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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable Michael G. Nettles, Circuit Court Judge

JAMES ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001195

APPENDIX

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY)	2010-GS-26-2883
State,)	
Plaintiff,)	Transcript of Record
vs.)	March 12-14, 2012
James Anderson,)	Trial Transcript
Defendant.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

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Attorney for Plaintiff

Edward Chrisco, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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Horry County Courthouse RANDOM STRIKE SHEET

NAME :

Sorted by: Random I

JURY TYPE : Criminal

PANEL ID : CULBERTSON 3-12

DESCRIPTION : CULBERTSON 3-12

Trial

COURTROOM JAR

NAME	AGE	SEX	RACE	STATE	PLAINTIFF	DEFENDANT	REMARKS
1 Gorman, Andrew B	156	W	M	(✓)	(X)	()	
2 Graham, Timothy R	158	W	M	(✓)	(✓)	()	
3 Thompkins, Eva N	389	W	F	(✓)	(✓)	()	
4 Woodbury, Lauren M	443	W	F	(✓)	(✓)	()	
5 Dewitt, Nathan W	105	W	M	(✓)	(✓)	()	
6 Froelich, Robert W	137	W	M	(✓)	(X)	()	
7 Beaty, Nancy B	25	W	F	(✓)	(✓)	()	
8 Carland, Catherine A	67	W	F	(✓)	(X)	()	
9 Abbenante, Michael J	1	W	M	(X)	()	()	
10 Sketers, John H	357	B	M	(✓)	(✓)	()	
11 Billett, Deborah A	36	W	F	(✓)	(✓)	()	
12 Jester, Roger K	218	W	M	(✓)	(X)	()	
13 Tharpe, Johnny D	385	W	M	(X)	()	()	
14 Frye, Emily M	138	W	F	(✓)	(X)	()	
15 Jensen, Jeffrey W	216	W	M	(✓)	(✓)	()	
16 Chickering, Charles G	80	W	M	(✓)	(✓)	()	
17 Strickland, Patience M	378	W	F	(X)	()	()	
18 Brewer, Ingrid K	48	W	F	(✓)	(✓)	()	
19 Warden, David	423	W	M	(✓)	(X)	()	
20 Mellen, Paul R	277	W	M	(✓)	(✓)	()	
21 Colvard, Melissa F	86	W	F	(✓)	(X)	()	
22 Furness, Deborah A	140	W	F	(✓)	(X)	()	
23 Painter, Dana A	308	W	F	(✓)	(✓)	()	

Horry County Courthouse RANDOM STRIKE SHEET

NAME :
 AL TYPE : Criminal
 ANEL ID : CULBERTSON 3-12
 COURTROOM JAR

DESCRIPTION : CULBERTSON 3-12

Sorted by: Random N

Trial

24	Chavon, Brandon C	78	W	M	(X)	()	()	
25	Hall, Charla R	171	W	F	(X)	(X)	()	alt. 1
26	Foxworth, Charles D JR	133	W	M	(X)	(X)	()	
27	Mante, Kylee	263	W	F	()	()	()	
28	Peirce, Judith K	314	W	F	(X)	(X)	()	
29	Thurlow, William T JR	391	W	M	(X)	()	()	
30	Hardee, Emily D	178	W	F	(X)	(X)	()	
31	Dues, Lawrence A	113	W	M	()	()	()	
32	Cox, Anne R	91	W	F	()	()	()	
33	Pheulpin, Maryann I	317	W	F	()	()	()	
34	Brazelle, Joy M	47	W	F	()	()	()	
35	Utiley, Terri L	412	W	F	()	()	()	
36	Moliterno, Francis R	285	W	M	()	()	()	
37	Ostendorf, Rebecca A	305	W	F	()	()	()	
38	Dale, Avery JR	97	W	M	()	()	()	
39	Wright, Billy K	444	W	M	()	()	()	
40	Bernabeu, John S	33	W	M	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

Motions

6

1 (On the record, March 12, 2012. The following takes place
2 outside the presence of the jury panel.)

3 THE COURT: All right, Ms. Richardson, you ready to
4 call your next case?

5 MS. RICHARDSON: Yes, sir, Your Honor. Your Honor,
6 this is the State of South Carolina versus James Anderson,
7 indictment 2010-GS-26-2883, charging him with burglary first
8 degree.

9 THE COURT: All right, we need to put anything on the
10 record before we bring the jury in, jury panel in for
11 selection?

12 MS. RICHARDSON: Nothing from the State, Your Honor.

13 THE COURT: All right.

14 MR. CHRISCO: Your Honor, I have a matter that needs to
15 be placed upon the record but it needs to be placed on the
16 record in the Solicitor's absence.

17 THE COURT: Okay, let me, let me see the attorneys up
18 here for a second.

19 (Whereupon, a bench conference is held.)

20 THE COURT: All right, all right, Mr. Chrisco, let's
21 go ahead. We're not going to do it outside the Solicitor but
22 you can go ahead and put it on the record.

23 MR. CHRISCO: Thank you, Your Honor.

24 THE COURT: This is what we discussed in chambers?

25 MR. CHRISCO: Yes, Your Honor.

Motions

7

1 THE COURT: Okay, go ahead.

2 MR. CHRISCO: Your Honor, I have represented Mr.
3 Anderson since August of 2009 and over that time he has been
4 in and out of the J. Reuben Long Detention Facility. He has
5 been rearrested on other charges. He's made bond and he's got
6 out. Currently I have been appointed to represent, including
7 this one, eight open files, some with multiple charges in
8 them. Over the time we've talked about not only those cases
9 but we've talked about other cases and this case, also. A
10 couple of weeks ago I wrote a letter, had it hand-delivered by
11 Gerald Ballon from my office, stating that March 12th would be
12 the trial date and that over our many talks I had not got a
13 witness list from him, I needed one so my investigator could
14 contact these people, and if necessary, serve them with a
15 subpoena to be here to testify.

16 A couple of days after his receipt of that letter I got a
17 - the office got a call from Mr. Anderson. He spoke with me.
18 He wanted a copy of his discovery, even though copies of his
19 discovery had been sent to the jail and I guess Mr. Anderson
20 had lost those in getting out. We sent him another copy of
21 it. He told me at that time that there was no witnesses.
22 Last Tuesday when we had the arraignment he told me the same
23 thing, he didn't know the full, only nicknames of the people,
24 told him I would need more than that for my investigator to
25 track down these people.

Motions

8

1 This morning he gives me a list of three names and I'll
2 hand one up to the Court and also one to the prosecutor. My
3 investigators called and one of the people has left the
4 employment of the last known place that Mr. Anderson knew, did
5 not leave on good terms and no forwarding address to track
6 down this person. My investigator still remains out there
7 committed to trying to find this person along with the other
8 two persons that are listed there. One we found that's not
9 going to be of help in this case, but my investigator is still
10 out there trying to get it but I'm just wanting to put this on
11 record. At this late date it's, it's hard to, it's hard to,
12 to have these people appear out of thin air at the, at the
13 last minute when I asked repeatedly for this type of
14 information and it's because of that I cannot in good
15 conscience and under the oath that I took to - I took when I
16 became a lawyer I cannot ask the Court for a continuance in
17 this matter.

18 THE COURT: Yeah, well, and I'll tell you right now I
19 wouldn't be inclined to grant one either unless it was some
20 newly discovered evidence or something of that nature. The
21 indictment reflects that the alleged incident occurred July 8th
22 of 2009. The indictment was handed down July 29th of 2010 and
23 if he just got you the witnesses this morning, March 12th,
24 2012, I would not be inclined to grant a continuance unless
25 there was some extenuating circumstance and explanation which

Motions

9

1 I can't fathom at this point in time. All right, anything
2 else you want to put on the record?

3 MR. CHRISCO: No, Your Honor.

4 THE COURT: All right, anything from the State?

5 MS. RICHARDSON: Nothing at this time, Your Honor.

6 THE COURT: All right, we ready to go ahead with the
7 jury selection?

8 MS. RICHARDSON: The State's ready.

9 THE COURT: All right, let's go ahead and bring the
10 jury panel in.

11 MR. CHRISCO: Your Honor, may we approach?

12 THE COURT: Yeah, yeah, come on up.

13 (Whereupon, a bench conference is held.)

14 THE COURT: All right, can we get somebody to get them
15 to hold up the jury from coming in for just a minute? We've
16 got to put an oral motion on the - all right, just stand out
17 there and just tell them to hold up for just a second.
18 All right, Mr. Chrisco, I understand that you've got a
19 motion.

20 MR. CHRISCO: My client has a motion. I thought I had
21 answered my client, but he still wants me to make this motion
22 and put it on the record. He states that this indictment that
23 the State has is not a real indictment.

24 MR. ANDERSON: I was just looking for the Grand Jury.
25 You want me to speak?

1 MR. CHRISCO: Yeah, stand up.

2 MR. ANDERSON: Okay, Your Honor, I have been - I have
3 seen some, some other indictments that it wasn't - they was
4 false indictments; and so, I was questioning about mines you
5 see if it was one of the original ones or it was just true-
6 billed, original true-billed from the Grand Jury. So, that's
7 why I was asking my attorney about this, this indictment right
8 here because ---

9 THE COURT: All right, well, I'm going to frame this
10 as a motion to quash the indictment. I'm going to deny your
11 motion. I'm holding an indictment marked original in case
12 number 2010-GS-26-2883 that shows a true-bill handed down by
13 the Grand Jury on July 29th, 2010, Martha Flom signed as
14 foreperson of the Grand Jury. All right?

15 MR. CHRISCO: Thank you, Your Honor.

16 THE COURT: All right, we can go ahead and bring the
17 jury in now.

18 THE COURT: All right, in this case it's ten and five;
19 is that the strikes?

20 MS. RICHARDSON: Yes, sir, Your Honor.

21 THE COURT: Ten and five, okay, and then we'll get two
22 alternates, for each alternate the State gets one strike, the
23 Defense gets two strikes?

24 MS. RICHARDSON: Yes, sir, Your Honor.

25 THE COURT: All right.

Voir Dire

11

1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: Let me see the attorneys for one brief
4 second.

5 (Whereupon, a bench conference is held in the presence
6 but out of the hearing of the jury panel.)

7 THE COURT: Got everyone?

8 OFFICER: Yes, sir.

9 THE COURT: All right, ladies and gentlemen, we are -
10 I hope everybody had a good lunch and we're getting ready to
11 start the trial of the case of the State of South Carolina
12 versus James Anderson. Now, I've got some questions to go
13 over with you now. You've all been qualified to serve as
14 jurors for this term of General Sessions Court. However, the
15 next set of questions I have to go over with you is commonly
16 referred to as voir dire questioning. These are questions
17 that determine whether or not you're qualified to serve as
18 jurors on this particular case and it also gives the attorneys
19 some additional information that assists them in the jury
20 selection process. So, just like the jury qualification
21 questions I need everyone to please stand and raise your right
22 hand.

23 (Whereupon, jury is sworn by Court.)

24 THE COURT: Is there any member of the jury panel who
25 did not respond to the oath by saying, "I do?"

Voir Dire

12

1 (No response.)

2 THE COURT: All right, very well.

3 All right, please listen up to these questions, and if I
4 ask any questions that are applicable to you please let me
5 know. Now, this is the case of the State of South Carolina
6 versus James Anderson. Mr. Anderson has been charged with
7 burglary in the first degree and the indictment alleges that
8 Mr. Anderson did in Horry County on or about July the 8th,
9 2009, enter the dwelling of Christian Vickery located at 2001
10 South Ocean Boulevard, Apartment [REDACTED], without consent, this
11 occurring during the nighttime. Now, is there any member of
12 the jury panel who has heard anything, read anything, knows
13 anything, discussed anything or has any information about this
14 case? If so, please stand.

15 (No response.)

16 THE COURT: All right, the Defendant in this case, as
17 I stated, is James Anderson. The alleged victim in this case
18 is Christian Vickery. Is there any member of the jury panel
19 related by blood or marriage, have a close personal
20 relationship, business relationship, social relationship or
21 any other type of relationship with either the Defendant,
22 James Anderson, or the alleged victim, Christian Vickery? If
23 so, please stand.

24 (No response.)

25 THE COURT: All right, please listen up as these are

Voir Dire

13

1 the potential witnesses. I don't know if all of them will
2 testify, they may, but these are the potential witnesses in
3 this case: Officer Tracy Chanaca, is that correct?

4 MS. RICHARDSON: That's correct.

5 THE COURT: Chanaca of the Myrtle Beach Police
6 Department; Officer Brad McClelland of the Myrtle Beach Police
7 Department; Christian Gail Vickery; Charles Allen Smith;
8 Marilyn Sanders of the State Law Enforcement Division; Melanie
9 Huggins-Ward, our Clerk of Court; Christy Phibbs; and Joseph
10 E. ; Katherine Parker; Victor Hatchette; and Brenda
11 Strickland, is there any member of the jury panel related by
12 blood or marriage, have a close personal relationship,
13 business relationship, social relationship or any other type
14 of relationship with any of these potential witnesses? If so,
15 please stand.

16 (No response.)

17 THE COURT: All right, now, the attorney for the State
18 in this case is Lauree Richardson, an Assistant Solicitor with
19 the Fifteenth Circuit Solicitor's Office. The Defendant's
20 attorney is Ed Chrisco, an attorney with the Fifteenth - with
21 the Horry County Public Defender's Office. Is there any
22 member of the jury panel related by blood or marriage, have a
23 close personal relationship, business relationship, social
24 relationship or any other type of relationship with either of
25 these attorneys? If so, please stand.

Voir Dire

14

1 Yes, ma'am, your name and number?

2 MS. MANTE: Kylee Mante, 263.

3 THE COURT: All right, hold for one second.

4 All right, I'm sorry, Juror Number 263 and what were you
5 saying now?

6 MS. MANTE: I know one of the attorneys.

7 THE COURT: Okay, which attorney do you know?

8 MS. MANTE: Ed.

9 THE COURT: Ed Chrisco?

10 MS. MANTE: Yes.

11 THE COURT: All right, now, how do you know Mr.
12 Chrisco?

13 MS. MANTE: I used to be a server at one of - the
14 place that him and his wife always came in. So, I just ---

15 THE COURT: Okay, I mean, do you all socialize on a
16 regular basis or do you go to the same church or a member of
17 any ---

18 MS. MANTE No, no, just from where I used to work.

19 THE COURT: Okay, all right, and when do you feel is
20 the last time you saw Mr. Chrisco?

21 MS. MANTE: Probably a few months ago.

22 THE COURT: All right, would the relationship or
23 association that you have with Mr. Chrisco would it affect
24 your ability to give both the State and the Defendant in this
25 case a fair and impartial trial?

Voir Dire

15

1 MS. MANTE: Probably not.

2 THE COURT: Okay, and I understand your honesty in
3 saying probably not but I do have to ensure that whichever -
4 whoever is selected on this jury is not influenced by any
5 outside relationship or information or source of any kind;
6 okay? So, if you think that it would influence or could
7 possibly influence your ability to give both the State and the
8 Defendant a fair and impartial trial we need to know it.

9 MS. MANTE: Yeah, I would just prefer not to.

10 THE COURT: Well, and I understand you would prefer
11 not to be. I think everybody would prefer not to be ---

12 MS. MANTE: Well ---

13 THE COURT: And I'm kind of sensing from you is that
14 you would have a hard time giving the State ---

15 MS. MANTE: Yeah.

16 THE COURT: --- a fair trial in this case; is that
17 correct?

18 MS. MANTE: Yeah.

19 THE COURT: Okay, thank you very much, Ms. - is it
20 Mante?

21 MS. MANTE: Yes.

22 THE COURT: All right, thank you for bringing that to
23 our attention. I'll excuse you in this particular case but if
24 you would stay with us for just a second; okay?

25 MS. MANTE: Okay.

Voir Dire

16

1 THE COURT: Anyone else have any type of acquaintance
2 or relationship with any of these attorneys? If so, please
3 stand.

4 (No response.)

5 THE COURT: Has any member of the jury panel ever been
6 represented by either of these attorneys? If so, please
7 stand.

8 (No response.)

9 THE COURT: Has any member of the jury panel ever been
10 involved in any type of legal action in which either of these
11 attorneys represented another party to that action? If so,
12 please stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel who
15 either personally, has a close personal friend or family
16 member employed with the Fifteenth Circuit Solicitor's Office?
17 If so, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel
20 either personally, have a close family member or a close
21 personal friend employed with the Horry County Public
22 Defender's Office? If so, please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel formed or
25 expressed an opinion about any issue or matter involved in

Voir Dire

17

1 this case? If so, please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel,
4 either personally or have a close family member or close
5 personal friend that is employed with the Myrtle Beach Police
6 Department or the State Law Enforcement Division or the -
7 excuse me, Horry County Clerk of Court's Office? If so,
8 please stand.

9 (No response.)

10 THE COURT: Is there any member of the jury panel
11 aware of any bias or prejudice towards either the State of
12 South Carolina or the Defendant in this case? If so, please
13 stand.

14 Yes, ma'am, I'm sorry, your name and number?

15 MS. COLVARD: Melissa Colvard, Number 86, Darus Fowler,
16 he works for the Myrtle Beach Police Department I think.

17 THE COURT: All right, and is that a friend, a family
18 member or what?

19 MS. COLVARD: Cousin.

20 THE COURT: It's a cousin of yours, all right, and how
21 often do you see your cousin?

22 MS. COLVARD: Not very often.

23 THE COURT: Okay, would that relationship, is it -
24 he's not a witness in this case; is he?

25 MS. RICHARDSON: No, sir, Your Honor.

1 THE COURT: Okay, he's not a witness in this case; and
2 so, would his employment affect your ability to be fair and
3 impartial to both the State and the Defendant in this case?

4 MS. COLVARD: No.

5 THE COURT: All right, would you be able to disregard
6 his employment in its entirety and your association and
7 relationship to him in its entirety and base your decision in
8 this case exclusively on the testimony and evidence in this
9 case?

10 MS. COLVARD: I think so.

11 THE COURT: All right, and I understand you being able
12 to say, "I think so," but I have to be sure. If there's any
13 doubt you need to let me know.

14 MS. COLVARD: I'd rather not.

15 THE COURT: Well, and I understand you'd rather not,
16 but what I've got to do is find out if you're going to be
17 influenced by your cousin's employment in any way, shape or
18 form.

19 MS. COLVARD: No.

20 THE COURT: Okay, so, you'd be able to disregard his
21 employment in its entirety and your relationship to him in its
22 entirety and base your decision in this case exclusively on
23 the testimony and evidence in this case?

24 MS. COLVARD: Yes.

25 THE COURT: Okay, thank you very much for bringing

Voir Dire

19

1 that to our attention, and I'm sorry you were Juror Number?

2 MS. COLVARD: 86.

3 THE COURT: 86, Ms. Colvard, thank you.

4 All right, anyone else have a family member, close
5 personal friend or is personally employed with the Myrtle
6 Beach Police Department, State Law Enforcement Division or
7 Horry County Clerk of Court? If so, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel
10 aware of any bias or prejudice towards either the State of
11 South Carolina or the Defendant in this case? If so, please
12 stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel that
15 was a member of the Grand Jury that issued the indictment in
16 this case? If so, please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 is a member of or a contributor to any group which has its
20 primary concern the promotion of law enforcement or victims'
21 rights. Some of these organizations include but are not
22 limited to Mothers Against Drunk Drivers, Students Against
23 Drunk Drivers, Citizens Against Violent Crime or what's
24 commonly referred to as CAVC or Citizens Against Spousal
25 Abuse, often referred to as CASA or any similar organization?

Voir Dire

20

1 If you're a member of or a contributor to any such
2 organization, please stand.

3 Yes, ma'am, your name and number?

4 MS. BRAZELLE: Joy Brazelle, Number 47.

5 THE COURT: All right, hold for one second. All
6 right, Ms. Brazelle, are you a member of or a contributor to?

7 MS. BRAZELLE: Contributor to.

8 THE COURT: Which organization?

9 MS. BRAZELLE: CASA.

10 THE COURT: All right, would your association with
11 that organization affect your ability to be fair and impartial
12 to both the State and the Defendant in this case?

13 MS. BRAZELLE: No.

14 THE COURT: All right, would you be able to disregard
15 your association with that organization in its entirety and
16 base your decision in this case exclusively on the testimony
17 and evidence in this case?

18 MS. BRAZELLE: Yes.

19 THE COURT: Thank you for bringing that to our
20 attention, Ms. Brazelle. Anyone else a member of or a
21 contributor to any organization that has as its primary
22 function the promotion of law enforcement or victims' rights?
23 If so, please stand.

24 Yes, sir, your name and number?

25 MR. JESTER: Roger Jester, 218.

Voir Dire

21

1 THE COURT: All right, Mr. Jester, what organization?

2 MR. JESTER: Well, I don't know if this applies but I
3 just take it to your translation, I'm president of the
4 Colonial Charters Community Homeowners Association and we
5 employ a member of the Horry County Police Department to
6 patrol our streets four hours a week.

7 THE COURT: Okay, are you acquainted with any of the
8 officers that you all employ on a, on any other type of basis?

9 MR. JESTER: We only have the one officer, Corporal
10 Justin Jones is the one that takes care of us all the time.

11 THE COURT: Okay, and he's not involved in this case;
12 is he?

13 MS. RICHARDSON: No, sir, Your Honor.

14 THE COURT: All right, would that association affect
15 your ability to be fair and impartial to both the State and
16 the Defendant in this case?

17 MR. JESTER: No, sir.

18 THE COURT: Would you be able to disregard your
19 association with that officer in its entirety and base your
20 decision in this case exclusively on the testimony and
21 evidence in this case?

22 MR. JESTER: Yes, sir.

23 THE COURT: All right, thank you very much for
24 bringing that to our attention.

25 THE COURT: Does any member of the jury panel know of

1 any reason whatsoever why he or she should not serve as a
2 juror in this case, with particular emphasis being placed on
3 your ability to be fair and impartial to both the State and
4 the Defendant? If so, please stand.

5 (No response.)

6 THE COURT: Any additional questions from the State?

7 MS. RICHARDSON: Nothing from the State.

8 THE COURT: Any from the Defense?

9 MR. CHRISCO: No, Your Honor.

10 THE COURT: All right, all right, ladies and
11 gentlemen, in the General Sessions setting what will happen is
12 your names have been fed into a computer and generated on a
13 list at random and the Clerk of Court will go down that list
14 and call names out one at a time. If your name is called if
15 you would please come forward, stand in front of the attorneys
16 and face the attorneys. Now, the State's attorney's going to
17 look at you and look at her notes and then decide if she wants
18 you as a juror and then if she does then the Defense attorney
19 is going to look at his notes and look at you a while and
20 decide if he wants you as a juror and we go through this
21 process until we have selected 12 jurors. We're going to
22 select 12 jurors and two alternates. So, if your - so, if
23 your named is called please come forward and bring with you
24 any coats, any pocketbooks, whatever you might have in your
25 possession.

Jury Selection

23

1 Now, if you are struck as a potential juror by either the
2 State or the Defendant in this case please do not take it
3 personally. It just means for whatever reason you do not fit
4 the profile that the State or the Defense is looking for in
5 this particular case. I've often known jurors to get picked
6 in one case and struck in the next by the same side and struck
7 in one case and accepted the next time by the same side. So,
8 there's really no rhyme or reason to it. So, please don't
9 take it personally but please listen up and as your name is
10 called please come forward and bring with you anything that
11 you might have with you. All right.

12 THE CLERK: Juror Number 156, Andrew Gorman, if you'll
13 just come stand by the podium and turn around and face the
14 back of the courtroom. What say the State?

15 MS. RICHARDSON: Please, please present the juror.

16 THE CLERK: Defense?

17 MR. CHRISCO: Please excuse the juror in the trial of
18 this case.

19 THE CLERK: You're excused from this particular case.
20 You can go back and have a seat.

21 158, Timothy Graham. What say the State?

22 MS. RICHARDSON: Please present the juror.

23 THE CLERK: Defense?

24 MR. CHRISCO: Seat the juror.

25 THE CLERK: Please be seated in the jury box.

Jury Selection

24

1 389, Eva Thompkins. What say the State?
2 MS. RICHARDSON: Please present the juror.
3 THE CLERK: Defense?
4 MR. CHRISCO: Seat the juror.
5 THE CLERK: Please be seated in the jury box.
6 443, Lauren Woodbury.
7 MR. CHRISCO: What was that number?
8 THE CLERK: 443. What say the State?
9 MS. RICHARDSON: Please present the juror.
10 THE CLERK: Defense?
11 MR. CHRISCO: Seat the juror.
12 THE CLERK: Please be seated in the jury box.
13 105, Nathan Dewitt. What say the State?
14 MS. RICHARDSON: Please present the juror.
15 THE CLERK: Defense?
16 MR. CHRISCO: Seat the juror.
17 THE CLERK: Please be seated in the jury box.
18 137, Robert Froelich. What say the State?
19 MS. RICHARDSON: Please present the juror.
20 THE CLERK: Defense?
21 MR. CHRISCO: Please excuse the juror in the trial of
22 this case.
23 THE CLERK: You're excused from this particular case.
24 25, Nancy Beaty. What say the State?
25 MS. RICHARDSON: Please present the juror.

Jury Selection

25

1 THE CLERK: Defense?
2 MR. CHRISCO: Seat the juror.
3 THE CLERK: Please be seated in the jury box.
4 67, Catherine Carland. What say the State?
5 MS. RICHARDSON: Please present the juror.
6 THE CLERK: Defense?
7 MR. CHRISCO: Please excuse the juror in the trial of
8 this case.
9 THE CLERK: You're excused from this particular case.
10 Number 1, Michael Abbenante.
11 MR. CHRISCO: What was that number?
12 THE CLERK: Number 1.
13 What say the State?
14 MS. RICHARDSON: Please excuse this juror.
15 THE CLERK: You're excused from this particular case.
16 357, John Sketers. What say the State?
17 MS. RICHARDSON: Please present the juror.
18 THE CLERK: Defense?
19 MR. CHRISCO: Seat the juror.
20 THE CLERK: Please be seated in the jury box.
21 36, Deborah Billett. What say the State?
22 MS. RICHARDSON: Please present the juror.
23 THE CLERK: Defense?
24 MR. CHRISCO: Seat the juror.
25 THE CLERK: Please be seated in the jury box.

Jury Selection

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1 218, Roger Jester. What say the State?

2 MS. RICHARDSON: Please present the juror.

3 THE CLERK: Defense?

4 MR. CHRISCO: Please excuse the juror in the trial of

5 this case.

6 THE CLERK: You're excused from this particular case.

7 385, Johnny Tharpe.

8 MR. CHRISCO: What was that number?

9 THE CLERK: 385. What say the State?

10 MS. RICHARDSON: Please excuse this particular juror.

11 THE CLERK: You're excused from this particular case.

12 138, Emily Frye. What say the State?

13 MS. RICHARDSON: Please present the juror.

14 THE CLERK: Defense?

15 MR. CHRISCO: Please excuse the juror in the trial of

16 this case.

17 THE CLERK: You're excused from this particular case.

18 216, Jeffrey Jensen. What say the State?

19 MS. RICHARDSON: Please present the juror.

20 THE CLERK: Defense?

21 MR. CHRISCO: Seat the juror.

22 THE CLERK: Please be seated in the jury box.

23 80, Charles Chickering. What say the State?

24 MS. RICHARDSON: Please present the juror.

25 THE CLERK: Defense?

Jury Selection

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1 MR. CHRISCO: Seat the juror.

2 THE CLERK: Please be seated in the jury box.

3 378, Patience Strickland. What say the State?

4 MS. RICHARDSON: Please excuse this particular juror.

5 THE CLERK: You're excused from this particular case.

6 48, Ingrid Brewer. What say the State?

7 MS. RICHARDSON: Please present the juror.

8 THE CLERK: Defense?

9 MR. CHRISCO: Please seat the juror.

10 THE CLERK: Please be seated in the jury box.

11 423, David Warden. What say the State?

12 MS. RICHARDSON: Please present the juror.

13 THE CLERK: Defense?

14 MR. CHRISCO: Please excuse the juror in the trial of

15 this case.

16 THE CLERK: You're excused from this particular case.

17 277, Paul Mellen. What say the State?

18 MS. RICHARDSON: Please present the juror.

19 THE CLERK: Defense?

20 MR. CHRISCO: May I inquire as to his occupation?

21 THE COURT: Where do you work?

22 MR. MELLEN: I'm a financial advisor.

23 MR. CHRISCO: Seat the juror.

24 THE CLERK: Please be seated in the jury box.

25 86, Melissa Colvard. What say the State?

Jury Selection

28

1 MS. RICHARDSON: Please present the juror.

2 THE CLERK: Defense?

3 MR. CHRISCO: Please excuse the juror in the trial of

4 this case.

5 THE CLERK: You're excused from this particular case.

6 140, Deborah Furness.

7 MR. CHRISCO: What number was that?

8 THE CLERK: 140. What say the State?

9 MS. RICHARDSON: Please present the juror.

10 THE CLERK: Defense?

11 MR. CHRISCO: Please excuse the juror in the trial of

12 this case.

13 THE CLERK: You're excused from this particular case.

14 308, Dana Painter. What say the State?

15 MS. RICHARDSON: Please present the juror.

16 THE CLERK: Defense?

17 MR. CHRISCO: Seat the juror.

18 THE CLERK: Please be seated in the jury box.

19 THE COURT: All right, we'll select two alternates.

20 The first - for each alternate the State will get one strike

21 and the Defense will get two.

22 THE CLERK: 78, Brandon Chavez. What say the State?

23 MS. RICHARDSON: Please excuse this particular juror.

24 THE CLERK: You're excused from this particular case.

25 171, Charla Hall. What say the State?

Jury Selection

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1 MS. RICHARDSON: Please present.
2 THE CLERK: Defense?
3 MR. CHRISCO: Seat the juror.
4 THE CLERK: Please be seated in the jury box.
5 THE COURT: All right.
6 THE CLERK: 133, Charles Foxworth, Jr.
7 THE COURT: All right, the State gets one strike, the
8 Defense gets two.
9 THE CLERK: What say the State?
10 MS. RICHARDSON: Please present the juror.
11 THE CLERK: Defense?
12 MR. CHRISCO: Please excuse the juror in the trial of
13 this case.
14 THE CLERK: You're excused from this particular case.
15 314, Judith Peirce. What say the State?
16 MS. RICHARDSON: Please present the juror.
17 THE CLERK: Defense?
18 MR. CHRISCO: Please excuse the juror in the trial of
19 this case.
20 THE CLERK: You're excused from this particular case.
21 391, William Thurlow, Jr. What say the State?
22 MS. RICHARDSON: Please excuse this particular juror.
23 THE CLERK: You're excused from this particular case.
24 178, Emily Hardee. What say the State?
25 MS. RICHARDSON: Please present the juror.

Jury Selection

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1 THE CLERK: Defense?

2 MR. CHRISCO: Seat the juror.

3 THE CLERK: Please be seated in the jury box.

4 THE COURT: All right, ladies and gentlemen, you will
5 be the jury that will preside in this first case. I'm going
6 to excuse you back to the jury room for just a few minutes
7 while I excuse the remainder of the jury panel. It'll also
8 give you - get to see the jury room and where you'll be when
9 we recess during the trial of this case.

10 Now, while you're in the jury room if I could get you to
11 do me one favor and that would be to select a foreperson for
12 this jury. Now, I understand that you don't know each other.
13 Some of you may know each other. I don't know, and if you're
14 unable to select a foreperson don't worry about it. I can
15 appoint someone to serve as foreperson. Many judges appoint
16 their own foreperson. I like to give the jury the opportunity
17 to select one on their own if they're able to do so. If you
18 can't don't worry about it. If you can just write the
19 foreperson's name on a sheet of paper with the jury number and
20 give it to the bailiff and we'll bring you back into the court
21 at that time.

22 Now, the foreperson has no more influence, no more
23 authority or no more importance than any other juror. The
24 sole function of the foreperson is to act as a liaison between
25 the Court and the jury. If the jury has a question the

Jury Selection

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1 foreperson lets the Court know. If the jury has a need the
2 foreperson lets the Court know. When it's time to deliberate
3 the foreperson will preside over the deliberations, but other
4 than that the foreperson has no more authority or influence or
5 importance than any other juror. The only restriction would
6 be at this point in time, Ms. Hall and Ms. Hardee, you could
7 not serve as foreperson because you are alternates at this
8 point in time and not part of the jury. So, other than the
9 two of you anyone else can serve as foreperson.

10 Now, when you come back into the jury room [sic] if the
11 foreperson will always occupy this second seat on the front
12 row closest to the witness stand. The two alternates will
13 always occupy your alternate seats where you now sit and the
14 rest of you are at liberty to sit in whichever seat you like.
15 If you want to sit in the same seat throughout the trial of
16 the case you can do that. If you want to alternate seats
17 during the trial of the case you can do that. The only
18 restriction is that the alternates always maintain their seats
19 and the foreperson always sits in that second seat on the
20 front row.

21 I'm going to excuse you back to the jury room for just a
22 few minutes, see if you can select a foreperson and we'll
23 bring you back out in just a second. Thank you very much.
24 Everybody else please remain seated while the jury is excused.

25 (Whereupon, the following takes place outside the

Jury Selection

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1 presence of the jury.)

2 THE COURT: All right, any challenges to the selection
3 or composition of the jury by the State?

4 MS. RICHARDSON: Nothing from the State, Your Honor.

5 THE COURT: Any from the Defense?

6 MR. CHRISCO: No, Your Honor.

7 THE COURT: All right.

8 (Remaining jury panel given call in-instructions and
9 excused by Court.)

10 THE COURT: All right, let's take about a 10-minute
11 break, let the jury try to select a foreperson, then we'll
12 come back in and I'll do the opening, we'll swear the jury,
13 I'll do the preliminary charge, do opening statements. Are we
14 going to get into any witnesses today? Do you expect to?

15 MS. RICHARDSON: Yes, sir, I would like to get through
16 three witnesses today. They'll all be relatively quickly but
17 all of them - one has a plane at 4:50 that we need to get them
18 out for and then the other two are traveling back today so
19 they can make work tomorrow.

20 THE COURT: All right, let's give the jury about 10
21 minutes to select a foreperson. If they can't I'll appoint
22 someone then, okay? But let's take about a 10-minute break;
23 okay?

24 MS. RICHARDSON: Thank you, Your Honor.

25 THE COURT: All right, anything from the State before

Jury Selection

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1 we break?

2 MS. RICHARDSON: Nothing from the State.

3 THE COURT: Anything from the Defense?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: All right, let's take about a 10-minute
6 recess.

7 MS. RICHARDSON: Thank you, Your Honor.

8 OFF THE RECORD

9 (On the record. The following takes place outside the
10 presence of the jury.)

11 THE COURT: All right, the jury sent out a note for
12 Paul Mellen was selected as the foreperson. Let's see, that
13 would be Juror Number 277. All right, they just wrote Paul
14 Mellen on a sheet of paper. I'm going to mark that as Court's
15 Exhibit Number One.

16 (Court's Exhibit Number One [Jury Foreperson Selection]
17 appropriately marked.)

18 THE COURT: All right, the jury also asked the bailiff
19 if they could take notes. I'm going to allow them to take
20 notes. I'll give them during my preliminary instructions the
21 standard instructions I usually give them on note-taking;
22 okay? Anything from the State before we bring the jury in?

23 MS. RICHARDSON: Nothing from the State, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. CHRISCO: No, Your Honor.

Opening Instructions by Court

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1 THE COURT: All right, let's bring the jury in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: All right, ladies and gentlemen, welcome
5 back. I understand, Mr. Paul Mellen, you've been selected as
6 foreperson for the jury. I thank you for serving in that
7 capacity. If you'd always occupy the seat where you now sit.
8 As I told our alternates, Ms. Hall and Ms. Hardee, if you'd
9 always occupy your seats and then the rest of you are at
10 liberty to sit in whichever seat you'd like.

11 Now, we're getting ready to start the case of the State
12 of South Carolina versus James Anderson and just like jury
13 qualifications and voir dire jurors are constantly taking
14 oaths and this is no different. So, I'll need everyone to
15 please stand and raise your right hand while the Clerk of
16 Court administers the oath for you to serve as jurors in this
17 particular case.

18 (Whereupon, jury is sworn by the Clerk.)

19 THE COURT: All right, thank you. Is there any member
20 of the jury who did not respond to the oath by saying, "I do?"
21 If so, please stand.

22 (No response.)

23 THE COURT: All right, good. All right, ladies and
24 gentlemen, we're getting ready to start the trial of the case
25 of the State of South Carolina versus James Anderson, but

Opening Instructions by Court

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1 before we do so I want to tell you what you can expect in this
2 trial. This trial will probably be different from what you're
3 accustomed to seeing on TV and in the movies and reading in
4 books. Those are usually full of a lot of excitement and
5 action and anxiety and things of that nature, and while that
6 might be the case in this trial it probably won't. The
7 primary function of this trial is a search for the truth and
8 that is often a slow and deliberate and repetitive process,
9 the exact opposite of what you're accustomed to in the movies
10 and reading books and things of that nature, but I do want to
11 thank you for your service and I do hope you find this trial
12 educational and entertaining to you to assist you as you serve
13 as jurors.

14 The attorneys appearing before you are advocates for the
15 parties they represent but first and foremost they're officers
16 of the court. They're sworn to uphold the integrity and
17 fairness of our judicial system and to help you in a search
18 for the truth. You should expect them to be professional,
19 competent and ethical in the representation of their clients'
20 interests and they will expect you to be the same as you
21 perform your duty as jurors. Now, what I now say is intended
22 to serve as an introduction to the trial of this case. These
23 remarks are not a charge on the law in the case. I'll
24 instruct you on the law applicable to this case at the end of
25 the trial before you retire to consider your verdict. This is

1 merely an explanation of the procedure that we'll follow in
2 this trial so that you can better understand what may be
3 happening.

4 Now, the Defendant is charged by an indictment, and in
5 this case the Defendant is charged by this indictment with the
6 crime of burglary in the first degree, the elements of which I
7 will explain to you at a later time. The indictment is simply
8 the charge by which this case is brought into court and it is
9 not in any sense evidence of the allegations it contains. The
10 Defendant has pled not guilty to this indictment. The State,
11 therefore, has the burden of proving each of the elements of
12 the indictment beyond a reasonable doubt. It'll be your duty,
13 ladies and gentlemen, to decide whether or not the State has
14 met that burden. Your purpose as jurors is to find and
15 determine the facts. You are the sole judge of the facts. If
16 at anytime I make a comment regarding the facts you're to
17 disregard my comments. You are to determine the facts from
18 the testimony you hear and other evidence introduced in court.
19 It is up to you to determine the inferences which you feel may
20 properly be drawn from that evidence. It is especially
21 important that you perform your duty of determining the facts
22 diligently and conscientiously because ordinarily there is no
23 way to correct an erroneous determination of the facts by a
24 jury. On the other hand and with equal emphasis the same law
25 that makes you the judge of the facts makes me the judge of

Opening Instructions by Court

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1 the law. The law as given by the court is the only law that
2 you can consider. You must accept and follow the law even
3 though you may disagree with the law. Just as I cannot tell
4 you what the facts of this case are you cannot disagree with
5 me about the law to be applied in this case. Your duty as
6 jurors is to take the law as I give it to you and apply it to
7 the facts as you find those facts to be. After doing that you
8 will then render your verdict, a true and just verdict under
9 the solemn oath that you just took as jurors.

10 Now, until I advise you to begin your deliberations you
11 must not discuss this case with anyone including your fellow
12 jurors, your friends or family members or anyone involved in
13 the case. After the case is submitted to you you can then
14 only discuss it in the jury room with your fellow jurors. The
15 attorneys and the parties in this case have been advised that
16 they're not to talk to you at all. So, they are not being
17 rude to you. They're just following the instructions of the
18 court as well.

19 Now, during the trial you're not to read or listen to or
20 watch any news reports about this case if there are any. This
21 includes anything that may be in the newspapers or on the
22 Internet or the radio or the television. You must not
23 consider anything you may have heard or read about the case
24 outside of the courtroom, whether that be before or during the
25 trial of this case. It's important that you keep an open mind

1 and not decide any issue in the case until all of the evidence
2 has been presented to you, the parties have made their closing
3 arguments and I've instructed you on the law in the case. It
4 is your solemn responsibility to determine the guilt or
5 innocence of the Defendant and your verdict must be based
6 solely on the evidence as it is presented to you in this trial
7 and on the law as I instruct you during and at the close of
8 the trial.

9 Now, in just a moment the Solicitor will make what's
10 called an opening statement in which the Solicitor will
11 explain to you the issues in this case or at least what the
12 Solicitor thinks the issues in this case are. The attorney
13 for the Defendant may also make an opening statement although
14 he is not required to do so. What the attorneys tell you
15 during their opening statements is not evidence in this case.
16 It is only their contention as to what the issues are. The
17 evidence in this case will be presented to you by testimony
18 from sworn witnesses from the witness stand and by any
19 exhibits that may be introduced into evidence.

20 From time to time during the trial we will take breaks
21 and I'll instruct you when we take the breaks that you're not
22 to discuss the case at that time and I'm telling you now do
23 not discuss the case until I tell you it is time to deliberate
24 the case.

25 Now, in determining what the true facts are in this case

Opening Instructions by Court

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1 you must decide whether or not the testimony of a witness is
2 believable. It'll be my responsibility to rule as a matter of
3 law as to whether certain testimony is admissible at all or
4 not, but once testimony is admitted whether or not you believe
5 it is solely for you to determine. In deciding whether to
6 believe a witness you have the right to consider the interest
7 of any witness, the bias of any witness, the prejudice of any
8 witness, the opportunity for the witness to have seen the
9 matters and things about which the witness may testify and the
10 way the witness acts on the witness stand. You have the right
11 to consider anything that is in the record that will help you
12 evaluate the testimony of the witness. That means that it is
13 your duty to pay close attention to the witnesses, to observe
14 the witnesses, to listen to the witnesses and to pay close
15 attention to the attorneys and to the court. Don't let your
16 thoughts wander, but give strict attention to the testimony in
17 this case so at the end of all of the testimony after the
18 arguments of counsel and the charge on the law by the court
19 you will then be in a position to determine what the true
20 facts are and to apply the law to those facts and thus render
21 a true and just verdict.

22 All right, now, I remind you that if you have any cell
23 phones or pager devices or anything of that nature you're to
24 turn them off completely when you're in the courtroom. I
25 understand - have we given them pads - yeah, okay, I

Opening Instructions by Court

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1 understand that some of you wanted to take notes and you are
2 entitled to take notes in this case if you would like to.
3 However, I need to give you some instructions on note-taking.
4 Number one, note-taking is to refresh your memory and it is
5 personal to each individual juror. So, you're not to share
6 your notes with any other person. Your note pad you should
7 write your name on the front of it and make sure that every
8 time you come into the courtroom you get your own notepad.
9 You're not to share it with anyone and you're not to take it
10 outside of the courtroom. Also, don't try to take down
11 everything that is said or everything that is testified to.
12 That - you'll - don't get so caught up in note-taking that you
13 forget to listen or are unable to listen to the witnesses that
14 testify. When you hear something that you think is important
15 and you want to recall that specific testimony or that
16 specific fact just jot it down quickly in your notes. Now,
17 when I charge you on the law of the case I'll instruct you
18 that just because a person takes a note does not mean that
19 that person got it correctly. Some people are better note-
20 takers than others. Some people are better listeners than
21 others. So, just because a person takes a note does not
22 necessarily mean that that person is more correct in recalling
23 the testimony than a person who did not take notes. So, note-
24 taking is simply for your own personal recollection to remind
25 you of things that you think are important. Okay? All right,

Opening by State

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1 does the State wish to make or first does the State have any
2 challenges to the opening charges by the Court?

3 MS. RICHARDSON: No, Your Honor.

4 THE COURT: Does the Defense?

5 MR. CHRISCO: No, Your Honor.

6 THE COURT: All right, ladies and gentlemen, at this
7 time the attorneys will make their opening statements. As I
8 instructed you these statements are not evidence in the case.
9 It is simply the attorney's contention as to what they feel
10 the issues in this case are. All right, Ms. Richardson.

11 MS. RICHARDSON: Thank you, Your Honor. May it
12 please the Court?

13 THE COURT: Yes, ma'am.

14 MS. RICHARDSON: July 4th weekend, July 4th week,
15 Myrtle Beach is probably the busiest tourist time in Myrtle
16 Beach. People are coming in with their families. They're
17 doing the family vacations and that's exactly what the victims
18 in this case were here to do. They had been coming to Myrtle
19 Beach several times. On July 4th week this year, well, 2009,
20 they did the same thing, came in for a family vacation.

21 This family vacation was a little different than family
22 vacations prior. This time their hotel was broken into. On
23 or about July 8th, 2009, the victims in this case, Ms.
24 Christian Vickery, who you will hear from, Mr. Charles Allen
25 Smith, who you will also hear from, had went to sleep in their

1 hotel room. It was a suite, two bedrooms and the living room
2 and you'll also hear from Joe E. . He was on the couch.
3 Ms. Christian Vickery and Mr. Allen Smith, they were asleep in
4 the front bedroom. She's going to tell you that she went to
5 sleep. When she wakes up, the door's open. She thinks that's
6 a little funny because she personally remembers closing that
7 door. She gets up, she closes the door, she goes lay back in
8 bed. Then she sees the window's open. She's says, "Hum,
9 that's a little funny, too, because I remember closing that
10 window." She wakes her boyfriend up, says, "Something's
11 wrong, something's going on." When she goes, I skipped a
12 part, when she goes to close the window she sees a male
13 walking out of the hotel room. She says, "Now, I know he
14 doesn't belong in this room." She wakes her boyfriend up, her
15 fiancé, says, "Something's going on. I just saw this guy walk
16 out." He goes to put on his pants because he's going to go
17 look for the guy. When he goes to put his pants on his pants
18 are missing. "Hum," in his pants was his wallet.

19 Now, we don't know what else he would have taken because
20 during his quest he encountered Mr. Joe E. . Mr. Joe
21 E. was asleep in the living area. He was on the couch. He
22 wasn't asleep. He was on the couch. He was texting some
23 friends. His phone went off and startled the Defendant in
24 this case. He sees him. The Defendant turns and runs out.
25 The police are called. Officer McClelland responds. During

Opening by State

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1 his crime scene, he's processing the crime scene, he lifts a
2 fingerprint. Based upon where this fingerprint is located,
3 the direction it's turned, it's obvious the fingerprint came
4 from the outside. It's on that window ledge. You'll get to
5 hear all about that. This fingerprint is run through AFIS.
6 You'll get to hear about AFIS, what exactly AFIS is. He gets
7 a hit on this Defendant, Mr. James Anderson. He does a visual
8 comparison of those fingerprints, determines it is Mr.
9 Anderson's fingerprint.

10 Now, burglary first degree, you're looking for several
11 different things. It's a breaking and entering. A common
12 misconception is that something has to be broken. It doesn't.
13 You don't have to break a window, you don't have to break down
14 a door. It's just breaking the surface, entering. If you
15 just stick your hand in and take it back out you've broke,
16 you've broke that plank. It's the breaking and entering the
17 dwelling of another. Okay, this is not a dwelling as in we're
18 used to it as in a house. This is a hotel room, which case
19 law says is considered a dwelling for burglary first purposes,
20 and then for burglary first degree you're looking for some
21 sort of elevating circumstance. There's different levels of
22 burglary. You've got burglary third, burglary second,
23 burglary first. At issue in this case is burglary first
24 degree. That's what we've alleged. That's what we're going
25 to prove to you. Burglary first you're looking for in the

Opening by State

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1 nighttime. Also, they could be armed with some sort of deadly
2 weapon. We're not alleging that, and another way is our
3 legislative has determined that if you have two prior
4 burglaries, if you commit an additional burglary that's a
5 burglary in the first degree. You'll also get to hear about
6 that. So, we've alleged two, in the nighttime and two prior
7 burglaries.

