

Transcript of Undisclosed Podcast  
Adnan's PCR Hearing: Day 2  
February 4, 2016

[0:00] Susan Simpson: Hi, this is Undisclosed podcast live in Baltimore at Adnan's PCR hearing. This is Susan Simpson, and I'll be here with uh Rabia, and Colin will join us remotely today for our second episode, um, covering the hearings in Baltimore.

So, it is day two of Adnan's PCR hearing. I am outside the courthouse. So, you know, yesterday went well. It was very interesting. A lot of stuff came out. And today I'm sure we'll have more of the same. I don't know what to expect other than more of Asia's cross, um, but you know, I think it's going to be an interesting day. Um, I'm looking forward to it.

[0:41] Susan Simpson So, it's the first break of the day at the PCR hearing. We are back outside the court, back outside the blue lines. Um, I don't even know what time it is, 'bout 10-ish, 11? I don't know, it's probably 11-ish by this point.

Um, anyway, it's been a very eventful morning so far. Um, there's a lot to cover, but I guess the highlight is Asia's on cross, um... I guess, one follow-up point is that yesterday the State was doing a lot of crossing on Asia about this whole basketball issue, saying: 'So, you were on the basketball team...' and she's like, 'Well, I was a cheerleader that became a basketball player, and they called me "ballerina" because I was really bad.'

And, uh, he kept trying to hit this point, which I was a little bit confused, not really concerned, but I wasn't sure what he was trying to go for, um, because it seemed like he was trying to say that... so, there was a—so, the Woodlawn basketball team, the girl's team, did have, play a basketball game on the 13th. It was at 6:30 p.m. It was at Parkville, actually, I think. Um and so, I was wondering if, like, he was going to have some surprise evidence that Asia was at the basketball game that night, which didn't make sense based on what we knew. Um... and, and no, I don't know what he was trying to go for, but Asia played junior year. She misspoke yesterday. And so he kind of abandoned that.

He then, he then tried the "snow versus ice" debate. So, in um Asia's letter, or that Asia—sorry, in Asia's affidavit to Rabia, she said that she remembered it because of the two snow days. Um, on the 13th, it was a Wednesday, that's uh... that evening the ice storm came in, and Woodlawn High School was closed Thursday and Friday. Um, there was another snow storm, albeit a much smaller one, not as big of a deal, not hardly any news about it, and it did close the school down for one day. Um... so, Thiru was trying to say, 'Oh, it could've been that day,' and um, but Asia's ironclad. She's like, 'Well, it's the two days I recall,' like, 'That's why I know this.'

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And as a Georgian, I have always found this funny because if it's, like, even like just a tiny sprinkling of frozen stuff, we're calling it a "snow day".

Um, and she had some other good, like, just conversations about like how she... how she remembered this, and she said when they found Hae's body, all the students were discussing... with... they were all discussing when and whereabout they last saw Hae. And she said, well, she couldn't remember when she last saw Hae, and that was kind of bothering her, but she did remember talking to Adnan about Hae on the 13th. And so that, on February 9th or 10th when she found out about Hae's death, that's when she recalled this conversation, and that's why she was thinking about it. And, uh, so that would be why when she found out about Adnan's arrest, she instantly knew, 'Wait, I saw you on the Hae disappeared' because she had been thinking about it a couple weeks... before she had any idea that Adnan would ever be a suspect on this case.

I don't know where Thiru's going. I think that's why he called a break... because he's not scoring any hits. Oh, that's not true. He did score one hit, um, and that is over Rabia. So, Rabia at the PCR hearing last time testified... or no, no, no, no. She testified that she met Asia at a library or something, at a library next to Woodlawn, um, High School and then they went to the check cashing place and notarized an affidavit.

Asia says what she recalls is Rabia showing up at her house, um... and talking—Rabia knocking on the door, talking to Rabia on the porch about this, and her being kind of irritated because she was on the way to see her boyfriend, but she felt it was important so she agreed to write a quick letter with, um, stay with Rabia and write the letter out, and then go to the check cashing place, which isn't very far away at all—um, I've been there with Rabia; I've drove past it—um, to get this notarized to make it official. Um, so we have Rabia saying they met somewhere at, at the library and then went to the check cashing place, and then Asia saying something else, um...

