

IN THE COURT OF APPEALS OF MARYLAND

STATE OF MARYLAND

v.

ADNAN SYED

Petitioner **Filed**
SEP 21 2018
Steph M. Decker, Clerk
Court of Appeals
of Maryland

Respondent

No. 24
September Term, 2018

On Writ of Certiorari to the Court of Special Appeals

Joint Record Extract - Volume II of II

BRIAN E. FROSH
Attorney General of Maryland

THIRUVENDRAN VIGNARAJAH
Special Assistant Attorney General

DLA Piper LLP (US)
100 Light Street, Suite 1350
Baltimore, Maryland 21202
(410) 580-3000 (O)
(410) 580-3001 (F)
thiru.vignarajah@dlapiper.com

Counsel for State of Maryland

C. JUSTIN BROWN
Brown & Nieto, LLC
231 E. Baltimore St., Ste. 1102
Baltimore, Maryland 21202
(410) 244-5444
brown@cjbrownlaw.com

CATE E. STETSON*
KATHRYN M. ALI*
JAMES W. CLAYTON*
W. DAVID MAXWELL*
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
(202) 637-5491
cate.stetson@hoganlovells.com

*Admitted *Pro Hac Vice*

Counsel for Respondent

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October 11, 2012 BEFORE JUDGE MARTIN P. WELCH

ADNAN SYED	*	IN THE
Petitioner	*	CIRCUIT COURT
V.	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY,
Respondent	*	STATE OF MARYLAND
	*	199103042-046 and
	*	Post-Conviction No. 10432

* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Post-Conviction)

BEFORE: THE HONORABLE MARTIN P. WELCH, Judge

HEARING DATE: October 11, 2012

APPEARANCES:

For the Petitioner: Justin Brown, Esquire
Melissa Kujda, Esquire
For the Respondent: Kathleen Murphy, Esquire

Transcriptionist: Erika B. Newton
Transcription Service: ACCUSCRIBES TRANSCRIPTION SERVICE
1301 York Road, Suite 601
Lutherville, Maryland 21093

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1 and maybe -- I may understand them better that way.

2 MR. BROWN: Okay. And, Your Honor, normally
3 when I do a post-conviction, I don't give an opening
4 statement. But I thought I would just give a very brief
5 description of what issues are in play. In the sense that
6 what issues we are presenting evidence to support.
7 Because there has been a lot of briefing and this case has
8 gone on for a long time.

9 THE COURT: Certainly.

10 MR. BROWN: The first issue that we are
11 presenting to the Court is the issue of an alibi witness.
12 And that alibi witness is named, Asia McClane. When --
13 after Mr. Syed had been arrested, while he was detained
14 and while he was awaiting his trial date, he received two
15 letters, which we will attempt to introduce into evidence.
16 And those letters were from a fellow student of his, a
17 high school student named, Asia McClane.

18 And in those letters, Ms. McClane wrote to Mr.
19 Syed that, hey, don't you remember that you were with me
20 on the day when this murder allegedly took place. And
21 even more specific than that, this woman wrote to him the
22 approximate times when she recalls being with Mr. Syed.
23 And those times correspond directly to the time when,
24 according to the State, the murder took place. So we have
25 a pure alibi witness in Asia McClane.

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1 Now, upon receiving these letters, Mr. Syed
2 informed his attorney, Christina Gutierrez, that there was
3 a witness who could help him account for where he was on
4 the day of the murder. And the way we know that, the way
5 we know that, is because in Ms. Gutierrez's file, there
6 were notes. And those notes were actually written by one
7 of Ms. Gutierrez's law clerks at the time. A gentleman
8 named, Ali Cornedor (phonetic).

9 And Ms. Murphy has stipulated to that, his
10 affidavit, in which he -- in which he says and he confirms
11 that it was he who wrote out those notes, based on an
12 interview he had at the detention center with Mr. Syed.
13 So, we know that Mr. Syed conveyed to his defense attorney
14 that there was this alibi witness out there.

15 In addition to that, Mr. Syed will testify that,
16 of course, he informed his attorney and any other
17 surrogate who she sent to visit him, that there's an alibi
18 witness. Who wouldn't inform their attorney of that?

19 Next, we know that Ms. Gutierrez never followed
20 up with that alibi witness. She never contacted, never
21 interviewed, never spoke to Asia McClane. And how do we
22 know that? We have an affidavit from Asia McClane, which
23 was taken just after Mr. Syed's conviction.

24 And while we do not have Asia McClane here as a
25 witness today, we do have Rabia Chaudry, who is the person

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1 who took that affidavit and who was with Asia McClane and
2 who spoke to her, in detail, about this.

3 So this is the alibi witness issue. There was
4 an alibi witness who was willing to testify. Who, in
5 fact, wanted to testify. Yet, the defense attorney never
6 even followed up, never investigated, never called Asia
7 McClane as a witness. And, Your Honor, this is a powerful
8 witness. In a close case like this, it's an extremely
9 powerful witness.

10 And does -- the test that we have to determine
11 or that the Court has to determine is, did this error by
12 Ms. Gutierrez undermine our confidence in the outcome of
13 this case? And it's our position that absolutely. It
14 absolutely undermines our confidence in the outcome of
15 this case. Because this would have been an entirely
16 different case with this alibi witness. Okay. So that's
17 the first issue.

18 The second issue is the plea bargaining issue.
19 You will hear testimony from Mr. Syed and we've written
20 this up in a supplement to the original petition. That
21 he, like any other defendant, at one point inquired of his
22 attorney, what is my plea offer? What's the State
23 offering me? Mr. Syed will testify he was over at
24 Baltimore City jail and was talking, you know, all the
25 inmates, what's your offer? What's your deal? What's

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1 your deal?

2 He inquired to his attorney, Ms. Gutierrez, what
3 is the State offering? And Ms. Gutierrez responded to
4 him, saying, that they are not offering you a deal. They
5 are not offering you any kind of deal, whereby, you can
6 plead guilty to this offense. Well, it has since come to
7 our attention and you will hear the testimony today of
8 Kevin Urick, who was one of the prosecutors on the case,
9 that Ms. Gutierrez never approached the State to ask for a
10 plea offer.

11 There have been a number of cases recently
12 involving issues in which the defense attorney gets a plea
13 offer and fails to convey it to her client. That was the
14 issue in a case called Merzbacher vs. State, a Cristina
15 Gutierrez case, in which she admitted that she failed to
16 convey a plea offer to her client.

17 It's our position that this violation is even
18 worse. Because in Merzbacher at least she went to get the
19 offer. Here, the client asks her for an offer. She does
20 nothing. Comes back to him and lies. And says, the State
21 isn't making an offer. So that's our second issue.

22 The third issue, Your Honor, is the Motion for
23 Modification. This is a much shorter issue. It won't
24 take as much of the Court's time. But there is some
25 testimony related to it.

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Cited Excerpts of Post-Conviction Hearing Testimony from Kevin Urick (10/11/2012) (Page 30)

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1 rephrase the question?

2 THE COURT: You may.

3 BY MS. MURPHY:

4 Q Mr. Urick, how did you learn that the
5 Defendant had filed this petition?

6 A A young lady named, Asia, called me.

7 Q And what did she say?

8 A She was concerned, because she was being
9 asked questions about an affidavit she had written back at
10 the time of the trial. She told me that she had only
11 written it because she was getting pressure from the
12 family. And she basically wrote it to please them and get
13 them off her back.

14 Q Is there anything else you recall about
15 that particular conversation?

16 A She was concerned if she had to come out
17 here. I explained to her, I was not her attorney. But I
18 told her that she would have to be served. And if she was
19 served, and if they made the proper arrangements, she
20 would have to show up.

21 Q Thank you.

22 MS. MURPHY: I have no further questions, Your
23 Honor.

24 THE COURT: Any redirect?

25 MR. BROWN: Just a few questions.

Cited Excerpts of Post-Conviction Hearing Testimony from Rabia Chaudry (10/11/2012) (Pages 26-29, 33-78)

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1 plea. We just proceeded to trial.

2 As far as I can recall in the dental student
3 case, where Chip Dorsey was the defense attorney. I can't
4 recall any discussion there of a defense -- of a plea.
5 And I have a very distinct remembrances of Mr. Dorsey
6 making it clear, that he was going to try to establish the
7 innocence of the defendant in that case.

8 BY MS. MURPHY:

9 Q Had you been asked to extend any kind of an
10 offer in a case such as this one, how would you handle
11 that?

12 A The first thing I would have done, would
13 have been to talk to the family. In a case like this, you
14 give even more consideration to a family of a homicide
15 victim. You try always to be considerate of a victim, and
16 the victim's family in all cases. But a homicide case,
17 it's even more so. So, I would have talked to Ms. Lee's
18 family, see what they thought. Then after I talked to
19 them, I would have gone probably to Sal Fili, and told him
20 that we were beginning to talk about plea and I was
21 planning to go to Mark Cohen to discuss it. Just so Sal,
22 Mr. Fili, would feel that I wasn't cutting him out of the
23 loop or anything like that. I would have then gone to
24 talk to Mark Cohen to see what he felt. And I'm pretty
25 certain that in this particular case, he would have

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1 suggested that we go to Ms. Jessamy with it and see where
2 she stood on it as well.

3 THE COURT: I'm sorry, sent you to Ms. Jessamy?

4 THE WITNESS: I think that Mr. Cohen would have
5 said that in a case such as this, that we also needed to
6 go to Ms. Jessamy to see what her feelings were about it.
7 BY MS. MURPHY:

8 Q Then you became aware, at some point last
9 year, that the Defendant had filed his post-conviction
10 petition; is that correct?

11 A That's correct.

12 Q Did there come a time, not long after that,
13 that you received a phone call from an Asia McClane?

14 A That's actually how I found out about this

15
16 MR. BROWN: Objection.

17 THE COURT: I'm sorry?

18 MR. BROWN: Again, this is way outside the
19 scope.

20 THE COURT: Ms. Murphy?

21 MS. MURPHY: Your Honor, I believe Mr. Urick's
22 responses to these questions will support the State's
23 contentions regarding the liability of Ms. McClane's
24 statement.

25 THE COURT: All right. Well, I guess the

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1 question is, I'll sustain the objection, because it's
2 outside the scope. But let me see Counsel at the bench
3 just on scheduling.

4 BENCH CONFERENCE

5 (Bench Conference begins - 2:49 p.m.)

6 (All Counsel approach the bench where the
7 following ensues:)

8 THE COURT: I mean, it is technically outside
9 the scope. The only issue is --

10 MS. MURPHY: Expedience, Your Honor.

11 THE COURT: The expedience. And the other
12 option is to finish up your cross where you are, any
13 redirect. And for the sake of trying to complete the
14 case, you could possibly call Mr. -- then, immediately
15 then, if Mr. Brown is willing to let us switch around,
16 then call him as your witness.

17 MS. MURPHY: I would --

18 THE COURT: I'm just trying to take full
19 advantage of the time and not require Mr. Urick to come
20 back again.

21 MS. MURPHY: Right.

22 MR. BROWN: That sounds -- I mean, you would
23 just call him as your own witness.

24 THE COURT: So, would you have any objection to
25 going slightly out of order then?

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1 MR. BROWN: Are there any other -- if there are
2 like this, I would just -- I have no problem with you
3 doing it now --

4 THE COURT: Let's suck it up.

5 MR. BROWN: -- rather than you recalling him.
6 As long as you don't do it in a leading manner.

7 MS. MURPHY: Oh, I see.

8 MR. BROWN: As if you were on -- if she does it
9 as if she were on direct.

10 THE COURT: Solely up to you.

11 MS. MURPHY: I can do that, Your Honor.

12 THE COURT: Okay.

13 MR. BROWN: Are there other issues you intend on
14 going into?

15 MS. MURPHY: No, I'm just about finished.

16 MR. BROWN: Okay.

17 THE COURT: Okay. So why don't we just rephrase
18 the question and maybe there won't be an objection. All
19 right.

20 MR. BROWN: Okay.

21 MS. MURPHY: Thank you.

22 (Bench Conference concluded at 2:50:23 a.m.)
23 (All Counsel return to trial tables where the
24 following ensued:)

25 MS. MURPHY: Thank you, Your Honor. If I may

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1 name for the Court, please?

2 THE WITNESS: It's R-A-B-I-A.

3 THE COURT: And last name, please?

4 THE WITNESS: C-H-A-U-D-R-Y.

5 THE COURT: Thank you. Mr. Brown?

6 DIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Good afternoon, Ms. Chaudry.

9 A Good afternoon.

10 Q What is your profession?

11 A I'm an attorney.

12 Q And where did you go to law school?

13 A I went to law school at George Mason School
14 of Law in Arlington, Virginia.

15 Q What year did you graduate?

16 A I graduated in 2000.

17 Q Are you admitted to practice law in any
18 state?

19 A I am. I am admitted to practice in
20 Washington D.C.

21 Q And do you practice law right now?

22 A Right now I am running an organization that
23 does National Security Consulting for local and federal
24 law enforcement and government agencies.

25 Q Can you give me an example of some of the

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1 government agencies that you work with?

