

UNDISCLOSED, the State v. Adnan Syed

Episode 1 - Adnan's Day

April 13, 2015

[0:00] The Undisclosed podcast is brought to you by the Adnan Syed Trust. The Adnan Syed Trust is a legal defense fund established by concerned citizens and friends of Adnan Syed to pay for Adnan's legal bills and investigative efforts that aim to contribute to Adnan Syed's exoneration. Adnan Syed's attorneys are not trustees or organizers for the fund. For more information, and to donate, please visit www.launchgood.com/freadnan.

[0:29] Female voice Adnan Syed... Mr. Syed, you've been indicted by the Grand Jury sitting in the port city of Baltimore on charges of homicide...

[0:42] Rabia Chaudry Hi. Welcome, and thanks for joining us on the very first episode of the new podcast *Undisclosed, the State v. Adnan Syed*. My name is Rabia Chaudry, and I'm really excited to bring this podcast to you with my colleagues, attorneys Susan Simpson and Colin Miller. Now before I tell you what the podcast is about, it's best that I start by telling you what it is not about. This podcast is not *Serial, Part II*. We have no affiliation to *Serial* or to the amazing team at *This American Life*. We are completely independent, we're a team of volunteers, and we're only connected to that podcast because we're examining the same case, but... having said that, if you actually haven't heard *Serial*, you have to go back and listen to that before you start listening to our podcast because we're going to be referencing both people and events... like the Nisha call and the Leakin Park pings that you already should have some background on--otherwise none of this is going to make sense. Now... to tell you what *Undisclosed* is about. We are not journalists or podcasters. We're three lawyers, who are interested in the minute details of the case of *The State v. Adnan Syed*. We like getting into the weeds, and we plan on taking you with us.

This is not going to be a beautifully crafted narrative like *Serial*, but it will be a run down many rabbit holes in the case. We aim to bring some new analysis to the things you already heard, share some things you probably never have heard, and answer some of the most frequent questions that I get asked as I talk about the case and about *Serial* across the country.

I'll start by telling you a bit about myself. I am an attorney with a background in immigration and civil rights law, but for the past few years I've been working in the national security sector. I'm currently a national security fellow for the New America foundation, and I do some independent consulting in national security. I also happen to be someone who is connected to the case on a very deep and personal level. I've known Adnan since he was 13, and he is my younger brother's best friend. Our parents have lived in the same neighborhood for a very long time, almost 20 years. And my family and I have been there through Adnan's arrest, through his conviction, uh, through the appeals over all the years, and after 15 years of frustration with the appellate process, I decided that it was time to get a journalist to look at this case. And that's

why I reached out to Sarah Koenig. So. That means that I'm not necessarily an unbiased observer in this podcast. I do believe Adnan is innocent, but I'm open to objective analysis by others, and I'm glad to have Susan and Colin here because they're going to be providing that. Uh, just for the record, I never met or knew Susan or Colin before *Serial* began and before they began writing about the case, but boy am I glad I got to know them. So I'm going to turn it over to Susan and Colin for them to introduce themselves. Susan?

[3:26] Susan Simpson Hi, I'm Susan Simpson. I'm an associate with the Volkov Law Group, where I focus on white collar defense and corporate compliance. I am also a blogger at *The View from LL2*, where I've been writing about Adnan Syed's case since shortly after I first started listening to *Serial* back in November of last year. I spend a lot of time trying to break down what it is we actually do and do not know about this case, and I found that the established facts are few and far between. I've also written extensively about the cell phone evidence used at Adnan's trial, and at this point I'm pretty sure I've memorized the location of every AT&T cell tower within a 5-mile radius of Woodlawn High School.

[3:58] Colin Miller Hi, this is Colin Miller. I'm an Associate Dean and Professor at the University of South Carolina School of Law. I'm also the creator and editor of *EvidenceProf Blog*. When I started listening to *Serial* last fall, I was immediately taken by its voice, the narrative, the near-granular attempts to get to the bottom of the terrible tragedy that was the death of Hae Min Lee.

On its own terms, *Serial* was wildly successful. That said, in the very first episode Sarah laid out those terms: she wasn't a detective, not a private investigator, not even a crime reporter. As such, the podcast wasn't an attempt to delve into the complicated legal issues that surrounded the prosecution of Adnan Syed. It was those legal issues that led me to start blogging about the case and eventually to my participation in this podcast.

I hope through this podcast we can explain to you some of the complicated and thorny legal issues surrounding that prosecution and maybe in the process, get just a little bit closer to the truth.

[4:52] Rabia Chaudry So we are going to begin our investigation of what actually happened on January 13th, 1999, by starting with Adnan and his day. Uh... there is a bit of a misperception that Adnan has absolutely no recollection of his day whatsoever. I get asked this question all the time, um... at talks that I do... People message it. They tweet it at me. "How come Adnan doesn't remember anything?" That's actually not true. Uh, Adnan did remember, um, many portions of the day and, in fact, he had made notes, um, to that effect that he had given to the attorney in September of '99, um... and, you know, breaking down what he remembered... different periods and stuff. So what we're going to do is, we're going to take what we have from Adnan, and then we're going to take all the statements that we have, from testimony, to police statements, to some of the Grand Jury stuff, and... try to corroborate, um, what Adnan has said,

and try to figure out who's not remembering correctly and who is remembering correctly, and really try to nail down what he was doing and where he was at all day on January 13th.

