

**UNDISCLOSED, the State v. Ronnie Long**  
**Episode 4 - Forensic Files**  
**April 2, 2018**

**[0:24] Colin Miller:** Austrian physicist Erwin Schrodinger created the world's most famous thought experiment in 1935. Here's *Popular Science* writer Chad Orzel explaining Schrodinger's Cat:

**Chad Orzel:**

He imagined taking a cat and placing it in a sealed box, with a device that had a 50% chance of killing the cat in the next hour. At the end of that hour, he asked, what is the state of the cat? Common sense suggests that the cat is either alive or dead, but Schrodinger pointed out that according to quantum physics, at the instance before the box is opened, the cat is equal parts alive and dead at the same time, it's only when the box is opened that we see a single definite state. Until then, the cat is a blur of probability. Half one thing, and half the other. This seems absurd. Which was Schrodinger's point.

**[1:14] Colin Miller:** Back in 1976, the State in the Ronnie Long case wanted the jury to believe that this case was a real world example of Schrodinger's cat. There undoubtedly was significant physical evidence from the burglary and brutal rape in the case that could have been used to incriminate or exonerate Ronnie Long, and it was the State's contention at trial that the vast majority of that evidence was never collected or tested.

According to the State, the only pieces of evidence collected and tested were the latent shoe print and the matches by the banister at Juddy Bost's house, and witnesses for the prosecution testified that the shoe print and those matches seemed consistent with the shoes seized from Ronnie Long and the matchbooks taken from the Long family car. Any other evidence from the crime scene was a black box, evidence of guilt and innocence at the same time. And, therefore, the prosecutor was able to argue during closing that "[e]very piece of physical evidence points unerringly to the fact that [the victim] told you what happened that night unerringly."

32 years later, that same prosecutor was forced to make an admission under oath. There was in fact a lot of evidence collected and tested in the case, and none of it pointed to Ronnie Long. And yet, even that admission was incomplete because there was still more evidence that wouldn't come to light for another seven years and still more evidence that has never been disclosed to Ronnie Long. And while the existence

of all this new evidence might lead you assume that he has been released, Ronnie Long is the actual real world Schrodinger's cat, still in a box, with a legal status perhaps unlike any other prisoner in American history: both innocent and guilty at the same time.

**[2:48] Rabia Chaudry:** Hi, and welcome to Undisclosed: The State V. Ronnie Long. This is the fourth and final episode on Ronnie Long, who has been imprisoned for 42 years based on a burglary and rape in Concord, North Carolina that he says he didn't commit. My name is Rabia Chaudry, I'm an attorney, and the author of *Adnan's Story*, and I'm here with my colleagues Susan Simpson, and Colin Miller.

**[3:05] Susan Simpson:** Hi, I'm Susan Simpson, I'm an attorney in Washington D.C., and I blog at [TheViewFromLL2.com](http://TheViewFromLL2.com). And, as you may have heard, we got some big news in the Adnan Syed case, and we'll have an update episode for you on that shortly.

**[3:16] Colin Miller:** Hi, this is Colin Miller, I'm an Associate Dean and Professor at the University of South Carolina School of Law, and I blog at [EvidenceProfBlog](http://EvidenceProfBlog.com).

**[3:28] Rabia Chaudry:** After Ronnie Long was convicted of rape and burglary on October 1, 1976, two sheriff's deputies drove him to Raleigh's central prison as the Hall & Oates song "She's Gone" played on the radio. He's been in prison ever since. In the past 42 years, Ronnie Long has seen hundreds of other prisoners enter and leave while he remains behind bars:

**[3:48] Ronnie Long:**

I'm going on 63 years old, man, they locked me up when I was 20 years old, man. I've been here almost... There's people that've murdered people, man, they done kilt' em. 2, 3 bodies. And they let 'em out.

**[4:01] Rabia Chaudry:** In 1989, Ronnie Long filed a *pro se* petition for writ of *habeas corpus* in federal court, claiming that his trial counsel was ineffective for not challenging the jury selection process, but that petition was denied a year later. Later, he applied to the Innocence Project at the University of North Carolina to investigate his case. The case was accepted, and two attorneys began working on it: Donna Bennick, herself a Concord native who is now deceased, and Janine Zanin. On April 20, 2005, they filed a motion in Cabarrus County Superior Court. Here's Janine Zanin describing the motion:

**[4:35] Janine Zanin:**

We went to the Cabarrus County Superior Court and filed a motion to preserve and locate all the physical evidence gathered in the case, including the rape kit

that we suspected had been gathered, just based on the testimony at the trial. We were also looking for the victims clothing, as well as the items that were introduced at trial, and the hair samples that collected from Ronnie, that he said were collected from him while he was in the jail as well as anything else might be out there. And in response to our motion, The Court granted it, and ordered that the Cabarrus County District Attorney's Office, The Concord City Police Department, and the North Carolina State FBI, were under order to locate and preserve not only all of the physical evidence, but also copies of all test results and reports prepared in connection with the investigation of the case as well as the evidence of their evidence custodians relating to any evidence that was collected.

**[5:35] Susan Simpson:** A month later, the State Bureau of Investigations, or SBI, came back and said that it had no evidence related to the Ronnie Long case. The Concord Police Department also said they had no evidence, but they opened the door a crack:

**Janine Zanin:**

Detective Leadwell testified that no physical evidence was found after 25 man-hours put in searching, and then he did say that there was a master case file, and the District Attorney represented that she had examined the master case file, and that there was nothing of evidentiary value within in, and that there was you know, nothing that we would be interested in. We then asked The Court to please allow us to go and see that master case file anyway, despite the representations that the District Attorney made in court, and in spite of the fact that they didn't actually bring it to court with them, and the court allowed us, and shortly after the hearing, it was part of The Court's order, we went down to the police department and reviewed that binder ourselves, and were shocked to discover that, actually, quite a bit of physical evidence had been collected in the case, and turned over to the State Bureau of Investigations.

