

UNDISCLOSED, the State v. Adnan Syed

Addendum 5:

The Auto, the Autopsy and the Eyewitness

June 15, 2015

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[00:38] Colin Miller Hi, this is Colin Miller. Welcome to this week’s episode of the *Undisclosed: Addendum*. I’m joined, as always, by Susan Simpson. Rabia is traveling this week, and so we have invited Rebecca Lavoie. She’s a crime fiction writer and a podcast host, and she’s going to talk to us a little bit later in the episode. But before we get to Rebecca, we wanted to focus on something very important in this case.

Now, as we have told you, the State’s theory of the case is that Hae’s car is dumped at an address in Baltimore City on January 13th, and it remains there until February 28th, 1999, when Jay leads the police to the car. But Susan has uncovered something that seems to contradict this version of events, and so, Susan, what have you found?

[1:28] Susan Simpson Last week, we talked about Hae’s car and how it was found at Edgewood Road [sic] in Baltimore City. We also talked about how there were indications that the car hadn’t been sitting there for the full six weeks between January 13th and February 28th. But if the car wasn’t sitting there the whole time, where was it?

There are indications that it might have been in Baltimore County, to the west of Baltimore City and in a different jurisdiction. This information comes from a February 24th report generated by Detective O’Shea from the Baltimore County Police. He did an NCIC offline search request, which tells him every time an officer has run a check on Hae’s plates. Now, the results of this search are interesting, that there were two searches on February 4th that don’t match anything we’d expect to see as part of an investigation. In fact, what they appear to be is two searches done by two different officers on mobile units out on patrol in Baltimore County.

[2:30] Colin Miller You’re saying this is a case of Baltimore County police on their beat in Baltimore County coming upon Hae’s car twice on February 4th.

[2:40] Susan Simpson That’s what the results look like. What law enforcement officers looking at these results have said is that it appears to be searches done by two separate patrol officers, one on the midnight shift and then, again, later on that day by a second officer. Now, because of the

failure of the Baltimore County Police to enter an NCIC report specifically for Hae's car; any plate checks done on her vehicle during that time period would not have returned an alert; it would not have notified the officer that the car was wanted in connection with the open investigation or that the car had been reported stolen.

[3:17] Colin Miller If we break that down for listeners not familiar with Baltimore, so, we have Baltimore City, the city itself, and that's where Edgewood Road [sic] is. That's where Hae's car is found on February 28th. And then, as you just said, Baltimore County is to the west. It's its own separate jurisdiction, right?

[3:32] Susan Simpson Yes, so Baltimore County--the Baltimore County line is exactly two miles west of where Hae's car was ultimately found.

[3:39] Colin Miller Right, and so unless these Baltimore County officers have veered twice into Baltimore City territory, they're seeing Hae's car in Baltimore County at least at a minimum two miles away from the Edgewood Road [sic] location.

[3:51] Susan Simpson That's what the records appear to be showing. There were no further searches done on Hae's plates after February 4th, so there's no record of where it might have been after that or why those searches might have been performed.

[4:03] Colin Miller In this initial period of time, at least January 13th to February 4th, that car is not at Edgewood Road [sic]; it's an entirely different jurisdiction.

[4:11] Susan Simpson I don't see anyone taking it into the city and then out to the county again before returning it, which means if these officers have encountered the car in the field, it was in Baltimore County for a least almost a month after Hae's murder.

[4:27] Colin Miller So, in the end we're left with another sort of dead end. It's one of those situations where we have found something. It seems to us, at least, to contradict what the State's theory of the case, but we're so lacking in documentation about exactly what happened here that we can't say anything definitive. But it certainly lends itself towards the conclusion that this car was not at Edgewood Road [sic] for those six weeks.

[5:00] Colin Miller As I said before, we have a special guest this week. It's Rebecca Lavoie, and we're going to have Rebecca asking us some questions about our findings from Episode 5 of the podcast.

[5:15] Rebecca Lavoie My name is Rebecca Lavoie. I'm a true crime author and the host of the podcast *Crime Writers on Serial*. Like you, I have a million questions for the lawyers who've spent the last few months of their lives digging into and writing about the investigation and evidence around Adnan Syed's case. Let's talk now about some of what we heard in Episode 5 and unpack

some details that didn't make the episode, as well as maybe follow up on some things that I know, as a listener, I'm really curious about.

So, we just heard you talk about the police work around the search for Hae's car, but in the episode itself, we heard a lot about the processing of the car, about what was found in the car, and a lot of those technical details around that evidence and how it played into both the State's story and in Jay's narrative in his interviews with the police. What was the actual timing of the police going to the car? Were there timestamps on these reports? Th--you know, when the police actually went to the car, presumably after Jay's first interview, and then began processing the car?