2 MS. MURPHY: Objection.

3 THE COURT: As to relevance?

4 MS. MURPHY: Relevance.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: Department of Justice, Department
7 of Homeland Security, the FBI, and local law enforcement.
8 BY MR. BROWN:

9 Q How do you know Adnan Syed?

10 A I know Adnan, he was a friend of my younger
11 brother's, family friends.

12 Q Is it fair to say he's a friend of the
13 family?

14 A Yes.

15 Q I'd like for you -- to take you back to
16 early 1999, around the time when Mr. Syed was arrested.
17 What were you doing then?

18 A I was living in Arlington, Virginia. I was
19 in my second year of law school.

20 Q And, again, where did you go to law school?

21 A George Mason School of Law, in Arlington,
22 Virginia.

23 Q And do you remember when Mr. Syed was
24 charged in this case?

25 A Yes, I do.

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1 Q How did you find out about it?

2 A I visited my parents every weekend who
3 lived in Baltimore. In fact, in the same neighborhood as
4 Adnan's family. And I was watching television one evening
5 and I saw it on television.

6 Q Okay. And do you recall that this case
7 drew a lot of media attention?

8 A It did seem to, yes. I had been following
9 the case, the disappearance of Hae Min, for many weeks
10 before then.

11 Q And what was -- what, if any, reaction did
12 you have when you learned that Adnan Syed had been
13 arrested?

14 A I was shocked. I had no idea there was any
15 connection between him and the case.

16 Q And why were you shocked that it was Adnan
17 in particular?

18 MS. MURPHY: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: I knew Adnan in passing, when I
21 would see him with my brother once in a while at the
22 house. And he was just a very sweet, laid back, relaxed,
23 quiet boy. And he had a very good reputation in the
24 community. He was a volunteer EMT. He just was an all-
25 around good kid and that's how everybody knew him. So, we

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1 were all shocked.

2 BY MR. BROWN:

3 Q And were you aware at that time of whether
4 he had any criminal record?

5 MS. MURPHY: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: I had no knowledge of any criminal
8 record. No.

9 BY MR. BROWN:

10 Q Okay. And do you know approximately how
11 old Mr. Syed was at that time?

12 A He was 17. He was a year younger than my
13 brother.

14 Q And do you recall what his personality was
15 like then, very briefly?

16 A Yeah. He was just very --

17 MS. MURPHY: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: He was very laid back and relaxed.
20 And I use to joke and tell my brother, you're going to
21 corrupt him, 'cause he's such a sweet kid. He was a very
22 nice boy.

23 BY MR. BROWN:

24 Q Just for clarity, your brother would
25 corrupt Adnan?

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1 A Yes, my brother would corrupt Adnan. I
2 would tell Adnan to stay away from my brother. He's a bad
3 influence. I mean, I was joking, but.

4 Q And how did you have communication with
5 Syed? After the time of his arrest, did you have any
6 communication with him?

7 A After he was arrested, not immediately. I
8 went with my family to visit his family a number of times.
9 But, after a while, every so often, Adnan would call the
10 house just to say hello to the family, while he was in
11 prison, awaiting trial, and to speak to my brother. And
12 so he would call once in a while, and that was it.

13 Q And during those phone calls, again, these
14 are phone calls prior to the trial. Was there any
15 discussion about the facts of the case or anything like
16 that?

17 A No. We never discussed any substance of
18 the case at all, ever.

19 Q Okay. Syed had his first trial in December
20 of 1999. Do you remember that trial?

21 A A little bit, because I wasn't able to
22 attend much. We had finals and stuff. But I did attend
23 once or twice.

24 Q Okay. And do you remember the name of
25 Syed's lawyer during that trial?

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1 A Cristina Gutierrez.

2 Q And had you met Ms. Gutierrez before?

3 A Never, no.

4 Q And approximately how many days were you
5 present at the trial?

6 A Maybe -- not more than twice. Maybe,
7 either once or twice. During the first trial, just once
8 or twice.

9 Q And do you know how that first trial ended?

10 A It ended in a mistrial.

11 Q How did you get involved in -- with the
12 family and with the case?

13 A After the second trial began, I was able to
14 attend more frequently during that trial, so I did. I
15 think it was either the beginning of the semester or it
16 was during a break, between two semesters. So I had more
17 time during the day. And I really didn't get directly
18 involved until after the conviction, until after he was --
19 the verdict came in.

20 Q Okay. Let's go back roughly to the time of
21 the second trial. Do you recall that that took place in
22 January of 2000?

23 A Yes, it did.

24 Q Was there a time around then, that you had
25 the chance to meet with Ms. Gutierrez?

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1 A While the prosecution's case was ongoing, I
2 did meet with Ms. Gutierrez twice, at the behest of
3 Adnan's parents.

4 Q Okay. Let's start with the first meeting.
5 Do you remember approximately when that took place?

6 A I remember the trial was ongoing. The
7 prosecution was putting on its case. And I am not clear
8 about whether Adnan's parents or Ms. Gutierrez asked for
9 the meeting. But it was during the time the trial was
10 ongoing.

11 Q And where did this meeting take place?

12 A In Ms. Gutierrez's office.

13 Q Who was present?

14 A I was there, Adnan's mother and father were
15 there.

16 Q And what was your role in the meeting?
17 What were you doing there?

18 A I was asked to go because -- first of all,
19 our community doesn't have a lot of interaction with law
20 enforcement or courts and stuff. So they knew I was in
21 law school. They felt very intimidated by Ms. Gutierrez.
22 And they just wanted somebody to be there, to help
23 understand -- there were some language issues, too. They
24 wanted somebody available to understand what she had to
25 say and then also relay their questions.

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1 Q Okay. And what do you recall happening at
2 that meeting?

3 A It was a very short meeting. I know the
4 family, there were many things the family wanted to talk
5 about. But Ms. Gutierrez was very intimidating and really
6 rude and short. And the only thing she wanted to talk
7 about was money. And so, she said at that time, that I
8 need \$5,000 to bus the jury to the location where the body
9 was found. And, yeah.

10 Q Do you recall whether the family members
11 paid her that money?

12 A Yeah. Adnan's father wrote her a check
13 immediately. And on the check he wrote, "For busing the
14 jury."

15 Q And are you aware of whether the jury was
16 actually bused to the scene where the body was found?

17 A The jury was never bused to the scene. No.

18 Q What was your impression of Ms. Gutierrez?

19 A I thought she was -- I didn't know what
20 kind of attorney she was at the point, but I thought she
21 was a terrible person. She was very mean. She was very
22 short. She would not talk about anything. She said,
23 clearly, you are not my clients. I don't know why you're
24 here. Adnan is my client. I don't have to answer to you
25 for anything or explain anything to you. All she wanted

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1 to talk about was money, money, money. That was it.

2 Q Did she answer the questions put to her by
3 the family?

4 A No, not at all. We had wanted to know how
5 we could help, you know, witnesses from the community, his
6 friends, whether we should talk to media or not talk to
7 media, things of that -- and she just did not talk about
8 anything related to the substance of the case.

9 Q And did she give you any impression as to
10 whether she was winning the case or not?

11 A She wouldn't talk about the case. We
12 didn't know at all.

13 Q Was there a second meeting? You mentioned
14 -- well, you mentioned there was two meetings with her.
15 Can you tell me about the second meeting?

16 A The second meeting was also before she had
17 put on her defense, and it was also very brief. And,
18 again, I don't really know who arranged it, but I was
19 asked to come. And, at that time, sometime during the
20 meeting, she had said that -- and you need to start
21 arranging for money for the appeal.

22 Q Were you surprised to hear that?

23 A We were surprised and we were very sad, of
24 course, because it didn't sound good.

25 Q And, again, when did this meeting take

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1 place with respect to the trial?

2 A It was during -- the trial was ongoing. It
3 was maybe just a few days after the first meeting, or
4 within the week, or something of that sort.

5 Q Okay. Do you remember how much money she
6 was asking for?

7 A She said \$50,000, you'll have to raise for
8 an appeal.

9 Q Okay. So those were two meetings you had
10 with Ms. Gutierrez. Were there any other encounters you
11 had?

12 A The last time I interacted with Ms.
13 Gutierrez was immediately after the verdicts came in and
14 we left the courtroom. Adnan had been convicted. So, we
15 left the courtroom and we entered the elevator. And in
16 the elevator was me, Adnan's mother, Ms. Gutierrez, maybe
17 a couple other people I didn't know. And, at the time,
18 she wouldn't even look at us. But before she left the
19 elevator she said, "Start putting together \$50,000 for the
20 appeal." That was the last thing I ever heard from her.

21 Q And what was your reaction to that?

22 A I mean, there was no love lost. I mean, we
23 were just disgusted, you know.

24 Q Did you have the opportunity to meet with
25 Syed after the jury verdict?

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1 A I did. That day, after he was convicted,
2 Adnan was being held somewhere downtown. So, I went to go
3 visit him. And that was the first time we had ever spoken
4 about, like, any substance related to the case.

5 Q And had you met with him, actually face-to-
6 face, prior to then?

7 A I think I had -- I can't remember clearly
8 because since then I've met him many times. Just, you
9 know, with my brother to visit. But I think once or
10 twice, we might have gone just to visit him while he was
11 incarcerated.

12 Q And you said that meeting took place in one
13 of the jails in Baltimore City?

14 A Yeah. It was somewhere here in the city.

15 Q Did the topic of Asia McClane come up at
16 that meeting?

17 A It did. So, what had happened was, when I
18 went to go see -- I didn't know all of the facts related
19 to the case. But I had said to Adnan that, you know, in
20 the closing remarks the prosecutor essentially said that
21 Asia McClane left school, and was killed within those 20
22 to 30 minutes right after she left school. So it really
23 comes down to those 20 or 30 minutes. Do you remember
24 where you were, but this over a year later? And Adnan
25 said, it was like any other day for me. The only thing

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1 that might be of possible assistance, was I got these
2 letters last year, after I was arrested. But I gave those
3 letters, they're from a girl named, Asia McClane. I gave
4 those letters to Cristina Gutierrez and she came back and
5 told me that they did not check out. The dates, that Asia
6 had her dates wrong.

7 Q Okay. And --

8 A That's the first time I heard of Asia
9 McClane. I did not know her.

10 Q Okay. And after speaking, after speaking
11 with him about Asia McClane, what, if anything, did you do
12 to follow-up on that?

13 A I asked Adnan -- I knew I couldn't speak to
14 Cristina Gutierrez. She wouldn't speak to anybody. So, I
15 asked Adnan, he had copies of the letters. I asked him to
16 send me copies of the letters, and I think I got them
17 maybe a week or two weeks later in the mail. And then I -
18 - there was a phone number on at least one of the letters,
19 maybe both, and so I called -- I called her.

20 Q Okay. And did she answer your call?

21 A I left a message with her grandfather. She
22 was living with her grandparents apparently. And she
23 returned my call, and we spoke.

24 Q And can you tell me how that phone
25 conversation went?

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1 A It was brief. She seemed very happy that
2 somebody was reaching out to her. And she was very
3 willing to meet. So we met, I think, in the next day or
4 two after our conversation.

5 Q Do you remember where you met?

6 A Yeah. We arranged to meet at the parking
7 lot of the library, the public library, right next -- I
8 think it's called the Woodlawn Library. Right next to the
9 high school, where they had attended high school.

10 Q And what impression did you have of Ms.
11 McClane upon meeting her?

12 A She seemed very earnest, and sincere, and
13 confused, about why nobody had, like, responded to her.
14 She was very happy to talk to me. And that was my
15 impression that she wanted to help. She wanted her story
16 to be heard.

17 Q And did you take any notes from that
18 meeting with her?

19 A I did. I think I spoke to her and I took
20 some notes afterwards or during. I can't remember. I did
21 take some notes.

22 MR. BROWN: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 MS. MURPHY: Your Honor, I'll object to the

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1 admission of further statements of Asia McClane, based on
2 my earlier argument. On the grounds of hearsay, Your
3 Honor.

4 THE COURT: And for what --

5 MR. BROWN: Would you like for me to have the
6 witness identify the exhibits?

7 THE COURT: Well, let's at least identify them.
8 Yes. And is that (inaudible), I'm not sure. Are they
9 premarked though, Mr. Brown?

10 MR. BROWN: I premarked. This has been
11 premarked as Defendant's Exhibit No. 1.

12 THE COURT: For identification purposes only.

13 (Whereupon, Counsel approached the witness stand
14 and the following ensued:)

15 BY MR. BROWN:

16 Q Can you take a look at Defendant's Exhibit
17 1. Do you recognize that document?

18 A Yes. This is -- these are notes I wrote.

19 Q And is that your handwriting?

20 A It is.

21 MR. BROWN: Your Honor, I would offer
22 Defendant's Exhibit No. 1 into evidence.

23 MS. MURPHY: The State's objection continues,
24 Your Honor.

25 THE COURT: And, Counsel, approach.

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1 BENCH CONFERENCE
2 (Bench Conference begins - 3:08:05 p.m.)
3 (All Counsel approach the bench where the
4 following ensues:)
5 THE COURT: And the specific objection, they're
6 being offered to show --
7 MR. BROWN: These are her notes.
8 THE COURT: (Inaudible.)
9 MR. BROWN: To confirm the reliability of her
10 story.
11 THE COURT: Okay. But I assume, and I can only
12 assume, within the notes, there's hearsay?
13 MR. BROWN: Your Honor, I would point out that
14 hearsay is generally admissible in a post-conviction
15 hearing. So regardless of whether there is hearsay or
16 not, is of questionable relevance. I mean, we've already
17 heard so much hearsay in the last half hour, Your Honor.
18 She got hearsay testimony. And I assume the rules would
19 be the same for both of us.
20 THE COURT: Ms. Murphy?
21 MS. MURPHY: Well, I think you're talking about
22 double levels of hearsay, Your Honor. I mean, the
23 applicability of the evidentiary rules is discretionary.
24 And, again, I would reiterate those questions of
25 reliability now that this witness is 10 years removed. We

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1 have no way to cross-examine her, to view her demeanor, to
2 ask her questions about these statements. We're only
3 hearing one side of this story. The notes themselves are
4 being offered, essentially, as a prior consistent
5 statement which is -- there's no foundation for that at
6 this point. If she needs to review these notes in some
7 sort of past recollection recorded, that's different. But
8 these on their face aren't automatically admissible. We
9 have no showing that she can't recall this conversation.