**Susan Simpson:** So, despite the SBI's claim that no evidence existed in the case, the UNC attorneys pushed forward:

**[6:45] Janine Zanin:**

We then began our own search to try to find those reports, because we knew that the reports must exist.

**Susan Simpson:** And, turns out, they were right. Their own search through the files produced several SBI files that had never been turned over to the defense, or,

apparently, to the prosecution. The latter part is key because the State tried to claim that it had an open file discovery policy, meaning that Ronnie's defense team had access to everything in the prosecutor's possession. But the prosecutor from Ronnie's trial would testify at his appeals hearing that he had never received any of these SBI reports, meaning that the defense hadn't seen them either. So, what happened?

The culprit here appears to have been Concord Police Department Identification Officer Van Isenhour, who failed to turn over the evidence either in good faith or bad faith, but there's every reason to believe it was the latter:

**[7:53] Janine Zanin:**

The records that we found, because of course, they thought that he was going to testify, so we, we looked for um... you know, we looked at his criminal record, and uh - my understanding was that he was stealing people's benefits checks, or maybe, uh-- maybe their tax returns out of mailboxes, so he was convicted and pled guilty of possession of stolen US Treasury checks, 2 counts, um, and then also pled guilty to 8 counts of uttering a forged instrument in State Court.

**[8:36] Susan Simpson:** But that's not all. In 1981, Van Isenhour had his marriage in Virginia annulled upon the finding that he was already married in North Carolina. In other words, Van Isenhour was guilty of bigamy. But, beyond Van Isenhour's sordid character, there's a more important reason to believe that he withheld the SBI reports in bad faith: They all supported Ronnie Long's innocence.

**[10:52] Colin Miller:** The first report dealt with the matchbooks found in the Long family car. Now, to refresh your recollection, the police recovered partially burned matches next to the white banister adjacent to the open window on the second floor of the Bost residence. The State's theory at trial was that the assailant used these matches to light his way in the dark. Five matchbooks were subsequently recovered from the Long family car, and, as we noted in Episode 2, Lieutenant Vogler testified as follows at trial:

**[11:16] Susan Simpson narrating:**

*The matches we found at Mrs. Bost's had... one side was... to my recollection was sort of a blue on one side, and and maybe natural grayish color on the other side, and the matchbooks we found in the car contained the same type of match.*

**Colin Miller:** What the jury didn't hear was that SBI Special Agent Rick Cone had done a forensic comparison of the matches from the crime scene and the matchbooks taken from the car. His conclusion was that all but one of the match books could be eliminated

as the source of the matches based upon “color characteristics.” Finally, Cone noted that he couldn’t completely exclude the fifth match book as the source of the crime scene matches on this basis but did conclude that those matches “probably did not originate from this match book.”

**[11:59] Rabia Chaudry:** The second report dealt with the second piece of forensic evidence presented against Ronnie Long at trial. As we noted last episode, SBI agent Dennis Mooney testified that he compared a latent shoe print lifted from the banister at the Bost residence with two ink impressions that were made from Ronnie Long’s shoes after they were taken by Van Isenhour before arraignment. Mooney testified at trial that he compared the shoe prints using “caliburst biters, oblique lighting, and a visual examination” and concluded that Ronnie Long’s shoes could have made the shoe print on the banister. Now, this sounds pretty scientific, and it was important...because the prosecutor was later able to claim during closing arguments that “[t]he man that made that footprint is the man that broke into her home.”

What the jury didn’t hear was the full lab report that he prepared in conjunction with the testing. It stated:

**Colin Miller narrating:**

*The shoe track impression submitted in Item #1 above was examined and noted to contain a partial shoe track impression. The known shoe track impressions submitted in Item #2 above were examined and compared with the shoe track impression represented on Item #1 above, and was noted to be of the same tread design.*

*There were an insufficient number of distinct characteristics noted by which to effect any identification.*

*It is this Examiner’s opinion that the two known shoe track impressions submitted in Item #2 above could have made [and that’s underlined -- could have made] the shoe track impression represented on Item #1 above.*

**[13:14] Rabia Chaudry:** Could have made, but, didn’t, necessarily make. So, all the talk about using caliber biters and oblique lighting to compare the shoe prints? It was hot air. There were an insufficient number of distinct characteristics to compare the prints, so Mooney just eyeballed it and determined that, sure, it was possible that Long’s shoe could have made the shoe print on the banister.

Colin asked Jamie Lau, Ronnie's current attorney with the Duke Innocence Project, about the significance of this report and the shoe print comparison:

**[13:40] Jamie Lau:**

The report itself, I think, suggests that it's even more problematic even to suggest that the latent lift was from Mr. Long's shoe, um, so of course that's important, however, with respect to the latent shoe print, I think any credence to the testimony regarding it at this point in time, has to be you know, there should be zero reliance on anything suggested by that shoe print, because the latent comparisons in this manner has more or less proven to be unreliable over the course of time and there's no scientific validity to making these comparisons.

