

**UNDISCLOSED, The State V. Rocky Myers**  
**Episode 1 - Residual Doubt**  
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**[00:41] Colin Miller:** You're probably familiar with the concept of *guilt beyond a reasonable doubt*. It's the burden of proof that the prosecution must satisfy to secure a conviction of a criminal defendant. But the odds are that you're unfamiliar with the idea of *residual doubt*. Here's Patrick Mulvaney, the managing attorney for capital litigation at the Southern Center for Human Rights:

**Patrick Mulvaney:**

What we see is that there's a difference between a jury making a decision beyond a reasonable doubt, and a jury disposing of *all doubt*. And it's that gap in between all doubt and reasonable doubt that we come up with this concept of residual doubt, where a jury can reach a guilty verdict at the guilt phase but still have some doubt as to this defendant's guilt when it reaches the penalty phase. And because of that doubt, that doubt becomes a powerful factor that weighs in favor of life at the penalty phase.

**Colin Miller:** Empirical research shows that there's good reason for such residual doubt. In Florida, there have been 29 death row exonerations. Robert Dunham and his team at the Death Penalty Information Center dug into those numbers:

**Robert Dunham:**

In Florida, we were able to identify the jury votes in 22 of the cases in which there were exonerations. And in 20 of those 22, there were non-unanimous jury votes for death. Either judicial override, or a majority but not a unanimous jury recommending the death penalty. And looking back on it, that makes sense, because one of the most powerful mitigating circumstances in capital cases is residual doubt.

**Colin Miller:** And this takes us to the second meaning of residual doubt. No state currently allows for judicial override; a now abandoned procedure whereby a majority of jurors could vote for a life sentence, followed by the judge overriding that vote and imposing a death sentence. And yet, there are still inmates in *two* states on death row

as the result of judicial override: five in Florida and a few dozen in Alabama. This new Undisclosed series explores the case of one of those men.

**[03:29] Rabia Chaudry:** Hi, and welcome to Undisclosed. This is Rabia Chaudry. I'm an attorney and author of the New York Times Bestseller, *Adnan's Story*, and I'm here with my colleagues, Susan Simpson and Colin Miller.

**Susan Simpson:** Hi, this is Susan Simpson. I'm an attorney in Washington, D.C. at Clinton and Peed, PLLC, and I blog at TheViewFromLL2.

**Colin Miller:** Hi, this is Colin Miller, I'm an Associate Dean at the University of South Carolina School of Law, and I blog at EvidenceProfBlog.

**Rabia Chaudry:** Now, this is the first episode in a four part series that's dealing with a possibly innocent man who sits on death row in Alabama.

**[06:08]** About 87 miles north of Birmingham sits the city of Decatur, in north-central Alabama, on the shore of the Tennessee River. In 1991, a 68 year-old white woman named Ludie Mae Tucker lived in downtown Decatur at 506 Gordon Drive, Southwest. Tucker was a widow, but on the afternoon of October 4, 1991, she was being visited by her cousin, Mamie Marie Dutton.

That afternoon, Tucker got a call from the guy she had been seeing, Tommy Drake- aka "Shorty-" who wanted to meet with her. Tucker agreed and she drove with Dutton to nearby Moulton, Alabama. Tucker dropped off Dutton at a restaurant called Steak N' Biscuit, where she had some tea while Tucker and Shorty got into an argument at the nearby Phillips 66 gas station.

Tucker and Dutton then returned to Tucker's house, where they watched some TV until Tucker got a call from her sister that ended at about 11:00pm. Tucker made the guest bed for Dutton and showed her her doll collection before Dutton went to sleep. A little while later, Dutton woke up at the sound of someone ringing the doorbell repeatedly:

**Mamie Marie Dutton:**

So anyway, then I heard the doorbell ringing, and I thought, well, my goodness, Ludie Mae, can you not hear that doorbell? And I got up and went to the door, and so when I got to the door from my bedroom, I seen her standing at the front door. She had the blinds pulled back, so I thought, well, that was her boyfriend. They had been into it that night.

**Interviewer:**

Oh, really? What's his name?

**Mamie Marie Dutton:**

Oh... they call him Shorty.

