IN THE COURT OF APPEALS OF MARYLAND

STATE OF MARYLAND

Petitioner

v.

ADNAN SYED

Respondent

No. 24
September Term, 2018

On Writ of Certiorari to the Court of Special Appeals

Appendix of Petitioner

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August 21, 2018

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* * * * * * * * * * * * * *

CONDITIONAL APPLICATION FOR LIMITED REMAND

The State of Maryland, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Thiruvendran Vignarajah, Deputy Attorney General, pursuant to Section 7-109(b) of the Criminal Procedure Article of the Maryland Code and Maryland Rule 8-204, conditionally applies to the Court of Special Appeals[1] for a limited remand under Section 7-109(b)(3)(ii)(2), in light of evidence previously unknown and unavailable to the State that bears on Respondent Adnan Syed's claim that his attorney was ineffective for failing to investigate a supposed alibi witness, Asia McClain.[2] Only in the event that this Court grants Syed's conditional application to cross appeal the McClain-alibi claim does the State request an opportunity to incorporate into the record the affidavits and, if requested by Syed, the testimony of two former classmates of McClain.

Affiant 1 and Affiant 2, who are sisters and graduates of Woodlawn High School, recall that shortly after Syed's arrest, Affiant 2 and McClain got into a charged conversation in class about why

[1] Pursuant to Rule 8-204(b)(1), the State is required to file this conditional application with the "clerk of the lower court," and thus the captions of the State's and Syed's applications refer to the Circuit Court for Baltimore City. The decision to grant or deny these applications, however, is before the Court of Special Appeals, and thus references to "this Court" in these filings denote Maryland's intermediate appellate court, the Court of Special Appeals, not the post-conviction court whose recent ruling is the subject of these filings.

[2] On August 11, 2016, Syed filed an application for leave to cross appeal this issue. Hence, what the State previously referenced, and continues to reference, as its *conditional* application is now contingent only upon this Court's grant of Syed's application for a cross appeal. *See infra* note 4.

McClain should not lie to help Syed avoid conviction. Affiant 1, who was better friends with McClain, intervened to deescalate the argument. Both witnesses first came to the State's attention in early July 2016, when Affiant 1 sent an email to the State one week after the publication of the post-conviction court's decision granting Syed a new trial. *See* Attachment 1. Both witnesses have spoken with police and executed sworn affidavits, *see* Attachments 2 & 3, which the State seeks to add to the post-conviction record; they are also both prepared to testify at a limited remand proceeding, if Syed or the court so requests. Should this Court decline Syed's request to cross appeal — which the State, in part, does not oppose[3] — no remand for the purpose of completing the record is needed.

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[3] Syed's conditional application for leave to cross appeal (filed August 11, 2016) asks this Court to consider two issues on appeal. The first question presented is the McClain-alibi claim that Syed raised in 2010, that the post-conviction court denied in 2013, that Syed sought and was granted leave to appeal in 2014, and that, after opening briefs were submitted, this Court remanded to the post-conviction court in 2015. Although the State maintains that this claim lacks merit, it does not, given the circuitous procedural history of this issue, *see infra* note 14, oppose Syed's application to resubmit this first question to this Court for review.

But the second question presented is a "cumulative error" claim that Syed unsuccessfully asserted in his original post-conviction petition in 2010, citing in fact the same precedent he cites now, *Bowers v. State*, 320 Md. 416, 436 (1990). *Compare* Post-Conviction Petition at 19 (Jun. 28, 2010), *with* Conditional Application for Leave to Cross Appeal at 16-18 (Aug. 11, 2016). When the post-conviction court agreed to reopen this matter, it did not list Syed's cumulative error claim as an issue it would reconsider. *See* Statement of Reasons and Order of the Court at 4-5 (Nov. 6, 2015) (enumerating specific issues it would consider on remand and expressly stating that it "finds no need to revisit other issues raised in the previously concluded post-conviction proceedings that are still pending before the Court of Special Appeals"). The court's order granting in part and denying in part Syed's petition also makes no reference to any allegation of cumulative error. *See* Mem. Op. II. Appellate courts ordinarily do not review a claim of error that has not been decided by a lower court. Md. Rule 8-131(a).

Under these circumstances, where Syed elected not to include that claim among those he sought leave to appeal in 2014, *see* Syed's Application for Leave to Appeal (Jan. 27, 2014), this Court should not permit him to use the limited remand previously authorized by this Court to resurrect a claim he already asserted and then abandoned. *See Smith v. Murray*, 477 U.S. 527, 536 (1986) ("[W]innowing out weaker arguments on appeal and focusing on those more likely to prevail . . . is the hallmark of effective appellate advocacy." (citations and internal quotation marks omitted)); *State v. Gross*, 134 Md. App. 528, 556 (2000) ("[T]he Supreme Court pointed out that the strategic selection of which appellate issues to raise and which to ignore is one entrusted to the strategic judgment of appellate counsel." (citing *Jones v. Barnes*, 463 U.S. 745, 752-53 (1983))). *Cf. also Holmes v. State*, 401 Md. 429, 466-67 (2007) (finding that petitioner could not revive a claim in a coram nobis petition after failing to raise the claim in an application for leave to appeal).

If requested, the State is prepared to provide further briefing, *see infra* note 13, on why Syed's application should be denied with regard to a cumulative error claim (*i.e.*, the second question

If, however, this Court agrees to review a twice-denied claim premised upon Asia McClain, this Court should decide whether the current record is adequate to ensure that justice is served. The State submits that supplementing the record with affidavits that directly undermine McClain's truthfulness would reinforce the grounds for denying Syed's petition (with respect to both prongs of *Strickland*) and would provide the post-conviction court an opportunity, with a more complete record, to resolve the McClain-alibi contention as a matter of law. *See Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (holding that, as a matter of law, a defendant cannot prove prejudice where the attorney declined to present false testimony). *Cf. Jones v. State*, 379 Md. 704, 707 (2004) (holding that the Court of Special Appeals can, in its discretion, remand an ineffective assistance claim to the post-conviction court to consider additional grounds that were consistent with the State's original position).[4]

Because an appellate court cannot supplement the record in a case pending before it, and because the State cannot file a motion to reopen under *Alston v. State*,[5] the State believes the proper mechanism to incorporate evidence into the post-conviction record is for the State, if an application

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presented), a catch-all claim that is difficult to confine. Otherwise, while not opposing Syed's application for leave to appeal on the first question, the State defers to this Court's judgment on whether further review of a claim that has now been twice considered and twice denied is warranted.

[4] In a separate application filed on August 1, 2016, the State asked this Court for leave to appeal the post-conviction court's order vacating Syed's convictions because of his attorney's alleged failure to more effectively cross examine the State's cellphone expert based on a disclaimer on a fax cover sheet. *See* State's Application for Leave to Appeal (Aug. 1, 2016). In that filing, the State referenced this Conditional Application for Limited Remand, which was not yet filed, advising that the State requested a remand to introduce the testimony of two previously unknown witnesses in the event that Syed persisted with his McClain-alibi claim. *See id.* at 2. In order to expedite and streamline the requested remand, the State now includes with this application affidavits by both witnesses, which they executed on August 4, 2016. The State respectfully asks that at a minimum the State be permitted to supplement the record with these affidavits and that the matter then be returned to this Court for further review. If Syed wishes on remand to cross examine the witnesses, they are prepared to testify.

[5] 425 Md. 326 (2012). A remand from the Court of Special Appeals appears to be the means by which the State is permitted to supplement the post-conviction record. Under *Alston*, the State cannot ask the post-conviction court to reopen post-conviction proceedings, since a motion to reopen is an avenue open only to criminal defendants whose petition for relief is denied. *Id.* at 336-37 ("The history of the reopening provision, § 7–104 of the Postconviction Procedure Act, demonstrates that the provision was simply to provide a limited exception, for the benefit of criminal 'defendants,' to the restriction upon the number of postconviction petitions which they could file.").

for leave to appeal is granted, to request from this Court a remand to the post-conviction court to enter into the record the proffered affidavits and, in that court's discretion, to accept additional testimony as needed. The post-conviction court could then choose to return the record to the appellate courts without additional findings, or in its discretion determine that Syed's claim may now be rejected as a matter of law in light of further evidence that Syed's ineffective assistance of counsel claim is premised on false testimony.

I. SUMMARY OF ARGUMENT

The post-conviction court denied Syed's petition for ineffective assistance of counsel with respect to the failure of Syed's trial counsel, Cristina Gutierrez, to incorporate a supposed alibi witness, Asia McClain, into Syed's defense. The court ruled that, while Gutierrez was deficient in her performance, her error did not prejudice Syed. Syed seeks to appeal this decision. If this Court agrees to review the decision, it should have the benefit of a factual record that is balanced and complete. That is particularly true here since Gutierrez is deceased, her private investigator, Andrew Davis, is deceased, and Syed has not called to testify any other member of Syed's defense team to present an explanation for why Gutierrez did not integrate McClain into an alibi defense for him. Absent an answer directly from Syed's trial counsel, the parties have been left to trade competing explanations for what was, according to the State, a reasonable decision to focus on stronger defenses.

In a very different case, *Griffin v. Warden*, 970 F.2d 1355 (4th Cir. 1992), a federal appellate court cautioned against fashioning in hindsight potential tactical reasons for an attorney's failure and then substituting those reasons for that attorney's on-the-record "unambiguous admissions of unpardonable neglect." *Id.* at 1358. In *Griffin*, however, the defense attorney on the record supplied as his reason for failing to contact any of five separate alibi witnesses identified by the client that he assumed the client would plead guilty on the morning of trial. Here, since Syed (the moving party with the burden of proof) has not called anyone from the defense team to provide a reason for

Gutierrez's putative error, both sides have had to propound "retrospective" explanations for why McClain was not part of Syed's defense.

For his part, Syed claimed Gutierrez was past her prime and speculated that she was perhaps beset and distracted by management and medical problems during this trial. The State has argued that Gutierrez — an acclaimed, coveted defense lawyer whose meticulous preparation and strategic deliberations in this case are reflected in months of pretrial efforts, dozens of internal notes and memoranda, and vigorous challenges at trial — could have reasonably avoided Asia McClain as a witness for several interrelated reasons. First, Gutierrez could have rightly questioned the legitimacy of the letters from McClain, reasonably interpreting them as an offer to fabricate an alibi or as evidence of collusion between Syed and McClain. Second, Gutierrez could reasonably have preferred an alibi strategy that did not carry the risks of placing Syed at the public library, which was (a) inconsistent with what Syed had told police, (b) a conspicuous deviation from his usual routine, and (c) a promising solution to a gap in the prosecution's case that Gutierrez intended to exploit. Finally, where Syed's investigator (while working with Syed's original attorneys) actually looked into the public library as part of a preliminary alibi investigation that collapsed when an accessory to the murder cooperated against Syed, Gutierrez was not required to reexamine each leg of that abandoned alibi defense.

The post-conviction court at once characterized the State's explanations as presenting "quite a compelling theory" and as "plausible," but at the same time declined to "favor one conjecture and ignore other equally plausible speculations," failing to appreciate, the State would argue, that the burden fell on Syed.[6] Mem. Op. II at 17, 19. Accordingly, it found Gutierrez's performance deficient but ultimately held that Syed had not been prejudiced.

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[6] *See Strickland v. Washington*, 466 U.S. 668, 689 (1984) ("[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, that the defendant must overcome the presumption that, under the circumstances, the challenged action '*might be considered* sound trial strategy.'" (emphasis added) (citations omitted)).

Given the court's reasoning — and in light of the factual vacuum created by Gutierrez's absence in this case — a limited remand would undoubtedly serve the interests of justice, giving the State an opportunity to introduce affidavits (and testimony if needed) of two witnesses with whom McClain spoke soon after Syed's arrest in 1999 about McClain "lying" to protect Syed. Supplementing with firsthand evidence what the court already framed as "plausible" conjecture, these witnesses substantially reinforce each of the State's defenses of Gutierrez's performance, confirming the untrustworthiness of McClain's letters, compounding the hazards of pursuing her as an alibi, and corroborating the State's view that McClain was a contrived addition to an alibi that had to be laid to rest once Jay Wilds, an accessory to the crime, testified for the prosecution. *See infra* Part III.A.-C.

A limited remand to add these affidavits is also warranted in a case involving a possible fabricated alibi because the new information bears squarely on the analysis of prejudice, which is not limited to Gutierrez's perspective at the time and which may account for all evidence presented to the court.[7] Two classmates reporting that McClain had spoken to them about fabricating a story to help Syed avoid conviction would have significantly damaged her credibility. In addition, under *Nix v. Whiteside*, 475 U.S. 157 (1986), and *Lockhart v. Fretwell*, 506 U.S. 364 (1993), Syed cannot establish prejudice if his ineffective assistance claim is premised upon his attorney's failure to present false testimony. In *Lockhart*, explaining *Nix*, the Supreme Court stated:

> The respondent in [*Nix*] argued that he received ineffective assistance because his counsel refused to cooperate in presenting perjured testimony. Obviously, had the respondent presented false testimony to the jury, there might have been a reasonable probability that the jury would not have returned a verdict of guilty. Sheer outcome determination, however, was not sufficient to make out a claim under the Sixth Amendment. We held that "*as a matter of law*, counsel's conduct . . . cannot establish the prejudice required for relief under the second strand of the *Strickland*[8] inquiry."

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[7] *See Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993); *Winston v. Kelly*, 784 F. Supp. 2d 623, 633 (W.D. Va. 2011) ("But unlike the rule of contemporary assessment which requires the court to review counsel's conduct from his perspective at the time of trial, in assessing prejudice . . . a post-conviction court considers the totality of the evidence — the evidence adduced at trial, and the evidence adduced in the [post-conviction] proceeding."); *see also United States v. Baker*, 719 F.3d 313, 322 (4th Cir. 2013).

[8] *Strickland v. Washington*, 466 U.S. 668 (1984).

Lockhart, 506 U.S. at 369-70 (quoting *Nix*, 475 U.S. at 186-87 (emphasis added)).

Applying these principles, direct evidence of McClain's statements about lying for Syed shortly after his arrest further establishes that Syed cannot satisfy his burden of showing that the alibi defense to which he claims a constitutional entitlement was not false or fabricated. And because Syed cannot prove that his petition for relief relies upon truthful information, as a matter of law, he cannot demonstrate prejudice recognized by the Constitution. *See Williams v. Taylor*, 529 U.S. 362, 391-92 (2000) ("Even if a defendant's false testimony might have persuaded the jury to acquit him, it is not fundamentally unfair to conclude that he was not prejudiced by counsel's interference with his intended perjury." (citing *Nix* , 475 U.S. at 175-76)). For this reason as well, a limited remand prior to appellate review would be in the interests of justice. "To hold otherwise would grant criminal defendants a windfall to which they are not entitled." *Lockhart*, 506 U.S. at 366. *See infra* Part III.D.

* * * * *

The State recognizes it previously opposed Syed's request to supplement the post-conviction record with testimony from McClain based on a second affidavit she executed in January 2015. The State maintains that requests for remand on the basis of new evidence should be granted sparingly. The unique character of the present circumstances, however, counsel a limited remand here. And, if a remand was appropriate on the basis of McClain's affidavit, *a fortiori*, the interests of justice, as well as fundamental fairness, dictate that the State should be now afforded an equal opportunity to make the record complete. Indeed, compared with the prior remand granted to Syed,[9] the State's instant request is more compelling for three reasons.

[9] Central to Syed's prior request for a remand was McClain's allegation that one of the original prosecutors had discouraged her from participating in court proceedings. Syed's Supp. Application for Leave to Appeal at 5, 8-9 (Jan. 20, 2015). That remains no more than a bare allegation and went entirely unaddressed by the post-conviction court. Allowing a claim of misconduct alone to trigger a remand, while denying the State's request in these circumstances, would set a poor precedent. The

First, unlike the affiants presented in this application, McClain was known to Syed when he filed his original petition and could have been subpoenaed to testify at the post-conviction hearing, which was repeatedly postponed. Second, the content of the alibi information McClain purported to offer was contained in her letters to Syed and her original affidavit from 2000, all of which were entered into the post-conviction record prior to the remand — whereas the evidence brought forward by the affiants has never been presented in any form, in any forum. Lastly, the statements of the affiants, if accepted, indicate that Syed was deprived at most of a fabricated alibi, which would allow Syed's claim to be rejected as a matter of law under the principles of *Nix* and its progeny.

Whether McClain's offer was a sincere avenue to pursue in 1999 — or whether there was something unsettling, suspicious, and false about her offer to Syed — is the central question that has animated Syed's claim of ineffective assistance of counsel. Direct evidence of discussions McClain was having with classmates soon after Syed's arrest about lying to protect him bears on the veracity of McClain's account and her overall credibility. To balance and complete the record with this previously unavailable and unsolicited information would therefore serve the interests of justice.

II. BACKGROUND

A. The Alibi of Asia McClain

The procedural history and factual background of this case are set forth in the State's principal application and in its opening brief to this Court last year. The State herein only includes excerpts that, in light of the attached affidavits, are especially germane to Syed's claim regarding McClain:

> In preparation for trial in Syed's case, Gutierrez assembled a team consisting of a private investigator and law clerks to assist with the pretrial investigation. Fashioning an alibi for Syed's whereabouts that supported Syed's statements to police was a clear priority for Gutierrez. . . . In fact, Gutierrez . . . provided to the State a list of 80 potential alibi witnesses on October 5, 1999. According to the alibi notice[:]

State respectfully submits that other considerations — *i.e.*, the prior unavailability, novelty, and legal significance of the proffered content — should instead be controlling.

> "At the conclusion of the school day, the defendant remained at the high school until the beginning of track practice. After track practice, Adnan Syed went home and remained there until attending services at his mosque that evening. These witnesses will testify to [sic] as to the defendant's regular attendance at school, track practice, and the Mosque; and that his absence on January 13, 1999 would have been missed."

Because Syed had spoken to police on multiple occasions before he was charged and before he retained counsel, the alibi framed in Gutierrez's notice to the State had the advantage of comporting with what Syed had already said to law enforcement.

Gutierrez also pursued an alibi defense at trial, through subtle cross-examination of witnesses presented by the State, by substantiating a reliable routine that Syed followed every day, *i.e.*, attendance at school followed by track practice followed by services at the mosque, and by calling to testify for a specific alibi Syed's father . . . who asserted that on the evening of Lee's disappearance he went to the mosque with his son at approximately 7:30 p.m. . . . Importantly, the trial court agreed to give an alibi instruction to the jury, thus finding that an alibi defense had been generated by the facts established by Gutierrez at trial. . . .

Asia McClain was a fellow student at Woodlawn High School. After Syed's arrest, McClain sent Syed two letters, dated March 1, 1999, and March 2, 1999, requesting to talk with him to explore the relevance of a conversation McClain recalls having on January 13, 1999, at the nearby public library. She does not say in this set of correspondence why she remembers that day or what precisely she recalls. Both letters express hope that Syed is innocent and simultaneously relay concerns that he is not: "I want you to look into my eyes and tell me of your innocence. If I ever find otherwise I will hunt you down and wip [sic] your ass . . . I hope that you're not guilty and I hope to death that you have nothing to do with it. If so I will try my best to help you account for some of your unwitnessed, unaccountable lost time (2:15-8:00)" "The information that I know about you being in the library could helpful [sic], unimportant or unhelpful to your case. . . . I guess that inside I know that you're innocent too. It's just that the so-called evidence looks very negative." In neither letter does McClain specify a particular time when she saw Syed at the library. She notes however that she aspires to become a criminal psychologist for the FBI. . . . Syed testified at the post-conviction hearing that he was "fairly certain" that his presence at the public library would have been to access his email account. . . .

Syed also introduced an affidavit McClain signed a year later, on March 25, 2000, in which McClain claimed she saw Syed at a specific time at the library on the day of Lee's murder, and that she was never contacted by Syed's defense team. [In this] affidavit, signed a month after Syed was convicted . . . McClain recalled with pinpoint accuracy that she had waited for her boyfriend at 2:20 p.m., that she held a 15-20 minute conversation with Syed, and then left at 2:45 p.m. Nothing in the affidavit explained why McClain was now able to provide a concrete, narrow alibi for Syed when details like this were notably absent from her original letters to Syed. Whatever the reason, the times neatly coincided with the State's postulation at Syed's trial as to when Syed may have killed Hae Min Lee. . . .

> Kevin Urick, one of the original prosecutors, testified that McClain called him after the post-conviction was filed to say she had written the affidavit only because of pressure from the defendant's family and hoped that, by doing so, they would leave her alone. She expressed to Urick concerns about participating in the post-conviction hearing, and ultimately she did not testify. Urick's characterization of McClain's reticence is confirmed by Syed's present counsel who said that although he tried to produce McClain, she evaded service. . . .
>
> Syed testified at the post-conviction hearing that he received the letters from McClain within a week of his arrest and that the letters "fortified" the memory that he had of going to the library after school and staying there from 2:40 p.m. to 3 p.m. He further stated that he remembers exactly who he spoke with and what they spoke about. Syed's sharpened recollection nearly 14 years after the murder stood in contrast to the statements he gave police in the early days of the investigation and contradicted [Rabia] Chaudry's testimony of his statements to her that, even after he was convicted of murder, he had no memory of where he was after school on January 13, 1999.

Brief of Appellee at 12-15 (May 6, 2015) (citations omitted).

B. The Emergence of New Evidence

On the basis of McClain's 2015 affidavit, this matter was previously remanded to the post-conviction court so that Syed could file a motion to reopen. The post-conviction court agreed to reopen proceedings and received testimony from McClain on the afternoon of February 3, 2016, and the morning of February 4, 2016. With respect to Syed's alibi claim, the post-conviction court again denied relief but, after hearing from McClain, altered its rationale and concluded that while Gutierrez was deficient in failing to investigate McClain, Syed suffered no prejudice. The order vacating Syed's murder conviction and granting him a new trial on other grounds was issued on Thursday, June 30, 2016. *See* Mem. Op. II.

One week later, on July 7, 2016, the State received an unsolicited email from a former high school classmate of McClain's. This individual — referred to here as Affiant 1 — stated:

> Hello,
> My name is [redacted].
> I'm not even sure if I'm contacting the right person but I'm hoping I am.
> I was going to stay out of it because I didn't think Adnan would be granted a new trail [sic] based on her fabricated story but seeing as he has, I felt it was important to come forward.
> Asia (McClain) Chapman's story about seeing Adnan in the library the day Hae was killed is a lie.

> I very much remember, as does [redacted] having a conversation with Asia in our co op class about Asia saying she believed so much in Adnan innocence that she would make up a lie to prove he couldn't have done it.
> Both my sister and I (more so my sister) argued with Asia about how serious this situation was. She just said that it wouldn't hurt anything-that if he was truly guilty then he would be convicted.
> I'm not sure what can come of this information but I felt I had to let someone know.
> Thank you for your time.
> [redacted]

See Attachment 1. (Note: The redactions at the beginning and end of this email contain the first and last name of the sender; the redaction in the body of the email is a reference to her sister, Affiant 2.)

The State relayed this information to police and asked law enforcement to verify the identity of the person and basic information in the correspondence. After aspects of the email were confirmed (*e.g.*, the sender and her sister were high school classmates with McClain), law enforcement made personal contact with Affiant 1 on July 22, 2016, and with her sister, Affiant 2, on July 24, 2016. Police obtained from the affiants Facebook messages with McClain that predate their contact with the State in this case and that provide context concerning their relationship with McClain.