10 MR. BROWN: Your Honor, her credibility has
11 already been called into question. These notes help
12 establish her credibility --

13 MS. MURPHY: Her being --

14 MR. BROWN: -- they help establish her
15 recollection of these events.

16 THE COURT: Well --

17 MS. MURPHY: I'm not sure whose credibility is
18 in question here.

19 THE COURT: And I'm not, if I did see this
20 stuff, it's been months ago. So, I don't recall. I know
21 we had some discussion over what was -- some of the
22 discovery issues and everything else involved in this
23 post-conviction. But, it's one thing to say that she's --
24 it's one thing to offer them to say, you're offering to
25 show that she did, in fact, meet. And (inaudible) that

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1 meeting, she took notes. And I assume there's no
2 objection as to, as to that.

3 MS. MURPHY: Well, she's testified to that, Your
4 Honor.

5 THE COURT: All right. But, I guess, I'm going
6 to sustain the objection. If you just want to proceed
7 with you took notes and what did you find out.

8 MR. BROWN: Okay.

9 THE COURT: And let's deal with it on a --
10 'cause I'm not sure what -- there may be portions of it
11 that Ms. Murphy has no objection to if it's necessary.

12 MS. MURPHY: My objection is on two levels. I
13 think that Asia McClane's statements -- I'm objecting to
14 them coming in at all. That's one level. And the second
15 one, was that there's been no foundation to show that any
16 notes need to come in. They're prior consistent
17 statements of something that the witness presumably is
18 testifying about.

19 MR. BROWN: Your Honor, this is essentially a
20 bench trial. My experience with every post-conviction is
21 that hearsay comes in. And it's up to the judge to give
22 it the value that the judge thinks it deserves. The State
23 has already raised questions about, you know, Asia
24 McClane's willingness to provide an affidavit. They did
25 that through Mr. Urick's hearsay. And now we are trying

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1 to substantiate our side of the story. Substantiate this
2 witness who's on the stand right now, number one. And,
3 number two, show the reliability of Asia McClane's
4 statement itself.

5 THE COURT: Well, but if she's able to testify
6 as to what happened that day, right, isn't she basically
7 bolstering her own credibility?

8 MR. BROWN: Through the introduction of --

9 THE COURT: Right. Yeah.

10 MR. BROWN: She is bolstering her own
11 credibility, yes. And she --

12 THE COURT: Ms. Chaudry.

13 MR. BROWN: And she's also -- the State has
14 already raised a question of, it's 10 years old and the
15 bat somehow diminishes the reliability of this. But I
16 would argue that these notes show that --

17 THE COURT: All right. Well --

18 MR. BROWN: -- she has a way of overcoming that
19 10 year period.

20 THE COURT: I'm going to -- we'll mark them as
21 ID. I'm going to sustain the objection. But I think you
22 can go ahead and, you know, ask her if she took notes.
23 And if you want to offer it to simply show she took notes.

24 MR. BROWN: Okay.

25 MS. MURPHY: Just to clarify, Your Honor, is Mr.

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1 Brown able to ask what she was told by Asia McClane?

2 THE COURT: And that's where we're going to deal
3 with this specific hearsay objection. We might as well
4 deal with it now.

5 MR. BROWN: Her witness just testified as to
6 what Asia McClane told him.

7 THE COURT: And Mr. Urick said that she said she
8 got involved. That's his assessment, was that she got
9 involved because of the family's insistence; is that the -
10 - what he testified to?

11 MR. BROWN: We have to rebut that now.

12 MS. MURPHY: But, she's already testified, Your
13 Honor, that she seemed eager and wanted to respond to her.
14 So, if they want to rebut her willingness or not
15 willingness to give a statement, I believe, that's been
16 established. And what specifically she said is regarding
17 a non-inundated question is a different story.

18 MR. BROWN: Your Honor, the State can't limit
19 how we can rebut the primary allegation they've made.

20 THE COURT: Well, at this point, and I'm
21 considering Mr. Urick, that portion of his testimony to --

22 MS. MURPHY: And that was rebuttal testimony
23 done in anticipation of the following witness.

24 THE COURT: Right. I understand. I understand.
25 Well, let's take it step-by-step. I think you can clearly

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1 rebut the whole willingness issue. But I know it's going
2 to get sticky when you start talking about what -- 'cause
3 I'm assuming in that, I guess, what you proffer in there
4 is that she said that he was with her at the time, the
5 alternate alibi, right?

6 MR. BROWN: Correct.

7 THE COURT: I'll let it in, but I'll give it the
8 weight I think it deserves. But there are some -- you
9 know, it's hearsay, within hearsay, within hearsay.

10 MR. BROWN: And, Your Honor, we would like the
11 opportunity to establish what weight exactly it deserves.
12 I mean, the way we do that is by presenting testimony
13 about exactly what happened, exactly how it all went down,
14 exactly how that statement is obtained. And then it is up
15 to Your Honor to decide, is that worthy of great weight or
16 little weight.

17 THE COURT: Well, it's a slippery slope. And
18 that's why I'm exercising some discretion in trying to
19 limit what does come in.

20 MR. BROWN: I guess we'll deal with it blow-by-
21 blow.

22 THE COURT: Let's deal with it blow-by-blow.

23 MR. BROWN: Thank you, Your Honor.

24 MS. MURPHY: I just -- so I don't have to keep
25 interrupting. I want a continued objection to any

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1 statements made by Asia McClane.

2 THE COURT: To Ms. Chaudry.

3 MS. MURPHY: Yes.

4 THE COURT: You have a continuing objection.

5 MS. MURPHY: Thank you, Your Honor.

6 (Bench Conference concluded at 3:16 p.m.)

7 (All Counsel return to trial tables where the
8 following ensued:)

9 THE COURT: You may continue, Mr. Brown.

10 MR. BROWN: Thank you, Your Honor.

11 BY MR. BROWN:

12 Q And again you have exhibit number --
13 Defendant's No. 1 in front of you. Can you describe what
14 that document is?

15 A This is a page from a legal pad that I had
16 made notes on when I met Asia.

17 Q Okay. And without reading it word-for-
18 word, can you describe what's contained in those notes?

19 A I just made notes summarizing what Asia had
20 said which was that she was with Adnan --

21 THE COURT: Well, don't tell us what she said
22 but just tell us.

23 THE WITNESS: Oh.

24 BY MR. BROWN:

25 Q Okay. Well, um, okay. Did -- as a result

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1 of your -- as a result of your conversation with Ms.
2 McClane, did you learn whether she ever tried to contact
3 the police about what she knew?

4 A Yes. She told me she tried to contact the
5 police, Adnan's family, his attorney. She wrote him
6 letters. She did everything she could to contact
7 somebody.

8 Q And what did you learn about her
9 interaction with Mr. Syed on the day in question?

10 A What I learned was that, she had seen him
11 after school that day at the library, which was next door
12 to the school. And she recalled the day very clearly.
13 She recalled very specific things about the day and she
14 had spent the time immediately after school with him for
15 about 15, 20 minutes.

16 MR. BROWN: Your Honor, just -- did I -- has
17 Exhibit No. 1 been admitted into evidence?

18 THE COURT: No, it's not been.

19 MR. BROWN: I would like to offer Defendant's
20 Exhibit 1 into evidence.

21 MS. MURPHY: I renew my objection, Your Honor.
22 There's been no foundation that the witness doesn't
23 independently recall this incident.

24 THE COURT: As to date and time?

25 MS. MURPHY: Date and time, substance. It's all

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1 been covered.

2 MR. BROWN: As to the date of this occurrence?

3 THE COURT: Well --

4 MR. BROWN: Are you aware of what date --

5 MS. MURPHY: Well, I'm sorry, not date, Your
6 Honor, but the --

7 THE COURT: You're offering it to prove that
8 there was a meeting and what was said, correct?

9 MR. BROWN: Correct, Your Honor.

10 THE COURT: I'm going to sustain the objection.
11 I think she -- you know, there are other objections that
12 have been made as to Ms. Chaudry's testimony as to what
13 was said to her. But unless she has trouble recollecting.

14 MR. BROWN: Okay. So, all right. Well, that
15 will be for identification purposes only and if you need
16 that to refresh your recollection, you may do so.

17 THE WITNESS: Okay.

18 (Whereupon, Defense's
19 Exhibit No. 1 was marked for
20 identification only.

21 BY MR. BROWN:

22 Q I am going to show you now what's been --
23 well, I'm sorry, before I do that. When you met with Ms.
24 McClane and you heard her story, what was your reaction to
25 that?

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1 A I was really angry and upset and shocked,
2 because I had never heard of this person before. And she
3 was clearly a very strong alibi witness. Her facts were
4 independently verifiable. And nobody had contacted her.
5 She had never heard from Cristina Gutierrez or anybody
6 from her firm.

7 Q And, at this time, did you pressure her in
8 any way to say something that she didn't want to say?

9 A Absolutely not. I didn't even know her.
10 This was completely her story, but it was consistent
11 through her letters, through everything she's told the
12 family. I just asked her, are you willing to put it down
13 on paper.

14 Q Okay. And after you asked her whether she
15 was willing to put it down on paper, what happened next?

16 A She said, yes, she would write it down on
17 paper. And, you know, do it in affidavit form so we could
18 go get it notarized. And she was completely willing to do
19 that.

20 Q I'm going to --

21 MR. BROWN: May I approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 (Whereupon, Counsel approached the witness stand
25 and the following ensued:)

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1 BY MR. BROWN:

2 Q I'm showing the witness what's been marked
3 as Defendant's Exhibit No. 2, do you recognize this
4 document?

5 A I do.

6 Q What is that document?

7 A That is the handwritten affidavit of Asia
8 McClane.

9 Q And are there any parts of that document
10 that you wrote?

11 A I wrote the word "Affidavit" on top and
12 everything else is her handwriting.

13 Q It's a little bit hard to read, but are you
14 able to make out a signature at the bottom of that
15 document?

16 A Yeah, that is the notary signature.

17 Q And is there another signature on there?

18 A Asia McClane's signature.

19 Q And is there a date on there?

20 A March 25, 2000.

21 Q And is that date consistent with the date
22 on which you met Asia McClane?

23 A Yes, that's the day we met.

24 Q Okay. And can you describe what this
25 affidavit says?

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1 MS. MURPHY: Objection.

2 MR. BROWN: Your Honor it's my -- well, do we
3 need to approach?

4 THE COURT: I think you do.

5 BENCH CONFERENCE

6 (Bench Conference begins - 3:21:56 p.m.)

7 (All Counsel approach the bench where the
8 following ensues:)

9 MR. BROWN: I thought we just covered this?

10 MS. MURPHY: Just my continued objection.

11 THE COURT: It's the same issue.

12 MS. MURPHY: It's the same issue. It's clearly
13 hearsay being offered for the truth of the matter
14 asserted.

15 THE COURT: And we'll, a continuing objection.
16 I'm just more concerned of the document itself. She's --
17 now this is not her. This is not her. So, Defense
18 Exhibit 1 are her notes.

19 MR. BROWN: Okay. That's correct. This is a
20 notarized affidavit, Your Honor. That does lend some
21 additional credibility. And it was notarized specifically
22 for this purpose. And once again, I would propose we let
23 it in, and Your Honor gives it the weight it deserves.
24 And I understand Ms. Murphy has a continuing objection.

25 THE COURT: But you're now asking her questions,

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1 what does it say.

2 MR. BROWN: Well, I --

3 MS. MURPHY: It speaks for itself.

4 MR. BROWN: Okay. That's fine. I don't -- I'm
5 going it -- I thought we had agreed --

6 THE COURT: I think you're doing the best you
7 can, Mr. Brown. I'm not -- you know --

8 MR. BROWN: How do you want me to do it, Your
9 Honor? Is this coming in or not?

10 THE COURT: As to its admission, Ms. Murphy, the
11 same objection?

12 MS. MURPHY: Same objection as to the hearsay.

13 THE COURT: All right. The Court will, again,
14 give it the weight I think it deserves.

15 MR. BROWN: Okay. And just to be clear, am I
16 allowed to ask her to describe what's in here?

17 THE COURT: I don't think so, because it's not
18 her affidavit. It's not her. She may have assisted in
19 obtaining it, right?

20 MR. BROWN: Okay.

21 THE COURT: It's not her.

22 MR. BROWN: But I may ask her about her
23 discussions with, her conversation?

24 THE COURT: You've already -- yeah, you've done
25 that. And there's a continuing objection as to what she

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1 said.

