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ORIGINAL

STATE OF SOUTH CAROLINA

No Respondent's Brief Filed

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ALBERT J. CAVE,

APPELLANT

Appellate Case No. 2011-198190

RECORD ON APPEAL

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E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: Good morning, ladies and gentlemen.

3 I apologize for the little bit of confusion this
4 morning. We're running two courtrooms, as you know.
5 Judge Barber is doing the civil court. And I'm Jack
6 Early. And I'm doing criminal court.

7 When I got here this morning just a short time after
8 9:00, the court reporter who was assigned to me, she's had
9 some health issues, and she was just not looking good and
10 feeling bad. I had to send her home. I called Court
11 Administration. They're sending someone. And they told
12 me at 10:30 that it would be an hour and a half. I'm
13 going to give them until 12:00 or 12:15.

14 But here is what we're going to do. We have two
15 cases to try on the criminal side, at least, two. I'm
16 going to draw those two juries now. So there will be 12
17 of you, and two alternates that will be serving on the
18 first jury. We'll start that case at 2:00. So once I
19 draw you and get you seated, you'll be able to leave and
20 come back at 2:00.

21 I'll draw the second jury. Those people will be
22 asked to call back in this afternoon after 6:00 is
23 probably the best way to do that. Those of you who are
24 not drawn, I'll ask you to be back here at 2:00. Judge
25 Barber is going to draw his first civil case. And the

1 rest of you will be allowed to go home and call back at
2 6:00.

3 Does that make sense?

4 I apologize for any confusion that we may have had.

5 All right. Mr. Weeks, what's the first case, or
6 Mr. Miller?

7 MR. MILLER: Thank you, Your Honor.

8 May it please the Court.

9 The State calls the State of South Carolina v. Albert
10 James Cave, Jr., indictment 2011-GS-02-01031, a
11 true-billed indictment for burglary in the first degree,
12 and indictment 2011-GS-02-01032, a true-billed indictment
13 for grand larceny more than \$2,000, but less than \$10,000.

14 THE COURT: Thank you.

15 Mr. Albert James Cave, Jr., would you, please, stand
16 and face the jury panel?

17 I know I've got a lot of people back over this way,
18 so look over that way.

19 Thank you.

20 You may be seated.

21 Ladies and gentlemen, as the State has called this
22 case, Mr. Cave is here this morning. He's been charged,
23 and indicted, and a true bill of indictment has been
24 returned against him for two matters, one is for burglary
25 in the first degree, and the other is grand larceny where

1 the value of the goods are alleged to be more than \$2,000,
2 but less than \$10,000.

3 Mr. Cave has pled not guilty to both of these
4 indictments. And by pleading not guilty, that, obviously,
5 puts the burden on the State of South Carolina to prove
6 his guilt to you beyond a reasonable doubt. And each of
7 these offenses have various elements. And the State has
8 to prove each element of each offense to you beyond a
9 reasonable doubt.

10 At the conclusion of the case, I will explain to you
11 the various elements. I'll explain to you reasonable
12 doubt. I'll explain to you burden of proof, all that sort
13 of thing. But Mr. James -- or Mr. Cave has pled not
14 guilty. And, as I said, that puts the burden on the State
15 of South Carolina.

16 The way we do matters is that we'll draw a jury of 12
17 people. We live under a rule of law in the United States.
18 It's not like you saw on TV last night and what's going on
19 in Libya, and Syria, and all over the world. We let 12
20 citizens from the community decide whether or not the
21 State is able to meet their burden of proof in a criminal
22 case. And we dispense justice under the rule of law.

23 And you jurors play, obviously, a very important
24 role. Because when we try these cases, I have certain
25 duties to perform. I'm the judge of the law in the case.

1 I'll tell you what the law is. And you have to accept the
2 law as I give it to you. And I, also, rule on the
3 admissibility of evidence. My job is pretty easy.

4 You have the tough job. Because the 12 of you
5 collectively acting as one, you are the judges of the
6 facts in the case. You'll listen to the testimony and
7 you'll determine what the true facts are in the case. And
8 then, obviously, you apply those true facts to the law as
9 I give it to you. And you'll be in a position to render a
10 verdict, whether it be guilty or not guilty, based on the
11 facts as you determine them to be. So that is a
12 tremendous role that you have, but it makes the system
13 work wonderfully, and we decide our differences here in a
14 courtroom and not on the street.