**[7:38] Susan Simpson:** But the man at the door wasn't "Shorty" or apparently anyone else that Tucker knew. Instead, it appeared to be a man in dire straits:

**Mamie Marie Dutton:**

It was a colored guy, I recognized his voice. He was a little short guy, and he had on blue pants and a white t-shirt.

**Interviewer:**

Okay. You say you recognized his voice. You mean...

**Mamie Marie Dutton:**

I could tell he was colored by his way of talking.

**Interviewer:**

From his voice. Okay. So, if somebody--

**Mamie Marie Dutton:**

He was just talking like a colored guy does. Real fast. And he said, well, he'd had a wreck and he'd had a fight and he was bleeding to death, and he needed to get in touch with his family. And I heard Ludie Mae ask him what was his number. And he said 3 something... I don't even remember. And so anyway, then by that time I could tell he was inside the house. Which, I thought, well, you know it, everything was alright, you know? I didn't think about nothing like that happening, you know? And so I was just laying there in the bed. I'd went and got back in the bed after I'd seen she was at the door.

This audio is from a post-trial interview, but in an interview on October 7, 1991, Dutton told police that the bleeding African-American man had given Tucker a phone number that had started with the numbers '353' to call his family. As Dutton notes, she believed the man's story and went back to bed, but she soon heard something that made her realize that something had gone horribly wrong:

**Mamie Marie Dutton:**

And I heard her say, "My husband's there in that room." And I knowed right then that he'd done something. Suspicion. For her to say that, you know. In a few minutes, then, she started hollerin' "Marie! Marie!" And I knowed right then that he was doing something to her. I guess I just froze.

**Interviewer:**

Well, sure. I'd be scared to death.

**Mamie Marie Dutton:**

Ooh, I know it. Lord. Boy, I tell you. I still have them flashbacks.

**Interviewer:**

I bet.

**Mamie Marie Dutton:**

I do. They said I'll always have them.

But while Dutton was frozen, the man wasn't. After he was done with Tucker, he ran to the bedroom where Dutton was staying:

**Interviewer:**

And so, he walks in ... he runs around ...

**Mamie Marie Dutton:**

He come around into the room, and see I couldn't see because the door was back against the bed.

**Interviewer:**

Right.

**Mamie Marie Dutton:**

Then he run up to the side of my bed and that's when he stabbed.

**Interviewer:**

Okay, you said he had his ... his, sort of, hand there ...?

**Mamie Marie Dutton:**

Oh, he drove back as far as he could, like this right here.

**Interviewer:**

With his right hand?

**Mamie Marie Dutton:**

Oh, I don't even ...

The man fled the scene, running out the front door, and Dutton came upon Tucker dialing 911:

**Mamie Marie Dutton:**

But anyway, when I got up and went to the door, she was sitting on the couch and had the phone. And now she had called the cops herself, and she was saying, "Hurry, hurry." And then I run to lock the front door, where he couldn't get back in, and when I looked around, she was gone. And I went down the hall and she had went into the dining room and she was passed out.

**[10:57] Colin Miller:** In that 911 call, Tucker spoke with police clerk Sherry Fulmer. Fulmer's records show that she received the call at 12:19 am, with Tucker telling her that a black male with a white shirt with blood on it had gotten into her house and stabbed her. Fulmer's records also show that she filled out a dispatch card at 12:20 am, with police dispatcher Alice Evans dispatching officers to Tucker's residence at 12:20 am.

Now, luckily, Decatur Police Officer James Tilley had been patrolling an area only a couple of blocks away since 12:14 am, so he was able to arrive at Tucker's residence within a couple of minutes of the 12:20 dispatch, and Officer Howard Godbee, who was also in the area, arrived a couple of minutes later. They were later joined by other officers, including John Boyd and James Rogers.

Tucker and Dutton relayed their story to the officers about the short, stocky black male with a bloody white shirt saying that he'd been in a fight and a wreck, that he was bleeding to death, and that he needed to call his family, followed by the man stabbing both of them. Tucker and Dutton were taken to the hospital, and the officers dusted for fingerprints in the areas where the perpetrator might have left them. A palm print was lifted from the front door that the officers would say they believe was left by the suspect. Another print was lifted from a glass stereo door where it looked like a missing VCR had been torn away from its connections at the TV and the cable decoder box. Finally, Officer Rogers noted that, in the alley to the east of Tucker's house, there was some

crushed down shrubbery and fresh footprints left in the dew on the ground that appeared to be heading from south to north or possibly north to south.