Prior to the broadcast of the popular podcast, "Serial," neither affiant seemingly knew what active steps, if any, McClain had taken relating to Syed's case. Seeking to elicit a reaction, in November 2014, Affiant 1 sent a message through Facebook to McClain referencing the podcast:

> I came across this last night after my Aunt asked me about it. Apparently she has been following the story through the series, The Serial.
> I had ni [sic] idea you had been that involved all those years ago.
>
> I'm sending you the link.
> http://serialpodcast.org/

See Attachment 2.

It does not appear McClain responded to this message. Seven weeks later, McClain sent through Facebook three pages of a handwritten letter that Affiant 1 wrote to McClain at the end of their freshman year at Woodlawn High School. McClain added, in an apparent reference to a postscript in Affiant 1's letter, "I never did forget you honey. Thanks for the good advice[.]" *Id.*

On March 2, 2016 (about four weeks after McClain testified before the post-conviction court), McClain sent a photograph to the affiants in a group message, asking, "Which one of you is this? You remembee [sic] what class? [redacted]?" The same day, Affiant 2 responded, "I think that is [redacted]. That is Mrs. Graham, right? Was it our co-op class?" Affiant 1 then stated, "Pretty sure that's you, [redacted]. I have no idea what class that is though." McClain answered, "I thought it might be co-op[.] You had co op? What period? At the start of 3rd?" Affiant 1 replied to this: "Yes, Asia, we had co-op with you." McClain then said, "Nice! My memory is not perfect but I thought ao [sic] when I saw the pic[.]" In that message, McClain also asked two questions: "So we had to go to 3rd period and wait to be dismissed right? Because we had to wait for busses and the other kids to get into the cafeteria, right?" Affiant 1 said, "Yes, that's right." McClain then concluded the group message: "Thank God I been going crazy! The stuff people expect me to remember." Attachments 2 & 3.

The final messages shown to police came the day after the post-conviction court issued its decision granting Syed a new trial. On July 1, 2016, at 9:30 a.m., Affiant 1 wrote to McClain:

> I was going to try to stay out of it because I seriously thought they'd be no way he would be granted a new trail [sic] but seeing as he is, I have to get this off my chest. Do you remember when you, [redacted] and I were talking in Mrs Graham's class about how you believed so much in his innocence that you would make up a little lie to prove he couldn't have done it? My sister and you actually starting arguing over it. I do. So does [redacted]. That's why he never told anyone, the police or his attorney to pursue you in the investigation because he knew you were full of it–he knew that never happened. Your letter to him, asking him why he never said he talked to you in the library, that was your way on [sic] getting him on board with your story . I think it's sad he may actually be set free because of you and this fabricated story. I'm not getting anymore involved besides writing this message to you but I hope if he gets set free because of your testimony, you're able to lived [sic] with that[.]

See Attachment 2. After sending the message, Affiant 1 activated the block feature of the Facebook Messenger application, precluding further messages from McClain.

On July 1, 2016, at 10:38 a.m., McClain wrote a message to Affiant 2: "Did your sister's FB acct get hacked? I got a crazy message from her that doesn't sound like her talking about me in ways

that doesn't sound like me and when I tried to respond I had been blocked[.]" Two minutes later, at 10:40 a.m., Affiant 2 "missed a call from Asia" over Facebook. Affiant 2 replied to McClain:

> No it wasn't hacked. She and I have been struggling with whether we should contact the SA who is handling the case but decided against it because we assumed there was no way in hell he would be granted a new trail [sic]. Ive sat back at [sic] let you have your 15 minutes of fame on behalf of that poor girl because I didn't think anyone would actually entertainment [sic] you or your fabricated story about seeing him in the library. I remember that day in Ms. Graham's like it was yesterday. I remember getting into a heated argument with you about how serious the situation was and that a girl lost her life and [redacted] actually had to "break up" our verbal altercation. Me, [redacted] and you know darn well you never saw him that library. You need to one [sic] clean giving [sic] how young you were may play on your side but to continue with this story 17 years later and you being a grown woman with children is disgusting.

See Attachment 3.

In response, McClain wrote, "Wow...this is crazy. I'm not lyig [sic] about any of this." Affiant 2 ended the exchange: "Ok but you really are... no need to contact me back. You obviously have decided to stick by this story." There have apparently been no communications since.

On August 4, 2016, Affiant 1 and Affiant 2 executed affidavits with associated Facebook messages, redacted copies of which are attached.[10] *See* Attachments 2 & 3. Both affiants will participate in legal proceedings if necessary, but ask that their privacy be respected and wish to avoid media contact and publicity.[11]

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[10] Affiant 1 and Affiant 2 showed police these messages on their Facebook accounts, and later, at law enforcement's request, provided a printout. The sworn affidavits accompanying this application incorporate those messages by reference.

[11] The State has advised both affiants that the post-conviction court did not grant Syed a new trial because of the alibi claim or McClain's testimony, and that their affidavits would be part of a conditional application by the State, which asks that those affidavits be made part of the record only in the event that Syed's unsuccessful alibi claim is presented on appeal. They are also aware they may be required to testify if the State's request for a limited remand is granted.

C. The Posture of These Proceedings

On June 30, 2016, the post-conviction court granted relief to Syed on the sole ground that Gutierrez failed to use a disclaimer on a fax cover sheet to more effectively cross examine the State's cellphone expert.[12] On July 21, 2016, the State notified the parties of its intent to seek an appeal on this issue and asked the post-conviction court to stay its order vacating Syed's convictions and granting his request for a new trial. On August 1, 2016, the State filed its application for leave to appeal with respect to this issue, and on August 2, 2016, the post-conviction court issued a stay of its prior order granting Syed's petition for relief. *See* Attachment 4.

In its August 1st application, the State indicated, regarding the McClain-alibi issue on which the State had prevailed, that it was filing a conditional application for a limited remand in order to supplement the record with evidence from two previously unknown witnesses, if Syed continued to seek appellate review of that claim. On August 11, 2016, Syed conditionally applied for leave to cross appeal that issue.[13] Because of this Court's prior grant of leave to appeal this issue and the terms of its prior remand order,[14] the State does not oppose the Court granting Syed's renewed application with

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[12] Syed also asserted a related *Brady* violation, claiming the State withheld cellphone documents including the fax cover sheet that is the predicate of Syed's corresponding ineffective assistance claim. The court denied relief, finding that because the documents at issue, including the fax cover sheet, were in defense counsel's possession "at least since the time of trial," this claim was waived and without merit. Mem. Op. II at 30. Syed has not applied for leave to appeal this denial. Because this *Brady* claim (like the cellphone-*Strickland* claim) was raised for the first time after this matter was remanded, Syed (like the State) was required to apply for leave to appeal under Section 7-109(b). Since he has not done so, the State assumes he has abandoned this claim on appeal.

[13] In his August 11th conditional application to cross appeal, Syed indicated he would file a response to the State's August 1st application to appeal the grant of relief on the cellphone-*Strickland* claim. The State would request an opportunity to file a reply, if needed, within 15 days of Syed's forthcoming response. There are assertions in Syed's latest filing that the State disputes. To avoid serial pleadings, however, and because the State does not oppose Syed's application with respect to the first question presented, unless this Court requests briefing on specific issues at the application stage, *see supra note* 3, the State will answer Syed's arguments as needed in a single consolidated reply or at the merits stage.

[14] Whether Syed was required to apply for leave to cross appeal the second denial of his McClain-alibi claim is not exactly clear. For one thing, before this Court remanded the matter, it had already granted Syed's application for leave to appeal the original denial of that claim. Furthermore, this Court's remand order, contemplated that, if the post-conviction court reopened and conducted

respect to the first question presented. For reasons outlined in note 3, *supra*, the State opposes Syed's application with respect to the second question, a "cumulative error" claim Syed formerly asserted and abandoned, which this Court should not permit him to use this limited remand to revive.

Assuming the Court in its discretion grants Syed's application, the State respectfully requests a limited remand under Section 7-109(b)(3)(ii)(2) to supplement the post-conviction record before this Court conducts further proceedings. *See also* Md. Rule 8-604(a)(5) & (d); Md. Rule 8-204(f)(4). In that event, the State would ask the Court to postpone further briefing on the merits of these issues until after the post-conviction court has an opportunity to adopt the affidavits, or testimony, of the State's new witnesses into the record and, in its discretion or at this Court's direction, to update its findings accordingly. This would resemble the course the matter has just taken. Alternatively, the Court could hold the State's conditional application *sub curia* and determine after merits briefing and oral argument whether a limited remand is appropriate. That would be more like the remand directed by this Court and approved by the Court of Appeals in *Jones*, 379 Md. at 707.

The State recognizes this is an unusual request, in a case that has already been the subject of great interest, on an issue on which the State prevailed no less. To contextualize and support this application, the State sets forth in detail salient arguments it presented to the post-conviction court. Drawing from the content of McClain's letters, evidence in the original investigation, and documents

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further proceedings, the parties would be given, "if and when this matter returns to this Court, an opportunity to supplement their briefs and the record." Order at 4 (May 18, 2015). On remand, the post-conviction court reconsidered the same claim and again denied Syed's petition, but on different grounds than its original ruling. Thus, it is not obvious to the State whether Syed had to reapply *vel non* for leave to appeal the court's second denial of this claim — or whether, by virtue of the prior grant of leave to appeal and by operation of this Court's remand order, the claim was already back before the Court of Special Appeals.

If the alibi claim is already pending before the Court of Special Appeals by virtue of this Court's prior order, the State requests a limited remand under Section 7-109(b)(3)(ii)(2). If that claim is not already before the Court of Special Appeals, now that Syed has filed an application for leave to appeal, the State conditionally applies, under the same subsection of the Criminal Procedure Article, for a narrow remand in the interests of justice to supplement the record with evidence that was neither known nor available to the State before Affiant 1 contacted prosecutors in July 2016.

in Gutierrez's defense file (all of which have been included in the post-conviction record), the State presents the same position it took long before it learned of these affiants — that McClain was not just mistaken, but worse. The State's recitation of arguments is intended to show that the affiants' statements confirm the very inferences the State had already drawn, and likewise that the existing record establishes the *prima facie* reliability of those affiants. In fact, the very conclusion the post-conviction court originally reached after reading McClain's letters — "that Ms. McClain was offering to lie in order to help [Syed] avoid conviction," Mem. Op. I at 12 — is precisely what the affiants were told by McClain in 1999. In these circumstances, the State believes it is proper and in the interests of justice to bring this information to the Court's attention and to seek to incorporate it into the post-conviction record prior to further proceedings. At the same time, the State does not seek to rewrite the procedural rules that govern post-conviction petitions and ultimately defers to this Court on whether a limited remand would aid appellate review by clarifying and completing the record.

III. ARGUMENT

The course of proceedings in this case has been unusually winding, and the State does not wish to unduly delay appellate review. It is in receipt, however, of unsolicited information that was previously unknown to the State that bears on key arguments that were considered by the post-conviction court. In these circumstances, the State respectfully requests an opportunity to supplement the post-conviction record so that an incomplete, and arguably misleading, record is not before the appellate courts should this Court agree to consider the McClain-alibi claim on appeal.

The affiants present information with special relevance to *both* whether Gutierrez was deficient in her performance and whether Syed suffered prejudice as a result of her supposed failure. With respect to the first prong of *Strickland*, to justify a limited remand, the State summarizes three sets of arguments it presented in defense of Gutierrez's performance — that McClain's letters were reasonably interpreted as a unilateral or collusive offer to falsify an alibi; that McClain's proposed alibi

was saddled with risks that Gutierrez's chosen alibi defense did not bear; and that Gutierrez was not obligated to reconsider elements of a discarded alibi strategy that depended on Wilds' complicity. Each point would be materially and meaningfully enhanced by the information the State seeks to add to the post-conviction record.[15] *See infra* Part III.A.-C.

The proffered affidavits also have special relevance as to whether Syed suffered true prejudice because Gutierrez did not pursue an alibi premised upon McClain. On this issue, the post-conviction court concurred with the State that McClain's alibi, even if it had been presented, was unlikely to alter the jury's verdict. *See* Mem. Op. II at 26. An expanded record containing evidence concerning McClain's statements in 1999 would reaffirm the court's conclusion on prejudice and, should this Court agree to review that determination, ensure that the appellate record is complete. For one thing, classmates reporting that McClain had spoken to them about lying to assist Syed avoid conviction directly impairs McClain's value and credibility as an uncorroborated alibi, especially in light of the

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[15] The State also advanced certain reasons why Syed's alibi claim should be denied that are not directly implicated by the new information the State seeks to introduce on remand. The State asserted, for example, that Syed had not satisfied his burden of presenting a coherent account of when and how information was given to Gutierrez, since Syed insisted he received McClain's letters "within the first week of being arrested" and "immediately" gave them to Gutierrez. *See* Attachment 5 (T. 10/25/12 at 28, 31). But two other attorneys represented Syed at that time, *id.* (A-0374); there is nothing in the memos of those original attorneys that reference McClain (A-0516-A-0547, A-0553-A-0565); Gutierrez only became Syed's attorney six weeks after his arrest, *id.* (A-0369); and Syed's conditional application now states that Gutierrez received the information five months before trial, *i.e.*, in July, *not* in March soon after Syed's arrest. *See* Conditional Application for Leave to Cross Appeal at 4, 9.

The State also argued, because ineffective assistance of counsel must be evaluated based on what the attorney knows at the time of the decision at issue, *see Strickland*, 466 U.S. at 689, that Gutierrez was not ineffective for failing to pursue a nebulous offer of an alibi corresponding to a broad indefinite period of time, when the State was unable to specify a time of death, even after Gutierrez inquired, until prosecutors postulated a possible timeline at trial. *Compare* Attachment 5 (A-0006) (Gutierrez asking, on July 7, 1999, for: "15. All information regarding when alleged victim was killed. Defendant can't possibly mount a defense or determine if an alibi disclosure is needed without being on notice of the alleged time of death.") *with id.* (A-0008) (responding, on July 8, 1999, to Gutierrez: "15. To the best of the State's information, the victim was murdered the afternoon of the day she was reported missing, shortly after she would have left school for the day, January 13, 1999. If further investigation narrows the time down, the State will provide that more specific time to the defense.").

Because arguments like these, though important, are neither directly improved nor undermined by the State's new evidence, they are not discussed in this application in detail.

suspicious circumstances surrounding her offer to help. For another, prejudice cannot be found when the defendant has only been deprived of false testimony, and the State's proffered witnesses disable Syed from proving that the alibi of Asia McClain was not just that. *See infra* Part III.D.

A. New Evidence Strongly Supports a Reasonable Interpretation of McClain's Letters as an Offer to Fabricate or as Evidence of Collusion.

The State maintained that Gutierrez could reasonably have construed McClain's letters either (1) as an offer to lie or (2) as evidence of collusion between Syed and McClain. The proffered affidavits would confirm the reasonableness of these interpretations, as they contain direct evidence of what McClain said to classmates, in 1999, about lying to aid and assist Syed.

1. Gutierrez could reasonably have interpreted Asia McClain's letters as an offer by a high school classmate to falsify an alibi.

The State argued to the post-conviction court that McClain's letters, in particular the letter dated March 1, 1999, could be understood by a veteran criminal defense attorney as an offer from McClain to falsely account for whatever period of time Syed needed an alibi. In the first letter, which is conspicuously devoid of details, McClain wrote, "I hope that you're not guilty and I hope to death that you have nothing to do with it. If so I will try my best to help you account for some of your unwitnessed, unaccountable lost time (2:15 - 8:00; Jan 13th)." Attachment 6 (Ex. 4). In its original decision, *i.e.*, before McClain testified, the post-conviction court reached the following conclusion:

> In the first letter, sent on March 1, 1999, Ms. McClain recounted that she saw Petitioner in the public library on January 13, 1999, but did not state the exact time during which the encounter took place. The only indication of Ms. McClain's potential to be an alibi witness for Petitioner is in Ms. McClain's offer to "account for some of [Petitioner's] un-witnessed, unaccountable lost time (2:15 - 8:00; Jan 13th)." . . . To require counsel to interpret such *vague language* as evidence of a concrete alibi would hold counsel to a much higher standard than is required by *Strickland.* In addition, trial counsel could have *reasonably concluded that Ms. McClain was offering to lie in order to help Petitioner avoid conviction.*

Mem. Op. I at 12 (emphasis added).

A limited remand to supplement the record would be in the interests of justice insofar as the appended affidavits would essentially confirm the post-conviction court's original conclusion that Gutierrez could have "reasonably concluded that Ms. McClain was offering to lie"; in fact, the "vague language" noted by the post-conviction court mirrors the dearth of information that McClain possessed according to her classmates. *See* Attachments 2 & 3 (attesting that McClain did not tell the affiants she saw or spoke to Syed at all on the day Hae Min Lee went missing). Thus, two witnesses affirming that McClain told them exactly what the court originally thought Gutierrez could reasonably have feared, *i.e.*, "that Ms. McClain was offering to lie" for Syed, should restore confidence in the court's earlier conclusion that Syed's attorney acted reasonably in failing to pursue McClain.

2. Gutierrez could reasonably have seen in Asia McClain's letters evidence that her client was colluding, directly or indirectly, to manufacture an alibi.

The State submitted that, with the knowledge and documents available to Gutierrez when she eventually became Syed's lawyer in April 1999, she could easily have detected in the letters — in particular in the March 2nd letter, *see* Attachment 7 (Def. Ex. 6) — subtle as well as clear warning signs that would have prompted this experienced criminal attorney to fear that her client was coordinating, either directly or indirectly, with McClain to falsify an alibi. *Cf. State v. Lloyd*, 48 Md. App. 535, 541 (1981) (recognizing that it is improper for defense counsel to call alibi witnesses when the attorney knows or is convinced that these witnesses will offer perjured testimony). Several items in particular, including some documents the State only saw after gaining access to Gutierrez's file two weeks before the February 2016 hearing,[16] contain troubling indicia of possible coordination or collusion:

[16] *See* State's Application for Leave to Appeal at 10 n.7 ("In the course of the original post-conviction hearing in 2010, the State requested, but was denied, an opportunity to review the defense file. Prior to the February 2016 hearing, the State filed a consent motion, reiterating its earlier position that Syed had waived attorney-client privilege and adding that Syed had widely shared documents from his attorney's file. The Court granted the consent motion, and on January 15, 2016, defense counsel provided to the State what it represented was the complete electronic and paper files of Gutierrez and her team.").

a) On March 6, 1999, less than a week after Syed's arrest, in an internal memo to the file, one of Syed's original defense attorneys noted talking with Syed about the address of the jail, a "self-addressed stamped and 1 piece paper," as well as "how mail scrutinized" *See* Attachment 7 (A-0531).[17]

b) On April 9, 1999, police interviewed Ju'uan Gordon — described by Syed's brother, according to another internal memo, as Syed's "best friend outside of the muslim community" Attachment 7 (A-0150). Detective notes from that interview indicate that Gordon told police that Syed had written him a letter and called the previous day, but that he wasn't home and that he had written Syed back. *See* Attachment 7 (B-0133). Gordon also told police that Syed:

WROTE A LETTER TO A GIRL TO
TYPE UP WITH HIS ADDRESS ON IT
BUT SHE GOT IT WRONG
101 EAST EAGER STREET
ASIA? 12TH GRADE
I GOT ONE, JUSTIN AGER GOT ONE

c) In the middle of the post-conviction hearing, Syed presented to the court an affidavit from Gordon in which he verified speaking with police on April 9, 1999, but claimed he "was not suggesting that Adnan or anyone else did anything deceptive." He similarly confirmed that he "recall[ed] telling police that Adnan talked about asking Asia to write" a letter but suggested it was a "character letter." Gordon added that Syed "may have asked [Asia] by letter (just like he did with me and Justin)," but stated in his affidavit that he did not know whether Syed ever sent McClain the letter, nor did he know "if she ever received it." *See* Attachment 7 (PC2-60).[18]

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[17] To prevent any misunderstanding, the State in no way suggests that Syed's original attorneys encouraged or facilitated Syed's or McClain's actions, or had the faintest idea what either may have been contemplating. There is plainly nothing problematic with a request from a new client for paper, self-addressed stamped envelopes, the address of the jail, or an understanding of how mail is scrutinized. It would only be after, *inter alia*, warrants were executed in late March 1999 and McClain's letters arrived that a defense attorney could reasonably suspect that Syed, directly or indirectly, was seeking to manufacture a false alibi. All of Syed's lawyers, from his very first attorneys through present counsel — including Cristina Gutierrez — have performed their sworn oath with distinction and have been zealous advocates for their client.

[18] To be sure, Syed's defense team had at one point in 1999 collected character letters, but they were for a bail review that had already taken place by the time police spoke to Gordon. It is not just the timing, however, that casts doubt on Gordon's explanation; Gordon's claim that Syed was asking McClain for a character letter is also belied by McClain's statements in her letter and at the hearing that she did not hear from Syed after his arrest and barely knew him, making her a poor candidate for a character reference. Absent a better explanation from Syed, who carried the burden in these proceedings, the court was left to wonder: what a curious combination of friends for Syed to personally contact a week after his bail hearing — two of his closest friends and a girl who could not spell his first name — if Syed was in fact just soliciting character letters.

d) The State also explained that Gutierrez — a savvy, seasoned defense attorney — would have readily discerned a number of warnings in McClain's second letter, which McClain purports to have written on March 2, 1999, just two days after Syed's arrest. The State observed that, in the letter itself, McClain indicates she is composing the letter while sitting in class; at the post-conviction hearing, however, she said for the first time that she actually first prepared a handwritten draft in school (which she did not keep) and then later that night, at home, typed the letter she sent to Syed, admitting it was possible that she accumulated additional facts between class and when she typed up the letter. The State argued that this was notable because the letter contains a number of pieces of information about the crime and the investigation that would have been difficult, if not impossible, for anyone to collect and synthesize within 48 hours of Syed's arrest.

   For example, the third page of McClain's March 2nd letter makes a peculiar reference, *not* to familiar forensic evidence like fingerprints or DNA, but to "fibers on Hae's body"; the letter also proposes a specific version of the murder of Hae Min Lee and her burial: "I don't understand . . . how the police expect you to follow Hae in your car, kill her and take her car to Leakin Park, dig a grave and find you [sic] way back home." *See* Attachment 7 (Def. Ex. 6). How, on March 2, McClain predicted forensic interest in fibers is not apparent. Why McClain adopted a particular order of events relating to the murder is also not obvious. At the hearing, McClain could not give specific sources for this information — nor for other details like Syed's state identification number or the address of the jail — except to ascribe some of it to gossip circulating at school.

e) Finally, the State emphasized search warrants executed by police in Syed's case. These, the State argued, provided a more plausible explanation for when and where certain facts in McClain's second letter originated. After all, unlike the initial statement of charges (which only indicated that Hae Min Lee was strangled and buried in Leakin Park by Syed and stated that the witnesses would remain anonymous until trial),[19] the warrants outlined the chain of events of the crime, reporting that Syed showed a witness Hae's body in the back of her car, then drove the victim's car to Leakin Park, buried the victim, and later returned to Baltimore County. Unless the warrants' contents were being relayed, directly or indirectly, to McClain, it is hard to explain the close resemblance between the sequence of events a student outlined in a letter she claimed to have written two days after Syed's arrest when few facts were publicly known and the sequence of events that actually happened — or at least so Gutierrez might reasonably have thought.

