State of Maryland,	*	IN THE COURT OF SPECIAL APPEALS
Applicant,	*	OF MARYLAND
v.	*	Sept. Term 2015, Application No. 10432
Adnan Syed,	*	(Circuit Court for Baltimore City
Respondent.	*	No. 199103042-46)

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BRIEF OF *AMICI CURIAE* OF STATE'S ATTORNEYS IN SUPPORT OF THE STATE'S APPLICATION FOR LEAVE TO APPEAL

The State's Attorneys for Allegany County, Anne Arundel County, Calvert County, Caroline County, Carroll County, Charles County, Dorchester County, Frederick County, Garrett County, Harford County, Howard County, Kent County, Montgomery County, Prince George's County, Queen Anne's County, St. Mary's County, Somerset County, Talbot County, Washington County, Wicomico County and Worcester County, by undersigned counsel, pursuant to Maryland Rule 8-511(a)(1), submit, with the written consent of the Applicant and Respondent, this *amicus curiae* brief in support of the State's application for leave to appeal under Md. Code, Criminal Procedure Section 7-109.[1] As *amicus curiae*, we recommend that the Court of Special Appeals grant the application and reverse the post-conviction court's decision for the reasons thoroughly and persuasively set forth in the Application for Leave to Appeal entered by the State of Maryland. We file this brief as independently-elected, lead prosecutors for jurisdictions who are not parties to this case but have a stake in seeing that justice is done in all cases, no matter the level of sensationalism or public interest.[2]

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[1] *Amicus Curiae* parties have not asked the State's Attorneys for Baltimore County or Baltimore City to participate in this *Amicus Curiae* brief as the murder took place in Baltimore County and the victim's body was found in Baltimore City.

[2] Two of the undersigned state's attorneys were appointed by their respective circuit court administrative judges following appointment of their predecessors as circuit court judges.

For that to happen in this case, we reiterate points that should be important to everyone with a stake in the criminal justice system: First, because straightforward, settled law defeats Adnan Syed's meritless post-conviction petition, so long as his arguments and claims are treated like any other criminal defendant's, they should be rejected; second, the sensationalized attention surrounding this case — fueled by supporters of a convicted murderer and left unanswered by a grieving family who has asked that their privacy be respected — should not bear on the just and proper resolution of this appeal.

Yet, defense attorneys supporting Mr. Syed recently said: "This case is a global phenomenon. . . . If the Court were to grant the State's application and reverse, as the State requests, this controversy will not disappear. Millions will continue to passionately believe that the Maryland criminal justice system failed Mr. Syed, and that he would prevail in a fair trial with competent counsel. The only satisfactory way to resolve the debate between the believers and doubters is through a retrial."

Growing fears that Mr. Syed's objectively unmeritorious appeal is being treated differently by the courts are only reinforced by tactics and pronouncements like this. Represented by more-than-competent trial counsel who mounted a fierce defense of him, Mr. Syed was convicted by a jury of his peers based on crushing evidence of his guilt. Indeed, the evidence put before the jury in this case is stronger than what is routinely presented against criminal defendants who are tried and rightly convicted and whose convictions are affirmed all the time. Evidence at trial of Mr. Syed's guilt included but was not limited to:

- Mr. Syed's accomplice, Jay Wilds, testified that Mr. Syed told him he was going to kill his ex-girlfriend, Hae Min Lee. Mr. Wilds told the jury that Mr. Syed showed him the victim's body after Mr. Syed strangled her, and that he helped Mr. Syed dig a shallow grave, bury the body, and dispose of the shovels. Mr. Wilds also led police to the victim's car, which had been missing for weeks.

- Mr. Syed's palm print was on the back of a map book with the page containing the burial location ripped out, which was recovered from the victim's vehicle.

- The victim described Mr. Syed as jealous and possessive, both to friends who testified at trial and in her diary, which was entered into evidence. Ms. Lee was strangled to death twelve days after her first date with a new boyfriend.

- Police recovered from Mr. Syed's bedroom a breakup note from the victim to Mr. Syed, on which Mr. Syed had written: "I'm going to kill."

- An anonymous caller told police to look at Mr. Syed and to talk to one of Mr. Syed's friends, Yasser Ali. According to the caller, Mr. Syed discussed with Mr. Ali what Mr. Syed would do with Ms. Lee's car if Mr. Syed ever hurt her. Mr. Syed called Mr. Ali two times the night of the murder from a brand new cellphone Mr. Syed first activated the day before the murder.

- Mr. Syed asked Ms. Lee for a ride after school on the day of the murder. Mr. Syed originally confirmed this to police, but changed his story two weeks later when he spoke to a different officer and said he never needed or asked for a ride from Ms. Lee since he had his own car.

- Three separate witnesses put Mr. Syed and Mr. Wilds (his accomplice) together at three different locations at three separate times after school on the night of the murder, each consistent with what Mr. Wilds told the jury.

- One of them, Jennifer Pusateri, met Mr. Syed and Mr. Wilds at a parking lot on the night of the murder, and Mr. Wilds told Ms. Pusateri that night that Mr. Syed had strangled his ex-girlfriend. Ms. Pusateri first told this to the police with her mother and attorney present and mentioned a key fact — that the victim was strangled — that was not publicly known at the time.