8 Now, let me just be up front right with you, we are not
9 showing you or telling you that he has two prior burglaries
10 for you to convict this man of this burglary. We are showing
11 you that and telling you that, you will hear about that only
12 for that elevating circumstance, only to get us to burglary
13 first degree. Okay, the Judge will instruct you specifically
14 on that at the end of the case.

15 What a better time to commit a crime, you've got tourists
16 here vacationing. You're in and out real quick. You get his
17 wallet. You get his ID. You get their credit cards. You get
18 their money and you're gone, and you hope they don't come
19 back, but they did come back and they're here today and
20 they're here for justice. Thank you for your time and your
21 attention in this matter.

22 THE COURT: Mr. Chrisco, does the Defense wish to make
23 an opening statement?

24 MR. CHRISCO: May it please the Court?

25 THE COURT: Yes, sir.

Opening by Defense

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1 MR. CHRISCO: You're sitting here because you were
2 chosen to hear the facts in this case. When you got here to
3 the courthouse today you have all the common sense from the
4 time that you can remember until present and that's what we
5 ask you to use is to use that common sense and common
6 experiences that you've had over the years to listen to these
7 witnesses as they testify. You'll be instructed later by the
8 Court on what the law is, and you'll take the facts you heard
9 and you will determine what those facts are and then you'll
10 apply them to the law which the Court gives them to you. The
11 Judge that sits up here judges the law. You are the judges of
12 what the facts are and you'll listen to each one of the
13 witnesses as they get on the stand. They'll take an oath and
14 as the Judge has instructed you earlier don't got any biases,
15 prejudices, you'll determine what you think, and you can
16 believe everything that a witness says, you cannot believe
17 anything at all or somewhere in the middle. That's up to you
18 to decide, but as you sit here and you listen, please, please,
19 listen very carefully to what's being said, what's not being
20 said and then add up in your own mind. You've got 12 sets of
21 eyes here, well, more than that because you've got the two,
22 but when you get back there to deliberate this case there'll
23 be 12 sets of eyes, 12 sets of ears. You'll have people from
24 different walks of life, come different parts of the country
25 but you'll sit back there and you will determine what you

1 think the facts are and that's all Mr. Anderson asks you to do
2 is to listen very intently because when it's over you'll make
3 that decision.

4 Now, the Solicitor here, that's - she represents the
5 State of South Carolina. It's their job, it's their burden to
6 prove every single element of the case. Mr. Anderson doesn't
7 have to prove anything. He doesn't have to prove he's
8 innocent. The State has to prove that he is, in fact, guilty.
9 That's the way it's been for 220 some years. Listen to what
10 the State has to put up and listen to what they're having to
11 depend on here and when we're through we'll both come over and
12 tell you what you heard and we'll both spin it whatever way.
13 That's the reason it's very important that you listen so that
14 you know what the facts are. Thank you.

15 THE COURT: All right, the State can call its first
16 witness.

17 MS. RICHARDSON: Thank you, Your Honor. The State
18 would call Mr. Joe E.

19 THE COURT: All right.

20 Whereupon, Joe E. was called to the stand,
21 duly sworn by the clerk and testified as follows:

22 THE CLERK: Thank you. Please be seated. Please
23 state your full name and spell your last name.

24 MR. Joe E.: Including middle, including my middle name
25 or just ---

Joe E.

- Direct by State

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1 THE CLERK: Yeah, just state your full name and spell
2 your last name.

3 MR. Joe E.: Okay, all right, my name is Joe E.

4 [REDACTED] [REDACTED]

5 THE COURT: All right, Ms. Richardson.

6 MS. RICHARDSON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. RICHARDSON:

9 Q Mr. Joe E., how old are you?

10 A I am 17.

11 Q You're 17. Okay, where are you from?

12 A I'm originally from Anderson, South Carolina.

13 Q Okay, and you understand the difference between right and
14 wrong?

15 A Yes, I do.

16 Q And a truth and a lie?

17 A Yes, ma'am.

18 Q Okay, did you have an occasion to visit Myrtle Beach on
19 or about July 8th, 2009?

20 A We were just visiting as a family like as a vacation.

21 Q Okay, who was with you?

22 A My mother, her fiancé at the time, the other, Allen and
23 Christian and my little brother and Christian's sister.

24 Q Okay, where were you sleeping?

25 A I was on the couch in the living room.

Joe E.

- Direct by State

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1 Q And specifically on or about July 8th tell us what
2 happened.

3 A Are you asking through the whole day or just at that
4 moment when I seen the ---

5 Q You can tell us what you did. What did you do that day?

6 A Okay, that day it was, you know, any normal day at the
7 beach. We went to the beach, swam in the ocean, went back to
8 the pool, stayed there for a little while. We ate supper and
9 then we all separated to go to sleep.

10 Q Okay, and what happened while you were asleep?

11 A Well, I was laying there texting some friends on the
12 couch when I seen a dark male come through the area of -
13 beside the kitchen towards where I was, and when I seen the
14 man like I reacted. So, I got off the couch and I'm guessing
15 either that or the phone light startled him and he turned and
16 ran out the door.

17 Q Okay, I'm going to show you a couple of pictures, see if
18 you can identify them for me. I'm going to hand you what's
19 been marked as State's Exhibit Two and what is that?

20 A That is the kitchen area of which I seen the Defendant
21 come into the area which I was sleeping or laying on the
22 couch.

23 Q Okay, I'm going to show you another exhibit, State's
24 Exhibit Three. See if you can tell me what that is.

25 A Okay, this is the couch that I was laying on whenever I

Joe E.

- Direct by State

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1 | seen the man come into the area.

2 | Q , Okay.

3 | MS. RICHARDSON: The State would ask to enter both of
4 | these.

5 | THE COURT: Any objection?

6 | MR. CHRISCO: No objection to the photographs, Your
7 | Honor.

8 | THE COURT: All right, State's Exhibit Number Two and
9 | State's Exhibit Number Three are admitted into evidence
10 | without objection.

11 | (Whereupon, State's Exhibit Number Two and Three
12 | [Photographs] entered into evidence and appropriately marked.)

13 | BY MS. RICHARDSON:

14 | Q Okay, so, hold that picture up for me and now where were
15 | you when - where was Mr. Anderson?

16 | A He was in this area.

17 | Q Okay, and where were you?

18 | A I was over here. It's not really shown too well, but I
19 | was like back behind this area.

20 | Q And is that where you were?

21 | A This right here is where I were, was at the time.

22 | Q Okay, thank you. Now, Joe, tell us exactly what you saw.

23 | A Okay, I seen a average dark male walk from the area of
24 | the door and their room, that he came back and I seen him come
25 | through the kitchen archway, came through here and I was

Joe E. - Direct by State

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1 laying there on the couch texting friends and I seen - when I
2 seen him I got off of the couch and then something startled
3 him, either me getting up or the phone light and he turned and
4 ran out of the room.

5 Q Okay, now, how tall is he?

6 A Just a little bit shorter than I was at the time.

7 Q Okay, and how tall are you?

8 A I am six foot.

9 Q Okay, would you say you were six foot two years ago?

10 A I haven't grown much since then. So, yes, I would.

11 Q Okay, so, he was shorter than you?

12 A Yes.

13 Q Okay, and now, when you say dark male what do you mean?

14 A Darker skinned, African-American with dark hair.

15 Q Okay, where were, where was your mom and her boyfriend at
16 that time?

17 A The way the suite was set up they had the first room
18 beside the front door and then the second room beside that
19 room and they were in the room beside the room that was broken
20 into first.

21 Q Okay, what were they doing at the time?

22 A They were asleep at the time.

23 Q What did you do after you observed the Defendant leave
24 the hotel room?

25 A Okay, after he left the hotel room we - I went into my

Joe E.

- Cross by Defense

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1 parents' room to make sure they were up and then I noticed
2 that Christian and Allen was looking for his shorts and after
3 that we went to and looked through the stairs to see if he
4 was, if he had hid in there anywhere and then we went to the
5 front desk to report it.

6 Q Okay, okay.

7 MS. RICHARDSON: Nothing further at this time.

8 THE COURT: All right, cross examination.

9 MR. CHRISCO: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. CHRISCO:

12 Q Is that the person that was in your room?

13 A Looks about the same height and the ---

14 Q Is that the same person that was in the room?

15 A Yes, sir.

16 Q No doubt in your mind?

17 A No doubt.

18 Q No doubt whatsoever.

19 A No doubt, sir.

20 Q You mentioned a while ago that he had dark hair.

21 A As in dark facial hair at the time. I didn't notice the
22 top of the head. He had dark facial hair.

23 Q You didn't tell the police at that time that you could
24 recognize him.

25 A At the time I said that I - I said exactly what I just

Joe E.

- Cross by Defense

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1 said.

2 Q You didn't tell the police that you could recognize him.

3 They didn't show you pictures; did they?

4 A No, sir.

5 Q They didn't ask you to draw any sketch or anything?

6 A No, sir.

7 Q In fact, the only thing you said at the time was, "he was
8 a little bit shorter than me"; is that not correct?

9 A That's correct.

10 Q But today you're saying that it was, in fact, him, no
11 doubt in your mind.

12 A Yes, sir.

13 Q You said you were on the couch. How far away from you
14 was this man?

15 A At the closest five feet.

16 Q And what were the lighting conditions there?

17 A There was a hall light that was still on so I could make
18 out the figure and notice part of the face.

19 Q And you had been texting?

20 A Yes.

21 Q Big screen, little screen, what kind of ---

22 A Medium sized screen.

23 Q Bright light, dim light?

24 A It was dim because that's what I like to keep it on to
25 save battery, but yes, it was dim.

Joe E.

- Cross by Defense

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1 Q Various tones of light?

2 A Yes, sir.

3 Q You said you first noticed him coming from where?

4 A Okay, the room set ups, it was the front door and then
5 Allen and Christian's room. I noticed him coming from that
6 area. I wasn't sure whether it was the first, front door or
7 theirs at the time but I noticed that it was from that hall
8 leading from there to where I was on the couch. He was beside
9 the kitchen.

10 Q And where did he go from there?

11 A After he seen me he turned and ran out the front door
12 which was straight back down the hall that I seen him came
13 from, come from.

14 Q Now, how is the doors situated in that hotel room?

15 A Okay, the front door, it went from the front door to a
16 maybe five, six foot wall and then it had a door and then
17 maybe a foot gap and then the other door which led into the
18 other room and then on that wall was the gap in between, there
19 wasn't no, there was not a door between the kitchen. So,
20 there was just a gap and that's where the gap of the kitchen
21 was and then the living room.

22 Q Could you see the - both doors through the bedroom from
23 where you were?

24 A I could see one of them from where I was.

25 Q And which one could you see?

Joe E. - Cross by Defense

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- 1 A The door on which my parents were in.
- 2 Q And who was the person that got up and come out and told,
- 3 asked you if you had seen anything?
- 4 A It was Allen that came out at first.
- 5 Q So, this was out of a different room.
- 6 A Yes, it was out of a different room.
- 7 Q You went down, you said you looked?
- 8 A Yes, sir.
- 9 Q You reported it to security, how long had passed?
- 10 A Well, we had looked for about five to ten minutes and
- 11 after we had looked we went down and reported it.
- 12 Q Now, what time were you laying on the couch texting?
- 13 A I'm not sure exactly. It was within the timeframe of ten
- 14 to three in the morning.
- 15 Q What time was this?
- 16 A When I seen him?
- 17 Q Uh-huh.
- 18 A It was in the same timeframe. It was really dark
- 19 outside. That's all I remember of the time.
- 20 Q So, it was after two?
- 21 A I'm not sure.
- 22 Q Well, the police report said it was after two. Would
- 23 that be accurate?
- 24 A Well, I'm saying it would have to be accurate if that's
- 25 what it says. So, I would go by that.

Christian Vickery - Direct by State

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1 Q You had been laying there texting for four or more hours?
2 A Quite some time, yes, sir.
3 MR. CHRISCO: No further questions.
4 THE COURT: Redirect?
5 MS. RICHARDSON: Nothing from the State, Your Honor.
6 THE COURT: All right, you may step down.
7 MS. RICHARDSON: Your Honor, the State would request
8 that he be excused from his subpoena so he can make his
9 flight.
10 THE COURT: Any objection?
11 MR. CHRISCO: No objection.
12 THE COURT: All right, you're free to go. Thank you
13 very much.
14 MS. RICHARDSON: The State would call Ms. Christian
15 Vickery.
16 THE COURT: All right.
17 Whereupon, Christian Gail Vickery was called to the
18 stand, duly sworn by the clerk and testified as follows:
19 THE CLERK: If you'll state your full name and spell
20 your last name.
21 MS. VICKERY: Christian Gail Vickery, V-I-C-K-E-R-Y.
22 THE COURT: All right, Ms. Richardson.
23 MS. RICHARDSON: Thank you, Your Honor.
24 DIRECT EXAMINATION
25 BY MS. RICHARDSON:

- 1 Q Ms. Vickery, where are you from?
- 2 A Anderson, South Carolina.
- 3 Q How old are you?
- 4 A I am 22.
- 5 Q Have you had occasion to visit Myrtle Beach?
- 6 A Oh, yeah, vacationing every year.
- 7 Q And when is that, when every year?
- 8 A We go the July 4th week.
- 9 Q Okay.
- 10 A Usually that whole week, Sunday to Sunday.
- 11 Q Okay, did you have occasion to visit Myrtle Beach on or
- 12 about July 8th, 2009?
- 13 A Yes, vacationing.
- 14 Q Okay, what did you do that day, if you recall?
- 15 A I don't recall what I did during the day.
- 16 Q Okay, what if anything happened that night?
- 17 A That night we had went to go to sleep. Allen had laid
- 18 down. He was already asleep. I laid down in the bed and his
- 19 dad, we was there with his dad and his dad smokes. So, I
- 20 always shut the door so the smoke don't get into our room.
- 21 Well, I knew specifically I shut the door. So, I laid down
- 22 and I had just dozed off to sleep and I went to roll over and
- 23 the door was open. So, I was like, "Hum, that's weird," get
- 24 up to shut the door, when I shut our bedroom door the door to
- 25 the front of our room shuts. I was like, "Hum, that's weird."

Christian Vickery - Direct by State

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1 So, I walked over to the window to see who was going out the
2 front door, noticed that the window is wide open. I know I
3 never sleep with the window open. So, I looked out and that's
4 where I seen a black male. He was wearing a pink shirt and a
5 white hat. So, I shut the window. Then I opened the bedroom
6 door and that's when I seen Joe and he said that someone had
7 been in our room.

8 Q Okay, you can't tell me what other people tell you; okay,
9 only tell me what you saw and what you observed, what you
10 said.

11 A Okay, so, I went out and then I came back and I woke
12 Allen up and I said, "Somebody has been in our room." He
13 jumped up, went to go grab his shorts and they was not there.
14 So, he took off out the front door looking for who was in our
15 room and I went and used the phone and called the people at
16 the desk, front desk, security.

17 Q Okay, describe the person that you saw coming out of the
18 room to the best of your ability, out of the hotel suite.

19 A He kind of startled me. The only thing that I know was
20 he was wearing a pink shirt, a white hat and he was average
21 size man.

22 Q Okay, where was everybody else?

23 A Allen was sleeping in the bed with me. My sister was
24 sleeping on the cot beside our bed. Joe was on the couch and
25 then Travis and Allen's dad and his step-mom they were in

1 their own room.

2 Q Okay, what were they doing at the time?

3 A Everybody was asleep except for - well, I had just laid
4 down. Joe was still awake.

5 Q Do you remember what hotel you were staying at?

6 A Bluewater Resort.

7 Q Is that where you stay every time?

8 A Yes, ma'am.

9 Q What time of day was this? I know we're talking about
10 sleeping but what time of day?

11 A It was night, definitely night.

12 Q Approximately what time?

13 A I know it was after 11.

14 MS. RICHARDSON: The Court's indulgence just a moment.

15 THE COURT: All right.

16 BY MS. RICHARDSON:

17 Q No doubt in your mind that that window was shut when you
18 went to sleep.

19 A No doubt in my mind that window was shut.

20 Q And I'm sorry, I don't recall if you said it, what, what
21 was the physical description of the gentleman that you saw?

22 A He was average size male.

23 Q Okay, what, what color was his skin?

24 A Black, African-American.

25 Q Okay, any other distinguishing features that you

Christian Vickery - Cross by Defense

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1 remember?

2 A No, ma'am.

3 Q Okay.

4 MS. RICHARDSON: Nothing further from the State.

5 THE COURT: All right, cross examination?

6 MR. CHRISCO: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. CHRISCO:

9 Q You're from Anderson, South Carolina.

10 A Yes, sir.

11 Q When was the last time you had a Skins' Hot Dog?

12 A All the time.

13 Q Okay, what time did you get into the room that night?

14 A I'd say around ten o'clock.

15 Q What time did you go to bed?

16 A I don't recall what time it was I went to bed.

17 Q Now, were you asleep and awakened and see the door open
18 or ---

19 A Yeah, I had just dozed off. I wasn't into, you know,
20 deep sleep.

21 Q And what did you do when you saw the door open?

22 A I jumped up and went to go shut it. When I shut our
23 bedroom door the front door to the hotel room slammed shut.
24 So, I walked over there to see who - to look out the window to
25 see who was leaving out the front door and that's when I

1 noticed the window was open.

2 Q Now, describe what's outside that window.

3 A Outside the window was a wall, just a plain wall.

4 Q Was there a door to the wall or ---

5 A To the left there was a door. I think it was either a

6 trash shoot or a laundry shoot.

7 Q And the door that entered your room ---

8 A Uh-huh.

9 Q --- could you see it from that window?

10 A Uh-huh, oh, yeah, our window was here, the door was right

11 beside it.

12 Q The door was - when you say right beside it.

13 A Window, door.

14 Q You could see it from the window?

15 A Uh-huh.

16 REPORTER: Is that a yes?

17 A Yes.

18 Q So, when you look out that window you see the door to the

19 hotel room?

20 A The door would be here beside me on my, on my side

21 vision.

22 Q So, when you look out the window you can't see the door?

23 A Not straight, huh-uh, it's to the side.

24 Q How far to the side?

25 A I'd say like four feet.

Christian Vickery - Cross by Defense

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- 1 Q And when you looked out the window what did you see?
- 2 A I seen a man standing there coming out of our front door.
- 3 Q Now, you said that you heard the door slam?
- 4 A Uh-huh.
- 5 Q Then you ---
- 6 THE COURT: Excuse me, is that a yes? You need to
- 7 answer yes or no because the court reporter can't pick up ---
- 8 A Okay, yes.
- 9 THE COURT: --- or distinguish.
- 10 Q You said you heard the door slam; correct?
- 11 A Yes.
- 12 Q Then you said you saw him coming out the door.
- 13 A No, he was standing outside of the door.
- 14 Q So, you don't know if that's the same person that came
- 15 out the door.
- 16 A No, sir, he was standing at our door.
- 17 Q Was he looking back at the door, was he looking away?
- 18 How was he, how was he standing?
- 19 A I don't recall the way that he was standing. He just
- 20 startled me. So, I slammed the window shut.
- 21 Q Now, when you got there you said that you don't like the
- 22 windows closed. Did you close the window? Was the window
- 23 open at some point?
- 24 A No, the window was always closed.
- 25 Q So, you had nothing to do with the window ---

1 A. Huh-uh.

2 Q --- except to close it when you saw that it was open?

3 A That's right.

4 MR. CHRISCO: The Court's indulgence.

5 THE COURT: All right.

6 BY MR. CHRISCO:

7 Q You said that he was wearing a what now? What was he

8 wearing?

9 A A pink shirt and white hat.

10 Q White hat, was that like a white baseball hat or what

11 kind of white hat was it?

12 A I don't recall. I just remember a pink shirt and white

13 hat.

14 Q How was the lighting there where you saw him?

15 A There was a, I guess, a hallway light would be out there.

16 That was the only lighting.

17 Q Pretty bright?

18 A Not really. It's about these lights.

19 Q About like this?

20 A Uh-huh.

21 THE COURT: That's a yes?

22 A Yes.

23 THE COURT: All right.

24 MR. CHRISCO: No further questions.

25 THE COURT: Redirect?

Allen Smith - Direct by State

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1 MS. RICHARDSON: Nothing from the State, Your Honor.
2 The State would request that she be released from her
3 subpoena.

4 THE COURT: Any objection?

5 MR. CHRISCO: No objection, Your Honor.

6 THE COURT: You may step down. You're free to go.
7 Thank you very much. The State can call its next witness.

8 MS. RICHARDSON: The State would call Mr. Allen Smith.

9 THE COURT: All right.

10 Whereupon, Charles Allen Smith was called to the stand,
11 duly sworn by the clerk and testified as follows:

12 THE CLERK: Thank you. Please be seated. If you'd
13 state your full and spell your first name and last name.

14 MR. SMITH: Okay, my name is Charles Allen Smith,
15 Charles, C-H-A-R-L-E-S, S-M-I-T-H.

16 DIRECT EXAMINATION

17 BY MS. RICHARDSON:

18 Q Mr. Smith, where are you from?

19 A Anderson, South Carolina.

20 Q And who is Ms. Christian Vickery to you?

21 A She is my fiancée.

22 Q Okay, and did you have an occasion to be in Myrtle Beach
23 with her on or about July 8th, 2009?

24 A Yes, ma'am.

25 Q Okay, do you recall what you did that day?

1 A We went swimming at the beach, I mean ---

2 Q If you could speak up just a little bit. I'm sorry. I'm
3 having a hard time hearing you.

4 A We went swimming in the ocean and in the pool and I think
5 we went out to eat and then we come back to the room to go to
6 bed.

7 Q Okay, tell us about that night. What, what woke you?

8 A She did, she woke me up.

9 Q Okay, and what did you do upon being woken up?

10 A Well, she woke me up and told me that somebody had been
11 in the room. So, I reached down because I kept my shorts
12 right beside where I slept and they was gone. So, I grabbed
13 another pair of shorts and I went into the living room where
14 Joe was.

15 Q What was in your shorts?

16 A My wallet.

17 Q And what was in your wallet?

18 A My debit cards and birth certificate and Social Security
19 card and my driver's license and probably a couple of dollars.

20 Q What did you do after seeing Joe?

21 A Well, they had told me it was a black male with a white
22 hat. I just went out the room. I was looking. I went down
23 the steps. Then we went to the front office to get them to
24 call the police.

25 Q Okay, just to be clear you never actually saw the person

Allen Smith - Cross by Defense

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1 in the hotel room?

2 A No, ma'am.

3 Q Okay, were you ever able to get your shorts
4 back?

5 A No, ma'am.

6 Q What about your wallet?

7 A No, ma'am.

8 Q Were your cards ever used?

9 A Not that I know of. I - well, Christian called and
10 cancelled them while the police was on the way.

11 Q So, you cancelled them immediately?

12 A Yeah, I cancelled them that night.

13 Q Do you remember what time of day it was?

14 A It was nighttime. It was, I mean, I don't remember what
15 time it was.

16 MS. RICHARDSON: Nothing else from the State.

17 THE COURT: All right, cross examination.

18 MR. CHRISCO: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. CHRISCO:

21 Q I didn't have any questions but I got one now. Birth
22 certificate in your wallet?

23 A I just keep my birth certificate and Social Security
24 card. I always kept it in my wallet.

25 MR. CHRISCO: No further questions.

1 THE COURT: Redirect?

2 MS. RICHARDSON: No, sir, Your Honor, the State would
3 just ask that he be released from his subpoena.

4 THE COURT: All right, any objection?

5 MR. CHRISCO: No objection.

6 THE COURT: All right, you may step down. You're free
7 to go. Thank you very much.

8 You all have another one?

9 MS. RICHARDSON: Not today, Your Honor.

10 THE COURT: Okay. All right, ladies and gentlemen,
11 it's about 4:15. The State has some more witnesses but we've
12 reached a point and a time where it's good for us to go ahead
13 and break for the evening. So, we're going to take a break
14 for the remainder of the day. I'm going to ask that you
15 please be back in your jury room at 9:15 tomorrow morning.
16 I'm going to try to take the bench at 9:30 and we'll get
17 started then, but that'll give you an opportunity to get you a
18 cup of coffee. They might have you a doughnut or something.
19 I don't know. We'll check and see, but please be back in the
20 jury room at 9:15 tomorrow morning. If you have your notepads
21 please leave them here in the jury box. We'll distribute them
22 back out to you tomorrow morning. Make sure your names are
23 written on the front of them. Please do not conduct any
24 independent investigations in the case. Don't go looking
25 through the newspaper or on the Internet or anything of that

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1 nature to try and find out anything about the case. Don't
2 discuss the case even among yourselves at this point in time.
3 Hope everybody has a good evening and we'll see you back
4 tomorrow morning. Thank you very much. Everyone else please
5 remain seated while the jury is excused.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right, anything from the State before
9 we break for the evening?

10 MS. RICHARDSON: Nothing from the State, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. CHRISCO: No, Your Honor.

13 THE COURT: All right, do you think this will take all
14 day tomorrow? I mean, I didn't know what to leave on the jury
15 phone message, whether we'll will need another jury for
16 tomorrow or whether just have them call back after six
17 tomorrow or ---

18 MS. RICHARDSON: Your Honor, I anticipate resting
19 before lunch tomorrow, maybe even being able to do closings.
20 The longest witness is going to be my officer. He'll take
21 about an hour. The rest of them together probably won't take
22 an hour.

23 THE COURT: Okay, and then we've got the closing
24 arguments, jury charges and deliberations. They got another
25 case behind this one ready to go?

1 MS. RICHARDSON: My understanding is that they do,
2 Your Honor. The last I checked this morning they did. I
3 think Brad had one of his has not pled yet.

4 THE COURT: All right.

5 (Court and clerk confer about scheduling.)

6 THE COURT: All right, we'll - I'm going to take the
7 bench at 9:30 tomorrow morning. Okay, I'll be here earlier
8 than that if you have anything pretrial come up; okay?

9 MS. RICHARDSON: Okay, thank you, Your Honor.

10 THE COURT: All right, thank you very much.

11 OFF THE RECORD

12 (On the record, March 13, 2012. The following takes
13 place outside the presence of the jury panel.)

14 THE COURT: All right, anything from the State before
15 we bring the jury back in?

16 MS. RICHARDSON: Yes, sir, our next witness would be
17 our crime scene specialist. This is the witness that we will
18 be certifying as an expert in this case. My understanding is
19 that the defense attorney would like him proffered. I would
20 prefer to do that outside the presence of the jury.

21 THE COURT: All right, is that correct, Mr. Chrisco?

22 MR. CHRISCO: Yes, Your Honor.

23 THE COURT: All right, let's go ahead and call your
24 witness then.

25 MS. RICHARDSON: Thank you, Your Honor, the State

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1 would call Crime Scene Specialist Brad McClelland.

2 Whereupon, Brad McClelland was called to the stand, duly
3 sworn by the clerk and testified as follows:

4 THE CLERK: Please be seated. If you'll state your
5 full name and spell your last name.

6 MR. MCCLELLAND: Okay, my name is Brad Andrew
7 McClelland, M-C-C-L-E-L-L-A-N-D.

8 EXAMINATION

9 BY MS. RICHARDSON:

10 Q Where are you employed?

11 A Currently I'm employed with the Federal Bureau of
12 Prisons.

13 Q Okay, where were you employed before that?

14 A Myrtle Beach Police Department.

15 Q What was your position?

16 A Crime scene investigator.

17 Q How long were you a crime scene investigator?

18 A Three and half years, well, actually four years.

19 Q Okay, and what education or training did you receive for
20 that position?

21 A I have an undergrad in biology. I have 12 or continuing
22 credits in forensic science and law from Duquesne University
23 of Pennsylvania. I have several classes I've taken through
24 either SLED or private classes in North Carolina.

25 Q Okay, and let's talk specifically about fingerprints.

1 A Uh-huh.

2 Q What classes have you had as it relates to fingerprints?

3 A I've had a basic fingerprint class from SLED. I've had
4 advanced palm class in North Carolina, which was 40, 40 hours.
5 The fingerprint class was also 40 hours. I've had two
6 different trainings, one again in Columbia which was a two-day
7 class, four hours, and that's all I can remember off the top
8 of my head.

9 Q Okay, how many fingerprints would you say that you have
10 viewed?

11 A Between three and 500 prints.

12 Q How many have you compared?

13 A Probably - well, those would all be compared whether it
14 was a hit or not. So, I've examined 350 prints.

15 Q Okay, are the methods that you use typically the methods
16 that SLED uses?

17 A Yes, ma'am.

18 Q Tell us about that. How do, how do - what, what type of
19 equipment do you use in your line of work?

20 A We use different powders, chemical processes to enhance
21 or to bring the print out. We also do super glue stuff in the
22 lab. We also obviously examine initially first but there's
23 various powders, light sources and chemical processes we use
24 to.

25 Q And are you certified through SLED to use those?

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1 A There's no certification to use that equipment. That's
2 just a process that we learn as on-the-job training that, that
3 - and experience.

4 Q Okay, are you certified through SLED for fingerprints?

5 A Yes, I am an AFIS, certified AFIS examiner which I
6 challenged the test in Columbia and passed.

7 Q Okay.

8 MS. RICHARDSON: The State has nothing further at
9 this time.

10 THE COURT: All right, any questions or challenges?

11 MR. CHRISCO: Yes, Your Honor.

12 THE COURT: All right.

13 EXAMINATION

14 BY MR. CHRISCO:

15 Q What is a certified AFIS, certified AFIS what?

16 A Examiner.

17 Q Examiner.

18 A Yes.

19 Q What is that?

20 A Basically I, I took a proficiency test in the comparison
21 of fingerprints between known standards and unknown. There's
22 10-print cards that have 10 fingers on each card and they give
23 us cards and they give us unknowns and we compare the two to a
24 hundred percent proficiency.

25 Q So, you just prepare the card and send it to - you just

1 prepare the card and send it to SLED; right?

2 A No, we compare, we compare the known print to the
3 unknown meaning whatever print we lift we use it - the AFIS
4 machine, which automated fingerprint machine, automated
5 fingerprint system. We put that into the system. The system
6 then will come back with certain amount of comparisons and we
7 visibly go through each comparison to see if that matches,
8 meaning the points are similar with no discernible
9 dissimilarities.

10 Q How many times have you done that?

11 A Probably three to 500 times.

12 Q And how many did you match?

13 A Off the top of my head I do not know. It's been well
14 over probably 40 or 50, if not more, but that's just being
15 generous.

16 Q Of those 40 to 50 are all of them correct or was there
17 any that were wrong?

18 A They were, they were all correct.

19 Q And how would you know that?

20 A Because after we get the first - we have a verification
21 process where that another AFIS examiner also verifies. Also,
22 again, if I don't know I'm not making a call because it is
23 very important, it's one of those sciences that - I'm sorry,
24 it's one of those things that once you're wrong once you're
25 done. I mean, I lose my credibility.

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1 Q What's your error rate?

2 A I have no error rate.

3 MR. CHRISCO: No further questions, Your Honor. I
4 would object to this person as an expert. I don't think 40
5 cards makes someone an expert, Your Honor. I don't think he's
6 got the proper schooling, 40 hours here, a few hours there,
7 two days there. I don't think that's enough to make him an
8 expert in fingerprints, Your Honor.

9 THE COURT: Let me, let me ask him this.

10 EXAMINATION

11 BY THE COURT:

12 Q These courses that you took ---

13 A Yes, sir.

14 Q --- did those teach the collection of fingerprints or
15 did it teach the identification of fingerprints or tell me
16 about the education. What did you learn in those courses?

17 A Those were all the identification. We did the - both
18 palm print and the fingerprint classes the majority of the
19 things we did were actually comparison identification. We
20 probably went through three to 400 prints through that time
21 and he would check each one and then we'd move on to another
22 set.

23 Q Okay, have you ever been qualified as an expert in
24 fingerprint identification before in court?

25 A No, sir.

1 Q Have you ever testified in court as to fingerprint
2 identification?

3 A No, sir.

4 Q All right, have you ever been asked or has anybody ever
5 sought to have you qualified as an expert in court before?

6 A Yes, sir.

7 Q Okay.

8 THE COURT: Any further follow-up questions?

9 MS. RICHARDSON: No, sir, Your Honor, if I can just
10 be heard for argument purposes but not, not ---

11 THE COURT: Okay, any follow-up questions to my
12 questioning?

13 MR. CHRISCO: No, Your Honor.

14 THE COURT: All right, let me hear from the State.

15 MS. RICHARDSON: Your Honor, Rule 702 requires three
16 things, it's beyond the ordinary knowledge of the jury and
17 that he has the knowledge and skill that's beyond the ordinary
18 knowledge and that it's reliable. There's ample case law out
19 of the Fourth Circuit that says that fingerprint analysis is
20 reliable so much so that one case even said that we're not
21 even going to talk about the reliability because it has been
22 established at this point. As it relates to - he, he
23 definitely has more knowledge than beyond an ordinary juror
24 does. He's had classes. He's certified. Just because he's
25 never been qualified as an expert before you got to start

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1 somewhere, Your Honor. Even the ones that have been qualified
2 40 times in the courtroom there was the day that they hadn't
3 been qualified before.

4 THE COURT: Let me ask this, I mean, you said that
5 you'd been offered as an expert and have not been qualified by
6 the court. Have you done anything since that court
7 appearance? When was that and since then what have you done
8 to get qualified?

9 A Well, that, that court appearance never - that's why I
10 was not because the court - it never went to trial. I was
11 asked if I was going to become an expert. They wanted to get
12 me but the trial ended up getting ---

13 THE COURT: Oh, okay, so, you've never had a judge
14 deny your request?

15 A No, no, no, no.

16 THE COURT: Okay, all right, any follow-up questions
17 in response to mine?

18 MS. RICHARDSON: Not, not questions, Your Honor.

19 THE COURT: Any follow-up questions?

20 MR. CHRISCO: No, Your Honor.

21 THE COURT: All right, go ahead and finish your point.

22 MS. RICHARDSON: Thank you, Your Honor. There is a
23 case McMillan versus Durant it says that if there is a defect
24 in the amount or the quality of education or experience then
25 it goes to the weight of the expert's testimony not its

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1 admissibility.

2 THE COURT: All right, all right, Mr. Chrisco,
3 anything in response?

4 MR. CHRISCO: Yes, Your Honor. I think in this case you
5 got an expert from SLED that's going to testify on
6 fingerprints. They're just wanting to have two people
7 qualified as experts to say that there were two experts that
8 said this, this and this. Your Honor, I would object. I
9 still don't think he has the schooling necessary. I still
10 don't think he has the common practice necessary. I don't
11 think four dozen fingerprints makes someone an expert.

12 THE COURT: All right, I understand your motion. I am
13 going to go ahead and qualify him as an expert. I think it
14 goes, it's a jury question. If they find, and they're
15 instructed if they find that he does not have sufficient
16 education or if his facts are not, if his conclusions are not
17 supported by other evidence they can disregard his testimony
18 and I'll give them that, those instructions so the jury can
19 consider it. All right.

20 MS. RICHARDSON: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MS. RICHARDSON: You need to come back around. I'll
23 have to call you back up.

24 THE COURT: All right, you can come back down. All
25 right, anything else ---

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1 MS. RICHARDSON: No, sir, Your Honor.

2 THE COURT: --- from the State before we bring the
3 jury in? Anything from the Defense?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: All right, let's go ahead and bring the
6 jury in.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: All right, ladies and gentlemen, welcome
10 back. Hope everyone had a good evening. We're ready to
11 resume the trial of the case. I remind you if you have any
12 cell phones or pager devices please turn those off at this
13 time. Also, if you are taking notes make sure you have your
14 own notepad and do not have someone else's notepad. Okay?
15 All right, the State can call its next witness.

16 MS. RICHARDSON: Thank you, Your Honor. The State
17 would call Crime Scene Specialist Officer Brad McClelland.

18 THE COURT: All right.

19 Whereupon, Brad Andrew McClelland was called to the
20 stand, duly sworn by the clerk and testified as follows:

21 THE CLERK: If you'll state your full name and spell
22 your last name.

23 MR. MCCLELLAND: Brad Andrew McClelland, M-C-C-L-E-L-
24 L-A-N-D.

25 DIRECT EXAMINATION

1 BY MS. RICHARDSON:

2 Q Officer McClelland, where are you employed?

3 A Currently?

4 Q Yes, sir.

5 A At the Federal Bureau of Prisons.

6 Q Okay, where were you employed before that?

7 A Myrtle Beach Police Department.

8 Q What was your position?

9 A Crime scene specialist.

10 Q And how long we were employed with Myrtle Beach?

11 A Six years.

12 Q Okay, what education or training did you receive as it
13 relates to your crime scene job?

14 A I've had basic introduction to crime scene. I've had 40
15 hours of fingerprint comparison, 40 hours of palm print
16 comparison, a tour, four hours of advanced training and
17 there's some other classes that I can't recall, but there's
18 been a couple of others.

19 Q Do you have any certifications through SLED?

20 A I am an AFIS operator certified through SLED.

21 Q What is AFIS?

22 A It's an automated fingerprint identification system and
23 it's used to store, compare fingerprints.

24 Q What type of equipment do you use as it relates to
25 fingerprints?

Brad McClelland - Direct by State

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1 A We use various powders, chemical processes, a camera.
2 We also use - being that I'm an examiner we also use the AFIS
3 machine.

4 Q How many fingerprints would you say that you've ID'd or
5 viewed?

6 A Between three and 500.

7 MS. RICHARDSON: At this time, Your Honor, the State
8 would move to have Officer Brad McClelland qualified as an
9 expert in fingerprint analysis.

10 THE COURT: All right, challenges?

11 MR. CHRISCO: Your Honor, I object. I don't think he
12 has the requisite schooling nor the requisite on-the-job
13 training, he does not do this on a daily basis.

14 THE COURT: All right, sir, all right, your objection
15 is noted. I am going to qualify this witness in the field -
16 as an expert in the field of fingerprint analysis. Now,
17 ladies and gentlemen, I'll give you some further instructions
18 on expert testimony when I charge you on the law in the case
19 but for the time-being I just need to let you know that
20 typically a person can only testify as to their personal
21 knowledge, what they saw, what they smelled, what they tasted,
22 what they personally witnessed. There is an exception for
23 certain witnesses called expert witnesses who because of
24 training or experience are qualified as an expert in a
25 particular field. Now, all that means is that they are able

1 to give an opinion in the field in which they're qualified as
2 an expert and I'll give you some further instructions but for
3 the purposes right now all you need to know is that this
4 witness will be allowed to give his opinion in addition to any
5 personal observations that he may have had. All right, go
6 ahead.

7 MS. RICHARDSON: Thank you, Your Honor.

8 BY MS. RICHARDSON:

9 Q What is an ink print?

10 A An ink print is where the print is rolled, a person's
11 fingerprint is rolled into an ink and placed on a white card.
12 It's also known as a known print. So, it would be somebody's
13 standard print.

14 Q What is a latent print?

15 A A latent print is a print that is not visible or
16 normally not visible by the naked eye and you need to use
17 various chemical processes or powders to enhance it or to
18 bring the print out so it's visible.

19 Q So, what would be an example of that?

20 A An example would be if I touched this wood here you
21 would not be able to see the print until I used powder or
22 chemical to enhance or to bring out the ridges on that
23 surface.

24 Q Tell us about fingerprints. Are there any
25 distinguishing characteristics?

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1 A There are several distinguishing characteristics. Three
2 of them are accept. Then there's various other
3 characteristics up to 15 or so. The normal three are your
4 bifurcations, ridge endings and dots.

5 Q Okay, and you're going to have to explain to us what
6 exactly that means.

7 A Okay, basically, you have ridges. As the ridges flow
8 where they stop that'd be considered a ridge ending. Okay, as
9 the ridges branch where that point or branch is that's
10 considered bifurcation and a dot or short ridge would be just
11 a little ridge that's just separate between two ridges that's
12 just kind of stuck in the middle. That's the simplest
13 explanation.

14 Q Okay, do you know how fingerprints are formed?

15 A They are, they are formed in the fetus at about 12
16 weeks.

17 Q Now, is it possible to touch a surface and not leave a
18 fingerprint?

19 A Yes.

20 Q Why is that?

21 A There are various reasons. It could be environmental.
22 Not every, not every surface is conducive. Some are porous
23 which absorbs the moisture that your skin leaves, the pores
24 leave from the fingerprint, the friction ridges or ridge end,
25 the ridges. There's also things like dust can absorb that

1 moisture and allow just no print. There's also genetic
2 disorder that though rare can prevent people from actually
3 having fingerprints. You also have if there's been damage to
4 your fingerprint such as burned or if you use rough or
5 abrasive things like brick or you're a bricklayer you may not
6 have fingerprints or very faint fingerprints.

7 Q What makes it possible to leave a fingerprint?

8 A Each ridge has a series of pores. These pores leave
9 about 98 percent moisture and there's about two percent of
10 greases and oils and amino acids that also come out of these
11 pores, but for the most part it's the perspiration that come
12 out of these pores that will leave the fingerprint and leave
13 the ridges in your finger.

14 Q Based upon your training and study are you aware of any
15 two people having the same fingerprint?

16 A Not to my knowledge, no, ma'am.

17 Q How - well, before we get into that, I'm going to show
18 you what's been marked as State's Exhibit Nine. See if you
19 can ID that for me.

20 A Yes, ma'am, this is the cast of the fingerprints I
21 lifted from the inside window sill of the room on the night at
22 room 1001A at the, at the Bluewater Resort in the ---

23 Q Okay, so, you had a chance to respond to the Bluewater
24 Resort?

25 A Yes, ma'am.

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- 1 Q And what county is that located in?
- 2 A That's located in Horry County.
- 3 Q Okay, when you got there what did you do?
- 4 A Our normal processes we first arrive on scene. We're
- 5 notified by a supervisor. We get to the scene. We talk to
- 6 whoever the responding officer is or we'll talk to the victim
- 7 to see what, what evidence may have been or what was moved.
- 8 We take photographs of the area and then we begin to process
- 9 anywhere that the suspect may have touched, such as point of
- 10 entry, which is where the window that the suspect came
- 11 through. So, we would do, do the window and do the ledge; and
- 12 so, after we process we get - if we lift something we'll lift
- 13 it and then finish, finish the scene that way.
- 14 Q So, you lifted that print?
- 15 A Yes, ma'am.
- 16 Q And has it been in your - was it in your custody and
- 17 control up to point of testing?
- 18 A Yes, it was in my custody and control up to the point of
- 19 me examining it through the AFIS machine.
- 20 Q Okay, then what did you do with it?
- 21 A It goes into our evidence room, which it's dropped in a
- 22 locker we're given personally, to the evidence tech, and
- 23 they're responsible for housing the print.
- 24 Q Did you tamper it or alter it in any kind of way?
- 25 A No, ma'am.

1 Q How exactly did you lift that fingerprint?

2 A I used the black powder, a silt powder which is
3 basically a kind of a volcanic, crushed volcanic ash with a,
4 with a brush and we lightly go over the surface. The print
5 will appear. I used what was called a casting material,
6 dental stone and what it does is it's used on surfaces such as
7 wood and things where it's grainy and the grainy tends to
8 distort sometimes the print which is why we use casting
9 because it does not get that distortion unlike we use lifting
10 tape, which is just like a, almost like a masking tape or not
11 masking tape but a clear tape that we put over a print to lift
12 it. In this case I used the casting material. It's - you use
13 two compounds, mix them together. They harden, they harden
14 over the print and then I peel the print off and on that print
15 comes the powder and the powder will be stuck to the casting
16 material.

17 Q Okay.

18 MS. RICHARDSON: The State would move at this time,
19 Your Honor, to enter the fingerprint as evidence.

20 THE COURT: All right, that's State's Exhibit Number
21 Nine?

22 MS. RICHARDSON: The Court's indulgence just a
23 moment. I believe so, Your Honor. It is, Your Honor.

24 THE COURT: All right, any objection?

25 MR. CHRISCO: No, Your Honor.

Brad McClelland - Direct by State

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1 THE COURT: All right, State's Exhibit Number Nine
2 admitted into evidence without objection.

3 MS. RICHARDSON: Thank you, Your Honor.

4 (Whereupon, State's Exhibit Number Nine [Fingerprint
5 Cast] admitted into evidence and appropriately marked.)

6 BY MS. RICHARDSON:

7 Q Officer McClelland, I'm going to show you some pictures
8 and see if you can identify them for me.

9 A Yes, ma'am.

10 Q What is that?

11 A That is the front door to the apartment or to the hotel
12 room [REDACTED] [sic].

13 Q And that's what you observed whenever you arrived on
14 scene?

15 A Yes, ma'am.

16 Q I'm sorry and that was?

17 A That's [REDACTED], I'm sorry, I think I said [REDACTED].

18 Q That's State's ID Number Eight. Now, I also hand you up
19 what's been marked as State's Exhibit for Id purposes only
20 Number Four?

21 A Okay.

22 Q And what is that?

23 A State ID Four, this is a picture of the window that the
24 suspect, that the suspect entered the room. I photographed
25 the window because there was also smudges on the window from

1 where somebody attempted or somebody pushed the window or
2 tried to slide the window open.

3 Q I'm going to hand you what's been marked as State's
4 Number Five for ID purposes only. What is that?

5 A This is a picture of the window sill that I used the
6 silk powder on, the silk black powder and this is where I
7 lifted the print from.

8 Q Okay, and do you see the print on there that you
9 actually lifted?

10 A Yes, ma'am.

11 Q Can you circle that print for me, please?

12 A (Complies with request.) There you go.

13 Q I'm going to hand you what's been marked as State's
14 Exhibit or State's ID Exhibit Seven for ID purposes only.
15 What is that?

16 A That is a photograph of the print that I lifted with the
17 casting material, and that is also the same print that is in
18 this picture on the ledge.

19 Q So, you just zoomed in on it?

20 A I just zoomed in on it, correct, yes.

21 Q Okay, I'm going to hand you what's been marked as
22 State's Exhibit Six for ID purposes only and what is that?

23 A That is the same picture zoomed in with the very edge of
24 the window sill on the right side and with a scale that we use
25 just in case the lift would not come out or the lift would get

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1 somehow screwed up or if the casting material didn't solidify
2 and it actually destroyed the print we still have the
3 photograph of the print. So, we use this as a backup in case
4 our lift does not come out with quality.

5 Q So, what would you do - I'm sorry, I didn't mean to
6 interrupt you.

7 A Sure.

8 Q What did you do - what would you do if the print didn't
9 lift?

10 A We can use this photograph and load it into AFIS and we
11 could do the same thing as if it was a cast.

12 Q So, as if you had just lifted it?

13 A If it - as if it was just lifted, yes, ma'am.

14 Q Did you have to do that in this case?

15 A No, ma'am.

16 MS. RICHARDSON: The State would move at this time to
17 enter State's Exhibit Number Six, Seven, Five, Four and Eight
18 into evidence.

19 THE COURT: Any objection?

20 MR. CHRISCO: No objection, Your Honor.

21 THE COURT: All right, State's Exhibits Number Eight,
22 Four, Five, Seven and Six admitted into evidence without
23 objection.

24 (Whereupon, State's Exhibit Numbers Four through Eight
25 [Photographs] admitted into evidence and appropriately

1 marked.)

2 BY MS. RICHARDSON:

3 Q Tell us about the fingerprint at the crime scene. Was
4 there any - what, what way was it facing?

5 A The fingerprint was facing inward meaning that the print
6 would have had to - the print would've have to have been more
7 than likely coming from the outside into the, into the hotel
8 room.

9 Q Okay.

10 MR. CHRISCO: Objection, Your Honor. I think this goes
11 beyond his expertise as a fingerprint person to be testifying
12 on what ---

13 THE COURT: I sustain, sustain the objection.

14 Q Did you have an opportunity to measure that fingerprint?

15 A As far as the distance from the window sill?

16 Q Yes.

17 A Yes, ma'am.

18 Q And what was that measurement?

19 A The approximate measurement was 21.2 millimeters or 2.1
20 centimeters.

21 Q So, two centimeters?

22 A Two centimeters approximately.

23 Q From where?

24 A From the edge of the window sill ledge to the beginning
25 part of the fingerprint.

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1 Q So, it was on the inside of the window?