   One specific warrant best illustrates this point. After executing a general warrant on Syed's vehicle on March 9, 1999, and searching Syed's home on March 20, 1999, police conducted a *second* search of Syed's vehicle on March 25, 1999, this time solely seeking evidence of "fiber samples from the carpet, seats, headliner" (B-0115, B-0118); that same day, police executed a warrant on Syed himself to obtain blood and hair samples.[20]

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[19] A recitation of the statement of charges found in the defense file reflects the limited information set forth in the original charging document. *See* Attachment 7 (A-0145) ("Statement of Probable Cause. Interviewed several people regarding the death of Hae Min Lee. Indicated defendant strangled victim to death and buried remains within Leakin Park. Witness anonymous until trial.").

[20] *See* Attachment 7 (documents related to search warrants).

> The strangely specific interest in "fibers on Hae's body" in McClain's March 2nd letter is far less strange if Syed transmitted information from the "fibers" warrant to McClain and if she had "type[d] up" the letter sometime after March 25, 1999.[21] This would also bring the timing closer to April 9, 1999, when Gordon told police about Syed writing a letter to a 12th grade girl named Asia to type up. And consistent with Gordon's report to police that she had gotten the address wrong, there was in fact a discrepancy between the address at the top of her March 2nd letter, "301 East Eager Street," and the address Gordon referenced to police: "101 EAST EAGER STREET." *Compare* Attachment 7 (Def. Ex. 6) *with id.* (B-0133).

In light of this constellation of facts, the State suggested that McClain's letters could have raised serious red flags for Gutierrez as she developed a defense strategy for a high school student charged with murdering his ex-girlfriend. In its assessment of the State's theory that Syed relayed information to McClain to "'type up' as part of a scheme to secure a false alibi," the post-conviction court said that "the State presents quite a compelling theory." Mem. Op. II at 17. The court proceeded, however, to conclude that, "[w]hile the State's speculation is plausible, the State is essentially asking the Court to favor one conjecture and ignore other equally plausible speculations." *Id.* at 19. Respectfully, the State submits that the post-conviction court improperly assigned the burden to the State, and not Syed, in reaching that conclusion. If the State's "compelling theory" is one among several "equally plausible speculations," then Syed has not met *his* burden of demonstrating that his lawyer's actions and inaction — which enjoy a "strong presumption" of reasonableness — were constitutionally defective. *See Strickland*, 466 U.S. at 689.

B. New Evidence Reveals Added Risks to the McClain-Library Alibi That Was Already Riskier Than the Alibi Strategy Gutierrez Chose to Pursue.

The State also reasoned that adopting an alibi that conformed with Syed's daily routine and his prior statements to police sidestepped three risks created by McClain's placement of Syed at the

[21] The March 25th "fibers" warrant included new information that Syed reportedly told a witness (Jay Wilds) that he had planned but failed to discard his clothing from the night of the crime, and that he was "concerned about forensic evidence" that may have been "exchanged" between him and the victim. Reading this the same day police took fiber samples from his car and blood and hair samples from his person would presumably amplify Syed's focus on this specific forensic subject.

library, and a seasoned defense attorney like Gutierrez was not required to explore a riskier alibi strategy to render effective assistance of counsel. Gutierrez's judgment to avoid these risks would appear even more reasonable if the State is permitted to supplement the record with information from the affiants that illuminates additional hazards of the alibi proposed by McClain — from the chance that a fabrication is uncovered to the folly of hinging an alibi strategy on a lone high school acquaintance who was speaking with classmates about lying for Syed.

1. Pursuing the alibi proposed by McClain risked creating another discrepancy with the account Syed had already given to police and his own attorneys.

The State argued that the alibi proposed by McClain presented significant risks, especially compared to the alibi strategy Gutierrez adopted, according to which Syed stayed at Woodlawn High School until track practice after which he attended prayers at his mosque. This alibi had at least three advantages: it was consistent with Syed's daily routine; it covered a broader range of time, which was important since prosecutors could not narrow time of death even after Gutierrez inquired, *see supra* note 15; and it conformed with what Syed had already told police. Conversely, pursuing the alibi proposed by McClain — that she and Syed spoke to one another at the public library that afternoon — risked producing another inconsistency with what Syed had told police (as well as his defense team).

Syed initially told police he was at school and then went to track practice, never mentioning a visit to the public library at the edge of the high school's campus. *See* Attachment 8 (B-0003). He provided to Gutierrez and her staff a similar account of where he was, failing to suggest that he stopped by the public library on that day or any other. As reported in a memo documenting one of many interviews, Syed apparently told a member of Gutierrez's staff that "he believes he attended track practice on that day because he remembers informing his coach that he had to lead prayers on Thursday." Attachment 8 (A-0153). This interview took place on August 21, 1999, months after Syed

says he received the McClain letters that "fortified" his memory of being in the library.[22] Furthermore, Syed recalled details both from the school day and after his ex-girlfriend went missing, but the summary of his interview makes no reference to talking with McClain or being at the public library:

> Hae's brother called Adnan on his cell phone. He initially asked for Don (thinking it was the current boyfriend's number) and then realized it was Adnan. He asked if Adnan had seen Hae and then a police officer got on the phone. Adnan does not remember where he was when Hae's brother called, but he believes he was in his car with Jay. He states he keeps his cell phone in the glove compartment and recalls reaching over Jay to get the phone from the glove compartment.

Id. At the bottom of this memo is a note indicating that Syed also provided "a handwritten account of his recollection of his whereabouts on Jan 13." The accompanying handwritten page, *id.* (A-0154), appears to be Syed's description of his day with a number of details of what happened in certain classes, when he left to drop off his car to Wilds, where and with whom he had left his cellphone, what time he returned, and even a reference to remembering that he arrived a few minutes late to his last class "cause it took some time in the guidance office." The rest of the page, however, like Syed's memory as to what he did next, is blank. *Id.*

Generating another incongruity between what Syed had told police and his narrative at trial would compound a problem that Gutierrez's team had already diagnosed and documented in another internal memo: "***Possible discrepancy as to whether Adnan stated Hae or Jay were going to pick up Adnan***" Attachment 8 (A-0145). This notation is followed by a description of Syed's conflicting accounts to Officer Adcock on whether he had planned to leave with Hae Min Lee or get a ride from Wilds after school. *See id.* This proves that Syed's defense team affirmatively appreciated the trial risks of a

[22] At the original post-conviction hearing, Syed testified: "And, when I received these letters, it kind of fortified the memory that I had of after school that day. School ended at 2:15, that after school that day, I went to the public library. And I stayed there between approximately 2:40 to 3:00, and then I went to track practice. So, these letters essentially, they verify in my mind what my memory was of that day." Attachment 5 (T. 10/25/12 at 27). *See also supra* note 15.

shifting story, and thus pursuing an alibi based upon McClain and the public library when Syed had consistently neglected to mention either would only exacerbate this problem.

The dangers of discrepancies in Syed's story, as noted in this defense memo, echo the rationale adopted by the post-conviction court in its original decision:

> [T]he information in Ms. McClain's letters stating the Petitioner was present at the public library contradicted Petitioner's own version of the events of January 13th, namely Petitioner's own stated alibi that he remained on the school campus from 2:15 p.m. to 3:30 p.m. Based on this inconsistency, trial counsel had adequate reason to believe that pursuing Ms. McClain as a potential alibi witness would not have been helpful to Petitioner's defense and may have harmed the defense's theory of the case.

Mem. Op. I at 12.[23]

2. Adopting an alibi away from Syed's school risked a precarious and inexplicable deviation from his settled daily routine.

As Syed's alibi notice expressly indicates, Gutierrez adopted and pursued an alibi based upon routine: "These witnesses will testify to [sic] as to the defendant's regular attendance at school, track practice, and the mosque; and that his absence on January 13, 1999, would have been noticed." *See* Attachment 9 (State's Ex. 1). Gutierrez's commitment to this strategy was conscious, clear, and consistent. *See, e.g.*, Attachment 9 (A-0695, A-0230, A-0264). In addition to preferring an alibi that comported with Syed's story to police, Gutierrez could reasonably have feared that deviating from

[23] Syed has argued, and the post-conviction court has indicated, that the potential inconsistency would have been minor because of the close proximity between the high school campus and the public library. Mem. Op. II at 21. But there is no reason to think Gutierrez and her team made strategic decisions about Syed's defense without knowing the layout of the school and its environs or the distance between locations. In fact, on a detailed defense team task list, *see* Attachment 8 (A-0261-A-0266) — which includes an "urgent" entry about making a "determination regarding alibi" and contains handwritten notes that refer to school, track practice, and the mosque, *id.* (A-0264) — there is also a long section of "maps" corresponding to 19 locations of interest with separate entries for, *inter alia*, Woodlawn High School, Woodlawn High School Track practice, and two pages later, the Woodlawn Library, *id.* (A-0264-A-0266). Thus, Gutierrez's staff seems to have been cognizant of the difference between the public school and the public library as well as their proximity to one another.

Syed's daily routine to visit the Woodlawn Public Library on the day of the murder would raise vexing and unwanted questions that Syed would not want to answer at trial.

For one thing, Gutierrez would have seen in detectives' notes interviews of two high school employees, Virginia Madison and Cheryl Metzger, who advised police that Syed was a "regular" at the high school library, that he went there "frequently," that he and the victim would visit there "often," and that the school library had computers with internet access. *See* Attachment 9 (B-0247-B-0248, B-0251). During the first post-conviction hearing, Syed testified that he was "fairly certain" that he "was accessing e-mail from the library." Attachment 5 (T. 10/25/12 at 30). But, neither Syed himself nor any other witness besides McClain has placed Syed at the *public* library on that fateful day or any other. Claiming that on the very day he is accused of strangling his ex-girlfriend he diverged from his routine of school-track-mosque or that he decided on that particular day to visit the public library to check his email instead of the school library where he was a regular would generate unnecessary questions in the mind of the jury as to both whether his deviation from a routine was plausible and, if so, why he deviated on that particular day.

But there was another precarious risk — of which Gutierrez and her team would have been cognizant — of having Syed break from his ordinary routine. The post-conviction court pointed out that "the alibi notice does not specify which witness, if any, could have accounted for Petitioner's regular routine in between school and track practice." Mem. Op. II at 22. The Defendant himself, however, had told Gutierrez's team what he often did during this time period. According to a memo in the defense file addressed to Gutierrez, on the topic of where he and Hae Min Lee had been intimate, Syed reported: "They also frequented the *Best Buy parking lot* next to Security Square Mall (this was their designated spot when school started)." Attachment 9 (A-0191) (emphasis in original). He told his defense team that "[o]n average they saw one another 4,5,6 times a week and . . . [s]ince

Hae was responsible for picking up her niece after school, they would have sex in the Best Buy parking lot close to the school after school," and that Hae would then "leave to get her niece." *Id.* (A-0192).

In this regard, Syed himself had "accounted for [his] regular routine in between school and track practice." Mem. Op. II at 22.[24] While it was understood that Syed and the victim had broken up two weeks earlier, Gutierrez could reasonably have concluded, in the context of a turbulent high school romance, that a deviation on that particular day from Syed's school-track-mosque routine risked jurors questioning whether the change implicated Syed in Hae Min Lee's murder. After all, if the jury learned what Syed had told his attorneys about where he normally went between school and track practice, any departure from the school would not place him at the public library — it would place him with the victim in the very location he was accused of killing her. Thus, if Syed pursued an alibi that required him to modify his standard routine, the State already had witnesses (Virginia Madison and Cheryl Metzger) who could point out that deviation, and the defense was aware of where, in the past, Syed had gone when he left school — and with whom. *Cf. Strickland v. Washington*, 466 U.S. 668, 691 (1984) ("[W]hen the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether."). Chasing an uncertain alibi witness that carried these myriad risks is not an investment or tactic required by the Constitution.

[24] Another internal defense memo from an interview between Syed's trials suggests that Syed himself connected the alleged location of the murder with the place he and Hae Min Lee would have sex: "Jay allegedly met him at the Best Buy parking lot around 3:30. So how did Adnan get into her car or have Hae meet him, kill Hae, pick her up drag her from the car to the trunk (how could he lift her??) between 2:15 and 3:30 with noone [sic] seeing him. *Where in the Best Buy parking lot did this allegedly take place?? If Jay said it occurred on the side where they would have sex*, Adnan would not then walk all the way to the phone booth (it is a long walk and Adnan does not like walking)." Attachment 9 (A-0234-A-0235) (emphasis added).

3. Placing Syed at the Woodlawn Public Library right after school risked curing what Gutierrez identified as a flaw in the prosecution's case.

The State also argued that a review of Gutierrez's notes and her approach at trial indicated that she believed it was a problem for the prosecution that two of its witnesses had told police that they had seen Hae Min Lee by herself soon after school on the day she went missing. According to notes from an interview in late March 1999, Inez Butler, a school employee, told police she saw the victim at around 2:30 p.m. *See* Attachment 10 (B-0191, B-0193). Debbie Warren, a fellow student, also told Baltimore County police that she saw the victim at around 3:00 p.m. "by herself" and that "she was inside the school near the gym." *Id.* (B-0006). Warren was less certain about this at Syed's second trial, but Gutierrez pressed her and succeeded in having her acknowledge that she had told police she saw the victim near the gym at about 3 p.m. *See* Attachment 10 (T. 2/17/00 at 69-70).

Gutierrez's notes confirmed she thought these facts created a wrinkle for the prosecution. Directly above where Gutierrez had written "Debbie Warren saw Hae at 3:00 pm," she wrote: "How did Adnan get in Hae's car." Attachment 10 (A-0775) (emphasis in original). Appreciating this gap in the State's case, Gutierrez could reasonably have sought to avoid an alibi that placed Syed at or near the public library, where students were regularly picked up and where Hae Min Lee could have picked up Syed.[25] Hence, McClain's offer of assistance to place Syed at the public library — which did not

[25] Syed himself apparently perceived this same problem in the prosecution's case; between his two trials, Syed shared several "points he wanted to make with regard to the first trial." Attachment 9 (A-0234-A-0235). Under "Jay Wilds," the memo summarizes his questions thus:

> (1) When Hae left school she left by herself, as noted by Butler. Butler said she saw her by herself. Where was Adnan?? If he was with Hae or had broken into her car at school someone would have seen him because the school day had ended and people were outside. Both Adnan and Hae were in Psychology class from 12:45-2:15. That is when school ended.
> Jay allegedly met him at the Best Buy parking lot around 3:30.
> *So how did Adnan get into her car or have Hae meet him*, kill Hae, pick her up drag her from the car to the trunk (how could he lift her??) between 2:15 and 3:30 with noone [sic] seeing him.

Attachment 9 (A-0235) (emphasis added). *See also supra* note 24.

ripen until after Syed was convicted — could reasonably have been discarded by Gutierrez as a poisoned chalice, leaving McClain as much an asset for the prosecution as an alibi for the defense.

4. Evidence previously unavailable to the State reveals additional risks to Syed's defense that Gutierrez was not compelled to take.

The constitutional guarantee of effective assistance of counsel did not require Gutierrez to explore an alibi that carried trial and tactical risks that her chosen defense strategy avoided, and a post-conviction record augmented to include information recently presented to the State would more fairly reflect the true magnitude of those risks. Already, an alibi consistent with habit and routine, and corroborated by known, reliable witnesses like Syed's father and Syed's track coach, was less risky than an alibi that depended upon an unfamiliar classmate who placed Syed at the public library where no one suggested Syed ever went. The affidavits of McClain's classmates reaffirm Gutierrez's judgment on which alibi to pursue by illustrating the dangers of following an incongruous lead.

Perhaps most acute, pursuing McClain as part of an alibi carried the risk of the fabrication being detected. For two key aspects of Syed's story to police — (a) from whom he was expected to get a ride and (b) where he was after classes ended — to notably shift would raise the specter of fabrication, for Syed's attorneys, for a jury, *and* for the prosecution. The affidavits of McClain's classmates convert this potential specter from what the post-conviction court already characterized as "quite a compelling theory" into a concrete and bona fide fear. Unlike most defense witnesses, alibi witnesses are subject to a disclosure rule meant to give prosecutors an opportunity to investigate them. *See* Md. Rule 4-263(e)(4). How that would have ended, especially in light of the proffered affidavits, involves a gamble that Gutierrez was not required by the Constitution to make.[26]

[26] In fact, for the decade *after* Syed was convicted, Asia McClain remained out of sight. Syed's attorneys reportedly had McClain's letters sometime before trial and her first affidavit a month after he was convicted; Syed's parents also apparently wrote to Gutierrez on March 30, 2000, and asked her to include McClain in a motion for new trial. *See* Attachment 11 (Ex. 6). Yet, there are no references to McClain in any correspondence with the court or the State; and neither Gutierrez nor Syed's

Evidence that McClain was engaged in conversations about lying to help Syed avoid conviction would only validate the wisdom of selecting an alibi strategy that did not depend on the unpredictable motives and volatility of a high school student. Difficult decisions about what defense to adopt, where to invest resources, and what pitfalls to avoid lie at the foundation of the expert judgments criminal defense attorneys are entrusted to make. *See Strickland*, 466 U.S. at 693 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). And as the State has previously argued, the promise of the Sixth Amendment is not an invitation to second guess tactical decisions and trial strategy from the comfortable perch of history and hindsight, particularly in indeterminate circumstances like these. *See* Brief of Appellee at 33.

C. Gutierrez Was Not Required to Pursue McClain When Syed's Original Attorneys Had Already Conducted Some Investigation of the Public Library.

Finally, the State argued that the billing record of Syed's private investigator shows that the public library angle was initially explored and that Gutierrez, when she became Syed's attorney six weeks later, was not required to retread where her predecessors had gone — particularly once Syed's planned line of defense was compromised by Wilds' cooperation with the State. The affidavits of McClain's classmates would reinforce the State's position that McClain, in coordination with Syed,

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attorney at sentencing nor his attorney on direct appeal mentioned McClain in any pleadings. Thus, until Syed's present counsel first raised the McClain-alibi ineffective assistance of counsel claim in his original post-conviction petition in 2010 — after Gutierrez was dead — no one from the prosecution knew who Asia McClain was or what she purported to know. Had Gutierrez placed McClain on Syed's alibi notice to the State and indicated that McClain remembered seeing Syed at the public library for 20 minutes after school, Gutierrez could reasonably have expected police and prosecutors to investigate McClain, by for example talking to her classmates. Where that would have ended — whether in bolstering Syed's alibi, in the State modifying its postulated timeline, *see* Brief of Appellee at 25 n.8, or in the judge advising the jury about falsifying an alibi and consciousness of guilt, rather than giving an alibi instruction, *see* Attachment 12 (T. 2/25/00 at 32-33) — remains a subject of debate. At a minimum, however, the new information provided by McClain's classmates makes clear that the risk profile of the McClain-library alibi was even worse than originally contemplated.

may have been a late addition to an alibi strategy that had already been abandoned once the anchor of that alibi — Jay Wilds — had been dislodged.

The State pointed out to the post-conviction court that, within a week of his arrest, Syed's original attorneys had in fact preliminarily investigated Syed's presence at the Woodlawn Public Library — and that the constitutional guarantee of effective representation did not require his original team or Gutierrez to later revisit this facet of Syed's purported alibi by further pursuing McClain. Moreover, the individuals to whom Syed first directed his investigator were part of Syed's original alibi defense; but without Wilds on their side, those witnesses proved more helpful to the State as corroborative of Wilds' testimony than components of Syed's alibi.

Contained in Gutierrez's file was a billing record by Syed's investigator, Andrew Davis, captioned "Billing Summary for Adnan Syed," followed by the statement: "The following is a summary of the man-hours and miles used to investigate this case while Attorneys Doug Colbert and Chris Flohr were Adnan's council [sic]." Attachment 12 (A-0374). Syed was arrested on Sunday morning, February 28, 1999. The first two entries on the billing summary reflect meetings, a "[f]irst meeting" on Tuesday, March 2, 1999, billed at 3 hours, and a second meeting on Wednesday, March 3, 1999, billed at 1.75 hours, which reads, "met with attorneys and met Mr. Syed[.]" *Id.* The third entry, billed at 4 hours, is for the same day (Wednesday, March 3, 1999), and states: "drove the area of Woodlawn High and Leakin Park, *Balt. Co. Library, Interviewed Wackenhut Off. Steven Mills*, interviewed Coach Michael Sye" (emphasis added). For the following day (Thursday, March 4), the billing summary indicates a 6-hour interview with Syed. *Id.*

The State only learned of this billing summary on January 15, 2016, when the document was provided by defense counsel pursuant to an order by the post-conviction court to disclose Gutierrez's file. *See supra* note 16. Until then, the State was not aware of either "Wackenhut" or Mills. The State subsequently located Mills and learned that Wackenhut was a private security firm. At the hearing in

February, Mills testified that he worked as a private security officer for Wackenhut, that he was employed by them in 1999, and that he was assigned to the Woodlawn Public Library both when Hae Min Lee went missing (January 1999) and when the billing summary indicates he was interviewed by Syed's private investigator (March 1999).[27] Thus, the State reasoned that where Syed's original attorneys and investigators, according to a record in the defense file, conducted *some* investigation of the Woodlawn Public Library — *i.e.*, at a minimum, driving the area of the high school, the victim's burial site, *and* the public library, as well as interviewing the private security officer who worked at that library at the relevant time — Gutierrez was not required to invest additional investigative resources to explore the public library aspect of Syed's alibi.