**[12:37] Rabia Chaudry:** Tucker and Dutton were treated at the hospital. Tucker, who had been stabbed four times, did not survive her wounds. Dutton, who had been stabbed once in the side, was able to pull through.

Over the next day, Decatur Police Officers spoke to neighbors without turning up any viable leads. Finally, Sergeant Johnny Coker and Investigator Gary Walker spoke with a man named Percell Yarbrough about the crime and the theft of the VCR. This led to Yarbrough becoming concerned because he knew that his sister, Annie Sue Crittendon, ran a "shot house" just a few blocks north of Tucker's residence. So, what's a shot house? It was kind of an informal bar run out of a person's house. Here's Keith Russell, the defense investigator in this case:

**Keith Russell:**

Shot houses in this area was known for selling drinks by the shot glass, by the can, by the pint bottle, or even by the fifths. Most commonly were pint bottles of all different whiskeys, vodkas, rums, etc.

But it wasn't just alcohol that was sold at this shot house, and it wasn't just money that was used to make purchases:

**Keith Russell:**

You could get crack-cocaine, marijuana in all quantities. You could also ... prostitution - you could buy women. And stolen goods of all types, from tvs ... VCRs were the hot items then. A-track players had gone by the wayside. Stereo equipment, boom boxes, and etc. That was the items that were very, very commonly wanted in this area and sold in this area.

So, Yarbrough went to his sister's house and talked with her daughter, Vickie Bouldin, who had been living there since her mother, Annie Sue, had become sick. Bouldin told Yarbrough that a man had indeed brought over a VCR and traded it for crack. Bouldin gave Yarbrough the VCR, which was in a bag, and Yarbrough brought the VCR to Sergeant Coker.

With the VCR in hand, the Decatur Police then tracked down the crack dealer at the shot house. His name was Leon Madden, and he went by the name "Butch." Again, here's defense investigator Keith Russell:

**Keith Russell:**

Butch Madden was known as a police informant, later on and during this time, and he also was a drug dealer and a purveyor of goods -- whatever they were, he was the man that you had to come to on this particular street, in this particular corner, in this street in order to conduct your business.

**[14:59] Susan Simpson:** At the police station, Madden acknowledged selling crack in exchange for the VCR, but denied having any knowledge of the seller. The next day, on Sunday, October 7th, Madden made a return visit to the police station with his right hand man, Willie Reece Raybon, who went by the street name "Road Runner" because he was able to outrun the cops. They both denied knowledge of the seller's identity.

Finally, that night, the Decatur Police caught a break. An anonymous caller spoke with Investigator Walker and said that she had information about the killing. But after being told that she would have to testify in court, she hung up. Then, however, the same woman called back a few minutes later and spoke with Sergeant Coker. She said she lived near the crime scene and that, on the night of the murder, she'd seen a man who went by the name "Breeze" in an alley that was only a block or two away from the crime scene. According to the caller, Breeze was bleeding from his hand and wiping blood on his white shirt, which had a logo on it. Breeze told her that he'd gotten into a fight with people over dope and they'd wronged him. Finally, Breeze asked her for a ride, which she refused, and, within minutes of seeing Breeze, police were all over the area.

A couple of days later, on Tuesday, October 8, 1991, there was a flurry of activity. First, in the morning, Sergeant Coker traced down the woman who made the anonymous call. Her name was Angela Acklin, and she lived one block west and one and a half blocks south of Tucker's residence. According to Acklin, on the night of October 4th, her husband Rudolph and she were watching TV:

***Tales from the Crypt:***

*"You know kiddies, after a night of slithering through the sickening slime of my crawly crypt, I take a tip from the Marquis de Sade. He likes to unwind with a little red hot poker [cackling laugh]."*

**[18:40] Colin Miller:** That's the Cryptkeeper from HBO's *Tales From the Crypt*, which aired from 11:00-11:30pm that night. Acklin told Coker that, after the episode, her husband went to bed, and she went in and out of the house a couple of times to her porch before hearing her dog crying. She then looked up Seventh Avenue and saw a

man she recognized as Breeze or Cool Breeze running across the street toward an alley that would have placed him just south of Tucker's house. Breeze was wearing black jeans and a white shirt with blood on it.