[6:16] Colin Miller What we have is we know that Jay's official first recorded interview started at 1:30 in the morning. The tape was flipped at 2:10 a.m., and then, according to the report by Detectives MacGillivray and Carew, it's at 2:45 a.m. when they go and they find Hae's Nissan Sentra. And then I mentioned during last episode how there's this diagram drawn that shows Hae's car, the surrounding cars, and all the license plate numbers. We'll actually include that on the show's website. That was drawn, according to Detective Forrester, at 8 o'clock a.m. And so that's the general timeframe we're dealing with with the discovery of the car according to the official records.

[6:55] Rebecca Lavoie I guess one of the questions that sort of pops out to me is that, you know, the first interview, which was before Jay leading them to the car, according to this timeline, you know, Susan, we heard you talking in the episode about how Jay's statement matches what you could see from outside the car, the shoes, the, um, the lever, uh, that was allegedly broken. The question it raises for me, the sort of--I don't know--skeptical question is, you know, are you thinking that perhaps, you know, the police and Jay had been to the car before this taped portion of this interview? Or are you thinking that these are just things he had, you know, maybe walked by the car and seen before the taped portion of this interview?

[7:31] Susan Simpson They're all things that someone could have walked by the car and seen from the outside. Hae's car was the kind of car that to unlock the trunk of it you had to have the key. There was no latch inside that you could pull and no way in the trunk short of either using the keys to open it or busting it open, which means someone doing a casual inspection had no way of knowing what was in her trunk area.

[7:52] Colin Miller You know how last episode we discussed Jay never in the recorded portion of his interviews says where the Nissan Sentra is? So we're assuming he told them the location during the pre-interview before the recording starts at 1:30. What's interesting is that, as I said before, the tape is flipped at 2:45 a.m. [sic]. Immediately after that tape is flipped, that's when Jay, the first thing he says is basically, 'Adnan told me while he was strangling Hae, she kicked and broke the windshield wiper lever.' So, g--going along with sort of a conspiracy theory, it's possible he told them the location, they found it, and then they relayed to him what was in the car right before that tape was flipped. I don't know, I mean, that's a bit of a tinfoil hat type thing, but it's a possibility.

[8:39] Rebecca Lavoie I, I think it's hard to not talk about the tinfoil hat stuff with all of the inconsistencies that there are, and I know that, you know, there's... I think there are people on all sides of this, you know. I come from a journalism background, so I don't like to speculate and think about the tinfoil hat-type stuff, but that being said, there are just so many details like this, and I think one of the really interesting things about Episode 5 and you guys talking about the car stuff, really, was the stuff that Jay knew, like, through the windows. Like, that really does stick out. I mean, the, the shoes, you know, very sort of specific and, uh, what kind of shoes were those? Does one of you know what kind of shoes they were?

[9:16] Susan Simpson She had black high heels. So the fact that they were in the backseat makes me wonder if she was taking them off just to drive. I don't know about you, but that's something I do. If I'm in high heels and driving for a while, I'll pop them in the back seat.

[9:28] Rebecca Lavoie Well, it could also be maybe shoes that she wore to work and not to school and that she, you know, kept them, you s--you mentioned that she used her car sort of as a storage locker, right?

[9:36] Susan Simpson Yes. Well, the only other shoes in the car were cleats, so I think it's safe to assume she wasn't wearing those that day.

[9:41] Rebecca Lavoie And all of her, uh... sporting equipment, everything that we knew that she kept in her car before her murder was still intact *in* the car when they found the car, right?

[9:50] Susan Simpson Correct. Other than her wallet, um, the cards in the wallet, obviously, and her car keys.

[9:56] Rebecca Lavoie I g--guess the question I have is the broken ignition collar--Colin, you explained that the little piece around the key where the key goes in was broken and was missing, and, you know, as Susan said, I think it doesn't just disappear, and it could've been s--a sign of maybe somebody attempting to or starting to hotwire the car. We know that the keys weren't found in the car, so, Colin, I think that you drew the conclusion that it could've very well been her killer who sort of has thinking, like, maybe "I have to do this to move this car." The idea of, like, just a pure car theft doesn't really fit, though, with all of her stuff still being in the car, right?

[10:31] Colin Miller Well, see, I didn't mention this during the episode itself, but another theory that I have is it's possible--we know that Hae said something came up. She had something else to do at the end of the school day. So one line of thought is, well maybe she drives somewhere, parking lot, gets out of the car. When she's coming back, she comes upon someone trying to hotwire the car. There's a brief altercation, and that ends with Hae being strangled. So with that, you can imagine maybe someone just trying to jack a car, and this unfortunate altercation leads to her death, so... one theory was that the person tries to hotwire the car *after* she's dead. Another

theory is maybe she comes upon someone trying to hotwire the car, and that's what precipitates her death.