2 A On the inside of the window.

3 MS. RICHARDSON: The Court's indulgence just a
4 moment.

5 THE COURT: All right.

6 BY MS. RICHARDSON:

7 Q What did you do with the fingerprint once you lifted it?

8 A The fingerprint was kept in my custody till I got back
9 to the - our lab. From there it was put into our evidence
10 room that we have there, a temporary evidence room that we
11 have a key for. It was entered there until at what point I -
12 the point that I went and took it to the AFIS room, which is
13 in a separate building and ran that through, that print
14 through AFIS.

15 Q What does that consist of? What does it mean to run it
16 through AFIS?

17 A Basically the machine is a camera that takes a
18 photograph of the print. So, what I would do is I'd put the
19 unknown print on the table. There's a camera that photographs
20 it in a one-to-one size meaning one inch to one inch or one
21 centimeter to one centimeter, whatever the camera is set at.
22 Ours in this case is set at one inch to one inch. It takes a
23 photograph of that and it puts it up on a screen. At that
24 point I go through and mark any points that what's called
25 minutia which are the ridge endings, bifurcations and dots or

1 short ridges. I mark all the, all the points that I see or as
2 many as I feel comfortable and then that - the machine will
3 then put it into the machine and the machine will give me at
4 that point however many I set. I set 30. So, there's 30
5 different prints that it comes back to. Each print at that
6 point is then compared by me that I go through each print and
7 look at these individual characteristics until I get one that
8 has the same characteristics and with no discernible
9 dissimilarities.

10 Q What do you mean it gives you back 30?

11 A It gives me back 30 known prints meaning anybody that's
12 ever put into the system it keeps in a database and this
13 database is what's used to compare that unknown print to these
14 known prints. If the person's not been arrested or if the
15 print's a victim then I will not get a hit back and it will
16 just stay in the system.

17 Q Okay, and did you get a hit in this case?

18 A In this case I did get a hit, yes.

19 Q Okay, and were you able to compare the two fingerprints?

20 A Yes, I compared the two.

21 Q And what ID did it give you a hit on?

22 A It gave me SID number South Carolina 00410955, finger
23 eight.

24 Q Okay, and what is a SID number?

25 A SID number is a South Carolina identification number and

Brad McClelland - Direct by State

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1 that's a number that anybody who's been arrested is given a
2 number by the state and that, that would, would be - each
3 person is given a specific number. That number is associated
4 to only that person. There's no two people have the same SID
5 number.

6 Q Okay, going back just a little bit, you talked about the
7 points on the fingerprint. On the fingerprint that you
8 entered into AFIS how many comparison points did you match?

9 A Was it - I don't have that specifically with me.

10 Q If I hand you something from your notes would it refresh
11 your memory?

12 A Yes, ma'am. In this specific case I did 11 points.

13 Q How many are needed to make an identification?

14 A There is no set number needed. It, it comes down to the
15 having the ability to read the points and have the points
16 match to where there's no dissimilarities, meaning there's no,
17 nothing that you can't explain as to one print or the other.
18 They're identical.

19 Q And you were able to do that in this case?

20 A Yes, ma'am.

21 MS. RICHARDSON: The Court's indulgence.

22 THE COURT: All right.

23 MS. RICHARDSON: Nothing further from the State, Your
24 Honor.

25 THE COURT: Cross examination?

1 MR. CHRISCO: Yes, Your Honor. Thank you.

2 CROSS EXAMINATION

3 BY MR. CHRISCO:

4 Q What time did you arrive out at the motel at the request
5 of whom?

6 A At the request of Sgt. Sloan from the Myrtle Beach
7 Police Department at approximately - he was - he notified me
8 at approximately 1:45 in the morning.

9 Q When you got there what did you do?

10 A When I got there I talked to the officer, the responding
11 officer which was Pfc. Jackson. At that point I got consent
12 to search and I also photographed, started with photographing
13 the outside and then photographing ---

14 Q Stop you there.

15 A Yes, sir.

16 Q Consent to search, what does that mean?

17 A That just gives me the right from the individuals who
18 are living, the victims that are living in there the ability
19 to search the premises for evidence.

20 Q Then what'd you do?

21 A Took photographs of the outside and inside of the room,
22 then began processing the areas that the victim or the victims
23 stated or where the victim said that the suspect came through
24 the window.

25 Q How many fingerprints did you obtain?

Brad McClelland - Cross by Defense

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- 1 A I obtained three total.
- 2 Q Three?
- 3 A Yes.
- 4 Q Where were those fingerprints?
- 5 A All three were on the windowsill ledge, two were on one,
- 6 there were two prints on one lift and there was a single print
- 7 on the other lift and they were all across the windowsill.
- 8 Q Were there doors to the bedrooms?
- 9 A Yes, sir.
- 10 Q There was how many doors going to the outside were
- 11 there?
- 12 A There was as far as - I'm not - I don't understand what
- 13 you're asking. You mean to the outside room?
- 14 Q How many ways to exit that room?
- 15 A There's one way to exit and that's through the front
- 16 door.
- 17 Q Now show you what's been marked as State's Exhibit
- 18 Number Three.
- 19 A Yes, sir.
- 20 Q Do you see an exit door in that exhibit?
- 21 A There's a sliding glass door but this is 11 stories up,
- 22 sorry, and there's also another door there that is locked
- 23 unless it's unlocked by the hotel.
- 24 Q And that door goes where?
- 25 A That goes to the next unit and would have an exit on

1 that side.

2 Q Now I show you what's been marked as State's Exhibit
3 Number Eight.

4 A Yes, sir, that's the front door of the, of the apartment
5 [REDACTED].

6 Q What's located on the back side of that door?

7 A I don't understand what you're ---

8 Q Is there a chain? Is there a bend over clasp?

9 A I don't remember.

10 Q Did you take fingerprints from that door?

11 A I did not, no.

12 Q Did you speak with the occupants of the room?

13 A Yes, sir.

14 Q And did you learn from them that the subject had exited
15 through the front door?

16 A Yes, sir.

17 Q Did you take any fingerprints of the bedroom door?

18 A No, sir.

19 Q Did you talk with the occupants of the room?

20 A Yes, sir.

21 Q Did they tell you that the door had been closed?

22 A Yes, sir.

23 Q And why didn't you take fingerprints of those areas?

24 A Normally door handles because they've been touched so
25 many times by whoever you get a overlapping sets of prints.

Brad McClelland - Cross by Defense

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1 So, even if I printed it the chances of me getting any type of
2 fingerprints on there because of the overlapping prints to
3 where I can use would not be efficient; and so, therefore, I
4 don't normally do door handles.

5 Q So, there could have been prints on the door?

6 A There could've been several prints on the door.

7 Q So, we'll never know that?

8 A That's correct.

9 Q Any other places that you lift fingerprints?

10 A No, just the windowsill.

11 Q Did you take fingerprints of the occupants of the room?

12 A No, sir.

13 Q Why wouldn't you do that?

14 A At that point I asked if anybody was near the windowsill
15 or touched the windowsill as far as the victims go and nobody
16 said that they were on the windowsill. So, therefore, I did
17 not lift the or did not take standards for the victims and
18 also if it had been a victim when I ran it through the AFIS
19 machine it would not have come back as a hit.

20 Q That's not necessarily true; is it?

21 A Unless they've been arrested.

22 Q They've been arrested before?

23 A Correct, unless they've been arrested before, but that
24 would be easily done by we get the name and then if the
25 occupants were in that room they would be disclaimed as being

1 the victims in that room and that print would have a reason to
2 be there.

3 Q Did you look at the IDs and the driver's licenses of
4 those people in the room?

5 A No, sir.

6 Q So, you don't even know who was in the room except for
7 the names that they gave?

8 A Correct, that's part of the patrol officer.

9 Q Now, when you took the fingerprint describe what you
10 saw.

11 A As far as the windowsill is that what you're asking?
12 I'm, I'm ---

13 Q Uh-huh.

14 A Okay, what I saw was, was after I put the powder down
15 there were several prints on the windowsill. The majority of
16 the prints were smudges, were smears, which is where the
17 fingerprint basically your hand wipes across it and leaves no
18 friction marks just because you basically smear through the
19 fingerprint. There were several of them on there. There were
20 also the three fingerprints that I lifted. Out of the three
21 that I lifted only one print was of good enough quality to
22 actually be entered through AFIS or entered into the machine.

23 Q Okay, I believe you testified earlier that the print is,
24 was it 98 or ---

25 A 98 percent perspiration, yes, sir, water.

Brad McClelland - Cross by Defense

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1 Q Water?

2 A Uh-huh.

3 Q And what is a smear or smudge that's the water being
4 smudged ---

5 A Basically, the fingerprint, yes, being smeared through,
6 correct.

7 Q How did you get this print?

8 A I used a silk black powder, which is, again, it's a
9 volcanic, it's a crushed volcanic ash, using the brush to go
10 over the windowsill from the - after we do that I - with it
11 being wood I use the micro-seal or casting material to lift
12 the print and then that's what I collected was the, the little
13 cast.

14 Q The window was wet?

15 A The windowsill was not wet. It was inside the room.

16 Q The area was wet?

17 A The outside was wet, the outside window.

18 Q Did you do a report?

19 A Yes, sir.

20 Q It states in your report that, "Because the window was
21 wet I use black SPR, small particle reagent, to process the
22 front of the window. I sprayed the SPR on the window. Then I
23 sprayed the window with water to remove the excess powder."

24 Is that what you did?

25 A Yes, sir, that was on the outside of the window.

1 Q "I was unable to develop the ridge detail but could see
2 a smeared handprint." Now, what did you say a latent print
3 was?

4 A A latent print is a print that is not necessarily
5 visible until you use a powder or some other chemical to bring
6 out the ridges.

7 Q A latent print is just a fragment of the whole print?

8 A No, a latent print is the full print. What a latent
9 print means is whether it's a partial latent print or a full
10 latent print all a latent print means is it's not visible by
11 the - it's normally not visible by the naked eye meaning
12 everything I touch I could be leaving latent prints and the
13 only way for me to enhance or to see those latent prints is to
14 use powder or chemical processing.

15 Q That is just a fragment of what the fingerprint is; is
16 it not?

17 A I am not sure what you're asking.

18 Q Fingerprint is of the whole, it's just one small area of
19 the fingerprint?

20 A Your fingerprint would be your pad on this part of the
21 finger.

22 Q Right.

23 A Correct.

24 Q And that's you got the whole fingerprint there ---

25 A This is a ---

1 Q --- to lift it?

2 A No, this would be a partial print, correct.

3 Q So, it's just a fragment of what the whole fingerprint
4 would be?

5 A Yes, sir.

6 Q Now, what is the fingerprint made up of?

7 A 98 percent water and some greases, oils and amino acids
8 are the - about the other two percent.

9 Q Explain what you're looking at as far as the print goes.

10 A You're looking at what's called friction ridges which
11 are ridges that are lined with pores. These pores are what
12 allows the perspiration or sweat, you have them on your palms,
13 fingertips, feet and your toes. So, any one of those leave
14 prints or leave the friction ridges is what we use to read or
15 compare prints.

16 Q Now, when you're getting the latent print, when you're
17 using some type of chemical ---

18 A Uh-huh.

19 Q --- you can distort the fingerprint; can you not?

20 A It can be. If you press too hard you can destroy the
21 print, correct. It also goes by the media, too, that it can
22 absorb the material, certain materials absorb or if they're
23 porous or nonporous can absorb the moisture because like I
24 said it's made of water. So, sometimes that can cause
25 distortion, also.

1 Q And when you take a picture of a fingerprint you can
2 cause distortion?

3 A When we take the photograph we use what's called TIFF.
4 So, it's not compressed. So, therefore we will not ---

5 Q TIFF is what?

6 A TIFF is a non-compressed photograph of, of - or non-
7 compressed data of a picture. So, basically, you don't lose -
8 when you open it back up you don't lose or have a chance of
9 losing certain details.

10 Q What's the difference between a TIFF and a JPG or ---

11 A JP ---

12 Q --- GIF?

13 A JPG is the, the - JPG are not compressed, they're
14 compressed. So, when the thing - when it reopens it it
15 actually can distort because it's opening, it's compressing
16 the data and then reopening up where a TIFF is a much larger
17 file or a much larger, has a much larger data. So, therefore,
18 it stays, whenever you open it up it's in the same form as you
19 took the photograph.

20 Q But when the TIFF opened up, opens up it only opens up
21 as to what the image was that it took.

22 A Correct, yes, sir.

23 Q If the image is not placed directly it could be
24 distorted by the taking of the picture; could it not, sir?

25 A That's why we use a scale in the photograph, but ---

Brad McClelland - Cross by Defense

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1 Q Not placed correctly it could distort by taking the
2 picture?

3 A Yes, sir, if your camera is not directly at 90 degrees
4 it can distort it, yes.

5 Q There's a lot of variables that go along with a
6 fingerprint?

7 A Yes.

8 Q Now, when a fingerprint is distorted it can move those
9 ridges and areas on a fingerprint; can it not?

10 A It can cause them to widen or shrink, yes. It also goes
11 down to how much pressure you put on a finger as opposed to
12 lightly touching it or if you press harder it'll spread your,
13 spread your ridges.

14 Q In this particular case, just in this particular case,
15 when you supplied this information to this AFIS ---

16 A Uh-huh.

17 Q --- automated fingerprint ---

18 A Identification system, identification system.

19 Q And who is that run by?

20 A SLED, SLED houses and is responsible for the ---

21 Q Who is the, who is the, who is the - who is the - what
22 is the program that's used?

23 A We use Morph Trak which is the camera company that we
24 use.

25 Q You don't use the Lockheed Martin?

1 A Lockheed Martin? It's Morpho Trak.

2 Q Now, how many, in this particular case, how many
3 results, matches did you get back?

4 A It gives me - it does not give me matches. It gives me
5 ones that are similar that the computer says are close to the
6 print. I actually go in and compare each print. I got 30
7 respondents back. That's the set number that I set. You can
8 set anywhere from 10 to 50. It's whatever your personal
9 preference is to how many respondents you wish to have back.

10 MR. CHRISCO: Your Honor, may we approach?

11 THE COURT: All right.

12 (Whereupon, a bench conference is held in the presence
13 but out of the hearing of the jury.)

14 THE COURT: All right, ladies and gentlemen, I'm
15 going to excuse you back to the jury room. I've got a matter
16 of law I need to take up with the attorneys and I'll tell you
17 why we excuse you to the jury room. It's not that we're
18 hiding anything from you, but as I told you at the outset you
19 and you alone decide what the facts of this case are. As the
20 judge of the law I decide the law in this case. Oftentimes
21 when we discuss these legal matters with the attorneys it
22 requires the attorneys and me as the judge to discuss factual
23 issues. Well, what we say is not evidence; and so, we do not
24 want you to be influenced by anything that I might say as the
25 judge or that the attorneys might say in discussing these

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1 legal matters to influence you on your finding of the facts
2 because you're to base your findings exclusively on the
3 testimony and evidence presented at trial and not based upon
4 what I might say or the attorneys might say in discussing
5 these legal matters. So, that's why we excuse you back to the
6 jury room. It'll give you a nice little break and I'll bring
7 you back out in just a minute. Please do not discuss the case
8 even among yourselves. If you have any notepads leave them
9 here in the jury box. Okay? All right, thank you very much.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, Mr. Chrisco.

13 MR. CHRISCO: Yes, Your Honor. Your Honor, back on
14 August the 6th, 2009, I was appointed to represent Mr.
15 Anderson. The same day that I was appointed I sent a motion
16 for production and disclosure of all witnesses, disclosure of
17 all evidence in the case. I never received any information
18 that there were 30 hits from the AFIS computer, nor did I
19 receive the fingerprints of those 30 individuals to look and
20 compare and to determine how close some of the other
21 individuals were on there; and therefore, I think that had I
22 been given that it may have helped my client in the
23 presentation of this case, Your Honor.

24 THE COURT: All right, Ms. Richardson.

25 MS. RICHARDSON: Your Honor, we provided to Mr.

1 Chrisco everything we had, which included an AFIS printout
2 screen that lists the other ID numbers showing that there were
3 different hits. He sets the number to 30, Your Honor. He
4 could have set it to whatever he wanted to set it to.

5 THE COURT: Yeah, but I think the point is is he got
6 30 hits and he's saying it matches this one. They're entitled
7 to the other 29 so that they can do their own comparison,
8 their own analysis to determine whether it's inculpatory or
9 exculpatory evidence is his argument.

10 MS. RICHARDSON: Your Honor, and they could subpoena
11 that. I didn't have that and to my knowledge the officer
12 didn't have that. We - I'll show you what we supplied.

13 THE COURT: Well, what - he said he got 30 hits; and
14 so, I'm assuming he compared all 30. So, the officer has
15 these other 29 I'm assuming.

16 MS. RICHARDSON: They would be in AFIS, Your Honor.
17 He doesn't have them in his possession.

18 THE COURT: Oh, so, you're saying they're an on-
19 screen analysis.

20 MS. RICHARDSON: They're on computer, yes, sir.

21 THE COURT: So, he just has his one and then he goes
22 on screen and compares them with these other 30.

23 MS. RICHARDSON: Yes, sir.

24 THE COURT: And does the Defense have access to this
25 AFIS where they can go online and do their comparison?

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1 MS. RICHARDSON: I don't know ---

2 A No.

3 MS. RICHARDSON: --- if they would have access to an
4 expert.

5 A No, sir, they don't.

6 THE COURT: Okay, so, that's the problem we've got,
7 if we've got information that is available to the Prosecution,
8 that is not available to the Defense, that might be
9 exculpatory and he's asked for this information. Let me see -
10 what was your request? What was it - read me what your
11 request was.

12 MR. CHRISCO: Your Honor, I have filed a notice to the
13 Prosecution for all the evidence and all the witnesses in the
14 case.

15 THE COURT: Yeah, but these other 29 are not
16 evidence. I mean, if you - all they're doing is introducing
17 this one as evidence. My question is did you ask for
18 anything other than evidence and witnesses because they've
19 given you the witness and they've given you the
20 evidence.

21 MR. CHRISCO: The Court's indulgence, Your Honor.

22 Number Seven, Your Honor, on my notice of motion for
23 production of specific evidence and disclosure of witnesses
24 reads, "Make available to the Defendant all results of
25 laboratory tests, scientific tests or physical examinations

1 conducted in connection with this case, including, but not
2 limited to, analysis of handwriting, photographs secured at
3 the scene, comparison of fingerprints." Your Honor, I think
4 that that covers it right to the T.

5 THE COURT: Yeah, all right.

6 MS. RICHARDSON: And Your Honor, this is not a
7 discovery violation. I have provided exactly what we have in
8 our discovery. He could have got an expert, Your Honor,
9 contacted somebody else to look into these other hits. I've
10 turned ---

11 THE COURT: Well, see, that's my question, how do
12 they get into this AFIS and look at these other hits? How is
13 that available to the Defendant? Let's say you're right, he
14 can get an expert, is this open to anybody that wants to go in
15 or how does a Defendant get in to do a comparison like the
16 State does? That's my question.

17 MR. CHRISCO: Your Honor, if I had been supplied with
18 the printout, and it's, I guess it's easy, you just hit print
19 and that's how they've got this particular one here, if they
20 would've just hit the print button on all the ones that they
21 were comparing, sent them to me, it would have been very
22 helpful in this case.

23 THE COURT: Well, and I understand that. My question
24 is their argument is is that you could have gotten this on
25 your own and that's what I want to find out, can you - could

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1 you have gotten it on your on?

2 MR. CHRISCO: No, Your Honor.

3 MS. RICHARDSON: Through court, through court order,
4 Your Honor.

5 THE COURT: No, no, no, no, not through a court
6 order. This - I'm not talking about coming in and getting a
7 judge to order that they be allowed to go into the AFIS
8 databank and search these 30 because it would've been a lot
9 easier for you all to just print out those 30 and give to them
10 and say, "Here's the 30 that we compared this one, this one to
11 and this is the one we picked out of that." My question is is
12 you're saying that this is available. Could the Defendant
13 have hired an expert and the expert gone on his taking your
14 known, the one that you all took, gone into the AFIS databank
15 and compared it to these 30 that you all compared it to?

16 MS. RICHARDSON: That, that expert would have, from my
17 understanding would have to be AFIS certified to have access
18 to the AFIS system.

19 THE COURT: All right, now, who all is AFIS certified?
20 Is it only those employed by SLED, in law-enforcement or are
21 there any Defense experts that are likewise qualified as AFIS
22 experts that has access to this databank?

23 MS. RICHARDSON: The Court's indulgence just a
24 moment.

25 THE COURT: All right.

1 MS. RICHARDSON: I have somebody from AFIS here. She
2 has instructed me, Your Honor, that it's just law enforcement.

3 THE COURT: Law-enforcement.

4 MS. RICHARDSON: So, it would have to be another
5 police officer.

6 THE COURT: All right, all right, let's take a short
7 break. Let me do a little research. There you go.

8 MS. RICHARDSON: Thank you, Your Honor

9 THE COURT: Thank you. You can step down but you
10 cannot discuss your testimony either what you've testified to
11 or what you anticipate testifying to in the future with
12 anybody; okay?

13 A Uh-huh.

14 THE COURT: All right, thank you.

15 OFF THE RECORD

16 (On the record.)

17 (Whereupon, the following takes place outside the
18 presence the jury.)

19 THE COURT: Thank you very much. Please be seated.
20 All right, I can't believe there's nothing on point. So, we
21 might be making law in this case. I don't know. We'll have
22 to wait and see. The rule for exculpatory evidence, it has to
23 be disclosed but you have to show that there's a high
24 probability or a probability that the exculpatory evidence if
25 produced would have brought about a different result at trial.

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1 We don't know if that's the case here. We don't even know if
2 it is exculpatory evidence. The rules of criminal procedure,
3 you did make the request but it says that they have to give
4 you the test results, which they gave you the tests results.
5 I'm going to go ahead and deny any motion by the Defendant to
6 exclude the evidence or declare a mistrial or anything of that
7 nature and go ahead and proceed. Like I said, we might be
8 making, making law in this case depending on what the jury
9 verdict is. I don't know, but I do want it on the record that
10 he did an analysis of 30 fingerprints. He identified it as
11 being one and they did not disclose the other 29 fingerprints
12 to the Defendant and the Defendant does not have access to
13 those other 29 to make their comparison but we've got it on
14 the record. So, anything else you want to put on the record,
15 Mr. Chrisco?

16 MR. CHRISCO: Your Honor, you've made your, you made
17 your ruling. I would at this time move to suppress the
18 fingerprint and I want that on the record, too ---

19 THE COURT: All right, all right, I, well, I'm ---

20 MR. CHRISCO: --- based upon, based upon me not having
21 the others to have someone to look at.

22 THE COURT: Okay, and I understand your motion. I'm
23 going to deny your motion just because the Rules of Criminal
24 Procedure says they have to disclose their scientific test
25 results. They did that, and I don't know what the answer is

1 with regard to exculpatory evidence where they don't disclose
2 it so you don't even know if it's exculpatory or not but
3 that's for another court at another day to decide. So, I'm
4 going to deny your motion to exclude the fingerprint analysis.
5 All right?

6 MS. RICHARDSON: Your Honor, if I may at this time
7 can I make this a Court's Exhibit? Our position on it is that
8 he did know that there were at least 30 pulled based upon the
9 discovery that we did send him.

10 THE COURT: Yeah, we'll go ahead and make that a
11 Court's Exhibit that shows that you disclosed that but the
12 fact of the matter is is he doesn't have access to them. So,
13 he made the request for the disclosure, you gave him that
14 sheet, but he - the Defense still does not have access to
15 those except through the State and law-enforcement.

16 MS. RICHARDSON: Right, he could have asked.

17 THE COURT: All right. So, the ---

18 MR. CHRISCO: It's a beautiful, it's a beautiful car,
19 Your Honor, but I don't have a license to drive it.

20 THE COURT: Exactly. All right, that's Court's
21 Exhibit Number Two.

22 (Whereupon, Court's Exhibit Number Two [Latent Search
23 Verification] appropriately marked.)

24 THE COURT: All right, anything else from the Defense
25 before we proceed?

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1 MR. CHRISCO: No, Your Honor.

2 THE COURT: Anything else from the State?

3 MS. RICHARDSON: No, Your Honor.

4 THE COURT: All right, let's bring the jury back in.

5 (Whereupon, the following takes place in the presence the
6 jury.)

7 THE COURT: All right, ladies and gentlemen, welcome
8 back. We're ready to proceed with the trial of the case. All
9 right, sir, Mr. Chrisco, continue with your cross examination.

10 MR. CHRISCO: Thank you, Your Honor.

11 BY MR. CHRISCO:

12 Q Now, when your machine, what kind of machine is it that
13 spits these results out?

14 A It's a Morpho Trak.

15 Q A what now?

16 A It's called Morpho Trak. It's a program we use. It's
17 just a computer system with the software, what we use Morpho
18 Trak.

19 Q It's a software and it's binary; correct?

20 A I'm not sure.

21 Q That's how computers work. How many results did you say
22 you got?

23 A I got 30 respondents back.

24 Q Thirty respondents?

25 A That's, and that's what I set.

1 Q Now, the first one that you looked at what did you do?

2 A I examined it. The print was not a match. So, I moved
3 to the next one. That's how I do each print until I hit, get
4 one that is a match.

5 Q How did you know that it wasn't a match?

6 A By checking the points that I've discussed, the minutia
7 points such as ridge endings, bifurcations, the number of
8 ridges in between each point so that they need to be
9 identical.

10 Q And how did you, how did you determine that?

11 A I don't understand. Basically, what I do is I count
12 wherever there's a ridge ending, bifurcation, dot or any type
13 of a characteristic I mark it with a point which the system
14 does for - which I do with the system. That system then
15 enters that information in and it gives me back 30 possible,
16 not matches, but 30 possible that the computer is saying these
17 are close. We're not saying they're a match, we're just
18 saying they're close.

19 Q The computer can't say that there's a match?

20 A No, sir.

21 Q And why is that?

22 A Because it's not - I'm the one that makes the match. It
23 just gives me possibilities.

24 Q And from the first one you looked at how did you look at
25 it?

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1 A They both pop up on a screen like this and I examine the
2 two points, my unknown print, which has the points that I
3 marked, along with the print that it's saying the points that
4 it thinks is close. I look. I compare, and if there's any
5 dissimilar, meaning if there's an extra ridge in there say
6 between two minutia points or two endings then that print is
7 now discarded because it's a dissimilarity. Any
8 dissimilarities means that print is not a match.

9 Q And you did this with the naked eye?

10 A Yes, sir.

11 Q You don't use a magnifying glass?

12 A No, the computer screen is about that big.

13 Q So, the computer screen enhances it?

14 A It enlarges it, correct.

15 Q That's the - is that the only scientific, it's not a
16 scientific machine; is it?

17 A It just - it doesn't enhance. It enlarges.

18 Q It's just a computer; right?

19 A Correct.

20 Q In fact, you don't use any scientific equipment; do you?

21 A We use scientific method which is the ASV, which is a -
22 which is the majority of people use.

23 Q So, you don't have any scientific equipment that you
24 use?

25 A That is, I mean, I don't know what you consider

1 scientific equipment. I mean, this equipment is what it's
2 designed for.

3 Q You tell me what equipment you have in your office.

4 A In my AFIS room or in my office itself, which, I mean
5 which office?

6 Q Whatever you use to look at fingerprints.

7 A We use a magnifying glass. We use computer. Those are
8 the two main systems and the naked eye.

9 Q So, there's no scientific equipment that you use?

10 A Just the magnifying glass.

11 Q So, how many points did that first one have?

12 A I do not remember.

13 Q Okay, on the second one?

14 A 11.

15 Q There was 11 on the second one. On the third one?

16 A I don't know. I stopped. When I get a hit I stop
17 because that is the match.

18 Q What do you mean that is the match?

19 A Once I determine that it's a match I stop and I do
20 what's called IDENT. That IDENT means now I'm going to go in
21 and match these points to see if or not to see but to show
22 that these two prints are the same.

23 Q So, 11 is the magic number?

24 A There is no number.

25 Q Ten?

Brad McClelland - Cross by Defense

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- 1 A There is no set number.
- 2 Q Nine?
- 3 A There is no set number. It's just the amount of points
- 4 that you see that show no dissimilar characteristics.
- 5 Q You just know it when you see it?
- 6 A It just matches. A lot of it has to do with ridges. It
- 7 depends on the quality of the print and other things.
- 8 Q What do you mean it just matches?
- 9 A I mean they're identical meaning this print look - is
- 10 this print, it's the same print, each point matches
- 11 specifically to the point on the known print.
- 12 Q What's the probability that that print could belong to
- 13 someone else?
- 14 A Zero.
- 15 Q Zero. There's no probability that it could belong to
- 16 someone else?
- 17 A As far as I know there's not a known person in this -
- 18 that have two sets of the same prints.
- 19 Q You work in the crime?
- 20 A Crime.
- 21 Q Crime scene at this time; did you not?
- 22 A At this time, yes, sir.
- 23 Q You take blood and you send it off to be analyzed?
- 24 A Yeah, yes, sir.
- 25 Q And you get a DNA?

1 A We get a - what's called a CODIS hit, yes, if it, if it
2 matches.

3 Q Comes back with a probability.

4 A No, they just give us the results. We don't do the live
5 results. They just give us a result of what this specific
6 person is - comes back to. It don't give us a probability or
7 anything like that.

8 Q But you know that it comes with a probability, one in
9 ---

10 A Right, but we do not have the probability.

11 Q --- one in 337 million. So, what makes fingerprints
12 different than DNA?

13 A Fingerprints are completely random. When they form in
14 the fetus there's numerous reasons why - how fingerprints form
15 in the fetus. There's no set thing. As a matter of a fact,
16 identical twins do not even have the same fingerprints. DNA
17 they do, but identical twins do not.

18 Q What about eight points; is that good?

19 A Again, there is no set number. It depends on the
20 similarities and the print quality.

21 Q If you are analyzing and looking at a number and it had
22 eight points.

23 A If you give me that print with the known print then -
24 and the points match up then I can compare it, yes, sir, but I
25 have to be able to see both prints and see the quality of both

Brad McClelland - Cross by Defense

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- 1 prints.
- 2 Q Are you aware that an Israeli fingerprint expert found
- 3 two different people with eight points?
- 4 A It's not uncommon to have numerous points, but again,
- 5 I'm looking for the dissimilarities in the print, not the
- 6 similarities.
- 7 Q Where does this phrase points come from?
- 8 A It comes from minutia, which are the ridge endings,
- 9 bifurcations, dots and so on and so forth that I was talking
- 10 about. Those are what I call points or minutia points.
- 11 Q At the Federal Bureau of Investigation there the -
- 12 they've created the term points; did they not?
- 13 A I do not know who created the term. I - it's minutia is
- 14 what we go as far as that.
- 15 Q You said earlier you work for the Bureau of Federal
- 16 Prisons. What do you do with them?
- 17 A Corrections officer.
- 18 Q So, you don't deal with fingerprints ---
- 19 A No.
- 20 Q --- on a daily basis. You just guard inmates?
- 21 A I just, just started, yes, sir.
- 22 Q How many, including these fingerprints, have you
- 23 decided?
- 24 A Were matches or hits? Off the top of my head I don't
- 25 know. I mean, I've had - if you count victims, too, I've

1 probably had - I don't even want to guess but it's been
2 numerous. Like I said, I said over 40. So, probably well
3 over 40 and that don't - like I said, that's not necessarily
4 like compared to just a victim we're looking at it or if the
5 print's not even good enough quality to even enter or make an
6 analysis.

7 Q What's your error ratio?

8 A I have no error ratio in fingerprints.

9 Q What do you mean by that?

10 A I mean if it's a match it's a match, if it's not - if I,
11 if I don't feel comfortable I don't make the call.

12 Q You're always right?

13 A Yes, sir.

14 Q Has someone else ever looked at your stuff and said it
15 was wrong?

16 A Not to my knowledge, no, sir.

17 Q You know anything about the International Association
18 for Identification?

19 A Yes, sir.

20 Q And what is that?

21 A That is the known or organization that has the standard
22 for fingerprint analysis identification. It's also court
23 approved or been court-approved.

24 Q Did you know that they instituted some tests a few years
25 ago?

Brad McClelland - Cross by Defense

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- 1 A As far as what kind of tests, sir?
- 2 Q Testing their fingerprint experts.
- 3 A No, sir.
- 4 Q Kind of like a proficiency test.
- 5 A Right, yes.
- 6 Q Realized that 56 percent of the ones that were tested
- 7 failed?
- 8 A No, sir, I did not see that article.
- 9 Q Number 27 of the - when it spit out the 30, number 27
- 10 may have had 14 points. Is that a possibility?
- 11 A It's possible.
- 12 Q We'll never know what number 27 had; will we?
- 13 A No, sir.
- 14 Q You stopped at three.
- 15 A I stopped at number two.
- 16 Q In your training there's this bias. What is that
- 17 called?
- 18 A Bias, not sure ---
- 19 Q It's when you know the name of the person that you're
- 20 looking for.
- 21 A Correct.
- 22 Q There is an innate bias.
- 23 A Well, the way these fingerprints are ---
- 24 Q What's the name of that bias?
- 25 A I'm not sure what you're asking.

1 Q In fact, it's talked about through that International
2 Association for Identification that - do they certify you?
3 A No, sir.
4 Q Who certifies you?
5 A The State.
6 Q The State?
7 A Yes, sir.
8 Q Now, you were with Myrtle Beach?
9 A Yes, sir.
10 Q Is the fingerprint unit there at Myrtle Beach is it
11 certified?
12 A There are several officers certified through SLED.
13 Q Is the fingerprint unit there at the Myrtle Beach Police
14 Department certified?
15 A It's individual certification.
16 Q But it's not certified.
17 A There is no actual certification for a unit. It can be
18 a member of the IAI and challenge the test to become that but
19 that's not required to run fingerprints.
20 Q So, there's no one - no one has ever come in to the
21 Myrtle Beach Police Department. How many people do
22 fingerprints over there at Myrtle Beach?
23 A We have three other certified examiners.
24 Q So, no one has ever come in and had you to do a
25 proficiency test?

Brad McClelland - Cross by Defense

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1 A We just do the original proficiency when we get
2 certified and we also get verification that every print, we're
3 required to get a verification from another examiner.

4 Q Do you know who it is?

5 A It would have been, the one that did mine would've be
6 Office Ioni [spelled phonetically] who no longer works for the
7 police department.

8 Q Kind of like that Nostradamus fellow makes a prediction
9 and if something happens then they read everything into it.

10 A There's, there's no prediction with this.

11 Q You see what you want to see.

12 A You see what is there.

13 Q And what is there?

14 A The minutia points that we've talked about as far as the
15 points go, the bifurcations, ridge endings and points, also
16 we're counting ridges and looking at the similarities,
17 dissimilarities. If there's dissimilarities that is not going
18 to be the print. That print's cast, is rejected.

19 Q A fingerprint is 98 percent water?

20 A Correct.

21 Q You take it off of a wet surface?

22 A No, it can be off of any surface. The pores are what
23 cause the ridge endings. They're friction ridges. That
24 dehydration coming out of the or I'm sorry, not dehydration
25 but the perspiration coming out of the pores is what leaves

1 your friction or your ridge or your ridges. It could be in
2 moist. It could be in dry. It can be on several different
3 types of medium.

4 Q The powder can distort it; can it not?

5 A The powder can damage it. It won't distort it. The
6 print's the print. The powder can destroy it if you press too
7 hard. It can cause it to lose, lose detail but as far as
8 distortion your distortion comes from your pressing of - too
9 hard or soft or ---

10 Q You said earlier that a latent print is one that you
11 can't see with the naked eye.

12 A Yes, sir.

13 Q You said that; right?

14 A Normally that you cannot see it with the naked eye.

15 Q You also said that you use powder or chemical?

16 A Powder on the windowsill, chemical on the outside of the
17 window.

18 Q To enhance?

19 A Well, you basically - not enhance it. You're bringing
20 out the print. You're - the powder or chemical is adhering
21 to the friction - the friction ridges which so you can go from
22 a latent print to where you could actually see the print. It
23 becomes a visible print.

24 Q So, the pressure that you use with powder ---

25 A Uh-huh.

Brad McClelland - Cross by Defense

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- 1 Q --- you said if you use too much you could distort it?
- 2 A You can damage the print, yes, sir.
- 3 Q So, you don't know if you distorted it or not because .
- 4 you couldn't see it originally with the naked eye.
- 5 A It won't distort it. It would just cause the ridges or
- 6 friction ridges to actually not be there or black out to where
- 7 you can't see them at all. It will not change what the print
- 8 is. It will not add a point. It will not take away a point
- 9 or minutia point. It only draws out those ridges. If you use
- 10 too much powder it will blacken in or fill in the ridges to
- 11 where it looks like just a black ---
- 12 Q Do you that a guy named Steve Grieves?
- 13 A No.
- 14 Q Stephen Grieves ---
- 15 A No, sir.
- 16 Q --- one of the highly renowned fingerprint experts.
- 17 Would it surprise you to learn that he says that when you put
- 18 that powder on if you use too much pressure you can distort
- 19 the fingerprint?
- 20 A What does he mean? I don't understand what he means by
- 21 distort. Is he talking about changing friction or friction
- 22 ends and ridges because ---
- 23 Q He used the phrase, he used the word distort.
- 24 A Distort would only be like I said to actually fill in
- 25 the ridges to where you cannot see the ridges. You're not

1 going to change what a ridge is. You're not going to make a
2 ridge a bifurcation. It's adhering to the moisture that your
3 pores allow that's your friction ridges. So, once you put the
4 powder down that's what it is. Now, if you press too hard you
5 could take that ridge out. You could remove the ridges or you
6 could darken them in, but you're not going to distort it as
7 far as - I don't understand what he's meaning by when he says
8 distort I guess what his definition or what he's trying to say
9 when he says distort.

10 Q And when you take a picture of it you can distort it.

11 A You can by certain angles, yes, you can. It will not
12 change, again, it will not change what ridges are there but it
13 can distort the image.

14 Q And because of the distortion the AFIS, that automated
15 fingerprints thing, can choose files, a fingerprint that it
16 wouldn't normally have given you had it not been for the
17 distortion; is that correct?

18 A No, sir, you mark the points. Those points are there.
19 They're not distorted. I may not - if the point gets wiped
20 out then I would not mark that point but the points are
21 consistent.

22 Q Let me understand this, you mark knowing who the person
23 is and who it's matched against.

24 A I do not know who the person is. When I say unknown
25 that means I do not know. When this goes into the system and

Brad McClelland - Cross by Defense

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1 it gives me them 30 respondents I have no idea who those 30
2 matches belong or not 30 matches but who those 30
3 possibilities belong to. It gives me no name, gives me no
4 number. It gives me an ID number, not even a South Carolina
5 ID number. It just gives me a number that that whatever
6 department put in.

7 Q When it kicks out the 30 does it give you a name?

8 A It gives me no names.

9 Q On the 30 it gives you no names whatsoever?

10 A It gives me no names, no, no, sir.

11 Q So, you mark what you want the machine to give you?

12 A I mark any of the points that I can. I put as many
13 points as I can get in there to attempt to get a match back or
14 ---

15 Q Mark what you want and feed it into the machine.

16 A No, I mark the minutia points that are in the system,
17 that are on the print but I, I mark them, yes, sir.

18 Q So, if you're wrong the results are wrong.

19 A No, sir, if I'm wrong then it will not - I will not get
20 a match.

21 Q How so?

22 A Because if I don't mark a point that computer sees
23 there's no points in there. When it gives me them
24 possibilities and there's two or three points I did not mark
25 then when that comes back it's going to give me ones that

1 don't have points in that area. So, therefore, it's not going
2 to give me that possibility, that the computer says it's
3 possible, not it is, it's just saying this is close.

4 Q So, the computer gives you what you put in?

5 A It gives me what I mark on that known print or unknown
6 print, I'm sorry.

7 Q Garbage in, garbage out?

8 A If you put garbage in you, yeah, you're going to get
9 garbage out, yes, sir.

10 Q What else did you do that night that you were out there
11 at the motel room?

12 A After I processed is that what you're asking, after I
13 completed the processing?

14 Q Well, everything else you did there.

15 A Well, I, again, took photographs. I sprayed SPR in the
16 front window, photographed that, went inside, took the
17 photographs of the room, powdered the, the, the - powdered the
18 ledge, lifted the prints off the ledge and then gathered my
19 stuff and left, and the stuff that I collected.

20 Q Did you have anything to do with the case after you
21 turned the information over to the detective on the prints?

22 A No, sir, as far - I mean, once I get a hit I turn that
23 stuff over to detectives and then I'm done with it.

24 MR. CHRISCO: No further questions.

25 THE COURT: Redirect?

Brad McClelland - Redirect by State

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1 MS. RICHARDSON: Yes, sir, Your Honor, just briefly.

2 REDIRECT EXAMINATION

3 BY MS. RICHARDSON:

4 Q We talked a little bit about whether the surface was wet
5 or dry. Where did you take the fingerprint from?

6 A The fingerprint was lifted from the inside ledge of the
7 window.

8 Q Okay, and was that surface wet or dry?

9 A That surface was dry.

10 Q Okay, what, what was wet?

11 A The window on the outside from obviously it's on the
12 ocean side. So, from the salt, the salt and the sea, the wind
13 and waves it's actually causes it to get moisture on it. So,
14 that's why I use the SPR, which is designed to lift wet
15 fingerprints. It's just a chemical that you spray on and you
16 spray some water and it washes the chemical off and the
17 chemical actually adheres to the fingerprints.

18 Q And were you able to get any fingerprints from the
19 outside?

20 A No, just, just a smear.

21 Q Okay, why were you not able to get a fingerprint?

22 A There's a lot of reasons. I mean, there's environmental
23 concerns, I mean, with, with that. There's salt and stuff
24 that could actually get into the, not just the ridges but you
25 have valleys and the valleys get that, that salt and stuff in

1 there. So, when you do that it also can cause it to fill in
2 your ridges so it looks like a thing. Plus the fact the hand
3 was slid across it will just wipe off no different than if you
4 have something on your counter and you wipe it off with a rag,
5 it does the same thing. It actually takes the detail out of
6 the print.

7 Q Okay, now, you said you lifted three prints in this
8 case?

9 A A total of three.

10 Q Is that correct?

11 A Yes, sir, or yes, ma'am, sorry.

12 Q What happened to the other two?

13 A The other two were not - I was not confident enough to
14 enter them; and therefore, the quality of them was not, the
15 quality was not good enough for me to actually enter them into
16 the AFIS machine.

17 Q Would - I need you to explain that in a little more
18 detail. What do you mean by that?

19 A The quality, basically, the points, the minutia points
20 that I was talking about I was not confident, I didn't have
21 enough points for me to actually enter the print into the
22 system. So, therefore, I give it a C, which means that it's
23 not good enough quality to be entered into the AFIS system.

24 Q And why would that be the case?

25 A Well, there's, again, a lot of reasons. It could be

1 environmental. It could be the amount of pressure. There's a
2 lot of different reasons. It could be how I lifted it.

3 Q The print you did lift, were you confident in that
4 print?

5 A Yes, ma'am.

6 Q We talked a little bit about markings. Again, I know
7 you've said it, how many - what, what exactly do you mark?

8 A I mark like, again, like I said, ridge endings,
9 bifurcations and where I mark is if you got a bifurcation,
10 where it splits, I mark that split. Where the ridges end, if
11 it ends I mark the end and going back. If it's a dot I mark
12 the dot. If it's a ridge or small ridge, short ridge, I mark
13 those, and those points are put into the system and then that
14 system will give me 30 respondents or however many I set to
15 tell me that we think this is a possibility of what the prints
16 are. It's not saying that they're matches. It's just saying
17 this is what we've come - this computer has set up saying
18 these are close, you want to look at these, they're ---

19 Q The first print that you looked at did not match.

20 A No, ma'am.

21 Q What about the second print?

22 A The second print was a match to the known, the known
23 print that I, that I was comparing to.

24 Q Why didn't you continue to look at the other 28?

25 A Because once I get, once I get a hit we do what's called

1 an ident. When I hit that ident button it freezes and it
2 allows me to go into the next stage of it which is were I do
3 the actual markings. So, I mark each one, which was exhibit -
4 which were ---

5 Q It's a Court's Exhibit.

6 A Court's Exhibit.

7 Q It's not into evidence. It's not.

8 A Oh, it's not in evidence. Okay, I'm sorry. But you
9 mark each, each point and I mark a number so I can count and
10 then what I'll do is I'll make sure that the ridges that I go
11 from each point. So, if there's 11 points I will count to
12 make sure the ridges are equal to where that point matches up.
13 So, if it's - if there's an extra ridge in there, if, if it's
14 a bifurcation and not a ridge ending then I know that that
15 print is not the same print and that print would be discarded,
16 but once I get that match it's a hit that the machine goes in
17 I ident, I mark it and that's it. Once I hit save it actually
18 kicks me out, it'll back me out of the - back to that point
19 and then I print out the screen and go, go on from there.

20 Q Is there any doubt in your mind that those two prints
21 match?

22 A Is there any doubt in my mind that these two prints
23 match, there's no doubt in my mind. They are the same print.

24 Q The print that you lifted from the scene and then the
25 number two that came back.

Brad McClelland - Redirect by State.

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1 A Yes.

2 Q How do you know that?

3 A Again, I know from the ridges, ridge detail. You also

4 get the ridge detail you have like he said the minutia points,

5 all the minutia points matched up. I marked 11. There very -

6 there could have possibly been even more than 11 but I marked

7 11. You also have the number of ridges in between which I

8 count. I make sure that there's not an extra ridge in there

9 or I make sure that it's, it's the same print.

10 Q And at that point in time did you know who that

11 fingerprint belonged to?

12 A No, ma'am.

13 Q No idea?

14 A Huh-uh, no, ma'am.

15 Q And what is your practice after you've identified it?

16 What do you do next?

17 A After I identify it we take - we'll take the number. We

18 enter it into the system. The system will then kick back who

19 the, who the print belongs to. We print that off. We print

20 the 10-print card which has all 10 fingers on it and then we

21 take that back and then we give the print that we compared, a

22 screenshot of the print or the 10-print and the known or the

23 unknown print to another AFIS examiner who verifies your

24 results. He'll go over it and check to make sure that you are

25 correct.

1 Q And you did that in this case?

2 A Yes.

3 MS. RICHARDSON: Nothing further, Your Honor.

4 THE COURT: All right, you may step down.

5 MS. RICHARDSON: Your Honor, may we approach?

6 THE COURT: Yeah.

7 (Whereupon, a bench conference was held in the presence
8 but out of the hearing of the jury.)

9 THE COURT: All right, ladies and gentlemen, in
10 speaking with the attorneys we've decided it's a good time for
11 us to go ahead and break for lunch. I'm going to allow you to
12 go to lunch on your own today. Please be back in the jury
13 room at 1:15 and we'll try to resume the trial as soon after
14 1:15 as soon as we can. If you have notepads please leave
15 them in the jury box. Please do not discuss the case even
16 among yourselves at this point in time. Don't conduct any
17 independent investigations or anything of that nature. I'll
18 excuse you to go to lunch and please be back at 1:15. Thank
19 you very much. Everyone else please remain seated while the
20 jury is excused.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, anything from the State before
24 we break?

25 MS. RICHARDSON: Nothing from the State, Your Honor.

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1 THE COURT: Anything from the Defense?

2 MR. CHRISCO: No, Your Honor.

3 THE COURT: All right, we'll stand in recess until
4 1:15.

5 MS. RICHARDSON: Thank you, Your Honor.

6 THE COURT: All right, thank you very much.

7 OFF THE RECORD

8 (On the record.)

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right, anything from the State before
12 we bring the jury in?