15 Now, having said that, let's go ahead and get you
16 qualified for this particular case. Please bear in mind
17 that you're still under oath from this morning when you
18 were sworn in.

19 JURY QUALIFICATION

20 THE COURT: Is there any member of the jury panel
21 related by blood or marriage to the Defendant, Albert
22 James Cave, Jr.? If so, please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Any member of the jury panel, have you
25 now or in the past had a close personal or social

1 relationship with the Defendant, Albert James Cave, Jr.?

2 If so, please, stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: I am told that the potential witnesses in
5 the trial of this case are as follows --

6 Do I have a witness list from anybody?

7 Here it is.

8 The witnesses are as follows --

9 David, do y'all got any?

10 MR. HAYES: No, sir.

11 THE COURT: I'm going to read these names of the
12 potential witnesses out. And I will ask you the same
13 question I just asked you. Are you related by blood or
14 marriage, or do you now or have you in the past had a
15 close personal or social relationship with any of these
16 potential witnesses? If so, please, stand.

17 The witnesses are as follows: Deputy Darrell Kostyk,
18 K-O-S-T-Y-K, with the Aiken County Sheriff's Office.

19 Is he in the courtroom?

20 Yes. He's standing right there.

21 Thank you.

22 Deputy Jessica Roberts with the Aiken County
23 Sheriff's Office, Gerald Turner with the Aiken County
24 Sheriff's Office, Lieutenant Clay Adams with the Sheriff's
25 Office.

1 There's Lieutenant Adams.

2 Thank you.

3 Chris Johnson with the Aiken County Sheriff's Office.

4 Chris, good morning.

5 Crystal Allen.

6 Is Crystal Allen in the courtroom?

7 (WHEREUPON, there was no response.)

8 THE COURT: Ronnie Smiley.

9 Mr. Smiley, good morning.

10 MR. RONNIE SMILEY: Good morning.

11 THE COURT: Delane Smiley, Lieutenant Nick Gallam,
12 G-A-L-L-A-M, and he's with the Aiken County Sheriff's
13 Office.

14 MR. MILLER: Your Honor, there is an additional --
15 one additional witness -- potential witness, Rafael
16 Robertson.

17 THE COURT: Rafael Robertson?

18 MR. MILLER: Yes, Your Honor.

19 THE COURT: Is any member of the jury panel related
20 by blood or marriage, or do you now or have you in the
21 past had a close personal or social relationship with any
22 of these potential witnesses? If so, please, stand.

23 Yes, ma'am. Your name?

24 JUROR #46, ASHLEY COOK: Ashley Cook, Juror #46.

25 I'm friends with Deputy Jessica Roberts. And I work

1 for Aiken Public safety, so I know --

2 THE COURT: You work with Aiken County Public Safety?

3 JUROR #46, ASHLEY: Yes, sir.

4 And we work with the Sheriff's Department. But I
5 know her from dispatch when she was a dispatcher and now a
6 deputy.

7 THE COURT: How does the public safety relate with
8 the Aiken County Sheriff's Office? Are they the same in
9 one, or what? How does that work?

10 MR. MILLER: No, sir, Your Honor.

11 The juror is a dispatcher for public safety now. And
12 I understand that Ms. Roberts, actually, used to work
13 there, but now she works for the Sheriff's Office. It's
14 separate and distinct.

15 THE COURT: All right. Ma'am, the fact that you know
16 this potential witness in the manner in which you do,
17 would that in any way preclude or keep you from being a
18 fair and impartial juror in the trial of this case?