**[14:26] Susan Simpson:** Lau is referring to a body of research that includes the 2016 report by the PCAST, the President's Council of Advisors on Science and Technology, which concluded that:

**Colin Miller:**

*"There are no appropriate black-box studies to support the foundational validity of footwear analysis to associate shoeprints with particular shoes based on specific identifying marks. Such associations are unsupported by any meaningful evidence or estimates of their accuracy and thus are not scientifically valid."*

**[14:55] Susan Simpson:** Janine Zanin would certainly agree with this analysis because she was especially unimpressed with the ink impressions they made of Ronnie's shoes and then compared with the latent shoe prints that they lifted from the crime scene:

**[15:05] Janine Zanin:**

Have you seen it?

**Colin Miller:**

I have, yeah. I have that in the file.

**Janine Zanin:**

I mean it's like the bottom of a Hush Puppy shoe, like maybe, like at the center of the...I don't... to me it's just like a bunch of scratchy lines, and I don't know how anyone could identify that against anything, and it's against a shoe that was probably worn by half the people in Concord at the time.

**[15:29] Susan Simpson:** And then there's a third report, the one that dealt with hair evidence. Back in 1976, SBI Agent Glen Glesne did a microscopic examination of the following evidence. Item #4 was a known hair sample from Ronnie Long from his comb. Item #5 was a package of pubic hairs taken from Ronnie Long. Item #9 was a hair taken from the bottom of the staircase in the Bost residence where the sexual assault took place. The report calls this hair "suspect hair." Item #10 was a plastic bag of known pubic hair taken from Bost. Finally, Item #13 was a plastic bag of clothing that Bost was wearing at the time of the assault.

Here is Glesne's conclusion:

**[16:23] Colin Miller reads:**

*Microscopic examination and comparison of the hair found at the scene in Item #9 showed it to be different from the suspect's hair in Items #4 and #5.*

*No hair or hair fragments similar to the suspect's were found in the victim's clothing in Item #13.*

In other words, the suspect hair was not similar to Ronnie Long's hair, nor were any hairs or hair fragments that were recovered from the clothing that Bost had been wearing at the time of the assault. Beyond the obvious exculpatory nature of this evidence, Janine Zanin sees a possible link between the suspect hair and the hair in the lime green toboggan that Ronnie Long says did not belong to him:

**[16:57] Janine Zanin:**

And I guess the other interesting thing to me that was really frustrating about the toboggan and the hair in the toboggan, and there's a connection that I see there, is that..so Donna and I, Donna Bennick and I, went down to the courthouse and looked through the clerk's evidence file from the case, and handled the toboggan, and just as it says in the record, the trial transcript, there is a light colored hair there, but I would say, not just a light colored hair, but a light colored hair that looks like it came from a light skinned African American person, because it's that texture, right? Like the short, very kind of curly hair that doesn't look like it came off, you know, the typical Caucasian head. So there's that, coupled with the description of the hair that was found and was tested up against Ronnie's at the SBI, which was also described as a lighter colored hair, but yet could have been Negroid, or, and then I think they wrote Native American, crossed it out and wrote Mongoloid. *And* Juddie Bost's description, the initial description, of her attacker, as like a high yellow, light skinned black man, which,

Ronnie is not. And so, I mean when I look at all of that, that's all consistent with the same perpetrator who's not Ronnie.

**[18:41] Rabia Chaudry:** A fourth report dealt with paint and fiber evidence. Back in 1976, SBI Agent Cone examined and compared the following evidence. Item #1 was the lime green toboggan taken from the Long family car. Item #2 was the pair of black gloves taken from the car. Item #3 was the black leather jacket that Ronnie had borrowed from his friend, Terrance Stocks. Items #6 and #7 were carpet fibers taken from the areas of the Bost residence where Bost said the assault occurred. Finally, Item #8 was paint taken from the white banister the State claimed the assailant climbed to enter the open window.

According to Agent Cone's report:

**[19:18] Susan Simpson reads:**

*Examination of the clothing in Items #1, #2, and #3 failed to reveal the presence of any fibers or paint similar to those in Items #6, #7, and #8, respectively.*

In other words, there were no paint or fibers from the Bost's house detected on the toboggan, gloves or leather jacket.

**[21:07] Colin Miller:** So, Donna Bennick and Janine Zanin took this new evidence and filed a Motion for Appropriate Relief in Cabarrus County Superior Court on August 27, 2008. Their claim was that these SBI reports and test results were material exculpatory evidence under the *Brady* doctrine, undermining confidence in the jury's verdict. An evidentiary hearing was held on the Motion, and you can probably imagine how it went.

With regard to the matchbooks, the defense claimed that Agent Cone's report directly contradicted Lieutenant Vogler's testimony that the matchbooks found in the Long family car "contained the same type of match" as the matches found by the banister. The State responded that there was no expert testimony regarding the matches at trial and that Vogler's matchbook testimony wasn't central to its case.

With regard to the shoe print, the defense claimed that Agent Mooney's report indicating that there were indistinct characteristics to make a comparison undermined his testimony at trial that Ronnie Long's shoe could have made the shoe print by the banister. The State of course responded that Mooney gave weak testimony at trial that Long's shoe merely could have made the print, with Mooney acknowledging on the stand that several other shoes could have made the print.

With regard to the paint and fiber report, the defense expert testified (1) that the assailant's clothes likely would have picked up carpet fibers given the violent nature of the sexual assault; and (2) that the white paint on the banister was cracking and that one would expect to find traces of that paint on the assailant's clothes. The State countered that Ronnie Long's clothes weren't seized until 15 days after the assault, meaning that the clothes could have been washed or subjected to weather conditions that would have removed the paint and carpet fibers.