13 MS. RICHARDSON: Nothing from the State.

14 THE COURT: Anything from the Defense?

15 MR. CHRISCO: Your Honor, my client wants to address
16 the Court.

17 THE COURT: Is it agreeable with you for him to
18 address the Court?

19 MR. CHRISCO: Beyond that. Stand up.

20 THE COURT: All right, sir.

21 MR. ANDERSON: Your Honor, I just want to inform the
22 Court that I have lost complete confidence in my attorney as
23 of this far. I just want to make a motion before the Court to
24 bring that to your attention.

25 THE COURT: All right, thank you. Thank you, sir.

1 Anything else?

2 MR. CHRISCO: No, Your Honor.

3 THE COURT: Anything else you want to say?

4 MR. ANDERSON: Yes, sir, I've got a number of things
5 that I wanted to point out to you.

6 THE COURT: Okay, this is just dissatisfaction with
7 the attorney?

8 MR. ANDERSON: Yes, sir.

9 THE COURT: Okay.

10 MR. ANDERSON: And the entire case has been presented to
11 this date.

12 THE COURT: Okay, I'm not going to put that in the
13 record. This is, the case is proceeding the way all trials
14 proceed. Okay? So, this is the way, procedurally this is the
15 way it goes. Now, if you can point to some error of law or
16 something that your attorney has done is an error of law.
17 What is it that, what is it that you're saying that he has
18 done that is contrary to your best interest in representing
19 you in this case?

20 REPORTER: He's going to have to speak up, too.

21 THE COURT: Yeah, if you need to, speak into that
22 microphone.

23 MR. ANDERSON: All right, all right, Your Honor. Give
24 me a minute. Let me get to it.

25 THE COURT: Okay, no, sit down. When you get your

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1 thoughts together we'll address it then.

2 MR. ANDERSON: All right, thank you.

3 THE COURT: All right, let's bring the jury in.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right, ladies and gentlemen, welcome
7 back. I hope everyone had a good lunch. We're ready to
8 resume the trial of this case. I remind you if you have any
9 cell phones or pager devices or other communication devices if
10 you would turn those off at this point in time. Also, if
11 you're taking notes make sure you have your own notepad and
12 make sure that you do not have anyone else's notepad. All
13 right, Ms. Richardson, call your next witness.

14 MS. RICHARDSON: Thank you, Your Honor. The State
15 would call Ms. Marilyn Sanders.

16 THE COURT: All right.

17 Whereupon, Marilyn Sanders was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Thank you. Please be seated. State your
20 full name and spell your last name.

21 MS. SANDERS: Marilyn Sanders, S-A-N-D-E-R-S.

22 DIRECT EXAMINATION

23 BY MS. RICHARDSON:

24 Q Good afternoon, Ms. Sanders. Where are you employed?

25 A South Carolina Law Enforcement Division.

Marilyn Sanders - Direct by State

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1 Q Commonly known as SLED.

2 A SLED, yes.

3 Q What is your position there?

4 A I am an AFIS coordinator, fingerprint examiner. I
5 handle all correspondence with the AFIS system and do all the
6 training for AFIS.

7 Q Are you a keeper of the AFIS records?

8 A Yes, I am.

9 Q How long have you been employed with SLED?

10 A Thirty years.

11 Q What is, what is a 10-print card?

12 A A 10-print card is a fingerprint card with all 10
13 fingers and the palm impression, the palm impression sometimes
14 and the slats.

15 Q Where do you get those 10-print cards from?

16 A We at SLED house fingerprint cards for the 46 counties
17 in the State of South Carolina and they come in from the
18 surrounding agencies in South Carolina.

19 Q How would you get possession of one?

20 A By law each time you're arrested in the State of South
21 Carolina the fingerprint has to be submitted to South Carolina
22 Law Enforcement Division for processing.

23 Q What do you do with the fingerprints once you receive
24 them, the 10-print cards?

25 A When we get a 10-print card in, if the person has an

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1 arrest it will add to that arrest. If they have not been
2 arrested before in the State of South Carolina then we will
3 establish a unique number for that individual. Then we
4 forward the card on to the FBI.

5 Q What do you mean by a unique number?

6 A The S-I-D number is a number that's unique only to that
7 person. Each time you get arrested your first arrest and each
8 subsequent arrest after that adds on to that number. Now,
9 they're added on by fingerprints. No two people in the world
10 has the same fingerprints. So, when a card come in it goes
11 through our AFIS system. It picks out the top 10 respondents.
12 If there is a problem or something wrong with the card then we
13 have to look at it. If there's no problem then the card due
14 to a process called lights out comes into our system, searches
15 against our files and is forwarded to the FBI with little or
16 no human intervention.

17 Q Does this S-I-D number ever change?

18 A Never, never.

19 Q Regardless of the times you're arrested?

20 A No, it just keeps building from one to 47, however many
21 times you're arrested it keeps building.

22 Q I'm going to show you what's been marked as State's
23 Exhibit 10 for ID purposes only. Can you identify that for
24 me?

25 A Yes, this is a fingerprint card that was made, it was

1 sent in from Myrtle Beach Police Department and it came into
2 our system on July 28th, 2009, and it has this 12 digit
3 identifying number from the agency that sent it in. When the
4 card come in we don't know the name, we don't know anything
5 about the individual. The card comes in, searches our file.
6 If it's a hit it adds to his record, update our computerized
7 criminal history side and then we forward on to the FBI.

8 Q Okay, whose 10-print card is that?

9 A This 10-print card belongs to a James Anderson.

10 Q And who submitted it?

11 A Myrtle Beach Police Department and the fingerprints were
12 taken by Jay Barn.

13 Q And when was it submitted to your office?

14 A July 28th, 2009.

15 Q When was it taken?

16 A It had to have been taken on July 28th, 2009, because
17 with the AFIS system when an individual come in they're
18 fingerprinted. The system is live. You take the prints. You
19 complete all the demographics and then you send the print on
20 to SLED. You just hit a button and it automatically comes to
21 SLED. You can't reproduce. You can't pull this number up,
22 make copies or anything. You can't duplicate the number
23 because the number, whenever the number, the 18 number comes
24 off, it comes off numerically. Like this number here, the
25 last number is 75. The next number'll come up it would be 76.

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1 Q And I guess I'm confused. What number are we talking
2 about? Is that the, is that Myrtle Beach's number, the
3 arresting agency or the SID number?

4 A Each time an agency makes an arrest, regardless of the
5 person having an arrest or not, they're given this 12 digit
6 number. This is, this is a number here unique to Myrtle Beach
7 Police Department. It comes in to SLED and when it comes in
8 to SLED it goes through our system. If the systems says it's
9 a hit then it tacks to an S-I-D number, a South Carolina State
10 ID number which would be ---

11 Q And did it attach to an S-I-D number in this case?

12 A Yes, it did.

13 Q And what was that S-I-D number?

14 A South Carolina 00410955.

15 Q And who does that number belong to?

16 A James Anderson.

17 MS. RICHARDSON: The State would request to admit
18 State's Exhibit - I'm sorry, 10, at this time.

19 THE COURT: Any objection?

20 MR. CHRISCO: We would object at this time, Your Honor.
21 It seems that this witness didn't see this card until this
22 morning, this actual card from, from her testimony.

23 THE COURT: Let's, yeah, let's get a little bit - I'll
24 sustain it at this time.

25 MS. RICHARDSON: Okay, oh, okay.

1 THE COURT: Let's get a little bit more foundation

2 MS. RICHARDSON: Okay, sorry about that.

3 THE COURT: That's fine.

4 BY MS. RICHARDSON:

5 Q Once a fingerprint comes into your office do you tamper
6 it or alter it in any kind of way?

7 A No, ma'am.

8 Q Where did you receive that 10-print card from?

9 A I pulled this - when I was subpoenaed I pulled this card
10 out of the record to bring with me today so I'd have
11 information on hand.

12 Q So, that 10 print card came from your office?

13 A Yes, sir - yes, ma'am.

14 Q And you're the keeper of those records?

15 A Yes, ma'am.

16 Q And it's within your - is it within your ordinary course
17 of business to keep such records?

18 A We keep all 10-print cards submitted to us by, by scan,
19 not hard copies like this but I can reproduce. This is a
20 reproduced copy from our AFIS system.

21 Q Okay, so, so, the police agency didn't actually submit
22 that piece of paper. You produced that piece of paper for
23 court here today?

24 A Yes, because with the AFIS there, it's wireless, it's
25 paperless. They send us images, but I can reproduce those

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1 images on a 10-print card.

2 Q Okay, is that a true and accurate copy of the 10-print
3 card?

4 A Yes, ma'am.

5 MS. RICHARDSON: The State would now ask you to move
6 into evidence State's Exhibit Number Ten.

7 THE COURT: Any objection?

8 MR. CHRISCO: I only object because that's not the best
9 evidence. The best evidence would be the card that was used
10 to take his fingerprints initially ---

11 THE COURT: All right.

12 MR. CHRISCO: --- at Myrtle Beach, Your Honor.

13 THE COURT: All right, I'm going to admit State's
14 Exhibit Number 10 into evidence over Defendant's objection.

15 MS. RICHARDSON: Thank you, Your Honor.

16 (Whereupon, State's Exhibit Number [10-print card]
17 admitted into evidence and appropriately marked.)

18 BY MS. RICHARDSON:

19 Q How many fingerprints do you have on file?

20 A Over 2.5 million.

21 MS. RICHARDSON: Nothing further.

22 THE COURT: All right, cross examination.

23 CROSS EXAMINATION

24 BY MR. CHRISCO:

25 Q Good afternoon.

1 A Good afternoon.

2 Q You said a while ago no two people have the same
3 fingerprints.

4 A Yes, sir, not to my knowledge.

5 Q Where do you get this information from?

6 A It comes out of - from the FBI and my knowledge with
7 working with fingerprints, all the studies that I've done,
8 been on that there are no two fingerprints of anybody in the
9 world that are the same.

10 Q Has there ever been - let me put it to you this way, do
11 you know that there has never been an objective test to
12 determine if that is true or false?

13 A What is an objective test?

14 Q An objective test to determine if no two people have the
15 same print. In other words, we don't know at this time.

16 A They are - it is written, yes, it is written.

17 Q It is written.

18 A Yes.

19 Q Is it true?

20 A Yes, it's true.

21 Q How is it true?

22 A A fingerprint is an exact science. How is it true?
23 Because of the scientific principles that we work on, the
24 uniqueness and the permanence of the fingerprints, there are
25 no two fingerprints in the world that are the same.

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- 1 Q But yet there's DNA.
- 2 A DNA is not fingerprinting.
- 3 Q Probably more exact than fingerprinting.
- 4 A So, what's your question?
- 5 Q How is it true, how can you make the statement that no
- 6 two fingerprints are alike in the world?
- 7 A In my 32 years of experience, all the studies that I've
- 8 done, all the classes I've had, there was never established to
- 9 be two people with the same fingerprints.
- 10 Q And when you say the same fingerprints, how do you
- 11 distinguish the fingerprints to the ones where they're
- 12 different?
- 13 A By bifurcations, minutia, dots, ending ridges.
- 14 Q So, six points, is that a, is you got a known proof and
- 15 a latent print and there's six points is that a match?
- 16 A I am not so much so a point person. I work with 10-
- 17 print fingerprint cards. When I look at a fingerprint card
- 18 I'm looking at all 10 fingers versus a latent examiner. So,
- 19 when I examine the fingerprint card I have a glass, I have the
- 20 fingerprint cards. I put my two cards together and I use my
- 21 glass to pick out the permanence, the persistence of the
- 22 ridges and I pick out bifurcation, minutias and ending ridges
- 23 and points, dots to make my determination, and I do blind
- 24 verification where I give it to somebody, one of my peers,
- 25 have them look at it and they determine if they see what I

1 see, but first and foremost most of our cards are done
2 electronically.

3 Q And how is that done?

4 A Through the AFIS system, the automated fingerprint
5 identification system.

6 Q How does that work?

7 A Through algorithms, points of minutia, different points,
8 it's set up - it's a scientific rule or fact that is set up in
9 the machine that it does most of the work.

10 Q Doesn't do all the work.

11 A In some instances.

12 Q How many determinations have you made on fingerprints in
13 your career?

14 A Thousands.

15 Q And what's your error ratio?

16 A Zero. I don't ---

17 MS. RICHARDSON: Your Honor, I would object to this
18 line of questioning. He's getting into expert testimony
19 questioning and she - we haven't qualified her as an expert.
20 She's only here as a custodian of records.

21 MR. CHRISCO: Your Honor, she made the statement that
22 no two fingerprints are alike.

23 THE COURT: Well, that was elicited through your
24 questioning. I'm going to sustain the objection.

25 MR. CHRISCO: And for the record, Your Honor, it was

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1 not. She made the statement through the prosecution.

2 THE COURT: Did she?

3 MR. CHRISCO: Yes, Your Honor.

4 MS. RICHARDSON: I don't think I asked the question,
5 Your Honor, but she might have said it through her testimony
6 in response to my questions.

7 THE COURT: Okay, well, then I'll allow the
8 questioning. Go ahead then.

9 BY MR. CHRISCO:

10 Q What is your error ratio over those thousands of
11 determinations of fingerprints?

12 A Zero.

13 Q You've never ever been wrong?

14 A No, no, sir.

15 MR. CHRISCO: No further questions.

16 THE COURT: Redirect?

17 MS. RICHARDSON: None, Your Honor.

18 THE COURT: All right, you may step down.

19 MS. RICHARDSON: Your Honor, the State would request
20 that should be released from her subpoena so she can return to
21 Columbia.

22 THE COURT: Any objection?

23 MR. CHRISCO: No objection.

24 THE COURT: All right, you're free to go. Thank you
25 very much.

1 MS. RICHARDSON: Thank you, Your Honor. The Court's
2 indulgence just a moment.

3 THE COURT: All right.

4 MR. CHRISCO: The Court's indulgence.

5 THE COURT: All right.

6 MS. RICHARDSON: Your Honor, may we approach?

7 THE COURT: Yeah.

8 (Whereupon, a bench conference was held in the presence
9 but out of hearing of the jury.)

10 THE COURT: All right, ladies and gentlemen, we're
11 going to take a short break. The next witness, we've got to
12 get them here. They're on their way. The State had
13 anticipated the prior witness taking a little bit longer. So,
14 we're going to take a short break. I'm going to excuse you
15 back to the jury room. Please do not discuss the case even
16 among yourselves. Leave your notepads here in the jury box.
17 Thank you very much. Everyone else please remain seated while
18 the jury's excused.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right, anything from the State before
22 we recess?

23 MS. RICHARDSON: No, sir, Your Honor.

24 THE COURT: All right, now, Mr. Chrisco, before we
25 called the jury back in, your client was looking for some,

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1 something. He was addressing the Court and was looking for
2 something and I told him that let's go ahead with the trial
3 and I'd give him opportunity. I didn't know if he wanted to
4 make any further statement or if you wanted him to make any
5 further statement at this time.

6 MR. CHRISCO: Your Honor, that's up to him.

7 THE COURT: All right, anything further you wish to
8 say, Mr. Anderson, at this time?

9 MR. ANDERSON: No, sir, Your Honor, I can make it at a
10 later date.

11 THE COURT: No, sir, now's your opportunity.

12 MR. ANDERSON: Now's my opportunity.

13 THE COURT: Now's your opportunity to say anything if
14 you want to say it.

15 MR. ANDERSON: Your Honor, I just wanted to ask about
16 some testimonies that was not - that's not in a - witnesses
17 didn't give a statement in the motion but they testified and I
18 ---

19 THE COURT: I don't understand what you're asking.

20 MR. ANDERSON: Well, we had some testimonies - we had a
21 testimony that, that, that wasn't - a witness, didn't give me
22 a witness in my motion so I could review it, be able to go
23 over it with my attorney, but I didn't have, I didn't have a
24 witness copy of it in my motion at all, but yet still the
25 witness came forth. When the Solicitor also - the Solicitor

1 said that ---

2 MR. CHRISCO: Your Honor, if I could just interrupt for
3 just a minute, what he's talking about is the testimony of the
4 17 year old witness yesterday. I got a letter from the
5 Solicitor. It's dated March the 6th. I shared it with Mr.
6 Anderson on March the 7th when they brought him over here to be
7 arraigned, and I let him know then that there were three
8 people that were not on the - that was not in the police
9 reports that may possibly testify and it actually turns out I
10 only think that one testified and that was the young boy. One
11 found out in the letter, the occupants of the room, was now
12 deceased and the other person did not testify. The person
13 said to the Solicitor that they saw someone shorter than six
14 feet in the room and that's all they said. Your Honor will
15 remember yesterday when he testified he testified that he
16 could identify my client and then he was asked is that -
17 that's not what he said earlier and I think that's what Mr.
18 Anderson now is putting on the record.

19 THE COURT: All right, is that what you're referring
20 to, Mr. Anderson?

21 MR. ANDERSON: Yes, sir.

22 THE COURT: All right, let me hear from you.

23 MR. ANDERSON: Well, I was just saying that Mr. - my
24 attorney he failed to oppose to the witness Joe E. taking
25 the stand after only getting a last minute letter from the

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1 Solicitor's Office that the State had only recently found out
2 about, found out about him and that he would not only be
3 called anyways, he would not be called anyways since he could
4 only testify that he was a black man, a black male. His
5 testimony was improper and also false when he actually said
6 that he, he could identify me. He said he could identify me
7 on- by he say he was the Defendant that stepped out of his
8 room, and he also, and he also said that, he also said that I
9 had hair. I was a dark male with dark hair and the other
10 witnesses testified that he had a pink shirt on and a white
11 cap, white hat, and I couldn't understand how, you know, that
12 we could allow that testimony in the way he wasn't supposed to
13 be a witness.

14 THE COURT: So, what are you asking me to do?

15 MR. ANDERSON: I'm asking you to strike that, can we
16 strike that from the, from the testimonies that was ---

17 THE COURT: No, sir.

18 MR. ANDERSON: Can we just dismiss that testimony?

19 THE COURT: No, sir. Yes, sir.

20 MR. CHRISCO: Your Honor, I can slide in here right now.
21 I want the Court to inquire of Mr. Anderson whether he wants
22 to relieve me as his attorney at this point and carry on with
23 the case himself.

24 THE COURT: Is that what you're asking me to do, Mr.
25 Anderson?

1 MR. ANDERSON: Well, Your Honor, I don't how to run, to
2 do the case myself. So, I would need some help.

3 THE COURT: Okay, well, then let's go ahead and let's
4 let Mr. Chrisco stay in the case; okay?

5 MR. ANDERSON: Well, can we get another attorney for me?

6 THE COURT: No, no, sir, huh-uh, no, Mr. Chrisco is
7 your court-appointed attorney.

8 MR. ANDERSON: All right.

9 THE COURT: And I think what's happening, Mr.
10 Anderson, I'm assuming you've never been to law school; is
11 that correct?

12 MR. ANDERSON: No, sir, I never.

13 THE COURT: And you're not licensed to practice law
14 and you've never practiced law; is that correct?

15 MR. ANDERSON: That is correct.

16 THE COURT: All right, like any other profession,
17 whether it be a medical doctor, whether it be a CPA, whether
18 it be a nuclear physicist or whatever the other profession is
19 that requires special training, those that do not have that
20 special training a lot of times don't understand why those
21 within the profession do what they do or why their system
22 operates the way it does because you don't have that legal
23 knowledge. That's why we've appointed Mr. Chrisco to
24 represent you is because there are things about procedure,
25 there are things about discovery, there's things about cross

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1 examination, there's things about defending people in criminal
2 trials that the ordinary person without that legal training
3 just does not understand; okay?

4 MR. ANDERSON: I understand.

5 THE COURT: So, I would encourage you to work with
6 your attorney, to listen to him. He has the legal training.
7 He has the legal education. He has the legal experience and I
8 would venture to say he knows more about how to defend a
9 Defendant in a criminal trial than you do. So, that's why
10 we've appointed him to represent you; okay?

11 MR. ANDERSON: Yes, sir.

12 THE COURT: All right, sir, anything else?

13 MR. ANDERSON: Yes, sir. I'm asking for a second.

14 (Mr. Chrisco and Mr. Anderson confer.)

15 MR. ANDERSON: All right, thank you. No further
16 questions, Your Honor.

17 THE COURT: All right, take about a five-minute break.

18 MS. RICHARDSON: Okay.

19 THE COURT: All right, then we'll be right back.

20 MS. RICHARDSON: Thank you.

21 OFF THE RECORD

22 (On the record.)

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right, anything from the State before

1 we bring the jury in?

2 MS. RICHARDSON: No, sir, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: All right, let's bring the jury in.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: All right, ladies and gentlemen, welcome
9 back. We're ready to resume the trial of the case. The State
10 can call its next witness.

11 MS. RICHARDSON: Thank you, Your Honor. The State
12 would call Ms. Melanie Huggins-Ward.

13 THE COURT: All right.

14 Whereupon, Melanie Huggins-Ward was called to the stand,
15 duly sworn by the clerk and testified as follows:

16 THE CLERK: Please state your full name and spell your
17 last name.

18 MS. HUGGINS-WARD: Melanie Huggins-Ward, W-A-R-D.

19 DIRECT EXAMINATION

20 BY MS. RICHARDSON:

21 Q Ms. Melanie, where are you employed?

22 A I'm the Horry County Clerk of Court.

23 Q How long have you held that position?

24 A Since 2005.

25 Q And among your duties as Clerk of Court are you the

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1 custodian of criminal records?

2 A I am.

3 Q I'm going to show you what's been marked as State's
4 Exhibit 11 for ID purposes. What is that?

5 A That is the sentencing sheet of a criminal case along
6 with the indictment.

7 Q And is it a true and accurate copy?

8 A It is a certified copy of the official record that I also
9 have.

10 Q And who does that belong to?

11 A The Defendant.

12 Q The name?

13 A It's the State of South Carolina versus James Anderson.

14 Q And what's the charge in that case?

15 A This is indictment 2005-GS-26-907 and the charge is
16 burglary in the second degree non-violent.

17 Q And what sentence did he receive?

18 A He received two years suspended to six months.

19 MS. RICHARDSON: The State would request to enter
20 State's Exhibit 11 into evidence at this time.

21 THE COURT: Any objection?

22 MR. CHRISCO: No objection, Your Honor.

23 THE COURT: All right, State's Exhibit Number 11 is
24 admitted into evidence without objection.

25 (Whereupon, State's Exhibit Number 11 [Sentencing Sheet]

1 admitted into evidence and appropriately marked.)

2 BY MS. RICHARDSON:

3 Q I'm going to show you what's been marked as State's
4 Exhibit 12 for ID purposes only. What is that?

5 A This is a sentencing sheet and an indictment, a certified
6 copy of the original record which I also have.

7 Q Okay, and what is that indictment for?

8 A This is the State of South Carolina versus James C.
9 Anderson, 2000-GS-26-2557 is the indictment number. It's
10 burglary in the third degree, first. This also has first.

11 Q Okay, what was the sentence that he received?

12 A Four years.

13 MS. RICHARDSON: The State would request to mark - to
14 enter State's Exhibit 12 into evidence at this time.

15 THE COURT: Any objection?

16 A It also says zero to five.

17 MR. CHRISCO: If I could see that one.

18 THE COURT: All right.

19 A See it's got third and then it's got first there.

20 MR. CHRISCO: May we approach, Your Honor?

21 THE COURT: Yeah.

22 (Whereupon, a bench conference was held in the presence
23 but out of the hearing of the jury.)

24 THE COURT: Any objection?

25 MR. CHRISCO: Not at this point, Your Honor.

Melanie Huggins-Ward - Cross by Defense

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1 THE COURT: All right, Plaintiff's Exhibit - excuse
2 me, State's Exhibit Number 12 is admitted into evidence
3 without objection.

4 (Whereupon, State's Exhibit Number 12 [Sentencing Sheet]
5 admitted into evidence and appropriately marked.)

6 BY MS. RICHARDSON:

7 Q So, based upon those sentencing sheets he has two
8 convictions, prior convictions for burglary?

9 A That's correct.

10 MS. RICHARDSON: Nothing further from the State.

11 THE COURT: All right, Mr. Chrisco.

12 CROSS EXAMINATION

13 BY MR. CHRISCO:

14 Q Good afternoon.

15 A Good afternoon.

16 Q Just a couple of questions, on State's Exhibit Number 11
17 on the sentencing sheet it states his name as James Anderson;
18 is that correct?

19 A That's correct.

20 Q Now, on the indictment it states that his name is James
21 Anderson?

22 A That's correct.

23 Q If I could see that back for just a minute. Now I'll
24 show you what's been marked as State's Exhibit Number 12.
25 What is the name on that?

1 A It looks like James C. Anderson but I think it's James
2 L. Anderson.

3 Q On the indictment side it says?

4 A James Lee Anderson.

5 Q And does the Social Security number there match the
6 Social Security number here?

7 A Does not. It's one digit off on the last four numbers,
8 [REDACTED] in State's 11 and [REDACTED] is State's 12.

9 Q Based upon what you've seen before you and what you've
10 given into evidence can you state with absolute certainty that
11 it is the same person?

12 A There's no way for me to know that.

13 Q Thank you for your honesty.

14 MS. RICHARDSON: Just briefly, Your Honor. I'm sorry.
15 Were you finished?

16 THE COURT: Anything further, cross-examination?

17 MR. CHRISCO: Nothing further, Your Honor.

18 THE COURT: All right, redirect.

19 MS. RICHARDSON: Sorry.

20 REDIRECT EXAMINATION

21 BY MS. RICHARDSON:

22 Q I'm going to hand you State's Exhibit 11 and State's
23 Exhibit 12. What are the birthdays on those two exhibits?

24 A Let's see, the date of birth [REDACTED]-63 on State 12 and [REDACTED]-
25 [REDACTED]-63 on State's 11.

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1 MS. RICHARDSON: The Court's indulgence just a moment.

2 BY MS. RICHARDSON:

3 Q And can you tell me what this is?

4 A That is the signature of the Defendant who pled guilty.

5 Q And do those signatures appear to be the same to you?

6 MR. CHRISCO: Your Honor, I would object.

7 THE COURT: Sustained.

8 MS. RICHARDSON: Nothing further. You can't.

9 A I know.

10 MS. RICHARDSON: Nothing further at this time, Your
11 Honor.

12 THE COURT: All right, thank you. You may step down.

13 A Thank you.

14 THE COURT: All right, the State can call its next
15 witness.

16 MS. RICHARDSON: The State would rest at this time,
17 Your Honor.

18 THE COURT: All right. All right, ladies and
19 gentlemen, the State has presented their case and now is the
20 time of the trial where I have to take up some matters of law
21 with the attorneys. So, again, I'm going to need to excuse
22 you back to the jury room while we take up these matters of
23 law. Please leave your notepads here. Do not discuss the
24 case even among yourselves at this point in time. It's too
25 early for any deliberations but we'll bring you back in just a

1 minute. If they need to go out that'll be fine. We'll be
2 taking about a 15-minute break.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, any motions at this time?

6 MR. CHRISCO: Yes, Your Honor, I reserve on the last
7 indictment I would object to it coming in because it's not
8 been proven that it's the same person, Your Honor. One is a
9 James Anderson, one is a James Lee Anderson. My client has no
10 middle name whatsoever. That's the first one I would make.

11 The other objection is I would ask for any fingerprint
12 testimony to be stricken from the record based upon the fact
13 that the discovery which I have received did not have the 30
14 other individuals in it and that I could have used those; that
15 evidence to have an expert to look at it because I do not have
16 access to their computer, and also as the testimony indicated
17 he only did two before he stopped. So, we don't know what
18 number 27 how many points that or even what the fingerprint
19 looks like. I think the client has been prejudiced to the
20 point where without that information it could have been
21 something in there, we do not know, that would have said that
22 it wasn't him, somebody that had 14 points or whatever they
23 called it, and in the absence of strikening that testimony
24 would ask the Court for a new trial.

25 THE COURT: All right, let me see those State's

Motions

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1 Exhibits 11 and 12. All right, I'm going to deny your motion
2 as to the fingerprint testimony, excuse me, as to the
3 indictments on the prior 2000-GS-26-2557 and 2005-GS-26-907,
4 granted one of them does say James Lee Anderson, but all of
5 them, including the present indictment state James Anderson.
6 They have identical dates of birth. They have identical
7 Social Security numbers except for 2005-GS-26-907 which is off
8 by one number. In other words, rather than - it doesn't have
9 any Social Security number on the sentencing sheet. On the
10 indictment it has [REDACTED] and all the others have [REDACTED]
11 [REDACTED]. So, I'm going to deny that.

12 Now, I do want to hear from the State - I'm not so
13 concerned about the full 30 fingerprints because as I
14 understand the testimony he stopped after the second one. In
15 other words, he didn't look at the others. So, we don't know
16 what's on those others. That's not part of the case. He
17 could have requested a thousand fingerprints to do it but he
18 requested 30, some request 50. My concern and I want to hear
19 from the State though is their failure to present the first
20 photograph that he did compare it to and denied and threw it
21 out. Why should that not be presented to the Defense?

22 MS. RICHARDSON: Your Honor, our position on it is
23 that it would not be a discovery violation in this case. We
24 provided him everything we had on which a printout that we've
25 made as a Court's Exhibit says that there were 30 returned

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1 prints. At that point in time he could have requested from
2 our office and I would have done to the best of my ability to
3 be able to provide that to him, Your Honor. It's nothing
4 that's within our possession.

5 THE COURT: When you say within your possession you're
6 talking about the Solicitor's Office or the police department
7 or within whose possession when you say our possession?

8 MS. RICHARDSON: The Solicitor's Office possession,
9 Your Honor.

10 THE COURT: Okay, well, but there's often things that
11 are within the possession of the police department that the
12 Solicitor hasn't obtained yet that you've got to go get.

13 MS. RICHARDSON: And Your Honor, to me it's almost
14 like a CI video where we have the CI video, we keep the CI
15 video. We let them know that the CI video is available and
16 upon their request they can come watch the video or they can
17 come get the video. To me this is similar to that. We let
18 him know these others, based upon that exhibit, these others
19 were - he tested them against it. So, for us, Your Honor, my
20 position on it is that it's not a discovery violation. This
21 officer used those prints as a test for him and we provided
22 the fact that there were 30 additional ones out there.

23 THE COURT: All right, all right, anything in reply,
24 Mr. Chrisco?

25 MR. CHRISCO: I don't think anything in the discovery

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1 rules make it incumbent upon the Defense to ask for every
2 single thing that the Solicitor has. If it's there it should
3 be provided. When they say it's not in their custody I think
4 even the courts have said that if it's in the police custody
5 then it's in the domain of the Solicitor's custody also.
6 They can't use one another to shield the evidence in the case
7 to give it to the Defense. It's a hard enough job defending
8 cases when you get some evidence. When you don't get it all
9 it makes it extraordinarily hard and it puts the Defendant
10 who's been charged in a very, very, in a very bad position
11 that but for not getting the item that could have made a
12 difference on how the case was presented, Your Honor.

13 THE COURT: Okay.

14 MS. RICHARDSON: Your Honor ---

15 THE COURT: All right, I'm fine.

16 MS. RICHARDSON: Okay.

17 THE COURT: All right, I'm going to deny your motion.
18 They did present Court's Exhibit Number, I think it was Two to
19 you that had the list on there. I'm kind of persuaded by the
20 State's argument it's like the CI video. We say, "We've got a
21 video. If you want to come look at it you can come look at
22 it." So, based upon that I'm going to deny your motion to
23 exclude the fingerprint testimony. All right, anything else?
24 Any other motions?

25 MR. CHRISCO: No, Your Honor.

1 THE COURT: All right, do we want to go ahead and
2 question your client on his right to testify?

3 MR. CHRISCO: Yes, Your Honor.

4 THE COURT: All right, Mr. Anderson, if you'd please
5 stand up.

6 (Complies with request.)

7 THE COURT: All right, sir. Would you raise your
8 right hand, please?

9 (Whereupon, Defendant sworn by the Court.)

10 THE COURT: All right, you can put your hand down.
11 Your name is James Anderson?

12 MR. ANDERSON: Yes, sir.

13 THE COURT: All right, Mr. Anderson, at this time I'm
14 going to explain to you certain rights that you have as
15 guaranteed by the United States Constitution. If you do not
16 understand anything I say please let me know. If you want me
17 to explain anything in more detail please let me know. Do you
18 understand that?

19 MR. ANDERSON: Yes, sir.

20 THE COURT: All right, we've now reached the stage of
21 the trial where you may present your defense. You have the
22 right to claim the protection given to you by the Fifth
23 Amendment of the Constitution of the United States. This
24 amendment states in part that no person shall be compelled in
25 any criminal case to be a witness against himself. This means

Questioning Re: Right to Testify

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1 that you cannot be required to testify in this case. You have
2 the right to testify on your own behalf. However, no one can
3 make you testify. This is a personal right and no one can
4 waive this right except for you. If you decide to testify you
5 will be subject to the same rules that govern other witnesses
6 and you may be examined and cross-examined on any relevant
7 issue in this case. In addition, if you have any convictions
8 involving dishonesty or false statement or for crimes
9 punishable by imprisonment for more than one year and this
10 Court determines that the probative value of admitting the
11 evidence outweighs its prejudicial affect to you the Solicitor
12 will be able to introduce your record to attack your
13 credibility. If you decide to testify this decision on your
14 part must be freely, voluntarily and intelligently made with
15 knowledge of the protections given to you by the Fifth
16 Amendment and to the consequences of your decision to testify.
17 If you decide not to testify I will instruct the jurors that
18 they cannot give the fact that you did not testify any
19 consideration whatsoever and that there is to be absolutely no
20 prejudice to you because you did not testify. It is left
21 entirely up to you whether or not you testify. You may talk
22 with your attorney, your family and friends or anyone else but
23 the final decision is left exclusively up to you. Do you
24 understand what I've explained to you?

25 MR. ANDERSON: Yes, sir.

1 THE COURT: All right, do you have any questions about
2 what I've explained to you?

3 MR. ANDERSON: No, sir.

4 THE COURT: All right, let's take about a five-minute
5 break. I'm going to let you discuss it further with your
6 attorney. When I come back I'm going to ask you whether or
7 not you wish to testify in the case. Okay?

8 MR. ANDERSON: Thank you.

9 THE COURT: All right, thank you very much. Let's
10 take a five-minute break.

11 MS. RICHARDSON: Thank you, Your Honor.

12 OFF THE RECORD

13 (On the record.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right, Mr. Anderson, if you'd please
17 stand.

18 (Complies with request.)

19 THE COURT: Have you had an ample opportunity to
20 discuss with your attorney your right to testify?

21 MR. ANDERSON: Yes, sir.

22 THE COURT: Do you have any questions that you want to
23 ask your attorney or ask the Court?

24 MR. ANDERSON: Yes, sir, if it please the Court, I'd like
25 to ask the Court, what part of my record would they be able to

Questioning Re: Right to Testify

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1 go into, just the burglaries or the whole, complete record?

2 THE COURT: All right, if he, if he intends to testify
3 what does the State intend to use?

4 MS. RICHARDSON: Your Honor, we would be starting in
5 2001. I know that's outside the 10 year period, but from my
6 understanding the rule says from when he was released from
7 prison or at the time he was convicted, whichever is latter.
8 He received a four-year sentence on a burglary third,
9 distribution of crack, PWID, Your Honor, possession of crack,
10 2005 burglary second, possession of crack, 2006, petit - we
11 would not be using petit larceny, I apologize, false
12 information to police, breaking and entering an automobile,
13 2008 financial transaction card theft, 2009 financial
14 transaction card theft, three counts of receiving stolen goods
15 and 2010 receiving stolen goods.

16 THE COURT: Okay, I am inclined not to let them cross-
17 examine you on the drug charges but on all of these other
18 charges they indicate crimes of moral turpitude and I think
19 they are. As far as the financial - read them out again, the
20 ones except for the drug charges.

21 MS. RICHARDSON: Your Honor, that would be a 2001
22 burglary third, 2005 burglary second, 2006 false information
23 to police and a breaking and entering, 2008 FTC theft, 2009
24 FTC theft, 2009 three counts of receiving stolen goods, 2010
25 one count of receiving stolen goods.

1 THE COURT: All right, so, those would be the ones
2 they would be inclined - I would allow them to cross examine
3 you on because those tend to show dishonesty. They're
4 classified as crimes of moral turpitude, and I find that the
5 probative value outweighs the prejudicial affect. I am going
6 to not let them question you on any drug charges because I
7 don't see where that, where the probative value outweighs the
8 prejudicial effect on those. All right.

9 MR. ANDERSON: All right.

10 THE COURT: Do you have any other questions?

11 MR. ANDERSON: No, sir.

12 THE COURT: All right, do you wish to testify or do
13 you intend to testify in this case?

14 MR. ANDERSON: I need to talk to my - to speak to my
15 attorney.

16 THE COURT: All right, yeah, take your time.

17 (Mr. Chrisco and Mr. Anderson confer.)

18 MR. ANDERSON: All right, yes, sir, Your Honor, I testify
19 on my behalf.

20 THE COURT: You do - you are going to testify?

21 MR. ANDERSON: Yes, sir.

22 THE COURT: All right, anything further from the
23 Defense before we bring the jury in?

24 MR. CHRISCO: No, Your Honor.

25 THE COURT: Anything further from the State before we

Christa Phibbs - Direct by Defense

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1 bring the jury in?

2 MS. RICHARDSON: No, Your Honor.

3 THE COURT: All right, let's bring in the jury.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right, ladies and gentlemen, welcome
7 back. We're ready to resume the trial of the case. The State
8 has presented their case in chief and now is the time for the
9 Defense to present a defense should they choose to do so. I
10 remind you if you have any cell phones or pager devices turn
11 those off. Make sure you have your own notepads. All right,
12 Mr. Chrisco, you can call your first witness.

13 MR. CHRISCO: Thank you, Your Honor, the Defense would
14 call Christy Phibbs.

15 THE COURT: All right.

16 Whereupon, Christa Michelle Phibbs was called to the
17 stand, duly sworn by the clerk and testified as follows:

18 THE CLERK: Please be seated. If you'll state your
19 full name and spell your last name. Christa Michelle Phibbs,
20 P-H-I-B-B-S.

21 DIRECT EXAMINATION

22 BY MR. CHRISCO:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Please state to the jury what you do.

1 A I am employed by Bluewater Resort Hotel in Myrtle Beach
2 as the front desk manager.

3 Q And that is the site of the reason for these charges.

4 A It is.

5 Q Do you have a - security guards there?

6 A We do.

7 Q And how many security guards do you employ?

8 A At any given time we have four.

9 Q Now, do you have cameras located anywhere on the
10 property?

11 A We do.

12 Q Do you know how many cameras?

13 A Currently we have 32.

14 Q And those are placed all around the property?

15 A They are placed throughout the property in what we would
16 call common areas, parking garages, pool area, lobby, anything
17 where people are going to gather.

18 Q Entrance, exits, that sort of thing?

19 A Yes.

20 Q When a burglary is reported to you do you or the
21 security, do they look at video from the time in question?

22 A Uh-huh, they would work in conjunction with the police
23 at their directive and discretion on reviewing the tapes.

24 Q Do you know if there - if the police got any videos from
25 the hotel for this particular instance?

Christa Phibbs - Direct by Defense

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1 A I have no knowledge of whether they did or did not.

2 Q And do you have any knowledge of anything that was on
3 the videos on the property?

4 A At that time, no.

5 Q Is there any videos that you've seen or heard about that
6 contain images of Mr. Anderson?

7 A I was not on the property during the time the incident
8 occurred. So, I would not be able to speak to that.

9 Q The security guards are there just in the nighttime?

10 A No, they are 24 hours.

11 Q And that's 24 hours a day, seven days a week?

12 A 24 seven, yes, sir.

13 MR. CHRISCO: The Court's indulgence just a moment.

14 THE COURT: All right.

15 BY MR. CHRISCO:

16 Q Do you know in this particular instance were a security
17 guard was called or not?

18 A Again, I was not on property. I was not employed by
19 Bluewater at the time of the incident. So, I would not know.

20 Q Thank you, ma'am.

21 THE COURT: Cross examination.

22 MS. RICHARDSON: Yes, Your Honor, just briefly.

23 CROSS EXAMINATION

24 BY MS. RICHARDSON:

25 Q When did you come on to Bluewater?

1 A This past December.

2 Q Is anybody - is it ran by the same management staff?

3 A The management staff has changed since the date of the
4 incident.

5 Q Are the security guards the same?

6 A I honestly don't know. The security guard is - the
7 security company is through our outside homeowners'
8 association.

9 Q What about the cameras at that time, is it the same
10 camera system?

11 A It is not.

12 Q Do you know how many cameras they had at that time?

13 A I believe they had the same number or very, very similar
14 to it because they're placed in the same areas. So, I would
15 also say 32 at that time.

16 Q But you don't know for sure that the cameras were
17 working?

18 A No.

19 Q You don't know for sure whether or not an officer
20 requested that information?

21 A I do not.

22 Q Are you familiar with the record-keeping system at your
23 hotel?

24 A Yes.

25 Q And how does that work?

Christa Phibbs - Redirect by Defense

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1 A The system, although the property management has
2 changed, the computer system and the software has remained the
3 same from as far as I know the inception of the company
4 because that's all your commodities are in your guest
5 histories. That's in your information. The software has
6 remained the same.

7 Q To your knowledge has Room 1001A ever been rented to
8 James Anderson?

9 A It has not according to our records.

10 MS. RICHARDSON: The Court's indulgence.

11 THE COURT: All right.

12 MS. RICHARDSON: Nothing further at this time.

13 THE COURT: All right, redirect.

14 MR. CHRISCO: The Court's indulgence just one moment,
15 please.

16 REDIRECT EXAMINATION

17 BY MR. CHRISCO:

18 Q Well, did you check to see if Mr. Anderson had ever
19 registered to stay at the hotel?

20 A I did.

21 Q And what was the answer?

22 A I did not find - only - I found only one James Anderson
23 and that James Anderson was in 2005 and lives in Connecticut.

24 Q If he was there with a girlfriend he wouldn't be listed
25 on your card; would he?

1 A We do encourage all the guests to register so that way
2 if he gets locked out or whoever is staying with a guest gets
3 locked out they have key access. So, if a guest, even if he
4 stayed as a guest and we pulled it up it would be linked to
5 the main person the reservation's name was in but if he
6 registered as a guest it would be on there and I could link it
7 to a room.

8 Q And routinely people don't register as a guest?

9 A Not a hundred percent, no.

10 Q And now some people are in the hotel are, aren't they
11 permanent so to speak, aren't they permanent people that live
12 in the motel?

13 A Permanent residents?

14 Q Right.

15 A Yes, we do have some permanent residents.

16 Q And you wouldn't know if Mr. Anderson knew any of those
17 people?

18 A I would have no knowledge of who he knows.

19 Q Have you ever seen Mr. Anderson?

20 A I have not.

21 MR. CHRISCO: No further questions, Your Honor.

22 THE COURT: All right, you may step down. All right,
23 you can call your next witness.

24 MR. CHRISCO: Your Honor, the Defense would call James
25 Anderson.

James Anderson - Direct by Defense

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1 THE COURT: All right, sir.

2 Whereupon, James Anderson was called to the stand, duly
3 set sworn by the clerk and testified as follows:

4 THE CLERK: Thank you. Please be seated. If you'll
5 state your full name and spell your last name.

6 MR. ANDERSON: James Anderson, A-N-D-E-R-S-O-N.

7 THE COURT: Mr. Chrisco.

8 MR. CHRISCO: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. CHRISCO:

11 Q How old are you, Mr. Anderson?

12 A 50, I soon to be 50, I'm 49, getting ready to be 50.

13 Q You admit to that and say you are. You've got a record.

14 A Yes, sir.

15 Q When the Prosecutor gets up she's going to say that
16 you've been convicted of burglary second or burglary third,
17 financial transaction card fraud, breaking and entering into
18 an automobile, giving false information to the police.

19 MS. RICHARDSON: Your Honor, I'm going to object to
20 leading his witness.

21 THE COURT: No, I don't think that's leading at this
22 point in time. I'll allow the question. Go ahead.

23 Q There's probably some that I've missed. You've been
24 convicted of all those things?

25 A Yes, sir.

1 Q What happened, going back you were arrested when for
2 this charge?

3 A For this charge I was arrested like 2000, in 2009.

4 Q And you've heard the evidence here. Where were you on
5 that day that they claim, the July 8th?

6 A On July the, July 8th?

7 Q July 8th and early July - well, early July 8th and late
8 July 7th, where were you?

9 A Well, I live on the - I live on Myrtle Beach and I live
10 in hotels. So, I was on, I was on Myrtle Beach. Around July
11 7th and 8th I'm not sure where I was at at that present moment
12 because, like I say, I live in different motels and I
13 probably was somewhere on the north end. I live at various
14 different motels. I was probably at the Odyssey Hotel or
15 Sailfish or someplace like that, and then again, I could've
16 been on the south end. I - because I got arrested on the
17 south end. This place is on the 20, 21st, but I didn't get
18 arrested on the 21st. I got arrested at another motel. The
19 police arrested me for this charge at Palmetto Vista.

20 Q Have you ever been on this property before?

21 A Yes, sir, I used to go to Bluewater all the time
22 visiting friends.

23 Q And how many times would you say that you've been there?

24 A I would say I've been there hundreds of times because I
25 used to go like two, three times a week to my friend's house

James Anderson - Direct by Defense

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1 and sometime I would have a friend that would get a room there
2 overnight, maybe two nights, two or three nights and I would
3 be there with them.

4 Q Did you know anybody that worked there?

5 A That worked there? No, ma'am - no, sir. I tried to
6 stay out of the manager's way because I wouldn't be the one
7 rented the room and I know how some hotels are about that, you
8 know, you be in there without being a registered guest.

9 Q Had you ever been in this particular room?

10 A I think so, yes, sir.

11 Q And when did you think that was?

12 A I think I was there with my - a friend of mine. She's
13 from Marlboro County and we stayed like two nights and this
14 was back before then. It was like maybe sometime in June,
15 last part of June or something like that. I'm not for sure,
16 but we stayed like two nights.

17 Q Are you married?

18 A No, sir, ain't never been married.

19 Q You got any kids?

20 A No, sir, I don't have no kids.

21 Q Anything else you'd like to say to the jury?

22 MS. RICHARDSON: Objection, Your Honor. What's,
23 what's the question?

24 THE COURT: Well, I'm going to allow it. Go ahead.

25 A Yes, sir, I just wanted to say to the jury that I don't

1 know how I've been accused of this, of this charge. It's one
2 that I didn't commit and if I would have committed this crime
3 I'd been pleaded guilty a long time ago because they, they
4 offered me a plea bargain for it but I just don't believe in
5 pleading guilty to something I didn't do. I did that when I
6 was growing up. That's why my record like it is pleading to
7 everything but now I just say I wish I hadn't did it then.
8 So, I ain't going to do it now. I'm not guilty for this
9 charge right here. I know I did a lot of things in life
10 growing up but this is one I didn't do and I just I can't
11 understand how they could have a burglary at a hotel such as
12 Bluewater and nobody got no footage of the video or there is
13 no security officers that brought, you know, if a, if a
14 burglary, if a burglary happen how would someone not try to
15 get a video of it and you call the police right then on time.
16 They got 24-hour security and they say it was on the 10th
17 floor, room 10 - 1001. How did he get down? He had to go
18 through the lobby or somewhere I would think. Like I say, I
19 used to go to this hotel a lot and I stayed there a lot. You
20 might find my fingerprint in a lot of rooms around there, you
21 know, because I be in there a lot with just the lifestyle I
22 was living around during that time and that's what I wanted to
23 say.

24 Q Answer any questions that the Prosecutor may have.

25

CROSS EXAMINATION

James Anderson - Cross by State

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1 BY MS. RICHARDSON:

2 Q Who were you in the hotel with?

3 A I was - who were I in the hotel room with when, on
4 which?

5 Q Who, who was your friend that you were in the hotel
6 with?

7 A I have a lot of friends. I had a lot of friends. Like
8 I say, I used to go there a lot with different ones.

9 Q You just testified to this jury that you were in that
10 hotel room you think late June ---

11 A Oh, that room, 1001?

12 Q --- with a girlfriend.

13 A Brenda.

14 REPORTER: I can't hear but one at the time.

15 A Okay, you're talking about 1001?

16 Q Who were you with.

17 A Brenda Strickland. Now, now, she's been married once
18 before and she maybe use her, she maybe - probably her ID
19 probably would have had her husband's last name, but I'm not
20 for sure and I don't remember her husband's last name but I do
21 know her name is Brenda Strickland. She was a real friend of
22 mine. She still is.