19 JUROR #46, ASHLEY COOK: I don't think so.

20 THE COURT: I need to know for sure. "Yes" or "no"?

21 JUROR #46, ASHLEY COOK: No.

22 THE COURT: Thank you.

23 You may be seated.

24 All right. I'm going to let the lawyers stand and
25 identify themselves.

1 Ms. Alves, or Mr. Hayes.

2 MR. HAYES: I'm David Hayes with the Aiken County
3 Public Defender's Office.

4 This is Wallis Alves with the Aiken County Public
5 Defender's Office.

6 MR. MILLER: I'm David Miller with the Aiken County
7 Solicitor's Office.

8 This is Kevin Molony. He is, also, a solicitor in
9 our office.

10 THE COURT: The first question: Has any member of
11 the jury panel now or in the past received legal services
12 from any of the four lawyers? If so, please, stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Has any member of the jury panel now or
15 in the past been related by blood or marriage, or do you
16 now or have you in the past had a close personal or social
17 relationship with any of the lawyers? If so, please,
18 stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Ladies and gentlemen, the indictment is
21 simply the charging document by which this case comes to
22 court. It is not evidence in the case. The only evidence
23 you can consider comes from the witness stand from sworn
24 testimony and/or relevant exhibits.

25 But I have to tell you what the allegations are to

1 ask you if anyone knows anything about this case. It is
2 alleged, alleged that here in Aiken County on or about
3 May 2 of the year 2011, this year, that the Defendant,
4 Mr. Cave, unlawfully entered the dwelling of Mr. Ronnie
5 Smiley located on [REDACTED] in North Augusta,
6 that's [REDACTED] and without his consent
7 and with the intent to commit a crime. And it is further
8 alleged that he took and carried away on that same date in
9 that same place a Dell, D-E-L-L, laptop computer and two
10 32-inch Visio flat panel TVs valued at more than \$2,000,
11 but less than \$10,000 belonging to Mr. Smiley with the
12 intent to deprive the owner of that.

13 In other words, it's alleged that this man broke into
14 a dwelling owned by the Smileys and stole a laptop
15 computer and two flat screen TVs on May 2, 2011, in North
16 Augusta.

17 Does anybody know anything about this case?

18 (WHEREUPON, there was no response.)

19 THE COURT: Has anybody read anything in the
20 newspapers, seen anything on the television, seen anything
21 on the Internet, or know anything at all about the facts
22 in this case?

23 (WHEREUPON, there was no response.)

24 THE COURT: Is any member of the jury panel aware of
25 any bias towards the State or the Defendant in this case?

1 If so, please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: Ladies and gentlemen, one of my main
4 duties in presiding over cases is to make sure that both
5 the Defendant and the State of South Carolina receive a
6 fair trial. And, obviously, the way we do that is we have
7 to have jurors who are able to perform their duties, which
8 is to find the facts in the case.

9 Now, do I have anyone who for any reason whatsoever
10 cannot complete that task, religious reasons, personal
11 beliefs, political beliefs, any kind of beliefs that would
12 keep or preclude you from sitting on the jury and
13 listening to the evidence?

14 In most cases, the evidence is contradictory. But
15 you have to decide what the true facts are, who's telling
16 the truth.

17 Anybody that cannot do that, please, stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Any additional questions by the
20 Defendant?

21 MR. HAYES: Your Honor, we would ask you to read
22 number five and number seven.

23 THE COURT: Is there any member of the jury panel
24 that has any member of your family or relative that work
25 in law enforcement, either SLED, that's the State Law

1 Enforcement Division, or the -- any Sheriff's Office, or
2 Highway Department, or employed by the Solicitor's Office
3 in any capacity, or the Attorney General's Office, or any
4 federal law enforcement agency? If so, please, stand.

5 Please remain standing.

6 Yes, ma'am. In the pretty black and white top, your
7 name?

8 JUROR #22, STACEY BOWERS: I'm Juror #22, Stacey
9 Bowers.

10 I have a first cousin that works at the Sheriff's
11 Department, Gerald Williams. And I have a cousin that's a
12 state trooper.

13 THE COURT: All right. You have a first cousin in
14 the Sheriff's Office?

15 JUROR #22, STACEY BOWERS: Yes, Gerald Williams.

16 THE COURT: All right. I'm going to excuse you from
17 the trial of this case, because you have a relative with
18 the agency.

19 Have a seat for me.

20 Yes, ma'am. Your name?

21 JUROR #17, SONYA BISHOP: Sonya Bishop, Juror #17.
22 My father is a retired deputy sheriff.

23 THE COURT: From where?

24 JUROR #17, SONYA BISHOP: Aiken County.

25 THE COURT: And the fact that your dad at one time

1 worked with the Aiken County Sheriff's Department, would
2 that keep or preclude you from being a fair and impartial
3 juror?