Furthermore, the State argued that this billing record revealed that Syed's defense team first explored an alibi that Syed had started to construct the day of the murder, which became untenable once Wilds became a witness for the State. Those witnesses whom Syed had originally hoped would serve as his alibi proved at trial only to reinforce and corroborate the account Wilds told the jury. Most telling, in addition to interviewing the security officer at the Woodlawn Public Library, the defense's private investigator spoke with or attempted to interview exactly five other individuals in the first ten days after Syed's arrest: (a) Coach Michael Sye, (b) Nisha Tanna, (c) Stephanie McPherson, (d) Yasser Ali, and (e) Jay Wilds. *See* Attachment 12 (A-0374). As Davis's billing record reflects,

[27] Mills acknowledged during his testimony that he did not remember whether or not he was interviewed in 1999 and that he was not sure if there was a security camera at the library separate from one he remembered on an adjacent building. The State had called him principally to clarify what "Wackenhut" was and to confirm he was employed at the Woodlawn Public Library as a private security officer during the relevant period referenced in the billing summary. Through Mills, the State confirmed that Syed's investigator had performed some investigation of the public library. But, to be clear, it is Syed's burden to establish that his trial attorney failed to give him an adequate defense. Thus, the State is not required to prove that Davis, Syed's investigator, did in fact interview Mills, a security officer at the public library; it is Syed who must prove that he did not, *see supra* note 6 — a burden he cannot satisfy in the presence of a billing summary that states "Interviewed Wackenhut Off. Steven Mills," especially where the State confirmed through testimony that Steven Mills worked for Wackenhut, a private security firm, as a security officer at the Woodlawn Public Library in 1999.

those witnesses are where Syed's defense team began. The State argued that, so long as the anchor of Syed's alibi for the night of the murder (*i.e.*, Wilds) remained steadfast, each of these individuals was someone Syed expected could confirm his whereabouts or corroborate that he was with Wilds on January 13, 1999. Syed had not counted on Wilds turning him in and testifying against him, but otherwise Syed was not wrong.[28] After all, even before the State had produced his cellphone records in discovery, he succeeded in directing his investigator to individuals who saw or spoke to him the very night in question — and who, if Wilds had not cooperated with police, would have reinforced the alibi that he had endeavored to put in place:

a) Coach Michael Sye (interviewed March 3, 1999). Wilds testified that Syed wanted to be dropped off at track practice because "he needed to be seen," Attachment 12 (T. 2/4/00 at 142), and Syed told his attorneys "he remembers informing his coach that he had to lead prayers on Thursday." Attachment 12 (A-0153). At trial, Coach Sye testified for Syed as part of the track practice alibi, but also corroborated Wilds' testimony in the process.

b) Nisha Tanna (interviewed March 8, 1999). According to detectives' notes, Tanna told police she remembered Syed getting a cellphone in mid-January, calling her a "day or two after he got cellphone," and "hand[ing] phone to Jay to talk to me." *See* Attachment 12 (B-0138, B-0140). At trial, Tanna testified for the State, corroborating Syed's cellphone records and the testimony of Wilds.

c) Stephanie McPherson (interviewed March 10-11, 1999). During Davis' first interview with McPherson, she did not recall speaking to Syed, but a report in Gutierrez's file documented a follow-up interview with McPherson on March 11, where Davis wrote: "McPherson advised PD Davis that she now remembers speaking to Jay and Adnan on January 13, 1999 between 4:15 and 5:30 p.m. She advised that she called Adnan on his cell phone and Jay was with him at the time." *See* Attachment 12 (A-0360).

d) Yasser Ali (interviewed March 10, 1999). At trial, the State called Ali to testify. He was able to confirm that his phone number corresponded to two outgoing calls on Syed's cellphone records for January 13, 1999 (6:59 p.m. and 10:02 p.m.), but had no specific recollection of either call. *See* Attachment 12 (T. 2/3/00 at 79-82).

[28] Syed's private investigator attempted several times to make contact with Wilds at his workplace. *See* Attachment 12 (A-0374). As of September 3, 1999, Davis still sought to speak with him, but Wilds declined to talk with Davis about the investigation. *See* Attachment 12 (A-0359).

The State contended that the common thread of the individuals first contacted by Syed's investigator indicates that Syed's defense team was focused on an alibi from the outset of their representation of him. These witnesses may in fact have proven helpful to Syed's defense as components of the original alibi Syed had planned. But the spine of Syed's original alibi was broken once Wilds cooperated with police and testified against him. Thus, placing the interview of Mills in this context reinforces the State's contention that Syed's original defense team conducted some investigation of the Woodlawn Public Library alibi. Furthermore, after Syed's original alibi became a liability for the defense, his attorney was not required to compound Syed's miscalculation about Wilds by pursuing an alibi angle that would (i) create yet another discrepancy with Syed's account to police, (ii) have him inexplicably depart from his routine on the day of the murder, and (iii) resolve a key wrinkle in the State's case that, unless Syed is picked up from the public library, prevented the State from being able to put Syed and Lee together leaving school that afternoon.

New information that, soon after Syed's arrest, McClain was talking about lying for Syed would further bolster the State's contention that Syed had concocted an original alibi centered on Wilds and, shortly after being arrested, pointed his private investigator to individuals whom Syed expected would — truthfully (*e.g.*, Nisha Tanna) or falsely (*e.g.*, Jay Wilds, Asia McClain) — support his originally conceived alibi. The post-conviction record already contains the frank assessment of others (of whom Gutierrez was aware) that Syed was adept at this kind of fabrication and manipulation,[29] but two

[29] For example, according to a defense summary, Syed's sibling told his defense team that Syed was a "very good liar," that he could "lie about anything, and you would not be able to tell he is not telling the truth," and that Syed "could be very convincing." Attachment 7 (A-0152). Gutierrez was also aware of Sharon Watts, the school nurse, who testified as an expert at the first trial (but was successfully blocked by Gutierrez at the second trial) that Syed feigned catatonia after learning of the discovery of Hae Min Lee's body and told Watts that the victim had called him the night before she disappeared and wanted to get back together with Syed. *See* Attachment 12 (T. 12/13/99 at 231-233).

At sentencing after his conviction at the second trial, the Honorable Judge Wanda Heard reached and relayed a similar conclusion: "The evidence was, there was a plan, and you used that intellect. You used that physical strength. You used that charismatic ability of yours that made you the president or the -- what was it, the king or the prince of your prom? You used that to manipulate people. *And*

affiants now present direct evidence that Syed's counterparty, Asia McClain, was also talking about fabricating a lie to help Syed avoid conviction.

D. Supplementing the Record Would Reinforce the Conclusion that Syed Suffered No Prejudice Since, as a Matter of Law, Prejudice Cannot be Based on False Testimony.

The Supreme Court has clarified that in most cases a showing that an attorney's error would have changed the outcome of a trial satisfies the *Strickland* requirement to show prejudice. *See Glover v. United States*, 531 U.S. 198 (2001). Concurring with the State on this issue, the post-conviction court ruled that Syed has not met this requirement and therefore denied relief. Syed has conditionally asked this Court to reconsider that assessment. But even assuming *arguendo* that incorporating McClain into Syed's alibi defense would have made a difference at trial — a position on the merits that the State would dispute — the Supreme Court has also made clear that "in some circumstances a mere difference in outcome will not suffice to establish prejudice," *id.* at 202, and that criminal defendants are unable as a matter of law to establish prejudice where their claim is predicated on a falsity or an improper ground they are not permitted to exploit.

In *Nix v. Whiteside*, the Supreme Court was asked to approve an ineffective assistance of counsel claim where the defense attorney refused to sponsor false testimony. There, the defendant consistently told his attorney that he stabbed the victim because he believed the victim owned a gun and that the victim was reaching for the gun when the defendant stabbed him. 475 U.S. at 160-61. On the eve of trial, the defendant, concerned that the jury would not credit his claim of self-defense if he did not purport to have seen the gun, told his counsel for the first time that he saw something metallic in the victim's hand. *Id.* His counsel refused to allow him to offer this newly-remembered detail in his testimony, believing it to be perjury. In post-conviction proceedings, the defendant

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even today, I think you continue to manipulate even those that love you, as you did to the victim. You manipulated her to go with you to her death." Attachment 12 (T. 6/6/00 at 16) (emphasis added).

claimed that the failure to allow him to offer this evidence was ineffective assistance of counsel, causing prejudice to him because it could have affected the outcome of the trial.

The Supreme Court disagreed. "Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law." *Id.* at 166. Chief Justice Burger noted that "at most, [the defendant] was denied the right to have the assistance of counsel in the presentation of false testimony." *Id.* at 174. This, however, does not qualify as a form of prejudice protected by the Sixth Amendment to the Constitution. "We hold that, as a matter of law, counsel's conduct complained of here cannot establish the prejudice required for relief under the second strand of the *Strickland* inquiry." *Id.* at 175.

Likewise, in *Lockhart v. Fretwell*, the Supreme Court addressed the impact of a new development in the law on evaluating prejudice under *Strickland*, once more emphasizing that a defendant cannot establish prejudice if the result would reward him with an unjust windfall. 506 U.S. at 366. In that case, even though the attorney failed to make an objection that would have succeeded and benefitted the defendant under the then-prevailing law, the state of the law was subsequently corrected. *See Lockhart*, 506 U.S. at 374 (O'Connor, J., concurring). Thus, by the time the defendant was seeking to establish that his attorney's failure had prejudiced him, it was apparent that his Sixth Amendment claim was rooted in an interpretation of the law that no longer had merit. *Id.*[30] On this basis, the Supreme Court found that the defendant could not establish prejudice: "Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him." *Id.* at 372; *see also Perry v. State,* 357 Md. 37, 80 (1999)

[30] The Supreme Court confirmed that although the "perspective of hindsight" and the "natural tendency to speculate as to whether a different trial strategy might have been more successful" are not proper considerations in evaluating counsel's performance, the analysis of prejudice "does not implicate these concerns" and thus, with respect to the second prong of *Strickland*, the "use of hindsight" is permitted and proper. *Lockhart*, 506 U.S. at 371-72. *See also supra* note 7.

(noting that prejudice is not always judged solely by whether the outcome would have been affected but also "whether the result of the proceeding was fundamentally unfair or unreliable." (citations and quotation marks omitted)).

Thus, under *Nix* and *Lockhart*, to satisfy his burden of establishing prejudice, Syed was required to prove not only (a) that there is a reasonable probability he would have been acquitted but for the alleged error, but also (b) that McClain's testimony was not fabricated or false: "Even if a defendant's false testimony might have persuaded the jury to acquit him, it is not fundamentally unfair to conclude that he was not prejudiced by counsel's interference with his intended perjury." *Williams v. Taylor*, 529 U.S. 362, 391-92 (2000) (citing *Nix*, 475 U.S. at 175-76). Because it ruled that Syed had not established "a substantial possibility that . . . the result of his trial would have been different," Mem. Op. II at 26, the post-conviction court had no occasion to assess — at least, not in the context of prejudice — the second question: whether Syed had shown that McClain's proposed testimony was not false.

The court indirectly shared, however, its appraisal of McClain in the context of evaluating deficient performance. Faced with rival conclusions about the veracity of McClain's recollection and whether her letters were produced in concert with Syed, the post-conviction court found that the State's theories and evidence, on the one hand, and more innocent explanations that favored Syed, on the other, both required the court to engage in speculation and were essentially in equipoise: "While the State's speculation is plausible, the State is essentially asking the Court to favor one conjecture and ignore other equally plausible speculations." *See* Mem. Op. II at 17. But, if it is just as possible that McClain's purported alibi was false or manufactured as it is that she is telling the truth, then Syed has not satisfied his burden and, as a matter of law, he cannot demonstrate prejudice.

Moreover, unlike *Griffin v. Warden*, where the Fourth Circuit criticized the "retrospective sophistry" of producing in hindsight possible justifications for an attorney's error where the attorney himself had candidly supplied his reason for being derelict in his professional duties (970 F.2d at 1358),

here, in the absence of testimony from any member of the defense team explaining the decision to forego Asia McClain, Syed and the State have both been left to present narratives and furnish evidence to support them. But it is emphatically not the State's burden to fill that gap. Still, if the question is close, previously unknown information that has only now been brought to the State's attention critically alters the balance in the State's favor. The State has already presented substantial evidence that the letters and statements of McClain were suspect and thus that Syed has no legitimate constitutional reason to be disappointed in the defense his attorney deployed. *See supra* Parts III.A.-C. Augmenting the record with affidavits from two of McClain's classmates would, in the interests of justice, cement that conclusion. Prejudice, after all, cannot be founded on false testimony.

IV. Conclusion

To review Syed's petition on the uncorroborated assumption that McClain has been truthful in the face of mounting evidence to the contrary is to grant Syed a "windfall" to which the Constitution does not entitle him. The burden of proof falls on Syed in these proceedings because the burden of proof to convict him was met by the State over 16 years ago. Otherwise, the passage of time, the vagaries of memory, and the seductive lens of hindsight make it all too easy to imagine a story of what might have been, especially when — long after the crime was committed, the investigation concluded, the defendant convicted — so many of those who lived the true story are not here to tell it.

The fashioning of a false alibi is not a novelty in criminal cases, and Syed would hardly be the first defendant charged with murder who sought to improve his position by manufacturing one. Already, the post-conviction court has characterized as "quite a compelling theory" the State's position that Asia McClain typed a letter as part of a scheme with Syed to create a false alibi. Courts operate under the comfortable assumption that a person ordinarily would not be willing to lie to assist someone charged with murder. Two witnesses who were previously unknown to the State have now

come forward and affirmed that this assumption does not apply in the case of Asia McClain. To correct that assumption prior to appellate review is in the interests of justice.

WHEREFORE, in accordance with the Criminal Procedure Article, Section 7-109(b)(3)(ii)(2), and Maryland Rules 8-604(d) and 8-204(f)(4), the State respectfully asks this Court, in the event that it agrees to review Syed's ineffective assistance claim based upon his lawyer's failure to pursue Asia McClain, to permit a limited remand in order to supplement the post-conviction record with the affidavits — and, if requested by Syed, testimony subject to cross examination — of two individuals who were previously unknown to the State and whose information was previously unavailable but materially bears on the validity of Syed's Sixth Amendment claim of ineffective assistance of counsel.

* * * * *

Respectfully Submitted,

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It's late.

I just came from your house an hour ago.

March 1, 1999

Dear Adnon (hope I sp. it right)

I know that you can't visitors, so I decided to write you a letter. I'm not sure if you remember talking to me in the library on Jan. 13th, but I remembered chatting with you ~~Rose~~ Throughout your actions that day I have reason to believe in your innocense. I went to your family's house and discussed your "calm" manner towards them. I also called the Woodlawn Public Library and found that they have a survailance system inside the building. Depending on the amount of time you spend in the library that afternoon, it might help in your defense. I really would appreciate it if you would contact me between 1:00pm - 4pm or 8:45pm -> until... My number is (410) 486-7655. More importantly I'm trying to reach your lawyer to schedule a possible meeting with the three of us. We aren't really close friends, but I want you to look into my eyes and tell me of your innocense. If I ever find otherwise I will hunt you down and wip your ass, ok - friend... //

I hope that you're not guilty and ~~I need~~ hope to death that you have nothing to do with it. If so I will try my best to help you account for some of your unwitnessed, unaccountable lost time (2:15 - 8:00 ; Jan 13th)
The police have not been notified Yet to my knowledge maybe it will give your side of the story a particle head start. I hope that you appreciate this, seeing as though I really would like to stay out of this whole thing - Thank Justin, he gave me a little more faith in you, through his friendship and faith. I'll pray for you and that the "REAL TRUTH" comes out in the end. Only trying to help
"I hope it will set you free."

Asia McClain

P.S. If necessary my grandparents line number is 653-2957. Do not call that line after 11:00 O.K.

Like I told Justin if your innocent I do my best to help you.
But if you're not only God can help you.

If you were in the library for awhile tell the police and I'll continue ~~to tell what I know~~ even louder than I am. My boyfriend and his best friend remember seeing you there too.

Your Amiga
Asia McClain

Adnon Syed #992005477
301 East Eager Street
Baltimore, MD. 21202

Dear Adnon,

How is everything? I know that we haven't been best friends in the past, however I believe in your innocence. I know that central booking is probably not the best place to make friends, so I'll attempt to be the best friend possible. I hope that nobody has attempted to harm you (not that they will). Just remember that if someone says something to you, that their just f**king with your emotions. I know that my first letter was probably a little harsh, but I just wanted you to know where I stode in this entire issue (on the centerline). I don't know you very well, however I didn't know Hae very well. The information that I know about you being in the library could helpful, unimportant or unhelpful to your case. I've been think a few things lately, that I wanted to ask you:

1. Why haven't you told anyone about talking to me in the library? Did you think it was unimportant, you didn't think that I would remember? Or did you just totally forget yourself?

2. How long did you stay in the library that day? Your family will probably try to obtain the library's surveillance tape.

3. Where exactly did you do and go that day? What is the so-called evidence that my statement is up against? And who are these WITNESSES?

Anyway, everything in school is somewhat the same. The ignorant (and some underclassmen) think that you're guilty, while others (mostly those that know you) think you're innocent. I talked to Emron today, he looked like crap. He's upset, most of your "CRUCHES" are. We love you, I guess that inside I know that you're innocent too. It's just that the so-called evidence looks very negative. However I'm positive that

March 2, 1999

everything will work out in favor of the truth. The main thing that I'm worried about is that the real killers are probably somewhere laughing at the police and the news, that makes me sick!! I hope this letter and the ones that follow ease you days a little. I guess if I didn't believe in your innocence, that I wouldn't write to you . ☺

The other day (Monday) We (some of Mr. Parker's class) were talking about it and Mrs. Shab over-heard us; she said, "Don't you think the police have considered everything, they wouldn't just lock him up unless they had "REAL" evidence." We just looked at her, then continued our conversations. Mr. Parker seems un-opinionated, yet he seemed happy when I told him that I spoke to you family about the matter (I told him) Your brothers are nice, I don't think I met your mother, I think I met you dad; does he have a big gray beard. They gave me and Justin soda and cake. There was a whole bunch of people at you house, I didn't know who they were. I also didn't know that Muslims take their shoes off in the house...thank God they didn't make me take mine off, my stinky feet probably would have knocked everyone out cold.

I over-heard Will and Anthony talking about you, they don't think you did "IT" either. I guess most people don't. Justin's mom is worried about you too. She gave me your home number, when Justin was in school. Classes are boring, that's one benefit to being "there", no school!!

They issued a school newsletter on the issue, so everyone is probably aware. It didn't say your name, but between that, gossip and the news, your name is known. I'm sorry this had to happen to you. Look at the bright side when you come back, won't nobody f**k with you and at least you'll know who your real friends and new friends should be. Also, you're the most popular guy in school. Shoot...you might get prom king.

You'll be happy to know that the gossip is dead for your associates, it's starting to get old. Your real friends are concentrated on you and your defense. I want you to know that I'm missing the instructions of Mrs. Ogle's CIP class, writing this letter.

March 2, 1999

It's weird, since I realized that I saw you in the public library that day, you've been on my mind. The conversation that we had, has been on my mind. Everything was cool that day, maybe if I would have stayed with you or something this entire situation could have been avoided. Did you cut school that day? Someone told me that you cut school to play video games at someone's house. Is that what you told the police? This entire case puzzles me, you see I have an analytical mind. I want to be a criminal psychologist for the FBI one day. I don't understand how it took the police three weeks to find Hae's car, if it was found in the same park. I don't understand how you would even know about Leakin Park or how the police expect you to follow Hae in your car, kill her and take her car to Leakin Park, dig a grave and find you way back home. As well how come you don't have any markings on your body from Hae's struggle. I know that if I was her, I would have struggled. I guess that's where the
SO-CALLED witnesses. White girl Stacie just mentioned that she thinks you did it. Something about your fibers on Hae's body...something like that (evidence). I don't mean to make you upset talking about it...if I am. I just thought that maybe you should know. Anyway I have to go to third period. I'll write you again. Maybe tomorrow.

Hope this letter brightens your day... Your Friend,

Asia R. McClain

P.S: Your brother said that he going to tell you to maybe call me, it's not necessary, save the phone call for your family. You could attempt to write back though. So I can tell everyone how you're doing (and so I'll know too).

Asia R. McClain
6603 Marott Drive
Baltimore, MD 21207

Apparently a whole bunch of girl were crying for you at the jail...Big Playa Playa (ha ha ha he he he).

March 2, 1999

9. This material has already been provided.

10. There is no unindicted co-conspirator or co-defendant.

11. Dr. Rodriguez has written no reports in this matter.

12. A copy of this material is attached.

13. As was noted in the State's original discovery, the State intends to call as witnesses any person mentioned in or on any of the reports provided to the defense.

14. The State has faxed a letter to the Office of the Chief Medical Examiner authorizing them to release a copy of the autopsy and or autopsy photographs to the defense. A copy of the letter is attached.

15. To the best of the State's information, the victim was murdered the afternoon of the day she was reported missing, shortly after she would have left school for the day, January 13, 1999. If further investigation narrows the time down, the State will provide that more specific time to the defense.

16. The State will check to see if there is any further discoverable material in this area.

17. Summaries of oral reports from experts will be provided as they become available.

18. See number 3 above.

19. See number 3 above.

And the State provides the further:

20. A copy of the advisement of rights signed by the defendant.

ASA Kevin Urick

Stephanie
Hussain
Juwan

MEMORANDUM

TO: MCG

FROM: ALI

DATE: AUGUST 21, 1999

RE: INTERVIEW WITH ADNAN'S BROTHER, ALI

These are the questions asked and answered during the interview:

1. Why did Jay hang out with Adnan and his friends considering that he was a couple of years older? Everyone in the area just hangs out together regardless of age. But Jay usually hung out with the Indian kids.

2. Was Leakin Park a hang out for everyone/anyone? No, people did not hang out in Leakin Park, it was considered to be dangerous.

3. Did anyone use Leakin Park as a place to go hook up? Did Adnan use it for that purpose? No, no one used Leakin Park to hook up, including Adnan.
Adnan used to hook up in Aziz Syed's house (no relation). Aziz was known as the trouble maker. Aziz was one of Jay's good friends.

4. How friendly were Adnan and Stephanie? They had been friends since second grade. They were close friends. They would talk often, and for long periods of time.

5. What does Stephanie have to say about this whole situation? Stephanie was telling people that Adnan had actually committed the murder. This being based on the fact that Jay had told Stephanie that he helped Adnan bury the body.

6. Has anyone else made similar comments as to what Jay said about helping bury the body? Yes, Tayib Hussain. Tayib is 20 years old and attends the University of Maryland at College Park. Tayib asked Jay about the incident, and Jay said that he helped Adnan bury the body. Jay told Tayib that Adnan had called Jay the day before asking for his help in the murder. Jay said his reply to Adnan was that he would not help in the killing of Hae, but he would help Adnan bury the body. Jay further went on to tell Tayib that he met Adnan on the day of the incident at a gas station were Adnan showed Jay the body.

Kati

7. Is there anyone else we could speak to in relation to Adnan and what he did regularly? Ask Juwan Gordan. This is Adnan's best friend outside of the muslim community. Juwan would know more, especially about the hook ups.

Parthenon

Gordan
Juwan

MEMORANDUM

TO: MCG
FROM: KALI
DATE: AUGUST 25, 1999
RE: INTERVIEW WITH ADNAN SYED

On August 21, 1999, I met with Adnan at the Baltimore City Detention Center to discuss the filming in the detention center on August 17 or 18, 1999.

Adnan stated the filming **aired on the 6 p.m. news on Channel 2 on August 20, 1999**. He stated that the news **showed his hands, his t-shirt, and his shorts. There was no footage of his cell.** Adnan stated that what was aired did not distinguish him at all and only he was able to recognize himself because he knew what he had on.

He stated that the "goon squad" has random shake-downs for contraband/knives, etc. They are in full gear and place the inmates in handcuffs, remove the inmates from their cells and search the inmate and the cell. This is the standard "shake-down" procedure according to Adnan in which the "goon squad" goes from cell to cell. **Nothing was found in Adnan's cell during the shake-down, nor has there ever been anything found in his cell.**

Information regarding Jay Wilds

Adnan states he has known Jay since 7th grade. Jay was in the 8th grade and Adnan was in the 7th. They attended Johnnycake Middle. They did not hang out together , but began to do so in Fall 1998 because of Stephanie. Jay provided Adnan with weed. He paid for it sometimes, but usually not because Jay always had weed. Adnan states he smoked with Jay less than 10 times.