Finally, there was the hair report. The defense expert testified that you would have expected to find at least one of the assailant's hairs on Bost's clothes given the violent nature of the assault and contended that the "suspect hair" not being a match for Ronnie Long was highly exculpatory. The State's expert contended that the assailant might not have shed any hair on Bost's clothes and that the "suspect hair" could have come from someone else who had been in the home or even a dog.

**[23:17] Ronnie Long:**

The state wants you to believe that in their analysis they can't make a distinction between a human's hair and a dog's hair. They trying to say that the hair that was found on the crime scene was a dog's hair. The agent's themselves say that they were Negroid or Mongolian. I ain't never heard of no Negroid dog.

**[23:44] Susan Simpson:** Ronnie is referencing Agent Glesne's description of the "suspect hair" in his SBI report. It describes that hair as "Black - human negroid. *Black* - heavily pigmented - but sort of a brownish gray color under full light of microscope. *Human* - Scale structure. Medulla seen - less than ½ diameter. *Negroid* - Kinky - flat or oval.

Now, let's remind you of the significance of this issue. Juddie Bost testified at trial that she had never had an African-American person in her home and that no African-Americans were members of the community groups she was a part of, including the church she attended earlier in the day. If this hair, which the SBI determined was a "suspect hair" was the hair of an African-American person, it is highly likely that it belonged to her assailant, and we know that hair did not belong to Ronnie Long.

**[24:54] Rabia Chaudry:** Finally, on February 20, 2009, Superior Court Judge Donald Bridges issued his opinion. Here's the pertinent part of that opinion:

**Colin Miller reads:**

*“The defendant has failed to prove by a preponderance of the evidence that his due process rights have been violated under Brady v Maryland, 373 U.S. 83 (1996), in that he has not shown by a preponderance of the evidence that the claimed evidence was withheld by the State, that it was exculpatory, or that the result likely would have been different with the claimed evidence.”*

The immediate thing that jumps out is that Judge Bridges applied the wrong standard. Under *Brady v. Maryland*, the Due Process Clause places an affirmative obligation on the State to disclose material exculpatory evidence to the defense. Now evidence is exculpatory when it is favorable to the defense, and courts have used two similar standards to define materiality. One focuses on whether the undisclosed evidence would have created the reasonable probability of a different outcome at trial if it had been turned over. And the second standard, which North Carolina courts have used, focuses on whether the undisclosed evidence undermines our confidence in the jury’s verdict.

Here’s the key part of the Supreme Court of North Carolina’s opinion in State v. Williams, which was issued about two months before Judge Bridges’s opinion:

**[25:54] Colin Miller reads:**

*“Evidence is considered ‘material’ if there is a ‘reasonable probability’ of a different result had the evidence been disclosed.”...Materiality does not require a “demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant’s acquittal.”...Rather, defendant must show that the government’s suppression of evidence would “ ‘undermine[ ] confidence in the outcome of the trial.’ ”*

In other words, Ronnie Long did *not* have to prove by a preponderance of the evidence that it was more likely than not these undisclosed reports would have produced a different outcome at trial. All he had to do was to prove that these undisclosed reports undermined confidence in the jury’s verdict. And yet, Judge Bridges rejected his Brady claim precisely because he failed to satisfy the wrong standard, the preponderance of the evidence standard. Colin asked Janine Zanin about her take on the ruling:

**[26:41] Janine Zanin:**

I think the court applied the wrong standard. I think the court took the DA’s standard from her motion papers, which was the incorrect standard, and decided that rather than a finding that all of this evidence that we found, um, gathered

together, had it been disclosed to the defense would have undermined confidence in the outcome of the trial, which would have been the correct standard, rather, um, he applied the standard because he did not believe that the evidence would have produced a different result at trial, which is I think a higher standard.

**[27:26] Rabia Chaudry:** But Ronnie Long had another bite at the apple: He could appeal to the Supreme Court of North Carolina, and he did. At the time, the dynamics of that court were similar to the dynamics of the current United States Supreme Court. It's well understood that Justice Kennedy is the swing vote on our country's highest court and that convincing him can turn a 5-4 loss into a 5-4 win.

There were seven justices on the North Carolina Supreme Court, and Bennick and Zanin recognized that three would probably rule in favor of Ronnie Long and three would probably rule against him. That left a swing justice, coincidentally named Justice Brady. According to Zanin, "We felt certain that Justice Brady held the deciding vote and much of the oral argument was focused on securing his vote."

**[29:47] Susan Simpson:** So, oral arguments were held in March 2010, and Justice Brady's term would end in January 2011. After oral arguments, spring turned to summer, summer turned to fall, and fall turned to winter. Ronnie Long was still waiting for the court's opinion. Finally, it was January 2011, the last month in which Justice Brady could take part in the opinion. It didn't come. Justice Brady's term ended, and he was replaced by Justice Barbara Jackson. Finally, the the next month, the opinion was issued, in February 2011. Three justices voted to give Ronnie Long a new trial. Three justices voted against a new trial. Justice Jackson, who wasn't present for oral arguments, declined to take part in the opinion. But to get a new trial, Ronnie Long needed a majority vote. Instead, he got a tie.