23 Q What's your Social Security number?

24 A [REDACTED].

25 Q Let's talk about your lifestyle, Mr. Anderson. You were

1 convicted in 2001 for burglary third degree for which you
2 received a four-year sentence?

3 A Yes.

4 Q You were convicted in 2005 for a burglary second degree?

5 A Yes.

6 Q You were convicted in 2006 for false information to
7 police?

8 A Yes, I think I pleaded guilty to that one, too.

9 Q You were convicted in 2006 for breaking and entering a
10 motor vehicle?

11 A Yes, ma'am.

12 Q You were convicted in 2008 for financial transaction
13 card theft?

14 A Yes, I were.

15 Q In 2009 for financial transaction card theft?

16 A Yes, I were.

17 Q 2009 three counts of receiving stolen goods?

18 A Yes, ma'am.

19 Q In 2010 one count of receiving stolen goods?

20 A Yes, I was.

21 Q So, you admit under oath here today that you have lied
22 to a police officer?

23 A Well, actually if I could tell you what happened. I
24 pleaded guilty to false information because I was drinking and
25 the CO asked me my Social Security number and I started to

James Anderson - Cross by State

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1 stuttering and he say, "I don't know who you is. So, I'm
2 going to have to take you in because you're stuttering and
3 you" ---

4 Q But you pled guilty?

5 A I pled ---

6 Q Or either you were convicted?

7 A That's how it happened and I pled guilty to it.

8 Q So, really, we can't believe anything you're saying here
9 today?

10 A Excuse me?

11 Q You admitted to lying to the police. Are you lying here
12 today as well?

13 A I didn't mean, I didn't admit to lying to the police.
14 What I just said is that when the police asked me my Social
15 Security number I started to stuttering because I was
16 intoxicated.

17 Q Because you couldn't remember what Social Security
18 number to give him?

19 A No, I was intoxicated and I was trying to think of my
20 Social Security number to tell him. I didn't want to tell him
21 the wrong thing. So, I told him, "Give me a minute, give me a
22 minute, let me think of it," and he said, "Well, I'm just
23 going to take you in because so I can find out who you are."
24 So, that's what he did.

25 Q No doubt you lied to the police, you pled guilty or were

1 convicted for lying to a police officer? You pled guilty or
2 you were convicted of lying to a police officer regardless of
3 ---

4 A For false information, I pled guilty to false
5 information, yes.

6 Q False information to a police officer?

7 A Yes.

8 MS. RICHARDSON: The Court's indulgence just a moment.

9 THE COURT: All right.

10 MS. RICHARDSON: May we approach, Your Honor?

11 THE COURT: All right.

12 (Whereupon, a bench conference is held in the presence
13 but out of the hearing of the jury.)

14 THE COURT: All right, go ahead.

15 MS. RICHARDSON: Nothing further at this time, Your
16 Honor.

17 THE COURT: All right, redirect?

18 MR. CHRISCO: No, Your Honor.

19 THE COURT: All right, you may step down.

20 A Thank you, Your Honor.

21 THE COURT: Thank you. All right, you can call your
22 next witness.

23 MR. CHRISCO: The Defense rests, Your Honor.

24 THE COURT: All right, let me see the attorneys for a
25 second.

Motions

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1 (Whereupon, a bench conference is held in the presence
2 but out of the hearing of the jury.)

3 THE COURT: All right, ladies and gentlemen, the
4 Defense has concluded their case. So, now is the time of the
5 trial where I need to take up some matters of law with the
6 attorneys again. So, I'm going to excuse you back to the jury
7 room for just a brief moment and we'll bring you back out in
8 just a second. Leave your pads here. Do not discuss the
9 case. It's too early for deliberations. Thank you very much.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, any motions at this time?

13 MR. CHRISCO: Your Honor, I'm going to renew the same
14 motions that I had at the end of the State's case and that
15 motion is to suppress the fingerprint testimony, anything
16 related to the fingerprint because the discovery rules were
17 violated. They did not - it prejudiced my client and would
18 have had a different style of trial had we had all of the
19 evidence and I don't think it's incumbent upon the Defendant
20 to ask for every single thing and I don't think that that
21 would be in the judicial economy of the court system to have
22 the attorneys file a motion on every little box or checkmark
23 or whatever that's located in discovery just to make sure that
24 they get everything that they're entitled to get to begin
25 with. It behooves me that everything is placed on and made

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1 the burden of the Defense to make sure that they get
2 everything that is involved in a case in a timely manner and
3 not a week before trial or two days before trial or even 30
4 days before trial but hearing the ruling of this Court the
5 computers in the Public Defender's office will be reprogrammed
6 and will be inundating the Court for a lot of things, Your
7 Honor.

8 THE COURT: All right, I understand your motions and
9 I'm going to deny them. Like I said, I don't know, there's no
10 case on point that deals with it. So, I was somewhat
11 persuaded by the State's argument that it's the same thing as
12 a video in the, in the store that has a shoplifting. They
13 don't send you the video but you're at liberty to come look at
14 it. Whether I'm right or wrong I don't know but that's going
15 to be my ruling. So, I deny your motion. All right, anything
16 else?

17 MR. CHRISCO: Not from the Defense, Your Honor.

18 THE COURT: Anything from the State?

19 MS. RICHARDSON: Not from the State, Your Honor.

20 THE COURT: All right, are we ready to go forward with
21 the reply?

22 MS. RICHARDSON: If I can have just a moment.

23 THE COURT: All right.

24 MS. RICHARDSON: We're ready to go, Your Honor.

25 THE COURT: All right, let's bring the jury back in.

Christa Michelle Phibbs - Direct by State

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1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: All right, ladies and gentlemen, welcome
4 back. I remind you if you have any cell phones or pager
5 devices please turn those off at this time. Make sure you
6 have your own notepads. The Defense has presented their case
7 and now is the time where the State can present any reply
8 witnesses they wish to. Does the State have any they wish to
9 call?

10 MS. RICHARDSON: Very briefly, Your Honor.

11 THE COURT: All right.

12 MS. RICHARDSON: The State would call Ms. Christa
13 Phibbs back to the stand.

14 THE COURT: All right, let's place her under oath
15 again, okay?

16 Whereupon, Christa Michelle Phibbs was called to the
17 stand, duly sworn by the clerk and testified as follows:

18 THE CLERK: If you'll state your full name and spell
19 your last name.

20 MS. PHIBBS: It's Christa Michelle Phibbs, P-H-I-B-B-S.

21 THE COURT: All right, Ms. Richardson.

22 MS. RICHARDSON: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. RICHARDSON:

25 Q Ms. Phibbs, very briefly, you were in the courtroom when

1 the Defendant testified that he stayed with a Brenda
2 Strickland at Bluewater Hotel?

3 A I was.

4 Q Have you had a chance to run that information through
5 your system?

6 A We did run Brenda Strickland. We spelled it S-T-R-I-C-
7 K-L-A-N-D. Although I found 13 females with the last name
8 Strickland, none were Brenda.

9 Q So, to your knowledge, no Brenda Strickland has ever
10 stayed at the Bluewater Hotel?

11 A No, and I do have the 13 names of the other females as
12 well.

13 Q Okay.

14 MS. RICHARDSON: Nothing further from the State.

15 THE COURT: All right, cross examination?

16 CROSS EXAMINATION

17 BY MR. CHRISCO:

18 Q But you - do you know for a fact that he never stayed
19 there?

20 A He or she?

21 Q Mr. Anderson?

22 A I can't say that he had never stayed there, no.

23 Q Thank you.

24 THE COURT: Redirect?

25 MS. RICHARDSON: No, sir, Your Honor.

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1 THE COURT: All right, you may step down. All right,
2 call your next witness.

3 MS. RICHARDSON: That would be the State's case, Your
4 Honor.

5 THE COURT: All right. All right, ladies and
6 gentlemen, all of the evidence to be presented to you has now
7 been presented to you and the only thing left in this trial is
8 for the attorneys to make their closing arguments and for me
9 to charge you with the law to be applied in the case.
10 However, that will take some time for us to get those things
11 together to present them to you. So, with it being 3:15 I'm
12 going to go ahead and excuse you for the remainder of the day.
13 I'm going to ask that you please be back in the jury room at
14 10 o'clock tomorrow morning and we'll get started soon after
15 that. Do not discuss the case even among yourselves at this
16 point in time. It's too early for deliberations. Don't
17 conduct any independent investigations. Don't try to find out
18 anything about the case. Leave your notepads in the jury box
19 and we'll see you back at 10 o'clock tomorrow morning. Thank
20 you very much.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, anything from the State before
24 we recess for the evening?

25 MS. RICHARDSON: No, sir, Your Honor.

1 THE COURT: Anything from the Defense?

2 MR. CHRISCO: Would like to know what the charges would
3 be so we can be thinking about that tonight?

4 THE COURT: Okay, well, I'm going to go ahead and be
5 drafting my jury charges tonight to submit to them. I'll have
6 them for you first thing in the morning. That's one reason I
7 went ahead and broke right now and the reason I waited until
8 10 o'clock is I do have a bond matter I need to take up at
9 9:15 tomorrow, but I - so, I'm going to be here nine o'clock
10 or before, so if you need to see me.

11 MR. CHRISCO: Your Honor, Your Honor had said the other
12 day that after the trial we would think about the charge for
13 the child.

14 THE COURT: Well, as I said, with the someone under 18
15 testifying there is a child, there is a charge that deals with
16 children's testimony and if you want that charged I'll charge
17 it.

18 MR. CHRISCO: The Defense would prefer that charge, Your
19 Honor.

20 THE COURT: All right, I'll put that in there. All
21 right, and if you have any other requests get them to me as
22 soon as you can and I'll take a look at them. Okay?

23 MS. RICHARDSON: Okay.

24 THE COURT: All right, thank you very much. We'll be
25 in recess in this case until 10 o'clock tomorrow, but as I

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1 said I'll be here tomorrow morning dealing with that other
2 matter. So, if you want to give me anything and I'll be here
3 working on these charges this afternoon. So, if you have
4 anything you want to get to me go ahead and get them to me.

5 MR. CHRISCO: Thank you, Your Honor.

6 MS. RICHARDSON: Thank you, Your Honor.

7 MR. CHRISCO: May we approach for just a minute?

8 THE COURT: Yeah, come on up.

9 OFF THE RECORD

10 (On the record, March 14, 2012.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, my clerk should have given you
14 my instructions and I'll give you an opportunity after I
15 charge the jury on the law to make any additional challenges
16 at that time, but before we bring the jury in is there any
17 challenges to the charges by the State?

18 MS. RICHARDSON: Nothing from the State, Your Honor.

19 THE COURT: Any at this time by the Defense?

20 MR. CHRISCO: No, Your Honor.

21 THE COURT: All right, anything from the State before
22 we bring the jury in?

23 MS. RICHARDSON: No, sir, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. CHRISCO: The Defense is ready, Your Honor.

1 THE COURT: All right, the State waiving opening?

2 MS. RICHARDSON: Yes, sir, Your Honor.

3 THE COURT: Okay, all right, let's go ahead and bring
4 the jury in.

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: Welcome back, ladies and gentlemen. I
8 hope everyone had a good evening. I apologize for keeping you
9 in the jury room for so long but we had some matters in
10 another case not pertaining to this one that I needed to
11 address first thing this morning. We have reached the time of
12 the trial where the attorneys can now make their closing
13 arguments to you and then I will charge you on the law and
14 then you will begin your deliberations. Now, like their
15 opening statements these closing arguments are not evidence in
16 this case. It is simply the attorney's contention as to what
17 they think the evidence has shown and what they feel the law
18 is in this case. If at any time an attorney makes reference
19 to a factual issue that is different from the facts as you
20 find them to be or references the law that is different from
21 the law as I will charge you at the close of their arguments
22 then you're to disregard their statements. As I said these
23 closing arguments are simply the attorney's contention as to
24 what the facts in this case are and what the law is in this
25 case to be applied. I remind you if you have any cell phones,

Closing Argument by Defense

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1 pager devices or other communication devices if you'd turn
2 them off at this time. All right, Mr. Chrisco.

3 MR. CHRISCO: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. CHRISCO: It's been a long three days. Mr. Anderson
6 took the stand yesterday. He testified. He took the oath and
7 he said that, after I had read a bunch of prior charges, the
8 Solicitor read a bunch of prior charges, that he was pleading
9 - he pled guilty to those because he was guilty, said he was
10 pleading not guilty to this because he was not guilty.

11 Let's go back and look at the witnesses that testified.
12 If I say something that you don't remember that way or you
13 don't have written that way you disregard what I say. Like
14 the Judge has already said, what I say is not evidence, only
15 what you've heard from these witnesses.

16 The young boy got up. He was asked questions by the
17 Prosecutor, said it was a dark male, under six foot because he
18 was six foot at the time when he was 14 years old. That was
19 about 32 months ago, a little over two and half years, and
20 when I got up and asked him questions he said that the person
21 had dark, dark skin and had dark hair. Then looked at Mr.
22 Anderson and said, "I meant dark facial hair." If he was
23 going to say and then he went on to say that Mr. Anderson was
24 indeed the person that was in the room. I'm just asking you
25 to use your common sense. Had that been the knowledge of that

1 witness he would have said that before, the Prosecutor would
2 have known and that's a question that a Prosecutor will surely
3 ask right out of the gate just to get that identification.

4 The Judge is going to give you a charge as far as the
5 minor testifying. I think sometimes people get caught up in
6 the moment and they want things a lot bigger than what they
7 actually are. So, let's go back to what he talked about. He
8 said he saw a dark male in the room. He never said anything
9 about a pink shirt and a white hat, and all through this case
10 I can't get over the fact that it was a pink shirt and a white
11 hat at night, something that would stand out.

12 The lady testified that she awoke, the door was open, she
13 closed the door, heard the front door close, looked out the
14 window, dark male standing there, pink shirt, white cap.
15 She's the one that said it was a pink shirt, white cap. The
16 young lad never said anything about a white shirt, with a pink
17 shirt, white hat, she said that he stood there for a while.
18 Now, the other man gets on the stand and he testifies that
19 when she awoke him he looked down, his shorts was gone that
20 contained his wallet. Many other things that a man carries in
21 his pocket, car keys, whatever, no testimony that the dark
22 male ever had anything in his hands, no testimony whatsoever.

23 Asking the crime scene person yesterday about the latches
24 on the door, you will see one that goes to an inner room, and
25 I would surmise that is the same set that you will see on the

Closing Argument by Defense

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1 door going outside is a slip latch, fold over latch and a
2 doorknob. The person's got stuff in his hands. It's hard to
3 open doors and stuff, stuff that you didn't think of when a
4 witness said it until later, what was missing, and what was
5 missing was the fact that no testimony that he ever had
6 anything in his hands, a pair of shorts, the billfold and
7 other items in it is a large thing to be cramming somewhere
8 out of the way and not have something in your hands
9 whatsoever. It would seem like if it was a burglary they
10 wouldn't want to be making much noise with it if they were
11 stepping around where people were sleeping.

12 They get up. The young lad and the male go looking for
13 the intruder. Once they come back then that's when they
14 notify the front desk that there's been a burglary. Seems
15 like it should be the desk and then go and see if you can't
16 help in the search or whatever. Seems like you'd want to get
17 the information out there as quickly as you could so they
18 could be security guards looking for a person in a pink shirt
19 and a white cap where the police could put out a be on the
20 lookout for the person with a pink shirt and a white hat.
21 Surely that would stand out in the middle of the night.

22 The crime scene investigator, he comes in and he takes a
23 fingerprint from the window. He says none available from any
24 of the other places. We know that two room doorknobs were
25 gone into. There could have been other places in there. He

1 says only took that one, that one. Didn't take fingerprints
2 from everybody else in the room to rule them out. As it comes
3 back we'll know this person was in there. Didn't ID the
4 people, "I believe the people to be who they are," a lot of
5 things that he didn't do.

6 Now, Mr. Anderson yesterday said he stayed over there at
7 that hotel many times. Fingerprint could have been there, may
8 possibly. We also heard from the crime scene guy who did the
9 fingerprints with the AFIS. That's where they store the
10 print. It was odd that his testimony was 50,000 prints in a
11 computer. When the person that did the computer from the
12 State came in, Ms. Sanders, it was two and a half million in a
13 computer. You heard both of them testify that their ratio or
14 their probability of error was zero. Nothing is certain in
15 this, in this world. They used to say nothing is certain but
16 death and taxes. I believe that the only thing that's certain
17 is death.

18 You heard the questioning about DNA. DNA was when it's
19 used they give probability because it's scientific, it's
20 objective. Fingerprint analysis is subjective. What I mean
21 by that it's that person's opinion, not anything else. There
22 is no objective standard used. It is subjective and that's
23 the reason they have a probability of error of zero because no
24 one is going to ever say that they made a mistake. You heard
25 him say that how a fingerprint can be distorted and what I was

Closing Argument by State

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1 trying to get to and I think that he concurred is that
2 sometimes you can distort something to the point that it's not
3 what it is. It's something else.

4 There is a lot to think about in this case. Ask yourself
5 all the questions, go over what each witness said and I think
6 that you will agree that there's reason for pause. If there's
7 reason for pause then there's reasonable doubt. Go back
8 there. Go over what everybody said and what they didn't say
9 or should have said because that's where that logic and common
10 sense that I told you about a couple of days ago comes into
11 play. You came in here with it. You didn't develop it while
12 you were here. From a small age you started getting it from
13 your parents and other people that you grew up with to give
14 you that ability to think things out and to think things
15 through and once you do find Mr. Anderson not guilty. Thank
16 you.

17 THE COURT: All right, Ms. Richardson.

18 MS. RICHARDSON: Thank you, Your Honor. May it please
19 the Court? I'm not as seasoned as Mr. Chrisco, so I'm going
20 to bring some notes to make sure I don't forget anything. You
21 guys have had a lot of things thrown at you this week. You've
22 heard about bifurcation, minutia, what fingerprints will stick
23 to, what they won't stick to, probably a lot more than you
24 ever wanted to know about fingerprints or even knew existed
25 about fingerprints. Don't get distracted in all of that.

1 Don't get distracted in everything that the Defense attorney
2 is throwing at you. Just remember the testimony as you
3 remember it from the stand. You've been in and out several
4 times, up and down. Sometimes you feel like you're playing
5 musical chairs. I know it gets frustrating. You want to know
6 what we're doing in here. There are things in the law that we
7 have to take up outside of your presence that the Constitution
8 doesn't allow you to be in here for because we want Mr.
9 Anderson to have a fair trial. Don't hold that against us.
10 It's just the way it works. I apologize for that. On behalf
11 of myself and Mr. Chrisco you've done exactly what we've asked
12 you to do. You've sat here. You've paid attention and we
13 thank you for that.

14 The Judge is going to talk about reasonable doubt. He's
15 going to give you the legal definition for reasonable doubt,
16 what it means. You folks are reasonable people. That's why
17 we picked you. Let's talk about what's reasonable in this
18 case. Is it reasonable that this crime scene specialist would
19 have lifted a print from the entry point of a crime scene in a
20 way that would have distorted, distorted it or altered it in a
21 way that would have happened to come back out of two million
22 fingerprints, he distorted it perfectly enough that it came
23 back to this James Anderson who happens to live in Horry
24 County, is that reasonable, is that reasonable. Is it
25 reasonable that on those prior indictments that you're going

Closing Argument by State

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1 to get that show that he's been convicted of two burglary
2 seconds that the Social Security number, is it reasonable that
3 that belongs to two different James Andersons with the exact
4 same birthday, with the exact same Social Security number
5 except two's flipped or is it reasonable that he's got so many
6 aliases he couldn't keep them straight. He's testified he's
7 already lied to the police officer, conveniently enough about
8 a Social Security number. What's reasonable? Is it
9 reasonable that these victims would come down here to visit
10 Myrtle Beach on a family vacation and make this up? Is it
11 reasonable that he would have went through the hassle of
12 canceling all his credit cards had it not happened? We know
13 what happened. We know his wallet was stolen. We know the
14 shorts were missing. This is just not reasonable. It's not
15 reasonable.

16 I tell you what is reasonable. You'll have these in your
17 jury room. You'll get to flip through them and look at them.
18 What is reasonable is Mr. James Anderson knew exactly what he
19 was doing. What is reasonable is that he approached this
20 window because he knew what was on the inside of that hotel
21 room. There were guests there who had fast cash. He could
22 get in, get out, hopefully not be noticed and hopefully they
23 wouldn't come back from wherever they lived. You can see the
24 finger marks where he tried to slide that window. You can see
25 those on that window. That's reasonable. You can see the

1 fingerprints as he entered that window. That's reasonable.
2 He goes into a hotel room while it's occupied. The victims
3 are in there sleeping. Ms. Vickery testified she remembers
4 the door being - she remembers shutting it. She knows for a
5 fact the window was closed because she never sleeps with the
6 windows open. She shuts the door. She hears the front door
7 shut. She looks out. She sees a dark male. 'From the way I
8 recall the testimony, you recall it the way you recall it, the
9 way I recall the testimony I don't remember her saying he
10 stood there. She said he scared her. She immediately shut
11 the window. She notifies her fiancé. He gets up. At this
12 time they encounter Joe. Joe says, "Yes, he was a dark male.
13 He ran out the front door." So, they go and look for him. At
14 that point he's gone.

15 Crime scene comes in. They analyze the room, the point
16 of entry, he dusts for fingerprints and he finds James
17 Anderson's fingerprint, no doubt about that. That is
18 reasonable. You can't have it both ways, folks. You can't,
19 you can't say, "No, it's not my fingerprint, no, he tampered
20 it, he altered it, that's not me, that's not me," and then
21 take the stand and say, "Oh, wait, it was me. It was me. I
22 think I was there in June with a lady who is my best friend or
23 really good friend, but I don't remember her name. I just
24 don't remember her name. I think it's Brenda Strickland."
25 When I turned and asked the hotel clerk who was still sitting

Closing Argument by State

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1 here, "Go run that name for me," "Well, wait a minute, wait a
2 minute, wait a minute, she was married. She might have a
3 different last name." Folks, what's reasonable? What's
4 reasonable?

5 You've heard prior record in this case. I did not admit
6 that prior record to show you that he committed this crime. I
7 did not do that. I entered that prior record to show you you
8 couldn't believe a word that comes out of that man's mouth.
9 He lied to the police officer before. He will lie to you
10 today. You cannot believe him.

11 Two million fingerprints in AFIS, is it reasonable that a
12 fingerprint that was lifted from a crime scene came back to
13 James Anderson? Is that reasonable? Ladies and gentlemen, I
14 submit to you that it is reasonable. I submit to you that he
15 is guilty of burglary in the first degree.

16 Briefly we talked about earlier we're looking for certain
17 elements. The Judge will instruct you on the law. If I say
18 something that differs from the Judge, you go with what the
19 Judge says. Before I forget, burglary first degree, the
20 breaking and entering the dwelling of another, which dwelling
21 of another hotel room applies to that, breaking and entering
22 the dwelling of another with intent to commit a crime therein.
23 What that means is that he had an intent to do something wrong
24 when he entered that room. We know that because the wallet is
25 gone, the credit cards are missing, and then some sort of

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1 elevating circumstance for burglary in the first degree, you
2 have to have that elevator. You're looking for nighttime,
3 which I believe every witness testified it was the nighttime,
4 somewhere between ten and two, ten and three, definitely the
5 nighttime. If you find it's not the nighttime, two prior
6 burglaries. Now, even if you think that those indictments are
7 wrong, that somehow there are two James Andersons in Horry
8 County with the exact same birthday, the exact same Social
9 Security number except two being flipped, he told you on this
10 stand he's got two prior burglaries. Thank you for your time
11 and your attention to this case.

12 THE COURT: All right, ladies and gentlemen, all of the
13 evidence to be presented in this case has now been presented to
14 you. The attorneys have made their closing arguments and now
15 is the time for me to charge you with the law to be applied in
16 this case. The indictment charges the Defendant with first
17 degree burglary. I remind you that the fact that the Defendant
18 was arrested, charged and indicted in this case is not evidence
19 in this case and cannot be considered by you as evidence of
20 guilt in this case, nor does the Defendant's arrest, charge or
21 indictment create any presumption or inference of guilt. The
22 indictment is simply the formal written instrument which
23 contains the charge made against the Defendant. It is the
24 formal document by which this case is brought into this court.

25 The Defendant pleads not guilty to this indictment. That

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1 plea puts the burden on the State to prove the Defendant
2 guilty. A person charged with committing a crime in South
3 Carolina is never required to prove his innocence. I charge
4 you that an important rule of the law is that the Defendant in
5 a criminal trial no matter what the seriousness of the charge
6 may be will always be presumed to be innocent of the crime for
7 which the indictment was issued unless guilt has been proven
8 by evidence satisfying you of that guilt beyond a reasonable
9 doubt. This presumption of innocence does not end when you
10 begin your deliberations, but it accompanies the Defendant
11 throughout the trial until you reach a verdict of guilt based
12 on evidence satisfying you of that guilt beyond a reasonable
13 doubt.

14 The presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the Defendant
16 which remains with the Defendant until it has been stripped
17 from the Defendant by evidence satisfying you of the
18 Defendant's guilt beyond a reasonable doubt.

19 The presumption of innocence is not a mere legal theory.
20 It is not just a legal phrase. It is a substantial right to
21 which every Defendant is entitled unless you, the jury, are
22 satisfied from the evidence of the Defendant's guilt beyond a
23 reasonable doubt.

24 Now, what is reasonable doubt in the law? A reasonable
25 doubt is the kind of doubt that would cause a reasonable

1 person to hesitate to act. Proof beyond a reasonable doubt is
2 proof that leaves you firmly convinced of the Defendant's
3 guilt. We know very few things in this world with absolute
4 certainty, and in criminal cases the law does not require
5 proof that overcomes every possible doubt. If, based on your
6 consideration of the evidence, you are firmly convinced that
7 the Defendant is guilty of the crime charged you must find the
8 Defendant guilty. If on the other hand, you think a real
9 possibility exists that the Defendant is not guilty, you must
10 give the Defendant the benefit of the doubt and find him not
11 guilty.

12 I remind you that during this trial, you and I have
13 certain duties to perform. As the trial judge my
14 responsibility is to preside over the trial of this case. I
15 also have the duty to rule on the admissibility of evidence
16 offered during this trial. You are to consider only the
17 competent evidence before you. If any testimony was ordered
18 stricken from the record in this case during this trial, you
19 must disregard that testimony. You are to consider only the
20 testimony which has been presented from the witness stand, any
21 exhibits which have been made a part of the record in this
22 case and any stipulations of counsel.

23 I have the additional duty to charge you the law
24 applicable to this case. As the presiding judge, I am the
25 sole judge of the law of this case. Your duty as jurors is to

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1 accept and apply the law as I now state it to you. If you
2 already have any idea as to what the law is or what the law
3 ought to be and your idea differs from what I now tell you the
4 law is, you must disregard your idea of what the law is or
5 ought to be because you are sworn to accept the law and apply
6 the law exactly as I state it to you.

7 In every case tried in this court before a jury, the jury
8 is the sole and exclusive judge of the facts in a case. A
9 trial judge cannot intimate, state, comment on or make any
10 statement to a trial jury about the facts in a case. Since
11 you, the jury, are the sole judge of the facts in this case,
12 you are not to infer from what I have said during the progress
13 of this trial in ruling upon the admissibility of evidence or
14 otherwise or anything that I say now during the course of this
15 instruction to you that I have any opinion about the facts in
16 this case. The law does not allow me to have an opinion about
17 the facts in this case. This is a matter solely for you, the
18 jury, to determine. As jurors your duty is to determine the
19 effect, the value, weight and truth of the evidence presented
20 during this trial.

21 Now, two types of evidence are generally presented during
22 a trial, direct evidence and circumstantial evidence. Direct
23 evidence is the testimony of a person who claims to have
24 actual knowledge of a fact, such as an eyewitness. It is
25 evidence which immediately establishes the main fact to be

1 proved. - Circumstantial evidence is proof of a chain of facts
2 and circumstances indicating the existence of a fact. It is
3 evidence which immediately establishes collateral facts from
4 which the main fact may be inferred. Circumstantial evidence
5 is based on inference and not on personal knowledge or
6 observation.

7 The law makes absolutely no distinction between the weight
8 or value to be given to either direct or circumstantial
9 evidence, nor is a greater degree of certainty required of
10 circumstantial evidence than of direct evidence. You should
11 weigh all of the evidence in the case. After weighing all of
12 the evidence, if you are not convinced of the guilt of the
13 Defendant beyond a reasonable doubt, you must find the
14 Defendant not guilty. On the other hand if after weighing all
15 of the evidence you are convinced of the Defendant's guilt
16 beyond a reasonable doubt then you must find the Defendant
17 guilty.

18 Necessarily, you must determine the credibility of
19 witnesses who have testified in this case. Credibility simply
20 means believability. Your duty as jurors is to analyze and to
21 evaluate the evidence and determine which evidence convinces
22 you of its truth. In determining the believability of
23 witnesses who have testified in this case you may believe one
24 witness over several witnesses or several witnesses over one
25 witness. You may believe a part of the testimony of a witness

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1 and reject the remaining part of the testimony of that same
2 witness. You may believe the testimony of a witness in its
3 entirety or reject the testimony of a witness in its entirety.
4 You may consider whether any witness has exhibited to you any
5 interest, bias, prejudice or other motive in this case. You
6 may also consider the appearance and manner of the witness
7 while on the witness stand.

8 The rules of evidence ordinarily do not permit witnesses
9 to testify to opinions or conclusions. An exception to this
10 rule exists for witnesses we call expert witnesses. A witness
11 who, by education and experience, has become expert in some
12 art, science, profession or calling may state an opinion as to
13 the relevant and material matter in which the witness claims
14 to be an expert, and may also state the reasons for the
15 opinion. You should consider any expert opinion received in
16 this case and, like any other evidence, give it the weight you
17 think it deserves. If you decide that the opinion of an
18 expert witness is not based on sufficient education and
19 experience or if you conclude that the reasons given in
20 support of the opinion are not sound or that the opinion is
21 outweighed by other evidence, you may disregard the opinion
22 entirely. An expert witness' testimony is to be given no
23 greater weight than that of other witnesses simply because the
24 witness is an expert. Further, you are not required to accept
25 an expert's opinion, even though it is not contradicted.

1 One of the witnesses in this case is 17 years old and by
2 state law considered a minor. When a witness is a child you
3 must determine, as with any witness, whether that testimony is
4 believable. In deciding believability, you may consider not
5 only matters that I have already discussed with you, but you
6 may also consider the age of the child, the child's ability to
7 observe and remember facts and the child's ability to
8 understand and answer questions. Because young children may
9 not fully understand what is happening here, you must decide
10 whether the child understood the seriousness of appearing as a
11 witness at this criminal trial, whether the child understood
12 the questions, whether the child has a good memory and whether
13 the child understands the difference between lying and telling
14 the truth. In addition, young children may be influenced by
15 the way that questions are asked. You must decide whether the
16 child understood the questions asked.

17 An issue in this case is the identification of the
18 Defendant as the person who committed the crime charged. The
19 State has the burden of proving identity beyond a reasonable
20 doubt. You must be satisfied beyond a reasonable doubt of the
21 accuracy of the identification of the Defendant before you may
22 convict the Defendant. Identification testimony is an
23 expression of belief or impression by a witness. You must
24 determine the accuracy of the identification of the Defendant.
25 You must consider the believability of each identification

Charge

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1 witness in the same way as any other witness. You may
2 consider whether the witness had an adequate opportunity to
3 observe the offender at the time of the offense. This will be
4 affected by things like how long or short a time was
5 available, how far or close the witness was, the lighting
6 conditions and whether the witness had the chance to see or
7 know the person in the past. Once again, I instruct you the
8 burden of proof is on the State and the State extends to every
9 element - and this burden of proof extends to every element of
10 the crime charged, and this specifically includes the burden
11 of proving beyond a reasonable doubt the identity of the
12 Defendant as the person who committed the crime. If, after
13 examining the testimony, you have a reasonable doubt as to the
14 accuracy of the identification, you must find the Defendant
15 not guilty.

16 In order to establish criminal liability, criminal intent
17 is required. For example, the mental state required to be
18 proven by the State for a particular crime might be purpose,
19 intent, knowledge, recklessness or criminal negligence.
20 Criminal intent must be proven by the State beyond a
21 reasonable doubt. Criminal intent is always a matter that
22 must be determined by the jury from the circumstances
23 surrounding the situation. There is no way to prove intent
24 to a mathematical certainty. There is no way medical science
25 can dissect a person's brain and determine what the person had

Charge

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1 in mind. So, the law says that criminal intent may be
2 inferred from the circumstances shown to have existed. This
3 is how you make a determination of whether or not the element
4 requiring intent was present. Intent is not necessarily
5 established by direct and positive evidence, but intent may be
6 established by inference in the same way as any other fact by
7 taking into consideration the acts of the parties and all the
8 facts and circumstances of the case.

9 Criminal intent is a mental state, a conscious
10 wrongdoing. You must determine what the Defendant intended to
11 do based on the circumstances shown to have existed. Criminal
12 intent can arise from action or a failure to act. It may
13 arise from negligence, recklessness or an indifference to duty
14 or to consequences that is considered by law to be the
15 equivalent of criminal intent.

16 Excuse me, you have also heard evidence that the
17 Defendant was convicted of a number of crimes other than the
18 one for which the Defendant is now on trial. This evidence
19 may be considered by you, if you conclude it is true, only in
20 deciding whether the Defendant's testimony is believable and
21 for no other purpose. You must not consider the Defendant's
22 prior record as evidence of the Defendant's guilt of the first
23 degree burglary charge in this trial.

24 The Defendant is charged with first degree burglary.
25 Before the Defendant can be convicted of this crime the State

Charge

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1 must first prove beyond a reasonable doubt that the Defendant
2 entered a dwelling without consent. A dwelling is any
3 building or portion of a building in which a person ordinarily
4 sleeps. Building constructed, a building constructed as a
5 dwelling that has never been occupied cannot be considered a
6 dwelling for purposes of burglary, but a building is a
7 dwelling even if the residents are temporarily absent from the
8 building.

9 In order to prove that the Defendant entered the dwelling,
10 the State does not have to show that the Defendant's entire
11 body entered the dwelling. The smallest entry is sufficient.
12 It may be any part of the body, such as a hand or foot, or
13 even an instrument, such as a hook or other instrument. In
14 addition, the State does not have to prove that force was used
15 to gain entry. If a person enters a building by using
16 deception, artifice, trick or misrepresentation to get consent
17 to enter this is an entry without consent.

18 Next, the State must prove beyond a reasonable doubt that
19 the Defendant intended to commit a crime, either a felony or a
20 misdemeanor, at the time of entry. The mere entry into a
21 dwelling without consent is not burglary. If the intent to
22 commit a crime is formed after the entry, it is not burglary.
23 On the other hand, if the Defendant intended to commit a crime
24 at the time of the entry, it is a burglary even if the intent
25 was abandoned after the entry. It does not matter that the

Charge

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1 intended crime was not completed. Intent may be shown by acts
2 and conduct of the Defendant and other circumstances from
3 which you may naturally and reasonably infer intent.

4 Finally, the State must prove beyond a reasonable doubt
5 that the Defendant has a prior record of two or more
6 convictions for burglary or that the Defendant entered the -
7 or remained in the dwelling in the nighttime. Evidence of
8 prior offenses committed by the Defendant is not to prove the
9 Defendant has a bad character or to prove that the Defendant
10 committed the burglary alleged in this case. The prior
11 convictions may be considered by you only for the purpose of
12 determining whether or not that element of the offense that
13 makes the crime in this case first degree burglary if you
14 enter a dwelling without consent to commit a crime and you
15 have two prior convictions for burglary has been satisfied.
16 Before you can even consider the evidence of the Defendant's
17 prior burglary convictions you must first find that the State
18 has proved beyond a reasonable doubt that a burglary was
19 committed by the Defendant. If you find beyond a reasonable
20 doubt that the burglary was committed then you may consider
21 the evidence of the prior convictions as evidence of one of
22 the circumstances which would make the burglary first degree
23 charge. If you do not find beyond a reasonable doubt that the
24 Defendant committed these alleged prior offenses then you
25 cannot return a verdict of guilty for first degree burglary

Charge

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1 unless you find that the burglary occurred during the
2 nighttime. Nighttime is the period between sunset and sunrise
3 during which there is not enough daylight to recognize a
4 person's face, except by artificial light or moonlight.

5 Now, there are two possible verdicts in this case, guilty or
6 not guilty. No significance whatsoever is to be given to the
7 order in which I state these possible verdicts to you. I
8 simply must state one of the possible verdicts first and one
9 second.

10 Ladies and gentlemen, your verdict must be a unanimous one.
11 Mr. Mellen, as foreperson when the jury agrees on the verdict
12 you will write the verdict on the back of the indictment and
13 sign your name as foreperson, then knock on the jury room door
14 and inform the bailiff that you have reached a verdict. At
15 that time we'll receive you back into the courtroom.

16 Now, you have been allowed to take notes during the trial of
17 this case. However, please remember that some people are
18 better note-takers than others. Juror notes should not be
19 given any greater weight than the recollection of other
20 jurors. The recollections of the individual jurors should be
21 considered as reliable as notes taken by any other jurors.
22 Now, I'm going to excuse you back to the jury room at this
23 time. Please do not begin your deliberations. I need to
24 check with the attorneys to see if they have any additional
25 charges or challenges to the charges that I've given to you.

Charge

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1 If they do and I deem them appropriate I'll give - I'll bring
2 you back in for the additional or corrective charges. If they
3 don't have any or if they have any that I deem or I overrule
4 and don't think you need to hear then I'll go ahead and send
5 the indictment back to the jury room with you with the
6 exhibits and you'll be instructed at that time by the bailiff
7 to begin your deliberations. You can take your note cards
8 with you but please do not begin your deliberations until
9 you're directed to do so. All right? Thank you very much.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, any challenges or additions to
13 the jury charge by the State?

14 MS. RICHARDSON: Nothing from the State, Your Honor.

15 THE COURT: Any from the Defense?

16 MR. CHRISCO: No, Your Honor.

17 THE COURT: All right, let's make sure we've got all
18 the exhibits. Here's the indictment and we'll send those back
19 to the jury room with directions that they can begin their
20 deliberations.

21 (Exhibits reviewed by counsel for the State and Defense.)

22 THE COURT: All right, also, I will need you to bring
23 - who are our alternates? I will need you to bring Ms. Hardee
24 and Ms. Hall out, Ms. Hall and Ms. Hardee; okay? Thank you.

25 (Whereupon, alternates enter courtroom and are excused by

Verdict

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1 Court with call-in instructions.)

2 (Deliberations begin at 11:12 a.m.)

3 THE COURT: All right, we'll stand in recess until the
4 jury reaches a verdict.

5 OFF THE RECORD

6 (On the record. Verdict reached at 11:35 a.m.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, I understand the jury has
10 reached a verdict. Anything from the State before we bring
11 the jury in?

12 MS. RICHARDSON: Nothing from the State, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. CHRISCO: No, Your Honor.

15 THE COURT: All right, let's bring the jury in.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: All right, ladies and gentlemen, welcome
19 back. Mr. Mellen, I understand the jury has reached a
20 verdict; is that correct?

21 FOREPERSON: Yes, we have.

22 THE COURT: Have you written the verdict on the
23 indictment and signed your name?

24 FOREPERSON: Yes, I have.

25 THE COURT: All right, if you'd please hand the

Verdict

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1 indictment to the bailiff.

2 (Complies with request and Court reviews.)

3 THE COURT: All right, I'll ask the Clerk if she'd
4 please publish the verdict. The Defendant please stand.

5 THE CLERK: Indictment number 2010-GS-26-2883, the
6 State of South Carolina, County of Horry versus James
7 Anderson, on the charge of burglary first degree we, the jury,
8 unanimously find the Defendant guilty, dated March 14th, 2012,
9 signed by foreperson, Paul Mellen.

10 Ladies and gentlemen of the jury, if this is your verdict
11 so signify by raising your right hand.

12 (All jurors raise right hand.)

13 THE CLERK: Thank you.

14 THE COURT: All right, let the record reflect that all
15 jurors raised their right hand. Any polling of the jury by
16 the Defense?

17 MR. CHRISCO: No, Your Honor.

18 THE COURT: All right.

19 Ladies and gentlemen, that will conclude your services as
20 jurors for this particular case. I want to thank you for your
21 service. I'll also excuse you for the remainder of the day.
22 You have been given a phone number that you'll need to call
23 back that number after six p.m. today and that'll give you
24 some direction as to when you need to return or if you need to
25 return. I want to thank you for your service in this case and

Motions

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1 for your service this week. I don't know if there's any more
2 trials this week. I know it's not a fun job serving as jurors
3 but I do want to thank you for your service not only in this
4 case but for this week as well. You're free to go for the
5 remainder of the day and please call that number after six
6 p.m. today. Thank you very much.

7 (Whereupon, jury exits courtroom.)

8 THE COURT: All right, any post-trial motions at this
9 time by the Defense?

10 MR. CHRISCO: Yes, Your Honor, I would renew the motions
11 that the Defense made at the end of the State's case and at
12 the end of the Defense's case, Your Honor.

13 THE COURT: All right, your motions are noted.
14 However, I am going to deny those motions. All right, any
15 objection or any reason as to why we cannot go ahead and
16 impose sentence at this time?

17 MR. CHRISCO: No, Your Honor.

18 THE COURT: All right.

19 MR. CHRISCO: Your Honor.

20 THE COURT: All right, Mr. Chrisco, any mitigating
21 circumstances?

22 MR. CHRISCO: Your Honor, we would just ask the Court,
23 the Court already knows the prior record of Mr. Anderson, we
24 just have the Court to understand as late as last Tuesday the
25 State was offering a 15-year sentence for burglary second,

1 non-violent under the old statute because this happened back
2 in 2009, Your Honor, understanding that he's been convicted of
3 burglary in the first degree, we would ask the Court for the
4 minimum of 15 years, Your Honor.

5 THE COURT: All right, Mr. Anderson, anything you'd
6 like to say?

7 MR. ANDERSON: Yes, sir, I want to, I want to say I
8 apologize to the State and the Courts for wasting you all's
9 time and I do have, I do have other pending charges also I
10 got to come back to court on anyhow, so.

11 THE COURT: I'm sorry. You need to speak up. I'm
12 sorry.

13 MR. ANDERSON: I say I apologize to the Courts for
14 wasting you all's time and, and I, you know, I still got, I
15 got other pending charges also I have to come back to court on
16 and I want to ask for the mercy of the Court, be lenient as
17 possible on me.

18 THE COURT: All right, are the victims present or wish
19 to say anything?

20 MS. RICHARDSON: No, sir, Your Honor.

21 THE COURT: All right, prior record?

22 MS. RICHARDSON: Yes, sir, Your Honor. It goes all
23 the way back to the eighties with housebreaking and possession
24 of marijuana; '89 possession of cocaine; '90 fraudulent check,
25 burglary third degree; '91 forgery, resisting arrest and

Sentencing

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1 robbery; '99 shoplifting, possession of stolen vehicle,
2 possession of cocaine, possession of stolen vehicle, assault
3 on a correctional officer; 2000 petit larceny; 2001 burglary
4 third, distribution of crack, PWID Schedule I, II or III,
5 possession of a stolen vehicle, possession of crack; 2005
6 burglary second degree, possession of crack; 2006 petit
7 larceny, false information to police, breaking and entering;
8 2008 financial transaction card theft; 2010, shoplifting, DUI,
9 DUS, petit larceny; 2009 FTC theft, receiving stolen goods
10 three counts; 2010, receiving stolen goods; Your Honor, 2009
11 is when he committed this burglary first. Since then we have
12 several pending charges in our office. I just don't want you
13 to think that he has no prior record since 2010.

14 THE COURT: All right, now, this, this is under -
15 this is prior to July of 2010. So, burglary first degree then
16 it still carried?

17 MS. RICHARDSON: Fifteen, Your Honor.

18 THE COURT: Fifteen.

19 MS. RICHARDSON: Fifteen minimum up to life.

20 THE COURT: Up to life, okay, that's what I was
21 thinking.

22 All right, Mr. Anderson, the sentence of the Court is
23 that you be confined to the State Department of Corrections
24 for 25 years. You'll be given credit for any time served thus
25 far.

Sentencing

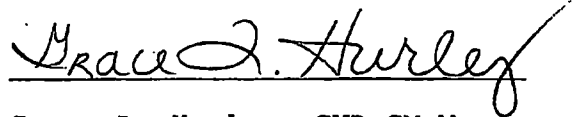
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1 MR. ANDERSON: Thank you, Your Honor.
2 THE COURT: Thank you.
3 MR. CHRISCO: Thank you, Your Honor.
4 MS. RICHARDSON: Thank you, Your Honor.
5 THE COURT: Thank you.
6 (Adjourned.)
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus James Anderson, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 12 through 14th, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

May 9, 2012.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HorryJames Anderson #260010
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15

2194

APPLICATION FOR
POST-CONVICTION RELIEF2015 MAR 23 PM 4:48
HORRY COUNTYINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institute
2. Name and location of Court which imposed sentence Conway Co. 25 years
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-26-2883
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3, 14, 12
 - (b) 25 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Feb. 12, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 51916
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Attachment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for Rehearing
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. denied on 2 of 3 Judges opinions
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. March 21, 2014
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. unknown
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Not appealable issues
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Edward Chrisco / P.O. Box # 1666, Conway S.C. 29526
- ii. Susan B. Hockett / SCCTD
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Reverse Judgment / Vacate Sentence / acquittal of charges

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

15

2194

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 18th
day of March, 2015

Lucian Bryant (L.S.)
Notary Public

My Commission Expires: March 10, 2018
May 26, 2020

CLERK OF COURT
2015 MAR 23 PM 4:48
SHERIFF COUNTY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

15

2194

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this
18th day of March, 2015.

[Signature]
Notary Public

My Commission Expires: May 26, 2020

CLERK OF COURT
2015 MAR 23 PM 4:48
JURY COURT

RE: PCR Application

15

2194

to: Clerk of Court,

Please find a PCR
application along with a 5 page attachment.
I request a clock stamped copy to be sent
to:

JAMES ANDERSON #260010

LIEBER CORRECTIONAL INSTITUTE CA-30

P.O. Box #205

RIDGEVILLE S.C. 29472

Respectfully Submitted,

James Anderson

DATE: 3-18-15

HENRY COUNTY
2015 MAR 23 PM 4:48
CLERK OF COURT

Ridgeville S.C

10. (a) Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution - during the guilt or innocence phase of his trial.

11. (a) Supporting facts: Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984).

Counsel's acts or omissions included, but are not limited to, the following:

① Counsel failed to adequately investigate the facts and circumstances surrounding the direct evidence of eye witness testimony.

② Counsel's failure to such an investigation deprived the jury of vital information relevant to an accurate assessment of applicant's guilt or innocence.

③ Counsel failed to seek an instruction stating that a burglary charge must set

forth one, specific crime intended upon entry and stating what the specific crime was in this case.

10.(b) Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution - during the sentencing phase of his trial.

11.(b) Supporting facts: Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

① Counsel failed to investigate, develop, and present all available, relevant, and admissible mitigating evidence. As a result of counsel's failure to uncover and present this evidence, applicants sentence is unreliable.

② Counsel failed to object on all possible
 (2.)

grounds to inflammatory and irrelevant evidence presented by the prosecution. As a result of counsel's failure to make all appropriate objections, applicants sentence is unreliable.

10.(c) Applicant was denied his due process rights as secured by the Fourth and Fourteenth Amendments because of the cumulative effect of several instances of deliberate prosecutorial misconduct.