Information regarding January 13, 1999

States he believes he attended track practice on that day because he remembers informing his coach that he had to lead prayers on Thursday. Hae's brother called Adnan on his cell phone. He initially asked for Don (thinking it was the current boyfriend's number) and then realized it was Adnan. He asked if Adnan had seen Hae and then a police officer got on the phone. Adnan does not remember where he was when Hae's brother called, but he believes he was in his car with Jay. He states he keeps his cell phone in the glove compartment and recalls reaching over Jay to get the phone from the glove compartment.

Provided a handwritten account of his recollection of his whereabouts on Jan 13 and his efforts in ensuring Hae had a proper memorial service. (ATTACHED)

H:/DOCS/DATA/SYED/INTERVIEWADNAN.DOC

* 1-12-99 - arrive at school 7:45
* 1st pd. 7:50 - 9:15 - photog 1:1 s. Margaret Musa nothing significant of remembrance - don't remember lesson plan
* 2nd pd. 9:20 - 10:45 - AP English - Ms. Jane Fron gave Stephanie McPherson (Jay's girlfriend) b-day present - stuffed Teddy Bear, B-Day card. don't remember lesson plan
* lunch 10:50 - 11:15 - left school, went to Jay's house, don't know what we did, came back to school 12:40 - let Ta. borrow my car (cell phone in glove compartment)
* 12:40 - went to guidance office Ms. Bettye Stuckey-counselor - to get college recommendation letter - (copy w/date 1-13-99 in packet of letters for bail hearing)
* 4th pd. - 12:50 - 2:15 - I arrived a few minutes before 1:00, cause it took some time in the guidance office

On the night of the prom, Adnan won Prom Prince and Stephanie won Prom Princess. They were dancing to one of Hae's favorite songs. Adnan danced a minute with Stephanie, the Prom Princess. He was supposed to dance the entire song with Stephanie, but because Adnan knew it was Hae's favorite song, he excused himself from Stephanie, left her on the dance floor, and took Hae out onto the dance floor. They kissed on the dance floor, but Adnan described that kiss as a peck.

The **first time he *really* kissed Hae on the lips** was on prom night when they had gone to the Inner Harbor in front of the Cheesecake Factory. Adnan says everyone knew they were going out. They were always together in school. Before practice they would go to the McDonald's together. They talked on the phone at night. They would go to the movies. The family pressure made it difficult to maintain a relationship. Adnan states that in the summer they had their ups and downs because they always had to cover up what they were doing because his parents did not know about Hae. Unlike Adnan's parents, Hae's mother would not have minded that Hae had a boyfriend but she wanted to meet the parents of the person Hae was dating. That was impossible. Therefore, Hae had to hide that she was dating Adnan from her mother and grandparents. Adnan describes Hae as always wanting to take a "recess" from their relationship. She always took breaks and then would call back a few days later and want Adnan back.

Adnan started to play football and work in the fall 1998 so the **amount of time he and Hae started spending together decreased.** He states that Hae was always getting on him about that. Then Hae began working at Lens Crafters and she was unable to spend time with him either.

I asked Adnan if he put pressure on Hae to not spend so much time with her friends but to devote more time to Adnan. Adnan stated just typical young relationship stuff. He would be playing basketball at the Mosque and she would get mad because he should be spending time with her. She would tell Adnan she had to stay in the house and then she would go to a girlfriends house. It was basically "tit for tat".

(3) ***Sexual Encounters*** Adnan and Hae would spend a lot of time in Adnan's car making out. There would be a lot of **foreplay**. Adnan describes foreplay as one perosn would be driving and the other person would tease the person who was driving with their hand. They would run their hands on the person's body above and below the person's waist and under the person's clothes.

They first time they had sex was sometime between April 25 to May 10. They would have sex off of Dogwood Road going to *Patapsco State Park*, where there is a little lake/pond and benches where people fish and the golf course is across from their spot. They also frequented the *Best Buy parking lot* next to Security Square Mall (this was their designated spot when school started).

Hae initiated the sex. He was uncomfortable and nervous initially. They used condoms initially, but later did not use condoms. He assumed she would get birth control, but they

never discussed it. On his birthday, May 21, Hae brought whipped cream and strawberries. Adnan describes this encounter as extremely messy.

They began having **oral sex,** both of them performed on the other, after they began having sex. Adnan does not remember how soon after they began having sex oral sex began. They had sex with Adnan on the bottom; Hae on top; or Adnan from behind. Adnan and Hae preferred Hae on top because it was easier due to mobility restrictions if you are in the car.

When I asked Adnan **how often they had sex,** "As often as possible" was Adnan's response. Out of the 7 days in a week, they probably had sex every time they had a chance to go somewhere or be together. On average they saw one another 4,5,6 times a week and had sex each of those days, about 2-3 times a day. Since Hae was responsible for picking up her niece after school, they would have sex in the Best Buy parking lot close to the school after school. Hae would leave to get her niece and they would see one another that night, when they would have sex again.

Who knew they were having sex? Adnan stated Saad knew everything. He did not tell his brother because he knows his brother would have been upset. He describes his brother as a practical person, a moral person. He states he is not religiously moral, but basically moral. He would think of the practical considerations of having sex with someone, i.e. pregnancy, sexually transmitted disease, etc. Adnan describes his relationship with his brother as "close".
Debbie also knew that Adnan and Hae were having sex. Hae told Debbie. Adnan would often ask Debbie how Hae described Adnan's sexual ability. Hae would occasionally mess with Adnan when Adnan asked if he was good after they had sex. She never outright said no, but teased him once when he did not ejaculate. Adnan states that once or twice he did not ejaculate, but on a few times Adnan "outlasted" Hae. Hae and Adnan stopped having sex the beginning of December because they had broken up. Hae and Adnan did not continue having sex after they broke up.

(4) ***Other people*** In October Adnan met Anjuli ___ at a party. She attends Bryn Mar College in Philadelphia. Adnan spoke with her on the telephone. Hae did not know Adnan was speaking with someone else. Adnan went to see Anjuli one day in Philadelphia and spent the day in her dorm room. They were in her bed. She had no clothes on, Adnan only had his shirt off. He and Anjuli fooled around. They kissed and Adnan teased her. Upon reviewing the diary Adnan stated that at that time he and Hae were both going their separate ways, he was talking to Anjuli, she was interested in Don.

III. Adnan reviewed the diary. See Notations Attached.

MEMORANDUM

TO: MCG
FROM: KALI
DATE: January 15, 2000
RE: INTERVIEW WITH ADNAN SYED

On January 15, 2000 I visited Adnan at the Baltimore City Detention Center. Adnan looked tired and stated he was ready for this trial to be over with – one way or the other.

He had concerns, actually points he wanted to make with regard to the first trial.

OFFICER ADCOOCK Adnan stated Officer Adcock testified Adnan asked Officer Adcock if there was going to be a police report made. Adnan said their conversation was long. Officer Adcock did not merely inform Adnan that Hae was missing. Officer Adcock asked Adnan a series of questions, his address, his name, birthday, etc. It was only after Officer Adcock asked these series of questions that Adnan questioned if a police report was going to be made.

NURSE Adnan said she had been fired or let go or asked to leave Woodlawn because she was not performing her job well. Adnan also said he only spoke to the nurse 10-20 minutes the day it was announced to the school Hae was missing. On what basis could the nurse state Adnan was "faking" when she had no basis on which to judge Adnan's state of mind.

DEBORAH WARREN She testified as to a note from October or November where Adnan and Aisha were writing back and forth to one another. Adnan said the part about kill looks like his writing. Aisha and Adnan were in Health class writing this. Health class is about 1-11/2 hours long. He cannot remember what they were writing about, but knows it had something with Hae being sick in the morning and the speculation about her being pregnant.
She also stated Adnan was possessive – that he did not want her to be around other guys. Adnan does not know hwy she would say that. He wondered if she could give specific examples of how this was. I guess also why this behavior would be any different from Hae being upset about girls sitting on his lap, etc.
Also when Hae disappeared Deborah stated that she did not come back home and Deborah knew where she was. Deborah told Aisha, Krista Meyers that she knew where Hae was and that she was going to try to get in touch with her. Apparently Deborah implied Hae was with Don.

TRACK Adnan ran in the county championship in the 300meter race after January 13, 1999. He received his track medal in November. Hae was the person who put the medal over his rear view mirror and he left it there. The medal was still placed in his car like that when he was arrested.
He wants to point out that Tina questioned whether he was a scholar-athlete. He would not formally be considered one, nor would he himself consider himself to be one. The persons in school recognized as scholar-athletes were so recognized in formal ceremonies at school.

Mcgclients/syed/interview4.doc

JAY WILDS

(1) When Hae left school she left by herself, as noted by Butler. Butler said she saw her by herself. Where was Adnan?? If he was with Hae or had broken into her car at school someone would have seen him because the school day had ended and people were outside. Both Adnan and Hae were in Psychology class from 12:45-2:15. That is when school ended.
Jay allegedly met him at the Best Buy parking lot around 3:30.
So how did Adnan get into her car or have Hae meet him, kill Hae, pick her up drag her from the car to the trunk (how could he lift her??) between 2:15 and 3:30 with noone seeing him. Where in the Best Buy parking lot did this allegedly take place?? If Jay said it occurred on the side where they would have sex, Adnan would not then walk all the way to the phone booth (it is a long walk and Adnan does not like walking).

(2) Do we have the videotapes from Best Buy and Westview??

(3) If Adnan threw the red gloves away before he got into the car and drove all around town as Jay testified then why were his fingerprints not all over the car?? I questioned Adnan how he knew about the red gloves before they were ver mentioned or we were ever made aware of them? Adnan stated that when he was arrested the police told him they knew about the shovels he discarded; the red gloves; the plans; the phone calls; his throwing up and his fingerprints were all over the car.

(4) Adnan said his fingerprints were on the cover of the map. He has flipped through that map a hundred times when he would be driving with Hae when they were downtown because they would always get lost. If his fingerprints were on the cover why were they not on the Leakin Park page?

(5) Adnan said the assembly in which he convinced Stephanie not to go Jay's house was in late October or November. Jay was spending time with "ghetto white girls". He told Hae because they were together at the time and Stephanie was so devoted to Jay that she had talked about not going to college and possibly staying with Jay and renting an apartment. This upset Adnan because he knew Jay was crazy about Stephanie and liked her being his girlfriend, but he did not treat her right.

(6) Adnan describes Jen as a good friend with Jay. He was always with her when he was not with Stephanie, but Jay never spent time with Jen and Stephanie together. He wouldn't be surprised if they slept together, but he doesn't think so. She's "butchie looking", i.e. a tomboy, with guys lots.

DESCRPTION When I asked Adnan to describe himself in 10 words, he said:

Pakistani; his age; Muslim; light skinned (not white); dark hair; dark eyes; slender; 6'0 tall; wears glasses (except when he is home); and educated.

He would not describe himself as Arab. If he had to chose a box he would chose either Middle Eastern or Asian American or other. He would also describe himself as Indian, if people have not heard of Pakistan and wanted to know what it was near.

Mcgclients/syed/interview4.doc

Date: 09.04.99
Re: **ADNAN SYED, 5540.1402**
TTD

Attorney/Client Privilege & Material Work Product Privileged Material

TASK	PERSON(S) ASSIGNED	NOTES
Response to Motion in Limine	ML	Done
Motion to Compel	ML and KP	Motions to Compel Done Another ?
Letter to Syed family requesting money	MCG	done 09/07/99
Letter to Urick demanding to see the scene w/ aid of individuals present at the crime scene on 02/09/99 and State for Appropriate Relief	ML MCG	delivered Flag w/ Motion to be filed for 2 weeks
Find out Balto. Cnty. Police protocol for initiating missing person investigation. Find out protocol for joint investigations. Why weren't Balto. Cnty. police involved. Balto. Cnty Cops involved SDT Balto County Missing Persons and Homicide file	Drew Davis ✓	urgent
Obtain and review Balto. Cnty. missing person file. SDT for trial, Tangible Evidence, Ex Parte	Drew Davis ✓ ML	
Need to subpoena Hae Lee's work records and records of boyfriend. at Lenscrafters SDT for trial, Tangible Evidence, Ex Parte	ML	
Any priors/police responses to Lee family.	Drew Davis ✓ ML	

Make Copies

Orig file

Date: 09.04.99
Re: ADNAN SYED, 5540.1402
TTD

Attorney/Client Privilege & Material Work Product Privileged Material

TASK	PERSON(S) ASSIGNED	NOTES
Obtain every police report in existence concerning Alonzo Sellers and Jay Wilds. Find the connection.	Thornton Daniels and Drew Davis ✓	~~9.24~~
Discover whereabouts of Alonzo Sellers on January 13th	Thornton Daniels and Drew Davis	SDT: ste W/ file for Copy
Ltr & SDT to BFI, Waste Mgmt., records of dumpsters SDT for trial, Tangible Evidence, Ex Parte	ML	to be filed 9.24
Dist. Ct. Tapes (ltr dated 08/06/99) 03/01, initial bail hearing 03/09, second bail hearing 04/05, preliminary hearing, pp 04/13, preliminary hearing	ML	need ASAP Ltr sent requesting all Just one.
criminal records on all witnesses	ML + A.P. + Drew ✓	
SDT FBI Reports and notes SDT for trial, Tangible Evidence, Ex Parte	ML + Drew ✓	re: agent in Leakin Park
SDT 3 dumpsters Dept. of Public Works, reports and notes SDT for trial, Tangible Evidence, Ex Parte	ML.	at Leakin Park Supervisor *** *** who when called
review photos of crime scene another other photos	ML Drew D MCG	schedule review on 09/13/99, letter requests *** of copying ML Done Letter re Video of Crime Scene
SDT Baltimore Co. Police Dept. homicide file, all reports, missing person file and all reports SDT for trial, Tangible Evidence,		by order of Det. + CC - COST

ML 9.24.

Date: 09.04.99
Re: ADNAN SYED, 5540.1402
TTD

Attorney/Client Privilege & Material Work Product Privileged Material

TASK	PERSON(S) ASSIGNED	NOTES
Ex Parte		
SDT Lenscrafters, Hae's employment records and [redacted] time sheets SDT for trial, Tangible Evidence, Ex Parte		Hae's personnel file Donald Clindinst's personnel file 410-825-5343 time sheets for 12/01/98 - 02/28/99 (Lenscrafters) GM: Carlyn Tunnel (TowsonStore) ⇒ Send SDT to store 825 Dulaney Valley Rd. Suite 32 Towson MD 21204 9.24
SDT Woodlawn H.S. and Balto Co. Board of Education Records on: Hae Adnan Jay Stephanie class schedule, attendance record teachers assigned to all senior classes SDT for trial, Tangible Evidence, Ex Parte		Send subpoena to ⇒ Woodlawn H.S. phone #410-887-1389 Attn: Ms. Eisha Evans 1801 Woodlawn Dr. Baltimore, MD 21207 9.24
SDT Donald Clindinst criminal record, school records SDT for trial, Tangible Evidence, Ex Parte	ML Drew Hartford Co.	
SDT Baltimore Co. Police Dept any prior complaints to Lee's address SDT for trial, Tangible Evidence, Ex Parte	ML	
SDT Alonzo Sellers criminal record, all police reports of any prior arrests or interactions w/ police SDT for trial, Tangible Evidence, Ex Parte	ML	

Date: 09.04.99
Re: ADNAN SYED, 5540.1402
TTD

Attorney/Client Privilege & Material Work Product Privileged Material

TASK	PERSON(S) ASSIGNED	NOTES
SDT Pet ~~World~~ Smart employment records of Jay Wilds, time sheets, personnel file	Drew Kate	Pet Smart – 7721 Pulaski Hwy (Rt 40) Send SDT: Pet Smart Attn: Payroll Dept 19001 N. 27th Ave. Phoenix, AZ 85027
SDT Porno Store *** need name employment records of Jay Wilds SDT for trial, Tangible Evidence, Ex Parte	Drew Kate	
SDT Jay Wilds prior record *** -- Balto City and Balto County all police record, MVA records SDT for trial, Tangible Evidence, Ex Parte	Drew Kate	
Make request to view the physical evidence w/ Adnan	MCG ML	State answered w/ no "showings" response
Make determination regarding alibi	MCG and ML	hrs of Student Dress school after Ct " " Pools " Mr " " " at Track Practice
Computer • develop powerpoint demo • computer diagrams/photos	ML	
MAPS		
Woodlawn High School	Kate Drew	
Woodlawn High School Track practice	Kate Drew	

urgent

Date: 09.04.99
Re: **ADNAN SYED, 5540.1402**
TTD

Attorney/Client Privilege & Material Work Product Privileged Material

TASK	PERSON(S) ASSIGNED	NOTES
Mosque		
Leakin Park 4400 block N. Franklinton Road		
Alonzo Sellers' house, 6545 Gilmore Street, Woodlawn		
Copping State College • maintenance department • [redacted] of security guard		
Wetherdsville Rd -- when open -- when closed		
Dumpsters • Westview Mall (Caldor) • (2) Rite Aid ~~Caldor~~ • Petsmart, Rt. 40 West, Catonsville		
Hae's house		
Syed's house		
Hae's work		

Date: 09.04.99
Re: ADNAN SYED, 5540.1402
TTD

Attorney/Client Privilege & Material Work Product Privileged Material

TASK	PERSON(S) ASSIGNED	NOTES
Hae's p/up at daycare		
Where Hae's car was found		
Jay's house		
Jay's work • porn store • Petsmart		
Cell Towers		
Wetherdsville Road and Windsor Mill Road		
Earl Carter, 5910 Charmwood, 21244		
Woodlawn Library		

CONFIDENTIAL

During the entire time Ms. McPherson knew Adnan, she advised that he never got upset or mad about anything nor showed any physical display of anger.

Ms. McPherson had never heard any information in school about Adnan being responsible for murdering Hae until the police charged him. Again, she stated that she never saw any changes in Adnan.

PD Davis then asked Ms. McPherson when she first spoke to Jay on January 13th and she stated it was after 11:30 that night.

PD Davis then asked if she knew a subject named Phil or Melanie who were Jay's friends. Ms. McPherson advised that both Phil and Melanie live in Frederick and Phil was Hispanic.

PD Davis asked Ms. McPherson if she could provide PD Davis with Jay's new address. She advised it was off of Winters Lane although she did not know the address. PD Davis was assured by Ms. McPherson and her parents that he would be provided with Jay's current address so PD Davis could conduct an interview.

During the end of the interview, Jay and Phil arrived at Ms. McPherson's house. Her parents did not allow him in and he was asked to return later. It came out during the interview that Ms. McPherson had advised Jay that PD Davis was coming over to conduct an interview with her.

Ms. McPherson then advised PD Davis that Jay did have firsthand knowledge about Adnan's involvement in this case although she would not go into any detail. Jay did tell Ms. McPherson that Adnan was responsible for murdering Hae Min Lee. Ms. McPherson was also advised by Jay that Adnan had threatened her through him. Ms. McPherson advised that she did not believe that Adnan would ever threaten her but she believed that her boyfriend of many years, Jay, was an honest person.

ATTORNEY WORK PRODUCT

On September 3, 1999 PD Davis spoke to Jay Wilds at his residence on the telephone. Jay refused to talk to PD Davis about this investigation.

CONTIDENTIAL

Private Detective Andrew Davis responded to the Woodlawn Senior High School Gymnasium for a memorial service held in honor of Hae Min Lee scheduled for 2:30. During the ceremony, Aisha Pittman, Debbie Warren and Becky Walker all spoke in reference to the special memories they had of Hae Min Lee. Becky Walker in her speech advised that she was Hae's best friend and read an e-mail that Hae had sent her during the summer of 1998 in reference to the hard times Becky was going through in losing a loved one. Debbie Warren stated that Hae confided in her more than anyone else and Aisha Pittman said that Hae was her best friend, like a sister to her.

After the ceremony, PD Davis was able to re-interview Stephanie McPherson. Ms. McPherson advised PD Davis that she now remembers speaking to Jay and Adnan on January 13, 1999 between 4:15 and 5:30 p.m. She advised that she called Adnan on his cell phone and Jay was with him at the time. Ms. McPherson advised that she was at Parkville High School waiting to play her basketball game and was bored so her and some fellow teammates began to make phone calls. Again, she believed it was between 4:15 and 5:30 p.m. She could not provide any other information about where Adnan and Jay were nor what they were doing.

PD Davis was also able to obtain a tag number of CJH-186 displayed on a Toyota Camary which appeared to belong to Hae's grandfather.

SYED, ADNAN

07/08/99

11373

State v. Adnan Syed
Our File: 5540-1402

DRAFT STATEMENT

04/07/99	MM	Meeting with community leadership; Travel to and from.	2.00	300.00
04/19/99	MM	Initial file review and set up; draft letters and memorandum re: bail transcript; authorization; investigation, and arraignment.	.50	75.00
04/21/99	MM	Telephone conference with Blilal Ahmed re: visits and next steps; meeting with Drew Davis re: investigation and next steps.	.80	120.00
05/03/99	MM	Meeting with MCG re: bail and investigation; telephone conference with Drew Davis re: same; roundtrip travel; client meeting.	2.90	435.00
05/04/99	MM	Meeting with MCG re: status; telephone conference with Bilahl Ahmed; telephone conference with Doug Culbert.	.50	75.00
05/12/99	MM	Case planning and preparation meeting with MCG; draft correspondence to Rhamand and Judge Mitchell.	2.00	300.00
05/17/99	MM	Telephone conference with Rhamens re: Monday night meeting.	.20	30.00
05/18/99	MM	Jail visit with defendant.	.50	75.00

(Continued)

SYED, ADNAN 07/08/99

11373

State v. Adnan Syed
Our File: 5540-1402

05/19/99				
	MM	Telephone conference with Syed Rhamen re: meeting and Court of Special Appeals.	.30	45.00
06/02/99				
	MCG	Preparation for arraignment; Bail hearing; Meeting to disqualify.	3.50	875.00
06/03/99				
	MCG	Arraignment at Baltimore City Circuit Court - Pt. 14.	3.75	937.50
06/08/99				
	MCG	Conference with Mike Millermann re: Disqualify issue.		
06/16/99				
	MM	Receipt and review of motion to extend time to file discovery; telephone conference with MCG re: same.	.30	45.00
06/21/99				
	MM	Edit opposition to state Motion to Extend discovery.	.30	45.00
06/29/99				
	MM	Edit Motion to Compel and Motion for Production of tangible evidence before trial.	.50	75.00
		TOTAL SERVICES:	18.05	3,432.50

ATTORNEY SUMMARY

Attorney	Hours	Hourly Rate	Total
Cristina Gutierrez	7.25	$250.00	$1,812.50
Mark Martin	10.80	150.00	1,620.00

Postage	13.09
Long Distance Telephone	0.08
Photocopying	115.80
Facsimile	11.80

(Continued)

SYED, ADNAN 07/08/99

11373

State v. Adnan Syed
Our File: 5540-1402

TOTAL EXPENSES:	140.77
TOTAL:	3,573.27
BALANCE DUE:	$3,573.27

PLEASE INCLUDE OUR FILE NUMBER ON YOUR DRAFT, OR
ENCLOSE A COPY OF OUR STATEMENT WITH YOUR PAYMENT.
ALL STATEMENTS ARE NET THIRTY DAYS
Tax Identification #52-1673197

Billing Summary for Adnan Syed

The following is a summary of the man-hours and miles used to investigate this case while Attorneys Doug Colbert and Chris Flohr were Adnan's council.