4 JUROR #17, SONYA BISHOP: No.

5 THE COURT: Thank you.

6 You may be seated.

7 Yes, ma'am. Again, in the blue, your name and
8 number?

9 JUROR #46, ASHLEY COOK: My name is Ashley Cook. My
10 number is 46.

11 My husband's uncle is a deputy at -- or an officer in
12 New Ellenton, and he used to be at Aiken County, Will
13 Cook. And his first cousin is a police officer in North
14 Augusta, and he used to work with the Aiken County
15 Sheriff's Department as well.

16 THE COURT: The fact that you have a number of people
17 in law enforcement that are particularly kinned to your
18 husband, ma'am, would that in any way preclude or keep you
19 from being fair and impartial in the trial of this case?

20 JUROR #46, ASHLEY COOK: No.

21 THE COURT: Thank you.

22 You may be seated.

23 Yes, ma'am. In the white sweater, your name?

24 JUROR #143, JENNIFER RHOADES: Jennifer Oswald
25 Rhoades. I'm Juror #143.

1 And I work for the highway department.

2 THE COURT: You work for the highway department?

3 JUROR #143, JENNIFER RHOADES: Yes, sir.

4 THE COURT: The fact that you -- what do you do for
5 the highway department?

6 JUROR #143, JENNIFER RHOADES: I'm a traffic safety
7 engineer.

8 THE COURT: That keeps all of our roads safe so we
9 don't have any wrecks and run into anybody?

10 JUROR #143, JENNIFER RHOADES: I try to.

11 THE COURT: You do such a great job.

12 Thank you.

13 The fact that you work for the highway department in
14 that capacity, ma'am, would that in any way preclude or
15 keep you from being fair and impartial?

16 JUROR #143, JENNIFER RHOADES: No, sir.

17 THE COURT: Thank you.

18 You be seated.

19 Yes, ma'am, in the brown suit.

20 JUROR #133, DEMETRUS PERRY: My name is Demetrus
21 Perry, Juror #133.

22 My aunt, Sherry Perry, works at the Aiken County
23 Detention Center.

24 THE COURT: Okay. The detention center?

25 JUROR #133, DEMETRUS PERRY: Yes.

1 THE COURT: The fact that you have an aunt that works
2 at the detention center, ma'am, would that keep you or
3 preclude you from being fair and impartial in the trial of
4 the case?

5 JUROR #133, DEMETRUS PERRY: No, sir.

6 THE COURT: Thank you.

7 You may be seated.

8 Last, but not least.

9 JUROR #160, ANDREA SHAW: I'm Juror #160. My name is
10 Andrea Shaw.

11 And my son formerly worked for the Aiken County
12 Sheriff's Department. And he's no longer there.

13 THE COURT: But he's no longer there?

14 JUROR #160, ANDREA SHAW: He's a federal marshall in
15 Washington.

16 THE COURT: He left when?

17 JUROR #160, ANDREA SHAW: Last September.

18 THE COURT: September of 2010?

19 JUROR #160, ANDREA SHAW: Uh-huh.

20 THE COURT: And this allegedly occurred in May of
21 2011.

22 Ma'am, the fact that you had a son with the Sheriff's
23 Department, would that in any way preclude or keep you
24 from being fair and impartial?

25 JUROR #160, ANDREA SHAW: No, sir.

1 THE COURT: Thank you.

2 You may be seated.

3 Has anybody on the jury panel or your immediate
4 family been the victim of a violent crime? If so, please,
5 stand.

6 Yes, sir. Your name, please?

7 JUROR #40, ANTHONY CHIERA: Anthony Chiera, #40.

8 THE COURT: And what was your situation?

9 JUROR #40, ANTHONY CHIERA: 13 years ago, our family
10 was kidnapped and held at gun point for an unborn child.

11 THE COURT: Having had to experience that horrible
12 situation, would that in any way, sir, preclude or keep
13 you from being fair and impartial --

14 JUROR #40, ANTHONY CHIERA: Definitely.

15 THE COURT: Sir?

16 JUROR #40, ANTHONY CHIERA: Definitely, yes.

17 THE COURT: Your name again?

18 JUROR #40, ANTHONY CHIERA: Anthony Chiera.

19 THE COURT: All right. Excuse him from the trial of
20 this case.

21 You may be seated.

22 Anybody else?

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. Any additional questions from
25 the State or --

1 MR. MILLER: Nothing from the State, Your Honor.

2 THE COURT: Mr. Hayes?

3 MR. HAYES: We asked, specifically, about number
4 three, Your Honor.

5 THE COURT: I just said that.

6 Any member on the jury panel, have you or your family
7 been a victim of a house break-in, burglary, somebody
8 breaking into property that you own? If so, please,
9 stand.