And this is why Ronnie Long is the real world Schrodinger's cat. There's a seventh Justice -- Justice Brady -- the swing vote who was the focus of the defense's oral arguments. Presumably, after oral arguments and ten months of work on the case, he formed an opinion...and yet, we don't know that opinion and probably never will. Indeed, we don't even know which Justices voted for or against a new trial or why. Here's the long and short of the court's opinion:

**[31:12] Rabia Chaudry reads:**

*Justice JACKSON took no part in the consideration or decision of this case. The remaining members of the Court are equally divided, with three members voting*

*to affirm and three members voting to reverse the order of the superior court. Accordingly, the order of the superior court is affirmed.*

**[31:32] Susan Simpson:** Needless to say, Janine Zanin was unimpressed with the court's actions:

**Janine Zanin:**

I think it was an extraordinary moment of cowardice on behalf of the court as a whole, knowing that that justice was retiring, and not getting to finalize the opinion until that justice retired, and then waiting until afterwards to issue a 3-3 tie that also allowed the justices to issue an opinion without naming which justices fell on which sides, you know, affirm or overrule the trial court's decision, I think that demonstrates some cowardice by all of them. Nobody wanted their names associated with it, it's mind-boggling to me that you could look at the real doubts that I see when I look at this case and want to sidestep it and not make a decision.

**[32:38] Susan Simpson:** But this situation with the seventh Justice isn't the only Schrodinger's Cat in this case. During their search for evidence, Bennick and Zanin discovered the existence of one more piece of evidence. They learned that a rape kit was done on Bost, with no less than five samples of bodily fluids collected. The records show that Marshall Lee of the Concord Police Department picked these samples up from the hospital on April 26, 1976, just hours after the assault. But there's no record of where the samples went after Lee picked them up. They're missing and might never be found.

Now, you might wonder: Was the State's failure to preserve this vital evidence, which so easily could have proved Ronnie Long's innocence or guilt, grounds for a new trial? Well, unfortunately, we're back in Schrodinger's cat territory. The US Supreme Court has distinguished between the failure to preserve *apparently* exculpatory evidence and the failure to preserve *potentially* exculpatory evidence.

To explain this, imagine that there's been a bank robbery, and the defendant in the case is a six foot tall African-American man. Now, assume that there is surveillance camera footage of the robbery and a police officer took notes while watching the video, writing down that the robber appeared to be about five feet tall and Caucasian. If that video subsequently got lost in good faith, such as it being destroyed while they were trying to make a copy, there would be a Due Process violation. That's because the video is *apparently* exculpatory, meaning that the exculpatory value of the video is apparent

from the police officer's notes. And the failure to preserve apparently exculpatory evidence is a Due Process violation regardless of good faith or bad faith of its destruction if the defense is unable to obtain comparable evidence.

Conversely, here in this case, there is potentially exculpatory evidence. This is evidence whose exculpatory value is uncertain when it goes missing. The key Supreme Court case on potentially exculpatory evidence is Arizona v. Youngblood, in which the State failed to refrigerate a young boy's underwear and t-shirt after he was sexually assaulted. While both contained semen stains, the lack of refrigeration made successful testing impossible. And, therefore, it was unclear whether those stains would have proven the defendant's guilt or innocence. As a result, according to the Court, there was no Due Process violation:

**Recording from Arizona v. Youngblood:**

*"In an opinion filed with the clerk today we hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law. Here the police failure to refrigerate the victim's clothing and to perform certain tests on the evidence can, at worst, be described as negligent."*

**[35:03] Colin Miller:** The same went for Ronnie Long. He was, however, given partial relief in his appeal. We discussed the case of James Tyrone Woodson in Episode 2, in which the Supreme Court held that North Carolina's mandatory death penalty was unconstitutional. That decision spared Ronnie Long's life back in 1976, and it gave him a shot at release in his later appeal when it was used again to convert Ronnie Long's two life sentences for rape and burglary into a total prison term of 80 years, meaning he's eligible for parole. But parole seems unlikely for the reason you might expect.

**[35:32] Janine Zanin:**

You know, we had been working with him a little while as he was coming before the parole board a number of times, and he was specifically told by the parole board on one occasion that he would greatly increase his chances of parole if he would enroll in the sex offender program available through the prison. But step one of that program is admitting your guilt, and he continues to maintain his innocence, and I believe that he's innocent, despite the fact that if he would even just fabricate and say that he did it, he could probably be out of prison at this point. I mean the man has been in prison for over 40 years... it's time for us to

find the truth, and I believe the truth is that Ronnie Long did not commit this crime.

**[36:22] Colin Miller:** Bennick and Zanin didn't give up after the state supreme court ruled against them. Instead, they took Ronnie Long's case to the North Carolina Innocence Inquiry Commission. We've talked a lot on this podcast about conviction integrity units formed in prosecutor's offices to review cases of possible wrongful convictions. The first CIU was started in 2007, and the North Carolina Innocence Inquiry Commission is sort of a proto-CIU that was formed the year before and is independent from a prosecutor's office. Here is Lindsey Smith the current Executive Director of the Commission:

**Lindsey Smith:**

So our commission is made up of 8 members, by statute it is required to be a superior court judge, who serves as our chair, a district attorney, a defense attorney, a victim's advocate, a sheriff, a member of the public who isn't an attorney and who isn't involved in the judicial branch, and two discretionary members that are chosen by the chief justice, they can have any background.

**[37:22] Colin Miller:** When a case is submitted to the Commission, they conduct an initial Investigation Phase, in which they are looking for new evidence that proves or could prove the claimant's innocence. If there is new evidence, the Commission moves to a second stage known as the Formal Inquiry Phase:

**Lindsey Smith:**

When there is some new evidence that's kind of there and it looks like we might want to put that case to a hearing, we move into what we call formal inquiry. This is a stage at which we are required to notify the victim that we're looking at the case, so this is kind of reserved for a small number of cases where there really is something there that might be considered new evidence that could be put forward. Once we're in a formal inquiry, we complete that investigation-- it doesn't really look much different than an investigation in terms of the types of things we're doing, we're still doing interviews, we're finishing up testing, and that kind of thing. And then, if it is deemed that there is new evidence that needs to be presented to our commission, we hold a hearing before the 8-member panel.