Total Hours: 39.75 Total Miles: 582

1. 3-2-99 3.0 hours 62 miles-First meeting
2. 3-3-99 1.75 hours 18 miles – met with attorneys and met Mr. Syed
3. 3-3-99 4.0 hours 41 miles – drove the area of Woodlawn High and Leakin Park, Balt. Co. Library, Interviewed Wackenhut Off. Steven Mills, interviewed Coach Michael Sye
4. 3-4-99 6.0 hours 49 miles-met and interviewed Adnan
5. 3-8-99 3.5 hours 104 miles- phone conversation with Mr. Flohr and interview with Nisha Tanna
6. 3-10-99 5.50 hours 85 miles – interviewed Stephanie McPherson and Yaser Ali, responded to Adult Boutique and picked up phone list
7. 3-11-99 2.50 hours 41 miles- Woodlawn Sr. High for Memorial Service and re-interviewed Steph
8. 3-15-99 .50 hours phone conversation with cell phone company
9. 3-16-99 5.0 hours 82 miles – met with Mr. Colbert, Lens Crafters interview, Saad Chaudry interview
10. 3-22-99 3.0 hours 39miles- Rebecca Walker interview
11. 3-23-99 2.0 hours 22 miles- Mr. Flohr meeting and re-visit Boutique
12. 3-30-99 .50 hours – conversation with Becky Walker about letter for Bail Review
13. 3-31-99 1.5 hours 39 miles- picked up letter and met with Attorneys about Bail Review

PHONE LOG

3:32PM 410-499-5396, Bilal
May Lee = deceased
→ Lincoln Park

5:04PM 410-396-2525, Homicide, Det Sydnor - gone for day, catalized Det Moore. O is gone to Centralized Booking. Det Sydnor, Det. McGilvery, Sgt Ritz + Sgt Lehmann are gone for day.

3/3/99

Appx 11:45 Bilal 410-499-5396 checking on time to meet w/ investig. will call back

Appx 11:50 Dew Davis left messages @ both #

12:17PM 410-499-5396, paged Bilal

Appx 12:45PM " " "

1PM 410-499-5396, Bilal → County Jail

Appx 2PM 410-258-5829, left name #

Appx 2:10PM 410-863-5829 410 left name + #

3-4-99

7:58AM 410-209-4018, → 209-4260 Chief Downey
Send to for a request for approval of investigator Officer Johnson

PHONE LOG

3/5 (cont) 11:55am — 410-332-4040 (Juveniles) Maryanne Burt left name, pager # re: met after night @ Courthouse Return meeting.

12:03pm — 410-333-4900, PD
333-4278 PD,

12:04pm — 333-4899 PD Juvenile

~~280~~
David Addison
→ Bill filed in legislature to shore up/ensure enforcement.

1:32pm — 410-887-1304, Woodlawn H.S.
Principal Dennis Garvin Emails can be picked up 1:00–1:30pm + spoke to Patty Wagner paralegals.

Patty Wagner (paralegal) 410-887-4060 — She called back 2:30pm after seeing / giving copies + remove any confid. papers exam. We required to give ⇒ not Registrar working on Mon today. Not going out until Monday

COMAR

final decision w/ Pf James Wilson (Principal) who — Other kids have finished what needed to somehow else – if have ed program approved by State # going. Probably only needs Eng/Soc Studies Glad to bring grades in. Diploma already ordered

PHONE LOG

3/6/99 2:15PM 410-499-5396, Bilal re: glasses, O doing fine.

2:17PM 410-492-5513 Drew Davis, left name, # re: not contacting family of Hae Min Lee yet plan to do that & want to coordinate

3/6 9:22AM 410-209-4065 Ms McCall needs 24hrs to get approval. About 3PM drop off

9:27AM 410-499-5396, Bilal
Uricyn, Rash

9:44AM 410-209-4065, ~~64~~ 4064 Ms McCall
3PM - give Mr. Syed Rahman's name + phone
Post 1 209-400 1/02
Security Co^ty Post 1 (visit post) + tell them to give Ms. Mccall's next 410-209-4064

10:25AM 410-209-4064, Ms McCall
changed name to Bilal Ahmed.

3/8 5:26PM 410-396-5380 Matthew Fraling
read order to him verbatim. Explained
learned of subp after family was contacted by
school, went to J. Bonn's chambers, sent to
J. Mitchell's chambers & they sent me to ~~Dist~~ Dist Ct where I went to J. Oshrine. ASA Fraling
said Hae was not his case but Vicky Wash's case
& he was following up for Vicky Wash.

PHONE LOG

3/9 9:~~42~~AM 410-209-~~4001~~ Sec. Post
4002
walkie/batteries → only on visiting day

410-

3/10 10:06AM 625-2766

10:08AM 410 396-5073, Yvonne Davis

10:12AM 499-5396, Dilel

5:49PM 887-4060, Bob Haynes

~~Chris P~~ left name, #, re: motion filed yesterday w/Cr Court + on ¶. Indicated to J. Welch's chambers my concern for mootness if school felt it had to comply in the interim when Grand Jury judge returns on 16th. I requested Mr. Haynes to inform me if the school felt they had to comply as J. Welch's chambers said I can call back if that is the case. I also said I'd fax them the latest motion tomorrow.

5:54PM 410-492-5513 updated Drew re: memorial service tomorrow & Jay's gift are to horse

5:56PM 499-5396, Dilel, left message re: Yvonne Davis, call w/info re drugs.

TO: File, Syed
RE: Speaking to @ Jail facility
DATE: 3-19-9

No notes since booking up, long time ago wrote notes
No surge cion of violence in notes..

Rule passport expired.

SS# 217-15-5019 DOB 5-21-81

Living home: Mom, Dad, older brother Tam veer (21 - Towson State Univ. pre-med). younger brother 9 yrs old Wysat. Bilal = Sunday school teacher

8th grade top 10% class. EMT transport Rural MetroCorp, elderly patients.

EMT certified since 16 yrs old. Play football (defense end) track, started 2 wks ago training @ Woodlawn Middle School PAL Recreation help homework ages 5-10 National Honor Society (member since this year) Highest grade in EMT

Colleges UMBC + College Park worthy results in

3-1-93

April. Interested in pre-med, ER med.

Not sign- 4 inches on waiver + sign bottom, They wrote down what classes Period 1 Mrs Mease Period 2 Eng/or Soc Studies. Work times 7:50-9:45 9:20-10:45 Am. ~~They have 2d + 4th~~ No tapes/no videos

(They have 2d + 4th period class together (4th period = Psych). O saw her in both classes.

PO said O solicited Susan to do it but Susan saw O choke her + bang body. Put her in trunk then sleep & night seeing her face in trunk and hole must cut you up inside. O told them not wnt to talk about this any more + want to speak to Bilal + then they'd said more things. Fingerprints were all over the car, hair samples + cloth samples. Nothing said about blood or DNA. PO said O wearing red gloves. They retrieved by Wilders 788-8495 & ff Stephnie (good friend of O) 788-857 works @ pawn store on Sulphur Spring Road near fairgrounds. Lives off Rt 40 near Sarentos Purple T diners. Why would you trust a black guy who puts pins through his mouth

TO: Fide, Syed
FROM: Fleh
RE: Transcript Order
DATE: 3-1-99

4:06PM 410-878-8015, left msg, (pager + home) #rec: 0's
Will review to order tape ASAP.

3/2/99 Spoke w/ Brian Horner + I can pick up tape tomorrow.

8 File, Syed
2nd Floor
E. Ct Special Appeals
DATE: 3-2-99

JP 3-707

10-260-1000, → 260-1500, 1450 Ct of Appeals
260-1450, Ct of Sp Appeals
Leslie Godette

1) Cir Ct clerk
Remind transmit quicker than usual
bec. of 10d time period
Quick turnaround → will greatly reduce
ruling @ time for filing of

Filing fee $50 to Circuit Court
+ Cir Ct will chg $60

No page limit, Be as thorough as can.
Ct not anticipate

Not ~~app~~ addressed to

Consol App Div of Atty Gen Office.

TO: File, Syed
RE: Kercsli's Investigator
DATE: 3-2-99

Frank Naftel
410-788-7800

TO: File, Syed
FROM: Flohr
DATE: 3-3-99

Corey Christopher
410-962-3962

Frank Naftel best out here
410 788-7800

WORK PRODUCT

TO: File, ~~Syed~~ ~~RAUF~~
RE: Psych
DATE: 3-3-99
FROM: Plohr

Jerry notes
State Psych = Dr. Spodak who can be hired for $1000

Good psych =
Ellen McDaniel very conservative judge likes her.

TO: File, Syed
RE: Listening to Bail Review tape
DATE: 3-24-99
FROM: Flohr

10yr. Tuckahoe Rd.

5 mo. employed

* → Not admit to any substance abuse
No adult conv history nor Juvenile Record
State's Atty Barbara Richman on behalf of Mike Cohen:

on tape 1:00 "intended to have a witness who was w/ Syed when the victim's body was buried and also we have a witness who would say that the D told him on the day that Hae Min Lee was killed that he was going to kill her."

Judge Heavrone: I imagine you're asking bail remain the same.

P Doran:

Now accepted Plans to go to college

Mother always had an honest law abiding life

75-100 outside at mm.

Always a dutiful son

"Family's cousin" Bilal

TO: File, Syed
RE: Speaking w/ Adnan
DATE: 3-~~8~~-99

~~Passport~~
E mail
Name of dec. present b/f
Bilal's relationship — not family
Never been in car recently

Note: Personal prop sheet gangs hut + ∆ and no hut + not known anything about it.

EMAIL: Syed_adnan@hotmail.com
password: poppy
Mail set up.
Computer @ Mom+Dad's house

Last email about int + be friends ok.

Gangs hut her, ~~forks~~, ~~PO-sec~~
Follow up

TO: Pile, Syed
FROM: Flohr
RE: Misc Juv. Issues
DATE: 3-5-99

speaking w/ David Addison
"dadison@mail.opd.state.md.us"
~~efdadis@attorney.com~~

"Motion To Transfer Jurisdiction to Juvenile Court"

Art 27 §594(g)

(f)

Criminal Court

Entire case 16 & 17 not eligible to Juv. Ct. transfer

"Waiver" "Reverse Waiver" "Transfer"

This stat is both mandatory & jurisdictional.

3-828 Confid of Juv. Records
CJP

May be an educational but not see it.

Human Rights Watch was to do an interview

Michael Bochenek 212-216-1245
"Bohenik"
e-mail bochenm@hrw.org.

TO: File, Syed
RE: medications
From: Chris Plohr
DATE: 3-5-99
Note: Bilal gave me this info earlier this week.

Doctor: Bonnie Orzech
Woodlawn Dermatologist
Medi: AQUAPHOR mixed w/ EZOCON
01%

→ Bilal Ahmed

x411 · Dr. Bonnie Orzech → not listed
~~445-225~~ Commerce Center
1777 Reisterstown Rd Ste 108
Balt. · 21208
"Woodholm Center"
410-486-9494

99
SW
DS
D9

- Glasses
- Ltd resources & envelopes
- Charges/legal research.

TO: File, Syed
FROM: Flohr
RE: Speaking w/ O
DATE: 3-6-99

→ self addressed stamped & 1 piece papers
~~Date of jail~~ - ~~work letters + how much sentenced~~
~~Releases signed~~
~~Arrests~~
History of Hair
~~School records / guidance counsellor~~
DOB chg. doc typed v. handwritten

Memorial service on 11th @ Woodlawn MS. plant tree O suppose to be 1st person

About 2-3 wks after initial disappearance, Ms Stuckey warned O to be careful, will be asked ques, think bf speak, took to see principal who gave similar advice + said BO should come here and I will volunteer to stay w/.

Senior yr. guidance counsellor, 1st gives GPA + then works w/ college staff. Ms. Stuckey = guidance counsellor. When O broke up, O didn't do his Eng assignment. Eng teacher told Ms Stuckey + Ms. Stuckey went to O + said relationships happen, its ok.

O would write letters about to from his mom saying he had a doc appt. (Mom knew these forged documents).

2

3-6-99

△ never told anyone he was born in 80 but always said 81. In fact, girl questioned him on that.

Ms Schaub = French teacher (Mae's teacher's aid for Ms Schaub in French). ○ thinks she had alot to do w/ △ breaking up. ○ thinks another part of break up was new b/f drove brand new camaro green. She was very superficial + would brag about her b/f driving BMW's, etc.

Mae's friends Ashley Pitts + Debra Worrell know Mae best. ~~Mae~~ ~~said~~ a ~~boy~~ prior b/f died in California in a car crash "Mike" (○ not know last name). ○ ~~the~~ Not know where Mae was in Calif. but knows she was near no ~~water~~ beaches. Mae's best friend "Jake" died of cancer in Ga. (not know last name or where in Ga.) both men were older than her. Mike died when she was in 10th grade. Mae was out in Cal. from about end of 9th grade until middle of 10th grade around December.

TO: File, Syed
FROM: Plohr
RE: Bail Review
DATE: 3-9-99

9:29AM 410-878-8058, Pam – usually goes before the volunteer judge is there for re-review.

9:33AM 410-878-8009, Connie Ferguson, busy.

10:39AM 410-878-8009, Audrey from Connie Ferguson's office
J. Shuger.

TO: File, Syed
FROM: Flohr
RE: Bail Re-Review
DATE: 3-9-99

9:29AM 410-878-8058, Pam – Usually goes before whatever judge is there for re-review.

9:33AM 410-878-8009, Lonnie Ferguson, busy.

10:39AM 410-878-8009, Audrey from Lonnie Ferguson's office
J. Shuger.

TO: Fde, Syed
FROM: Flohr
RE: School Records
DATE: 3-10-99

3:23PM 410-887-4060 Bob Haynes, not in bldg.
Charlene Scaretta not have answers yet.
Still call

Fax

To: Fdl, Syed
From: Flohr
RE. med.
DATE: 3-11-99

11:12AM 396-5013, Yvonne Davis, left message, # re: med for Syed

TO: File, Syed
From: Plohr
RE: Meds
DATE: 3-12-99

3:46PM 410-396-5013 Yvonne Davis

3:49PM 410-837-2135, Dr. Borman, no answer.

1:05PM - 2:34PM
(# 2005477)

TO: File, Syed
From: Flohr
RE: Meeting @ BCOC
DATE: 3-12-99

~~Id #?~~
~~Phone:~~
~~Beard:~~
~~Call Bild:~~
~~Witness:~~
~~Other Allys:~~

Dion Taylor - Same car as O, 2dr. Accord (O has 4dr. Basketball game that day, Dion saw him & smoked G's car making funny noise. Cooling fan wire was loose, fixed 1-2 weeks after Bangie M+N Car Care (family's machine). Bangie may be weary of atty coming in. School schedule should list the game. This happened @ 3-3:30PM in front of school front entrance to Gyms.

Not make sense call Krista before 5PM b/c she works until 5PM @ car insurance place (stolen cars not claimed go to her+sle processes them).

Yasir Ali - O would not call him during day b/c father always has the phone during the day.

TO: File, Syed
FROM: Flohr
RE: Speaking - ~~Client~~ Saad Chaudry
DATE: 3-12-99

8:33AM 410-869-9498, Saad Chaudry explained his ~~d~~ to speak to anyone he wishes + his right not to speak to anyone + can only be forced if subp + told by Judge to speak. He asked would it look bad if not speak what should he do. I answered I cannot make that decision for him. I also asked if he'd be willing to speak to our investigator, he said yes + I provided the # and asked him to call.

8:39AM 410-492-5513 Drew, explained he'd be getting call.

2

3-20-94

Appx 1:20PM I made the following objections to Sgt Bompi + I specifically asked him if he could hear me across the room + he said yes (I had been initially told by the Sgt B to stay in living room area). I made the following objections:

1) Warrant was overboard in general and
   a) in particular no particularity of search areas

2) I objected to any photos being taken as nothing in warrant authorized photos being taken in the pictures of these people.

3) Objected to warrant stating "persons premises ~~and~~ vehicle" it is not crossed out showing judge did not review the document + it's not particular.

4) Objected to unnamed witness in affidavit - that basis alone is enough to invalidate the warrant.

5) Objected Nothing in affidavit supports facts of the warrant nothing in affidavit suggests there is anything in the house.

Note: Det Ritts white, mustache greying jeans + black Belt City shirt.
Officer R. Williams African American, uniform Belt Co.
Woodlawn Pct 2.

TO: File, Syed
FROM: Plohr
RE:
DATE: 3-26-99

3:02pm 410-396-5013, Yvonne Davis
Fax#: 625-2766
Treatment SVCS Ms. McCall 410-204-4063

3:12pm 410-486-9444 Dr. Brandorzech, gave info, asked to fax.

TO: File, Syed
FROM: Plohr
RE: Phone Det
DATE: 3-29-99

1:17PM 410-625-9109, Charlene Dunn, left name, # re: D.

TO: File, Syed
FROM: Flohr
RE:
DATE: 3-29-99

12:27pm 410-486-7166, Dr. Orzek → Faxed prescrip to Yvonne
Same rash, did help last time, Does he have other symptoms?
Needs more follow up.

Sle faxed

Mike Filey 410-396-5052
410-396-5052

TO: File, Syed
FROM: Fidler
RE: L. Mitchell's request for DOB to produced
DATE: 3-29-99

12:22PM 410-396-5052, ~~left~~ spoke w/ Mike Filey, gave jail id #, location, protective custody, dob. Gave my pager # as well.

TO: File, Syed
FROM: Kohr
RE: House Arrest
DATE: 3-29-99

4:13PM 410-625-9111, Alt Correction Concepts, left name, # (pager) RE: D.

TO: File, Syed
FROM: Clohr
RE: Home Det
DATE: 3-29-99

1:17PM 410-625-9109, Charlene Dunn, left name, # req'd.

TO: File, Syed
FROM: Clohe
RE: Postpont Request
DATE: 3-29-99

10:05 AM 410-878-8185, ASA Sarah Reader covering, 410-358-0677= fax. Explained that ~~we~~ I am attorney for O + we are opposing the request for postpont as our client has been in jail appx 1 months + we want him to go b4 court. She indicated she has not heard anything P.C: apprsd of the postpont. I also asked whether this is her case & + she explained she is covering it only @ Wdnesdy + she is not appearing @ writ hearing.

10:12 AM
~~10:11 AM~~ 410-878-~~8858~~ 8058, Pam Mitchell ⇒ J. Waxman or to duty Judge. is who we send a request to.

TO: File, Supd
FROM: Plohr
RE: Receipt of Records/Production of O.
DATE: 3-31-94

10:55 AM 410 ~~396~~ - 5380 ASA Vickie Wash, in her boss, on way ~~Today~~ into office, they are in her box I explained I wanted to make sure she gets them & if they'd let her know they are there. Lisa (sec) confirmed receipt of letters in support of O.

10:57 AM 410 396 - ~~5052~~ 5052/53 J. Mitchell's chambers, Mike Finley, → talked to Scott → no problems w/ production.

3:50 PM 410 396 - 5052, J. Mitchell's chambers, Mike Finley fax# Sue Sheldon, 410-396-5010.

3:54 PM 410-396-5010 Sue Sheldon
Case Name, ~~#~~ case #, date + Judge, transcript or video.

Rm 244
Cthouse East
21202
410-545-7864

4-5 sales $2.50
7 1/2 days - $5.50
overnight.
$20 per tape

TO: Fdc, Syed
FROM: Flohr
RE: Saad Chaudry
DATE: 4-1-99

Called Bilal, got Saad Chaudry's phone #, called Saad Chaudry & after speaking briefly w/ his mother I spoke to him & I explained that we thought he would benefit from representation & if he has not hired an atty nor does he have anyone he is considering, he can call Erin Scheller & gave her #.

I also spoke w/ Erin about dlet & gave name & phone #.

TO: File, Syed
From: Plohr
RE:
DATE: 4-1-99

5:05PM 788-1064, busy

5:06PM 202-543-2928,

5:08PM → 410-783-0272
410-788-1064,

5:20PM appx → ~~Anisha~~ → Nisha 7:30PM
Det said female atty going w/them tonight.
RE: phone call.
301-603-0697

5:21PM 443-520-~~6952~~, Syed (cell phone) no answer.

5:23PM 301-603-0657, Nisha Tanna
~~subp~~ Det R? has subp, said call Mon.
Said she 7PM - 7:30PM, wants to ask questions about 1/2 hour.
202-708-4932 x 3158 Manjula Tanna
(cellular 703-568-0514)

5:34PM Speaking w/Drew

5:48PM ~~202-708-4932 x 3158~~ 703-568-0514,
dialed 2x & hung up on.

5:50PM 410-783-0272, Lucy Nathans
410-977-6119, cell

5:56PM ~~240~~ - 543-2928, Erin

5:57PM 410-299-2191, Dory

6:24PM 301-603-0657, Nisha Tapper (Mother Manjula Tanna) ~~is~~ A want an atty + they said you don't need an atty. She said how about Mon. How about if I come + she said short notice. Think Williams? Explained all her options (as I did the her daughter) Pending, speedy, not speedy, hiring an atty - any of her choice. She said she had none, I explained I had an atty if she wanted one that would be willing to talk to her. Ultimately she indicated she would sit w/ her daughter while they spoke to her tonight.

6:43PM 410-788-1064, Fidler.

6:45PM 410-869-9498, Saad Chaudary's mom
$75/hr. →
10-11PM tonight, Answer Chaudary

8:24PM 410-869-9498, Answer Chaudary - not in, will be back in 1hr.

10:30PM 410-869-9498, Chaudary

TO: File, Syed
FROM: Rohr
RE: videotape
DATE: 4-1-94

410-396-5010

Sue Sheldon

Tape
1 week order received

410-545-7764
duke + Hardy

Ms Sheldon said it would take 1 week to order the tape & it could not go any faster.

TO: File, Syed
FROM: Flohr
RE: Saad Chaudry
DATE: 4-1-99

Called Bilal, got Saad Chaudry's phone #, called Saad Chaudry & after speaking briefly w/ his mother I spoke to him & I explained that we thought he would benefit from representation & if he has not hired an atty nor does he have anyone he is considering, he can call Erin Schuler & gave her #.

I also spoke w/ Erin about client & gave name & phone #.

TO: File, Syed
RE: Transcripts
DATE: 4-5-99
FROM: Fluhr

6:12PM 410-396-5010 (Eastside), left msg, & rec minutes (note the machine did not say Sue Sheldon's name.

TO: File, Syed
FROM: Fluhr
RE: med
DATE: 4-6-99

2:04PM 410-486-7166, Dr Orzek, on hold for 5 min. + no response.

TO: File, Syed
FROM: Plotkin
RE: Minutes
DATE: 4-6-99

507 4th West.

9AM

Kenneth Norris

$150

396-5011 $20

602-8252

TO: File, Syed
FROM: Fisher
RE: med
DATE: 4-6-99

2:04pm 410-486-7166, Dr Orzek, on hold for 5 min. + no response.

Tina office

TO: File, Syed
RE: Speaking w/ Δ @ BCDC
DATE: 4-7-99
FROM: Rabia

Answering PT's comments.

- Failed 2x -

Psych 2/3 class dropped it

- Call home = not turn in report 4 xmas but did turn it in after.