11.(c) Supporting Facts: Prosecutors during all phases of this case acted unreasonable and prejudicial. See *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963) along with South Carolina Rule 5. Prosecutors acts or omissions included but not limited to, the following:

① Prosecutor did not provide trial defense counsel with discovery materials in a timely fashion.

② Prosecutor did not provide defense counsel with all relevant discovery materials.

③.

③ Prosecutor did provide fraudulent materials to defense counsel six days prior to trial.

④ Prosecutors deceiving tactics did impede the defense in making reasonable decisions did result in unethical conduct.

10.(d) Applicant was denied his Sixth Amendment right to a trial by an impartial and objective jury.

11.(d) Supporting facts: During Voir Dire potential jurors were asked about any type of relationships with defendant, if so please stand. (No response) See *McCoy v. State*, 401 S.C 363, 737 S.E 2d 623 (2013).

Jurors concealment deprived him of information material to his intelligent use of peremptory challenges. Jurors act or omissions included but not limited to:

① Juror who was empaneled and sat through entire trial did intentionally conceal information and was directly in contempt of court.

④

② Juror concealed information that would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.

Applicant respectfully requests this court to grant leave to amend P.C.R application according to additional information which is revealed through discovery.

I, JAMES ANDERSON state pursuant to 28 U.S.C 1746 under penalty of perjury that the foregoing is true and correct.

James Anderson

Date: 3-18-15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
James Anderson, #260010,	)	Case No. 2015-CP-26-2194
Applicant,	)	
v.	)	RETURN
State of South Carolina,	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed March 3, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2010, the Horry County Grand Jury indicted Applicant for first-degree burglary (2010-GS-26-2883). William Edward Chrisco, Esquire, represented Applicant. On March 12, 2104, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. On March 14, 2104, the jury found Applicant guilty as indicted. Judge Culbertson sentenced Applicant to twenty-five years imprisonment.

Applicant filed a timely notice of appeal, and Susan B. Hackey, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on February 12, 2014. State v. Anderson, 407 S.C. 278, 754 S.E.2d 905 (Ct. App. 2014), reh'g denied (Mar. 21, 2014), cert. denied (Nov. 10, 2014). The remittitur was returned to the circuit court on December 12, 2014.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following

reasons:

1. Ineffective assistance of counsel at trial
 - a. "Counsel failed to adequately investigate the facts and circumstances surrounding the direct evidence of eye witness testimony."
 - b. "Counsel's failure to such an investigation deprived the jury of vital information relevant to an accurate assessment of applicant's guilt or innocence."
 - c. "Counsel failed to seek an instruction stating that a burglary charge must set forth one, specific crime intended upon entry and stating what the specific crime was in this case."
2. Ineffective assistance of counsel at sentencing
 - a. "Counsel failed to investigate, develop, and present all available, relevant, and admissible mitigating evidence. As a result of counsel's failure to uncover and present this evidence, applicant's sentence is unreliable."
 - b. "Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution. As a result of counsel's failure to make all appropriate objections, applicant's sentence is unreliable."
3. Prosecutorial misconduct
 - a. "Prosecutor did not provide trial defense counsel with discovery materials in a timely fashion."
 - b. "Prosecutor did not provide defense counsel with all relevant discovery materials."
 - c. "Prosecutor did provide fraudulent materials to defense counsel six days prior to trial."
 - d. "Prosecutors deceiving tactics did impede the defense in making reasonable decision did result in unethical conduct."
4. Denial of right to fair and impartial jury
 - a. "Juror who was empaneled and sat through entire trial did intentionally conceal information and was directly in contempt of court."
 - b. "Juror concealed information that would have supported a challenge for cause or would have been a material factor in the use of the party's preemptory challenges."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that Applicant's allegations regarding prosecutorial misconduct and the composition of his jury should be dismissed. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegations regarding prosecutorial misconduct and the

composition of his jury could have been raised on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRCp.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

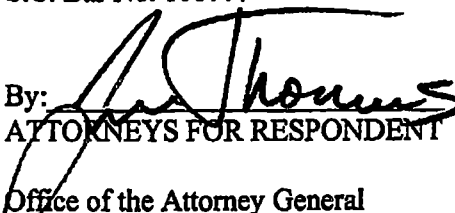
Respectfully submitted,

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By: 
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Aug. 31, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JAMES ANDERSON, #260010)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-2194

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven W. Fowler, Esquire
 1019 Highway 17 South #222
 North Myrtle Beach, SC 29582

DATED this 31ST day of August, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2015-CP-26-02194

3

4

James Anderson)

5

vs.)

6

State of South Carolina)

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ORIGINAL

February 7, 2017
Conway, South Carolina

10

11 BEFORE:

12 Honorable Michael G. Nettles, Judge.

13

APPEARANCES:

14

Steven W. Fowler, Esq.
Attorney for the Applicant

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Valerie Giovanoli, Esq.
Attorney for the State

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Teresa J. F. Bautz, RPR
Official Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

James Anderson

Mr. Fowler	6	--	53	--

Ms. Giovanoli	--	42	--	--

William E. Chrisco

Ms. Giovanoli	60	--	79	--

Mr. Fowler	--	71	--	--

Lauree Richardson Ortiz

Ms. Giovanoli	81	--	--	--

Mr. Fowler	--	88	--	--

E X H I B I T S

NO.	DESCRIPTION	ID	EV
Plaintiff's-1	Letter from solicitor	--	91

Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately 2:16 p.m.)

2 MS. GIOVANOLI: This is the case of James Anderson
3 versus the State of South Carolina, Case No.
4 2015-CP-26-2194. We're before the Court on an
5 application for post conviction relief filed March 3rd,
6 2015. Applicant is presently confined in the South
7 Carolina Department of Corrections pursuant to orders
8 of commitment of the Horry County Clerk of Court.

9 In July 2010, the Horry County Grand Jury indicted
10 Applicant for first degree burglary, 2010-GS-26-2883.
11 William Edward Chrisco represented the Applicant, and
12 on March 12, 2014, Applicant proceeded to trial before
13 the Honorable Benjamin H. Culbertson and a jury. On
14 March 14, 2014, the jury found Applicant guilty as
15 indicted. Judge Culbertson sentenced Applicant to 25
16 years imprisonment.

17 Applicant filed a timely notice of appeal, and
18 Susan B. Hackie, Esquire, of the Office of Appellate
19 Defense perfected the appeal. The South Carolina Court
20 of Appeals affirmed Applicant's conviction on February
21 12th, 2014, and a remittitur was returned to the
22 Circuit Court on December 12th, 2014.

23 The State is present and ready to proceed, and the
24 Applicant is also present and represented by Mr. Steve
25 Fowler. And I will hand it over to counsel.

1 THE COURT: Mr. Fowler, you're recognized. And
2 I'll be happy to hear a summary of the allegations that
3 you want to go forward with here today.

4 MR. FOWLER: Yes, sir. Briefly, Your Honor, you
5 have a copy of the application for post conviction
6 relief which was filed by my client, Your Honor. In
7 the back of that is an attachment where he spells out
8 all the different facets of this matter, Your Honor.
9 I'll be more than happy to go in depth briefly on them.
10 But that's the incorporation of where he stands, Your
11 Honor, and where we are.

12 We obviously feel like upon discussions with my
13 client, Your Honor, we feel like the Strickland versus
14 Washington standard has not been met. And there are
15 various spelled out in this application, Your Honor,
16 which the Attorney General also has, spells out his
17 outline of where he wants to be today, Your Honor.

18 And we also have a copy of the transcript of
19 record which we feel shows in various places in the
20 transcript of record, Your Honor, that there was a
21 dissatisfaction, there was a miscommunication, there
22 was a problem apparently based on what is in the
23 transcript between my client and his attorney.

24 And not to get into an opening statement or what
25 have you, but we do feel like by showing that in the

1 transcript as well, Your Honor, it will lead the Court
2 to rule in my client's favor hopefully.

3 THE COURT: All right. And I assume that based on
4 what you told me in a very general way, the essence of
5 your claim is ineffective assistance of counsel?

6 MR. FOWLER: Yes, sir. And, you know, there's
7 various aspects of that that my client has detailed in
8 his application. But it is ineffective assistance of
9 counsel in various ways, Your Honor, as spelled out in
10 his attachments to his application when it was
11 initially filed.

12 THE COURT: All right. You may call your first
13 witness.

14 MR. FOWLER: Your Honor, at this time I would like
15 to call Mr. James Anderson to the stand, please.

16 THE COURT: Mr. Anderson, please come forward.
17 Ask if you could, take your time and place your
18 paperwork down in front of that microphone there, and
19 ask you to place your left hand on the Bible and raise
20 your right hand as the clerk administers the oath.

21 JAMES ANDERSON, after being duly sworn, testified
22 as follows:

23 THE CLERK: You may be seated.

24 THE APPLICANT: Thank you.

25 THE COURT: All right. Come around and watch your

1 step. Come around and have a seat in the witness
2 chair. We're going to ask that you pull up real close
3 to that microphone, speak loudly, clearly and slowly in
4 order that we can hear everything that you have to say.
5 And let's start with your full name, please, sir.

6 THE APPLICANT: My name is James Anderson.

7 THE COURT: Very good. Mr. Fowler.

8 DIRECT EXAMINATION

9 BY MR. FOWLER:

10 Q Mr. Anderson, you heard the judge and myself speak
11 a few minutes ago; is that correct?

12 A Yes, sir.

13 Q And he asked me what the -- what we were looking
14 for here today potentially in so many words; is that
15 correct?

16 A Yes, sir.

17 Q And you're stating that we're here today because
18 of ineffective assistance of counsel; correct?

19 A Yes, sir.

20 Q Okay. And there are various ways that you have
21 spelled out in your application and in discussions with
22 me that you feel that there has been ineffective
23 assistance of counsel in your case; is that correct?

24 A That is correct.

25 Q Okay.

JAMES ANDERSON-DIRECT BY MR. FOWLER

7

1 MR. FOWLER: Your Honor, at this time I would like
2 to ask the Court to take judicial notice of the
3 transcript of record that was provided for me by the
4 Attorney General's office.

5 THE COURT: It's already a part of the record.

6 MR. FOWLER: I just wanted to be clear, Your
7 Honor.

8 Q Tell me a little bit about, who was your attorney
9 in this case from March 12th to March 14th, 2012?

10 A My attorney was Mr. Edward Chrisco.

11 Q Okay. Now, was he privately retained, or was he
12 in the public defender's office, or how did you and he
13 discuss the -- how did he become your attorney, in
14 effect?

15 A He was appointed by the public defender's office.

16 Q Okay. Briefly, how was your relationship with him
17 before going to trial? Did you meet with him
18 frequently, infrequently; how would you characterize
19 your relationship in your own words?

20 A Well, Mr. Ed Chrisco, he came out to the County.
21 When I was in the county jail, he came out there on
22 different occasions and we talked.

23 Q Okay. Do you think it was a thorough conversation
24 or not? Or tell me a little bit about the depth of the
25 conversations basically.

1 A Well, actually, he had so many clients that he
2 have to see, I guess he -- you know, we didn't have a
3 real long conversation. He tell me a little bit about
4 the case and -- and stuff of that nature, you know.

5 Q Very good.

6 A But, like I say, we didn't have a real long
7 conversation because I guess he have too much clients,
8 so many clients.

9 Q Okay. So you weren't pleased with the length of
10 conversation; is that correct?

11 A Right, sir.

12 Q Now, you obviously were in court on March 12th
13 through 14th, 2012; is that correct?

14 A Yes, sir.

15 Q Okay. And you're somewhat familiar with the
16 transcript; is that correct?

17 A Yes, sir.

18 MR. FOWLER: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 MR. FOWLER: And, Your Honor, I might approach
22 several times today; would you prefer me to ask each
23 time?

24 THE COURT: No. You help yourself.

25 MR. FOWLER: Okay. Thank you, sir.

JAMES ANDERSON-DIRECT BY MR. FOWLER

1 Q If you could take a look at page 133 of the
2 transcript, if you could start reading on line 14 where
3 the Court -- where it says, the Court.

4 A Okay.

5 Q Go ahead right there.

6 A All right. Mr. Chrisco. Okay, on 14?

7 Q Yes.

8 A All right. The Court: Anything from the
9 Defendant? Mr. Chrisco: Your Honor, my client wants
10 to address the Court. The Court: Okay, for the Court..
11 Is it agreeable with you from him to address the Court,
12 Mr. Chrisco. Beyond that, stand up. The Court: All
13 right, sir. All right.

14 Mr. Anderson: Your Honor, I just want to inform
15 the Court that I have lost complete confidence in my
16 attorney as of this far. I just want to make a motion
17 before the Court to bring that to your attention.

18 Q Okay.

19 A The Court: All right, thank you.

20 Q All right. And if you would continue on to -- and
21 we won't read too much more, but I want to get this
22 in -- from lines one to four -- no, one to ten, excuse
23 me.

24 A One to ten. Okay, from line one. Anything else,
25 line two, Mr. Chrisco? No, Your Honor. The Court:

1 Anything else you want to say, Mr. Anderson?

2 Yes, sir. I've got a number of things that I want
3 to point out to you. The Court: Okay. This is just
4 dissatisfaction with the attorney? Mr. Anderson: Yes,
5 sir. The Court: Okay.

6 Q And read 10 and 11, please.

7 A Okay. All right. Mr. Anderson: The Court -- it
8 says the entire case has been presented to this day.

9 Q Okay. So basically on these two pages, 133 and
10 134 you, in my -- well, you used fairly clear language
11 saying that you were dissatisfied with your attorney;
12 is that correct?

13 A Yes, sir.

14 Q Okay. And on -- as you read into the record,
15 lines 22 through 24, you state in effect, I have lost
16 complete confidence in my attorney?

17 A Yes, sir.

18 Q Okay. Explain that sentence, explain that
19 statement to me. You say, I have lost complete
20 confidence in my attorney. What -- without being too
21 general, why were you -- why did you lose complete
22 confidence in your attorney, Mr. Anderson?

23 A Well, first of all, there was some things I had
24 wanted him to bring out in court, and he wouldn't do
25 it.

JAMES ANDERSON-DIRECT BY MR. FOWLER

11

1 Q Okay, let me stop you right there. Can you list
2 briefly for the Court what some of those things were.

3 A Yes, sir.

4 Q What were they?

5 A Some of the things were about testimonies, and
6 some of the things -- and one of the things were about,
7 you know, like the way the -- the solicitor's office
8 pointed me out in front of the Courts with this witness
9 that say he couldn't identify me, but --

10 Q Okay. So let's hold it right there. You're
11 saying that there was a problem with one of the
12 witnesses that was -- that had testified in this case?

13 A Yes, sir.

14 Q What was that witness' name?

15 A His name was Joe E. .

16 Q And tell me a little bit about Joe E. ; why
17 were you dissatisfied with your attorney's performance
18 about that witness?

19 A Well, you see, that witness, he -- well, you see,
20 the solicitor -- the solicitor, Ms. Lauree Richardson,
21 sent us a letter on March the 6th stating that Joe
22 E. couldn't identify the Defendant and if -- and
23 that he wouldn't be testifying. But if he did testify,
24 the only thing he would be able to say is that -- the
25 only thing he knew is it was a black male shorter than

1 he was.

2 Q So Mr. Joe E. did testify that day; is that
3 correct, or at that time?

4 A Yes, he did. Yes, he did.

5 Q All right. So you're saying that you asked your
6 attorney to -- how was your relationship with your
7 attorney in regards to that witness; did you tell him
8 not to call him, not to ask him questions? What was
9 your directions to your attorney at that time?

10 A Well, I was asking him, you know, in reference of
11 his testifying, you know that, you know, he wasn't
12 going to testify, from my knowledge, from what we was
13 told. But if he did testify, the only thing he would
14 be able to say is that it was just a -- it was a black
15 male shorter than he was.

16 Q So do you feel like that was handled improperly by
17 your attorney?

18 A Yes, sir.

19 THE COURT: Who called this witness?

20 Q Who called this witness; the State?

21 A The State called him. And my attorney -- my
22 attorney cross-examined him.

23 Q Okay. And you say that your -- that the
24 cross-examination did not meet your standards; is that
25 correct?

JAMES ANDERSON-DIRECT BY MR. FOWLER

13

1 A Right, sir.

2 Q Okay. So that's one of the issues that you have
3 in terms of your lawyer's representation; correct?

4 A Yes, sir.

5 Q Okay. So Mr. -- and when were you notified that
6 this witness was going to testify?

7 A We wasn't -- we was notified a week before the
8 trial, about six days before the trial.

9 Q And how were you notified of that?

10 A Oh, I got a letter. I would like to introduce
11 this letter.

12 Q Well, if you could just tell me a little bit about
13 it in your own words.

14 A Okay. We had a meeting at the courthouse. I
15 think it was an arraignment or something. And during
16 that time, the solicitor brought us -- Solicitor Lauree
17 Richardson brought us a letter saying that she wanted
18 to give this letter to us about Joe E. , about their
19 witnesses.

20 Q Um-hum.

21 A So she wrote us this letter, and it's dated March
22 the 6th. And we read it. But the point was not only
23 was he not going to testify, but Mr. Chrisco, he didn't
24 even investigate it.

25 Q Okay.

1 A He didn't even question the witness or anything of
2 that nature.

3 Q So basically what you're saying is that you did
4 not receive notice that this witness was going to
5 testify until approximately a week, six days before the
6 trial; is that correct?

7 A Yes.

8 Q And you're saying that your attorney did not
9 properly investigate this witness; is that correct?

10 A Yes, sir.

11 Q And this was one of the leading witnesses for the
12 prosecution against you; is that correct?

13 A Yes, sir.

14 Q In terms of that complete confidence statement,
15 other than Joe -- than the witness you named,
16 Mr. **Joe E.** , if that's the proper pronunciation, you
17 said you -- once again, you said you lost your complete
18 confidence in your attorney. Was there anything else
19 that made you lose complete confidence in your
20 attorney?

21 A Yeah. There's a couple more things. But first, I
22 want to know if I could get this on the record, I mean,
23 you know, as Exhibit 1 or something.

24 Q Well --

25 MR. FOWLER: May I approach, Your Honor?

JAMES ANDERSON-DIRECT BY MR. FOWLER

15

1 THE COURT: Yes.

2 Q Now, you're saying this was a letter brought to
3 your attention; is that correct?

4 A Yes, sir.

5 Q All right. And, in effect, what is that letter;
6 is that letter specifically about the witness, or is it
7 about something else, or what exactly is it?

8 A It's about the witnesses that's supposed to
9 testify in this case.

10 Q Okay. And was it just Mr. Joe E. or?

11 A No. I got -- I got Mr. David Smith in there.

12 MS. GIOVANOLI: I'm going to object to hearsay at
13 this point, he's essentially trying to --

14 THE COURT: Have you seen the letter?

15 MS. GIOVANOLI: I have not.

16 THE COURT: Why don't you take a look at it..

17 MR. FOWLER: May I approach, Your Honor.

18 THE COURT: While she's looking at that letter,
19 one of your complaints is that your lawyer didn't
20 investigate this eye witness who essentially was not an
21 eye witness at all, he was just saying that whoever did
22 it was a black male shorter than he. What could your
23 lawyer have done to help you in that regard?

24 THE APPLICANT: Well, when he got on the stand, he
25 actually said I was the one on the stand. But this

1 letter was saying that he would not testify, but if he
2 did, the only thing he could say is that it was a black
3 male. But my lawyer was questioning him when he say,
4 do you see him in the courtroom. And he say, that's
5 him. He says, are you sure, you know, this and that.

6 So instead of him investigating or questioning the
7 witness himself before we even have trial, all this
8 come out on the stand.

9 THE COURT: Okay.

10 MR. FOWLER: Your Honor, this is a letter
11 addressed to Mr. Ed Chrisco who is in the courtroom
12 today and can verify its voracity. So at this time I'd
13 like to move this into evidence before the Court.

14 THE COURT: Who wrote it?

15 THE APPLICANT: Mr. Chris -- no.

16 MR. FOWLER: Well, it was addressed to Mr.
17 Chrisco.

18 THE APPLICANT: Ms. Lauree Richardson gave it to
19 us.

20 MR. FOWLER: Okay.

21 MS. GIOVANOLI: And, Your Honor, I would object on
22 the basis of there's no signature or a name at the
23 bottom. I don't know who it's written by, there's no
24 letterhead. It's just sincerely yours at the end, and
25 it's addressed to Ed. So there's no proper foundation

JAMES ANDERSON-DIRECT BY MR. FOWLER

17

1 laid for that.

2 MR. FOWLER: And, Your Honor, like I said,
3 Mr. Chrisco is here, and he can address this.

4 THE COURT: You know, if he can identify it and if
5 he is the author of it, perhaps. But if we don't know
6 who wrote it, it's admissible hearsay.

7 MR. FOWLER: Okay, thank you, Your Honor.

8 Q Well, you've spoken about -- you've answered the
9 judge's questions about the witness. But that complete
10 confidence statement as we were discussing, was there
11 anything other than the witness that you lost
12 confidence in in your attorney at that point?

13 A Well, there was -- there was two or three other
14 things. I can't recall to mind right at this present
15 moment. But I know that that was one. And there was
16 something else we was talking about during trial, and I
17 asked him to -- I asked him to do, but he said he
18 wasn't going to do it.

19 Q Okay. Well, let's go to page 148, and there's
20 several --

21 MR. FOWLER: Excuse me, 147 of the transcript,
22 Your Honor. And we'll be brief and to the point as
23 much as possible, but there are several statements I
24 would like for him to read if at all possible.

25 Q Could you start at line 13 on page 147 of the

1 transcript.

2 A Line 13. Now is your opportunity to say anything
3 if you want to say it, Mr. Anderson. Your Honor, I
4 just want to ask about some testimony that was not --
5 that was not in a witnesses -- it says witnesses didn't
6 give a statement and the motion, but they testified
7 that.

8 Q And if you read line number 19.

9 A I don't understand what you're asking,
10 Mr. Anderson. Well -- go on?

11 Q Go ahead, please.

12 A Well, we had some testimony, we had a testimony
13 that wasn't a witness, didn't give me a witness in my
14 motion, okay, so I could review it, be able to go over
15 it with my attorney. But I didn't have -- I didn't
16 have a witness copy, a copy of it in my motion at all,
17 but yet still the witness came forward.

18 Q Okay. And if you continue reading, please.

19 A When the solicitor also -- the solicitor also said
20 that.

21 Q And then it goes for several paragraphs with
22 Mr. Chrisco; is that correct?

23 A Yeah.

24 Q Okay. And then if you'll pick up on line 23 down
25 at the bottom on page 148.

JAMES ANDERSON-DIRECT BY MR. FOWLER

19

1 THE COURT: Mr. Anderson, that first thing that
2 you're talking about, that first category from the
3 transcript, I couldn't really tell from what you said,
4 are you saying that there was not a statement, a
5 written statement, that you could review?

6 THE APPLICANT: Yes, sir. What I was saying is
7 that Mr. Joe E. was on the stand testifying, but he
8 didn't give a statement to the police officer, nor do
9 we have any statements to read, to look at.

10 THE COURT: Okay. But that's your complaint is
11 that there was not a statement of a witness who
12 testified against you?

13 THE APPLICANT: Well, yes, sir. That's the --
14 that's part of it.

15 THE COURT: All right, very good. You may
16 proceed.

17 Q If you'll continue.

18 MR. FOWLER: If you may, Your Honor.

19 Q Starting at line 23 on page 148.

20 A Well, I was just saying that my attorney, he
21 failed to oppose to the witness, Joe E. , taking the
22 stand after only getting a last-minute letter.

23 Q And if you would, read down, with the Court's
24 indulgence, read down to 13 at this point, Your Honor.

25 A Solicitor's office that the State had only

1 recently found out about -- found out about him and
2 that he would not only be called anyway -- he would not
3 be called anyway since he could only testify that he
4 was a black man, a black male. His testimony was
5 improper and also false when they actually -- when he
6 actually said that he could identify me.

7 He said he could identify me on by -- he say he
8 was the Defendant that stopped it out of -- stepped it
9 out of his room. And he also -- and he also said
10 that -- he also said that I had hair. I was a dark
11 male with dark hair.

12 And another witness testified that he had a pink
13 shirt on and a white cap -- white hat. And I couldn't
14 understand how you know that we -- that we could not
15 allow that testimony in the way he wasn't supposed to
16 be a witness.

17 Q All right, let me stop you right there. So
18 basically this is not a johnny-come-lately complaint
19 that you had. You brought this complaint about this
20 witness up at the hearing itself; correct?

21 A Yes, sir.

22 Q And you also brought that complaint about your
23 attorney the day of that hearing; correct?

24 A Yes, sir.

25 Q So this is not something you thought of later down

JAMES ANDERSON-DIRECT BY MR. FOWLER

21

1 the line. At that hearing itself, you were upset about
2 that; correct?

3 A Yes, sir.

4 Q Okay. And you feel like that you weren't given
5 the proper time to investigate that witness; is that
6 correct?

7 A Yes, sir.

8 Q Okay. And also you had some discrepancies with
9 his testimony, or proposed testimony, that you had some
10 questions about; right?

11 A Yes, sir.

12 Q So we basically talked about that witness and how
13 not only are you raising that problem here, but you're
14 also raising it on the transcript from 2012?

15 A Yes, sir.

16 Q Is that correct?

17 A Yes, sir.

18 Q Okay. Now, also there was some questions in this
19 transcript that shows on that page that you had some
20 real questions about the -- about legal maneuvers; is
21 that correct?

22 A Um-hum.

23 Q Okay. Is that correct?

24 A Yes, sir.

25 Q Okay. And if you could read line 15 through 19

1 real quick.

2 A Yes, sir. I'm asking you to strike that. Can we
3 strike that from the testimony that was. The Court:
4 No, sir. Mr. Anderson: Can we just dismiss that
5 testimony. The Court: No, sir. Yes, sir.

6 Q Okay. All right, so basically at that time you --
7 once again, you brought that to the Court's attention
8 during the trial; correct?

9 A Yes, sir.

10 Q And what was your attorney's reaction to it at
11 that time?

12 A Well, actually, my attorney didn't -- I didn't
13 even see his reaction.

14 Q Well, did he tell you anything about it either --
15 after you said that to the judge in this case, did he
16 calm your fears any, what did he say to you after you
17 brought that up to the Court?

18 A After I brought that up to the Court, actually, I
19 think he took over, if I'm not mistaken. I can't
20 recall what he actually said, but I think he might have
21 took over the conversation as we were speaking, as I
22 was speaking.

23 Q All right. And continuing on with that, with this
24 page of testimony, you're -- you actually asked if you
25 could dismiss this testimony to the judge; is that

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1 correct?

2 A Yes, sir.

3 Q Okay. Now, on page -- and this is the last page
4 for a while on this, on page 150, could you read from
5 paragraph -- line 1 to line 11.

6 A To line 11.

7 Q Please.

8 A Okay, I'll do that. All right. Mr. Anderson:

9 Well, Your Honor, I don't how -- I don't how to run.

10 Q That's okay.

11 A Okay.

12 Q You were trying to --

13 A I was saying I don't know or something.

14 Q Sure.

15 A To do the case myself, I don't know how to do the
16 case myself.

17 Q Okay.

18 A So I would need some help. Okay.

19 Q Continue reading.

20 A Okay.

21 Q Line three.

22 A All right. You want me to go all the way down.

23 Q Please.

24 A Okay. Well, then let's go ahead and let's let

25 Mr. Chrisco stay in the case, okay. Mr. Anderson:

1 Well, can we just get another attorney for me. The
2 Court: No. No, sir. No. Mr. Chrisco is your court
3 appointed attorney. Mr. Anderson: All right.

4 Q And through to line 11.

5 A Line 11. And I think -- the Court said -- and I
6 think what's happening, Mr. Anderson, I am assuming you
7 have never been -- you have never been to law school;
8 is that correct?

9 Q Okay. So basically you asked for a new attorney
10 in the middle of the trial; is that correct?

11 A Yes, sir.

12 Q All right. And was it -- so this is not
13 something, as I said earlier, that you addressed later
14 or thought about after you were sentenced. You asked
15 the Court at that point for a new attorney; correct?

16 A Yes, sir.

17 Q And the Court immediately said no; correct?

18 A Yes, sir.

19 Q Okay. And then they said -- asked you if you went
20 to law school, seeing if you were an attorney; correct?

21 A Right, yes, sir.

22 Q Okay. So not only did you have -- so you brought
23 up trial preparation issues with the Court about the
24 witness?

25 A Yes, sir.

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1 Q Okay. And then you asked the Court clearly for a
2 new attorney; correct?

3 A Yes, sir.

4 Q Moving on, you basically said that there were
5 other issues other than the attorney -- excuse me,
6 other than the witness that you would like to bring to
7 the Court's attention; correct?

8 A Yes, sir.

9 Q Okay. And one of those is the discovery; correct?

10 A Yes, sir.

11 Q Okay. Tell me a little bit about what discovery
12 issues other than this witness that you brought to your
13 attorney's attention.

14 A The issues that I brought to my attorney's
15 attention was, if I could pull them up, just a minute.

16 Q Well, let me rephrase that question.

17 A Okay.

18 Q Let me rephrase that question. You stated in your
19 PCR application that you were denied -- that your
20 attorney failed to adequately investigate the facts and
21 circumstances surrounding the direct witness -- direct
22 evidence of the eyewitness testimony; correct? And
23 we've gone over that; right?

24 A Right, sir.

25 Q Now, you also said that counsel's failure to such

1 an investigation deprived the jury of vital information
2 relevant to an accurate assessment of the guilt or
3 innocence. How do you think that witness testifying
4 and you not having early notice of that went to your --
5 went to the jury's guilt or innocence phase of this?

6 A I think that they really looked at that
7 information real closely. And I think it really was
8 bad on my behalf, you know, to be -- for them to get on
9 the witness stand and to say such things like that.
10 And, you know, like I say, he never been investigated,
11 he never been interviewed by my attorney.

12 Q Okay. Now, you also said that there was issues
13 about the specific crime in this case that you were
14 charged with. I think in your application you state,
15 counsel failed to seek an instruction stating that a
16 burglary charge must set forth one specific crime
17 intended upon entry and stating what the specific crime
18 was in this case.

19 Tell me a little bit about that. Are you saying
20 that the specific crime was not provided to the Court
21 or the jury in this case?

22 A No. What I'm saying is that, you know, at first
23 he was saying -- they was trying to prove two
24 burglaries, I mean, a burglary charge on me. And they
25 just come out with a first degree burglary. But they

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1 was trying to do it differently as if -- you know, it's
2 the way they wrote it up, I guess.

3 Q Okay. So you're saying that there was not a clear
4 instruction to the -- well, there was not a clear
5 charge against you in this matter; is that correct?

6 A What I'm saying is that the way they wrote the
7 warrant, the indictment up, the warrant up and
8 everything, it clearly says -- points me out as being
9 the person that did this, you know. The language that
10 warrant had on it and everything, it seems -- you know,
11 it just showed that it says that that individual was
12 the one introduced -- it was introducing it as he was
13 the one that committed a burglary charge. And, you
14 see, and I know I'm innocent until proven guilty.

15 Q Okay.

16 A But, you see, stuff like that, it just -- it makes
17 you -- it makes the individual look guilty before he
18 even go to trial.

19 Q Okay. Now, you also touched base on the
20 sentencing phase of your trial in your application;
21 correct?

22 A Yes, sir.

23 Q All right. Tell me a little bit about what issues
24 you thought were brought up during the sentencing phase
25 or not brought up, that garnered your attention.

1 A Let me see, get to it right quick.

2 Q Can you recollect anything right now on that?

3 A No, I'm getting to it. I'm reading up, reading up
4 about it because I got it right here. Yeah. This was
5 basically saying right here is that during my
6 sentencing phases, my counsel was -- he failed to
7 appropriately object to the objections. He failed to
8 object to certain things that the solicitor was saying
9 at that present moment.

10 Q Okay. So you're saying that there were objections
11 that he needed to make that you felt like he did not;
12 correct?

13 A Yes, sir.

14 Q Okay. Can you recollect any of those right off?

15 A Yeah, I got something right here in this
16 transcript that I was reading about. I got something
17 right here in the transcript. That's on page 49.

18 Q What page are you referring to?

19 A I'm on page 49.

20 Q Page 49?

21 A Yes, sir.

22 Q All right. Let me get to you on that. So on page
23 49.

24 A Yes, sir.

25 Q Which line are you on?

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1 A I'm on line 14 and 15.

2 Q If you could, read lines 14 through 16 to the
3 Court.

4 A Okay. 14 through 16?

5 Q Well, let's go back to give it some context, let's
6 go back to line 8 and then end at 16. So starting on
7 line 8.

8 A Okay, all right. State Exhibit No. 2 and State's
9 Exhibit No. 3 are admitted into evidence without
10 objection. Whereupon, the State Exhibit No. 2 and 3,
11 photographs, entered into evidence and appropriately
12 marked by Ms. Chrisco -- I mean, Ms. Richardson, excuse
13 me.

14 Q Okay.

15 A All right. Courts: Okay, so hold that picture up
16 for me. And now, where were you, where was
17 Mr. Anderson? Let's see.

18 Q And then read line 16, and we'll conclude it.

19 A He was in this area.

20 Q Okay. So what of that section are you stating you
21 have a problem with your attorney's representation of
22 you in that case?

23 A Well, he failed to object to any of that right
24 there. Especially with Mr. Joe E. in that letter
25 saying that he couldn't identify anybody. He couldn't

1 identify the Defendant. And right here, the solicitor
2 is asking, where was Mr. Anderson. That's me. And my
3 attorney never objected to it, you know.

4 Q So you're saying that because of that objection,
5 it created a negative -- it created a problem --

6 MS. GIOVANOLI: Objection to leading.

7 THE WITNESS: Yes, sir.

8 THE COURT: Sustained.

9 MR. FOWLER: I apologize.

10 Q Well, tell me a little bit about how that related
11 to your representation of your attorney -- by your
12 attorney of you.

13 A Well, I was hoping that -- like I say, I was
14 hoping that he would have been -- he would have
15 objected to unsupported allegations that was made
16 during that time. And, you know, that was just some of
17 the things right there I was talking about.

18 Q Okay. In your application, you state that the
19 prosecutor did not provide trial defense counsel with
20 discovery materials in a timely fashion.

21 Now, are you referring exclusively or only to that
22 witness Joe E. , or are you stating there were other
23 discovery problems in this case?

24 A Yes, sir. That's some -- there's some other
25 things in this case that --

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1 Q So you're saying there's other issues in the case;
2 correct?

3 A Yes, sir.

4 Q Okay. If you would explain to the Court what some
5 of those issues are other than the Joe E. matter,
6 issue.

7 A All right. Well, the prosecution say they had
8 some fingerprints. And we never got any copy of it,
9 any type fingerprints to do any kind of research for
10 ourselves. So actually, the trial was like a one-sided
11 trial. They said they have evidence and we didn't. So
12 they have fingerprints.

13 Mr. McClelland which was the crime scene
14 investigator was sworn in as an expert, and he say he
15 collected one fingerprint at the scene. And he took
16 that print back to the -- he took that print and he
17 sent it through the computer, and the computer sent him
18 a hit of 30 prints similar to the one found at the
19 crime scene. So that's what he did.

20 And he took -- and he say he did a test of those
21 prints. He said the first print come back it wasn't
22 mine. He doesn't know whose it is. Then he say the
23 second print come back was mines. So he took the other
24 28 prints and threw them away. And he never given us a
25 copy to run any tests for ourselves, nor did the

1 solicitor give us any copies.

2 Q Okay. And this is spelled out, in part at least,
3 in the transcript; is that correct?

4 A Yes, sir.

5 Q On page 103, can you read starting at line --
6 identify who's talking at line 13, and then read line
7 17 through 21 or 23.

8 A Okay.

9 Q So who's talking in this section?

10 A Who's talking in that section, Mr. Chrisco.

11 Q Okay. If you could read, pick up on line 17 to
12 23.

13 A Okay, I can bring it over some?

14 Q Yes, please.

15 A All right. I never received any information that
16 there were 30 hits from the AFIS computer, nor did I
17 receive the fingerprints of those 30 individuals to
18 look at and to compare and to determine how close some
19 of the other individuals were on there. And therefore,
20 I think that I had been given that, it may have helped
21 my client and the presentation of this case, Your
22 Honor.

23 Q And it's your contention, this goes on for several
24 pages; correct?

25 A That is right.

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1 Q In terms of the fingerprint issue?

2 A Yes, sir.

3 Q All right. So you read into the record and it was
4 stated in the transcript that Mr. Chrisco never
5 received any information that there were 30 hits from
6 the AFIS computer; right?

7 A That is correct, sir.

8 Q And he told the Court he -- nor did I receive the
9 fingerprints of these 30 individuals to look at and
10 compare and determine how close they were. That's
11 correct; right?

12 A Yes, sir, that's correct.

13 Q So initially we were talking about the witness,
14 Joe E. . Now we're talking about fingerprints, okay?

15 A All right.

16 Q And you're saying that the fingerprints, your
17 attorney in open court basically said he did not get
18 something that he should have gotten; correct?

19 A That is correct.

20 Q Okay. How would this -- how did this go to his
21 alleged ineffective assistance of counsel for you, how
22 did that make him not represent you to the best of his
23 ability here?

24 A Well, he didn't have the information, he didn't
25 have the evidence to bring forward.

1 Q Do you feel like he should have got that earlier?

2 Do you feel like he should have had that information?

3 A Yes, sir, I feel like he should have had that
4 information.

5 Q Okay. And why did he not have that information?

6 A He didn't have the information because the
7 solicitor's office, I feel, didn't give it to him.

8 Q Okay.

9 A Now, I don't -- you see, I'm not saying that he
10 did a bad job on that part because he -- I think he
11 only did what he could do on that part.

12 Q But there was other things he could do at that
13 point perhaps to --

14 A Yes, sir. He could have asked for a continuance,
15 or he could have did some other things.

16 Q Did he ask for a continuance at that point?

17 A No, sir.

18 Q Okay. Did he ask for any kind of mistrial at that
19 point?

20 A At that point, well, he objected, he did made --
21 he asked for a mistrial, he did ask for a mistrial.

22 But I'm not for sure if it was at this point or later.

23 Q But at that point he could have done that;
24 correct?

25 A Yes, sir, he could have did it.

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1 Q Okay. You stated that he didn't -- continuing on
2 with the discovery in your application, you state in
3 11-C 2, prosecutor did not provide defense counsel with
4 all relevant discovery materials, we discussed that.
5 And in three, you're saying that prosecutor did provide
6 -- now, this is your words, not mine, okay, but just to
7 be clear, you're stating in your application that the
8 prosecutor provided fraudulent materials to defense
9 counsel six days prior to trial. Could you explain
10 that to me.

11 A Yes, sir. Fraudulent, I mean, the material that
12 they presented to us six days before the trial was
13 untrue.

14 Q How so?

15 A Because I am not the one that burglarized
16 anything. And I still stand on my innocence because I
17 -- you know, I didn't do a burglary.

18 Q Okay. All right. And you're saying that in --
19 that that impeded -- in your application, again, in
20 section four of that section, you're saying that those
21 tactics did impede the Defense in making reasonable
22 decisions.

23 How so, how did that lack of information or faulty
24 information allegedly create unreasonable decisions on
25 your defense team?

1 A Well, one thing, it led to my guilt, you know, it
2 painted such a picture to it, made it look like I was
3 guilty when I wasn't. And, you know, it's -- and like
4 I say, I think my lawyer could have did something to
5 prevent all of those things from happening.

6 Q Okay. What about the jury -- the juror that did
7 not identify himself as knowing you or knowing the
8 Defense counsel, tell me a little bit about that
9 situation, your recollection of it.

10 A Well, yeah. Well, there was a juror that I know,
11 and he knows me. I mean, I didn't realize that was him
12 because I hadn't seen him in like a year or so until it
13 was, you know, like well over into the trial. And then
14 I recognized him. But he -- I'm quite sure he
15 recognized me because he kept staring at me.

16 Q Okay.

17 A That's what made me recognize him.

18 Q And was he already empanelled in the jury?

19 A Yes, sir.

20 Q Okay. And did he remove himself or not, or how
21 did that come to fruition?

22 A No, he never removed himself. He never said
23 anything.

24 Q Okay. Did your attorney bring that to the
25 attention of the Court?

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1 A No, sir.

2 Q Okay. You and I have had several conversations
3 about this. You've stated that there might be some
4 other issues that you feel like might be relevant to
5 this case, or may be encapsulated in what we've gone
6 over. But are you saying that there might be double
7 jeopardy issues in this matter?

8 A Yes, sir.

9 Q How so?

10 A Well, that's -- I filed a brief in this Court.
11 And I just outlined -- I just got some of it outlined
12 that I just wanted to read.

13 Q Okay.

14 A For the record.

15 MS. GIOVANOLI: And, Your Honor, I'm going to
16 object to that. We already moved to strike that
17 pursuant to Rule 11 in the November PCR term. The
18 judge didn't rule on that motion. But it's a 300-page
19 document, I believe, or is this the nine-page?

20 MR. FOWLER: This is the nine-page.

21 THE APPLICANT: This is the nine-page.

22 MS. GIOVANOLI: And I actually don't have
23 possession of that or the 300-page one.

24 THE APPLICANT: I got a copy for you.

25 MS. GIOVANOLI: But the State would move to strike

1 all pleadings that were made by the Applicant at this
2 point in time. He's been represented by Mr. Fowler
3 since March of 2015.

4 MR. FOWLER: And these are not pleadings, Your
5 Honor, this is a brief that would --

6 MS. GIOVANOLI: Memorandums, pleadings, briefs.

7 MR. FOWLER: However you want to phrase it. This
8 is something that would provide accurate information to
9 the Court, and I can talk to him.

10 THE COURT: As an officer of the Court, do you
11 think that this presents a valid argument for double
12 jeopardy?

13 MR. FOWLER: Your Honor, this is something that
14 has been brought up. I'm not -- this is something
15 that's been brought up to my client, and he and I have
16 discussed it. And he has done --

17 THE COURT: I'm asking you as an officer of the
18 Court, have you looked at it, do you think there's
19 legitimately a claim for double jeopardy?

20 MR. FOWLER: Your Honor --

21 THE COURT: I can't imagine a circumstance. He
22 wasn't tried twice; was he?

23 MR. FOWLER: To the best of my knowledge, no, Your
24 Honor. I'm just saying that this is something that my
25 client has brought to my attention, and it's something

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1 that he feels is important. And he's obviously done
2 his homework, in my opinion, on this matter. So I am
3 just giving him an opportunity to speak about it.

4 THE COURT: I'll allow him to address it, I
5 imagine.

6 MR. FOWLER: Okay.

7 Q Double jeopardy, did you say there was some
8 potential double jeopardy issues on this?

9 A Yes, sir.

10 Q Okay. How so?

11 A Double jeopardy issues --

12 MS. GIOVANOLI: At this point I'm going to object,
13 because it seems as though he's trying to read from the
14 many documents in the testimony. And I believe that
15 document was not even prepared by him. So I would
16 oppose any reading of any documents into testimony.

17 THE COURT: Did you prepare that document?

18 THE APPLICANT: Yes, sir. Yes, sir, I have --

19 THE COURT: Go ahead.

20 THE APPLICANT: I have prepared it. I would just
21 like to read to make sure I got my words because
22 sometime my words come out not right. So I would like
23 to read it from paper to make sure it come out correct.

24 THE COURT: Go ahead.

25 THE APPLICANT: Thank you. Speaking about the

1 indictment, when it comes to double jeopardy speaking
2 about the indictment and the language that's on the
3 indictment, it says, the indictment by its language
4 take away my presumptions of innocence and
5 predetermined in advance the outcome of the
6 proceedings, creating an instant double jeopardy issue.
7 It says --

8 THE COURT: Are you saying that because you're
9 indicted, that was a trial, and the second -- and the
10 trial to determine whether or not they could prove your
11 guilt beyond a reasonable doubt is the second trial?

12 THE APPLICANT: Well, actually, I'm saying that
13 the -- you know, yes, sir.

14 THE COURT: Okay. All right. Is that the essence
15 of the argument is that you were already indicted, and
16 you couldn't be tried on that indictment?

17 THE APPLICANT: Well, I was indicted on the --
18 with the -- I was charged with the indictment and, you
19 know, it was -- from the way the indictment was drawn
20 up and everything, it's like I was already guilty.

21 THE COURT: Okay. All right.

22 Q In your application, you refer to Strickland
23 versus Washington; is that correct?

24 A Um-hum.

25 Q What is your knowledge of Strickland versus

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1 Washington?

2 A Let me get to it now.

3 Q In 11-A.

4 A 11-A?

5 Q Of your application.

6 A Okay, Strickland versus Washington.

7 MS. GIOVANOLI: I'm going to object as to
8 relevance.

9 THE COURT: I don't think there's anything wrong
10 in a PCR with Strickland.

11 MS. GIOVANOLI: But his understanding of
12 Strickland. I believe that counsel is --

13 THE COURT: I think he's asking how the
14 performance fell short. But we don't need him to give
15 us a lesson on Strickland, we all know what it means.

16 Q Well, do you -- what's your opinion of your
17 attorney's performance in this matter?

18 A Well, my -- well, it was poor performance.

19 THE COURT: Okay.

20 Q And do you feel like because of that poor
21 performance that you were sentenced to the sentence
22 that you received?

23 A Yes, sir, I do think that. And I think if he --
24 if my attorney would have did the job he was supposed
25 to do, you know, like ain't none of us perfect, but if

1 he would have done the job he was supposed to did, I
2 don't think I would even be found guilty.

3 Q Okay. Is there anything else about your
4 attorney's performance that you feel needs to be
5 brought to the Court's attention?

6 A No -- well, I'm not for sure. I got to read my
7 paper back again.

8 Q Okay. Well, I'll take that as a no. If you
9 change your mind, let me know right now.

10 MR. FOWLER: But based on that, I have no further
11 questions.

12 THE COURT: All right. Cross-examination.

13 MS. GIOVANOLI: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. GIOVANOLI:

16 Q Do you have a copy of the transcript with you up
17 there?

18 A Yes, I do.

19 Q Okay. So you don't mind if I make reference to it
20 kind of like Mr. Fowler did?

21 A Okay. It's what -- he did that, so I guess it
22 would be all right for you to make some.

23 Q Okay. So earlier in your direct testimony you
24 testified that Ed's cross-examination of the witness
25 Joe E. did not meet your standards. What standards

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1 are those?

2 A Where you at?

3 Q I'm not in the transcript yet. But you testified
4 earlier that your lawyer's cross-examination of the
5 witness Joe E. didn't meet you standards. I'm
6 asking you, what are those standards?

7 A Well, actually, what -- what that really means is
8 that -- to me is that Joe never gave us a statement to
9 the police. Therefore, we could never get a statement.
10 So I don't feel like -- I don't think you could just
11 get anybody up there to testify to something that they
12 don't even, you know, know nothing of.

13 Q Okay. So just so that I'm clear, Joe E. got on
14 the stand and testified to something that you had never
15 heard of before?

16 A No, no, that's not what I'm saying.

17 Q Okay. What are you saying?

18 A Okay. I was trying to answer your question. But
19 what I was -- what my standards, he didn't meet the
20 standards is that when he got up to testify to
21 something that he never -- that he already said that he
22 can't identify, so...

23 Q Right. So what I'm saying is he testified to
24 something you had never heard before?

25 A No, I ain't never heard of that.

1 Q Okay. Can I refer you to page 51 just so we have
2 a complete record. If you look on page 51 of the
3 transcript --

4 A Okay.

5 Q -- and this time I'm just going to read. It
6 starts on line 11. This is Mr. Chrisco.

7 A All right.

8 Q Is that the -- and this is cross-examination of
9 Joe E. the witness that you're discussing.

10 Question: Is that the person that was in your room?

11 Answer: Looks about the same height and the --

12 Question: Is that the same person that was in your

13 room? Answer: Yes, sir. Question: No doubt in your

14 mind? Answer: No doubt. Question: No doubt

15 whatsoever? Answer: No doubt, sir.