[11:10] Rebecca Lavoie Just more theories then to throw onto the pile, theories that weren't explored, I guess, is the whole point of this, right?

[11:14] Susan Simpson Mm-hmm.

[11:15] Colin Miller Just spe--speculating here. Obviously, I don't have any insight, but it, it's strange that this ignition collar is missing because it's hard to imagine why it would be missing other than someone trying to hotwire the car, and so then you try to imagine at what point is the person trying to hotwire it and, you know, what's the motivation in doing that.

[11:33] Rebecca Lavoie Right.

[11:33] Susan Simpson For me, the significance is not just that it was missing because, again, that's hard to answer. We don't know why it wasn't there, but it's the fact the cops *didn't* record that or seem to be shoving that whole issue under a rug. I mean, the report says 'no evidence of tampering', and yet, they have a photo of the ignition collar missing. And it's hard for me to believe it didn't ever cross their minds that that was, in fact, evidence of tampering. And kind of related--the photo of the broken lever, whichever one it was, it seems from the testimony that photo wasn't actually of a broken lever; it was a photo of the missing ignition collar.

[12:08] Rebecca Lavoie Hmm.

[12:09] Susan Simpson And in the background you could see a lever was broken. So it seems that ignition collar was a focus for the investigators at one point.

[12:16] Rebecca Lavoie So, it was a focus, and then it was dropped, you know, maybe because it didn't fit the narrative. Is that, is that what you're thinking? Or is it you're thinking it was dropped for some other reason because it didn't mean anything?

[12:26] Susan Simpson It seems to mean something. If they had an answer for it, they'd have brought it up.

[12:29] Colin Miller I've looked at a few cases in response to seeing this, and... yeah, all the cases where the ignition collar is missing, it was an attempted carjacking. Someone tried to hotwire the car. So you have to imagine these detectives, when they see that missing ignition collar, the first thing you'd assume is someone was trying to hotwire that car, and that, that seems like a rational line of investigation that just was never pursued.

[12:51] Rebecca Lavoie Okay, so let--let's talk for a second about the keys. The cops asked Jay during this first interview how Adnan opened the trunk, and he responded that the trunk had to be opened with keys, right?

[13:03] Susan Simpson Yes, he did.

[13:04] Rebecca Lavoie Now, that seems like a really specific question. You know, where did that question come from, how did the keys sort of fit into the Jay narrative about what happened, and how does all that fit in? If you could just flesh that out a little bit, I'd, I'd appreciate it.

[13:17] Susan Simpson It is so oddly specific, and one possibility that to me seems to fit the best is that if they had the car already, and they tried to open it, they would know they could not open the trunk and could not see what was inside without having the keys themselves. So it's one fact about the car that they can ask Jay to try and verify or to try and prove that he had knowledge of her car and knowledge of the crime scene.

[13:42] Rebecca Lavoie I see, so they're laying the foundation, the theory goes, that he knows enough about the car that other things that he says are then also reliable. Is that the foundation that they're trying to lay with regard to the car stuff, you think?

[13:53] Susan Simpson It sounds like it, but it is so... just such a weird detail to include. It's hard to think of them spontaneously remembering to ask that question without having some experience or some knowledge that led them there.

[14:05] Rebecca Lavoie One of the things that you talked about, one of the details that changed between Jay's first interview and second interview, was that, um, Adnan had told him that he took Hae's purse out of the car, but then the purse, of course, was found in the car buried in the back seat. Why wasn't that purse itemized in the evidence they found in the car? These--this is one of those things that I just--it's hard for me, you know, as somebody who's looked at a lot of police files, as somebody who's been doing this kind of, you know, writing and reporting for a long time. They itemize *everything*. I mean, if they're itemizing gum wrappers and receipts and a... T-shirt, like, it's hard for me to imagine that her purse and the contents of the purse wouldn't be on that list.

[14:43] Susan Simpson Again, they would probably argue that, well, they didn't itemize every single thing in her car, so the purse was just one more thing that they didn't add to the list. But the purse seems like one of the first things you *would* include in a report because that's what you care about if you're trying to determine if there was a theft, if it was--what the motive was, and they obviously cared a great deal that her wallet was missing. So why never mention the purse again? Why have it just fall away from the narrative?

[15:08] Rebecca Lavoie One of the things we heard in Episode 5 that there were these, you know, 20--were they 20 individual unknown fingerprints or 20 sets of unknown fingerprints?