**[38:29] Colin Miller:** At this point, for convictions after jury trials, if a majority of the Commission believes that there is significant new evidence of innocence, the case is

sent to a three judge panel. In the Ronnie Long case, there was new evidence, 43 new pieces of evidence. And yet, the case was not sent to a three judge panel.

By July 30, 2015, Jamie Lau of the Duke Innocence Project had taken over Ronnie Long's case. On that date, he received a letter from the Associate Director Sharon Stellato denying relief to Ronnie Long. Here's the pertinent part of that letter:

**Susan Simpson (reading):**

At the Commission's request, Concord Police Department located three envelopes of latent prints from the crime scene in this case. These latent prints were analyzed by an independent expert. The expert excluded Mr. Long and several alternate suspects as the source of those latent prints. Concord Police Department uploaded four latent prints to AFIS and the queries returned no possible contributors. Copies of the latent examiner report and the AFIS report are enclosed with this letter.

In Mr. Long's case, the Commission determined that there is no DNA testing that can be done that might establish actual innocence. At this time, there is no other credible and verifiable evidence of innocence on which the Commission can proceed. His claim will not be considered again unless there is new, verifiable, credible evidence that has not been previously considered by a jury or a judge. Closure of Mr. Long's case by the Commission does not impact his right to pursue other post-conviction relief.

**[39:56] Rabia Chaudry:** So, there are two huge pieces of news here. **First**, seven years earlier, the Concord Police Department had been ordered to turn over all of the physical evidence they had in the case, and there was no disclosure of these fingerprints. And there were a lot of them. According to the Concord Police Department Evidence Processing Report, there were three envelopes containing latent fingerprint lift cards: the first had 9, the second had 22, and the third had 12. None of them were a match for Ronnie Long. As you might expect, Ronnie Long wasn't thrilled with this delayed disclosure:

**[40:30] Ronnie Long:**

The DA stood before the superior court judge and LIED! Saying that I had all the evidence that they had, and there was no more evidence in this case! A Sergeant Nedwell(?) from the Concord Police Department also testified that there was no more evidence, and then in 2015...in 2009 they testified that there was no more evidence! (Prison phone interrupts: "You have 30 seconds remaining.") then in

2015 I told, 64 fingerprints that were collected from the crime scene, and not one matched my prints. My prints was nowhere in the house!

**[41:10] Rabia Chaudry:** Second, the report indicates that the fingerprints were tested against Ronnie Long and “several alternate suspects.” But who were those alternate suspects? Jamie Lau followed up with the Commission, and they told him there were six alternate suspects. One of these six was mentioned in the police files, but the other five were never previously disclosed to trial or appellate counsel.

Now, you might recall that Juddie Bost was shown 13 photographs of African-American men soon after she was assaulted. It turns out that three of these men were actually part of the five previously undisclosed alternate suspects in the case. Clearly, then, there was some evidentiary basis for considering *these* 3 men alternate suspects and not the other 10 men in the lineup. And then there were the last 2 undisclosed men, who presumably became alternate suspects based on evidence collected after the night of the assault.

The disclosure of these fingerprints, of course, prompts at least three additional questions: First, where were they lifted from:

**[42:08] Jamie Lau:**

There is some indication in the material that, um, the Innocence Inquiry Commission provided with respect to where they were lifted, but there’s no, as is typically the case, there’s no photos identifying where they were collected from. There’s just some general descriptors for each print -- latent lift.

**[42:28] Rabia Chaudry:** Second, were these prints put into the national system for possible contributors? Lau was given an “Evidence Processing Report” from the Concord Police Department indicating that they had submitted the fingerprints to AFIS, the Automated Fingerprint Identification System, for possible nationwide matches. That report indicates that one of the fingerprint lift cards had “insufficient value” for submission and that the other two cards “returned no possible contributors” of the latent impressions. According to Lau, this report raised some serious concerns. Here’s Lau explaining those concerns to students in Colin’s Criminal Adjudication class just last week:

**[43:04] Jamie Lau:**

The database always turns possible contributors. It's up to the...analysts to determine whether or not the possible contributors returned by the database are that a match to the print put into the database. So, you set the database to return the number of potential matches, um, you want it to, and it will always return people because it's just doing a scoring comparison, and it will give you the highest scores, which are the highest likely matches. So this is not a valid result. Um, we looked into this a little bit and we found out that the agency the Concord Police Department, who stands to lose a lot if Ronnie Long is ever exonerated, because they're the one who, uh, is responsible in many ways for his conviction. The agency had only had the system these fingerprints were queried through for about three months at the time this query was done. They had no standard operating procedures, um, guiding their use of this system at the time these fingerprints were run. And because of that, that makes a lot of sense, why they put a response into the report that's impossible given the system. Um, we did a public records request for their standard operating procedures, and in response to that we got a word document, which was great, um, because then we just looked at the metadata in the word document that said it was created that day, and then they had to admit that they only created it in response to our request for the standard operating procedures for the lab. Um, the other thing about it is it said that 'our standard operating procedures is to apply the operating procedures that the State Bureau of Investigation uses when they run fingerprints through a system' and you go to the State Bureau of Investigations Procedures and this is not a valid response, per the State Bureau of Investigation Procedures. So, if they were, in fact, using those operating procedures, they would not have reported that the query returned no possible contributors. Further evidence that they were absolutely rudderless when they were querying these fingerprints through the system.