Then, according to Acklin, she sat on her porch for a while before seeing a lot of police cars with lights arrive to the east. Acklin said she went to a friend's house and talk to her friend and a husband before heading to an alley that was just southwest of Tucker's house. There, she says she saw Breeze again and asked him about the blood on his shirt. Breeze responded that he had a misunderstanding with people about dope and said he had closed a door on his finger and hurt it. Breeze asked her for a ride, and she turned him down. Coker returned at 12:50pm, and Acklin picked a man named Anthony Ballentine out of a photo array.

From there, things proceeded in short order. Again, here's defense investigator Keith Russell:

**Investigator Keith Russell:**

Within a few days of the murder, police connected a man named Anthony 'Cool Breeze' Ballentine to the scene and the murder. Three men had come forward stating that Ballentine had pawned a stolen VCR.

**[20:04] Rabia Chaudry:** The first of those men was "Road Runner," Willie Reece Raybon, Butch Madden's right hand man. According to Road Runner, Ballentine came to the shot house at about 8:00pm and bought a \$20 rock of cocaine. Later, Ballentine came back a second time and asked Butch about getting another rock on credit. When Butch turned him down, Ballentine left but returned one to one and a half hours later. Ballentine came running up, as if he were coming north from vicinity of Tucker's house. Road Runner said that Ballentine was sweating and shaking all over, with a VCR under his right arm. Ballentine traded the VCR to Butch for a rock or two of cocaine, and Road Runner then hassled Ballentine about \$5 he owed him from a prior drug deal. Raybon's statement was completed at 4:10pm.

For the police, this was enough to complete an arrest:

**Investigator Keith Russell:**

The police arrested a man named Anthony 'Cool Breeze' Ballentine, who worked at a local copper manufacturing plant.

Ballentine was arrested at his workplace at 5:45pm and interrogated by Sergeant Boyd and Jep Tallent at 6:01pm. This interview led to the creation of a document by Sergeant Boyd called "21 lies." It documents the 21 lies told by Ballentine during this interview. Some of these include Ballentine's claim that he stayed at home all night at his grandmother's house on October 4, 1991, watching the Atlanta Braves game with her:

**Braves Broadcast:**

*...2nd half John Smoltz will pitch. And the Braves take the field...*

**[21:28] Susan Simpson:** The Braves did indeed play a game that night, against the Houston Astros. But the police spoke with Ballentine's grandmother, and she said her grandson had been in and out all evening, and he was *not* home when she finished watching the game and went to bed at 11:30pm.

Another lie by Ballentine was that he'd never used crack cocaine in his life. This lie was proven by the fact that a urinalysis was done on Ballentine that day, and it came back positive for cocaine.

Two other lies by Ballentine were that he didn't know Butch Madden and had never been to the shot house on October 4th. Road Runner had already contradicted these claims, and Butch Madden corroborated Road Runner in a statement he'd given that same night. According to Madden, Ballentine came to the shot house a first time and bought a rock of crack after haggling over its size for a while. Ballentine then left before coming back and asking about buying more crack, this time on credit. Madden turned him down, and Ballentine left before returning again, walking in at a fast pace. He was sweating, shaking, talking fast, and acting paranoid. Under his right arm, Ballentine had a VCR that he traded for two rock of crack. Then, a few minutes later, police cars were all over the place. Madden closed his statement by saying, "I hate it for Breeze, but I didn't make him do what he did."

There was one seeming issue though with Breeze being the perpetrator of this crime: Both Tucker and Dutton described the man who came to the house that night as short and stocky, but Ballentine was listed by the officers as five foot eleven and 169 pounds. Whatever reservations though that the Decatur Police might have had were quelled by what happened over the next few days.

