, who made the calls, who received them, place him everywhere but at the mosque. The best defense an attorney can put on is the defense the client is telling them. But attorneys still are not supposed to put on fabricated evidence. And that would've been fabricated evidence. And I think once Gutierrez recognized that fact, she did not put it on. Which I think was the right call for her. As a practical attorney, I think she also would've realized that it was so easily disprovable that the jury would've just been sort of disgusted at the attempt to put it on. But she clearly made the decision not to put it on. She made the right call. And I think on big issues of ethics, I think Cristina acted the right way. She would argue anything she could. But defense attorneys aren't allowed to [use fabricated evidence].

TI: Can you tell us little bit more about the fingerprint evidence?

KU: There was an atlas found in Adnan's car. Like an AAA road map. They used to put them together in spiral binders. And it had one page, which was the page that contained the map for Leakin Park, that was dogeared, folded down, and Adnan's fingerprint was on it. [*Ed. note*: According to a government brief, the palm print was found on the back cover of a map, not a fingerprint. It was found in Hae's car, not Adnan's.]

TI: Do you consider that an important piece of evidence? What was the defense's reply?

KU: You don't want to overdo your argument. Is it an unfair piece of circumstantial evidence? It's his atlas. There are a hundred reasons why that page could've been dogeared. Is it suggestive? I think it's suggestive.

TI: Just out of curiosity, you don't recall if that was the only dogeared page in that atlas, do you?

KU: It was a fairly extensive atlas. There were a lot of pages. I would be guessing.

TI: What about Syed's motive? He's a teenager, he was already dating other girls apparently. There was no prior record of violence on his part. Doesn't that raise doubts?

KU: Motive is not an element of the crime and the state does not have to prove motive. We can put it out there as an explanation but it's not essential to prove guilt. It may be supporting evidence that makes the jury understand it. But motive does not need to be proved. That is a standard instruction to the jury.

TI: And that's read to the jurors before they deliberate?

KU: Yes.

TI: Can we discuss the DNA submitted into evidence?

KU: There was no DNA submitted into evidence. Not by me or Cristina.

Next up: The DNA evidence, jury polling, Jay's attorney, Urick's reaction to "Serial," and more.

Will Federman contributed research and analysis to this article. Illustration by Eli Valley for The Intercept.

[*Ed. note*: *The Intercept* has made three corrections and clarifications to the introduction. Hae Min Lee was a student in Baltimore County. A defense disclosure referenced more than 80 witnesses, and the witnesses were in regard to his whereabouts throughout the day, not just at the mosque. *The Intercept* is also including an additional line from Urick about his contacts with "Serial," as well as an additional statement from "Serial" producers. We have also made editor's notes in the Q&A. We regret the errors.]

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PETITIONER'S EXHIBIT 10

THE DAILY RECORD

Adnan Syed prosecutor speaks out

A letter from Kevin Urick

By: Daily Record Staff February 11, 2015

Fourteen years ago we obtained a constitutionally valid conviction by jury of Adnan Syed. What is transpiring now is an example of defense tactics at their worst. The law allows a convicted felon a nearly never ending ability to continually attack the results we obtained. And the immunity provided to filings during litigation allows one to file accusations with impunity thus obtaining wide publicity for the accusation while knowing you cannot be held accountable for them and that the subject of the accusations basically has no way to respond.

Asia McClain was an alleged witness the defense knew about 14 years ago. Neither she nor the defense ever brought her to the State's attention. After investigating Ms. McClain's potential as a witness, Defense Attorney Gutierrez made a reasoned decision not to call her at trial.

The Defense filed a post conviction proceeding in 2010, and in preparation for that determined that Ms. McClain was a witness whose not being called at trial they could use to argue Ms. Gutierrez made a mistake. The defense contacted Ms. McClain and in response she contacted me.

I testified accurately about that conversation during the post conviction proceeding at a hearing in 2012. In January 2014 the relief asked for in the post conviction was denied.

Despite having been in contact with Ms. McClain, and knowing full well where she was and how to contact her, and despite hearing my testimony about our conversation, the defense never issued a subpoena for Ms. McClain either in their case in chief nor in rebuttal to my testimony.

Interestingly, about two or three weeks after an interview I gave appeared online, the defense filed the supplemental filing with great publicity, even issuing a press release to announce it. Was it in retaliation for my contradicting the slant the defense had been presenting to the public? Remember, they have immunity from civil suit.

In the "affidavit" Ms. McClain mentions her fear of the Syed defense team and supporters as well as outlining some of the contacts those persons had with her prior to her allowing the affidavit. I would ask that experienced attorneys review that affidavit for its credibility as well as its legal validity given that despite the fact the witness was known and available to the defense they never subpoenaed her.

And to my fellow prosecutors, I would say, we need to recognize that when court pleadings are used to publicly disseminate baseless attacks against one of us, should that smear campaign succeed, we all will be subject to like attack tomorrow.

— Kevin Urick