[6:03] Susan Simpson We've picked four time periods from that day to look at: that morning when Adnan arrived at school, that afternoon when school was let out, later on that afternoon during track practice, and that evening after Jay picked Adnan up. Before we start looking at witness statements, though, it's worth nothing that we've got about as many stories about what happened January 13th as we've got witnesses.

[6:22] Colin Miller This isn't surprising because there's a memory deficit known as "confabulation". This is taking events that occurred across multiple days and believing they occurred all in one single day. Happens in courtrooms across the country every single day, and it's something to keep in mind as we look into the witness statements at Adnan's trial.

[6:40] Susan Simpson The fact that a witness remembers an event occurring on a certain date isn't great proof that it actually did occur then--particularly when the witness wasn't asked about it until months later. So for any given statement in this case, it shouldn't be accepted that the witness is actually remembering events that occurred January 13th without some sort of independent corroboration beyond that witness's own statements.

[6:59] Colin Miller We have two witnesses with the recollection of seeing Adnan at the start of school on January 13th, 1999. The first of those is Debbie. A fellow Woodlawn student, she was a friend to both Hae and Adnan. Debbie remembers Adnan being tardy, arriving at 8 o'clock, 8:05 in the morning that day.

[7:15] Susan Simpson Probably not right about that...

[7:17] Colin Miller We have the attendance records for Adnan, and he wasn't marked as tardy on January 13th. Now you might be wondering, is it possible the teacher forgot to mark him as tardy? Certainly possible, but... what we see is that Adnan was marked as tardy several other days in January 1999. Most notably, before the 13th he was marked as tardy on January 5th and January 12th.

[7:37] Susan Simpson Then... Debbie's just thinking of the 5th or the 12th, rather than the 13th.

[7:41] Colin Miller Well, it's certainly possible, but as I'll note later, in her statement Debbie has a clear recollection of talking to Adnan after school as he was on his way to track practice. The problem with the 5th and 12th is, Woodlawn didn't have track practice those days. They were competing in track meets that were not at Woodlawn.

[7:57] Susan Simpson Other possibility is that Debbie is right about it being January 13th, and just wrong about Adnan being late to school that day.

[8:03] Colin Miller Yeah, that's possible, but... Woodlawn had "A" days and "B" days. On "A" days, both Debbie and Adnan had Social Science, on "B" days, they had AP English. In Debbie's statement, she seems to recall January 13th being an "A" day with Social Science. Well, in fact, January 13th was a "B" day with AP English. This was the class in which Adnan indisputably gave a stuffed reindeer to his friend, Stephanie, as a birthday present.

[8:27] Susan Simpson Well... almost indisputably, anyway. Adnan recalls giving her a stuffed teddy bear, not a reindeer. But I'm inclined to credit Stephanie on this one. Anyway, the second witness to see Adnan that morning was Krista:

[8:38] Krista

Adnan was on time for school that day, and I feel like we may have even walked in school together... And I remember that Hae was--'cause photography class was right across the hall from the steps to go down to the next floor--and Hae was there, and that's when they had the conversation... about the ride.

Susan

And... I'm creepy enough where I have checked where locations were in the school...

Krista

Uh huh...

Susan

...and her school records and, yes, she was right down the hallway...

Krista

Right.

Susan

...for her first period.

[9:04] Susan Simpson It's worth noting that Krista's memory now of that conversation is different from what it allegedly was back in March '99 when she gave a police interview. But... as we will discuss in a later episode, there are reasons to doubt the accuracy of that report. Here's what Krista remembers now:

[9:17] Krista

They had a really quick conversation, but it was kind of like, um, Adnan said to her, "Hae, could you think you could give me a ride after school?" and she said, "Yeah, no problem." You know... "I'll talk to you later." And... that was pretty much it.

Susan

And it's the last time you saw her?

Krista

That was the last time... um, I may have seen her in English class, but that's the last time that I can remember hearing her voice.

[9:38] Susan Simpson Krista correctly recalled that January 13th was a "B" day. It's still possible that Krista's remembering some day other than the 13th, but based on events that occurred later that day and in the weeks following, her memory is on more solid footing than that of many other witnesses.

[9:53] Colin Miller Let's now turn our attention to the end of the school day on January 13th, 1999. We have two witnesses who recall seeing Adnan either at, or immediately after, the end of school at 2:15 p.m. The first of those is Becky. She recalls walking to the guidance counselor's office at about 2:20 p.m. She was accompanied by Aisha, her friends, and possibly Krista. While walking down the hallway, Becky recalls seeing Adnan and Hae walking in opposite directions and briefly making contact. In reference to the ride request mentioned by Krista before, Becky recalls Hae saying to Adnan, "Oh no, I can't take you. I have something else to do." She didn't say what else. In response, Becky recalls Adnan saying, "Okay, I'll just ask someone else."