2 MR. BROWN: Okay. Thank you, Your Honor.

3 (Bench Conference concluded at 3:24:11 p.m.)

4 (All Counsel return to trial tables where the
5 following ensued:)

6 MR. BROWN: Your Honor, I offer Defendant's
7 Exhibit No. 2 into evidence.

8 THE COURT: And you object for the reasons set
9 forth?

10 MS. MURPHY: Yes, Your Honor. Thank you.

11 THE COURT: On the record. The Court notes the
12 objection. The Court will admit into evidence then
13 Defendant's Exhibit No. 2.

14 (Whereupon, Defense's
15 Exhibit No. 2 was admitted
16 into evidence.)

17 MR. BROWN: Is it okay for me to leave it right
18 here?

19 THE COURT: Sure.

20 BY MR. BROWN:

21 Q Ms. Chaudry, you said that you had a
22 conversation with Ms. McClane prior to the taking of that
23 affidavit, correct?

24 A Yes.

25 Q Could you please read that affidavit right

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1 now and tell me if there's anything in that affidavit
2 that's inconsistent --

3 THE COURT: Read it to yourself.

4 MR. BROWN: Absolutely. Read it to yourself.
5 And tell me if there's anything in that affidavit that's
6 inconsistent with the conversation that you had with Ms.
7 McClane?

8 MS. MURPHY: Objection.

9 THE COURT: Same objection, Ms. Murphy?

10 MS. MURPHY: Same objection, Your Honor.

11 THE COURT: Duly noted, but overruled.

12 (Pause. Witness examined the exhibit.)

13 THE WITNESS: I'm done.

14 BY MR. BROWN:

15 Q Okay. Let me ask the question again. Is
16 there anything in that affidavit that's in any way
17 inconsistent with what Ms. McClane told you in person when
18 you talked to her?

19 A No, that's exactly what she said.

20 Q Okay. And why did you decide to get that
21 statement notarized?

22 A Honestly, I was in my second year of law
23 school. I wasn't sure, like, how to handle the situation.
24 I knew Cristina was not approachable, Cristina Gutierrez.
25 And it just seemed, like, you know -- and I also didn't

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1 really have any contact with Asia at all after that. So I
2 just wanted to get it on paper, to be able to also give it
3 to Cristina Gutierrez, and to show it to the family and to
4 provide it to the court. I thought it might help.

5 Q How did you get it notarized?

6 A There's a -- we were in the Security Mall
7 area. And there was a little check-cashing place across
8 the street, on Security Boulevard, and we just went there
9 and got it notarized.

10 Q Okay. And did Ms. McClane have any
11 objection to that?

12 A No, not at all.

13 Q How did you feel after having met her?

14 MS. MURPHY: Objection.

15 THE COURT: Overruled. You may answer.

16 THE WITNESS: I was furious. I felt like this
17 was a witness who would have changed the entire case. And
18 her -- the story she told me, she remembered so many
19 details. I was able to verify those, some of the details
20 later. There were two other witnesses involved in it and
21 the fact that Cristina Gutierrez had not even contacted
22 her, to me, was evidence that she was -- Gutierrez was
23 okay -- she wanted to lose the case. That's how I felt at
24 that point. That she wanted to lose that case.

25 MS. MURPHY: Objection.

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1 THE COURT: Sustained.

2 BY MR. BROWN:

3 Q Are you aware of any motive that she may
4 have had to lie about this?

5 THE COURT: I'm sorry?

6 MR. BROWN: Were you aware of any motive that
7 she might have had at that time to lie about her account?

8 MS. MURPHY: Objection.

9 THE COURT: Sustained.

10 BY MR. BROWN:

11 Q Did Ms. McClane say anything to you about
12 having a romantic interest in Mr. Syed?

13 A Absolutely not.

14 MS. MURPHY: Objection.

15 THE COURT: Sustained.

16 MR. BROWN: May we approach, Your Honor?

17 THE COURT: You may.

18 BENCH CONFERENCE

19 (Bench Conference begins - 3:28:12 p.m.)

20 (All Counsel approach the bench where the
21 following ensues:)

22 MR. BROWN: I believe it was you in your opening
23 statement said that there was clearly evidence of some
24 kind of romantic interest --

25 THE COURT: I missed that, if Ms. Murphy did.

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1 MR. BROWN: -- exemplified from that. And I
2 think that kind of opened the door to that question,
3 that's why I'm asking.

4 MS. MURPHY: It was an argument, Your Honor.
5 There was no testimony on that. And it's based on
6 documents, other than these, that were provided by the
7 Defense Counsel in his petition.

8 THE COURT: But did you mention -- I don't
9 recall that in today's opening?

10 MS. MURPHY: Yes, I did. When -- I will argue
11 about the credibility of this witness and things the State
12 would want to explore. There's certainly --

13 THE COURT: Right. 'Cause I assume there was?

14 MR. BROWN: No.

15 MS. MURPHY: -- statements in the letters.

16 MR. BROWN: It's our position there was not.

17 MS. MURPHY: There's statements made in the
18 letters that suggest a very strong affinity for the
19 Defendant by this witness.

20 THE COURT: But your objection again?

21 MS. MURPHY: This -- I mean, that was argument.
22 There's been no testimony and I just don't see how it's
23 relevant at this point.

24 THE COURT: (Inaudible) the question was, did?

25 MR. BROWN: Did she do anything to indicate that

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1 she -- or say anything that indicated to you, that she had
2 a romantic interest in Mr. Syed?

3 THE COURT: I'll overrule and allow it.

4 (Bench Conference concluded at 3:29:45 p.m.)

5 (All Counsel return to trial tables where the
6 following ensued:)

7 BY MR. BROWN:

8 Q Ms. Chaudry, I'll ask you the same question
9 again. Did Ms. McLane do, or say anything to you, that
10 led you to believe she had a romantic interest in Mr.
11 Syed?

12 A Not at all.

13 Q Okay. After you met with Ms. McClane, did
14 you make any effort to confirm the truth of what she told
15 you?

16 A I did. Yes.

17 Q And can you please tell the Court what you
18 did?

19 MS. MURPHY: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: I -- Asia had conveyed that the
22 day she --

23 MS. MURPHY: Objection.

24 THE COURT: Sustained.

25 THE WITNESS: Okay. Um --

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1 BY MR. BROWN:

2 Q Can you -- can you just tell exactly what
3 you did.

4 A I checked the weather reports to see if
5 they were consistent with what she said. And I checked
6 the school closing records to check if it was consistent
7 with what she said.

8 Q And what did you find out? Was -- did
9 those -- that fact checking you did, was that consistent
10 with what she had said?

11 A It was completely consistent with what she
12 said.

13 Q And why did you think that?

14 A Because school had been closed for two
15 days. The day after Hae Min disappeared because there was
16 a heavy snowstorm that same night. And that's what Asia
17 had conveyed and that's what the record showed.

18 Q And what, if any, significance did that
19 have to you?

20 A That showed me that there were details
21 about that day. It was not just any other day for her.
22 She remembered specific details about that day, and her
23 details were verifiable.

24 Q What did you then do with that affidavit?

25 A I made a bunch of copies. I sent, I think,

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1 a copy maybe to Adnan. I showed it to his family. The
2 family decided to send a copy to Cristina Gutierrez.
3 Nobody was able to get in touch with her. She would not
4 respond to phone calls, not the family's or Adnan's. So,
5 we sent her a letter and a copy of the affidavit.

6 Q Okay.

7 MR. BROWN: May I approach?

8 THE COURT: You may.

9 (Whereupon, Counsel approached the witness stand
10 and the following ensued:)

11 MR. BROWN: I'm showing the witness what's been
12 premarked as Defense Exhibit No. 3.

13 BY MR. BROWN:

14 Q Do you recognize that document?

15 A Yes, I do.

16 Q What do you recognize it to be?

17 A This is a letter that Adnan's parents asked
18 me to help them draft and type up to send to Cristina
19 Gutierrez, along with a copy of the affidavit.

20 Q And why is it that they asked you to help
21 draft and type up that letter?

22 A I think, um -- I think they might not have
23 had a computer at home. But, also, again language issues.
24 And maybe they thought I would be able to use legal
25 language more appropriately.

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Q Okay. And could you please read that letter out-loud to the Court?

A (Reading from exhibit.) "Dear, Ms. Gutierrez. We would like for you to include in our Motion for a New Trial, the newly discovered evidence provided by Ms. Asia McClane. We are aware that under Maryland laws, the evidence is considered newly discovered, only when it is indeed newly discovered. We feel, however, that Asia's information falls into a gray area. Because, in fact, nobody contacted her for her story. And that, until now, her story was undiscovered. Attached, please find a copy of the affidavit signed and sworn to by Ms. Asia McClane. According to her, the two other eyewitness alibis are also willing to submit affidavits. Furthermore, for sentencing, we would like to have mitigating witnesses address the Court. Please contact us to arrange for this. Thank you."

MR. BROWN: Your Honor, I'd like to offer Defense Exhibit No. 3 into evidence.

THE COURT: Any objection, Ms. Murphy?

MS. MURPHY: No, Your Honor.

THE COURT: So admitted then as Defense Exhibit No. 3.

(Whereupon, Defense's Exhibit No. 3 was admitted

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1 into evidence.)

2 BY MR. BROWN:

3 Q And did you ever become aware of whether

4 Ms. Gutierrez responded to that letter?

5 A Ms. Gutierrez never responded to the

6 letter.

7 Q And did you have any direct contact with

8 Ms. Gutierrez after you obtained the affidavit?

9 A No, I did not.

10 Q Did you continue to assist Mr. Syed's

11 family with the case after that?

12 A I did. I helped them write -- because

13 there was no response from Cristina Gutierrez, out of

14 desperation, they wanted to write a letter to the judge.

15 So, I helped them draft a letter to the judge and also

16 included a copy of the affidavit.

17 Q I'm going to show you what's been premarked

18 as Defense Exhibit No. 4. Do you recognize that document?

19 A Yes, I do.

20 Q What do you recognize that to be?

21 A That's the letter that I helped Adnan's

22 parents draft, to send to the Honorable Wanda Keyes, who

23 was the judge in the case.

24 Q And, do you know whose signature is at the

25 bottom of that?

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1 A That is his mother and father's signature.
2 Q But you, in fact, typed that letter up?
3 A I did. Yes.
4 MR. BROWN: Okay. Your Honor, I offer
5 Defendant's Exhibit No. 4 into evidence.
6 THE COURT: And, again, any objection, Ms.
7 Murphy?
8 MS. MURPHY: No, Your Honor.
9 THE COURT: So admitted then as Defendant's
10 Exhibit No. 4.
11 (Whereupon, Defense's
12 Exhibit No. 4 was admitted
13 into evidence.)
14 MR. BROWN: Court's indulgence for one moment,
15 Your Honor.
16 THE COURT: Uh-huh.
17 (Pause.)
18 BY MR. BROWN:
19 Q And, Ms. Chaudry, can you -- are you able
20 to review that letter and tell me what the status of Ms.
21 Gutierrez was with this case, at the time of this letter?
22 The first paragraph, the first paragraph might refresh
23 your recollection.
24 A The status of Ms. Gutierrez's relationship
25 at that point was that, Adnan's family was trying to fire

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1 her and get a public defender. But she would not respond.
2 And not just to the family but not to Adnan. And in order
3 for him to get a public defender, she had to withdraw from
4 the case, and file something with the court. But she
5 wasn't doing that either. So, we were asking for a
6 continuance on the -- I think, either on the sentencing or
7 a motion or something, so we could get another lawyer.

8 Q And were you involved in the family's
9 decision to fire Ms. Gutierrez?

10 A They fired her, but I supported it.

11 Q Why did you support that decision?

12 A I think -- I mean, after having met with
13 Asia, and knowing how she had treated the family and
14 Adnan, it was clear that her -- she was not representing
15 Adnan's interests.

16 MS. MURPHY: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. BROWN:

19 Q Moving on, did there come a time when you
20 obtained Ms. Gutierrez's case file?

21 A Yes. The family called me after Cristina
22 Gutierrez had been dismissed from the case, or she had
23 been fired from the case, and said that her office had
24 said his case files are in a warehouse. So, Adnan's
25 mother contacted me and asked to help go retrieve them.

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1 Q And did you do that?
2 A I did. Yes.
3 Q And were you involved in getting those
4 boxes delivered to my office?
5 A Yes, I was.
6 Q How did you do that?
7 A I delivered them with Adnan's younger
8 brother. We dropped them off at your office.
9 Q Okay.
10 MR. BROWN: May I have the Court's indulgence
11 for one moment?
12 THE COURT: You may.
13 (Pause.)
14 MR. BROWN: Your Honor, no further questions for
15 this witness.
16 THE COURT: Ms. Murphy?
17 MS. MURPHY: Thank you, Your Honor. Court's
18 indulgence for one moment, please.
19 CROSS-EXAMINATION
20 BY MS. MURPHY:
21 Q Good afternoon, Ms. Chaudry.
22 A Good afternoon.
23 Q You stated that you were able to attend the
24 second trial more so than the first; is that correct?
25 A Yes.

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1 Q And you are aware that trial took about six
2 weeks to complete?

3 A The second trial?

4 Q Yes.

5 A I'm not sure of the length of the trial. I
6 don't really know. I wasn't there the entire time.

7 Q Okay. Were you there enough to see that
8 there were many contentious legal discussions between
9 counsel and the judge?