10 We'll start on my left this time. Please remain
11 standing.

12 Yes, ma'am. In the pretty -- well, we've got two in
13 black and white outfits. The one to my left, your right,
14 your name?

15 JUROR #132, JOAN PARROTT: I'm Juror #132.

16 Several years ago, someone broke into our house
17 twice.

18 THE COURT: And would that, ma'am, preclude or keep
19 you from being fair and impartial in the trial of this
20 case?

21 JUROR #132, JOAN PARROTT: No.

22 THE COURT: Thank you.

23 You may be seated.

24 Yes, ma'am. Your name?

25 JUROR #135, JOANN PIERCE: My name is Joann Pierce,

1 #135.

2 My sister's house was broken into about 10 years ago
3 in Aiken County.

4 THE COURT: The fact that your sister was the victim
5 of a break-in 10 years ago, would that in any way preclude
6 or keep you from being fair and impartial?

7 JUROR #135, JOANN PIERCE: No, sir.

8 THE COURT: Thank you.

9 You may be seated.

10 Sir, in the black "SRR" shirt.

11 JUROR #164, DANIEL SKIFF: My oldest brother had a --
12 my name is Dan Skiff, #164.

13 My oldest brother had a break-in about 10 years ago
14 in Pittsburgh.

15 THE COURT: The fact that that occurred in Pittsburgh
16 10 years ago, sir, would that preclude or keep you from
17 being fair and impartial?

18 JUROR #164, DANIEL SKIFF: No, sir.

19 THE COURT: Thank you.

20 You may be seated.

21 Ma'am, in the burgundy.

22 JUROR #2, ALLYSON AVERY: Our house was broken into
23 in July of 2010.

24 THE COURT: And your name?

25 JUROR #2, ALLYSON AVERY: Allison Avery, Juror #2.

1 THE COURT: #2?

2 JUROR #2, ALLYSON AVERY: Uh-huh.

3 THE COURT: And the fact that you had that happen
4 last year, ma'am, would that preclude or keep you from
5 being fair and impartial?