- Stopped running track after County Championships
College apps were due Feb 15th = deadline + O dropped 2wks.
He stated going to guidance counsellor every day after school

- Broke up 2x

- Look for actually mean note that sent to Δ around October.
Photo Δ gave her + O wrote on back where he said they would be friends forever.

- Scoliosis → flaking out eyes, hair.

- Jennifer Pusateri: Stephanie said PD asked her questions → only other person connected w/ Jay

TO: File, Syed
FROM: Flohr
RE: Calls
DATE: ~~4~~ 8-99

11:17AM 410-788-1064, Explained to Ms Tim's advice re seeing B.Hal.
11:20AM 455-9762, Mr. Patel, left name, # re:

11:25~~AM~~ 410-~~486~~-7166, Dr. Orzeck - explained what symptoms. Lupus? - look for joint pains, GI, blood in nose/stool, sensitivity to sun. Doubtful but be aware of it.

Mr. Patel 410-383-5703

11:40~~AM~~ 410-~~665-12~~ 396-501~~3~~

11:45AM 410-396-5013, Yvonne Davis, sent precrip to Dr. ~~Edwards~~ 410-209-4093/4079 Edouard

Dr. Edouard

11:48AM 410-~~396~~-209-4093, Dr. Edouard - not available, explained spoke to Ms Davis who said she sent it to Dr. Edouard, close to 2 wks ago. ~~Edwards~~ Dr. Kite = psych. 209-4055 = Psy Dr. Edouard = a psychiatrist. Dr. Lukas, Dr. Holiday.

11:58AM 410-209-4055, Doc's → Martha Neal → sick call slip, I will bring Δ in, gave her her # & info. see reverse

TO: File, Syed
RE: 4-14-99 ct appearance
DATE: "
FROM: Flohr

I spoke to O in pens, asked an other if I could speak to his family & return to speak to him. The Officer said yes. Later I learned that O had already been taken back.

I called Cir Ct clerk's office & they did searches in computer under name, id# and found nothing. They indicated case had not been filed.

When I returned to ct rm, Tanveer said case was already called into record & the read the ind #. I immediately requested case be re-called & J. Lesser did notice I had been in ct since AM. I made the filing arg. (after initially asking the fel. if she/he had any info - she did not even have ind. # @ that time). Then I requested recog (denied)

Case called into record again & after 2 hrs, filed ind.

I (A) Carmen Hernandez ... FPD ... D.C.
... Re: ... information on Marshalls
... other ... from ... Federal ... lawyer
@ FPD

(B) FOIA [... Marshall Facts? ... or ... letter to ... people re facts
(C) Call ... Embassy [... make ... specific
Demands ...

Care
MDJ QVC

Idea → Drake
Idea → Thornton

Alert Rhamey in writing
Re ... Property ... Matters
Charitable Bonds
Family
... support
Embassy — Issue of Federalism, Embassy ...
Vicki's arguments

Letter to Rhamey — Talk to people to get information out to relay private or protected information

How did Adnan get Hae's car

Debbie Warren
saw Hae at 3:00 pm.

Hae recognizes Adnan's car
even if Jay was driving

Jay describes himself as very high

Strip = where drugs sold.

Jay = I couldn't bury her.

There are 2 TAPES

Jay admits to Drug Trafficking & Debbie

Who Prepped

BALTIMORE COUNTY POLICE DEPARTMENT

CONFIDENTIAL

REPORT OF INVESTIGATION

NAME OF SUBJECT	DATE SUBMITTED
WARREN, DEBBIE	02/14/99
	TYPE OF INVESTIGATION LEE MISSING PERSON 99-013-1074

NOTICE: THE INFORMATION CONTAINED IN THIS REPORT IS HIGHLY CONFIDENTIAL. DISSEMINATION OF INFORMATION TO ANY PERSON WITHOUT A NEED TO KNOW IS STRICTLY FORBIDDEN.

REPORT OF FINDINGS:

INTERVIEWED: WARREN, DEBBIE

BLACK FEMALE, DOB [redacted]

[redacted]

BALTIMORE, MD 21228

TELEPHONE [redacted]

RELATION: SCHOOLMATE AND FRIEND OF HAE LEE

On 01/28/99 the assigned interviewed Debbie Warren. Debbie said she saw Hae at approximately 1500 hours on 01/13/99. Hae was by herself and she was inside the school near the gym. Hae told Debbie that she was going to see Donald at the mall. Debbie did not see Hae leave the school.

Debbie said Hae was excited about her relationship with Donald Clinedinst. Hae would fight with her mother, but it was nothing serious enough to make her leave.

SIGNATURE OF INVESTIGATOR	NAME OF INVESTIGATOR
Det. J. O'Shea #2828	Detective J. O'Shea #2828

CAME BACK AFTER SCHOOL

MEET CANCELED

EYES WATERY, HE WAS FLUSHED, NEVER SAW HIM CARE ABOUT ANYONE LIKE THAT BEFORE, NEVER SEEN HIM LIKE THAT BEFORE

DIDN'T TALK ABOUT SEXUAL RELATIONSHIP WITH ▲

NEVER SAW ▲ DRINK

JA'UAN DRINKS --

SMOKED MARIJUANA BEFORE WITH ADNAN 1X

REMINISCING ABOUT SPOT BY BEST BUYS

HE SAID -- IT WASN'T MUCH (AMOUNT OF MARIJUANA)

HE SNEEZED AND IT BLEW.

HAD A FASHION SHOW PRACTICE AFTER SCHOOL

WENT TO HIS HOUSE; I STAYED IN HIS CAR - ACCORD - BROWN OR GOLD

CAME BACK BEFORE PRACTICE

WOULD HAVE BEEN AFTER CHRISTMAS AFTER SHE WAS GONE

▲ HAD TO PICK UP A LIGHTER

BOTH OF OUR CARS HAD ELECTRICAL PROBLEMS

GO TO BEST BUYS BY MCDONALD'S ACROSS FROM SECURITY

PULL IN BACK.

GO TO END PARKING LOT CLOSEST TO BELTWAY

JOINT-NOT MUCH, ROLLED IT RIGHT THERE

HE DID IT, I DON'T' ROLL. HE HAD THE PAPERS

MARIJUANA WAS JA'UAN'S

TALKED ABOUT IT NOT BEING ANY GOOD

★ HE SAID - I USED TO COME HERE WITH HAE

WHERE IT WAS AT, DIDN'T KNOW IT WAS OVER THERE

1ST MISSING --- HE SAID HE HOPED SHE RAN OFF WITH HER BOY-

FRIEND CAUSE HE DIDN'T WANT TO FIND OUT THAT

SOMETHING HAPPENED TO HER

NEVER GOTTEN HIGH ON OTHER OCCASIONS

WENT TO MALL BEFORE -- SECURITY SQUARE MALL

HE CAME TO MY HOUSE COUPLE TIMES IN SUMMER

HAS CELL PHONE/ PAGER

FOUND OUT THAT MORNING ----

▲ IN NURSE'S OFFICE

4/1/99

DET. RITZ
6:55
NISHA TANNA
DOB [redacted]

SHERWOOD HIGH SCHOOL -- 12TH GRADE

MET DEFENDANT THROUGH:

LAKSHMI GURUSWAMY

LIVES: ELLICOTT CITY

N.Y.E. PARTY --

PARTY STARTED APPROXIMATELY 8-9P

A LOT OF PEOPLE: 100 OR MORE

STAYED AT PARTY UNTIL APPROXIMATELY 1A

MET ▲ AT PARTY -- INTRODUCED. DIDN'T REALLY TALK

AROUND MIDNIGHT STARTED TALKING WITH ▲.

EXCHANGED # AND

DANCED. INTRODUCED BY LAKSHMI

▲ SAID HE LIVED IN BALTIMORE. HE INTRODUCED ME TO HIS

FRIENDS

NEVER CALL ▲ AT HIS HOUSE

NEVER ARRANGED A DATE. MENTIONED HE WOULD TAKE ME TO MOVIES.

REMEMBER WHEN ADNAN GOT A CELL PHONE

THINK IT WAS MID-JANUARY WHEN HE GOT IT

HE FIGURED IT WOULD BE EASIER TO CALL ME ON CELL PHONE

THINK IT WAS AROUND TIME WHEN HE 1ST GOT CELL PHONE;

HE HANDED PHONE TO JAY TO TALK TO ME

THOUGHT JAY WAS WHITE

JAY DIDN'T SEEM FRIENDLY

DEFENDANT JUST GOTTEN TO JAY'S STORE -

THEY WERE JUST TALKING. DEFENDANT SAID 'HI WHAT'S UP'

I SAID 'HI' TO JAY

**DAY OR TWO AFTER HE GOT CELL PHONE

THINK ▲ WENT IN THE STORE TO SAY HI WHEN ▲ WAS VISITING JAY

IT WAS MAYBE A MINUTE

JAY DID NOT ASK ANY QUESTIONS

3/23/99

1:20 - 2:03 INEZ BUTLER
GYM TEACHER

DETECTIVE QUESTION: WHEN DURING THE DAY DO YOU SEE EITHER HAE / ADNAN OR BOTH?

DON'T HAVE EITHER IN MY CLASS
SEE ▲ EVERYDAY DURING
LUNCH GOING TOWARD LIBRARY. HANG WITH
ASSOCIATES UPSTAIRS BY NEWSSTAND AREA
DID NOT SEE V/▲ TOGETHER THAT DAY

SAW ▲ IN BUILDING EARLIER THAT DAY.
DIDN'T SEE HAE UNTIL LUNCH. SHE WAS TAPING FOR CHANNEL 36. AIRED ONE WEEK LATER.

MY CLASS IN ROOM 214, PUSH CART TO GO INTO CLASSROOM. USE HALLWAY TILL HALLWAY CLEARED. SAW ▲ 2ND PERIOD. HE HAD MS. EFRON FOR ENGLISH.
REMEMBER BECAUSE HE'S ONE OF THE ONES THAT I HAVE PULLED HIS SCHEDULE ON. (TO SEE WHERE HE IS SUPPOSED TO BE)
REMEMBER WHAT SHE HAD ON
BECAUSE HER SKIRT WAS SHORT
SHE PUT $ IN CASH BOX HERSELF.
TEACH PSAT/ SAT -- HOW TO TAKE THE TEST
2ND PERIOD -- 9:15 - 10:40
**DON'T REMEMBER SEEING THEM AT LUNCH
USUALLY SAME GROUP THERE

HAE KNEW I HAD TO LEAVE AT 2:45

BELL RINGS 2:15. SHE GOES GETS CAR

UP HERE BETWEEN 2:20 - 2:25, AS SOON AS THE BUS LOOP CLEARS

SHE'S UP IN FRONT OF THE SCHOOL.

HAE KEEPS CAR RUNNING. KEYS IN CAR

RUNS BEHIND COUNTER

VERY FINE APPLE JUICE / HOT FRIES

WE FUSS -- TOLD HER TO GO HOME AND CHANGE CLOTHES

SHE SAID SHE HAD TO PICK COUSIN UP BEFORE SHE COULD GO TO WORK,

(DID WE FIND A JUICE BOTTLE OR FRY BAG IN CAR PER SGT. LEHMAN) ?

MY CHILD'S BELL RINGS AT 2:45

I LEFT AT 2:45. COULD HAVE BEEN CLOSER TO 2:50

COULDN'T BE CLOSER TO 2:15 BECAUSE:

2:25 BUSES LEAVE

2:30 SHE JUMPS FROM CAR

SHE DIDN'T WANT TO WAIT WITH OTHERS

SO SHE JUST RAN BEHIND COUNTER

ALICE SAID HAE IS LATE COMING BACK TODAY.

I KNOW EVERYONE DID NOT SEE HIM (▲) IN GYM AREA THAT DAY.

" DO YOU STILL RUN TRACK?"

--LIST
--SIGN IN SHEETS
--HARD DRIVE
FOR ▲'S INFOR

3/24/99

VIRGINIA MADISON
ASST. TO LIBRARIAN

▲ CAME INTO LIBRARY FREQUENTLY
SEVERAL DAYS IN A.M. (USE COMPUTER)

SOMETIMES AT LUNCH -- 3RD / 4TH PERIOD
SITTING ON SIDE

HAVE TO HAVE A PASS TO COME IN LIBRARY
LUNCH ROOM TEACHER MUST GIVE PASS.

CAN'T RECALL NAMES OF INDIVIDUALS WITH HIM
KNOW ▲ DOESN'T RETURN LIBRARY BOOKS.
HAVE BEEN ASKING AND ASKING
NEVER COULD UNDERSTAND THAT BECAUSE THEY'VE BEEN OUT A WHILE. THEY WERE FOR ENGLISH / SHAKESPEARE / MS. EFRON'S CLASS.

LUNCH 3RD AND 4TH PERIOD:
12:15 -- 12:50

HE AND VICTIM IN LIBRARY OFTEN BEFORE VICTIM DIED
3RD PERIOD

TAKE NOTICE WHEN KIDS WERE IN THERE LONGER:
HE SAID HE HAS FREE PERIOD AND LUNCH PERIOD

HAVE SIGN IN SHEET
SOMETIMES THEY DON'T SIGN IT IF WE'RE NOT STANDING THERE.

→ NEED SHEETS FROM SEPT. → NOV.

SAAD PATEL, IMRON, SYED HANG OUT --
OWES BOOKS

MUST ASK TO USE COMPUTERS
7 TO 8 COMPUTERS
3 HAVE INTERNET

▲ IN THERE THE MORNING THEY FOUND OUT THAT CHILD HAD DIED

MEETING THAT MORNING

SAYING SORRY TO HIM
HE JUST NODDED IN RESPONSE
▲ WITH TRACY KRAMET

NO PASSWORD NEEDED TO GET INTO COMPUTER

NO STUDENT DISC PER EACH STUDENT IN LIBRARY

WE HAVE A STUDENT DISC --
DON'T RECALL ▲ USING THAT STUDENT DISC

3/24/99

CHERYL METZGER

LOOKED ON HARD DRIVE
FOUND HAMLET ESSAY ON COMPUTER

A QUESTION OF POWER -- BOOK OVERDUE
BESSIE HEAD - (AUTHOR)
WRITER FROM SOUTH AFRICA

VIRGINIA LOOKING FOR SIGN IN SHEETS
REGULARS WEASEL THEIR WAY THROUGH.
NOT WATCHED AS CLOSELY

STUDENTS DON'T NEED A PASS DURING LUNCH

REGULARS ARE:
▲ WAS A REGULAR
NEVER PAID ATTENTION TO WHO HE SAT WITH

IMRAN AHMED WOULD SIT WITNESS HIM

1/13 -- CAN'T REMEMBER 1/13

DAY THAT DR. WILSON, AND POLICE OFFICER CAME TO SCHOOL AND ANNOUNCED BODY FOUND, KRAMER AND ▲ IN LIBRARY. I HUGGED HIM. SAID SO SORRY. HE JUST STOOD THERE

HE WAS DOING SOMETHING ON COMPUTER.

ALWAYS FRIENDLY
QUIET, RESPECTFUL

COME TO LIBRARY -- THEY DON'T EAT IN CAFETERIA

TAPED 0293

Police Department
Baltimore, Maryland

CI/209 Case Number H99030

INFORMATION SHEET

Name JA'UAN GORDON Nickname JAY

Race B Sex M Age 18 D.O.B. [redacted]

Height 5-08 Weight 185 Complexion LIGHT

Address [redacted] SS# [redacted]

Home Phone [redacted] Date and time of interview 4-20-99 1250

Parent's name [redacted] Address SAME

Boy/girlfriends name _____ Address _____

Last School Attended WOODLAWN HIGH SCHOOL Grade 12

Employer ECONOMY SHOES Address WESTVIEW

Employers Phone 410-747-4650 Hours of employment _____

RELATIVES IN BALTIMORE NOT LIVING WITH WITNESS

Name _____ Relationship _____

Address _____ Phone _____

Name _____ Relationship _____

Address _____ Phone _____

Read and Write Yes X No _____

Under the influence of drugs Yes _____ No X

If yes explain _____

Alcohol Check One Sober X Had Been Drinking ____ Intoxicated ____

Description of clothing at time of Interview (note in bloodstained torn etc.) MULTI-COLORED RUGBY SHIRT , BLUE JEANS, BLACK TENNIS

Note any injuries _____

Meals Provided ____ Date ____ Time ____ Date ____ Time ____

Detective MACGILLIVARY Detective RITZ

MPIA 15 459 468

4/20/99

B 0294

INTERVIEW @ WOODLAWN @ 1251.

Utqiʻa – JAʻUN GORDON

1ST – ENGLISH
SS
HEALTH

2ND – ENGLISH/SS
PHOTOGRAPHY

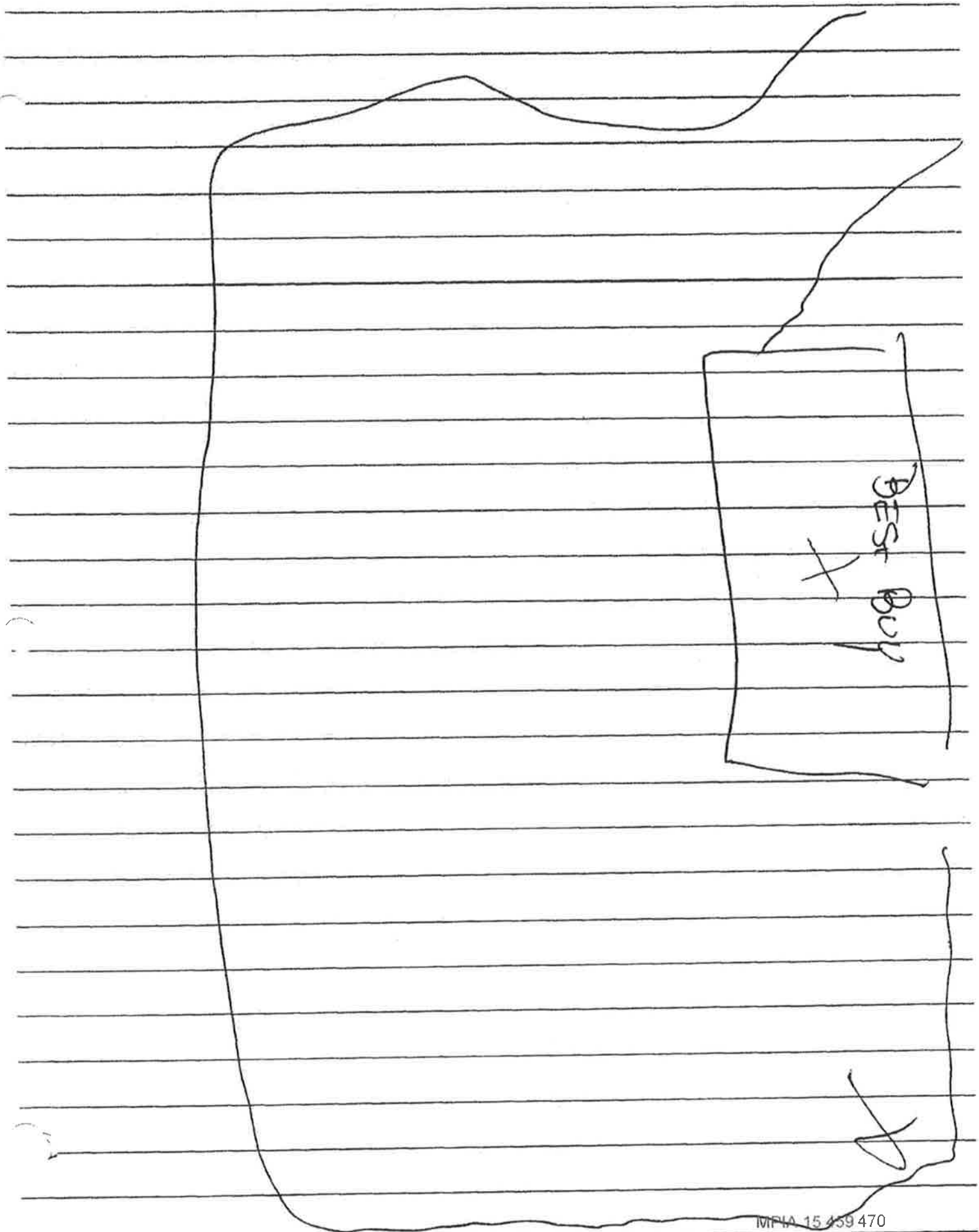
3RD – ENGLISH/SS – 2ND [redacted]
1ST FOODS 11:45 - 1:15

FASHION STORY PRACTICE – BEST BUY

MS. GRAHAM – FASHION SITAT

JAʻUAN

(C)
(P) 410 [redacted]


BEST Buy

REDMOND, BURGIN & GUTIERREZ, P.A.

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* Also admitted in the District of Columbia
** Also admitted in New York

PRINCE GEORGE'S COUNTY OFFICE
14746 MAIN STREET
UPPER MARLBORO, MARYLAND 20772
(301) 952-1555

M. CRISTINA GUTIERREZ

July 7, 1999

via FACSIMILE

CORRECTED ORIGINAL

The Honorable William D. Quarles
Circuit Court for Baltimore City
Mitchell Courthouse
100 N. Calvert Street
Baltimore, MD, 21202

Re: *State v. Adnan Syed*

Dear Judge Quarles:

Pursuant to your instruction at the motions hearing in the above referenced matter on July 2, 1999, I have reviewed the discovery materials provided by the State. The materials provided by Assistant State's Attorney Kevin Urick are deficient in several respects. The following documents were missing and/or not legible as produced by the State:

1. Any and all sketches, diagrams, and photographs of the crime scene, to include the victim as well as any evidence collected.

2. A legible crime scene log. The log provided was cut-off.

3. An evidence log from the crime scene which lists all evidence collected, by whom it was collected, a complete chain of custody list for each piece of evidence, an indication of who, if anyone, performed any analysis testing, etc., an indication of what, if any, analysis or testing was performed, all documents, photographs, and reports regarding each piece of evidence, whether by police officers, testing personnel, or others, and an identification of the custody, location and condition of each and every piece of evidence observed.

4. An evidence log on the alleged victim's car indicating how, when and where car was located, when the car last seen, a listing of all evidence collected, by whom collected, an identification of who, if anyone, performed any analysis testing, etc., an identification of what, if any, analysis or testing was performed, all documents, photographs, and reports, concerning

each piece of evidence, whether written by police officers, testing personnel or others, an identification of the custody, location, and condition of each and every piece of evidence observed and collected.

5. An evidence log on the defendant's car indicating how, when and where car was located, and seized, a listing of all evidence collected, by whom collected, an identification of who, if anyone, performed any analysis testing, etc., an identification of what, if any, analysis or testing was performed, all documents, photographs, and reports, concerning each piece of evidence, whether written by police officers, testing personnel or others , and an identification of the custody, location, and condition of each and every piece of evidence observed and collected.

6. An evidence log on the search of defendant's home and a listing of all evidence collected, by whom collected, an identification of who, if anyone, performed any analysis testing, etc., an identification of what, if any, analysis or testing was performed, all documents, photographs, and reports, concerning each piece of evidence, whether written by police officers, testing personnel or others, and an identification of the custody, location, and condition of each and every piece of evidence observed and collected.

7. All police reports, only incomplete reports were provided.

8. A copy of Det. Bradshaw's follow-up investigation report. The report in the materials provided is cut-off.

9. A copy of the latent fingerprint report for the hockey and lacrosse sticks submitted by Det. Macgillivary. (Property # 99009003). The report as received by the defense is cut-off.