10 A Yes, I did see some of that.

11 Q Were you aware enough to -- were you
12 present enough to be aware that Ms. Gutierrez felt that
13 she had appealable issues in the case?

14 MR. BROWN: Objection. As to her testifying
15 about how Ms. Gutierrez felt.

16 THE COURT: I'll sustain. You want to rephrase.
17 BY MS. MURPHY:

18 Q You stated that Ms. Gutierrez encouraged
19 the family to begin arranging money for appeal.

20 A Yes.

21 Q And are you aware that the case was, in
22 fact, appealed?

23 A Yes.

24 Q And the Defendant was not then represented
25 by Ms. Gutierrez; is that correct?

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1 A That's correct.

2 Q So, the family, in effect, did follow
3 through on her recommendation to pursue the appeal,
4 correct?

5 A What other option did the family have?
6 They were not just going to use her though.

7 Q The family pursued the appeal, correct?

8 A Of course.

9 Q Just as Ms. Gutierrez recommended?

10 A Before he was convicted, yes.

11 Q And you were aware that there were
12 contentious legal issues ongoing in the case?

13 MR. BROWN: Objection, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: I did not know at that time a lot
16 of the facts of the case, no. I wasn't that involved
17 during the trial. No.

18 BY MS. MURPHY:

19 Q So, you wouldn't know one way or the other
20 whether Ms. Gutierrez's comments stem from issues that
21 were arising daily in the courtroom, would you?

22 A She was enigma. She was just rude. It
23 didn't matter. I don't know.

24 Q You don't know?

25 A I don't know.

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1 Q And you were not privy to any discussions
2 that occurred between her and her client, correct?

3 A There were none, I don't think.

4 Q Were you privy to discussions between Ms.
5 Gutierrez and her client?

6 A I don't understand the question. Do you
7 mean, do I have personal knowledge or did Adnan tell me
8 about those discussions? What does that mean?

9 Q Were you present for any discussions
10 between Ms. Gutierrez and her client?

11 A He was incarcerated. No, of course not.

12 Q You were present for discussions between
13 Ms. Gutierrez and the Defendant's family, correct?

14 A Yes, yes.

15 Q Now, at that point, you were a second year
16 law student. You're an attorney now, right?

17 A Yes.

18 Q Is it ethical for an attorney to disclose
19 communications from her client either to his client's
20 family?

21 MR. BROWN: Objection, Your Honor. She's not on
22 the stand as an expert in ethical matters.

23 THE COURT: Overruled.

24 THE WITNESS: Generally, no. Unless the client
25 has granted permission which was given in this case.

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1 BY MS. MURPHY:

2 Q Was the client present for those meetings?

3 A No.

4 Q And Ms. Gutierrez, you stated, indicated to
5 you that she didn't represent the family, correct?

6 A Yes.

7 Q She said, and I'll quote you, "Adnan is my
8 client."

9 A Yes.

10 Q You stated you spoke with Adnan about the
11 substance of his case after the verdict.

12 A Yes.

13 Q And the topic of Asia McClane came up then.

14 A Yes.

15 Q You stated Adnan said, that it was like any
16 other day?

17 A For him. He didn't have any specific
18 recollection of that day, no.

19 Q So he did not indicate to you that he felt
20 Asia McClane was true, her statements were true or not
21 true?

22 A He said he remembered meeting Asia one time
23 in the library, but he could not verify the date.

24 Q So, Adnan did not tell you that he saw this
25 witness in the library on the date?

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1 A Um, no. I mean, he said that he remembers
2 it but he didn't know the date.

3 Q Well, let's clarify. You said he
4 remembered seeing her one day in the library?

5 A Yes, yeah. But that's why he asked
6 Cristina to verify the date.

7 MS. MURPHY: Nothing further, Your Honor.

8 THE COURT: Any redirect?

9 MR. BROWN: Just very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BROWN:

12 Q Ms. Murphy asked you about a -- that
13 particular date and whether you were able to verify that
14 that was, in fact, the date when Mr. Syed met with Asia
15 McClane. Were you able to verify that date?

16 MS. MURPHY: Objection. That was not the
17 State's question, Your Honor.

18 THE COURT: I'm sorry. Let me hear the question
19 again though, please. Don't answer. Let me hear the
20 question again.

21 MR. BROWN: Were you able to verify the date on
22 which Ms. McClane said that she met with Mr. Syed?

23 MS. MURPHY: Objection.

24 THE COURT: As to form?

25 MS. MURPHY: This was covered in her direct,

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1 Your Honor. And I only asked about the Defendant's
2 statements about that meeting. Not whether she did
3 independent investigation.

4 THE COURT: Overruled.

5 BY MR. BROWN:

6 Q Ms. Chaudry, were you able to verify that
7 date on which Ms. McClane stated that she met with Mr.
8 Syed?

9 A Yes, I was.

10 Q And can you tell the Court one more time
11 how you verified that?

12 A I verified it, because I checked the
13 weather records and the school closing records which is
14 how she remembered that day. She had been snowed in.

15 Q And again, were those records and those
16 weather reports consistent with what Ms. McClane had told
17 you?

18 A Absolutely.

19 MR. BROWN: No further questions.

20 THE COURT: Any limited recross, Ms. Murphy?

21 MS. MURPHY: Nothing further, Your Honor.

22 THE COURT: Ms. Chaudry, you may step down.

23 (Witness was excused.)

24 THE COURT: And, I need to take a quick break.
25 But, there are two more witnesses?

Cited Excerpts of Post-Conviction Hearing Testimony from Shamin Rahman (10/11/2012) (Pages 84-85, 98-100)

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1 Q How did you first come to know Cristina
2 Gutierrez?
3 A When Adnan got arrested the first time. So
4 we did hire the professor. Then he --
5 THE COURT: I'm sorry. You hired who?
6 THE WITNESS: The professor. We had the
7 professor, a professor.
8 BY MS. KUJDA:
9 Q Are you saying that you had a relationship
10 with a professor who --
11 A We hired him, yes.
12 Q And what did the professor do in regards to
13 Adnan's case?
14 A Yeah. He -- when Adnan got arrested, so we
15 hired him. So he introduced us to Ms. Gutierrez.
16 Q So the professor introduced you to
17 Cristina?
18 A Yes, Cristina.
19 Q Did you agree to meet with Cristina?
20 A Yes, we did.
21 Q Okay. Could you describe that meeting?
22 A Yeah. It was three lawyers. So, the
23 mosque, you know, they had -- they interviewed other three
24 lawyers. So they choose Cristina Gutierrez.
25 Q So you're saying that the mosque --

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1 A Yes.

2 Q -- which you attend, had interviewed --

3 A Yeah, Cristina.

4 Q -- some attorneys?

5 A Yes, the three of them.

6 Q Okay. So, did the people at your mosque
7 make a decision on who would represent Adnan?

8 A Yes, they did.

9 Q And who did they decide?

10 A Cristina Gutierrez.

11 Q When was the first time that you met with
12 Ms. Gutierrez without the individuals in your mosque?

13 A Yeah, me and my husband, we went to her
14 office and we signed the contract.

15 Q Okay. And when you went to her office, did
16 you talk to her at all about Adnan's case?

17 A We did. But she asked us for the money,
18 like \$50,000. So we had to take the money to her.

19 Q Okay. So she asked you for \$50,000?

20 A Yes.

21 Q Did you pay the \$50,000?

22 A Yes, we did.

23 Q And how did you pay that?

24 A Some of the mosque, you know, the community
25 gave us the money, and the rest of them we had to take up

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1 innocent?

2 A Yes, I know he's innocent.

3 Q Regardless of this belief, if Adnan had
4 come to you and said that he was considering pleading
5 guilty, what would you have done?

6 A I'd respect his wishes. Whatever he
7 decide, you know, is all right with me.

8 Q Would you have loved him and supported him?

9 A Of course. He's my child, yes.

10 MS. KUJDA: No further questions.

11 THE COURT: Just one second.

12 (Pause.)

13 THE COURT: And, Ms. Murphy, any cross?

14 MS. MURPHY: Just briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. MURPHY:

17 Q Good afternoon.

18 A Good afternoon.

19 Q You said you initially hired a professor.

20 A Yes.

21 Q Was that Michael Millman at the University
22 of Maryland?

23 A I don't remember his name, 'cause a long
24 time.

25 Q Was he at the University of Maryland?

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1 A Yes.

2 Q Was there also another professor named,
3 Doug Colbert who assisted?

4 A Yes, his first name.

5 Q And they actually recommended Cristina
6 Gutierrez, correct?

7 A Yes, yes.

8 Q And they told you that she had a reputation
9 for being very tough?

10 A Of course, yes.

11 Q And for fighting very hard for the client.

12 A Yes.

13 Q And, of course, that's what you wanted?

14 A Yeah, the expertise, you know.

15 Q So you were aware that she had an extensive
16 background in trying criminal cases?

17 A Yes, that's what they told us.

18 Q And then representing Defendants in
19 criminal cases, correct?

20 A Yes, uh-huh.

21 Q And as any mother, you wanted the best
22 attorney possible, right?

23 A Of course.

24 Q It's fair that you and your community
25 sacrificed a great deal to hire Ms. Gutierrez; is that

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1 correct?

2 A Yes, we did.

3 Q And you did that, because you hoped for an
4 acquittal in the case, right?

5 A Uh-huh.

6 MS. MURPHY: Nothing further, Your Honor.

7 THE COURT: Any redirect, Ms. Kujda?

8 MS. KUJDA: Court's indulgence. No redirect,
9 Your Honor.

10 THE COURT: And you may step down, Ms. Rahman.
11 (Witness was excused.)

12 THE COURT: Counsel, unfortunately, I think
13 based upon my schedule, this is probably an appropriate
14 time for us to break. And we're back again on October the
15 25th. Thank you. And thank you for your patience and
16 cooperation.

17 MR. BROWN: Thank you, Your Honor.

18 MS. MURPHY: Thank you, Your Honor.

19 (Off the record -- 4:16:16 p.m.)
20
21
22
23
24
25

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Cited Excerpts of Post-Conviction Hearing Entry of Stipulation (10/25/2012) (Pages 4-5)

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October 25, 2012 BEFORE JUDGE MARTIN P. WELCH

ADNAN SYED	*	IN THE
Petitioner	*	CIRCUIT COURT
V.	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY,
Respondent	*	STATE OF MARYLAND
	*	199103042-046 and
	*	Post-Conviction No. 10432

* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Post-Conviction)

BEFORE: THE HONORABLE MARTIN P. WELCH, Judge

HEARING DATE: October 25, 2012

APPEARANCES:

For the Petitioner: Justin Brown, Esquire

For the Respondent: Kathleen Murphy, Esquire

Transcriptionist: Erika B. Newton

Transcription Service: ACCUSCRIBES TRANSCRIPTION SERVICE
1301 York Road, Suite 601
Lutherville, Maryland 21093

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1 told her to be here around 2:00, but certainly I can shoot
2 her a text message or something to change that.

3 THE COURT: And any other witnesses after?

4 MR. BROWN: No, Your Honor.

5 THE COURT: Okay. Any, Ms. Murphy?

6 MS. MURPHY: At this point, the State is not
7 intending to call any witnesses, Your Honor.

8 THE COURT: Okay. Any idea -- well, and Mr.
9 Syed is probably your longest witness, I assume.

10 MR. BROWN: I would imagine.

11 THE COURT: Okay. Well let's sort of see where
12 we are and then we can always adjust. So, is the
13 Petitioner prepared to call its next witness then, Mr.
14 Brown?

15 MR. BROWN: Yes, Your Honor. I would like to
16 before I call Mr. Syed, I just want to address one issue
17 that came up at the last hearing. We -- I discussed, that
18 it was my understanding there was a stipulation regarding
19 a note that was found in Ms. Gutierrez's file. And Ms.
20 Murphy initially objected, that she didn't recall there
21 being a stipulation. But we have had the opportunity to
22 discuss it. And, in fact, there was an agreement that an
23 affidavit, she would not object to its admission into
24 evidence.

25 So, I would like to introduce it into evidence

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1 at that time and briefly explain to Your Honor what it is.

2 THE COURT: All right. And I missed the first
3 thing you said as to what it was. So maybe you'll --

4 MR. BROWN: Your Honor, there was a note found
5 in Ms. Gutierrez's file related to the alibi witness, Asia
6 McClane. And, essentially what the note said was, "Asia
7 McClane saw him in the library at 3:00. Asia, boyfriend
8 saw him too." That's a handwritten note.

9 And I was able to determine that that note was
10 written by a law clerk to Ms. Gutierrez named, Ali
11 Cornedor (phonetic), who's now an attorney in Washington
12 D.C. So I sent that note, along with some requests for a
13 jail visit to Mr. Cornedor, so that he could authenticate
14 them. And say that, indeed, that was his handwriting.
15 That by the best of his recollection, he visited Syed,
16 obtained that information, and that in the normal course
17 of being a law clerk, he would have relayed that
18 information to Ms. Gutierrez.