So, anyway, this whole time I'm sitting next to Saad in the courtroom, and Saad's like poking me, going, 'Susan, Susan, I was there. We went to her house.' So, I guess, Saad agrees with Asia, too. He thinks that they were—went to her house. So, we do have a mix-up here. Um, I'm probably more inclined to believe, um, Asia's memory of what happened. Um, uh they might call Rabia to the stand now. I'm thinking they might do it. Maybe. I don't know. I don't think it really gets them that far because they're going to gain a little ground on it maybe but not enough to undermine the defense case, um, because Asia's rock solid. Um, Asia is very, very good about saying when she does not recall and, like, she will not specu—well, she'll be like, 'Oh, well, since you're asking to speculate, I'll speculate now,' but she always, like, clarifies when she's trying to guess at a memory, which is excellent in a witness, what you need, um, 'cause so many witnesses are just like, 'Well, I think it probably happened this way, so I'll just keep talking.'

[5:14] Rabia Chaudry: Hi, this is Rabia, and welcome to day two of Undisclosed, reporting from the Baltimore City Circuit Court. I got here a little bit late today, around 10:30. I figured, what's the point? I'm sequestered anyways, and I was just kind of waiting outside of the courtroom down the hall to, um, just see, you know, the family and friends when they got out. They had a little break, um, but I know that, uh, you know, they're not supposed to talk to me about what's going on. I know that Asia's on cross-examination, and uh, I know that any testimony I would offer would be in relation to Asia, um, basically, how I got the affidavit from her. Um, I mean, that's really the only relevance I have to the entire case. Um, so there is a possibility that I would be called, and so nobody can talk to me. Everybody basically is coming out and saying, 'We can't talk to you.' [laughs] So I just ask for a thumbs-up or thumbs-down. That's all I want. I mean, I mean, it's a—it's nerve-wracking in a different way not to be inside. But, anyhow, so in a way it's kind of a small mercy that I'm not inside, um with my blood pressure rising. So, um, I might be called. I'm just going to hang out at the courthouse and, uh, tweet and write and, you know, see what happens today. Thanks for listening.

[6:25] Susan Simpson: So, we are once again outside the blue lines of the courthouse. We're at the end of our lunch break. Um, we just finished up Asia's cross, and Thiru had all morning where he tried to beat up Asia, um, and she-e was destroying him. It was kind of fun to watch, and uh, it was. It was a really sloppy, cross, though, like he was just like, I don't know... like, I mean, there's the whole rule, like, you don't ask a question you don't know the answer to on cross, and that's not true. You... like, there's times to break that, for sure, but he was just a-asking these really open-ended questions that she's like, 'Well, I have a very obvious and easy answer for that, which I'm going to give right now.'

And then at the end he, his gotcha moment, the only thing he could like try and do, he started asking Asia: 'Well, would it surprise you to learn about what Ju'aun, your classmate, said in an interview?'

And she's like, 'Well, I... I don't know what the hell he said in the interview.' Only she used nicer words 'cause... I did like it when she was... she was trying to talk about when the Sprint representative called her a "bitch", and she was like, 'She called me a female dog.' [laughs] Off-topic.

Anyway, so, um, they're talking about the Ju'aun police notes from his 4/7 interview. Um, we'll get into those more on redirect, I'm sure, so I can explain it more later but, basically, the prosecution is taking some like sketchy, sketchy-ass notes taken during an interview about a classmate that's talking about bail letters and requested for them to be typed up, which was circulated among all the students, um...

[7:53] Karen Turner: Bail letters from...?

[7:55] Susan Simpson: Bail letters for the bail hearing that just happened about a week before Ju'aun's interview. Um, and we know from other interviews with other students that, like, like...

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Someone's like, 'Well, Ju'aun was chosen to type one.' So, clearly, this... [inaudible] letter that Ju'aun's talking about is not the Asia letters. It's the freaking bail stuff.

Um, so, hopefully on redirect that'll get explained because, um apparently, Thiru felt no need to actually put that evidence into evidence, so no one really knows what he's talking about right now, and it would be nice to clear that up.

[8:31] Susan Simpson: We are once again in, um, Undisclosed home base, Defcon 1, which is Dunkin' Donuts, actually. Um, you know, it's an upgrade from our spot by the blue line of the courthouse. So, we're done with the second day of the PCR hearing, um, and it was an exciting day.