[15:16] Susan Simpson The problem with trying to count the fingerprints here and trying to understand what was found is that the notes are so incomplete, and the prosecution handed over reports that were illegible, basically. I've *tried* to r--reconstruct what they say. It can't be done completely. So, to the extent we can count the prints that were taken and that were not matched to Adnan, we have about 20-ish. But, again, that's making inferences based on inconsistent reports because sometimes a report will say there were multiple prints that were found and not identified. Then later on we'll have testimony or a different report that says one print, singular. So sometimes we can't be sure if it's more than one print. And if it's more than one print, we don't even know how many more than one it is.

[15:57] Rebecca Lavoie So, we, we see on procedural crime television shows, that when prints are found, you know, they get, like, run through the system. I think they call it, you know, "AFIS" on, you know, CSI or whatever. Were these prints run? Is there any documentation that they were or weren't run through any kind of system t--to sort of see who they might belong to?

[16:15] Susan Simpson Sharon Talmadge, the print examiner, testified that she ran 16 prints through a system. Sixteen does not appear--if the records are correct--to include all the prints that were found, but those 16 were put through the system and came up negative.

[16:30] Rebecca Lavoie So there were no hits, meaning that nobody who had been printed before, uh, matched the prints found in the car.

[16:36] Susan Simpson Correct. And for me, probably the two most important prints, the ones I am most curious about, are the two found on her rear-view mirror in the car because, if someone was driving her car around, what are they going to do? They're going to move the mirror so they can see better if it's not positioned for them normally. So, I feel like if there are prints of someone else in the car that are relevant, that's the most likely location for them.

[16:58] Rebecca Lavoie That and maybe the seat lever to adjust the position of the seat?

[17:01] Susan Simpson Well, they didn't, they didn't take those so... no.

[17:03] Rebecca Lavoie Okay.

[17:04] Susan Simpson They might have looked for them. They didn't find any there. But it's hard to know where they looked and where they did not. And on the subject of prints--this is not about Hae's car but Adnan's car--is that they never took prints of his car. They examined his car twice, and in the first report it says that per the direction of Detective MacGillivray, no prints were taken of the car. And the second time they tested Adnan's car, it says no prints were taken 'cause it's already been done.

[17:31] Rebecca Lavoie Hmm.

[17:31] Susan Simpson So which is it?

[17:32] Rebecca Lavoie Another thing that came out in the episode is related to Jay. Basically, my understanding was that when you were going through this part, what you were saying was that Jay was describing what Adnan had told him. And whether or not it allied with what had been seen from outside th--the car, I mean, that's what's kind of up for debate, but is that right, that he was describing what had been told to him? And then he described, you know, the trunk pop and seeing Hae's body in the car. One of the things that came out of this--and it was brought up a little bit in *Serial*, and I don't know if you guys know anything about it--is this issue around Hae's stockings? Can you talk about this issue around the color of the stockings as, as Jay was describing them to the cops in his interview?

[18:09] Colin Miller Yeah, it's interesting because before we played the whole clip about whether Jay said "red gloves" or "gray gloves", and a lot of people gave me feedback on this last episode and said, well, when Susan was talking about the jacket and we heard Jay's clip, he said "red jacket," and it clearly sounded like "red", as opposed to what sounded like "gray" in the context of the gloves. Well, yeah, in terms of the stockings, it's interesting because Hae is found with stockings that could be described as taupe stockings, and when he testifies at trial, he describes them as taupe stockings, but when Jay first--and this is in his second recorded interview, I believe, so after the car has been processed--when he first describes what Hae is wearing, he describes the stockings, and we have a clip there. And the question is did he in fact use the word "taupe" or did he use another word and eventually was led into using taupe at trial? And so--

[19:05] Rebecca Lavoie Let's just listen to that clip really quick and we can just come out of it and talk about it.

[19:09] Detective Ritz

...do you recall what type of clothing she's wearing?

Jay Wilds

Um, a black skirt, um, some, some like [inaudible] stockings, um, and uh, like a, a white blouse.

[Jay's first police interview, p.8]

[19:22] Rebecca Lavoie So, what does it sound to you guys like he said in that clip?

[19:26] Susan Simpson I hear "taupe".

[19:27] Colin Miller And I hear "coat". I've played it for a few people and they've heard it either "coat" or "tote". No one has said it sounds like "taupe".

[19:34] **Susan Simpson** Oh, I hear “taupe”.

[19:36] **Colin Miller** You heard tau--t-a-u-p-e or “tote”?

[19:38] **Susan Simpson** Yes. T-a-u-p-e.

[19:40] **Colin Miller** Okay.

[19:41] **Susan Simpson** I don’t hear “toast”, though, which is what is in the--

[19:43] **Colin Miller** Yeah, no one hears “toast”.

[19:44] **Susan Simpson** ...the transcript.

[19:45] **Colin Miller** Yeah.