8. Fingerprint results for any other pieces of evidence that were tested in connection with this case.

9. A full copy of all Laboratory Continuation Sheets. The sheets received are illegible and/or cut-off.

10. A copy of any statements made by Jay Wilds as an unindicted co-conspirator or co-defendant.

11. A copy of any report or documents prepared by Dr. Rodriguez, the forensic scientist at the crime scene.

12. The missing persons investigatory file, including all reports, photographs taken, witness interviews, etc., specifically, information regarding when and where alleged victim was last seen.

13. A complete witness list. It is clear from the material that numerous forensic witnesses will be called regarding numerous items of evidence listed. No expert witnesses are listed in the witness list.

14. Autopsy photographs. The photocopies provided are not legible.

15. All information regarding when alleged victim was killed. Defendant can't possibly mount a defense or determine if an alibi disclosure is needed without being on notice of the alleged time of death.

16. The Medical Examiner's log with any and all notes made by any personnel concerning the collection of the body.

17. All oral reports from any expert.

18. A list of Evidence for use at trial or any tangible thing the state intends to use.

19. A list of Defendant's property seized at any time or obtained.

The defense respectfully requests that the above mentioned documents be turned over immediately.

Sincerely,

M. Cristina Gutierrez
MCG:sgs
cc: Kevin Urick, ASA, via facsimile (410.727.5437
syed.1285t. 5540.1402

State of Maryland

vs.

Adnan Syed

#199103042-46

CRIMINAL DIVISION

1999 JUL -8* P 12: 38

CIRCUIT COURT
BALTIMORE CITY

In The

Circuit Court

Of

Baltimore City

* * * * * * * * * * * *

Amended State's Disclosure

NOW come Patricia C. Jessamy, State's Attorney for Baltimore City, and Kevin Urick, Assistant State's Attorney, and in accordance with provisions of Rule 4-263(h) of the Maryland Rules of Procedure hereby promptly supplement the State's prior disclosure with the following additional witnesses and/or information:

In response to the July 7, 1999, Discovery Letter sent to Judge Quarles, the State provides the following:

1. Copies of all currently available sketches are attached; upon reasonable request the State will allow the defense to examine any or all crime scene photographs available;

2. This information has already been provided;

3. The State has requested an updated list of all evidence submitted to ECU. As soon as that list is available, it will be forwarded to the defense. As the State reviews the file, if any further discoverable information on this topic is found, it will be forwarded to the defense;

4. See number 3.

5. See number 3.

6. See number 3.

RECEIVED
JUL 10 1999

7. The complete offense report currently available has been provided to the defense.

8. This material has already been provided.

9. This material has already been provided.

10. There is no unindicted co-conspirator or co-defendant.

11. Dr. Rodriguez has written no reports in this matter.

12. A copy of this material is attached.

13. As was noted in the State's original discovery, the State intends to call as witnesses any person mentioned in or on any of the reports provided to the defense.

14. The State has faxed a letter to the Office of the Chief Medical Examiner authorizing them to release a copy of the autopsy and or autopsy photographs to the defense. A copy of the letter is attached.

15. To the best of the State's information, the victim was murdered the afternoon of the day she was reported missing, shortly after she would have left school for the day, January 13, 1999. If further investigation narrows the time down, the State will provide that more specific time to the defense.

16. The State will check to see if there is any further discoverable material in this area.

17. Summaries of oral reports from experts will be provided as they become available.

18. See number 3 above.

19. See number 3 above.

And the State provides the further:

20. A copy of the advisement of rights signed by the defendant.

ASA Kevin Urick

Adnan

MEMORANDUM

TO: MCG
FROM: KALI
DATE: October 12, 1999
RE: INTERVIEW WITH ADNAN SYED

On October 9, 1999, I met with Adnan at the Baltimore City Detention Center. Adnan and I reviewed the diary of Hae Min Lee.

I. ***I asked Adnan follow-up questions to the interview on October 6, 1999 (attached).***

(2) Adnan stated the assembly in school occurred in January. He was unsure if it was actually an assembly or a chance for persons to leave school a half day. Upon reflection Adnan stated it was an assembly.

Adnan stated Hae was upset that Jay would cheat on Stephanie because Hae had been cheated on before and was opposed to cheating. She thought that as Stephanie's best friend, Adnan should have told Stephanie what Jay had done. Adnan should not have covered for Jay. Hae had questioned Adnan if he and Stephanie were "only friends" or if there was something more.

(3) Adnan worked for Rural Metro Ambulance as a TECHNICIAN. Two persons rode in the ambulance, the driver and the technician. As the technician Adnan was responsible for making sure the oxygen was flowing; replacing the canister when necessary; checking the patient's vital signs; talking to the patient to get patient info, insurance info, medical history, family info, etc.

(5) Hae's phone number was (410) 602-5244. On January 12, 1999 Adnan called her at home and provided his new cell phone number. She was on the phone when he called. Adnan stated he called Hae from the Rite-Aid on Ingleside and Route 40 across from Westview Mall.

(6) The picture Adnan provided for the picture frame as the gift for X-mas was the same as the picture on the cover of Adnan's binder of the Hae and Adnan together. Adnan describes light flirting as "friendly". He defines flirting as "dealings with a person, verbal or physical, that would exceed normal boundaries". He was unable to define 'normal boundaries' because he thought that was subjective and dependent on the relationship the people shared and their manner of communication. He provided examples of "flirting" as someone putting their arms around someone else, staring, smiling, etc. He actually wouldn't even call what he and Hae did as 'flirting'. He said it was nothing suggestive, just casual conversation, brotherly-sisterly conversation.

(7) Relationship to Anne Benyora - Adnan does not know if Jay has family or friends in Rockville, but Jay does know people in Frederick, MD because on Adnan's cell phone that day were calls to Frederick MD that Adnan states were made by Jay.

II. The meeting with Adnan continued with general questions. He was uncomfortable with my announcement that I was there to review the diary with him. I began with the questions noted above, to allow him time to get comfortable with the fact that we were going to review the diary. We then discussed general information about Hae.

(1) ***Ex-boyfriends*** Adnan had difficulty naming Hae's boyfriends.

• Kwa - her ex-boyfriend who is Vietnamese and works at Pep Boys near Howard County near the Giant on Route 40. He and Hae went out before Hae had moved to California. Hae broke up with him because he was pressuring her to have sex with him.

• Michael - he lived in California and died in a car crash. He also had cancer. Hae told various accounts as to whether she was in the car with him when he died.

• Jeff or Chris

• Nick - named in the diary. was close friends with him. May have actually gone out but Adnan they thinks they were more or less "talking" and not formally boyfriend/girlfriend.

• Jake - not a boyfriend, but a friend. He died in the summer of 1998. He attended college in Atlanta. He came to visit Hae. Hae did not mention that Jake had died until two weeks later. Hae's friends and Adnan discussed that it was weird that Hae had not mentioned when Jake died until a few weeks later. Jake is mentioned in the diary and at one point it says "JAKE CASSOL". She describes as the only person who really knew her.

(2) ***Relationship*** **Hae was not a virgin** when Hae and Adnan first went out. She told various accounts of when she had lost her virginity. Once she said it was when she was in California in the ninth and tenth grade, once she said it was in middle school. Adnan said Hae had 1,2 or 3 prior lovers, other than Adnan. She would tell varying accounts. Adnan states they never really discussed it.

Hae was Adnan's first lover. They began dating the end of March 1998, beginning of April. Adnan asked Hae to attend the prom and gave his pager number to Hae. When I asked why he asked Hae to go to the prom versus anyone else, Adnan replied it was just someone who would go. Their friend Debbie was sitting by Adnan. She and Adnan were discussing the prom and Adnan stated he needed someone who would go. Debbie told Adnan that Hae would probably go. Debbie then ran outside and asked Hae if she would go to the prom with Adnan. Adnan states that he had never really noticed Hae before. Debbie ran in and said Hae would go to the prom. Adnan gave Hae his pager number. Hae eventually told Adnan that she always had a crush on him. Adnan states they just "hit it off' and started going out.

On the night of the prom, Adnan won Prom Prince and Stephanie won Prom Princess. They were dancing to one of Hae's favorite songs. Adnan danced a minute with Stephanie, the Prom Princess. He was supposed to dance the entire song with Stephanie, but because Adnan knew it was Hae's favorite song, he excused himself from Stephanie, left her on the dance floor, and took Hae out onto the dance floor. They kissed on the dance floor, but Adnan described that kiss as a peck.

The **first time he *really* kissed Hae on the lips** was on prom night when they had gone to the Inner Harbor in front of the Cheesecake Factory. Adnan says everyone knew they were going out. They were always together in school. Before practice they would go to the McDonald's together. They talked on the phone at night. They would go to the movies. The family pressure made it difficult to maintain a relationship. Adnan states that in the summer they had their ups and downs because they always had to cover up what they were doing because his parents did not know about Hae. Unlike Adnan's parents, Hae's mother would not have minded that Hae had a boyfriend but she wanted to meet the parents of the person Hae was dating. That was impossible. Therefore, Hae had to hide that she was dating Adnan from her mother and grandparents. Adnan describes Hae as always wanting to take a "recess" from their relationship. She always took breaks and then would call back a few days later and want Adnan back.

Adnan started to play football and work in the fall 1998 so the **amount of time he and Hae started spending together decreased.** He states that Hae was always getting on him about that. Then Hae began working at Lens Crafters and she was unable to spend time with him either.

I asked Adnan if he put pressure on Hae to not spend so much time with her friends but to devote more time to Adnan. Adnan stated just typical young relationship stuff. He would be playing basketball at the Mosque and she would get mad because he should be spending time with her. She would tell Adnan she had to stay in the house and then she would go to a girlfriends house. It was basically "tit for tat".

(3) ***Sexual Encounters*** Adnan and Hae would spend a lot of time in Adnan's car making out. There would be a lot of **foreplay**. Adnan describes foreplay as one perosn would be driving and the other person would tease the person who was driving with their hand. They would run their hands on the person's body above and below the person's waist and under the person's clothes.

They first time they had sex was sometime between April 25 to May 10. They would have sex off of Dogwood Road going to *Patapsco State Park*, where there is a little lake/pond and benches where people fish and the golf course is across from their spot. They also frequented the *Best Buy parking lot* next to Security Square Mall (this was their designated spot when school started).

Hae initiated the sex. He was uncomfortable and nervous initially. They used condoms initially, but later did not use condoms. He assumed she would get birth control, but they

never discussed it. On his birthday, May 21, Hae brought whipped cream and strawberries. Adnan describes this encounter as extremely messy.

They began having **oral sex,** both of them performed on the other, after they began having sex. Adnan does not remember how soon after they began having sex oral sex began. They had sex with Adnan on the bottom; Hae on top; or Adnan from behind. Adnan and Hae preferred Hae on top because it was easier due to mobility restrictions if you are in the car.

When I asked Adnan **how often they had sex,** "As often as possible" was Adnan's response. Out of the 7 days in a week, they probably had sex every time they had a chance to go somewhere or be together. On average they saw one another 4,5,6 times a week and had sex each of those days, about 2-3 times a day. Since Hae was responsible for picking up her niece after school, they would have sex in the Best Buy parking lot close to the school after school. Hae would leave to get her niece and they would see one another that night, when they would have sex again.

Who knew they were having sex? Adnan stated Saad knew everything. He did not tell his brother because he knows his brother would have been upset. He describes his brother as a practical person, a moral person. He states he is not religiously moral, but basically moral. He would think of the practical considerations of having sex with someone, i.e. pregnancy, sexually transmitted disease, etc. Adnan describes his relationship with his brother as "close".
Debbie also knew that Adnan and Hae were having sex. Hae told Debbie. Adnan would often ask Debbie how Hae described Adnan's sexual ability. Hae would occasionally mess with Adnan when Adnan asked if he was good after they had sex. She never outright said no, but teased him once when he did not ejaculate. Adnan states that once or twice he did not ejaculate, but on a few times Adnan "outlasted" Hae. Hae and Adnan stopped having sex the beginning of December because they had broken up. Hae and Adnan did not continue having sex after they broke up.

(4) ***Other people*** In October Adnan met Anjuli ___ at a party. She attends Bryn Mar College in Philadelphia. Adnan spoke with her on the telephone. Hae did not know Adnan was speaking with someone else. Adnan went to see Anjuli one day in Philadelphia and spent the day in her dorm room. They were in her bed. She had no clothes on, Adnan only had his shirt off. He and Anjuli fooled around. They kissed and Adnan teased her. Upon reviewing the diary Adnan stated that at that time he and Hae were both going their separate ways, he was talking to Anjuli, she was interested in Don.

III. Adnan reviewed the diary. See Notations Attached.

CONFIDENTIAL

Date: March 10,1999
Investigation: Adnan Syed
Investigator: Andrew Davis
Interview With: Stephanie McPherson; (410) 788-8519, (410) 788-2899

Narrative:

After several attempts on the telephone, PD Andrew Davis was able to conduct an interview with Stephanie McPherson at her residence in the presence of her mother and father.

PD Davis was advised that Ms. McPherson has known Adnan since second grade where they attended Woodbridge Elementary School together. Adnan and her became very close friends since high school.

Stephanie advised that Adnan "is one of my best friends."

Stephanie first met Hae Min Lee during her freshman year. Ms. McPherson also advised that she was in several of Hae and Adnan's classes.

Adnan and Hae started dating in spring 1998.
They sat across from each other in English class.

Ms. McPherson thought their relationship was somewhat odd as she described Hae as being "shallow". She also thought it was odd because of Adnan's religious beliefs. She did advise that they had a close relationship.

PD Davis was advised that Adnan's parents showed up at a dance in the Fall, possibly the Home Coming Dance, and took Adnan away from the location. She believes his parents were showing up in an attempt to find Adnan with a woman which is against their religion. This made Hae very uncomfortable. Adnan did return back to the dance after his parents left.

Ms. McPherson advised that in November or December of 1998, Hae became somewhat strange. She advised that Hae had another boyfriend and Adnan was said to be upset because this was a surprised to him and he didn't see it coming. Hae and Adnan did terminate their dating before Christmas. Adnan really wanted to meet the guy that Hae was now dating. After Adnan met Don, Adnan was okay with their dating because he didn't feel as though Don was a threat to his manly hood. He felt as though Hae's choice in Don was a step down from him.

Ms. McPherson advised that Adnan stated that he was happy that he and Hae had broken up so he wouldn't feel guilty about talking to other girls and hanging out with his friends.

Ms. McPherson remembered when Adnan got his cell phone. She advised that Adnan was the only one who had ever phoned her from Adnan's cell phone. She spoke to Adnan just about every night. She stated that none of their cell phone conversations stick out in her mind.

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January 13, 1999 was a normal school day for Steph although it was her birthday. She remembered receiving balloons first thing in the morning. She could not remember anything out of the ordinary from first period. Second period was English class which she had with Hae and Adnan. She remembered Adnan bringing her a stuffed reindeer. Ms. McPherson could not remember anything about Hae during second period. Lunch was at approximately 10:40 a.m. She believes Adnan was at lunch with her but she could not be certain. She further advised that Hae was very quiet at lunch.

At approximately 2:15 p.m., Stephanie left school to go to her car. She drove up the front of school, picked up her sister and then drove home arriving at 2:55 p.m. She went back to school and went on a bus to her basketball game which was at Parkville High School. She believes she got on the bus approximately 3:30-3:45 p.m. She did not remember any other involvement with Adnan that day.

Ms. McPherson advised that Friday, January 15th, they had a big snowball fight at her house. The following persons were present: Adnan, Jeff Perkins, Janice, Justin, and a subject she knew as Lee. Ms. McPherson was then advised by her mother that the snowball fight was possibly the following week. This was remembered because on Thursday the 14th into early the 15th, the power was out due to a power failure.

PD Davis asked Ms. McPherson if she attended a party in Randallstown on Friday the 15th. She advised that she did attend Krista's birthday party with Adnan. PD Davis asked if anyone else went with her and then for the first time she brought up the name of Jay Wilds who was her boyfriend. Ms. McPherson downplayed Jay's relationship with Adnan. She advised that Adnan was not any different on Friday night, January 15th than he was any other time and Adnan had not mentioned Hae's disappearance. Ms. McPherson advised that Aisha Pittman first mentioned that Hae was missing on Wednesday or Thursday of the following week. Ms. McPherson did not realize Hae was missing until Wednesday of the following week. She was advised that Hae had run away.

Ms. McPherson said something to Adnan when she first heard about Hae's disappearance. Adnan's response was that he had heard that Hae had run away. Ms. McPherson was quick to point out that none of Hae's best friends were initially worried about Hae's disappearance. She advised that Hae's best friends were Debbie Warren and Aisha Pittman. Ms. McPherson advised that a lot of time elapsed before anyone did anything about her disappearance.

The police found Hae's body on February 9, 1999. Ms. McPherson remembered asking if Adnan knew. She tried to call him on his cell phone at which time he returned her call. Ms. McPherson advised that her and Adnan went to Aisha's house where Hae's brother called and said that they found Hae's body. As soon as Adnan heard this information, Ms. McPherson advised that "we called Detective O'Shea." Adnan wanted to call the detective because he didn't believe it was true about her being deceased. Adnan was crying. Krista and Adnan then attempted to get a hold of Detective O'Shea and left him a message though they did not receive a return phone call from him.

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During the entire time Ms. McPherson knew Adnan, she advised that he never got upset or mad about anything nor showed any physical display of anger.

Ms. McPherson had never heard any information in school about Adnan being responsible for murdering Hae until the police charged him. Again, she stated that she never saw any changes in Adnan.

PD Davis then asked Ms. McPherson when she first spoke to Jay on January 13th and she stated it was after 11:30 that night.

PD Davis then asked if she knew a subject named Phil or Melanie who were Jay's friends. Ms. McPherson advised that both Phil and Melanie live in Frederick and Phil was Hispanic.

PD Davis asked Ms. McPherson if she could provide PD Davis with Jay's new address. She advised it was off of Winters Lane although she did not know the address. PD Davis was assured by Ms. McPherson and her parents that he would be provided with Jay's current address so PD Davis could conduct an interview.

During the end of the interview, Jay and Phil arrived at Ms. McPherson's house. Her parents did not allow him in and he was asked to return later. It came out during the interview that Ms. McPherson had advised Jay that PD Davis was coming over to conduct an interview with her.

Ms. McPherson then advised PD Davis that Jay did have firsthand knowledge about Adnan's involvement in this case although she would not go into any detail. Jay did tell Ms. McPherson that Adnan was responsible for murdering Hae Min Lee. Ms. McPherson was also advised by Jay that Adnan had threatened her through him. Ms. McPherson advised that she did not believe that Adnan would ever threaten her but she believed that her boyfriend of many years, Jay, was an honest person.

▲ WROTE ME A LETTER. HE CALLED YESTERDAY, BUT I WASN'T HOME. WROTE ▲ BACK

HE WROTE A LETTER TO A GIRL TO TYPE UP WITH HIS ADDRESS ON IT

BUT SHE GOT IT WRONG

101 EAST EAGER STREET

ASIA? 12TH GRADE

I GOT ONE, JUSTIN AGER GOT ONE

JUSTIN WAS IN ENGLISH CLASS. THEY GREW UP TOGETHER. HE IS NOT MUSLIN.

SAW ▲ DRIVE CAR - HAE'S CAR- WE USED IT TO GO TO MARKET: FOR FOOD CLASS ONE MORNING:

BAGELS, CHOCOLATE MILK, DONUTS

SHE PICKED BOTH OF US UP FOR SCHOOL

▲ DIDN'T HAVE CAR ---

PARKING LOT:

▲ DIDN'T MENTION ANY OTHER PLACES THEY WENT.

Track Team:

MEMORANDUM

TO: MCG
FROM: KALI
DATE: October 16, 1999
RE: Track Team Roster

Are These W/ on.

Boy Indoor Track Team - Woodlawn High School

Kehinde Adeloye (Sr.) Lots of classes w

Joel Brown (Sr.)

Michael Clites

Clevon Johnson →

Anthony Jenkins

William McCray — Wide player football.

Aaron Noreiga

Dorrell Walker

~~Write~~ friends w/ ol football team friends.

Track player football hang out at track meets

4X2 Relay

g:docs/data/syed/track.doc

Track Team:

MEMORANDUM

TO: MCG
FROM: KALI
DATE: October 16, 1999
RE: Track Team Roster

Boy Indoor Track Team - Woodlawn High School

- Kehinde Adeloye (Sr.) Lots of classes together
- Joel Brown (Sr.)
- Michael Clites
- Clevon Johnson
- Anthony Jenkins
- William McCray — Will play football
- Aaron Noreiga
- Dorrell Walker

friends on football team friends.

Mark Pryor — Woodlawn track & field 1st year high jump 5'8" 180

Coach Gerald Russell 4X2 Relay 3rd year relay

g:docs/data/syed/track.doc

MEMORANDUM

TO: MCG
FROM: KALI
DATE: October 16, 1999
RE: Track Team Roster

CC: Mike Lewis

Drew called and provided the telephone numbers of the members of the track team.

Boy Indoor Track Team - Woodlawn High School

Kehinde Adeloye (Sr.)	410-298-7459
Joel Brown (Sr.)	410-944-2278
Michael Clites	410-747-5578
Clevon Johnson	410-521-5393
Anthony Jenkins	410-298-4960
William McCray	410-744-4047
Aaron Noreiga	410-747-9513
Dorrell Walker	no home phone (mom's work) #410-679-0776

Mike- Drew also stated he will attempt to personally serve everyone, but knows that you recommended subpoenas, and that he thinks it's a good idea. He said for you to put a copy of every subpoena in the mail to him. He said you will understand what this means.

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Boy Indoor Track Team - Woodlawn High School

Kehinde Adeloye (Sr.) 410-298-7459 – left message on answering machine, then dad returned my call + said so was away at college. 20 mins. late

* Joel Brown (Sr.) 410-944-2278 – # has been disconnected - no further info avail

Michael Clites 410-747-5578 – spoke with mother & gave her message not to appear

* Clevon Johnson 410-521-5393 – # temporarily disconnected

Anthony Jenkins 410-298-4960 – left message with Master Jenkins (he did not receive Subpoena yet)

William McCray 410-744-4047 - left message with him.

Aaron Noreiga 410-747-9513 - left message with his Mom.

Dorrell Walker no home phone (mom's work) #410-679-0776 - called his house - 869-7346, spoke with him & gave him the message.

* needs to be followed up with during the day -- another # possibly?

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g:docs/data/syed/track2.doc

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Joel Brown (Sr.)	410-944-2278	– disconnected
Michael Clites	410-747-5578	– left message
Clevon Johnson	410-521-5393	
Anthony Jenkins	410-298-4960	– Contacted
William McCray	410-744-4047	
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Michael Clites	410-747-5578 – served
Clevon Johnson	410-521-5393 –
Anthony Jenkins	410-298-4960
William McCray	410-744-4047
Aaron Noreiga	410-747-9513 – served
Dorrell Walker	no home phone (mom's work) #410-679-0776 – served

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Dorrell Walker no home phone (mom's work) #410-679-0776 – served
not employed there -
COVE ELECTRIC

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