Yeah, so we started up with finishing up the cross of Asia, and then we had the redirect of Asia, which Justin pwned. It was pretty cool. Um... I was saying earlier, like, I really respect and like, uh, Justin's a great trial attorney. He's got a great trial manner. Um, he's very comfortable and. like, he has such an easygoing manner.

When I first met him, I did not appreciate the wily bastard that he is. Um, but he's just, you know, he's so, he's, he's a really nice guy. He really is. He's a great guy, very friendly, very like... [inaudible] surface.

But, like, at points today, if looks could kill... um, well, if looks could say "fuck you", they did. [laughs] Probably edit that out. [laughs] Sorry.

Um, he um, was just very in control, and the State was throwing out so many... just, like, crazy-ass things, like attacking Asia on all kinds of grounds that are not relevant, are not true—mostly not even true and like all over the place, like, throughout the entire morning. I mean, I had started keeping a list and then I again lost track but there's, like, five or six things that were just blatantly untrue. And Justin did object to the ones that were like blatantly, blatantly untrue, and every time it got overruled so whatever. Um...

Rather than going through piece by piece and explaining why each one was wrong, he just said, like, 'Look, Asia. Thiru just talked to you and said, "Oh, you're a liar" because your entire letter came from the search—um, the affidavits for the search warrants, which were done two weeks after your letter—um, three weeks after your letter, so obviously your letter is a fake. It was not written the day it says it was written.'

Um, and Justin was like, 'You just got challenged by Thiru about—that how could you possibly have known that Adnan was in Central Booking? How could you know such a thing?'

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And, uh, he then puts an article on the overhead, and it's like March 1st, and it says: 'Adnan Syed arrested, taken to Central Booking.'

So, like: 'So, Asia, how could you possibly have known... why Adnan—that Adnan was in Central Booking?'

Um, and he pointed out a few others, and like, the whole way I was, like, "I know four other examples that you could easily disprove—"

He's like, 'It's cool.' [laughs] 'We're just going to hit a few of them. There's no need to like...' [laughs] 'explain every one.'

But, like, the car stuff... Like, so go to Episode 15 of Undisclosed, maybe like two minutes in. There's a clip from a news broadcast played um... on March 1st, talking about Adnan's arrest, and it says Hae's car was found next to Leakin Park.

So, that whole time when Thiru's going, 'How could you have known the car was found in Leakin Park?' well, one, it wasn't found in Leakin Park, but two, news—the news said it was. So the fact that the same day the news said it was found in Leakin Park, and Asia knew it was found in Leakin Park, that's not a coincidence. That's not a conspiracy. That's really fucking obvious.

Um, I mean, I'm being mean and sarcastic, but like there was a lot of floundering today on that—on the, the cross. Like it was not... it just wasn't pretty for a crossing. Like, I'm sorry, Thiru, I know I sound like I'm being harsh to you, but like... you—that's not how you do a cross, come on! Um, that was really mean... but you can leave it in.

[12:07] Susan Simpson: So, we were a little bit boisterous, and we decided to go outside from Dunkin Donuts and now, um, standing on the side of this lovely street somewhere near the courthouse. So, the Asia stuff, like, went well. Um, he... tried to lay some, like, insinuating questions down to suggest that Asia had, like I said, forged her testimony. So he did that. I was wrong. I thought he wouldn't dare go there 'cause... really? But he did.

Um, like, it really felt like when he was, like, questioning Asia, it felt like a cross-examination of a defendant in a criminal trial. Like, the way he was questioning her, it was like how you would approach—not just an adverse witness, but like the defendant themselves. And to the extent the judge could even follow what he was trying to say, I don't think it really is going to make a difference. Um, plus he didn't even put any of his sources in the record, which is still driving me crazy. He's just trying to lay suspicion down by—like 'cause he had—if those notes actually supported his position, he would have introduced them. But he knows that if he actually shows what he's talking about, it's going to be like, 'Well, that's a big piece of nothing.'

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Um, so, he preferred to leave his like suggestive questions out there without the context, um, the context being, of course, that it's not about the fucking Asia letter. It's about the bail letters that everyone was asked to write and everyone's asked to type up, um, which the other witness statements make very clear.