[19:46] **Susan Simpson** I don’t know where the “toast stocking” came from. I actually was wondering for a while if it was “toe stockings” like “toe socks” or some things, but to me there’s a, a “t” and a “p” sound in it, so... But, again, I still find that weird because I’m not even sure I know what color taupe is, and it seems like the kind of detail you’d have in an evidence report and not something you would rattle off if you’re describing how you briefly saw someone.

[20:08] **Rebecca Lavoie** Yeah, that’s actually a detail that, that sticks out to me as well because, you know, it’s one thing for--I don’t know--I want to say like a career woman to know the difference between taupe and off-black. And, you know, all the colors that are very specific to stockings? I mean, those are very specifically, like, stocking colors. I think that’s really one of the only ways that taupe--maybe upholstery also--is used...

[20:30] **Susan Simpson** [*laughs*]

[20:31] **Rebecca Lavoie** ...sort of, in the vernacular, and that’s a question I would ask. You know, would, would Jay know how to--I mean, he might say pantyhose or he might say--I, I don’t want to--to get too far into the weeds with the speculation, but a high school kid knowing that a color of stockings was called “taupe” just to me seems really unlikely, not just in 1999, but, you know, I could ask my own son and, I don’t even know if he would know what to call stockings, in [*laughs*] particu--you know what I mean?

[20:53] **Susan Simpson** Well, Gutierrez had the same issue. She tried to bring this up in cross in a very confusing manner, and I agree with her that it’s odd. Um, it’s not going to get you much mileage because, maybe Jay *did* know what taupe stockings were and could identify them on sight, but it’s another detail that just doesn’t add up to what we would expect to find if the story was what the cops claim it was.

[21:13] Rebecca Lavoie One of the things that, Susan, you talked about that didn't make Episode 5 is that burying a body at Leakin Park at 7 p.m. doesn't make any sense. Eh, you've been there. What do you mean by "it just doesn't make sense in terms of the State's timeline"?

[21:27] Susan Simpson 7 p.m.'s the tail end of rush hour, and Franklinton Road is a frequently trafficked cut-through, and it's going to have a steady stream of traffic at that time of day. So trying to transfer a body out of the trunk immediately on the side of the road when a car can drive by at any second, no one's going to do that. No one is going to try and bury a body that way. It's just not gonna happen, especially since where it is right there, there's a turn just ahead so you couldn't even know if a car was about to come up on you. So you'd, you know, open the trunk, start taking the body out, and suddenly a car is coming right by and you're an inch from the roadside. They're gonna see you.

[22:02] Rebecca Lavoie Another thing that came up that was talked about in Episode 5 was Jay's *Intercept* interview, and one of the things he mentions is that he *didn't* see the body in the grave after all. What do you guys make of that?

[22:13] Colin Miller It's so tough for me--and this is--I was discussing a bit with Rabia on the previous episode--to consider how much of what Jay says in *The Intercept* interview is a concerted effort to correct errors at trial and how much is Jay just not having any real memory of what happened. So, for instance, in the interview he also says that Adnan skipped his final period class a--and ditched that when we know he was in the class, although he was late. And he also says that he dropped Adnan off for track practice *before* he killed Hae, which doesn't fit with any conceivable theory of the crime. So, from my perspective, I think a lot of Jay's *Intercept* interview is just... he was making stuff up back in '99; he's either forgotten or making new stuff up, up in 2015. I'm not sure how much of it is a concerted effort to try to tell a coherent narrative in 2014.

[23:04] Susan Simpson I think it's a combination. Part of it is he's going to naturally forget details. Whatever happened, he's going to have a different story now because people's memories do fade and order of events shift, but I have a hard time believing that the burial time could organically shift that much in his memory. And if it was a purposeful decision to change it, other than just Jay being Jay, it could be a way to explain why Jay's descriptions of the burial and why his description of the body are, one, inconsistent and, two, don't match the evidence. For instance, Hae was buried with her clothes largely pulled up and off of her, and that's a detail you'd think Jay'd--would recall. If she'd been buried with her body exposed, w-why doesn't Jay ever mention that?

[23:55] Rebecca Lavoie It also speaks to a very different kind of crime. I mean, that's a detail that doesn't really fit with any part of the State's narrative, right?

[24:01] Susan Simpson It doesn't.

[24:03] Rebecca Lavoie Colin, did the police test to see whether or not Hae was sexually assaulted before she was killed?

[24:08] Colin Miller Yes, so the police did this, but, unfortunately, as I'll discuss, it wasn't really able to be accurate based upon the passage of time. So the police--the State did a vaginal swab, an oral swab, and an anal swab, and they found elevated levels of acid phosphatase.