[10:34] Susan Simpson When she testified at trial, however, an important part of this story was missing.

[10:39] Colin Miller She's asked by defense counsel what she recalls Hae saying to her immediately after the end of school. According to Becky, "She just said that she had to be somewhere after school. She didn't tell me where she was going, but she said she had to leave." Becky then recalls Hae heading to the door that led to her car.

Unfortunately, defense counsel doesn't ask whether Adnan is part of this conversation or indeed the recipient of the information about Hae having to be somewhere after school. Question then becomes: did defense counsel drop the ball? Did she have strategic reasons for not mentioning Adnan? Did Becky forget Adnan being part of the conversation?

[11:14] Susan Simpson Or maybe she was never given a copy of Becky's statement in the first place.

[11:18] Colin Miller Not entirely sure. What we do know is, when Becky was interviewed by Sarah for *Serial* last fall, she was read her statement about Hae saying to Adnan she couldn't give him a ride because she had something else to do. In response, Becky said, "Okay, yeah. That sounds right. It kind of all comes back a little bit."

This takes us to Aisha and Krista, the other two people mentioned in Becky's police statement. Aisha was called as a witness for the prosecution at trial. When asked about seeing Hae at the

end of school, she responded, “Yes, I remember seeing her.” When asked what she was doing, her response is, “I saw her talking to Adnan.” Now, the prosecution uses this evidence as part of its closing argument to prove Adnan had to kill Hae. After all, he had asked for a ride earlier in the day... Aisha saw the two talking at the end of class... Unless something strange happened in those next few minutes, it’s reasonable to believe Adnan got that ride and at the end of the ride killed her. There’s only one problem, and that problem comes in the form of Krista.

[12:16] Susan Simpson We don’t know what Aisha told the police. The report of her interview was very brief and wasn’t even written until two and a half weeks later. All it says is that Aisha saw Hae that afternoon at 2:15 p.m. and that Hae was in good spirits, and she did not mention any problems. Based on the report, you’d think that Aisha hadn’t really seen anything relevant to the case. But Krista talked to Aisha early in the evening on January 13th, and she says Aisha did see something important:

[12:48] Krista

When I... when we were talking, she said that she had heard from Hae’s brother and that they couldn’t find Hae. So, when I explained to her, you know, “Well, in first period class I heard... um, Adnan asked Hae for a ride. Has anybody talked to him?” and she’s like, “Well, no... but... in Psychology she said that something came up, and she wasn’t able to give him a ride anymore, so she didn’t take him anywhere after school.”

[13:13] Colin Miller Wow, Krista’s statement is pretty shocking. The jurors at Adnan’s trial were given every reason to believe he requested a ride from Hae, that Hae agreed to give that ride, and unless something strange happened, he received that ride. As it turns out, if we believe some combination of the statements by Krista, Aisha, and Becky, something came up for Hae toward the end of the day. She had somewhere else to be and something else to do. And unless Adnan was able to get into her car by hook or by crook, that ride didn’t take place. Now the question is, if defense counsel asked any of these witnesses about something coming up for Hae, would they have provided testimony that helped Adnan? Certainly seems to be the case, but... with witnesses you never know, and never is that more clear than with the two witnesses who apparently saw Adnan *after* the immediate aftermath of school, those witnesses being Debbie as well as Asia.

As noted before, in her statement to detectives on March 26th, Debbie recalled seeing Adnan after school on January 13th, 1999. Specifically, she recalled seeing Adnan at about 2:45 p.m. at the guidance counselor’s office, along with some other students. She recalled Adnan having his gym bag and talking about him going to track practice. In that same interview, Debbie recalled seeing Hae between 2:45 p.m. and 3:15 p.m. on the afternoon of the 13th. That said, for reasons we’ll discuss in a later episode, by the time trial rolls around, the prosecution has written Debbie out of its timeline. Its claim at trial is that Adnan has strangled Hae in the Best Buy parking lot by 2:36 p.m., at which point in time he makes a phone call from the Best Buy payphone asking to be picked up. That said, the prosecution does call Debbie as a witness, primarily to read from Hae’s diary and to discuss the relationship between Hae and Adnan.

During cross-examination, defense counsel covers largely the same grounds. She says she has no further questions, and you can almost imagine her in your head, about to sit down and done with her interrogation of Debbie. At that point, however, defense counsel has a bit of a Columbo moment. She pulls out the March 26th statement, she says, in effect, there is just one more thing, and she asks Debbie, “Do you recall telling detectives that you saw Adnan at the guidance counselor’s office at 2:45 p.m. on January 13th?” Debbie’s response? “Yes.”

It’s hard to underscore how important this testimony would’ve been, had Adnan’s first trial ended in a jury verdict. Here we have a prosecution witness becoming an alibi witness. Prosecution’s claim is, Adnan has killed Hae at Best Buy by 2:36, and here we have Debbie repeating her claim she saw Adnan still at school, 2:45 p.m. on his way to track practice.