19 So, I believe we're on Defendant's Exhibit No.
20 5. And I would move that into evidence at this time, Your
21 Honor.

22 THE COURT: And, Ms. Murphy?

23 MS. MURPHY: No objection, Your Honor.

24 THE COURT: So admitted then as Defendant's
25 Exhibit No. 5.

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Cited Excerpts of Post-Conviction Hearing Testimony from Adnan Syed (10/25/2012) (Pages 8-34, 38-39, 57-59)

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1 Q At that time, did you have any criminal
2 record?
3 A No.
4 Q Ever been arrested, any juvenile offenses,
5 anything?
6 A No.
7 Q Do you recall that you were arrested on
8 February 28, 1999?
9 A Yes.
10 Q And do you remember where you were detained
11 initially?
12 A At the Baltimore City Detention Center.
13 Q Were you able to get released on bail?
14 A No.
15 Q Were you represented by an attorney at your
16 bail hearing?
17 A Yes.
18 Q Do you recall the name of that attorney?
19 A I believe it was Professor Douglas Colbert.
20 Q Okay. And did there eventually come a time
21 when you obtained a lawyer other than Professor Colbert to
22 represent you?
23 A Yes.
24 Q And who was that other lawyer?
25 A Ms. Cristina Gutierrez.

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1 Q To the best of your recollection, how did
2 Cristina Gutierrez come to represent you?

3 A Well, when I was arrested, the community
4 that I was a part of, they raised money to hire an
5 attorney. So, that's how she was hired. The members of
6 the community, they hired her.

7 Q Okay. Were you personally involved in the
8 selection process?

9 A No.

10 Q Had you met with Ms. Gutierrez prior to the
11 time when she was officially retained?

12 A No.

13 Q Do you recall when you first met Ms.
14 Gutierrez?

15 A Yes.

16 Q And I assume that was prior to the trial;
17 is that correct?

18 A Yes.

19 Q Do you remember where that meeting took
20 place?

21 A In the city jail visiting room.

22 Q Okay. What was she like at that meeting?

23 A Well, I would characterize my interactions
24 with Ms. Gutierrez in the same manner that I would
25 interact with, I guess, my teachers, or my coaches, or

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1 even my doctor. In the sense that, they were very much,
2 you know, the adult. And they were in charge. And
3 whatever they said, that's what it was. You know, I
4 depended on them. I trusted on them. So, I guess, that
5 would be the best way to describe my interactions with Ms.
6 Gutierrez.

7 Q Is it fair to say that Ms. Gutierrez was
8 assertive?

9 A Yes.

10 Q Did you feel at all intimidated by her?

11 A To an extent. I guess, the best way to
12 describe it was like the relationships I just described,
13 that whatever she said, that's what it was.

14 Q Okay. And you testified before, that you -
15 - this was the first time you'd ever been arrested, right?

16 A Yes.

17 Q How much did you know about the whole
18 process of being charged with a crime?

19 A Other than what I had seen on T.V. or read
20 in the books, I didn't have any experience with it.

21 Q What, if anything, did you know about the
22 discovery process?

23 A I didn't know much of anything about it.

24 Q What, if anything, did you know about the
25 plea bargaining process?

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1 A I didn't -- until the initial hearings
2 began and through conversations with other inmates over at
3 the city jail, I didn't know anything about the plea
4 bargaining process.

5 Q Did you understand suppression issues and
6 other evidentiary issues?

7 A No.

8 Q Did you understand anything about jury
9 selection?

10 A Not in detail.

11 Q Did you know all the components of a jury
12 trial?

13 A No.

14 Q And did Ms. Gutierrez explain all of these
15 things to you?

16 A Not in any detail.

17 Q Now, I want to ask you a few questions
18 about the discovery in this case. Do you now know what I
19 mean when I use the word discovery?

20 A Yes.

21 Q Did Ms. Gutierrez explain to you the
22 State's evidence piece by piece, or at least what she
23 understood to be the State's evidence?

24 A Not in any detail.

25 Q Did she explain to you --

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1 MS. MURPHY: Your Honor, I'm going to object to
2 the leading nature of these questions.

3 THE COURT: Sustained.

4 BY MR. BROWN:

5 Q What, if anything, did Ms. Gutierrez
6 explain to you about cellular telephone evidence?

7 A She didn't really go into detail about any
8 aspects of cellular. Just, she did mention that -- when
9 she would describe the case to me, when I would ask her,
10 she would give me bits and pieces in a sense. And she
11 would tell me that, for example, they're trying to use
12 your cell phone to pinpoint where you were during the day.
13 So that was the gist of her explanations to me. They were
14 not in any great detail.

15 Q Did she attempt to explain to you what
16 other witnesses would testify to?

17 MS. MURPHY: Objection as to the leading nature
18 of the question.

19 THE COURT: Sustained.

20 BY MR. BROWN:

21 Q What, if anything, did Ms. Gutierrez tell
22 you about other witnesses and how they might testify
23 against you?

24 A She didn't go into great detail with me
25 about the total extent, I guess, of what she knew about

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1 the prosecutor's case.

2 MS. MURPHY: Objection, Your Honor. As to what
3 she knew.

4 THE COURT: Sustained as to what she knew.

5 BY MR. BROWN:

6 Q Let me ask you this, did you feel like you
7 had a good grasp of the evidence against you?

8 A Not to a great extent.

9 Q Now, you mentioned that there was at least
10 one meeting with Ms. Gutierrez. Did there ever come a
11 time when other people from her office would visit you?

12 A Yes.

13 Q And I'm going to read you a couple of names
14 and I want to ask you if you recall those people and
15 whether they visited you at all. Do you recall someone
16 named Michael Lewis?

17 A Yes.

18 Q Who is Michael Lewis?

19 A He was one of, I guess, a paralegal or a
20 law clerk or. I guess he was a lawyer who worked
21 underneath of -- I'm not even sure what the term is for
22 that.

23 Q What about Caleoby (phonetic) Farmamous
24 (phonetic)?

25 A She was in the same capacity.

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1 Q What about Rita Pazmiacous (phonetic)?
2 A She was an attorney who worked with her or.
3 Q Did you recall someone named Ali Cornedor?
4 A Yes.
5 Q And did any of these people ever visit you
6 prior to your trial?
7 A Yes.
8 Q Was there one in particular, or was it the
9 sum of them, or was it all of them? What do you recall?
10 A They would come at different intervals.
11 So, they would come individually, at different times.
12 Q And what, if anything, was your
13 understanding as to whether those people would relay
14 information to Ms. Gutierrez?
15 A I was under the impression that whatever I
16 told them, they would pass it along to her.
17 Q Okay. Now, prior, there were numerous -- I
18 want to ask you a few questions about your court
19 proceedings but not your trial, but prior to the trial.
20 Do you recall any of those proceedings?
21 A Yes.
22 Q And do you recall who represented you at
23 those proceedings?
24 A Yes.
25 Q Who was that?

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1 A Ms. Gutierrez.

2 Q Okay. Can you describe to the Court what
3 those proceedings were like?

4 A Well, it was always very crowded. The
5 courtroom was always full of people. And it was really
6 like emotionally charged atmosphere. And through the
7 first initial hearings, I was just really trying to pay
8 attention to what was going on. And whenever I would get
9 back to the jail, I would see on the news, news stories of
10 it, or someone would show me a paper -- excuse me, stories
11 from the newspaper. And, I guess, the sense that I got
12 was that, initially and throughout the entire proceeding
13 was that, this wasn't really -- this was really a
14 situation where I would have to prove that I didn't commit
15 this crime. This wasn't a situation where I could just
16 lay back and see, well they have to prove that I did it.
17 And, I guess, that understanding comes from, you know,
18 when you watch T.V. or you watch the legal shows. It's
19 the sense of innocent until proven guilty. But my
20 impression from going to court and seeing all the media
21 coverage and in the newspaper or on T.V., that that was
22 just the impression that stuck with me. That, I was going
23 to have prove that I didn't commit this crime. That in a
24 sense, I was already -- it felt like I was just presumed
25 guilty by everyone.

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1 Q Did you ever have the opportunity to speak
2 with your lawyer about how strong the case against you
3 was?

4 A Yes.

5 Q And what, if anything, do you recall her
6 saying?

7 A Well, I asked her and I asked some of her
8 legal people that work with her when they would come to
9 visit me. I would ask them, you know, what are the
10 elements of the State's case? You know, do you guys know
11 what they're going to present against me? Essentially,
12 what is it that I'm facing? And, they never really went
13 into great detail about it. They would just kind of ask
14 me the questions and then that was it. And to the extent
15 that I explained earlier, that that was my relationship
16 with them. I mean, specifically with Ms. Gutierrez that,
17 I trusted her. And I took it to be that, well, she
18 understood what was important, she would come and ask me
19 what it was. And I may ask her a question or not, but
20 whatever her response was, that's what it is. I mean, the
21 best way I can explain it is, is to be 17-year-old and go
22 visit your doctor. And your doctor asks you questions and
23 he tells you something, you listen to what they say. You
24 know, whatever they say, that's what it is.

25 Q But, did you feel like you understood how

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1 strong the case was against you or wasn't against you?

2 A I definitely did not have confidence that,
3 unless I was able to prove I didn't commit this crime,
4 because it seemed as if from what the State was saying at
5 these different hearings, that they were pinpointing,
6 like, an exact time and an exact place where this murder
7 took place.

8 Q Did there come a time when Ms. Gutierrez
9 sat down with you and explained your options with regards
10 to pleading guilty or going to trial?

11 A No.

12 Q Did you ever raise this issue with Ms.
13 Gutierrez?

14 A I did.

15 THE COURT: You said you didn't?

16 THE WITNESS: Oh, no, I'm sorry, Your Honor. I
17 said, I did. Yes sir, I did.

18 THE COURT: You did.

19 THE WITNESS: Yes sir, I did.

20 BY MR. BROWN:

21 Q And how did you -- you mentioned before
22 that you'd never been arrested for a crime. How did you
23 come to ask her about this issue, this issue about
24 pleading guilty or proceeding to trial? How did you come
25 to ask her about it?

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A Well, when I was housed in the city jail, a lot of times, you know, other inmates and myself we would talk about our cases. And my conversation with some older guys, I would explain that, I really didn't have confidence in my case. Because, I felt that, the time that they said -- or excuse me, the time that it seems the State's theory was that this murder took place or the time that they were alleging in the bits and pieces of information that Ms. Gutierrez was giving me, it seemed that I couldn't prove I was somewhere else or with someone else at that time. So, I felt that I was expressing I didn't really have confidence in my case. And it was suggested to me that, well, you should ask your attorney, did the State offer a plea deal or, you know, what is the possibility of that. And it was explained to me that that's pretty much common practice. That in most cases, the State will -- you know, a person will be offered a plea deal. So that's how the conversation came up about the plea deal and the idea came to me.

Q Okay. Do you know approximately when this conversation took place?

A It was prior to the first trial.

Q And what exactly did you ask Ms. Gutierrez to do?

A Well, I asked Ms. Gutierrez if the State

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1 offered a plea deal. She said no. My next question to
2 was to her, could she speak to the State's Attorney or
3 request some type of a plea. And I explained to her that
4 I didn't really have confidence that I'd be able to prove
5 I was somewhere else when the murder take place and when
6 the State's theory that the murder took place, from the
7 information that we were getting. So that's what I asked
8 her.

9 Q And how did she respond to your request?

10 A She responded in the affirmative. And I
11 took it to mean that, okay, she was going to ask her.

12 Q And did she ever follow-up on this?

13 A Well, my next time that I saw her, I asked
14 her, what was the end result? Did she get a chance to
15 speak to the State's Attorney? And her response was,
16 "They're not offering you a plea deal." So, when she said
17 that, that's what it was. There was nothing else for me
18 to ask her after that, because I believed that she went
19 and spoke to the State's Attorney, the State's Attorney
20 said no, and that's what it was. Whatever she said, I
21 mean, that's what it was. I didn't feel the need to
22 question her about it. I took her for her word.

23 Q Okay. And do you recall, do you recall how
24 your first trial ended?

25 A It ended in a mistrial.

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1 Q And do you recall why it ended in a
2 mistrial?
3 A Yes.
4 Q Why was that?
5 A Well, Judge Quarles had called Ms.
6 Gutierrez a liar during an exchange and Christopher Flohr
7 was sitting behind us. He made reference to Ms. Gutierrez
8 about it and Judge Quarles also stated that he received
9 the letter from the juror saying that they heard him call
10 her a liar in court.
11 Q Were you able to hear him call her a liar?
12 A I was able to hear it, yes.
13 Q What was that like to hear the judge call
14 your client -- your attorney a liar?
15 A I mean, it was -- I didn't really have a --
16 I don't even know what to say. I mean, I didn't -- it was
17 just kind of shocking to hear that.
18 Q Do you recall whether the mistrial occurred
19 before or after Jay Wilds (phonetic) testified?
20 THE COURT: I'm sorry, after who testified?
21 MR. BROWN: I said, does he recall whether the
22 mistrial occurred before or after Jay Wilds testified --
23 THE COURT: Jay Wilds.
24 MR. BROWN: -- testified in your trial, in that
25 first trial?

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1 THE WITNESS: I know that he had testified
2 extensively. I don't know if his testimony -- I can't
3 remember -- I don't recall if his testimony was complete
4 at this time.

5 BY MR. BROWN:

6 Q And is it fair to say that Jay Wilds was
7 the State's primary witness against you?

8 A I believe now that I'm able to say that the
9 answer is yes. And I was able to hear the State's entire
10 opening arguments. And specifically, at that time when
11 they pinpointed that at 2:36 p.m., I made a phone call to
12 Jay Wilds to come pick me up in the Best Buy parking lot,
13 and I showed him the body of Hae Lee in the trunk of the
14 car.