Acid phosphatase is an enzyme. It's secreted by the prostate gland, and so there's large amounts of it in seminal fluid, i.e. semen, and so if a person has elevated levels of acid phosphatase, that can be an indication that they had recent sexual activity. The problem is that that acid phosphatase from the semen starts to degrade, and so, really, it's not reliable 48, 72, maybe 96 hours after the person has had the sexual activity.

Hae obviously was found about a month after her death, and so the elevated levels of acid phosphatase can't show recent sexual activity. So why were they elevated? Well, acid phosphatase is also found in large degree in decomposition fluid. And so in this case then, the conclusion is likely: while Hae did have elevated levels of acid phosphatase, it was due to decomposition, not due to her sexual activity, and the test really couldn't test to determine whether, in fact, she was sexually assaulted based upon the passage of time.

[25:28] Rebecca Lavoie What about, you know, DNA tests that were ta--I mean, th--is this the big question about, um, you know, other samples that were taken and tested for the presence of DNA that could be related to her sexual assault?

[25:38] Susan Simpson They didn't test that.

[25:39] Colin Miller Right, they did do the PERK, the Physical Evidence Recovery Kit, which is out there, and right, Susan, as far as we can tell, while they did the kit, they haven't actually done the full testing on that kit?

[25:50] Susan Simpson Correct.

[25:51] Colin Miller That's--

[25:51] Susan Simpson They did take samples as well from her fingernails, so--

[25:55] Colin Miller Right.

[25:55] Susan Simpson ...those samples were taken, they were never tested, and it's possible that DNA could have been recovered from them, but we just don't know.

[26:01] Rebecca Lavoie Hm.

[26:01] Colin Miller Right, that's what the Innocence Project might eventually test because that would be alternate ways to determine whether there was recent sexual activity.

[26:09] Rebecca Lavoie Colin, we heard a large part of your conversation with Dr. Hlavaty, the Medical Examiner, in Episode 5. She talked about the lividity evidence, which you all, you know, really pointed to as being a key, key medical fact that, you know, really, really takes apart the State's assertion about burial time, about Hae being in the trunk of the car. Very, very important potential medical evidence there. There was another piece of medical evidence that didn't make Episode 5, and that was around the pulmonary edema. Now, you did speak to Dr. Hlavaty about this as well. She explained that evidence. You asked her some questions about it. First, she started with explaining what pulmonary edema is. Let's just listen to that clip:

[26:49] Dr. Hlavaty

Pulmonary edema is the frothy, uh, white or, uh, pink proteinaceous fluid that is within the [inaudible] lung, and it does contain, uh, some red blood cells, thus giving it its, uh, pink color. Um, but it is a non-specific autopsy finding. Uh, there are certainly certain types of death in which, uh, you are more apt to see, uh, pulmonary edema. Most notably these would be opiate narcotic drug deaths, or, uh, people dying of heart disease in which they're dying of heart failure. But it can be seen in any type of death and that would include strangulation.

Colin Miller

Okay, now, in this case there was a T-shirt with stains that was found by the driver's seat in Lee's Nissan Sentra. The State's claim at trial was that a strangulation caused Lee to have a pulmonary edema, and they claimed that this can cause this foamy blood to come out of the victim's mouth and nose right after death. They also claimed that whoever killed Lee likely then used that T-shirt to wipe away this foamy blood from Lee's nose and mouth after strangling her. Do you think that's a likely scenario in this case?

Dr. Hlavaty

Um, once pulmonary edema was produced as part of the mechanism of death, um, such as respiratory failure in opiate death, it usually doesn't just spontaneously froth up and emanate out of the nose and mouth. But when a body dies, it, it loses all of its muscle tone, so any fluid that is within the body--whether it be urine, uh, pulmonary edema, or stomach contents--uh, these can be expelled from the body if the body is placed in a dependent position, uh, meaning if someone was strangled and then after they died, they're tilted forward or perhaps placed prone on their stomach, certainly the fluid that would be within the lungs could then leak from the nose and mouth. It's also possible that during the initial struggle, uh, before the pressure could be tightly maintained on her neck and she was still alive and conscious, that she was coughing or gagging, uh, during this process and in that she could have, uh, produced a mucousy blood-tinged flu--fluid that could have escaped through her mouth.

Colin Miller

Okay, now, in this case the State tested the T-shirt, and they determined that the stains on the T-shirt tested positive for the presence of blood. They didn't do additional testing, though, and so were there additional tests the State could have done to determine whether, in fact, these stains were the result of this frothy blood from a pulmonary edema?

[29:19] Dr Hlavaty

N--not that I'm aware.

[29:21] Susan Simpson I've talked to three doctors about this case, and when I described the pulmonary edema issue, all of them had the same reaction, which I found interesting. And it was a variation of "Oh, so this was a drug overdose case". They assume that if pulmonary edema was showing up in the car somewhere, then she died from a drug overdose and that it was not connected to a strangulation.