Now, of course, the first trial didn’t end in a jury verdict. It ended in a mistrial after the judge referred to defense counsel as a liar. So your question at this point might be, what happened between the first trial and the second trial?” Let’s fast forward. About two months later, Debbie is again called as a witness for the prosecution, again the prosecution’s claim is that Hae has been killed by 2:36, and again prosecution writes Debbie out of the timeline. Well, cross-examination, defense counsel pulls out the statement from March 26th, she’s cross-examining Debbie, and here are the two most important Q&A’s from that cross-examination:

Question: “And you told them you saw Adnan on that day” referring to the 13th “before he went to practice?”

Answer: “I don’t remember.”

Question: “And you recall that you also told them that you spoke to him and some other kids?”

Answer: “No.”

That’s the difference between guilt and innocence. It’s my firm belief that if Debbie simply repeated her testimony from the first trial at the second trial, we would’ve had a not guilty verdict, Adnan would be an innocent man. Now, of course, that leaves the question “Would that be an innocent man being set free, or a guilty man being sent free?” It’s unclear.

At first, Debbie is quite certain that she saw Adnan on January 13th. Later in her statement to detectives, however, she says, “Could’ve been the day before, could’ve been the day after.” Again, there’s a problem, though. The day before January 13th, as I said before, January 12th Woodlawn didn’t have practice. They had a track meet. The day after January 13th, January 14th was a snow day. There was no school, and therefore no track practice. So the question becomes, once again, did Debbie have the right day? Did she see Adnan? Did she see him at 2:45? And would that have exonerated Adnan had she given this testimony at trial?

[17:48] Rabia Chaudry Hmm... well, that’s interesting. I mean... I wonder what happened in those two months? Right, I mean, it’s quite disturbing that a witness’s testimony would change

from trial one to trial two, and... I really... want to find out why at some point. But, um, so let's, uh... just taking a look at Adnan's day, and we're at the end of the school day, and it seems like, um, what he remembers of the school day does pretty much match up to other witness statements... Uh, it seems pretty corroborated that when he says he was in school, he was in school, and when he says he went off-campus that day, he was off-campus, which takes us to 2:15, which is the end of school. And it's when they're dismissed. Um, Adnan had told me that essentially between dismissal and track practice, which is about an hour later, he would just kind of tool around school. Um, he would either hang out in school with friends, or he would go to the library, um, check his email. And, um, part of the problem was, you know, when he got to trial, he had no way to verify for sure what he was doing on the 13th because his recollection of being with Asia, in fact, was not, um, supported when Gutierrez told him that the date didn't check out. So, let's pick up there and, um... let's, uh, let's talk about Asia, Colin.

[19:12] Colin Miller Similar questions surround Asia McClain, the other person who claims to have seen Adnan on the afternoon of January 13th. Asia, you might recall, is the person who says she saw Adnan at the library that afternoon, she sent letters to Adnan to that effect on March 1st and March 2nd right after his arrest, and she's the centerpiece of Adnan's current claim of ineffective assistance of counsel based upon his trial attorney's failure to contact her before trial. Now, in a future episode, we'll focus upon Asia's recollection of seeing Adnan on January 13th. What I wanted to do now, though, was to focus upon Adnan's recollection of seeing Asia on January 13th.

In his post-conviction review proceeding in 2010, Adnan testified to the following: he remembers going to the library on January 13th; he was there to check his email; he remembers this being January 13th because the next two days, January 14th and January 15th, were snow dates; while there, he recalls seeing Asia McClain and then her boyfriend. According to Adnan, he was at the library until about 3:00 when he left to start getting ready for track practice, and track practice started at 3:30. Now, is it possible that Adnan is lying? Sure. It's also possible he is mistaken. What seems abundantly clear, however, is that his story in 2010 is consistent with the story he told in 1999. In 1999, Adnan's attorney sent a law clerk to prison to talk to Adnan on July 13th, and we have the notes from that interaction. Pretty short.

At the top, we have a note about Adnan working together with Debbie about putting together Hae's school assembly. At the bottom, we have Adnan's school schedule from January 13th. And in the middle, we have a series of four notations. The first notation has Adnan's email address, as well as the password "poppy". This was created by Hae. It was the pet name that she used for him. The second notation says, January 14th to January 15th snow days. The third notation says, Asia McClain saw him in the library at 3 o'clock. Asia's boyfriend saw him, too. And the fourth notation says, track starts at 3:30.

Now again, could Adnan have been lying in 1999? Sure. Also could've been mistaken. But again, what seems abundantly clear is, these notations corroborate Adnan's testimony in 2010. If he was telling the truth in '99, it's likely he was telling the truth when he testified in 2010.

[21:38] Susan Simpson Asia wasn't Adnan's only alibi witness for that day. A second witness also saw him after school: Coach Sye, his track coach. Back at the time of Adnan's trial, though, no one realized this because Coach Sye said he couldn't be certain about the date. But he did remember having a conversation with Adnan on a "warm day" in January, with temperatures in the 50s, "towards the end of Ramadan." That practice stood out to him because the indoor track team had been able to practice outside for once, and he remembered talking to Adnan on the far side of the track, close to the stream, while Adnan was stretching. Coach Sye had asked him about Ramadan and fasting and what it meant, and they'd talked for a bit. And Coach Sye said, on the day this talk happened, from what he remembered, Adnan was there on time and left on time.