Justin was on fire. Justin had a lot of really great quips. Um... [laughs] so, my favorite one of the day was definitely the, uh... when he kind of called out the judge. So, during the cross, Thiru was asking and answering the same question over and over. And it was absurd. It really was. I kind of have to criticize the judge for doing it 'cause it was... it was just not... it... I, I really have a hard time understanding his mindset in that, that instance because that's just... it was, it was really blatant. And I, I feel bad and I probably shouldn't be questioning a judge in an active hearing, but like that...

Thiru got to ask the same exact question, like, 30 times, and Asia would say, 'I don't know.' And then he'd ask again, and she's like, 'Well, I don't know, but I can like guess. Do you want me to guess?' And that kept going on and on.

So, when the redirect happened and Justin gets to ask questions to Asia again, um, he gets up there and says, 'Do you remember this morning when,' um, 'Thiru was asking you the same questions over and over again?'

She says, 'Yes.'

And: 'When I was here, and I was,' um, 'objecting to ask and answer over and over again?'

And she said, 'Yes.'

'And the judge was over there doing—well, I probably shouldn't say that.'

And, uh, the courtroom laughed. The judge smiled. He wasn't quite laughing. I'm not sure if he found this funny as everyone else did, but... he was uh, he had a lot of comments today.

So, after Asia, they brought on the cellphone, um, expert, who was Jerry Grant. He often consults for Innocence Network, um, which is how Justin got in touch with him through Barry Scheck and the Innocence Network. Um, and he testified—like, Justin kept his testimony directly on point. And he was, like he said in his opening, this is not, I mean, it is, this is a complicated area, a technical area. But at heart, this is a really simple issue. And the issue is that necessary information about what evidence before the court was not provided when it should have been, which is exactly what he showed. Um, he showed that the, through the expert, that the cover letter from AT&T that says how to read subscriber activity reports does, in fact, apply to the document it was sent with that is titled "Subscriber Activity".

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So, Thiru had a challenge there. Like, how do you challenge that? I mean... a company sends you a document. It says: "How to Read XYZ Document" and then it has a document with it that says "XYZ" at the top. Thiru's trying to claim that the instruction on how to read XYZ does not apply to the document called XYZ, which... I mean, that's... that's... if I was in his shoes, I maybe would've done what he did because I don't know what else you're going to do.

Um... you just try to cast doubt instead: 'Well, is it possible you're misreading this? Is it possible that the reason this did not come up before is 'cause you're just totally wrong here and don't know what you're talking about?'

And the expert's like, 'No, that's not the case.'

But what I loved when Justin brought out was, uh, the true... the ultimate consequence of Justin's argument, um, because Thiru was trying to say, the... when the, the subscriber activity, um, how-to-read message says, um, 'Outgoing calls only are reliable for location status,' he's trying to say that applies to a column on one of the sheets that says "Location1" and that only that is unreliable.

Well, Justin—through the expert—points out, if that's the case, the records are even worse than we're claiming because the "Location1" column just shows what network and what city, um, you're calling on. In this case, all the records mostly say "Baltimore-Washington", which is the, the specific network, the switch that, you know, the calls were going on—for obvious reasons. Um, so if in fact, it's the "Location1" column that is wrong, we don't even know what, like, geographic region that those calls are in. They're not even in, like, DC-Baltimore. They could be anywhere like on earth, apparently, which isn't the case because that, that, that column is correct. Um, it has to be correct because if that column's not correct, then the cell site's not correct.

It's literally just like—this is a terribly analogy: so a Labrador Retriever is a type of dog, but if you're a Labrador Retriever, you're always a dog. Um, if you're in cell site L6-51A, you are always going to be in the DC-Baltimore switch, but you can be in the DC-Baltimore switch without being on L6-51A. You can be on a different tower in that network. So, according to Thiru, actually we can't even tell that much. We don't even know what switch we're on. We could be like on a switch in like California, um, and that's his best defense. But what are you going to do? It's a pretty hard argument to go up against, so he did what he could.