[29:41] Colin Miller Yeah, I've talked to a number of people, too, and they all said either drug overdose or drowning. The State and the Medical Examiner, they say that the blood, the sputum coming out happens right after death; it can happen spontaneously. No, that's not right. You just heard from Dr. Hlavaty. Maybe if you flip the body, but usually it's, it's well after the death. It--it's very rare. Ah, again, in talking to a number of medical examiners, they had never seen a case of a pulmonary edema with strangulation. So, I mean, this whole story here that she was strangled in the car, blood come about immediately, and they--the killer wiped off the blood with a T-shirt doesn't match with the reality of pulmonary edema.

[30:19] Susan Simpson And then we have Bianca, the forensic analyst who says it's mucus. Clearly we have different opinions coming out based on photographs.

[30:26] Colin Miller Right, and the Medical Examiner, all she says is 'I looked at a photo of the shirt, and the stains look sort of pinkish as opposed to red, and from that it could be sputum from a pulmonary edema,' but that, I mean, that's--you can't make any conclusion based upon just looking at an image of a shirt. That's not medically reliable at all.

[30:44] Rebecca Lavoie Susan, you mentioned Salvatore Bianca there. Who was he, and how does he fit into the story?

[30:49] Susan Simpson Salvatore Bianca was a forensic analyst with the Baltimore crime lab. He testified at both trials in place of Van Gelder, who had done some of the testing but was apparently unavailable to testify.

Bianca's an interesting character to me because his testimony is kind of off the wall. He is inconsistent. He... I've not--never seen him; I have not seen tapes of him. But I kind of imagine sort of like a bumbling lab coat type because--oh, give an example: when he's talking about the testing of the hair and the fibers, he describes how after his initial testing was done, he goes back

and realises he screwed it up. He had hairs mixed in his fibers, so his reports, which have previously claimed there were no hairs, were blatantly wrong. And at trial he testifies that he considered just, you know, destroying it all to hide the fact he'd screwed up the test but then decided better of it, like, "No, that's not right" and does the test again. And the fact that he feels comfortable testifying to this, as one person I talked to described it, "It sounds like a guy who should've retired long ago."

[31:51] Rebecca Lavoie So was the T-shirt tested for any other fluids besides blood?

[31:54] Susan Simpson He said he saw mucus on it, but it was never actually tested for that--that we know. But it's seems like that was kind of angling to support the theory that it was either pulmonary edema or perhaps that it was used to muffle her during the strangulation. They don't bring it up again, and it's hard to know where they're going with it.

[32:09] Rebecca Lavoie Or it was a T-shirt she kept in her car to clean up...

[32:11] Susan Simpson As a wipe rag, yeah.

[32:12] Rebecca Lavoie Yeah, I mean, that, that's--

[32:13] Colin Miller Right.

[32:13] Rebecca Lavoie ...you know, that's, that--if she's using her car as a locker, I guess that's conceivable. Um, Colin, one thing we heard you say just there when you were reacting was that Bianca's testimony was based on a photo and that it wasn't medically reliable. And, I'm wondering, you know, when you talked to the ME and she's looking at photos, you know, what is the difference between this witness looking at a photo and making claims about what it means and to somebody looking at photos, you know, 15 years hence? And is it because the Medical Examiner's report also said fixed frontal lividity that you feel more confident in Dr. Hlavaty's looking at photos in making assertions, or...? I'd just like to hear you address that.

[32:45] Colin Miller Yeah, I think Dr. Hlavaty was very honest when she said on the episode that she, herself, wasn't able to confirm the lividity pattern just from looking at the photos. They're a low resolution in black and white. What she felt comfortable with, though, is, being someone who's a Medical Examiner herself--being able to look at the testimony, the autopsy report, seeing that the Medical Examiner in this case said it was fixed frontal lividity--her testimony to the same effect. So, she felt comfortable enough based upon the autopsy and the testimony to say that she did not feel comfortable just looking at the photos and making a conclusion based upon that alone.

[33:22] Rebecca Lavoie One of the things that came up during the episode that I think was really surprising--um, I saw a couple of people react to it on Twitter, and I know it surprised me--after the whole conversation about the turn signal and a couple of other points in the episode, Rabia sort of takes like the devil's advocate position a little bit. And she's like, "They wouldn't have shown

anything regarding the turn signal in court had it not been broken.” And, you know, I sort of felt in that moment like I was at a little bit of a lawyer’s conference, sort of listening into that. But I also felt like, you know, there really is this sense of, um, kind of the unknown, you know, even on Rabia’s part ’cause she seems so sure of so many things. And I’m wondering, does it surprise the two of you when, when Rabia plays devil’s advocate on the State’s behalf or on Jay’s behalf during these conversations?