But even though Coach Sye didn't recall the date of this conversation, it turns out that that date could only have been January 13th. Assuming his memory of practicing outside was correct, there's no other day it could've been. During the last two weeks of Ramadan, there were only two days on which the temperatures went above 40 degrees: January 12th and January 13th. On both those days, the weather was in the 50s. There was no track practice on January 12th, however, as the team was at a track meet that day--Coach Sye was definitely there; Woodlawn took first place.

That leaves us with only January 13th, and that means that Coach Sye can confirm a significant chunk of Adnan's alibi for that day. Adnan, for his part, has a clear memory of being at track. In fact, back in March of 1999, he told his attorney that he was sure he'd been at practice that day because he remembered talking to his coach about the prayers he'd be leading at mosque the next day on the 14th.

That Coach Sye remembers Adnan being there on time that day is also a contradiction to all of Jay's stories. In every account he has given, he's told the cops and the prosecutor and the jury that Adnan showed up late that day to practice--in fact, as much as an hour or more late.

[23:23] Detective

What time do you take him back to school?

Jay

Uh... I don't recall. The sun was going down. Ah, I don't... [inaudible] ...track practice.

[23:33] Susan Simpson Sunset was at 5:04 p.m. that day, so according to Jay's story, Adnan left Patapsco State Park for practice at about 4:30 to 5 p.m.... which means Adnan only got there about a half hour before practice ended. It's unlikely the coach would've recalled him being there on time if he showed up that late. Of course, Jay also seems to think that practice ended at 6:45 p.m. when the coach said it ended at 5:30.

[23:56] Detective

How do you know what time to get back to school?

Jay

He called me on the cell phone again.

Detective

Do you recall what time he called you?

Jay

Um, maybe like... 6:45, something like that.

[24:07] Susan Simpson Second interview to the cops, he doesn't say what time Adnan goes to practice, but based on the phone calls he says Adnan received as they were driving to Woodlawn High School, Adnan didn't show up 'til after 5 p.m. Here's how Jay describes or, at least, tries to describe the trip back from Patapsco State Park to Woodlawn High School.

[24:25] Jay

We leave there... um, I believe... Can you bear with me for a minute? Ah... [*knocks*] um, okay, we left there... I... take him... I took him back to school, and, and I dropped him off.

[24:46] Susan Simpson Jay does that a lot, by the way, that thing where he sounds like an actor who's forgotten the next line. Luckily, the detectives are always willing to help him out. They give him time to think about it. They give him hints, suggestions, reminders... Their influence can likely be seen in the fact that, by the time of the second interview, Jay's story about when track ended moves closer to the truth.

[25:08] Jay

Ah... I remember that track practice got out at about quarter-to-six, so that's, that's when I left.

Detective

And how did you know that, uh?

Jay

Yeah, I still had his cell phone. He called me.

Detective

He called you?

Jay

Yes.

[25:19] Susan Simpson I can count on one hand the number of things that Jay has been consistent on in every story he's ever told. But here's one of them: Jay has maintained from the start that Adnan was late to practice that day.

[25:28] Detective

Did he talk about any, anything that he had to do at practice?

Jay

He just said he had to run a lot, that he was late.

Detective

He had to run?

Jay

Yeah. And that he was late.

Detective

That he was late?

Jay

Mm-hm.

Detective

Getting there?

Jay

Yeah.

[25:39] Susan Simpson But even though Jay's story is consistent, it's still wrong. It's also worth noting that Jay wasn't just wrong about Adnan being late or what time practice ended, he's also wrong about Adnan having to run quote unquote "a lot"... because Adnan definitely wasn't running a lot that day. It was Ramadan, and he was fasting. As a result, Coach Sye wouldn't let him practice with the rest of the team. Instead, he'd send him for light jogs around the track.

I don't know why Adnan's attorney didn't realize that Coach Sye had seen him at track that day. Maybe she never received copies of the police note that show January 13th was the only day he could have been talking about, or maybe she did get them and didn't understand their importance. Either way, Coach Sye has a very specific and credible memory of Adnan not being late for practice that day. Although Jay's stories make up for in variety what they lack in credibility, there is no reason to credit any of his versions of events over the singular statement given by Coach Sye. Adnan was almost certainly at practice that day and on time, and by his coach's judgment, acting totally normal.

Adnan's memories of what happened that day are less clear following track practice. Why? Because it wasn't until nine months later that Adnan and his attorneys even found out that anything that took place after 4 or 5 p.m. was relevant. At trial, the State claimed Adnan and Jay had gone to Cathy's together, at about 6 p.m., but Cathy wasn't even disclosed as a witness until September--one month before the scheduled trial date.