And I've already ranted about this, but the ending was pretty spectacular because Thiru lost his cool again, kind of like during the Asia-cross, but he was like throwing his pen around, like, "Raaaahr!" [sound of pen hitting ground] I just re-enacted it. So that's what he did, um... when he, when Asia's cross was like going badly for him.

He asked a question of Jerry Grant, the expert, and the question was so out of scope of anything that had come of Justin. It should've been, like, it should not have been admissible. The question should not have come in. Strategically, we didn't want to go there yet. Um, and judge is like: 'Overruled. I

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will allow you to ask a question that was never asked on redirect.' You can't do that. Um, but you know, the judge can actually, so you can do that.

Um, and Jerry Grant starts to answer, and the answer was not good for the State, so Thiru cuts him off and says, 'Are you going to be here tomorrow?'

And the expert is thinking, like, 'Oh, you want to continue this cross tomorrow or the next day so, like, you want to make sure I'm here so you can finish up the cross of me or something?' He's like, 'Well, I can be. I don't have plans yet.'

And then Thiru gets very aggressive and says... He said, 'What is your best explanation for why the incoming calls are considered unreliable? Or why the fax cover sheet says incoming calls are unreliable?' And Grant started to answer, and then Thiru cuts in and says, 'Do you want to know what the actual answer is? Then be here tomorrow and listen to our expert from the FBI.' Mic drop. I guess. [laughs]

So... that didn't go well for him. And you know what, who knows? Maybe he's got some, like, rabbit up his sleeve. Um, I'm skeptical but I'm open-minded, and we'll see what he, what this expert's got from the FBI. Um, he's—I'm already, my skepticism is 'cause, 'cause this guy is from the CAST group, which I think is responsible for a lot of the misinformation that surrounds the use of historical cell site analysis. Um, and we know that they have a very... aggressive view on how accurate this stuff can be, um... So, hey, maybe he's got something. I'm curious, but... his little tantrum at the end wasn't very reassuring.

If you actually had good evidence, you would like smile slyly and wait and, like, know you can launch on the opponent. You don't lose your cool and, like, tell the other expert, 'Be here tomorrow to learn the truth.' So, all in all, it went well today.

[20:29] Colin Miller: Hi, this is Colin Miller. I'm checking in at about 4:50 on the second day of the reopened PCR proceeding. It seems to me from what I've read that today consisted of cross-examination and redirect of Asia McClain and then testimony by the defense's cell tower expert, Gerald Grant.

We start first with Asia McClain. From what I've read on Twitter, it appears that the Deputy Attorney General was trying to accomplish two things: the first was to show that, possibly, based upon the content of the letters, Gutierrez could have been justified in not contacting her as a potential alibi witness. The problem for the State, in that regard, is that's not a legitimate ground to refrain from contacting an alibi witness.

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I've written about a few cases like this in my blog. One of them was a case out of the 7th Circuit Court of Appeals, and actually this is a case that was cited by both the 4th Circuit and the Court of Appeals of Maryland. The case is *Montgomery v. Peterson*. It's actually a case in which defense counsel did contact 12 alibi witnesses, but they didn't contact the 13th. And, specifically, the information here that was given by the defendant to his attorney was a receipt from Sears.

And, according to the attorney, quote: "I was just given a receipt. I wasn't given a name, so I didn't know who to interview until I found out who the witness was, but at that point I simply didn't believe the defendant, so I didn't think it happened."

So, in other words, this is a case where the State tried to claim lack of ineffective assistance based upon disbelief by the attorney. Well, here was the court's response:

"Nor can we say the defense counsel's conclusory statement that he did not believe his client was an adequate basis for ignoring such an important need. Indeed, if counsel had taken the few steps necessary to identify and interview the Sears clerk, he may well have formed a more favorable view of his client's veracity."

So, in other words, no way, no how can Gutierrez look at these letters, think: "This might be an unreliable witness; I'm not going to contact them." Pursuant to well-established ineffective assistance standards cited by Maryland courts, the attorney in that case would have to contact the alibi witness to make their own assessment of veracity.

From social media, again, it appears that part of the Deputy Attorney General's strategy was to try to claim that the second letter written by Asia McClain dated March 2nd might, in fact, have been written later. I saw, in particular, on Twitter that he appeared to be hammering her over how she knew that he was in "Central Booking", that those were odd words for a teenager to use.