15 Q Now, after that mistrial, do you recall how
16 long it was until your second trial started?

17 A I believe it was several weeks. It wasn't
18 long at all.

19 Q And during that interim, did you have an
20 opportunity to speak to Ms. Gutierrez?

21 A Yes.

22 Q And did you, at any time, raise the issue
23 of a plea?

24 A Yes.

25 Q Can you describe to the Court what

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1 happened?

2 A Well, at this point, my fear was even
3 greater. And it was confirmed because, once again, back
4 to the original point, I felt that I needed to prove that
5 I didn't commit this crime. And I felt the best
6 opportunity to do that was to be able to prove at the time
7 they said the murder was committed, I was somewhere else
8 or with someone else. And absent of that, I didn't
9 believe that I would prevail at trial. And I had a pretty
10 good opportunity of seeing all of the State's case, so my
11 fears were confirmed earlier. And my request to her was,
12 I guess, based on an even greater fear that I wouldn't be
13 able to prevail at trial.

14 Q Can you tell me though, what did you tell
15 her with -- or what, if anything, did you tell her about
16 the pleas?

17 A Well, I expressed to Ms. Gutierrez again
18 that, I really didn't have confidence in the case because
19 now, my fears are confirmed that, that's essentially to me
20 what it came down to. The perception in my mind was, this
21 is what this case comes down to. Where was I at this
22 time. So, I asked Ms. Gutierrez once again, do you think
23 the State will offer a deal? Could you talk to them
24 again?

25 Q And, did she respond?

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1 A She responded that, they're not offering
2 you a deal.

3 Q I'm going to turn your attention to
4 somebody named, Asia McClane. Do you know Asia McClane?

5 A I went to school with her.

6 Q And how long did you know her at school?

7 A She was the girlfriend of a friend of mine,
8 who I had went to school with since middle school.

9 Q And what's that person's name?

10 A His name is Justin Adger (phonetic).

11 Q Justin Adger?

12 A Yes, sir.

13 Q Okay. Did you -- did you know her well?

14 A I only knew her through him. We had a few
15 classes together. But other than that, I only knew her
16 through him.

17 Q Were you aware of whether she had a
18 boyfriend?

19 A Well, when I knew her, she was his
20 boyfriend. I knew they had broken up. So, I did not know
21 at the time whether she had a boyfriend or not.

22 Q Okay. Were you aware of whether she was a
23 good student or not?

24 A We were in a lot -- some of the same
25 classes together. So, I believe, that she was a pretty

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1 good student.

2 Q And I believe you mentioned before that you
3 were in some type of Honors Program at the school; is that
4 correct?

5 A Yeah. It was a magnet program.

6 Q Were you aware of whether she was also in
7 that program?

8 A She was in some of the classes. So, I
9 believe she may or may not have been. But, I know we were
10 in a lot -- but we were in a few of the same classes
11 together.

12 Q And, did there come a time when she
13 contacted you following your arrest?

14 A Yes.

15 MR. BROWN: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 (Whereupon, Counsel approached the witness stand
19 and the following ensued:)

20 BY MR. BROWN:

21 Q I'm going to show you what's been marked as
22 Defendant's Exhibit 6. Do you recognize that document?

23 A Yes.

24 Q Can you describe for the Court what this
25 is?

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1 A It's the letter I received from Asia
2 McClane, probably within a few days after I was arrested.

3 Q And do you, do you need a chance to review
4 that letter or do you recall?

5 A I recall it.

6 MR. BROWN: Your Honor, I'd offer into evidence
7 Defendant's Exhibit No. 6.

8 THE COURT: Any objection, Ms. Murphy?

9 MS. MURPHY: No, Your Honor.

10 THE COURT: So admitted then as Defendant's
11 Exhibit No. 6.

12 (Whereupon, Defense's
13 Exhibit No. 6 was admitted
14 into evidence.)

15 BY MR. BROWN:

16 Q Can you explain to the Court what
17 impression this letter had upon you?

18 A I think that's the second letter.

19 Q Okay. Let me -- let's do this. Do you
20 recall that there was -- do you recall how many letters
21 you received from Asia McClane?

22 A I received two letters from her back to
23 back.

24 Q I want to show you what's been marked as
25 Defendant's Exhibit No. 7. Do you recognize Defendant's

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1 Exhibit No. 7?

2 A Yes.

3 Q What's Defendant's Exhibit No. 7?

4 A It's the first letter that she wrote me.
5 It's dated March 1, 1999 and I was arrested the day
6 before, February 28, 1999. So, I probably received it
7 maybe two or three days after I was arrested.

8 MR. BROWN: Your Honor, I would like to move
9 Defendant's Exhibit No. 7 into evidence.

10 THE COURT: And again, any objection, Ms.
11 Murphy?

12 MS. MURPHY: No, Your Honor.

13 THE COURT: So admitted then, as Defense Exhibit
14 No. 7.

15 (Whereupon, Defense's
16 Exhibit No. 7 was admitted
17 into evidence.)

18 BY MR. BROWN:

19 Q So, do you recall chronologically which
20 letter you received first?

21 A I received Exhibit No. 7 first. It's
22 dated, March 1, 1999.

23 Q And do you recall what impression these
24 letters had on you?

25 A Well, once I was arrested, I realized that

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1 it was very important for me to be able to recount exactly
2 what happened that day. And, when I received these
3 letters, it kind of fortified the memory that I had of
4 after school that day. School ended at 2:15, that after
5 school that day, I went to the public library. And I
6 stayed there between approximately 2:40 to 3:00, and then
7 I went to track practice. So, these letters essentially,
8 they verify in my mind what my memory was of that day.

9 Q Were you surprised to receive these
10 letters?

11 A I was surprised to received these letters.
12 And in them, she stressed several things to me. She
13 stressed number one, that she was very clear and concise
14 about remembering that day. And she was very emphatic
15 about being able to help me out. She was emphatic about,
16 she provided me with her phone number, her, I believe, her
17 mother or her grandmother's phone number. She requested
18 me to ask my attorney to contact her, so that she could
19 come forward with this information. And, I mean, she --
20 and, I guess, what surprised me in a sense was that, she
21 wrote me back to back. And she told me that she also took
22 it upon herself to visit my family and she spoke to my
23 mother. And, you know, she expressed these things to my
24 mother. So, yeah.

25 Q And all that's in those letters?

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1 A All of this contained in these letters.

2 Q If I could turn your attention to Exhibit
3 No. 6, is there a mention of someone named, Justin Adger?

4 A Oh, yes, sir. There is.

5 Q Is that the same Justin Adger who you
6 mentioned before in your testimony?

7 A Yes.

8 Q And, again, who is Justin Adger?

9 A He was a friend of mine, that I had known
10 since middle school.

11 Q And just to be absolutely clear, did those
12 letters come to you before the trial or after the trial?

13 A I received these letters within the first
14 week of being arrested. So that was way prior before the
15 trial.

16 Q And did you solicit these letters in any
17 way?

18 A Not at all.

19 Q Is what she said, in these letters about
20 January 13th true?

21 A I -- it's absolutely true. She -- one of
22 the things that really stuck out in my mind, was that she
23 stated that she spoke to the librarian who stated that
24 they had security cameras. And one of the things that she
25 mentioned was that, that's something that we should look

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1 at, trying to secure those or retrieve the security camera

2 Q Tell me, and not what these letters say,
3 but tell me what your own recollection is from that date
4 of January 13th, with regard to Asia McClane?

5 A I would say my -- well, my recollection is

6
7 THE COURT: And, I'm sorry, January 13th is the
8 date of the letter or?

9 MR. BROWN: Your Honor, that's the date when Ms.
10 McClane ran into Mr. Syed at the library. It's the date
11 when the murder took place.

12 THE COURT: Okay.

13 THE WITNESS: I was in the library and Asia
14 McClane, she came over and there were two other guys with
15 her. And she introduced them as her boyfriend and her
16 boyfriend's best friend. So, we sat, and we talked for a
17 little while about different things, like, college and
18 what's going on in high school. You know, things like
19 that. And, I would say the two things particularly that
20 really stuck out in my mind, and she did mention them --
21 excuse me, she did mention them -- excuse me. The one
22 thing that stuck out in mind was the fact that, there were
23 two snow days immediately after this day. And she
24 mentioned that in the letter. And, so, that would be
25 January 14th and 15th. We didn't have school those two

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1 days. And that stuck out in my mind was because, when I
2 met her boyfriend, I had put in my head that, well, when I
3 see Justin tomorrow in school, you know, I'm just going to
4 let him know, you know, I met Asia's boyfriend. He seemed
5 like a pretty nice guy. 'Cause I just felt like that was
6 something, you know, he -- you know, he may want to know.
7 But I didn't have a chance to tell him this until the
8 following Monday because we had two snow days.

9 Q Do you recall what you were doing at the
10 library at that time?

11 A I'm fairly certain that I was accessing my
12 e-mail from the library.

13 Q Okay. And why, why had you not told anyone
14 this before about the library?

15 A Well, prior to me being arrested, I had
16 absolutely no idea that I would need to -- have to recount
17 every single aspect of my day that day. I didn't know
18 that I was going to be charged with her murder. I had
19 absolutely nothing to do with her murder. So, up until
20 the day I was arrested, in my conversations with the
21 detectives or with anyone for that matter, I never went
22 into great extent or felt the need to, because I didn't
23 believe I needed to provide an alibi. I didn't know that
24 I was going to be charged with her murder.

25 Q And is it correct that, to the best of your

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1 recollection, the victim's body was not found until nearly
2 a month later, after this date, this January 13th date?

3 A I believe it was February 9th, 1999.

4 Q And is it correct that you were arrested on
5 February 28th, 1999?

6 A Yes.

7 Q And after receiving the letters from Ms.
8 McClane, did you notify Cristina Gutierrez?

9 A I immediately notified her.

10 Q How did you notify her?

11 A Well, it would have been, the next time
12 that I saw her on a visit, I showed her the two letters
13 and she read them. And I asked her, could she please do
14 two things, contact Asia McClane, and try to go to the
15 library to retrieve whatever security footage was there.

16 Q And do you recall whether this conversation
17 with Ms. Gutierrez took place prior to the start of the
18 trial?

19 A It took place very much prior to the start
20 of the first trial.

21 Q Do you -- we mentioned this name before.
22 I'm gong to run it by you again, Ali Cornedor. Do you
23 recall who he was?

24 A Yes. He was one of Ms. Gutierrez's law --
25 I don't know. He was a lawyer, I think. So, I don't know

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1 if that's called a law clerk. But he worked for her and
2 he would come talk to me about the case.

3 Q And do you recall meeting with him?

4 A Yes.

5 Q And did there come a time when you told him
6 about Asia McClane?

7 A Yes.

8 Q And, just very briefly, because we've been
9 over it. But what did you tell him about Asia McClane?

10 A Well, I told him that I remembered being in
11 the public library with her that day from right after
12 school, which is about 2:15 to around 2:40, 2:45'ish,
13 close to three.

14 Q And, again, when you spoke to him, was it
15 your understanding that that information would eventually
16 be conveyed to Ms. Gutierrez?

17 A True. And I specifically pointed out the
18 two things about this, the surveillance cameras. And I
19 also asked him if he could please, well, pass along that,
20 about the e-mail access. And I gave him my e-mail address
21 and the password.

22 Q Okay. And did Ms. Gutierrez, or anybody
23 working for her, working under her, ever get back to you
24 about Asia McClane?

25 A Subsequent to the time when I mentioned

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1 this to Ms. Gutierrez, the next visit, I immediately asked
2 her, what -- did you speak to Asia McClane? What did she
3 have to say? Were you able to secure the surveillance
4 cameras?

5 Q And how did she respond?

6 A Her response was, I looked into it and
7 nothing came of it.

8 Q Did you press her on this?

9 A When I asked her, and her response was
10 that, I asked her again, well, Ms. Gutierrez, did you go
11 speak to her? You know, did they say that -- I just began
12 in my mind to try to understand what she meant, but she
13 moved onto another subject. And I understand now, it
14 looks one way, but to be a 17-year-old kid in this type of
15 situation, whatever your lawyer tells you, that's what it
16 is.

17 Q And after you were told by Ms. Gutierrez
18 that nothing came of it, which is what you just testified
19 to. Did this -- what, if any, affect did this have about
20 how you felt about the strength of the case?

21 A Well, as I explained before about the plea
22 deal, this was what precipitated my fear, that I wouldn't
23 be able to prove where I was at this time. I didn't know
24 the exact timing at the time, but I would find out at the
25 first trial. But from the pieces and tidbits of

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1 information that was gleamed from the hearings that we had
2 and some of the things, Ms. Gutierrez, I understood that.
3 That was the most crucial time during the day, right after
4 school. People had seen me in school. People had seen
5 Hae Lee in school afterwards. People testified that they
6 saw her leaving by herself. People testified that they
7 saw me after school by myself. That this timing was the
8 most crucial time between 2:15 and come to find out later
9 2:36 p.m. It's the window of 21 minutes, that was the
10 most crucial time. If I was going to prove I didn't
11 commit this crime, that was where it was. My case lived
12 and died in those 21 minutes, that's it. There was
13 nothing else to -- you know, that's what it was.