16 Question: You mentioned a while ago he had dark

17 hair? Answer: As in dark facial hair at the time. I

18 didn't notice the top of the head. He had dark facial

19 hair. Question: You didn't tell the police at the

20 time that you could recognize him. Answer: At the

21 time I said that I -- I said exactly what I just said.

22 Question: You didn't tell the police that you

23 could recognize him, they didn't show you pictures; did

24 they? Answer: No, sir. Question: They didn't ask

25 you to draw any sketch or anything? Answer: No, sir.

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1 Question: In fact, the only thing you said at the time
2 was, he was a little bit shorter than me; is that not
3 correct? Answer: That's right. Question: But today
4 you're saying that it was in fact him, no doubt in your
5 mind? Answer: Yes, sir.

6 So your testimony here today is that that
7 cross-examination of this witness was not up to your
8 standards?

9 A No, that's not what I'm saying, ma'am. I'm saying
10 when she asked these questions, when these questions
11 were asked earlier, you know, I -- no, they wasn't up
12 to my standards earlier. But this is another range of
13 questions coming back a second time.

14 Q Okay. How many trials have you been in as the
15 Defendant?

16 MR. FOWLER: Objection, Your Honor, relevance.

17 THE COURT: Overruled.

18 Q You can answer.

19 A How many trials I been into?

20 Q Yes.

21 A I ain't been in no trials. I was in one trial
22 back in '98, '99, one.

23 Q So one trial before?

24 A One.

25 Q Okay, I'm going to move on. And also, earlier you

1 were reading a little bit about your -- let's see, on
2 page 147, can you turn there in the transcript for me.

3 MR. FOWLER: What page was that again, please?

4 MS. GIOVANOLI: 147.

5 MR. FOWLER: Thank you.

6 Q And on line 13 when the Court tells you it's your
7 opportunity to say anything if you want to say it. And
8 once again, I'm just going to go ahead and read this
9 into the record.

10 MR. FOWLER: And which lines are you referring to,
11 please?

12 MS. GIOVANOLI: On page 147, line 13. The Court:
13 Now is your opportunity to say anything if you want to.

14 MR. FOWLER: Thank you.

15 Q Mr. Fowler had you read line 15 through 17 into
16 the record and then stopped, so I'm just going to pick
17 up where you left off on line 19. I don't understand
18 what you're asking, the Court. Line 20, Mr. Anderson:
19 Well, we had some testimonies -- and I apologize, I'm
20 reading the wrong line.

21 Actually, page 148, line 2. So we skipped over
22 Mr. Chrisco. It starts at line two. Your Honor, if I
23 could just interrupt for just a minute, what he's
24 talking about is the testimony of the 17-year-old
25 witness yesterday. I got a letter from the solicitor,

JAMES ANDERSON-CROSS BY MS. GIOVANOLI

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1 it's dated March the 6th, I shared it with Mr. Anderson
2 on March the 7th when they brought him over here to be
3 arraigned. And I let him know then that there were
4 three people that were not on the -- that was not in
5 the police reports that may possibly testify. And it
6 actually turns out I only think that one testified, and
7 that was the young boy.

8 One found out in the letter the occupants of the
9 room was now deceased, and the other person did not
10 testify. The person said to the solicitor that they
11 saw someone shorter than six feet in the room, and
12 that's all they said. Your Honor will remember
13 yesterday when he testified, he testified that he could
14 identify my client. And then he was asked, is that --
15 that's not what he said earlier, and I think that's
16 what Mr. Anderson is now putting into it record.

17 Is that correct, was that what you were trying to
18 put into the record?

19 A No. What I was putting into the record is that
20 even though he got this on the 7th, he still failed to
21 interview this guy. He still failed to interview.
22 That's part of what I was getting on the record, yeah.

23 Q Okay.

24 A Yeah, that's what it was.

25 Q Thank you for that clarification.

1 A Thank you, too.

2 Q And then if you turn over to page 149 and line 20,
3 this is where Mr. Chrisco, he says, Your Honor, I can
4 slide in here right now, I want the Court to inquire of
5 Mr. Anderson whether he wants to relieve me as his
6 attorney at this point and carry on the case himself.

7 The Court: Is that what you're asking me to do,
8 Mr. Anderson? This was you, Mr. Anderson: Well, Your
9 Honor, I don't how to run -- to do the case myself, so
10 I would need some help. The Court: Okay. Well, let's
11 go ahead and let's let Mr. Chrisco stay in the case;
12 okay?

13 MR. FOWLER: Your Honor, that's already been read
14 into the record.

15 MS. GIOVANOLI: That's right, I apologize. And
16 then I'm going to skip down to page 151. And the Court
17 on line 5, So I would encourage you to work with your
18 attorney, to listen to him. He has the legal training,
19 he has the legal education, he has the legal
20 experience. And I would venture to say he knows more
21 about how to defend a defendant in a criminal trial
22 than you. So that's why we've appointed him to
23 represent you; okay? Your response: Yes, sir. The
24 Court: All right, sir, anything else? You say, Yes,
25 sir, I'm asking for a second.

JAMES ANDERSON-CROSS BY MS. GIOVANOLI

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1 And then there's a brief conference between you
2 and Mr. Chrisco. And then you responded, all right,
3 thank you. No further questions, Your Honor.

4 So at that point why didn't you -- why didn't you
5 insist on getting a new attorney at that point?

6 A Because I had already asked the judge to give me
7 another attorney. And he said he was going to leave
8 Mr. Chrisco as my attorney. So I -- and just to try to
9 go ahead on with the trial, I just went ahead on with
10 that situation at that present moment.

11 Q Okay.

12 A But I did ask for -- I did thought he was going to
13 give me another one. At one point in time I thought I
14 was going to get another one.

15 Q Okay. Do you recall in that brief conference
16 between you and Mr. Chrisco what you guys talked about?

17 MR. FOWLER: Objection, Your Honor. That's
18 attorney/client privilege.

19 MS. GIOVANOLI: That privilege has been waived
20 when this application is filed.

21 MR. FOWLER: I would like for the judge to rule on
22 that.

23 THE COURT: It is waived to the extent that it
24 affects that application.

25 MR. FOWLER: Thank you, Your Honor.

1 Q So do you recall what you discussed in that brief
2 conference?

3 A No, I don't recall what it was.

4 Q All right. With regard to the indictment, are you
5 aware that an indictment is a charging document?

6 A Um-hum. Yes, ma'am.

7 Q Are you aware that it's also a notice document?

8 A I don't understand.

9 Q Okay. Are you aware that the indictment is a
10 charging and a notice document and nothing more?

11 A Okay.

12 Q Is that a yes?

13 A Yes.

14 MR. FOWLER: Your Honor, she's asking -- I would
15 like to object to that question because that is a legal
16 question that I don't think my client has been --

17 THE COURT: He's the one that wrote the brief on
18 the law.

19 MR. FOWLER: Thank you, Your Honor.

20 THE COURT: All right.

21 Q Okay. And then -- apologize, I'm just trying to
22 find page numbers. You also testified on direct that
23 on page 49 of the transcript, at line 8, with reference
24 to a State's Exhibit No. 2 and No. 3, you stated on
25 direct that when Mrs. Richardson asked the question,

JAMES ANDERSON-CROSS BY MS. GIOVANOLI

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1 hold that picture up for me now. Where we -- where
2 were you when -- where was Mr. Anderson? And the
3 answer from that witness was, He was in this area.

4 You stated on direct that you wanted your attorney
5 to object to that question. On what basis did you want
6 him to object?

7 A Because on what -- oh, oh. Can you say that one
8 more time.

9 Q On what basis did you want your attorney to object
10 to that specific question or answer?

11 A Oh. Because she asked, where did you see Mr.
12 Anderson. I was not there.

13 THE COURT: I think the record speaks for itself.
14 I understand what he's objecting to. He's objecting to
15 the eye witness saying he was there. He said he wasn't
16 there. It's a question of fact for the jury.

17 MS. GIOVANOLI: All right. Thank you, Your Honor.

18 Q Do you recall that your lawyer objected to the
19 fingerprint evidence?

20 A Um-hum. Say it again.

21 Q Do you recall that your lawyer objected to the
22 fingerprint evidence?

23 A Um-hum.

24 Q Okay. And do you recall that that was an issue
25 that you took up on appeal? Do you remember your

1 appeal in this case?

2 A Yes, I'm appealing the case.

3 Q Do you remember that one of the issues was that
4 fingerprint evidence?

5 A Well, actually, I remember him objecting to
6 certain -- yeah, to the prints. But yes, I was putting
7 it into the record for other reasons also.

8 Q Was that an issue -- was that issue part of your
9 appeal?

10 A Yeah, that's part of my appeal.

11 Q Okay. Do you recall how the Court of Appeals
12 ruled on that issue?

13 A Nu-uh.

14 Q You don't recall?

15 A No. I got -- no, nu-uh. I got some Court of
16 Appeals records here I meant to read into it. But I
17 didn't get a chance to do that.

18 Q Did you get a chance to read the Court of Appeals
19 opinion affirming that there was no Brady violation
20 with regard to the fingerprints?

21 A No, I didn't get a chance to read that.

22 MS. GIOVANOLI: I have nothing further, Your
23 Honor.

24 THE COURT: Any redirect?

25 MR. FOWLER: Yes, Your Honor, briefly.

JAMES ANDERSON-REDIRECT BY MR. FOWLER

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1 REDIRECT EXAMINATION

2 BY MR. FOWLER:

3 Q Attorney General opened up with what standards
4 about this witness. When did you find out that Joe
5 E. was going to appear at trial?

6 A Like --

7 MS. GIOVANOLI: Your Honor, that's been asked and
8 answered.

9 THE APPLICANT: -- six days before.

10 MR. FOWLER: She asked him what standards he was
11 asking, and I'm just asking one more time what
12 standards, if I may.

13 Q Do you think six days before your trial is enough
14 time for you to adequately investigate what Joe E.
15 would be saying at trial?

16 A No, sir.

17 Q Why not?

18 A Because it's not enough time for -- it's not
19 enough time to investigate because it's so much stuff
20 to go through, I mean.

21 Q You asked the Court for a new lawyer; correct?

22 A Right, sir.

23 Q And by that, did you want another attorney, or did
24 you want to proceed by yourself, or how did you want to
25 proceed if you were to -- if Mr. Chrisco was to be

1 relieved as your counsel?

2 A I wanted another attorney.

3 Q Okay. And the Court denied that for you during
4 that trial; correct?

5 A Yes, sir.

6 Q Okay. So you wanted a new attorney, but you
7 didn't want to proceed by yourself; correct?

8 A Right. So like I said, I didn't know anything
9 about the law.

10 Q Okay. And also, she was talking about
11 fingerprints, okay. We read earlier on the record that
12 Mr. Chrisco said he did not receive the 30 AFIS prints;
13 correct?

14 A Yes, sir.

15 Q And this was -- and that issue was brought up at
16 your trial; correct?

17 A Yes, sir.

18 Q So is it correct that you would expect Mr. Chrisco
19 to have had those 30 AFIS fingerprints before your
20 trial?

21 A Yes, sir.

22 MR. FOWLER: No further questions.

23 THE COURT: All right. You may step down.

24 THE APPLICANT: Thank you, sir.

25 (Witness excused.)

1 THE COURT: All right. Mr. Fowler, we've now
2 heard all of the testimony of the Applicant. And I'm
3 going to ask if you can summarize for me the areas of
4 ineffectiveness just briefly. Just bullet point what
5 areas we're talking about.

6 MR. FOWLER: Yes, sir. And this is to the best of
7 my knowledge. And my client has gone over these on the
8 stand. First of all, Your Honor, there's the Joe
9 E. situation, Your Honor; whereas, he was not
10 brought to the Court -- to my client's attorney's
11 attention until six days before trial.

12 THE COURT: Okay, I understand that. What's the
13 next?

14 MR. FOWLER: Okay. The next one is my client
15 clearly asked the Court for his attorney to be
16 relieved. And he has indicated that he has tried to --
17 that he wanted a new attorney, and the Court said, no,
18 you've got to stick with Mr. Chrisco.

19 And also, Mr. Chrisco stated on the record that --

20 THE COURT: Would that be an issue for appeal? I
21 mean, obviously -- and we're going to obviously hear
22 from Mr. Chrisco. But the issue is not whether or not
23 he's dissatisfied with Mr. Chrisco, it's whether or not
24 his performance failed below the standard and whether
25 or not that causally was related to his conviction.

1 Those are the issues.

2 MR. FOWLER: And, Your Honor, my understanding is
3 that both in the fingerprint issues we've shown and in
4 the witness testimony as we've -- or the last six-day
5 testimony knowledge, that we've shown that there was
6 not a proper time for discovery to be digested in this
7 case by both my client and --

8 THE COURT: That's a whole different issue. But
9 as far as him moving for a new attorney, and you made a
10 big deal out of that, that might be an issue for
11 appeal. But really a post conviction relief is whether
12 or not Chrisco was effective.

13 MR. FOWLER: And, Your Honor, by my client's
14 application and my client -- and the thing about it is,
15 Your Honor, if I may just -- and I'll be brief, when a
16 client or someone who's being defended in the middle of
17 the trial says, Your Honor, I'm dissatisfied, I've lost
18 complete confidence in my client, it's not something
19 that he thinks about 60 days after the trial verdict
20 comes in. Those are issues that are brought in the
21 middle of trial to the Court's attention and not three
22 years later on a PCR appeal. So what I'm --

23 THE COURT: I understand that he asked for it, and
24 you made it eminently clear that he asked for it during
25 the trial. But one thing that is clear according to

1 the law is that when someone is accused of a crime here
2 in the United States of America, and particularly in
3 South Carolina, they can't afford a lawyer, one is
4 appointed for them. And they don't have to take that
5 lawyer, they can proceed forward by themselves, or they
6 can hire their own lawyer. And those are the issues
7 that are before the Court.

8 We can't allow someone who's an indigent who
9 objects to their lawyer just to say, I'm dissatisfied,
10 and stop the trial.

11 MR. FOWLER: And Your Honor, with all due
12 respect --

13 THE COURT: But the issue, don't you agree, is
14 whether or not Chrisco's performance failed below the
15 standard?

16 MR. FOWLER: Well, it's the Strickland standard,
17 Your Honor.

18 THE COURT: Yes.

19 MR. FOWLER: When we walk in this courtroom on a
20 PCR, it's always Strickland versus Washington. And I
21 agree with that.

22 THE COURT: Whether he issued a complaint at trial
23 really doesn't have a whole lot to do with it. But
24 that's one of the issues you're talking about?

25 MR. FOWLER: Yes, sir, my Strickland versus --

1 THE COURT: It's the timeliness of the objection.
2 All right, what's the next one?

3 MR. FOWLER: Well, Your Honor, as I said, I mean,
4 the -- it's my understanding that the attorney's role
5 is to get discovery for his client, provide that
6 discovery to his client in a timely or enough matter --

7 THE COURT: Okay.

8 MR. FOWLER: -- to do it.

9 THE COURT: All right. Discovery is a general --
10 we don't need to argue about it. I just want you to
11 encapsulate the areas.

12 MR. FOWLER: Yes, sir.

13 THE COURT: All right. So we've got the attorney
14 issue, we've got the discovery.

15 MR. FOWLER: Yes, sir.

16 THE COURT: We've got the testimony of Joe E. or
17 Joe or whatever it is.

18 MR. FOWLER: Yes, sir.

19 THE COURT: We've got that. All right. What's
20 the other one? The statement of eye witness. He was
21 objecting to him, the eye witness.

22 MR. FOWLER: Yes, sir. And like I said earlier,
23 my -- if I may, my client's application, I think, is
24 very detailed, and it spells out all these different
25 issues. I would say the surprise witness, in my words,

1 not the Court's, and the fingerprints, the attorney
2 saying that those were not --

3 THE COURT: All right, fingerprints and the eye
4 witness?

5 MR. FOWLER: Yes, sir. But also I would include
6 in that all of my client's wording in his application,
7 Your Honor. And I think we tried to touch on each one
8 of those, so...

9 THE COURT: I understand that. I'm just trying to
10 delineate what we've got to deal with here.

11 MR. FOWLER: Yes, sir. The witness and
12 fingerprints, Your Honor, those were not given to my
13 client in a timely enough matter for him to adequately
14 defend himself.

15 THE COURT: All right.

16 MR. FOWLER: And we felt that that did not meet
17 the Strickland standard in this case.

18 THE COURT: Okay. Any other?

19 MR. FOWLER: Well, like I said, I mean, I'm trying
20 to encapsulate everything in here. But those were the
21 two main issues, I think, that we tried to bring up on
22 the stand. May I speak to my client?

23 THE COURT: Yeah.

24 MR. FOWLER: All right, Your Honor, I've spoken
25 with my client, and he agrees with what I presented to

1 the Court.

2 THE COURT: All right.

3 MR. FOWLER: We would ask for his entire --

4 THE COURT: The motion to relieve the attorney,
5 the discovery, the fingerprints and the statement of
6 the eye witness.

7 MR. FOWLER: Yes, sir. Those are the primary
8 ones.

9 THE COURT: Very good.

10 MR. FOWLER: Thank you.

11 THE COURT: All right. Any further testimony?

12 MR. FOWLER: No further testimony, Your Honor. No
13 further witnesses at this time.

14 THE COURT: Very good. Yes, ma'am.

15 MS. GIOVANOLI: Your Honor, the State would call
16 Mr. Ed Chrisco to the stand.

17 THE COURT: Mr. Chrisco, please come forward.
18 Place your left hand on the Bible, raise your right
19 hand as the clerk administers the oath.

20 WILLIAM E. CHRISCO, after being duly sworn,
21 testified as follows:

22 THE CLERK: You may be seated.

23 DIRECT EXAMINATION

24 BY MS. GIOVANOLI:

25 Q Good afternoon, Mr. Chrisco.

WILLIAM E. CHRISCO-DIRECT BY MS. GIOVANOLI

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- 1 A Good afternoon.
- 2 Q Thank you so much for being here.
- 3 A It's got to be done.
- 4 Q How long have you been practicing criminal law?
- 5 A I've been over my third decade now.
- 6 Q Okay. And where are you employed?
- 7 A I'm employed with the Horry County Public
- 8 Defender's office.
- 9 Q How long have you been with them?
- 10 A 18 years.
- 11 Q And what is your position over there?
- 12 A I'm the chief public defender.
- 13 Q Do you recall how you came to represent
- 14 Mr. Anderson?
- 15 A I was appointed by the Court.
- 16 Q Okay. And what were the charges against him?
- 17 A I had nine files on Mr. Anderson. This one dates
- 18 back to 2009. But over the course of the time he had
- 19 gotten out, got back in trouble, gotten out, got back
- 20 in trouble. So altogether there were nine different
- 21 files.
- 22 Q How many charges were pending at the time of this
- 23 case?
- 24 A I'm sorry?
- 25 Q How many charges were pending at the time of your

1 appointment to this case?

2 MR. FOWLER: And, Your Honor, I would like to
3 object to that if she's asking outside of the scope of
4 what he was charged with in this transcript in the
5 Court.

6 THE COURT: I'm not giving any -- any other files
7 not subject to this proceeding I'm not going to give
8 any consideration. We'll move on, go ahead.

9 MR. FOWLER: Thank you.

10 THE WITNESS: I don't know, there were nine files.
11 Sometimes they have two or three charges, sometimes
12 they only have one. So I can't -- I don't know for
13 sure.

14 Q Okay. And in this case you recall he had been
15 charged with first-degree burglary?

16 A Right.

17 Q Okay. And did you make a formal motion for
18 discovery in this case?

19 A Yes. That is done the same day that I'm appointed
20 that request goes out, that motion is made.

21 Q And did you receive discovery in this case?

22 A I received discovery probably about four times in
23 this case. Supplemental discovery would come in --

24 Q Okay.

25 A -- from time to time.

WILLIAM E. CHRISCO-DIRECT BY MS. GIOVANOLI

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1 Q I won't ask you about specific dates, but do you
2 recall how long between the time you were appointed and
3 the day of the trial?

4 A Well, some I got maybe 32 months earlier, and then
5 some I had gotten like 18 months earlier, some that I
6 got ten months earlier. Yeah, as time went on, the
7 less that you got. It was more specific on what you
8 got. Sometime it was a bond paper.

9 Q Okay. Did you in your -- let me rephrase that.
10 Did you have ample opportunity to prepare this case for
11 trial?

12 A We talked about it several times. Sometimes I
13 would go out to the jail and he wouldn't be there. And
14 then, by the time that I got -- at the office we have
15 ACCs, what we called ACCs, in-office conferences.
16 Sometimes I would do that and he would not appear, and
17 then I would look and see that he was back in jail.

18 Q Okay. And how many meetings do you recall
19 approximately did you have with Applicant?

20 A Oh, gosh. We probably 30 times or more.

21 Q Okay. And about how long were those meetings?

22 A Some were only like five, six minutes. Some last
23 30, 35 minutes.

24 Q In those meetings did you review the discovery
25 with the Applicant?

1 A Yeah. I always like to go over how can we -- you
2 know, it's one of those things where I say, are you
3 guilty or do you want a trial. And most times they say
4 they want a trial. And then you go over the evidence
5 with them, and sometimes they understand that the odds
6 are not in their favor and they go over it. But that
7 was not the case with Mr. Bellamy [sic].

8 There were several plea offers on this particular
9 case to wipe out this and all of the other charges.
10 And the last one was a plea to a burglary second and
11 five years and credit for all of time that he had
12 served. Of course it had been three years, but it
13 had -- he had been out some of those times. So it
14 wasn't a full three years that he'd get credit for,
15 probably more like two years.

16 Q Did you relay that offer to the Applicant?

17 A Plead with him.

18 Q Okay. And in your -- how would you describe the
19 evidence in this case; overwhelming, very little?

20 A A fingerprint in a dwelling that you have no
21 relationship to is kind of -- it's a strong wind that
22 you're running against.

23 Q Did you discuss with the Applicant his version of
24 the facts?

25 A I discussed his version of the facts, and they

WILLIAM E. CHRISCO-DIRECT BY MS. GIOVANOLI

1 were plentiful and many.

2 Q And what were they?

3 A I really can't tell you because over time they
4 change from one thing to the next thing.

5 Q Okay. What did you think the likelihood of
6 conviction was going into the trial?

7 A I knew if we couldn't get past the fingerprint,
8 that they probably -- the odds were 80 percent plus
9 they would find him guilty.

10 Q Let's get right into the first issue, I believe.
11 Do you recall Joe E. testifying?

12 A Yes.

13 Q And what was his testimony, in general?

14 A His testimony was he was in the room, that the
15 door was closed, the door wasn't open, where he was in
16 proximity to the door, could he see the door, and that
17 he saw someone that was about his height in the room.

18 Q And were you provided with a witness list that
19 included Joe E. 's name on it?

20 A To my recollection, I don't -- I think...

21 Q Let me ask it this way. Was he a surprise
22 witness?

23 A No. Because we had gotten the stuff in advance
24 like a week in advance on him.

25 Q Did you know about what he was going to testify to

1 prior to the trial?

2 A Yeah. As far as I was concerned, he wasn't going
3 to say that -- he was going to say it was just a black
4 male about his height, average height.

5 Q Were you surprised by his testimony in the trial?

6 A Only the part where I asked a stupid question, is
7 that person in the courtroom. And of course he says,
8 yes, it is, and then wasn't backing down from it no
9 matter what I said.

10 Q Well, prior to you asking that question, hadn't he
11 already identified the Defendant on the State's direct
12 examination?

13 A I think he had alluded to it, but he hadn't said
14 it with the forcefulness that he said when I asked the
15 question. He had said it in such a way to make me
16 believe that he was not secure in saying it.

17 Q So your cross, the purpose of your cross was to
18 confirm whether or not he could identify your client?

19 A Exactly.

20 THE COURT: And you had an indication that he
21 could not identify him based on the information that
22 you had, and you were trying to elicit that previous
23 response from him?

24 THE WITNESS: Exactly. That's what I was trying
25 to elicit, was the fact that he didn't know who it was,

WILLIAM E. CHRISCO-DIRECT BY MS. GIOVANOLI

1 it was just an average height black male. But he did a
2 (indicating).

3 Q Okay. And --

4 MS. GIOVANOLI: Beg the Court's indulgence for a
5 moment.

6 Q Okay. So moving on to the discovery issue, was
7 there any discovery that you were not provided with in
8 this case, to your knowledge?

9 A I was not provided with the discovery from the
10 30 -- see, how this happened was they did the
11 investigation, they got the fingerprint. They ran it
12 through AFIS computer, and it kicked out 30
13 fingerprints. And they notified the police department
14 of the fingerprints that he had kicked out.

15 And he pulls the first one, he does it, it
16 doesn't -- there's not enough points. He does this
17 one, and there were -- like there were 11 identifying
18 points. And then he just stops, he does no more.

19 And my argument to the Court was, I needed those
20 fingerprints so I could have an expert to look at
21 those, because it is subjective. And to look at those
22 fingerprints to determine if any of the other 28 people
23 that they had the fingerprint for, what points would
24 they have been, according to my expert.

25 Q What was provided to you in discovery regarding

1 the fingerprints?

2 A Just the fingerprint.

3 Q One fingerprint?

4 A That's it, just his.

5 Q Do you recall it was a screen shot of how many
6 hits there were and his specifically --

7 A Right.

8 Q -- there was a list of them?

9 A It said that there were 30.

10 Q Right.

11 A And that was also the testimony too, that there
12 were 30 and that they had sent it to the fingerprint
13 expert. I'll put that in quotation marks. And what he
14 had done, and he is the one that put that in the
15 record.

16 Q And the Applicant's fingerprint was the second?

17 A Was the second one.

18 Q Second comparison they did.

19 A And after he did his, they said, that's it.

20 Q So after that the other 28 weren't even looked at
21 by anyone?

22 A Right.

23 Q All right.

24 A And then was the big argument that I had was that
25 had I had that, I could have gotten someone to look at

WILLIAM E. CHRISCO-DIRECT BY MS. GIOVANOLI

1 those. And we could make sure that those other 28 were
2 excluded rightly.

3 Q And that's actually the argument you made to the
4 Court at trial?

5 A Exactly.

6 Q And the trial Court ruled against you on that
7 point?

8 A Yes.

9 Q And are you aware that that issue was taken up on
10 appeal?

11 A Yes.

12 Q Are you familiar with the Court of Appeals opinion
13 affirming that issue --

14 A I never read the opinion, but I was told that it
15 was affirmed. Because I think I asked the appellate --
16 Bob, I can't remember his last name, at a seminar or
17 something that we had gone to, has that case -- had he
18 argued that case. And he said, yeah, it's kind of
19 novel.

20 Q Okay. So it was a novel issue?

21 A Yeah.

22 Q But you argued it at the trial nonetheless?

23 A Exactly.

24 Q Okay. Now, with regard to the discovery, did you
25 ever provide a copy of the discovery to your client?

1 A Everything that we get, everything that I get, the
2 same day goes out to my client whether they are in jail
3 or not.

4 Q Is that your general practice?

5 A That's the way we do it.

6 Q And you know for a fact that that happened in this
7 case?

8 A I know for a fact it happens in every case.

9 Q Okay.

10 A If not that day, then by the next morning, if it
11 comes in after 4 o'clock.

12 Q Okay. There was a little bit of testimony, and
13 I'm not sure if this is an issue that we're going
14 forward on, but were you ever made aware of a juror
15 that actually knew the Applicant?

16 A I sat there during his testimony and I read it in
17 the thing. And it never was mentioned to me.

18 Q Okay.

19 A But I can say had it been mentioned to me, I would
20 have brought it to the Court's attention because that's
21 something that I think that I should have brought to
22 the Court's attention just to -- because they had
23 alternates at that time, and one of those could have
24 taken the place. I would rather for it to be out than
25 to not say anything at all. So I can tell you that I

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1 didn't hear it during the trial.

2 Q Okay. Did you recall any defects in the
3 indictment in this case?

4 A None.

5 MS. GIOVANOLI: I have nothing further for this
6 witness. Answer any questions Mr. Fowler may have.
7 Thank you.

8 CROSS-EXAMINATION

9 BY MR. FOWLER:

10 Q You made it clear on cross-examination that you
11 provided discovery to my client -- or based on what I
12 heard that you provided discovery to my client when you
13 received it; correct?

14 A As soon as we received it, he got it. Sometimes
15 it was that same day, sometimes it was the next day.

16 Q One of the issues in this PCR hearing is the
17 witness Joe E. , okay. When were you notified
18 and -- when were you notified, I would like to hear it
19 from you, when were you notified that he would be at
20 trial testifying against my client?

21 A I think we had gotten a statement the week before.

22 Q Okay.

23 A But there was no indication -- any indication
24 whether they were going to call him as a witness or
25 not. And it was -- I think maybe it was the day of the

1 trial that they said that he was going to be a witness.
2 But that was only the formality of them saying it. I
3 had assumed a week earlier that he was going to be a
4 witness.

5 Q When you know that there's a witness against your
6 client, against your client in a case like that, what
7 procedures do you go through? Do you speak to them, do
8 you get some kind of statement, do you get a police
9 file; what -- if you know there is a potentially
10 adversary witness against your client, what are some of
11 the steps you take to find out more about that witness?

12 A I don't know from the statement that was made and
13 given to me that he was adversarial. It seemed like he
14 was more of a help to me.

15 Q Okay.

16 A He can paint a gray area.

17 Q Well, whether a witness is helpful or hurtful,
18 what can you do to obtain more knowledge about what
19 that witness would say, what are some of the things you
20 would do?

21 A Well, you could investigate it. But I did not do
22 that in this case because what he was saying on -- in
23 the statement that was made was not harmful to
24 Mr. Anderson.

25 Q And he identified Mr. -- and let me be straight on

1 this, he identified in his testimony that Mr. Anderson
2 was at the scene of the crime?

3 A No. That was the -- that was the question that I
4 asked after he had made the indication that he really
5 wasn't sure. And when I asked the question, he says,
6 yes, that's him. And then I quickly followed up and, I
7 think, three questions where he's stating, yes, that's
8 him, yes, that's him.

9 Q So, was that testimony a surprise to you or not?

10 A Yeah, it was a surprise.

11 Q Okay. So you say that this witness that you found
12 out about six days before --

13 A I mean, let me interrupt you. I could have talked
14 to him six days before, and he probably wouldn't have
15 said that it was my client.

16 Q Well, he could have said a lot of things; correct?

17 A Right. And he did in the statement.

18 Q Right. But I guess my point is, you only had six
19 days to prepare for what this witness was going to say
20 or not say; correct?

21 A My whole defense was not based upon this one
22 witness.

23 Q But he was the primary witness in this case;
24 correct?

25 A He turned out to be, once I asked the question.

1 Q Okay. So once you asked -- well, all right. So
2 basically how -- in general, how much time do you need
3 to learn about a witness that you think is going to be
4 testifying at trial, what's a good --

5 A It depends on their involvement in the case.

6 Q Okay. Would you have liked to have had more time
7 to --

8 A I would like to have five years, but I didn't.

9 Q But more than six days; correct?

10 A Six days for a witness that says that he is just
11 an average -- a black person that was of average
12 height, no taller than him, wasn't even in my radar to
13 investigate.

14 Q But he proved to be a fairly important witness in
15 the trial?

16 A Hindsight is 20/20, and I wish I could just walk
17 backwards with my whole life.

18 Q Okay. Talking about fingerprints, you said, I
19 think you used some language that that's a hard burden
20 to overcome, something along those lines?

21 THE COURT: Let me interrupt you there one second.
22 Initially he said that he couldn't identify him, that
23 he was a black male shorter than him, something of that
24 nature; is that correct?

25 THE WITNESS: Exactly, Your Honor.

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1 THE COURT: All right. And then he testified on
2 direct examination, didn't really say that that was
3 the -- that the Defendant was the one who did it --

4 THE WITNESS: Alluded, alluded.

5 THE COURT: And you thought you were going to be
6 able to elicit from him that he couldn't really
7 identify him because that's what he said previously;
8 right?

9 THE WITNESS: Right. Because of the questions
10 beforehand was where he was and how he could see and
11 stuff like that.

12 THE COURT: Right. And you were going to bring
13 out what he had now -- when he said, yes, that's the
14 gentleman that was in the room and pointed to the
15 Defendant, did you bring out before the jury that
16 initially he could not identify him?

17 THE WITNESS: Exactly, Your Honor. I brought the
18 whole thing out of what he said and the statement that
19 he had made. And then this was just totally a
20 surprise.

21 THE COURT: Right. Okay. Go ahead.

22 Q So if you had more time to prepare other than six
23 days, do you think that would have been helpful?

24 A No.

25 Q Okay. In terms of the fingerprints, you stated

1 on, I think, page 50 of the transcript something along
2 the lines, and we read it earlier, but just to be brief
3 here, you never received any information, there were 30
4 hits from the AFIS computer. I think on direct you
5 stated that the AFIS computer is a fairly important
6 aspect of fingerprint identification; is that correct?

7 A Yeah. AFIS is -- what it is, is everybody that's
8 arrested of a crime that I think now it's a year or
9 more is fingerprinted. And those fingerprints go into
10 the computer. So if they've ever been arrested or
11 served time in jail in any state, then they are in the
12 computer.

13 Q But you said earlier on direct that it was a
14 subjective -- in this case, at least, it was a
15 subjective test; correct? Or the way it was presented
16 was subjective; correct?

17 A The fingerprint expert, it's his determination of
18 how many points are made. They're all on there -- as
19 it was brought out in the testimony there, there have
20 been tests that have been conducted blindly by the
21 association of fingerprint takers to test whether their
22 method is -- whether the person has got experience or
23 not. And in 60 percent of the cases they were
24 completely wrong.

25 Q So in this case you told the Court that you didn't

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1 have -- you didn't receive adequate information;
2 correct?

3 A Right. If I would have had those 28 and had my
4 own expert, I might have found someone in there that
5 had at least ten or whatever, maybe the same amount.

6 Q So whereas the witness Mr. Joe E. was a six-day,
7 you only received information about him six days
8 before, you didn't receive any information about the
9 AFIS test at all?

10 A No, no. And I had questioned it by
11 supplemental --

12 Q Right.

13 A -- discovery.

14 Q And they never provided that to you?

15 A Never provided it. They said they couldn't get
16 it.

17 Q But then it wound up at trial; is that correct?

18 A Never did see the name -- never did see the
19 fingerprints at trial either.

20 Q But that -- but like you said on direct, the
21 fingerprints is -- that testing is a very important
22 element of --

23 MS. GIOVANOLI: I'm going to object as to
24 relevance. He's already testified extensively about
25 objecting in court. That issue was ruled upon by the

1 Court and then the Court of Appeals. I don't see how
2 this pertains to any deficiency.

3 THE COURT: I'll allow you some leeway. Although
4 this issue is clearly an issue of law that's already
5 been addressed by the Court of Appeals. And he did
6 object to it; didn't he? What else could he have done?

7 MR. FOWLER: I'm trying to elicit that on
8 testimony, Your Honor. I'm just...

9 Q With these discrepancies on both the witness and
10 the fingerprints, did you ever ask for any kind of
11 continuance of this trial to a later date so that you
12 could have more time to digest these issues or this
13 discovery material?

14 A At one point I was going to ask for a mistrial.
15 Although I think I heard the attorney general say that
16 I asked for one. I don't think that I ever asked for
17 one on the record. I think that we had discussed one.

18 Q Okay.

19 A And I had talked with my client, and my client
20 said he wished to go forward. And I said, okay. And
21 so, it's always up to the client what -- if we're going
22 to go forward or ask for a mistrial. Because I don't
23 want to stop something that he's comfortable with.

24 Q So even though your client allegedly told you to
25 go ahead, didn't this rise to the standard of

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1 potentially a mistrial based on what you've just said
2 in your statements?

3 A I just said I was going to make the motion, I
4 didn't say I was going to get it.

5 Q Okay. Did you ask for any kind of continuance
6 before trial based on these elements that we brought up
7 today?

8 A No. No, I didn't.

9 Q Okay. The potential juror that was -- do you
10 recollect the situation around that in terms of the
11 juror being perhaps not forthcoming initially about
12 their relationship with my client or some?

13 A First notice I had of it was when I read it in
14 Mr. Anderson's complaint.

15 MR. FOWLER: If I may have a minute.

16 THE COURT: Yes.

17 MR. FOWLER: Your Honor, I've spoken to my client,
18 we have no further questions at this time.

19 THE COURT: Very good. Any redirect?

20 MS. GIOVANOLI: Just briefly, just to clarify
21 because there were a few issues.

22 REDIRECT EXAMINATION

23 BY MS. GIOVANOLI:

24 Q Remember we were talking about mistrial. I didn't
25 say that you moved for a mistrial. But that issue was

1 taken up with regard to the fingerprints. You did move
2 to suppress it, and the Court -- I'm going to draw the
3 Court's attention to page 109. And this was the Court
4 speaking on line 5. I'm going to go ahead and deny any
5 motion by the Defendant to exclude the evidence or
6 declare a mistrial or anything of that nature and go
7 ahead and proceed.

8 So the Court did, in essence, rule on that issue.
9 Do you recall that?

10 MR. FOWLER: Could you repeat the lines, please.

11 MS. GIOVANOLI: That was page 109 at line 5
12 through 7.

13 THE WITNESS: Vaguely I remember it.

14 Q Okay. And then also briefly to clarify the
15 record, on page 48, line 20, and this is Joe E. j's
16 testimony. And he was answering a question from the
17 solicitor, and his answer was that is in the kitchen
18 area of which I seen the Defendant come into the area
19 which I was sleeping or laying on the couch.

20 And this was on direct. So you had testified
21 earlier that you believed you brought about the
22 identification on cross-examination. Does that refresh
23 your recollection?

24 A Yes, yes.

25 Q Okay.

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1 MS. GIOVANOLI: And there's nothing further.

2 THE COURT: All right. You may step down. You're
3 free to leave.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right, Mr. Christo.

6 (Witness excused.)

7 THE COURT: All right. Anything further?

8 MS. GIOVANOLI: The State could call Mrs. Lauree
9 Richardson to the stand.

10 THE COURT: Okay, very good. Ms. Richardson, if
11 you could, please come forward and place your left hand
12 on the Bible and raise your right hand as the clerk
13 administers the oath.

14 LAUREE RICHARDSON ORTIZ, after being duly sworn,
15 testified as follows:

16 THE COURT: Please pull up real close to that
17 microphone, speak loudly, clearly and slowly in order
18 that we can hear everything that you have to say.
19 Let's start with your full name.

20 THE WITNESS: My name is Lauree Richardson Ortiz.

21 THE COURT: Very good.

22 DIRECT EXAMINATION

23 BY MS. GIOVANOLI:

24 Q Good afternoon, Mrs. Richardson-Ortiz?

25 A Just Richardson.

1 Q Okay. Good morning, Mrs. Richardson. I mean,
2 good afternoon. How long have you been practicing law?

3 A I graduated law school in 2007.

4 Q Okay. And of that time how much has been criminal
5 law?

6 A I clerked one year with Judge John till 2008, and
7 then I was employed with the solicitor's office right
8 after that.

9 Q Okay. And is that where you are currently
10 employed?

11 A That is.

12 Q And I take it you were employed there at the time
13 of this trial?

14 A That is correct.

15 Q Okay. And do you recall the charges against the
16 Applicant in this case?

17 A He had numerous charges. What he went to trial on
18 was the burglary first degree.

19 Q Okay. Can you briefly describe the evidence
20 against the Applicant in this case.

21 A The main evidence was a fingerprint inside a
22 window ledge of one of the bedrooms. That was where
23 the witness -- one of the witnesses had said that she
24 had seen a gentleman enter. Or actually, I believe her
25 testimony was that she woke up and she knew the window

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1 was closed. When she woke up, the window was open and
2 she saw him in her room.

3 So I don't think she actually testified that she
4 saw him come in through the window. But they
5 fingerprinted that area, and that's where the
6 fingerprint was found.

7 MR. FOWLER: Your Honor, I'd like to object to
8 this because this does not go to the attorney/client
9 relationship that is defined by Strickland versus
10 Washington. I don't know how this --

11 THE COURT: I think one of the things that I need
12 to determine is whether or not it would have made a
13 difference. And one of the things I need to determine
14 is whether or not there's overwhelming evidence.

15 MR. FOWLER: Thank you, Your Honor.

16 THE COURT: Overruled.

17 Q You may continue.

18 A That was the main testimony. That was the crux, I
19 guess, of the case. Mr. Joe E. did turn up later. I
20 don't know if you've ever prosecuted cases, but it's --
21 you talk to a witness one time and they'll tell you a
22 little bit, you talk to them again, they'll tell you a
23 little bit more.

24 And over the course of this time, I believe the
25 police report only had Ms. Vickory, she was the lady

1 that was inside the bedroom. It had her name in the
2 police report, and I believe the other person's name
3 that was in the police report was her boyfriend who was
4 currently staying in that room with her. And I had
5 spoken to both of them.

6 Ms. Vickory, she was the type that didn't have a
7 lot to say at first, but the more you talked to her she
8 would elaborate a little more. By the time we were up
9 for trial, she had told me that there was another
10 couple in another room, which in the letter I talk
11 about them a little bit. We chose not to call them as
12 witnesses. One of them was deceased. The other lady,
13 I can't remember her name, but she basically was asleep
14 the whole time and didn't see anything, she couldn't
15 add anything to it.

16 And then there was this Mr., was it **Joe E.** I
17 can't remember his name, **Joe E.** And so he was a
18 minor. So it was a while before I could even speak to
19 him because his dad kind of protected him and sheltered
20 him and didn't want me to speak to him. That lasted a
21 little while too. I didn't even know what he had to
22 say. As far as I knew, he was asleep on the couch the
23 entire time.

24 And as we got closer to trial I was able to speak
25 with him. He did, in fact, tell me that he would not

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1 be able to identify Mr. Anderson. He told me that he
2 knew he was a black male. He was -- I think he told me
3 he was dark skinned, I don't remember if that came out
4 on the phone or if that came out on the stand. He was
5 dark skinned and that he would be able to say that he
6 was a little bit shorter than he was. And, again, this
7 was all by phone, I had never met him in person. He
8 told me that --

9 MR. FOWLER: Your Honor, I would like to object to
10 this under hearsay. This is something that another
11 person has told her that he's not available to testify
12 to himself.

13 THE COURT: Okay. I ask that you move on.
14 Sustained.

15 MS. GIOVANOLI: Okay.

16 Q So outside of the discussions that you had with
17 Mr. Joe E. prior to trial, during trial, his testimony,
18 was it a surprise to you?

19 A Absolutely.

20 Q Okay. And you were saying with regard to the
21 witnesses, they would talk a little more every time you
22 discussed it with them. Did you relay that information
23 to Mr. -- I'm sorry, Mr. Chrisco?

24 A I can't remember without going back through it
25 all. I don't remember what her initial statement was.

1 I don't think her story ever changed. All that I would
2 get from her were the people that were in the room.

3 And so as soon as I found out about the three
4 other individuals, about Mr. **Joe E.** and what he was
5 going to say, that's when I prepared the letter for
6 Mr. Chrisco. Because there was no way -- without
7 talking to these witnesses there was no way that he
8 would know about the three other witnesses, because
9 they weren't contained in the police report.

10 Q Okay.

11 A So I wanted to make sure that he knew they existed
12 and that he knew that they had the potential to be
13 called, which truthfully the minor -- well, I say he's
14 a minor, Mr. **Joe E.**, he was a last minute decision to
15 even call because I wasn't even sure he could add
16 anything to the case.

17 Q Okay. So in this case did you withhold any
18 information, any evidence?

19 A Absolutely not.

20 Q Okay.

21 THE COURT: While she is looking there, your
22 recollection of the trial, did Mr. Chrisco point out
23 that he initially indicated that he could not identify
24 him?

25 THE WITNESS: Yes, sir, Your Honor. That was

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1 definitely brought up. And in my questioning of him,
2 it was a little -- he was skirting around the issue
3 because, again, I thought he was going to say, just
4 like Mr. Chrisco thought he was going to say, that he
5 couldn't identify him. So I wasn't asking those direct
6 questions on --

7 THE COURT: Chrisco asked the question
8 anticipating it would be mitigating.

9 THE WITNESS: Absolutely, Your Honor.

10 THE COURT: All right. Exculpatory, not
11 mitigating but exculpatory.

12 Q With regard to the -- okay, I think that we've
13 covered the discovery issue. You did not withhold any
14 evidence in this case from the Applicant?

15 A That's correct.

16 Q Okay. And moving on, were you aware of any
17 potential juror misconduct issues?

18 A No, ma'am. I knew nothing about him potentially
19 knowing or a juror knowing him.

20 Q Okay. With regard to the fingerprints, you
21 provided the Applicant with everything that you had?

22 A I was -- I provided him everything that I had in
23 regards to those fingerprints.

24 MS. GIOVANOLI: I have nothing further.

25 THE COURT: All right. Yes, sir.

CROSS-EXAMINATION

2 BY MR. FOWLER:

3 || Q When you say everything you have --

4 THE COURT: Please stand up.

5 MR. FOWLER: I apologize, Your Honor, thank you.

6 I was looking for a page.

7 Q When you say everything you had, are you referring
8 to yourself, or you referring to the solicitor's
9 office?

10 A We -- I turned over everything I was provided in
11 the case as it relates to the fingerprint.

12 Q Okay. You personally; correct? Well, you were in
13 charge of this case; is that correct?

14 A It was my case.

15 Q Okay. So you said you -- well, let's dial it back
16 a second. You said that you prepared a letter;
17 correct?

18 A That is correct.

19 Q Okay.

20 MR. FOWLER: May I approach the witness, Your
21 Honor?

22 THE WITNESS: I have a copy of it.

23 Q Okay. Is this the -- so you know what I'm going
24 to show you; correct?

25 A Well, I know what mine looks like.

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1 Q Okay. So is that -- does this look like an
2 accurate copy of that?

3 A Do you want this?

4 Q Yeah, that would be great. Thank you. And, well,
5 before I leave, tell me about this letter. It's dated
6 March 6th, 2012; correct?

7 A That's correct.

8 Q And who's it addressed to?

9 A Mr. Ed Chrisco.

10 Q Okay. And what does it spell out here in the body
11 of the text?

12 A Do you want me to just read it?

13 Q That would be great. Thank you.

14 A It says, Dear Ed, it has come to my attention
15 there are three other people in the hotel room that are
16 not indicated in the discovery. Mrs. Emma Smith -- and
17 then I provide her phone number -- was in the other
18 bedroom along with her husband, Mr. David Smith. I
19 have spoken to her, she has no firsthand knowledge.
20 She was asleep in the other room when he entered the
21 hotel room and was not woken up until sometime later.

22 I do not plan to call her as a witness. Mr. Smith
23 has since passed away. However, she tells me that he
24 was asleep next to her and did not see anything either.

25 There was a boy, Joe E. , 14 at the time, who

1 was asleep in the living room. I have spoken to him.
2 He indicated that he would not be able to identify the
3 Defendant. But he knows he was a black male shorter
4 than him -- and then in parenthesis, he is six foot.
5 He testifies -- if he testifies, that would be the
6 extent of his testimony. I do not have a direct number
7 for him because he is a minor; however, his father's
8 number is -- and then I provide that.

9 Q Okay.

10 A If you have any questions or need any additional
11 information, please do not hesitate to ask. I look
12 forward to resolving this matter.

13 Q And you prepared this?

14 A Yes, sir.

15 Q And that's your signature at the bottom?

16 A Yes, sir.

17 Q Okay. Can I have this?

18 A Sure.

19 Q Thank you.

20 MR. FOWLER: Your Honor, I would like to enter
21 this into evidence.

22 THE COURT: It's into evidence without objection
23 from the State.

24 MR. FOWLER: Do I give it to the clerk?

25 THE COURT: No. The court reporter.

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1 (WHEREUPON, Plaintiff's Exhibit No. P-1 was
2 admitted in evidence.)