Well, I found, actually, the Baltimore Sun article—this is from March 1st, 1999—reporting the arrest, and it says:

"Sgt. Scott Rowe, a police spokesman, said Adnan Musud [sic] Syed was arrested about 6 a.m. at his home in the 7000 block of Johnnycake Road in Woodlawn, Baltimore County, and taken to the Central Booking and Intake Center, where he was charged as an adult with first-degree murder."

So, in other words, very easily Asia's knowledge of Central Booking could have come from this article from the Baltimore Sun the day before her let—letter was written.

Uh, second part was that, apparently, the Deputy Attorney General questioned how Asia had knowledge about certain parts of the investigation in the case as of March 2nd. Well, my understanding is that Justin actually showed a news clip from before March 2nd where, basically, people from the State were talking about various details about the case.

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More importantly, from my perspective, this is from, actually, an interview in late March with Debbie, and she's talking with Detective MacGillivray. And, basically, she's saying that at first she didn't believe that Adnan was guilty and then that it changed her mind based upon Adnan being arrested.

And here's the exchange:

MacGillivray: ...er, reason other than the fact that police have arrested him?

Debbie: Right.

MacGillivray: Okay.

Debbie: And it does, um, when Ann told me, um, a sergeant got even more afterwards, um, I guess that's the real...

[Debbie's statement, March 26, 1999]

And, basically, what we know in this case is that on March 2nd, the very same day that Asia second letter was dated, there were interviews of Ann, Aisha, and Debbie. What we also know is, the notes from those interviews were never turned over. What seems clear to me from Debbie's statement in late March is, is that on March 2nd, the police who were at the school were conversing with students such as Ann, and they were telling them details about the case—that, specifically, this sergeant gave her even more information about the case, and so, it seems to me completely consistent with Asia's claim that in this case she had the additional information as of March 2nd and included it in a letter sent to Adnan.

And turning next then to the cell tower expert, Gerald Grant, uh unfortunately, I haven't been able to find too much about what happened during the direct and cross-examination. I hope to find some more detail later.

But it's my understanding from looking through Twitter that, basically, Grant testified that he talked to Abe Waranowitz, the expert who testified at trial; that similar to what he said in his affidavit, Waranowitz said that he basically was shown Exhibit 31, the cell tower exhibit, right before he testified at trial; that Urick didn't show it to him before; that that exhibit did not contain the disclaimer saying that incoming calls are unreliable for determining location; and that, basically, Waranowitz said he wouldn't have testified as he testified without first checking into why this disclaimer was there.

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And it's my understanding that Grant has basically testified that, yeah, that this disclaimer establishes that incoming calls could be unreliable. As such, he would not have relied on them to do a drive test and make conclusions about incoming calls and what tower they would ping.

Now, you might recall we discussed on the podcast the standard in Maryland is the Frye Test, and the Frye Test basically says that: A, evidence of an expert nature is inadmissible unless it has general acceptance in the relevant expert community; and then there's also Maryland Rule of Evidence 5703, which says an expert cannot rely upon unreliable evidence in forming an expert opinion.

So, I mean, this is just the defense expert. I expect there'll be a battle of the experts, and we'll see what the State's expert has to say. I think that Justin, Adnan's attorney, has definitely some ammunition that he can use on cross-examination.

But, at least, at this point, it appears the defense has established that in this case, if the defense were aware of the disclaimer, they could've used it to have the incoming calls deemed inadmissible. And, again, that's either a nature of ineffective assistance if Gutierrez knew about this disclaimer and failed to use it, or as I think is more likely, a Brady claim, that the exhibit in this case did not include the disclaimer and, therefore, by the State's own admission, it was unclear that the exhibit was the subscriber activity report. As such, it was unclear the disclaimer applied to it. But, certainly, it appears based upon the affidavit from Waranowitz and the testimony by Grant, in this case, there was some type of violation, which would justify a new trial. And we'll have to wait and see what happens when the State calls their own expert.

[27:55] Susan Simpson: So, this is Susan Simpson from Undisclosed: Live, day two of the uh Adnan Syed PCR hearing. We'll be back tomorrow for day three and, hopefully, the final day um at 9:30 a.m. Thanks for listening and thanks for following, and come back tomorrow to learn more about how the hearing goes.