[27:06] Rabia Chaudry

Adnan does remember going to Cathy's apartment with Jay exactly once. He didn't really know Cathy. Um, he also didn't really know Jen, and I think Cathy and Jen were friends. But he happened to be with Jay at some point, and they went to the apartment. Now, uh, Adnan himself has never been able to verify that it was on January 13th. The first time he ever, um, realized that it was part of the state's case, or narrative, or it figured into anything at all, was at trial. Um... and he just is not able to say for sure or not whether the visit was on that day. But what he does remember is that when he got the call asking about Hae Min, he was in his car and he was not at her apartment.

[27:51] Susan Simpson So did Adnan and Jay actually go to Cathy's apartment that night? I'm skeptical. Because if Adnan and Jay really did visit Cathy's on January 13th, then why is almost everything that Cathy say about it at odds with everything Jay says? Their stories can't be reconciled. Either Cathy is completely wrong about everything that happened, or Jay is.

Adnan's trip to Cathy's happened at some point, just probably not January 13th. Significantly, neither Jay nor Jen remembered Adnan going to Cathy's in their first statements to the police. In fact, in Jay's first story, he never mentioned visiting Cathy or Jeff at all. Here's what he says about where Adnan was when the cops called him:

[28:23] Detective

When he gets a call from the officer...

Jay

Mm-hm...

Detective

...where are you guys? Are you up at the Park and Ride?

Jay

No, we're at a restaurant. We were sitting down to eat.

Detective

Where exactly? What, what's the name of the restaurant?

Jay

Um, I think McDonald's on Rolling Road.

[28:34] Susan Simpson By trial, though, Jay has gone from saying he made zero trips to Cathy's to saying that he made three trips that day: once at about 4:30 p.m., once at about 6 p.m., and once at about 10 p.m. These three new trips appeared after the cops made some mistakes interpreting the cell data, which led them to falsely conclude that Jay had been at Cathy's from 4:30 p.m. to 5 p.m. I won't go into technical details here--you can find them on my blog--but long story short, the cops... screwed up. They misread the cell data, and they thought it was saying that Jay was at Cathy's from 4:30 to 5, even though he wasn't.

Consequently, in Jay's second interview, his story changed to match the cops' misconceptions. He told the cops he'd been at Cathy's three times, just like they thought--even though it's completely impossible for the first trip to have occurred. For one, Cathy wasn't even home then, which means Jay couldn't have been hanging out with her and smoking a blunt like he says he was.

So we know Jay's willing to lie about going to Cathy's even when that lie is easily disproven. That leaves us with Cathy. Why does she think Adnan's trip happened on January 13th? Well, as it turns out... because the cops told her it happened on the 13th. At the second trial, here's what Cathy testified to:

Question: "And on the day, a month later when that day came up in conversation, did you remember that it was on the 13th of January?"

Answer: "I don't think I remembered the specific date, no."

Question: "Somebody told you that date, did they not?"

Answer: "I think it was Detective MacGillivray."

Question: "Detective MacGillivray. You did not have any independent recollection of your own the day this person came with Jay occurred actually on the 13th?"

Answer: "No, I don't think so."

[30:05] Susan Simpson This is where it gets a little bit fishy. Detective MacGillivray was feeding information to Cathy that he shouldn't have possessed in the first place... because Cathy was interviewed on March 9th, and at that point, neither Jay nor Jen had ever mentioned the Cathy trip to the cops. So... how could MacGillivray have told Cathy what day Adnan and Jay visited her when, at least officially, no one's ever told *him* that Adnan and Jay went to Cathy's at all?

So Cathy's memory of Adnan's trip to her house isn't entirely organic. It's been influenced by the cops. And... based on the details she does remember, what she's describing doesn't sound like January 13th, like what Jay was wearing that day. Here's what Jay said he had on:

[30:44] Jay

Um... I think I had on a pair of tan jeans, some work boots, and a plaid coat, like a wool plaid coat.

[30:50] Susan Simpson Cathy's memory is slightly different:

[30:54] Cathy

Uh... maybe a black coat. I can't really remember. A black hat... or like a fisherman's hat with a string.

Detective

Okay, and it's...?

Cathy

And it's black.

Detective

Black.

[31:01] Susan Simpson And Jay says that between his second trip to Cathy's and his third trip, he changed his clothes:

[31:05] Detective

When you went back to your house after Adnan dropped you off, did you change your clothes?

Jay

Yes.

Detective

And what did you do with the clothes?

Jay

I put them in a plastic bag...

[31:13] Susan Simpson Cathy doesn't remember that:

[31:15] Cathy

I think I would have noticed if he had changed clothes, so I'm thinking that, no, it was the same outfit.

[31:21] Susan Simpson And here's what Cathy says Jay was talking about when he and Adnan came to her apartment:

[31:24] Cathy

When Jay came in, he was telling me that they were going to go to the movie store and then they were going to meet up with Stephanie...

[31:29] Susan Simpson She also testified that Jay told her that he and Adnan had been "picked up" by someone, but she was never clear who:

[31:37] Cathy

So I was, like, "So, wait a minute, who's coming to pick you up here? And... I never really got it figured out..."

Detective

Okay.