14 So, when Ms. Gutierrez told me that I looked
15 into it and nothing came of it, I took that into mean
16 that, now I have no way to prove I was somewhere else at
17 this time. So that precipitated my fear and the
18 conversations about -- I didn't have confidence in my case
19 at all then, because that's where the case lived and died
20 at. At that time, right then and there.

21 Q Okay. And what, if any, affect did this
22 have on your willingness to take a plea?

23 A Well, at that time, particularly after the
24 first trial when I heard the -- for the most part, the
25 State's entire theory. The State's entire case was that,

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1 one puts me with Jay Wilds anywhere near 2:36 p.m. No one
2 puts me anywhere near Hae Lee at 2:36 p.m. It's just his
3 word versus nothing. And that's why I felt it was so
4 crucial about her contacting Asia McClane. So when she
5 contacted -- so when she impressed upon me that she spoke
6 to her and nothing came of it, that's what led to me, just
7 completely having lack of faith in my defense. Because I
8 realized that nothing -- it didn't matter if someone came
9 to court and said, I was a good son or I went to the
10 mosque, or I was a good student, or a good athlete. None
11 of this stuff mattered.

12 Because no one came to court, not one single
13 person, you can look at the transcript, and said they
14 witnessed me threatening Hae Lee, they witnessed me
15 physically abusing her, emotionally abusing her. Hae Lee
16 -- no one testified that Hae Lee expressed to them that
17 she was afraid of me. Except for Jay Wilds, no one said
18 anything about us being anything but friends. So, none of
19 that other stuff mattered about, if I was a good son.
20 This whole case was built -- could I prove that I was
21 somewhere else when Jay Wilds said I was here. And if I
22 couldn't do that, I had no confidence in the case
23 whatsoever.

24 Q Okay. How was your relationship with Ms.
25 Gutierrez throughout the second trial?

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1 A I mean, I trusted her as I did in the first
2 trial. I trusted her word completely. I didn't have any
3 reason to doubt up to that point.

4 Q Did she tell you what her strategy was in
5 the second trial?

6 A Absolutely not.

7 Q Did you keep her on -- and, in fact, you
8 were convicted, correct?

9 A Correct.

10 Q Did you keep her on for your sentencing?

11 A No.

12 Q Why not?

13 A Well, after I was convicted, I had made
14 mention to Rabia Chaudry about Asia McClane. And I had
15 made mention to her that, you know, I wish there was some
16 way that I could of proved that I was somewhere else at
17 this time. And I told her that, well, Ms. Gutierrez
18 checked into it and obviously it didn't pan out. So,
19 Rabia requested that I send her the information. She was
20 a law student at the time.

21 So, I sent her the information. These two --
22 these letters -- well, copies of these letters, or these
23 letters. And she, in turn, contacted Asia McClane. And
24 Asia McClane informed her that she was never contacted.
25 No one ever reached out to her. No one ever talked to

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1 Q Right. So you knew, you were one of the
2 first to know essentially that, Hae Min Lee was missing,
3 correct?

4 A Yes, ma'am.

5 Q So that day would be significant to you,
6 correct?

7 A Well, as far as -- I didn't know that she
8 was missing. The only thing that he mentioned to me was
9 that, her family was -- she didn't -- I believe, she
10 didn't go pick up her cousin from school. So, as far as
11 saying that I knew that she was missing, I didn't know
12 that she was missing.

13 Q Okay. You and Hae Min Lee had been very
14 close that year, correct?

15 A We had been close for the four years that
16 we knew each other.

17 Q And that year in particular, you had been
18 very close, correct?

19 A We had dated for about six months.

20 Q And that included a sexual relationship,
21 correct?

22 A Yes, ma'am.

23 Q You spoke on the phone often, correct?

24 A Yes, ma'am.

25 Q You didn't call Hae Min Lee on the 13th,

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1 did you?

2 A Well, I would have seen her in school that
3 day. So, if we were both in school, I wouldn't have
4 called her.

5 Q You didn't call her after Officer Agcot
6 called you, did you?

7 A Did I call her?

8 Q Yes.

9 A Did I call her house? She didn't have a
10 phone or anything?

11 Q Did you call her house after Officer Agcot
12 called you?

13 A I did speak to several of her friends.
14 From what I understood from the conversation, he was at
15 her house saying that, asking me, had I seen her that day

16
17 Q I'm just asking you, did you call her
18 house?

19 A He called me from her house.

20 Q Did you call Hae Min Lee's house after you
21 spoke to Officer Agcot?

22 A When he called me from her house. I don't
23 understand, why would I call her house back if he's at her
24 house calling me, asking, you know, did I see her that day
25 or anything like that.

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1 Q So, I take it from your answer, that you
2 did not call Hae Min Lee's house after Officer Agcot spoke
3 to you on January 13th, correct?

4 A He called me from Hae Min Lee's house.

5 Q All right. So you spoke to Officer Agcot
6 on the 13th?

7 A Yes, ma'am.

8 Q You also were interviewed by detectives in
9 the days and weeks following, correct?

10 A I believe it was a Det. O'Shea, on the
11 25th.

12 Q From Baltimore County, right?

13 A Yes, ma'am.

14 Q Less than a week later?

15 A It was on the -- yes, ma'am.

16 Q And Det. O'Shea asked you where you were on
17 the 13th, right?

18 A I believe that he asked me if I had seen
19 Hae Lee that day.

20 Q You told Det. O'Shea you had been at school
21 that day and had gone to track practice, correct?

22 A Yes, ma'am.

23 Q And that was in response to his questions,
24 I presume, correct?

25 A Yes, ma'am.

Cited Excerpts of Post-Conviction Hearing Testimony from Margaret Meade (10/25/2012) (Page 98)

ADNAN SYED VS. STATE OF MARYLAND
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1 Gutierrez. Because, when I first saw her, when I was
2 clerking for Judge Prevas, and she was the only woman out
3 there, doing criminal defense. So, she was sort of a
4 semi-mentor, semi-idol, for a while. So, I was --

5 Q But you didn't have any extensive
6 discussions with her about this case?

7 A No, no.

8 Q I assume you didn't have any discussions
9 with Judge Quarles or Judge Heard about the case?

10 A No.

11 Q Did Mr. Brown provide you with just the
12 transcript of the closing argument and no other
13 transcripts?

14 A I looked at some other transcripts but it
15 was mainly going through, he explained the circumstances
16 and the evidence, and going through the petition and his
17 supplemental petition.

18 Q But you didn't get all 35 volumes?

19 A Oh, no.

20 Q You would remember that, right?

21 A I would remember that. There was one other
22 part. It was sections of it that I reviewed.

23 Q So, basically the only knowledge you have
24 of this case is what the Defendant has provided you?

25 A Right.

Cited Excerpt of Petitioner's
Closing Statement
at Post-Conviction Hearing
(10/25/2012) (Pages 106, 113)

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1 Now, there was a hearsay objection to that
2 affidavit coming in. And one of the arguments that I
3 would like the Court to consider is because this issue is
4 framed as a failure to investigate, that affidavit should
5 also come in, because it's not hearsay. It's not offered
6 to necessarily prove what is written in the affidavit.
7 Rather, the fact is, that that affidavit was out there and
8 those statements were out there. And, therefore, the
9 attorney had the duty to at least investigate it. Not
10 necessarily, it's not necessarily provable in the sense
11 that things would have turned out that way. But at the
12 very least, Cristina Gutierrez had to investigate such an
13 alibi witness.

14 We heard from Kevin Urick about the same alibi
15 witness. Kevin Urick spoke to her on the phone. We heard
16 from him that she lives in Oregon now. Your Honor, we
17 tried -- and I submit, as an officer of the court, Your
18 Honor, has granted a certification in which we attempted
19 to get her here. For whatever reason, she evaded service
20 in Oregon. We could not produce her. But we know from
21 Kevin Urick that she's real. That she exists. That she
22 called him up. Sure, she said that she felt coerced or
23 pressured into signing that affidavit. But, by saying
24 that, she's acknowledging that she did, in fact, sign that
25 affidavit.

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1 was evidence against him. And, he had to be able to show
2 where he was when this murder took place. There was an
3 alibi witness. There was an alibi witness who was willing
4 to talk. But his defense attorney completely blew that
5 off. As his hopes were dwindling, mentally, he turned
6 more toward the plea deal. Yet, she failed him again.
7 Because she never followed up on that plea deal. So the
8 two additives that he had for resolving this case, trial
9 and guilty plea, they were both ruined by his lawyer. His
10 lawyer, who has been disbarred. Who, this Court is well
11 aware of, there were scores of clients whom she cheated
12 out of their money.

13 THE COURT: Well, I, I -- the Court is unaware
14 of that. And --

15 MR. BROWN: Okay. Well, you heard testimony
16 from Mr. Syed's mother about those interactions.

17 THE COURT: Yeah. But I, in all fairness, Mr.
18 Brown, to the late Ms. Gutierrez.

19 MR. BROWN: I understand your point, Your Honor,
20 without you saying it. She certainly had some great
21 moments as a defense attorney. But, I think the record,
22 that we have established is that, she also had some not so
23 great moments. And, this was one of them. Thank you,
24 Your Honor.

25 THE COURT: I didn't mean to cut you off.

Cited Excerpts of Post-Conviction
Hearing Testimony
from William Kanwisher
(2/3/2016) (Pages 104-06)

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1

ADNAN SYED v. STATE OF MARYLAND
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

ADNAN SYED,	*	IN THE
	*	
PETITIONER,	*	CIRCUIT COURT
	*	
	*	FOR
V.	*	
	*	BALTIMORE CITY
	*	
STATE OF MARYLAND.	*	CASE: 199103042-46
	*	

* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS

(EVIDENTIARY HEARING)

BEFORE: THE HONORABLE MARTIN P. WELCH, JUDGE

HEARING DATE: FEBRUARY 3, 2016

APPEARANCES:

For the Petitioner: C. Justin Brown, Esquire
Christopher C. Nieto, Esquire
For the State: Thiruvendran Vignarajah, AAG
Matthew Krimski, AAG
Tiffany Harvey, AAG

Transcriptionist: Patricia Noell

AAERT Cert. No.: CET 362

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1 A I can.

2 Q All right. If it's easier I can give you just a

3 straight hard copy. Yeah.

4 A Actually, that would be fine too, but -- yeah.

5 Q Here you go.

6 A Thanks.

7 Q All right, sir. So I draw your attention to

8 paragraph no. 6.

9 A Yes, sir.

10 Q Okay. Now, you stated that the alibi notice

11 does not lock the defense attorney into a particular

12 strategy; do you remember writing that?

13 A Yep.

14 Q Now, with regards to Ms. Gutierrez's practice,

15 per your experiences and observations, what did you mean

16 by that?

17 A Cristina's philosophy was always to try and keep

18 as many doors open as she possibly could. In answering

19 any kind of pretrial motion or demand she would try to

20 craft it so that she didn't in fact pin herself down to

21 any case theory, if she could. So for something like an

22 alibi notice, she would have treated it the same way.

23 Tina would have likely tried to put as much information

24 and as many names into an alibi notice as she possibly

25 could. This is so the State would not be able to focus in

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1 on the one or two alibi witnesses that she may have
2 planned to call. That was one of her tactics. Also she
3 would have done that so that the State would expend
4 resources and time and energy possibly going and either
5 interviewing or re-interviewing the witnesses that she
6 named as alibi witnesses.

7 Q All right. So if I may draw your attention
8 additionally to paragraph 7 or 8, and I think you've
9 addressed some of that. In this affidavit you speak to
10 her tactics and the use of this necessary alibi notice,
11 right?

12 A Uh-huh.

13 Q And so if I understand your testimony, then, the
14 idea is to put as many witnesses on the list so as to
15 potentially confuse the State; is that fair to say?

16 A That's correct.

17 Q And also to keep her or your options open.

18 A Correct.

19 Q Now, if a witness were not put on the alibi
20 notice, what would that mean for purposes of trial?

21 A Well, Tina understood the rules and she would
22 have understood that if she had an alibi witness that she
23 had actually either was planning or maybe just considering
24 using that her failure to put it on the list could
25 preclude her from actually presenting that at trial.

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1 Q And you'd also said that part of Ms. Gutierrez's
2 tactics were to put essentially as many witness names on
3 the list as possible? Is that fair to say, or not?

4 A I mean, within reason, yeah.

5 Q Within reason. Would that be hinged upon her
6 expectation to call them as witnesses, or no?

7 A No. Not necessarily. She would have -- and in
8 an abundance of caution if she had even the slightest
9 inkling that she might call them she would have included
10 them. She might have included some people that she had no
11 intention whatsoever of calling just to basically get the
12 State to, as I said, spend resources interviewing and
13 re-interviewing these witnesses.

14 Q All right. So, Mr. Kanwisher, I'd like to show
15 you what's --

16 MR. NIETO: I believe, Your Honor, already been
17 introduced as Exhibit 11. I don't know if it's PC2-11.
18 Do you have that?

19 MR. BROWN: Your Honor, this is an exhibit that
20 was introduced and admitted at the previous
21 post-conviction proceeding. We have it listed as PC2-11.

22 MR. VIGNARAJAH: I presume this is the notice
23 about alibi witnesses.

24 MR. BROWN: That's right.

25 MR. VIGNARAJAH: State has no objection.