- Mr. Syed's cellphone records confirmed calls to Ms. Pusateri, Mr. Wilds, Mr. Ali, and Ms. Tanna (who told the jury that Mr. Syed called her and handed the phone to Mr. Wilds who introduced himself). The records also confirmed repeated calls to Ms. Lee late the night before the murder and none to her at any point after police told Mr. Syed that Ms. Lee was missing.

- The celltower sites for calls on Mr. Syed's new cellphone were consistent with the prosecution's evidence. None of the celltower sites put Mr. Syed at the mosque at any point that evening, which is where the defense claimed he went after school and track practice that night.

Before this case became a "global phenomenon," Mr. Syed's motion for a new trial, direct appeals, and post-conviction petitions were all correctly rejected. As at trial, he was

represented at every stage by able private counsel of Mr. Syed's choosing. As part of a limited remand, Mr. Syed's original claim about his attorney's failure to contact an unreliable and highly suspect, supposed "alibi" witness was again rejected, a ruling the appellate courts should not reverse. The lower court nevertheless granted Mr. Syed a new trial based on a completely new claim that it was ineffective assistance of counsel for Mr. Syed's trial attorney not to use a boilerplate AT&T fax cover sheet to attack the State's cellphone evidence. No one, including all of the defendant's capable post-trial attorneys, made this argument until a lawyer who blogged about the case first suggested it after the 10-year statutory window expired.[3] Both sides' experts agree that no defense attorney has ever attempted this line of attack to try to discredit AT&T cellphone records in all the years since, nor has any expert ever even suggested this attack before Mr. Syed found one for the hearing. And, even today, the experts cannot agree on whether the disclaimer Mr. Syed highlights is relevant or applies at all to the particular records and analysis presented at Mr. Syed's trial.

Given all of this, Mr. Syed's claim is meritless and waived. Yet, in this case, in order to grant the relief Mr. Syed requested, the lower court had to twist procedural rules about waiver, crafting arguments that even Mr. Syed's attorneys had not made. The court ignored clear, binding, recent Supreme Court precedent about what counts as ineffective cross examination of expert testimony, and it repeatedly placed the legal burden on the State when it was Mr. Syed's burden to bear. Put simply, the lower court made a mistake. It happens. But, when it does, it is the responsibility of the appellate courts to correct the error.

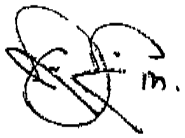
[3] Justin Fenton & Justin George, Conviction vacated, new trial granted for Adnan Syed of 'Serial,' Baltimore Sun, June 30, 2016 ("[A]n attorney and 'Serial' blogger who produced an offshoot podcast . . . is credited with tracking down the evidence that [Judge] Welch cited in granting a new trial.").

Indeed, when a lower court makes a clear error like this, rewriting procedural rules and misapplying substantive law, the State regularly seeks an appeal and asks the appellate courts to correct the error. There is nothing unusual about the State seeking appeal in these circumstances, and to suggest otherwise in an effort to shape public sentiment is disingenuous and misleading. In addition, the defendant's popularity or the level of media attention to a case should not influence the outcome. Here, the lower court made a clear and serious error; the appellate court should correct it. The goal of the appellate process is not to satisfy the court of public opinion, nor should the State be held to a higher standard, as Mr. Syed's supporters argue, just because the case could conceivably be retried 17 years after Mr. Syed was already indicted and convicted. That is unfair to the witnesses, to the State, and to the victim's family, who should be able to have closure and finality when, as in this case, Mr. Syed was correctly convicted by a jury of his peers based on overwhelming evidence of guilt with more-than-competent counsel preparing and representing him at trial.

Finally, contrary to the suggestion by Mr. Syed's supporters, neither a retrial nor a resolution on appeal will end the public debate among the masses; one side or the other will inevitably complain — but assessing who is louder and answering public opinion is not the goal of the criminal justice system. We are elected to pursue justice in every case by looking closely at the facts and faithfully applying the law, without passion or prejudice, and regardless of one side's public-relations campaign or the publicity swirling around a case on the internet, on television, or in the papers. Sometimes we have to confess an error at trial or on appeal; sometimes we have to file charges, or decline to file charges, or drop charges, even when it is unpopular. Each of us has done this, and so has the Attorney General of Maryland. But when we do so, it is because it is the right thing to do, not to satisfy the masses or because of public

opinion. That is what we are elected (or appointed) and sworn to do, and that is what our courts are bound to do as well. Which is why it is rightly the Court of Special Appeals, not the court of public opinion, that must correct the lower court's error in granting Mr. Syed's petition for a new trial. Accordingly, without consideration of public opinion the Court of Special Appeals should grant the application for leave to appeal and reverse the post-conviction court's plainly incorrect ruling for the reasons set forth in the State's pleadings.

Respectfully submitted,



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I hereby certify that, on October 4, 2016, a copy of the foregoing amicus brief, consented to by all parties, was sent by first-class mail, postage prepaid, to:

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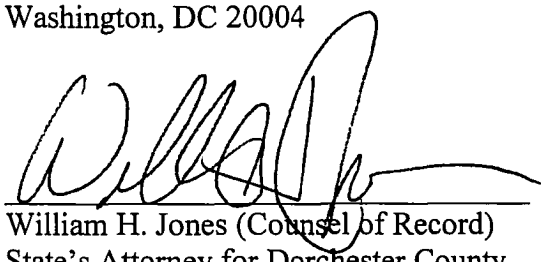

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