[31:45] Susan Simpson And... here's the problem. Everything that Cathy remembers Jay saying that night involves references to events that would not have been happening on January 13th. She says Jay and Adnan were either coming from or going to a video store, which definitely didn't happen according to every other story Jay's given. Jay did work at an adult video store that was not far from Cathy's apartment, and he often had Adnan drop him off at work, but if that's what Jay was talking about, the Cathy trip wasn't on January 13th. He didn't begin working at the adult video store until January 31st. Also, Stephanie had an away basketball game that night. She didn't get home until 10 p.m. Adnan and Jay couldn't have had plans to go see her because Adnan was at mosque by then.

Then there are the references Jay made to being "picked up" by somebody at Cathy's apartment. But unless there was a third conspirator in the murder, that wouldn't have been happening either.

Then there's the biggest problem of all--the phone call. The one Cathy overhears and thinks is so incriminating. Cathy believed that Adnan was talking to a friend, and in *Serial*, she said it sounded like a "best friend" even. Now, compare Cathy's description of that phone call with the phone call that Jay says happened:

[32:46] Jay

We stay there for a while until, uh... we're interrupted by a phone call. He wakes up, and he answers his phone. He, uh... it's, uh, Hae, Hae's family. They're looking for Hae... He tells them he has no knowledge where she is.

[33:00] Susan Simpson Jay says the only person who called while they were at Cathy's was Hae's brother. Cathy says that Adnan only received one phone call while they were at her place. But there's no way the call Cathy overheard was a call from Hae's brother. Adnan would not have been saying to him, "What do I do? What do I say?" That doesn't make sense. So who was it that Cathy overheard Adnan talking to, and why didn't Jay hear this conversation?

Sarah Koenig speculated that maybe Aisha had been the caller Cathy overheard. Even though Jay never heard that call, and if you believe his trial testimony, all the possible calls from that time period were either Hae's brother or the cops. But Aisha thought she talked to Adnan later that evening, after the cops had called him. She also didn't describe Adnan as freaking out like Cathy heard. Here's what Krista remembers about that conversation:

[33:40] Krista

And I do remember her saying that he sort of sounded annoyed when he was talking to her, like, "Why did you tell the cop--" like, kind of like, "Why did you tell the cops that she might've been with me?" Like, "We weren't together" or whatever... Um, 'cause I talked to her after she had talked to him.

[33:54] Susan Simpson So, the hypothetical Aisha call doesn't really fit what we know. There's another explanation, though, for why the call Cathy overheard doesn't match any calls made January 13th: the call she heard happened on a different day entirely. Remember, January 13th wasn't the only day the cops were trying to get in touch with Adnan. It also wasn't the only day that Adnan was hanging out in the general area where Cathy's apartment was located. Based on the cell records, Adnan was actually down there pretty frequently, about 13 times in all after January 13th.

[34:21] Jay

Then a few minutes later, he got a call from the police department, and uh... that, that's--

Detective

How, how do you know Adnan got a call from the police department?

Jay

Um, because that's what he does--he holds the phone away and says, "Police." And at that time I started to panic.

Detective

Were you inside the apartment or outside the apartment?

Jay

We're ins--we were... just leaving. We were stepping from the foyer and into the hallway.

[34:43] Susan Simpson Here's what Cathy said:

[34:44] Detective

So he leaves?

Cathy

He...yeah, Adnan leaves.

Detective

He opens your apartment door...?

Cathy

The door was locked, and there's a chain on that door. Adnan unlocks it...

Detective

And he goes through the whole nine yards?

Cathy

He goes through the whole ni--I mean, maybe the chain wasn't locked, but he undoes the deadbolt of the lock and walks out and closes the door behind him, and then...

Detective

D--

Cathy

I looked at Jay. Jay was smoking a cigarette at the time, and then he waits like one or two seconds and then he gets up. He's like, "Hold on," and he like gets up and leaves, and he closes the door behind him.

[35:13] Susan Simpson It doesn't seem like they're describing the same event. In fact, there's only one point of similarity between Jay's story about Adnan's trip to Cathy's and Cathy's story about Adnan's trip to her place: both of them remember Adnan acting weird--kind of slumped over, maybe even asleep. But here's the thing, Jay does not attribute this weirdness to... you know, the whole "being a murderer" thing. Jay thinks the reason Adnan's acting weird is because he'd given him something to smoke:

[35:37] Jay

He's feeling a little nauseous from a... cigarette that I'd given him prior to going in the house. So he sits away from the group.

[35:44] Susan Simpson Jay gives a similar story in his recent *Intercept* interview. He says, "I made him smoke one time, he got a little high, got a little weird. Didn't say that much."

That sounds an awful lot like Cathy's description of how Adnan was when he visited her place, weird and quiet. But Jay doesn't seem to associate this event with the night of the murder at all. So if Jay thinks the reason Adnan was acting weird at Cathy's house had nothing to do with the events of January 13th, maybe that's because the event that Cathy and Jay are talking about happened on a different day entirely.