**[45:13] Rabia Chaudry:** And then, of course, there's the third and most obvious questions: Why were these other men considered alternate suspects? Here's Jamie Lau:

**[45:22] Jamie Lau:**

The Innocence Commission indicates to us that the bulk of its investigation was reliant on the files of the Concord Police Department, and the Cabarrus County District Attorney's Office, which was the red flag that there were additional files that we've never seen because suddenly there are new names of alternate suspects that have never been provided to Mr. Long before.

**[45:49] Susan Simpson:** So Lau made an understandable request to the Innocence Inquiry Commission, where, by the way, he actually used to work. He asked them: please turn over your files pursuant to a protective order so we can see what's going on here, and we promise not to disclose those files to anyone else. The Commission's response was they had no problem with complying with this request, subject to one condition:

**[46:10] Jamie Lau:**

The Innocence Inquiry Commission had indicated willingness to provide us its files under a protective order, but they would only do so if the prosecution agreed, and the prosecution said that they would not agree to our having the files, even under protective order, limiting our use to in-court proceedings in Mr. Long's case.

**[46:32] Susan Simpson:** So yeah, after about 42 years in prison, Ronnie Long still doesn't know the exact locations of 43 fingerprints lifted from the crime scene, whether those fingerprints were correctly submitted to AFIS, or why several other man were considered alternate suspects in his case.

**[46:50] Colin Miller:** Finally, around the same time that Ronnie Long's case was submitted to the Commission, it was also submitted in federal court. In 2012, Long's prior attorneys filed a petition for a writ of *habeas corpus* in federal district court, claiming that the North Carolina courts applied an unreasonable application of clearly established federal law in denying his *Brady* claim.

And, based upon what we discussed before, they were obviously correct. In the Supreme Court of North Carolina opinion we cited, that was issued months before the same court addressed his appeal, the court cited the United States Supreme Court opinion in Kyles v. Whitley for the conclusion that *Brady* does not require a showing that proper disclosure of withheld evidence would have produced a different outcome at trial.

Therefore, the North Carolina courts clearly erred in denying Ronnie relief based upon the finding that he failed to prove by a preponderance of the evidence that disclosure of the SBI reports would have led to the jury acquitting him.

So, what the North Carolina courts did in this case is entitled to no deference, and the federal courts should simply have to decide whether those reports undermine our confidence in the jury's verdict.

But, here we are, six years after Ronnie Long's filing, and no federal court has reached the merits of his claim. Why? As we noted before, back in the 1980s, Ronnie Long had filed a *pro se habeas* petition, meaning that his second *habeas* petition was what's known as a *successor habeas* petition. And because Ronnie's attorneys didn't seek permission to file a successor petition, the district court dismissed that petition.

Well, after Jamie Lau learned of this new fingerprint evidence, he filed as third *habeas* petition, this time with the permission of the court. The district court, however, denied this petition, finding the fingerprint evidence was new evidence that the North Carolina state courts hadn't yet considered, meaning that Ronnie had to go back to state court and litigate, or exhaust, the issue before returning to federal court.

The defense appealed this ruling to the United States Court of Appeals for the Fourth Circuit, using an argument similar to the one we covered in our Terrance Lewis series: that the fingerprint evidence was being used to prove actual innocence as a gateway to revive the previously defaulted *Brady* claims based upon the undisclosed SBI Reports. And, without getting into the weeds of this claim, we can simply say this: it worked. Here's Jamie Lau:

**[48:37] Jamie Lau:**

So we appealed that decision to dismiss on the basis of failure to exhaust to the Fourth Circuit, the the Fourth Circuit reversed, or remanded, the decision to the district court, and sent the case back to the district court for continued litigation. Which is where we currently stand -- we're back in the district court, after the Fourth Circuit reversed and remanded the decision to dismiss Mr. Long's case from district court on the basis of failure to exhaust. And we're hopeful that the district court will now provide us with an opportunity to litigate the case in the federal district court and will agree with us that the Brady violations were egregious violations of Mr. Long's rights.

**[49:27] Rabia Chaudry:** This opinion by the Fourth Circuit was issued on October 25, 2017, and Lau is hopeful that a hearing will be scheduled in district court in the next few months, with a federal judge finally ruling on the merits of Ronnie Long's claims. So, let's briefly assess that claim:

At trial, the jury heard Juddie Bost's unquestionably shaky eyewitness identification, which was bolstered by the shoe print comparison, the match book comparison, and the toboggan, gloves, and jacket allegedly recovered from Ronnie Long. And that evidence

allowed the jury to convict despite several alibi witnesses accounting for Ronnie's whereabouts throughout the day. What the district court now has to decide is whether the previously undisclosed evidence, in totality, undermines our confidence in the jury's verdict. This is that undisclosed evidence: the SBI Agent's report that no shoe print comparison could be made; the other SBI agent's conclusion that the matches from the crime scene didn't come from the matchbooks in the Long family car; the absence of paint and carpet fibers from the Bost residence on the toboggan, gloves, and jacket; the absence of Ronnie Long's hair on the victim's clothes; the suspect African-American hair from the site of the sexual assault that was not a match for Ronnie; the 43 fingerprints that were not a match for Ronnie; and the existence of six alternate suspects.

Janine Zanin and Jamie Lau clearly think this standard has been met. Colin reached out to Cabarrus County District Attorney Roxann Vaneekhoven for her take on the case, but she never responded. Here was her response when Kayla Ayres was covering the case for Fox 46 Charlotte:

**[51:08] Kayla Ayres:**

Now just hours ago, the Cabarrus County District Attorney responded to my multiple request for comment, writing in part, "I have thoroughly reviewed the case, personally met with the victim, and analyzed the changing story of the defendant. I stand by the jury's verdict. Moreover, I stand by the victim, who never wavered from her identification of Ronnie Long as her brutal rapist."