**[26:13] Colin Miller:** The next day, Wednesday, October 9, 1991, officers executed a search warrant at Ballentine's home. There, they found a knife with a broken yellow handle in Ballentine's bedroom drawer and a laundry basket in that bedroom with

several items of clothing, including blue work pants with paint on them and a white Oakland Athletics shirt with what appeared to be a blood stain on it. This shirt matched Acklin's description of Ballentine wearing a white shirt with a logo and a blood stain.

This takes us back to the list of 21 lies. According to Sergeant Boyd, while he was interrogating him, Ballentine said, "You can check my clothes. There ain't no blood on my clothes." To Boyd, this seemed like an incriminating statement given that it wasn't public information yet that the victims had said the perpetrator had blood on his clothes. It was also a lie.

Roger Morrison of the Alabama Department of Forensic Sciences did testing on the Oakland A's shirt and determined that it did indeed have a blood stain. Testing revealed that this blood had an HLA-DQ Alpha type that excluded Tucker and Dutton but was the same HLA-DQ Alpha type as Anthony Ballentine.

So, what is the HLA-DQ Alpha type? I reached out to Gary Harmor, the Chief Forensic Serologist at the Serological Research Institute, which is where Morrison got his training:

**[27:28] Gary Harmor:**

Initially in the early 1990's there was only one PCR marker, and that's the HLA-DQ Alpha, and that's just the location of where the DNA is found in the human genome. So, it was good and robust, and bloodstains could be typed for years. It did take a little bit more DNA than we use now. It took 2 nanograms, and we usually use one nanogram now.

In this case, Morrison determined that both the blood stain and Ballentine both had the HLA-DQ Alpha type 4, 4. I asked Harmor what this meant:

**Gary Harmor:**

Well, there's four major types in the HLA-DQ Alpha location that was tested for in this, and they're 1,2,3,4. So everybody inherits one set of DNA from their mother and one set of DNA from their father, 'cause the egg has half the DNA to make a human and the sperm has half the amount. So when they fertilize, then it completes two sets of chromosomes. So the HLA-DQ Alpha, I believe it's at chromosome six ... so you inherit a type from your mother and a type from your father, and that's true of all the STR's, except for Y chromosomes, 'cause there's only one of those, but you inherit two types. So, in this case you determine that the 4, 4 -- they inherited 4 from their mother and 4 from their father.

So, what's the likelihood that this was Ballentine's blood. I found a case from the same time frame in which a criminalist had testified that **8.9%** of the African-American population had the HLA-DQ Alpha type 4, 4. I followed up with the criminalist over email, and she confirmed this testimony and said that more advanced DNA testing could conclusively determine whether this was, in fact, Ballentine's blood.

There was also another finding that Morrison about the blood stain on the Oakland A's shirt. He said, "This was basically a stain in which the blood had saturated into the material of the garment. It was not a crusty stain, nor did it appear to be a washed stain." I asked Harmor whether this meant what I thought it meant:

**Gary Harmor:**

Yeah, so what happens with people who bleed a lot in one spot is that the cloth becomes saturated, and then the liquid pools on top of the saturated cloth and that dries into a crust. So you could actually flake off pieces of crust from the fabric. Or if it's dried onto a piece of glass, which doesn't absorb any blood, then that turns into a crust which you can just scrape off the glass. So that's what crust means. Now that indicates that there wasn't a lot of pooling of blood on that garment. When he says it didn't appear to be washed -- washed blood stains are fainter than bloodstains where ... if you bleed on a piece of cloth and it comes up red, you can see it fairly readily, it soaks into the fabric, but when you wash it, it fades away and becomes less apparent to the eye. So he was using his expertise and looking at the stain, and saying: Well, it doesn't have the appearance of being washed because it was fairly concentrated looking, but it wasn't too concentrated that it caused it to crust up.

**[30:53] Rabia Chaudry:** So, this was a blood stain that does not appear to have resulted from a lot of bleeding, and it was unwashed and in a laundry basket a few days after the murder. This lined up pretty well with Angela Acklin's claim of seeing Ballentine with a white shirt with a logo with some blood on it from a cut to his hand around the time of the murder.