So, if Adnan and Jay's trip to Cathy's wasn't on January 13th, when was it? Well, there are a

few possibilities, but here's one guess: based on the cell site records: the call Cathy heard was from Yaser on February 15th, after Yaser had been contacted by the cops about the anonymous phone call they'd received. There is a call from Yaser to Adnan's cell phone that day, um, and the cell site data shows it pinged L655B, which is consistent with a call at Cathy's apartment. And before the Yaser call, several calls were made from Adnan's phone to Stephanie, which would explain why Jay was talking about their plans to go see her later.

That would mean that Cathy's memory about the day of the trip was very wrong, but her memory about Adnan's trip *has* to be wrong about something. Here's something else weird: Remember Cathy's boyfriend, Jeff? The police talked to him, too, a couple days after talking to Cathy. The cops decided not to save any notes from the interview with Jeff, which means we'll never know if his statement confirmed or contradicted that Adnan had been at Cathy's on January 13th.

So, ignoring where the phone was for the moment, who was it that was making all these calls to Adnan during the time period that he was supposedly at Cathy's? The phone records show that from 6 p.m. to 6:30 p.m., there were three incoming calls: one at 6:07 p.m., one at 6:09 p.m., and one at 6:24 p.m. The general assumption is that the last call at 6:24 was Officer Adcock and, at least in this case, the general assumption seems right.

But what about the other two calls, then? In his first interview, Jay only remembers one call, and that was from the cops. By his second interview, he remembers two calls, one from Hae's family, one from the cops. And by trial, Jay now remembers three calls: two from Hae's family and one from the police, which accounts for all three calls during that time period.

Adnan only recalls one call, and that was from Hae's brother, who then passed the phone to Officer Adcock. It's possible Jay is right, though, and that Hae's brother and Adcock called separately. That would still leave us with one come--incoming call unaccounted for. Could that be Cathy's mysterious third conspirator? Maybe?

Well, probably not. Back at trial, it was assumed that the cell phone records only showed calls that had actually been answered, and incoming calls where no one picked up wouldn't show up. Turns out, this was not a safe assumption to make because the phone company's definition of "answered" and the human definition of "answered" aren't always the same. I don't have Adnan's service agreement, so I don't know the terms he used, but in 1999 there were plenty of phone companies that would have charged for an incoming call that wasn't answered and went to voicemail--even if the caller hung up before the beep. Here's language used by other AT&T agreements from the 2000s:

"You may be charged for both an incoming and an outgoing call when incoming calls are routed to voicemail, even if no message is left" and... "Chargeable Time may also occur for other uses of our facilities, including by way of example, voicemail deposits and retrievals, and call transfers."

It's worth noting that, due to AT&T's first-minute free policy for incoming calls, users weren't actually charged for these incoming calls that went unanswered. They did, however, show up on the bills. So it could be that all those incoming calls on the cell records don't actually represent times when someone picked up Adnan's phone and answered. Jay's constantly evolving stories about who was making these calls is just reflecting his attempts to appease the prosecution who wanted explanations for every call on the log, even though they weren't real calls.

We do know one person who called and left a voicemail for Adnan that day: Krista. That means one of those incoming calls would've been from her. Turns out we have a good idea of when she might've called, too, because Krista saved her phone records from that day. She was on a landline, so they don't show all the calls made like a cell phone bill would, but they do show two calls she made using *69, and based on that, her voicemail to Adnan was sometime around 6 p.m.

[39:39] Susan

How many times that night did you call Adnan?

Krista

Um, that I can remember? Definitely, twice. Possibly three times. Um, after he left the hang-up on my machine, and I...

Susan

Which was at 5:38...

Krista

Right, and... and it was, you know, I obviously got the call 5:51. I hit *69 and saw that I had a hang-up, and that's who the number it went back to was. I remember trying to call him shortly thereafter and him not answering, which I thought was weird because, usually, if he called me, especially, he would always answer the phone if I called him right back.

Susan

Mm-hm...

Krista

Um... and then when I didn't hear from him, I know I called him at least one other time, just 'cause I thought it was a little out of sorts that, you know, he didn't return a call right away, especially when he called me to begin with.

Susan

So how long again would you estimate was between the first call and

second call?

Krista

I mean, I'd probably say an hour?

[40:31] Susan Simpson So if Adnan's cell records *are* showing incoming calls that were routed to voicemail, that means that either the 6:07 or 6:09 call was Krista. And if Krista is right about her second call to Adnan coming an hour later, that means *she* is one of the two Leakin Park phone calls. More on that later...

[40:47] Colin Miller Today we learned how the reality of Adnan's day on January 13th was quite possibly very different from the perception created by the prosecution at trial. But what about Hae? What if nearly nothing we've been told about her day on the 13th turned out to be true? We'll discuss that very real possibility... next time on *Undisclosed*.

[41:04] Rabia Chaudry A special thanks to Amar Nagi, our sound editor; Ramiro Marquez, who created our theme music; and Ballookey, who provided the logo. Dennis Robinson is our executive producer. Thanks for listening to *Undisclosed, the State v. Adnan Syed*. We'll see you again in two weeks.

[41:26] Today's episode of the *Undisclosed* podcast was brought to you by the Adnan Syed Trust. Please visit www.launchgood.com/freadnan to donate to the fight to exonerate Adnan Syed.

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