**[51:31] Rabia Chaudry:** Colin asked Jamie Lau about this statement:

**[51:34] Jamie Lau:**

Mr. Long's story has been consistent from the very first day. That day he went to a planning party for a class reunion. Later on he was at home for a period of time, where he spoke on the phone to the mother of his child, and then he was later at a party that night. Numerous people, um, had seen him throughout the day, could verify his whereabouts throughout the day, and did so at trial. The suggestion that his story has been anything but consistent, is simply an effort by the State to mislead and misdirect individuals as to the strength of the evidence in its case. Any review of Mr. Long's account of that day would have to acknowledge its utter consistency in what it was that he was doing on that day.

**[52:37] Colin Miller:** And so, about 42 years after first being locked up, Ronnie Long waits. His most tireless defender is his wife AshLeigh, who researched his case,

concluded that he was an innocent man, and fell in love with him while visiting him in prison. Here's a clip from a news story by Stuart Watson about their marriage:

**[52:52] AshLeigh Long:**

He's a great man, and I fell...in the process of helping create awareness for his injustice, um, I fell in love with him. I think it to be positive, um, 'cause I also think it will bring attention to his case.

**Stuart Watson:**

Why do you believe Ronnie is innocent?

**AshLeigh Long:**

Because I've seen...I've seen the evidence, um, with my own eyes, and I've also asked him myself, um, ya know, face to face. You know, I go visit him every single week, um, and we speak multiple times every single day. You know, Ronnie can call me, he calls every morning and calls throughout the day. He can call me and say, "can you do this..." and I get it done. I mean, I stop everything I'm doing and get it done for him. I've, you know I've sacrificed everything and put him first, cause that's what he needs to get out. He needs to be put first. You know people on the outside looking in, just can't understand it, you know, and what matters is that Ronnie and I have an understanding.

**[53:32] Colin Miller:** But over the years, he's missed a lot. The 2 year-old son who talked with him on the phone on the night of the assault, possibly even at the exact time of the assault, is now a father himself, with two kids of his own, one of them older than Ronnie was when he was first arrested:

**[53:45] Anthony Long:**

I usually don't show emotion. Uh, nine times outta ten I just, I use, uh, jokes as a defense mechanism. I'll probably crack jokes here and there. If you see me crack a joke, nine outta ten my feelings are hurt. So, I'm...by me not having Ronnie around, it is tough. I don't, I kinda need him here. I really do, I really need him here, 'cause, it's a lot of things that I can be able to sit down and talk to him about without havin' to... I can have a unbiased opinion about things that's goin' on with myself. But, the way it makes me feel is - I really need him here. It's tearing me down too. Just to hear him say that he's broken down, breaks me down.

In speaking with Ronnie, you get a sense of his anger and also a sense of his fighting spirit, that same spirit that led him to turn down a plea deal all those years ago that would have had him home in a few years. And yet, you also get a sense of his weariness. You can almost hear the toll that the years of being wrongfully imprisoned have taken on him just from his voice:

**[54:54] Ronnie Long:**

I have been done wrong. I have been done injustice for 42 years. And when is it gonna stop, man? When is it gonna come to an end and let me know...the government, or whoever it is man -- and let me go home? I done missed my dad has died, my two sisters are dead, my mom is 87, and I missed raising my son. My son is 45 year old now. He got two daughters. My two granddaughters -- I ain't never spent no time with none of them. I... and here I am now, 42 years have been taken from me, then what am I supposed to do, they turn me loose into the streets right now? 62 year old! Now what kind of life am I supposed to have? The system that they have here in the state of North Carolina, it's set up for you to fail!

And yet, you get no real sense that Ronnie or the people around him will ever give up. And, with the recent ruling of the Fourth Circuit, they might be in the best legal position they've been in for years. There's no guarantee that Ronnie Long will ever be released, but there is now a guarantee that his case will be heard, and not in the North Carolina courts that have denied him relief for decades, but in federal court, probably later this year. This ends our arc in the Ronnie Long case, but it doesn't end our work on the case or our reporting on the it. We'll continue to update you on his status as his case winds its way through the courts.

**[56:27] Rabia Chaudry:** Now as Susan said earlier, and many of you may have heard, we got a big ruling in Adnan's case last week. Keep your eyes peeled and your ears open for an extra bonus episode of Undisclosed, dropping tomorrow, in which Susan, Colin, and I go through the new ruling and what it means for the State vs. Adnan Syed. Next time...on Undisclosed.

A big thank you to everyone who has helped make this episode, and this series, possible. A big thank you first to our sponsors, who help bring us back week after week and bring these stories to you. Thank you to our fantastic executive producer Mital Telhan, to Baluki for designing our logo, to Chrissy for maintaining our website. A special thank you to Henry LaVoie for research on this case. And if his name sounds familiar that's because he's the son of Rebecca LaVoie. Yes, the LaVoie's are widely

talented! Rebecca is our fantastic audio producer and also the host and co-producer of one of my favorite podcasts, Crime Writers On, which, if you have not listened to, please do check it out. And finally, thank you to J Trinity, who produced the credit song in this case. Don't forget to follow us on social media, our Twitter handle and Facebook is @undisclosedpod. And if you have questions for the addendum, don't forget to get our producers attention by tagging them with #UDAddendum. Thanks so much. Until next week...

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**Transcript compiled by Brita Bliss, Erica Fladell, Dawn Loges, & Skylar Park**