It also lined up well with a statement the police would take the next day, October 10th, from a third man who claimed to have seen Ballentine trading a VCR for crack on the night of the murder. That man was Larry Smith, who was dating Vickie Bouldin, who again, was the daughter of the owner of the shot house. Smith's story was largely the same as the story by Road Runner and Butch: Ballentine came to the shot house and bought a rock of crack. He then returned a second time and left after Butch said he didn't do credit.

Later, Ballentine came running around the corner of the house with a VCR under his arm. He was “scary acting” and looking around and behind him. Ballentine then traded the VCR for two rocks of crack and left, followed by police cars arriving in the area about 10-15 minutes later. And finally, according to Smith, Ballentine was wearing the Oakland A’s shirt that the police had seized and dark pants.

That same day, the Decatur Police established another one of Ballentine’s 21 lies: this was Ballentine’s second attempt at an alibi after saying he was watching the Braves game with his grandmother all night. After this lie, Ballentine said he only left to go to the house of his neighbor, James Watkins. But officers interviewed Watkins about the same time other officers were interviewing Smith, and according to Watkins, he had seen Ballentine, but in the morning and early afternoon. He first saw Ballentine at Ballentine’s place between 10:00 and 10:30 am when the two drank some beers and talked. Later, Ballentine came over to Watkins’s place at about 3:30 pm, and they talked and drank with some friends before Ballentine left about 45 minutes later. Eventually, Watkins went to a barbecue with his wife between 7:30 and 8:00 pm and didn’t return home until about 12:30 or 12:45 am, seeing the police cars and ambulances by the Tucker house as they went home.

**[32:58] Susan Simpson:** Watkins said that he then listened to some music and fell asleep before someone knocked at his door, a little while later. Watkins answered the door and had a conversation with a man, who might have been Ballentine, but Watkins was too drunk to remember. Later this same day, police also talked to a woman named Linda Wheeler, who’d known Ballentine since junior high school and who worked with him. Wheeler said that Ballentine had a drug problem and he told her that he would walk across town at night because he got nervous and couldn’t sleep. She also said that Ballentine was broke a lot but she’d heard he’d been saving some money.

The next day, October 11th, the police then spoke to a woman named Maggie Smith, who’d known Ballentine for 30 years. According to Smith, Ballentine was kind of Jekyll and Hyde. He was nice when he was clean, but when he started using drugs, he “became a different person” and was mean, violent, and high strung. Maggie Smith also said that his crack habit led to him owing every drug dealer in Decatur.

Not long after this, the Decatur police got records from a prior repair of Tucker’s VCR, and those records confirmed that the VCR retrieved from the shot house was indeed Ludie Mae Tucker’s VCR. This was seeming like an open and shut case, the prosecutor took it to a grand jury, and Sergeant Boyd took the stand and testified that he was

confident that they had the right man: that Anthony “Cool Breeze” Ballentine was the man who had killed Ludie Mae Tucker.

**[34:30] Colin Miller:** Now, we opened this episode with the concept of residual doubt, and, at this point, you might be a lot like Sergeant Boyd...confident in the guilt of Mr. Ballentine and not harboring much in the way of residual doubt. But Anthony Ballentine is not the man who sits in death row for the murder of Ludie Mae Tucker, and he's not the man who could be told any day now that he has 30 days until the State of Alabama will execute him with a secretive lethal injection protocol.

That man is Robin “Rocky” Myers, Ludie Mae Tucker's neighbor, who lived just across the street to Tucker, on the north of her house. This is his story and maybe the story of how you can help save the life of an innocent man. Next time...on Undisclosed.

**Rabia Chaudry:** A big thank you to everybody who makes Undisclosed possible. Thank you to our sponsors who help us put on our episodes week after week. Thank you to Mital Telhan, our Executive Producer for helping keep this ship afloat. Thank you to Rebecca LaVoie, our fantastic Audio Producer and also the co-host and producer of a couple of my favorite podcasts, including Crime Writers On. Do not miss her podcast. Thank you to Baluki for our logo, for Kristi for maintaining our website. Also a big thank you to our listeners. Thanks for coming back week after week. Check us out and make sure to follow us online on Twitter, Instagram, and Facebook. Our handle is @undisclosedpod. And please, do not forget to subscribe to us on iTunes and rate us! Thanks so much. See you in a week.