3 Q So on direct examination, you say that you did not
4 withhold any evidence. That's correct; right?

5 A Yes.

6 Q But you also by this letter waited until March
7 the 6th to tell Mr. Chrisco what exactly, what
8 witnesses you were preparing to provide; correct?

9 A Well, again, I don't --

10 Q Is that correct?

11 A Can I answer your question, please.

12 Q You can answer it yes or no.

13 A No. I actually would like to elaborate on it.

14 Q Sure.

15 A If that's okay.

16 THE COURT: Well, you have to answer yes or no,
17 then you can elaborate.

18 THE WITNESS: Well, I don't even recall his
19 question at this point.

20 Q My question is you waited until March 6th, 2012 to
21 tell Mr. Chrisco what witnesses were going to be called
22 by your office; correct, yes or no?

23 A I found out about Mr. Joe E. --

24 MR. FOWLER: Your Honor?

25 THE COURT: You have to answer that.

1 THE WITNESS: Yes. That letter is dated March 6.
2 I found out about Mr. Joe E. shortly before that. To
3 what extent, I do not remember. But I provided that as
4 soon as I became aware of it.

5 Q Okay.

6 THE COURT: Very good.

7 Q So Mr. Chrisco basically only had six days to know
8 what witnesses you were calling; correct?

9 A I didn't provide a complete list of the witnesses
10 I was calling.

11 Q Well, you provided --

12 A I went above and beyond and provided him witnesses
13 that were not contained in the police report.

14 Q Okay. So to follow that up, you added additional
15 witnesses that were not contained in the police report
16 that might be called to trial that on the 12th of
17 March; correct? Let me rephrase that.

18 So not only did he have to prepare -- be concerned
19 about potential witnesses in the police report, he was
20 also now concerned about potential witnesses from this
21 letter; correct?

22 MS. GIOVANOLI: Objection. She has no knowledge
23 of his concerns.

24 MR. FOWLER: I'm just trying to clarify. She said
25 there was people in the police report, and now there's

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1 people in this letter. So are you saying --

2 THE COURT: I will allow you to ask the question.
3 But one other thing. Let's have a discussion about the
4 law. Typically, I don't know, I might be wrong, but
5 when I practiced law, and I did it for about 20 years,
6 and in the 12th Circuit Dudley Sleepy was notorious for
7 not giving you any information. In the rules do not
8 allow for you to give the names of any of the
9 witnesses. Really the only time you have to disclose
10 witnesses is when you qualify the jury or do the voir
11 dire for the jury.

12 There's no law that indicates that you have to
13 give a list of witnesses who are going to testify. And
14 you don't have to give a statement until after the
15 witness takes the witness stand. Am I mistaken on
16 that, Mr. Fowler?

17 MR. FOWLER: Your Honor, I don't know the -- how
18 it's done in Florence or what have you, but all I'm
19 saying is --

20 THE COURT: Well, you point to me the rule, Rule 5
21 or any other rule that says they have to give you the
22 name of any witness.

23 MR. FOWLER: My understanding under Rule 5 Brady
24 is that they are asked that it is a -- and I don't know
25 what --

1 THE COURT: I want you point that out. Why don't
2 we take a moment and let you point that out to me.

3 MR. FOWLER: Okay, well. May I speak with my
4 client?

5 THE COURT: Yes.

6 (Discussion off the record.)

7 MR. FOWLER: Your Honor, I -- to be quite honest
8 with you, I cannot bring that to your attention as per
9 your request. However, my understanding is that a Rule
10 5 Brady is to provide any information the solicitor's
11 office might have. So I don't know how specific it was
12 in this case.

13 THE COURT: What is your understanding of that?

14 THE WITNESS: Your Honor, my understanding is the
15 same as yours, we do not have to provide that
16 information. However, out of an abundance of caution
17 and because I'm not a solicitor that likes to play hide
18 the ball at all, I do provide -- if they -- if there is
19 a witness that a defense attorney would not have any
20 knowledge of, I do provide that information. That is
21 my practice. That is not our office's practice.

22 THE COURT: And you did give him six days notice
23 to --

24 THE WITNESS: Yes, sir. I notified him as soon as
25 I spoke to Mr. Joe E. , and I knew what his testimony

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1 was going to be.

2 THE COURT: All right.

3 THE WITNESS: Or what it was supposed to be.

4 Q Let's talk about the -- am I pronouncing, AFIS,

5 A-F-I-S?

6 A AFIS.

7 Q Okay. You've been in court during this; correct?

8 A Yes.

9 Q Okay. You heard both in the transcript and
10 Mr. Chrisco say that he did not receive any of the
11 AFIS; is that correct?

12 A I did hear that, yes, sir.

13 Q Okay. When did you provide him the AFIS
14 information in this case?

15 A The case actually -- I'm sorry?

16 Q I apologize, I just threw that in there at the
17 end. In this case specifically, when did you provide
18 him the AFIS information about the 30 fingerprint
19 tests, as I understand it to be?

20 A I actually -- the case, Jimmy Richardson who
21 was -- I obtained the case from Jimmy Richardson once
22 he was promoted in our office. And he actually
23 provided it on September 2nd, 2009, and we have it
24 stamped as received from the public defender's office
25 on September 8th, 2009.

1 Q Okay. But you did hear Mr. -- based on the
2 transcript earlier, that Mr. Chrisco did not receive
3 it; correct?

4 A I believe what Mr. Chrisco was talking about was
5 that he did not receive the ten print cards from the 30
6 additional people that it, for lack of better words, it
7 hit on. He did, however, receive the fingerprint
8 analysis of his particular client as well as the screen
9 shot of where the other 30 were.

10 Q Okay. Well, I'm just asking for clarification.
11 You're saying that he received his client's information
12 but not the more extensive panel test; is that what
13 you're saying, the ten --

14 A That was my understanding of Mr. Chrisco's
15 testimony.

16 Q Okay. And also, he had indicated that that is
17 subjective too, correct, in terms of the person doing
18 the testing; correct?

19 A That was his opinion of it.

20 Q Okay.

21 MR. FOWLER: If I might have a moment, Your Honor.
22 Your Honor, I've spoken with my client, we have no
23 questions at this time.

24 THE COURT: You may step down.

25 MS. GIOVANOLI: May the witness be excused?

1 THE COURT: Please. You're free to leave.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness excused.)

4 THE COURT: Any further witnesses?

5 MS. GIOVANOLI: The State has no further

6 witnesses.

7 THE COURT: Anything in reply?

8 MR. FOWLER: No, sir, Your Honor.

9 THE COURT: All right. Well, Mr. Fowler, I'll
10 allow you to give just a brief summary as to why you
11 think relief should be granted.

12 MR. FOWLER: Yes, sir, Your Honor. And like I
13 said, my client and I have had discussions on this,
14 I've read his application, we feel like we've
15 adequately gone over his application here in court
16 today. As we have drawn from the transcript, Your
17 Honor, and all I can do is go within the four corners
18 of that document in the application in the court file.

19 Two issues here. Obviously we're under
20 Strickland, Your Honor, that the attorney's performance
21 was deficient and that deficiency created my client's
22 current situation. In this case there was a client --
23 there was a letter that's entered into evidence on
24 March 6th, 2012. And as it's been explained in court,
25 you know, maybe there was no reason for her to -- for

1 the solicitor's office to provide a witness list at
2 all. But they did.

3 And when they did, based on my discussions with my
4 client, my client has always indicated to me that he
5 felt like six days was not enough time for that witness
6 for his client to -- for his attorney to adequately
7 investigate that witness and to avoid any surprise
8 questions that apparently came out, as Mr. Chrisco
9 described earlier.

10 Also the fingerprints. Mr. Chrisco said that, you
11 know, that's a high -- he used strong wind to go
12 against is, I think, Mr. Chrisco's wording earlier
13 today. So the fingerprints were very important.

14 In the transcript itself, Mr. Chrisco, and
15 regardless of what was said here with the second
16 witness, he's saying that he did not receive, my
17 understanding of it was, the 30 AFIS panel or something
18 that could have helped his client. So the Attorney
19 General has said, well, you didn't withhold
20 information.

21 Well, on the AFIS, according to the transcript,
22 apparently there was some withheld information. Also,
23 the information provided on March 6th was not enough
24 time for my client's attorney to adequately prepare, in
25 our estimation upon discussing this with my client.

1 That and some other issues that are brought up in
2 his application, Your Honor, I think warrant that this
3 case has risen to the level of Strickland versus
4 Washington, and we would ask for the Court to rule in
5 our favor in this case, Your Honor.

6 THE COURT: Ms. Valerie, be glad to hear from you.

7 MS. GIOVANOLI: Okay.

8 THE COURT: Took the first name.

9 MS. GIOVANOLI: Sure. With regard to the issue of
10 the witness list, I don't even -- with all due respect,
11 I don't even think the issue was when it was provided
12 because it was testified to that she went above and
13 beyond by providing this witness to the Defendant, the
14 Applicant in this case.

15 I think the testimony that was relevant was when
16 Mr. Chrisco said that he did not actually investigate
17 the witness Joe E. . However, as it was spoken
18 about from Mrs. Richardson and Mr. Chrisco, that his
19 statement prior to the trial was inconsistent with what
20 he testified to at trial.

21 I think that Mr. Chrisco not only met the standard
22 of reasonableness in his defense and his representation
23 of the Applicant, but he went above and beyond on the
24 cross-examination and did a good job of impeaching that
25 witness on his credibility based on that prior

1 inconsistent statement. So the State would submit that
2 there was no deficiency on that issue with regard to
3 Mr. Chrisco.

4 As well as the fingerprints, Mr. Chrisco argued
5 that strenuously, he objected to that evidence coming
6 in. That issue was also taken up on appeal, and the
7 Court of Appeals found that there was no Brady
8 violation, that what was provided to the Defense was
9 sufficient.

10 And so the State would further submit that there
11 was no deficiency on the part of Mr. Chrisco in any
12 part of his representation of the Applicant, and the
13 Applicant has failed to meet his burden of proof here
14 pursuant to Strickland. And we would ask that this
15 application be denied.

16 THE COURT: How do you spell the witness' name
17 we're talking about; is it **Joe E.** ?

18 MS. GIOVANOLI: In the transcript it was spelled
19 **Joe E.** . However, in the letter that was put into
20 evidence it's spelled **Joe E.** . Either way I
21 believe it's **Joe E.** .

22 THE COURT: All right. I'm going to deny the
23 application for post-conviction relief and ask
24 Ms. Valerie to prepare an order consistent with my
25 ruling here today.

1 The first issue deals with the fingerprints. I
2 think really the only obligation for Mr. Chrisco was to
3 recognize that there was a problem that he felt as
4 though he wasn't given all of the information. He did
5 make the motion. He preserved it adequately for
6 appeal. The issue was addressed by the Court of
7 Appeals, and his responsibility is discharged at that
8 point.

9 He felt as though that prejudiced his client. He
10 objected to it. The Court ruled on it, and then the
11 matter was properly brought before the Court of
12 Appeals. They affirmed the conviction, given all of
13 the facts and circumstances and made a rule that Rule 5
14 had indeed been complied with, and there were no Brady
15 violations.

16 The issue with regard to the juror, I think it's
17 clear and the order ought to reflect that the only
18 person in this courtroom who knew that there was
19 perhaps an inappropriate relationship between the
20 Defendant and a juror was the Defendant himself. He
21 never gave -- he never told his lawyer about that.

22 In his testimony, if I'm not mistaken, he didn't
23 indicate that he told his lawyer about that. And one
24 can only surmise from that would be that the Defendant
25 perhaps wanted to take advantage of the fact that he

1 had a relationship with the Defendant [sic], and it was
2 only after the conviction that he wanted to raise the
3 issue.

4 But the bottom line is it's clear from the record
5 that he did not inform his lawyer, and the issue was
6 not put before the Court. And I had an opportunity to
7 listen to Mr. Chrisco, trial counsel. He indicated to
8 me, and I believe him, after having the opportunity to
9 observe him on the witness stand, he said that the
10 Defendant did not tell him about it, and I believe him.

11 And I specifically find here today that the
12 Defendant did not divulge the fact that there could
13 have been an improper relationship between he and one
14 of the jurors.

15 With regard to the witness **Joe E.** who is a minor,
16 I do not think that it was -- that the State violated
17 any Rule 5 obligations. I specifically find that they
18 had no obligation to provide a witness list, nor would
19 they have the obligation to tell them the substance of
20 what the witnesses would testify to. But she indeed
21 did do that and did it six days before the trial.

22 I do not find that trial counsel's performance
23 fell below the standard set forth in Strickland,
24 because the direct testimony, as I understand it from
25 hearing Chrisco and the solicitor testify, was that

1 there was no actual identification in direct
2 examination. And that's consistent with what the
3 solicitor actually initially believed, was that he
4 could only say that he was a black gentleman with dark
5 complexion and a little bit shorter than he.

6 And, of course, I think it was appropriate trial
7 strategy for defense counsel to specifically elicit
8 from this witness, based on the information that he
9 had, that he could not make a positive identification.
10 I think that it's clear from the testimony of Chrisco
11 and the solicitor that Chrisco did point out the fact
12 that initially he indicated that he could not identify
13 the Defendant as the perpetrator. And that was brought
14 out before the jury.

15 And I think it was proper for him to ask the
16 question whether or not he could identify him. And
17 when he answered inconsistent with his previous
18 statement, I think it's appropriate for him to impeach
19 the witness, and I understand that he did.

20 As far as proper investigation, I'm not real sure
21 how you can properly prepare a minor witness who can
22 sort of act like a chameleon at times, they can change
23 from time to time. It happens all the time. As a
24 matter of fact, the solicitor was surprised with his
25 declaration that he could indeed identify him.

1 I think that it was not improper for him not to
2 discuss it with the minor, because his statement to
3 some extent was exculpatory. And he had a right to
4 rely on the information that had been given to him. In
5 addition to that, I think it probably needs to be
6 pointed out that the witness **Joe E.** was indeed a minor,
7 which poses other problems with regard to interviewing
8 him.

9 There was a lot made of the fact that the
10 Applicant objected during the trial indicating that he
11 had lost confidence in his lawyer. We all understand
12 that in the United States of America you can't be tried
13 for a serious crime without a lawyer. And he was
14 indeed appointed a lawyer. And probably of all of the
15 people in this courtroom, Chrisco has probably tried
16 more felony trials than anybody in this courtroom. And
17 he's a very qualified lawyer.

18 And the trial -- and they made the objection. But
19 he's not entitled to choose his lawyer. He's entitled
20 to a good lawyer, and he indeed did have one. And he
21 had not -- he did not have to take Chrisco. He has a
22 constitutional right to represent himself or to hire
23 his own lawyer, and he didn't exercise either one of
24 those.

25 Have I addressed all the issues? There was a

1 little bit of uncertainty as to the grounds that were
2 presented. You feel as though we've addressed all of
3 the issues, Mr. Fowler?

4 MR. FOWLER: Just a moment, if I may, Your Honor.

5 (Discussion off the record.)

6 MR. FOWLER: Yes, after talking with my client,
7 yes, Your Honor.

8 THE COURT: Okay, very good. All right. I'll ask
9 that you prepare that order. And I'm going to ask that
10 the clerk just do a Form 4 saying that the application
11 has been denied. And a more formal order is going to
12 be forthcoming within the next 30 days.

13 THE CLERK: Yes, sir.

14 MR. FOWLER: And that will be within 30 days;
15 correct, Your Honor?

16 THE COURT: That's correct.

17 MR. FOWLER: Thank you, Your Honor.

18 THE COURT: And I'm going to ask Mr. Fowler and
19 Ms. Valerie if, I would like to speak with them just
20 one moment before we go forward with the next case.

21 (The hearing concluded at approximately 4:42 p.m.)

22 (End of Transcript of Record)

23

24

25

1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 23rd day of September,
14 2017.

15

16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18

19

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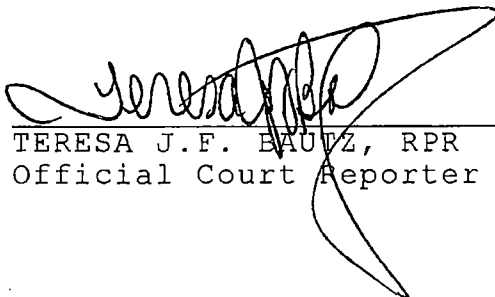
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TERESA J.F. BAUTZ, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

James Anderson, #260010,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-26-2194

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
HORRY COUNTY
17 MAY -4 AM 11:22
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 3, 2015. Respondent made its Return on or about August 31, 2015. An evidentiary hearing was convened into the matter on February 7, 2017 at the Horry County Courthouse. Applicant was present and represented by Steven W. Fowler, Esquire. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, William Edward Chrisco, Esquire, (Counsel) and Laurie Richardson Ortiz (Ortiz), Esquire, of the Fifteenth Circuit Solicitor's Office also testified. This Court had before it a copy of the Horry County Clerk of Court records regarding the subject convictions, Applicant's SCDC records, the trial transcript, Applicant's appellate records, and the records of this PCR action.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2010, the Horry County Grand Jury indicted Applicant for first-degree burglary (2010-GS-26-2883). William Edward Chrisco,

Esquire, represented Applicant. On March 12-14, 2012, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. On March 14, 2012, the jury found Applicant guilty as indicted. Judge Culbertson sentenced Applicant to twenty-five years imprisonment.

Applicant filed a timely notice of appeal, and Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on February 12, 2014. State v. Anderson, 407 S.C. 278, 754 S.E.2d 905 (Ct. App. 2014), reh'g denied (Mar. 21, 2014), cert. denied (Nov. 10, 2014). The remittitur was returned to the circuit court on December 12, 2014.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel at trial
 - a. "Counsel failed to adequately investigate the facts and circumstances surrounding the direct evidence of eye witness testimony."
 - b. "Counsel's failure to such an investigation deprived the jury of vital information relevant to an accurate assessment of applicant's guilt or innocence."
 - c. "Counsel failed to seek an instruction stating that a burglary charge must set forth one, specific crime intended upon entry and stating what the specific crime was in this case."
2. Ineffective assistance of counsel at sentencing
 - a. "Counsel failed to investigate, develop, and present all available, relevant, and admissible mitigating evidence. As a result of counsel's failure to uncover and present this evidence, applicant's sentence is unreliable."
 - b. "Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution. As a result of counsel's failure to make all appropriate objections, applicant's sentence is unreliable."

3. Prosecutorial misconduct
 - a. "Prosecutor did not provide trial defense counsel with discovery materials in a timely fashion."
 - b. "Prosecutor did not provide defense counsel with all relevant discovery materials."
 - c. "Prosecutor did provide fraudulent materials to defense counsel six days prior to trial."
 - d. "Prosecutors deceiving tactics did impede the defense in making reasonable decision did result in unethical conduct."
4. Denial of right to fair and impartial jury
 - a. "Juror who was empaneled and sat through entire trial did intentionally conceal information and was directly in contempt of court."
 - b. "Juror concealed information that would have supported a challenge for cause or would have been a material factor in the use of the party's preemptory challenges."

At the PCR hearing, Applicant proceeded on his claims of ineffective assistance of counseling, specifically that Counsel failed to investigate an eye witness and failed to adequately cross exam the eye witness. Applicant also proceeded on his claims that his indictment was defective, prosecutorial misconduct in that the State failed to turn over evidence, and juror misconduct in that he knew a juror.

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Counsel was appointed to Applicant's case through the Public Defender's Office. Applicant first met Counsel when he came to county jail to visit Applicant. The meeting was not very long, but Counsel asked Applicant about his case. Applicant became unsatisfied with Counsel during his trial because there were things Applicant wanted Counsel to do that he would not do. One thing included not cross examining witness, a minor named Joe E. (E.), better based on his previous statement that he could not identify the burglar. Counsel's cross examination of Joe E. was not up

to Applicant's standards. Applicant claims he did not know Joe was going to testify. Applicant claims Counsel received a letter on March 6, 2012 that included a witness list, but that Counsel failed to question those witnesses or investigate them. Counsel also failed to object to Joe E.'s testimony.¹

Applicant also claimed that his indictment was prejudicial because it clearly points out that Applicant committed the crime and the language of the indictment made it sound like Applicant was guilty. Applicant also claimed that the Solicitor had fingerprint evidence that were never turned over to Applicant in discovery.² Applicant also complained that the prosecutor painted a picture that made Applicant look guilty although he was not.

Applicant recognized a juror at his trial. The juror kept staring at him. However, Applicant could not recall the juror's name and admittedly did not mention it to Counsel at trial. Applicant believes Counsel performed poorly and because of his poor performance, Applicant was sentenced to a lengthy term of imprisonment.

II. Counsel testified to the following:

Counsel testified that he has been practicing criminal law for nearly three decades and he is the 15th Judicial Circuit Chief Public Defender. He was appointed to represent Applicant on nine different cases, including the case that's the basis for this PCR action. Counsel made a formal request for discovery and received discovery on four times. Counsel had thirty two months to prepare Applicant's case for trial, which Counsel found to be ample time. Counsel met with Applicant approximately thirty times, anywhere from five to thirty minutes per meeting. During

¹ Applicant, himself, objected to Joe's testimony and Counsel assisted in his objection. Applicant requested Joe's testimony be stricken and the Court denied his request. Trial Tr. p. 147, l. 15 - p. 149, l. 19.

² This exact issue was taken up on appeal where the Court of Appeals found no *Brady* violation.

those meetings, Counsel reviewed discovery with Applicant and relayed several plea offers. Counsel advised Applicant to accept the State's plea offer based on his likelihood of conviction. Counsel estimated the likelihood of conviction was 85%. This was compounded by the fact that Applicant changed his version of the facts multiple times across meetings with Counsel.

Counsel was aware of the State's witness, Joe E., and that he was in the hotel room at the time of the burglary. His prior statement was provided to Counsel a week before the trial. The statement was that Joe E. saw someone that was a black male of average height in the hotel room, but could not specifically identify the burglar. Counsel found Joe E.'s statement to be helpful, since identification was the main issue at trial. Because the statement was helpful to Applicant's defense, Counsel did not find it necessary to investigate Joe E. further. However, at trial, Joe E. surprisingly identified Applicant. Joe E. didn't seem sure in his identification, so Counsel pursued this uncertainty during his cross-examination. Counsel did not believe he would have been any more prepared had Joe E.'s statement been provided to him earlier.

Counsel believes the State should have provided him the other twenty eight finger prints that the fingerprint expert did not analyze so that Counsel could have an expert determine if they were a match to those found at the crime scene. Counsel brought this to the Court's attention twice, asking for the fingerprint testimony to be stricken, or in the alternative, for a mistrial. The issue was taken up on appeal as a novel issue.

Applicant never mentioned anything to Counsel about possibly knowing one of the jurors. Had Counsel known, he would have brought it to the Court's attention. Counsel did not find any defects in the indictment.

III. Ortiz testified to the following:

Ortiz has been practicing criminal law since 2009. She was the assigned Assistant Solicitor for Applicant's criminal case. Applicant had numerous pending charges. Ortiz recalled the evidence in the case included a fingerprint on the window ledge where the occupants of the hotel room alleged the burglar entered. One of the occupants of the hotel room saw Applicant in the room, but did not see him enter. There was another couple in another room of the hotel, but neither saw Applicant. Joe was a minor who was also in the room and saw the burglar. Joe E.'s father did not want him to testify. However, he ultimately did testify. Joe E.'s identification testimony at trial came as a surprise to Ortiz, also Joe E. had not identified Applicant prior to trial.

Ortiz turned over everything in the case to the defense. She did not withhold any evidence or information. She did not provide Joe E. statement until a week before trial because she did not know about it. Ortiz also provided an additional list of potential witnesses. Ortiz provided everything she had regarding the fingerprints. Nothing was ever mentioned at trial about juror misconduct.

FINDINGS OF FACT AND CONCLUSION OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

As a matter of general impression, this Court finds the testimony of Counsel and Ortiz to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action. "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to investigate and adequately cross examine witness

This Court finds Applicant has failed to meet his burden to prove Counsel was ineffective for failing to investigating the facts and circumstances surrounding eye witness testimony Joe E. identified the defendant during direct examination by the State. Trial Tr. p. 48, ll. 20-22. Counsel

sensed some uncertainty in Joe E.'s identification and pursued that during cross examination. Trial Tr. p. 51, ll. 12-19. Counsel also impeached Emming by using his prior statement to law enforcement in which he could not identify Applicant. Trial Tr. p. 51, l. 23 – p. 52, l. 12. This Court finds Counsel's cross examination of the witness not only reasonable in light of the circumstances, but an effective impeachment to call into question the witness's credibility for the jury to consider.

This Court finds Counsel and Ortiz's testimony that Joe E.'s prior statement was inconsistent with his identification testimony at trial is credible. Based on the discovery that was provided to Counsel, it was reasonable to view Joe E.'s statement as favorable to his defense and opt not to pursue an interview with the minor witness. Counsel is not expected to have the foresight to know a witness will testify to something different than their statement to law enforcement. With such a surprise, Counsel was astute in his decision to cross examine him based on his prior inconsistent statement and impeach his credibility. Ultimately, the credibility of his testimony was for the jury to determine. Therefore, this Court finds these allegations are without merit and are denied and dismissed with prejudice.

Defective Indictment

Despite Applicant's failure to allege defects in his indictment in his PCR application or amendment thereto, this Court addresses Applicant's claim made *at the hearing* that his indictment was defective because it points out that Applicant committed the crime. The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to

quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Applicant has not made such an allegation against Counsel and this Court declines to infer an allegation of ineffective assistance of counsel from Applicant's indictment complaint.³ Nevertheless, this Court notes that indictments are charging documents that *allege* the indicted committed a particular crime. Necessarily, indictments point to the indicted as the person who committed the crime alleged. However, the opening charge by the trial court expressly instructs the jurors that the indictment is simply a charging document and not evidence of the allegation contained therein. Trial Tr. p. 36, ll. 4-9. This Court finds Applicant's allegation of a defective indictment lacks merit and is denied and dismissed with prejudice.

Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct in that the State failed to provide him all of the fingerprint evidence. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant raised this very issue on appeal and the Court of Appeals affirmed, finding no Brady violation occurred. This Court finds this allegation is not proper for PCR and therefore it is denied and dismissed with prejudice.

³ At trial, Applicant made a motion to quash the indictment which was denied by the court. Trial Tr. p. 9, l. 20 -- p. 10, l. 14.

Similarly, with regard to Applicant's complaint that the State failed to make a timely disclosure of certain witnesses and statements, this Court finds this prosecutorial misconduct claim is not proper for PCR. Regardless, this Court finds Ortiz's testimony that she turned over the witness list and statement as soon as she obtained it to be credible. Counsel's testimony that he would not have benefitted from receiving it earlier is also credible. This Court finds the State provided Applicant with all of the discovery in this case and committed no error by disclosing discovery the week before trial, where the State was not aware of the discovery beforehand. This allegation is also denied and dismissed with prejudice.

Juror Misconduct

Juror concealed information

This Court finds Applicant has failed to meet his burden of proving by a preponderance of the evidence that juror misconduct occurred. Applicant alleges that he knew a juror, yet the juror failed to disclose that information. Applicant has failed to present evidence of who the juror is or how he knows the juror. Regardless of the credibility of Applicant's testimony that he knew a juror, it was incumbent upon Applicant to raise that issue to his counsel or the trial court, had the juror failed to disclose it himself. This Court finds Counsel and Ortiz's testimony that no juror issue was ever brought to their attention⁴ to be credible. Having failed to meet his burden to prove this allegation, this Court denies and dismisses this claim with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for

⁴ Nor was it brought to the trial court's attention as evident from the transcript.

post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1 day of May, 2017.


MICHAEL G. NETTLES
Presiding Judge
Fifteenth Judicial Circuit

 _____, South Carolina

MAILED
5-4-17 *PRW*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Anderson, Appellant.

Appellate Case No. 2012-210188

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5196
Heard September 10, 2013 – Filed February 12, 2014

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General John Benjamin Aplin, both of
Columbia, for Respondent.

WILLIAMS, J.: James Anderson was convicted of first-degree burglary. On appeal, Anderson argues the trial court erred by qualifying a crime scene investigator as an expert in fingerprint analysis. In addition, Anderson claims the trial court erred in refusing to strike the investigator's testimony or, in the alternative, to grant a mistrial based on the State's failure to disclose fingerprint evidence favorable to him prior to trial. We affirm.

FACTS/PROCEDURAL HISTORY

During the week of July 4, 2009, Christian Vickery, Allen Smith, and Joe E. were vacationing with their families at the Blue Water Resort hotel in Myrtle Beach, South Carolina. On the night of July 8, 2009, their hotel suite was burglarized. Anderson was subsequently arrested for the crime and charged with first-degree burglary.

At trial, all three victims testified. Joe E. stated he was lying on the couch in the living room when he saw an African-American male pass through the kitchen into the living room. When Joe E. got off the couch, the perpetrator ran out the door. Joe E. unequivocally identified Anderson as the person he saw in the hotel suite during the burglary. Vickery testified that she and Smith were sleeping in one of the bedrooms when the burglary occurred. Shortly after falling asleep, Vickery awakened and noticed her bedroom door and window were open, despite the door and window being closed when she went to sleep. Vickery stated she saw a black male outside the door to the suite. Smith testified Vickery awoke him and told him someone had been in their bedroom. He then reached down to put on his shorts, but his shorts and wallet were missing. Smith stated he never saw the perpetrator.

To connect Anderson to the crime, the State proffered Brad McClelland as an expert witness regarding fingerprint analysis and comparison. McClelland stated he was currently employed with the Federal Bureau of Prisons. However, at the time of the burglary, he worked as a crime scene investigator for the Myrtle Beach Police Department (MBPD). In support of his qualification as an expert, McClelland testified he had completed the following training: twelve hours of continuing education courses in forensic science and law; forty hours of training in basic fingerprint analysis with the South Carolina Law Enforcement Division (SLED); forty hours of private training in advanced palm print analysis in North Carolina; and an additional four-hour advanced fingerprint class administered by SLED in Columbia. He testified he became a certified Automated Fingerprint Identification System¹ (AFIS) examiner by passing a test administered by SLED in

¹ Law enforcement fingerprints every person who is arrested in this state. *State v. Anderson*, 386 S.C. 120, 130, 687 S.E.2d 35, 40 (2009). SLED then receives and maintains these known prints on the arrestee's ten-print card in the condition in which it arrives. *Id.* The AFIS database stores all of the digital fingerprint images of every ten-print card in South Carolina. *Id.* When a latent fingerprint is found at a crime scene, law enforcement can analyze this print by running it through AFIS

Columbia. McClelland explained his AFIS certification was based on a proficiency test that required comparing ten-print cards of known prints to unknown prints until he accurately matched all of the cards. Since becoming a certified AFIS examiner, McClelland had viewed 300 to 500 unknown fingerprints and correctly matched forty to fifty of those unknown prints.

Anderson objected to McClelland's qualification as an expert, arguing he lacked adequate experience and disputing whether McClelland had the "proper schooling" to make him an expert in fingerprint analysis. Upon further examination by the trial court, McClelland testified that the subject of the classes he took was fingerprint comparison identification. He confirmed he had not previously been qualified by a court as an expert in fingerprint identification. McClelland had previously been asked to provide expert testimony; however, those cases never went to trial. Ultimately, the trial court qualified McClelland as an expert witness. In making this determination, the trial court found the sufficiency of McClelland's education and validity of his conclusions were matters for the jury after proper instructions on the role of expert testimony in the case.

After the State's proffer of McClelland's testimony and the trial court's ruling, McClelland testified before the jury. According to McClelland, he responded to the scene of the burglary and lifted fingerprints from the inside of the windowsill. McClelland stated he ran the best print through AFIS, requested a list of thirty known prints with similar characteristics, and was ultimately able to find a known print identical to the fingerprint left on the windowsill.

On cross-examination, McClelland was questioned about obtaining fingerprints from the windowsill and submitting a print through the AFIS identification process. McClelland testified that AFIS does not return actual fingerprint matches. According to McClelland, the examiner requests anywhere between ten and fifty responses. AFIS then returns a list of fingerprints that are similar to the unknown fingerprint, and the examiner must then physically review each potential matching print and compare it with the latent print from the crime scene.

McClelland testified that in the instant case, he analyzed the subject fingerprint points,² entered the points into AFIS, and at his request, the system returned thirty

to determine whether the recovered print matches any prints in the AFIS database. *Id.* at 130, 687 S.E.2d at 39.

fingerprints that contained similar points to the subject fingerprint. McClelland stated he did not analyze all thirty prints because the second print he examined contained eleven matching points. In his opinion, the matched print was identical to the subject print, and the probability the print belonged to someone other than the person he identified was zero.

According to McClelland, the MBPD required all matched prints be verified by another examiner. In this case, Officer Ioni examined and verified the match. On redirect, McClelland testified he was confident the print he lifted from the crime scene matched the known print generated on AFIS. Marilyn Sanders, AFIS coordinator and SLED fingerprint examiner, subsequently confirmed that the known print in AFIS belonged to Anderson.

In light of McClelland's testimony, Anderson argued outside the jury's presence that "[he] never received any information that there were thirty hits from the AFIS computer, nor did [he] receive the fingerprints of those thirty individuals to look and compare and to determine how close some of the other individuals were on there." Anderson further argued that while the summary of results and the matched print were provided to him, the twenty-nine unmatched prints were not provided to him. In response, the State argued it produced everything in its possession, including a printed AFIS screenshot listing the identification numbers from the thirty fingerprint results. Upon query from the trial court, the State clarified it never printed nor produced the thirty individual results, only the summary of results. The State also acknowledged that only law enforcement officers could view and compare the fingerprint results on AFIS, and accordingly, Anderson could not have obtained the print outs of the other identified prints on his own.

The trial court framed Anderson's argument as a claim that Anderson was entitled to the twenty-nine identified but unmatched prints to do his own analysis to determine whether those prints were exculpatory. The trial court noted that to grant relief for a discovery violation, Anderson would have to show there is a probability that exculpatory evidence, if produced, would have brought about a different result at trial. The trial court found there was no proof of the existence of exculpatory evidence and the State complied with the rules of criminal procedure by giving Anderson the AFIS results screenshot and the matched print result. The trial court then denied Anderson's motion to exclude the fingerprint analysis evidence.

² McClelland testified the term "points" includes the ridge endings, bifurcations, dots, and other minute details of each fingerprint.

Upon completion of the State's case, Anderson renewed his motion to strike McClelland's fingerprint testimony. Anderson argued he was prejudiced by the omission of the documents because McClelland admitted he stopped reviewing the thirty fingerprint results after the second print contained eleven matching points. According to Anderson, one or more of the other potential matching fingerprints could have contained more matching points and, therefore, were potentially exculpatory. In the alternative, Anderson made a motion for a new trial. The State responded that no discovery violation occurred because it provided the printout summary of the thirty fingerprints and Anderson could have requested these printouts. The trial court agreed and denied Anderson's motions.

Anderson testified in his own defense. He stated he frequently went to the Blue Water Hotel to visit friends. Anderson believed he had been there hundreds of times, and he thought he had been in the same room shortly before the fingerprint was found. At the conclusion of Anderson's case, Anderson renewed his motions and the trial court denied the same.

After both closing arguments, the trial court charged the jury as follows:

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become [an] expert in some art, science, profession or calling may state an opinion as to the relevant and material matter in which the witness claims to be an expert, and may also state the reasons for the opinion. You should consider any expert opinion received in this case and, like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

After deliberations, the jury found Anderson guilty of first-degree burglary. The trial court sentenced Anderson to twenty-five years' imprisonment. This appeal followed.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law. *State v. McEachern*, 399 S.C. 125, 135, 731 S.E.2d 604, 608 (Ct. App. 2012). "The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011).

LAW/ANALYSIS

First, Anderson argues the trial court erred by qualifying McClelland as an expert in fingerprint analysis because McClelland lacked the requisite knowledge, skill, experience, training, and education to form an opinion and testify accordingly. We disagree.

The qualification of a witness as an expert and the subsequent admission of that witness's opinion testimony are matters within the sound discretion of the trial court. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge." *State v. Goode*, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991). Absent an abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal. *State v. Weaverling*, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999).

Rule 702 of the South Carolina Rules of Evidence, entitled "Testimony by Experts," provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or

education, may testify thereto in the form of an opinion or otherwise.

We hold the trial court properly qualified McClelland as an expert in fingerprint analysis pursuant to Rule 702. McClelland's experience as a crime scene investigator as well as his education and training demonstrate McClelland had acquired by "study or practical experience" the requisite knowledge to testify as an expert on the subject of fingerprint analysis and comparison. Through his experience and study, McClelland was better qualified than the jury to form an opinion on these topics. *See State v. Robinson*, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012) ("To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.") (internal quotation marks omitted); *see also Goode*, 305 S.C. at 178, 406 S.E.2d at 393 (finding police officer qualified to testify as an expert on accident impact issue when officer received twelve weeks of training at highway department academy, spent one week in "on the road" training with police force, and had four to five months experience as a state trooper at time of the accident).

Second, Anderson argues the trial court erred by either refusing to strike the testimony concerning fingerprint analysis, or, in the alternative, refusing to declare a mistrial based upon the State's failure to provide individual printouts of all thirty fingerprints as required by *Brady v. Maryland*.³ We disagree.

The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. *Hyman v. State*, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012). Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1963). Materiality of evidence is based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. *Hyman*, 397 S.C. at 45, 723 S.E.2d at 380. A reasonable probability is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Id.* at 45-46, 723 S.E.2d at 380.

Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. *United States v. Agurs*, 427 U.S. 97, 107 (1976). Thus, an individual asserting a *Brady* violation must demonstrate the

³ 373 U.S. 83 (1963).

evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or was impeaching. *Kyles v. Whitley*, 514 U.S. 419, 419 (1995).

In our opinion, *Brady* does not require the State to turn over the unmatched prints to Anderson. In response to Anderson's discovery request, the State provided the AFIS results screenshot, which showed AFIS had produced thirty responses to McClelland's query. Anderson makes no showing that if he obtained the individual printouts of the unmatched fingerprints, they would constitute exculpatory or favorable impeachment evidence. Because the exculpatory value of the unmatched prints was entirely speculative, we find it does not fall within the rule enunciated by *Brady*. See *Agurs*, 427 U.S. at 109-10 (holding the mere possibility that an item of undisclosed information may have been helpful to the defense in its own investigation is insufficient to establish constitutional materiality under *Brady*). Accordingly, we hold the trial court did not err in this respect.

CONCLUSION

Based on the foregoing, the trial court's decision is

AFFIRMED.

FEW, C.J., concurs.

KONDUROS, J., concurs in result only.

The Supreme Court of South Carolina

The State, Respondent,

v.

James Anderson, Petitioner.

Appellate Case No. 2014-000812

Lower Court Case No. 2010-GS-26-02883

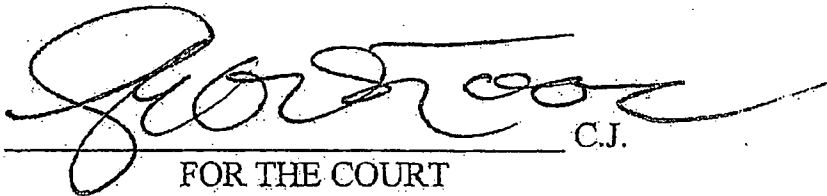
CEIV

NOV 10 2014

SC OFFICE OF
APPELLATE DEFENSE

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *State v. Anderson*, 407 S.C. 278, 754 S.E.2d 905 (Ct. App. 2014). The petition is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

November 10, 2014

cc:

Susan Barber Hackett, Esquire

John Benjamin Aplin, Esquire

Alan McCrory Wilson, Esquire

Melanie Huggins-Ward

The Honorable Jenny Kitchings

WITNESSES

Gerodie Livingston - 15th Circuit Solicitor Office

DOCKET NO. 2010-GS-26-2883

The State of South Carolina

County of Horry

Lauree Richardson

09H03094

COURT OF GENERAL SESSIONS

July, 2010 TERM

ARREST WARRANT NUMBER

2010GS2602883

CDR: 0079 16-11-0311

DOA: 7/28/2009

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

James Anderson

B/M

Foreperson of Grand Jury

Date: JUL 29 2010

ATTORNEY: Chrisco, William Edward

VERDICT

GUILTY

Indictment for

Burglary, First Degree

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date: 3-14-2012

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on July 29, 2010, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That James Anderson did in Horry County, on or about July 8, 2009 enter the dwelling of Christian Vickery located at 2001 South Ocean Blvd, Apt. [REDACTED], without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, and has a prior record of two or more convictions for burglary or housebreaking in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

James Anderson

AKA:

Race: BLACK Sex: M Age: 48

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, Lauree

SCB76142

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010 GS 26 - 2883

A/W#: M345397 Direct Indictment

Date of Offense: 7/8/2009

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ 25.00 beginning 03/14/2011

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 21408

Sentence Date: March 14, 2012

368

15:08:03 Tuesday, April 14, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/14/15
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 260010 LOC: LIEBER
ANDERSON, JAMES - SCDC CLASSIFICATION...: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 025-00-000 CONSECUTIVE SENTENCE ...: N
025-00-000 CURRENT SENT START DATE: 05/26/2011
PROJECTED COMPLETION DATES
MAXOUT DATE: 08/18/2032 CURRENT EWC ..: 2 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000
TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000499 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 001398 ISS.....:
PFKEYS: 5:HISTORY OF DATE CHANGES

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
BREAKING INTO MOTOR VEH	5	0	0	HORRY	10/25/2011	N	2	11GS2602353
BURGLARY-1ST DEGREE	25	0	0	HORRY	05/26/2011	V	4	09GS2604325

COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
FINAN TRANS CARD THEFT	0	11	0	HORRY	06/26/2008	N	2	09GS26978
FINAN TRANS CARD THEFT	0	11	0	HORRY	06/26/2008	N	2	08GS2600863
POSS METH/COC BASE 2ND	1	0	0	HORRY	10/07/2005	N	2	05GS262521
BURGLARY-2ND DEG/NON-VIO	0	6	0	HORRY	11/09/2004	N	3	05GS26907
POSSESS STOLEN VEHICLE	1	0	0	HORRY	12/10/2001	N	2	99GS261785
COCAINE POSSESS	1	0	0	HORRY	12/10/2001	N	2	99GS261195
ILLEGAL DRUGS DISTRIB	4	0	0	HORRY	11/03/2000	N	2	01GS263588
CRACK DISTRIBUTION	4	0	0	HORRY	11/03/2000	N	2	01GS263603
BURGLARY-3RD DEGREE	4	0	0	HORRY	11/03/2000	N	2	00GS262557
ASSAULT ON A POLICE OFF	0	6	0	HORRY	07/23/1999	N	4	99GS261788
COCAINE POSSESS	0	18	0	HORRY	04/21/1999	N	2	99GS261195
POSSESS STOLEN VEHICLE	0	18	0	HORRY	04/21/1999	N	2	99GS261785

PRIOR COMMITMENTS OVER 90 DAYS:

09/10/1990	BURGLARY-3RD DEGREE
05/25/1983	LARCENY-HOUSEBREAKING

PREVIOUS OFFENSES	PREVSCDCID	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
FORGERY	00180390	5	0	0	MARLBORO	09/14/1991	N	2	00001
BURGLARY-3RD DEGREE	00180390	5	0	0	MARLBORO	09/14/1991	N	2	00001
COMMON LAW ROBBERY	00180390	9	0	0	MARLBORO	09/14/1991	N	3	00001
RESISTING OFFICER	00180390	1	0	0	MARLBORO	09/14/1991	N	3	00001
PETIT LARCENY	00241999	0	0	30	MARLBORO	06/04/1997	N	1	9734461-64
BREAKING INTO MOTOR VEH	00241999	2	0	0	MARLBORO	06/04/1997	N	2	9734465-66
BURGLARY-3RD DEGREE	00241999	2	0	0	MARLBORO	06/04/1997	N	2	97GS34462

DETAINEES (HOLD,WANTED,NOTIFY):

MARIJUANA POSSESS	WANTED	PRESIDING JUDGE	CATEG:2
COCAINE POSSESS	WANTED	PRESIDING JUDGE	CATEG:2
MANU/DIST CRACK-3RD,SUB.	WANTED	PRESIDING JUDGE	CATEG:3

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARIES HISTORY

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

07/27/1993 00180390 ABUSE OF PRIVILEGES CONVICTED MINOR DISC. HEARING

HISTORY OF MOVEMENTS:

03/31/2015	LIEBER	INCARCERATED	ADMINISTRATIVE
03/31/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/26/2015	LIEBER	INCARCERATED	ADMINISTRATIVE
03/26/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
02/06/2015	LIEBER	INCARCERATED	ADMINISTRATIVE
02/06/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
01/06/2015	LIEBER	INCARCERATED	ADMINISTRATIVE
01/06/2015	KIRKLAND	INCARCERATED	MEDICAL
09/25/2012	LIEBER	INCARCERATED	ADMINISTRATIVE
09/24/2012	KIRKLAND	INCARCERATED	MEDICAL
04/19/2012	LIEBER	INCARCERATED	ADMINISTRATIVE
03/16/2012	KIRKLAND	INCARCERATED	NEW ADMISSION
03/11/2009	UNK	RELEASE	EXPIRATION OF SENTENCE
03/11/2009	KIRKLAND	INCARCERATED	NEW ADMISSION
10/03/2006	UNK	RELEASE	EXPIRATION OF SENTENCE
10/03/2006	HORRY CO	AUTH ABSENCE (AWL)	SERVING SC SENT IN OJ
04/05/2005	UNK	RELEASE	EXPIRATION OF SENTENCE
04/05/2005	KIRKLAND	INCARCERATED	NEW ADMISSION
01/26/2003	UNK	RELEASE	EXPIRATION OF SENTENCE
01/08/2002	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
12/14/2001	KIRKLAND	INCARCERATED	PROBATION VIOLATOR
05/16/2000	HORRY CO	PROBATION	RELEASED TO PROBATION
03/07/2000	WATKINS	PRE-RELEASE	PRE-RELEASE
01/10/2000	WALDEN	INCARCERATED	ADMINISTRATIVE
09/17/1999	MACDOUGALL CORR INST	INCARCERATED	ADMINISTRATIVE
09/14/1999	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
08/24/1999	MACDOUGALL CORR INST	INCARCERATED	ADMINISTRATIVE
07/28/1999	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
FOOD SERVICE AIDE	05/08/2012	-		2F5
HEAVY EQ MECHANIC TRNEE	09/04/2002	01/26/2003	RELEASED/PAROLED	2F5
WARDKEEPER ASSISTANT	02/08/2002	09/03/2002	LATERAL TRANSFER	2F5
FOOD SERVICE AIDE	01/11/2000	05/16/2000	RELEASED/PAROLED	2F5
FOOD SERVICE AIDE	08/26/1999	01/10/2000	INSTIT TRANSFER	2F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 12-14 HR/WK	12/09/1999	01/10/2000	INSTIT TRANSFER

***** END OF REPORT *****

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State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



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J. GREGORY HEMBREE
Solicitor

March 6, 2012

Ed Chrisco, Esq.
PO Box 1666
Conway, SC 29526

SCANNED

RE: State v. James Anderson (Burglary 1st)

Dear Ed:

It has come to my attention that there were three other people in the hotel room that are not indicated in the discovery. Mrs. Ima Smith (██████-9110) was in the other bedroom, along with her husband, Mr. David Smith. I have spoken to her. She has no firsthand knowledge. She was asleep in the other room when he entered the hotel room and was not woken up until sometime later. I do not plan to call her as a witness. Mr. Smith has since passed away; however, she tells me that he was asleep next to her and did not see anything either. There was a boy, Joe E. (14 at the time) who was asleep in the living room. I have spoken to him. He indicated that he would not be able to identify the Defendant, but he knows he was a black male – shorter than him (he is 6'). If he testifies, that would be the extent of his testimony. I do not have a direct number for him because he is a minor. However, his father's number is ██████-6332.

If you have any questions or need additional information, please do not hesitate to ask. I look forward to resolving this matter.

With kindest regards, I am

Sincerely yours,

Lauree Richardson
Assistant Solicitor
15th Circuit Solicitor's Office

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