[34:06] Susan Simpson Not really, because there’s so much we don’t agree on. I mean, there’s so much that we still don’t know and that we’re still trying to piece together.

[34:12] Colin Miller It, it’s the same as any case that I’ve worked on when I was in practice, is that--this goes back to the Rashomon effect--anyone’s going to look at any piece of evidence or argument a little bit differently. And I know, yes, Susan, Rabia, and I all have different theories. I mean, they, they sort of overlap somewhat but there’s lots of differences, and so, I think it’s good to really look at it from our different angles. And yeah, I mean, there’s times when I’ve had a theory or Susan or Rabia has, and s--yeah, oftentimes we agree, but oftentimes we, we do disagree, and I think that’s, that’s good to sort of further the debate and explore all the avenues.

[34:45] Rebecca Lavoie I think that’s an interesting thing to hear because I think that there is, you know, to some sense a perception that the three of you are like one hive mind, sort of, you know, *[laughing]* working toward a common purpose. And, I know you a little bit, and I can tell you that what I sort of perceive from your interactions with each other is that, you know, you have different backgrounds, and it’s a question of finding what’s true. It’s a question of sort of exploring what wasn’t explored and asking why. And it’s a question of whether or not there was a full process here with justice around this trial. Do you think that that’s accurate, you know, to sort of, especially I, I’m not going to ask you to sort of categorize where Rabia is coming from, but is that an accurate portrayal of where the two of you are coming from when you’re looking at all these little bits here and there and weighing what they could mean?

[35:29] Colin Miller Yeah, it’s interesting because it’s really tough to get into someone else’s mindset. I, I mean, I come from a--I’ve always been someone who’s predisposed to try to sort of tear things down and have more of a defence perspective. There’s a thing known as a “prosecutor’s fallacy”, which is that oftentimes there is a groupthink among prosecutors and that’s how you get the type of tunnel vision that leads to a lot of wrongful convictions. Whereas, from my perspective working on the defence side in a lot of cases, I feel like it’s much more a process where different avenues are pursued an--and, you get to your eventual theory by bouncing these different ideas and theories and, and coming to some type of consensus on, “Okay, this makes the most sense.” Whereas, I think a prosecutor or the police approach it from a very different perspective.

[36:14] Susan Simpson Um, my focus has always been not necessarily on the case itself directly but sort of investigating the investigation. It’s been 16 years now. We don’t have a lot of the facts; we don’t have the basic evidence that they would’ve had back then. So we can’t really investigate

that the way we'd need to in order to solve this case. What we do have in great quantity is the investigator's own notes and reports and findings. And even if we can't look directly at the underlying evidence we *can* look at their reports and piece together what they were doing and from there figure out what they were looking at. This includes things that they were looking at and they didn't actually include in their reports. So, it's kind of working backwards in a way, but I feel very strongly that we can show here that what the investigators did was not appropriate and not a good investigation--and, frankly, at times not constitutional--even if it's harder for us to actually draw solid conclusions about what did happen to Hae Min Lee.

[37:16] Colin Miller I'd like to thank Rebecca for helping us out with this week's episode of the *Undisclosed: Addendum*. Now, once again, this week you heard about how both the Baltimore County and Baltimore City police departments were involved in investigating the death of Hae Min Lee. But it turns out there's actually a third law enforcement agency that was involved in investigating this case, the DEA. Next time on *Undisclosed*.

[37:43] A special thanks to Ramiro Marquez for our theme music and photography; to Christie Williams for our website; to Ballookey, who designed our logo; and to Amar Nagi, our sound editor. Our executive producer is Dennis Robinson. You can find us online on social media on Facebook and Twitter. Our Twitter handle is [@Undisclosedpod](#). Tweet us your questions and comments using the hashtag #Undisclosed.

[38:17] Do you own a car? Then you know how expensive it is. From a recent AAA study, your car costs you \$9,000 a year. Ouch. But what if your car paid *you* instead? Enter RelayRides. RelayRides is a peer-to-peer car rental company. You can rent out your car on RelayRides and earn as much as \$1,000 a month. RelayRides pre-screens each renter and offers \$1,000,000 insurance. A special offer for *Undisclosed* listeners: earn an extra \$100 when you sign up today for free at relayrides.com/undisclosed.

[38:52] The *Undisclosed* podcast is brought to you in part by the Adnan Syed Trust, a legal defense fund that helps to pay Adnan's legal fees and associated investigative efforts. All proceeds raised through advertising on today's episode of *Undisclosed* were given to the trust. To learn more about the trust and to donate to our efforts to free Adnan, please visit www.launchgood.com/freedadnan.

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