6 JUROR #2, ALLYSON AVERY: No, sir.

7 THE COURT: Thank you.

8 You may be seated.

9 Yes, ma'am, in the black and white sweater.

10 JUROR #81, SUSAN HICKS: Our motor home was broken
11 into about three weeks ago.

12 THE COURT: Your mother's home?

13 JUROR #81, SUSAN HICKS: Our motor home.

14 THE COURT: Your motor home.

15 And your name, please?

16 JUROR #81, SUSAN HICKS: Susan Hicks, #81.

17 THE COURT: Would that keep you from being fair and
18 impartial?

19 JUROR #81, SUSAN HICKS: No.

20 THE COURT: Thank you.

21 You may be seated.

22 Yes, ma'am, in the --

23 JUROR #63, CHRISTINE FARINA: Pink.

24 THE COURT: The mauve sweater.

25 JUROR #63, CHRISTINE FARINA: Juror #63, Christine

1 Farina.

2 About a year and a half ago, my daughter and
3 son-in-law had a break-in here in Aiken.

4 THE COURT: Thank you.

5 Would that preclude or keep you from being fair and
6 impartial?

7 JUROR #63, CHRISTINE FARINA: No, sir.

8 THE COURT: Thank you.

9 You may be seated.

10 Yes, sir, in the green.

11 JUROR #3, MARION AVERY: Marion Avery, Juror #3.

12 I was broke into 20 years ago probably and robbed.

13 THE COURT: And would that preclude or keep you from
14 being fair and impartial?

15 JUROR #3, MARION AVERY: No, sir.

16 THE COURT: Thank you.

17 You may be seated.

18 Yes, sir, in the blue.

19 JUROR #80, DENNIS HARVILLE: Juror #80, Dennis
20 Harville.

21 My vehicle was stolen last year from my house.

22 THE COURT: And would that keep you from being a fair
23 and impartial juror?

24 JUROR #80, DENNIS HARVILLE: No, sir.

25 THE COURT: Thank you.

1 You may be seated.

2 Yes, ma'am, in the blue.

3 JUROR #18, THERESA BOETTIER: Juror #18, Theresa
4 Boettier.

5 My house was broken into in January of this year.

6 THE COURT: And would that keep you from being a fair
7 and impartial juror?

8 JUROR #18, THERESA BOETTIER: No, sir.

9 THE COURT: You may be seated.

10 Last, but not least, in the green.

11 JUROR #67, GARY FOURNIER: Juror #67, Gary Fournier.

12 My home was broken into in 1993.

13 THE COURT: Sir, would that keep or preclude you from
14 being a fair and impartial juror?

15 JUROR #67, GARY FOURNIER: No.

16 THE COURT: Thank you.

17 You may be seated.

18 Any additional questions?

19 (WHEREUPON, there was no response.)

20 THE COURT: Ladies and gentlemen, the way we draw a
21 jury in a --

22 Yes, sir. Your name?

23 JUROR #57, JOE DUNBAR: My name is Joe Dunbar. I'm
24 Juror #57.

25 I'd like to ask a question about whether or not

1 there's time constraints on -- because you asked about a
2 crime being -- somebody being convicted of a violent
3 crime. Is there any time limit on that?

4 THE COURT: No, sir.

5 JUROR #57, JOE DUNBAR: Well, my mother was convicted
6 of a crime.

7 THE COURT: Your mother was convicted?

8 JUROR #57, JOE DUNBAR: Yes, sir.

9 THE COURT: Okay. Well, I asked --

10 JUROR #57, JOE DUNBAR: It was several years ago.

11 THE COURT: My question was, were you a victim.

12 But your mother was involved in like -- in the
13 criminal process?

14 JUROR #57, JOE DUNBAR: Yes.

15 THE COURT: And would that keep or preclude you, sir,
16 from being fair and impartial?

17 JUROR #57, JOE DUNBAR: No.

18 THE COURT: Thank you.

19 All right. The way we draw a jury in this case, the
20 State has five strikes, and the Defendant has 10. We will
21 randomly get a printout of names. And from that random
22 list, I will go down it. And as your name -- or if your
23 name is called, would you, please, ease right up here to
24 the front and stand before the Solicitor's Office and the
25 Defense side.

1 forward.)

2 THE COURT: What say you for the State?

3 MR. MILLER: Please present the juror.

4 THE CLERK: Thank you.

5 What say you for Defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Thank you.

8 Please have a seat in the jury box right over there.

9 Juror #81, Susan Hicks.

10 (WHEREUPON, Susan Hicks, a white female, came

11 forward.)

12 THE CLERK: What say you for the State?

13 MR. MILLER: Please present the juror.

14 THE CLERK: Thank you.

15 What say you for Defense?

16 MR. HAYES: Judge, we would ask for her to be struck

17 for cause.

18 THE COURT: For cause?

19 MR. HAYES: Yes, sir.

20 THE COURT: For what reason?

21 MR. HAYES: She was the victim of a break-in several

22 weeks ago, three weeks ago.

23 THE COURT: And I asked her, specifically, could she

24 be fair and impartial notwithstanding that, and she said

25 yes.

1 Denied.

2 MR. HAYES: Yes, sir.

3 Please excuse this juror from the trial of this case.

4 THE CLERK: Please return to your seat.

5 Juror #133, Demetrus Perry.

6 (WHEREUPON, Demetrus Perry, a black female, came

7 forward.)

8 THE CLERK: What say you for the State?

9 MR. MILLER: Please excuse Ms. Perry from the trial

10 of this case.

11 THE CLERK: Thank you.

12 Please return to your seat.

13 Juror #169, Ronald Staggs.

14 (WHEREUPON, Ronald Staggs, a white male, came

15 forward.)

16 THE CLERK: What say you for the State?

17 MR. MILLER: Please present Mr. Staggs.

18 THE CLERK: Thank you.

19 What say you for Defense?

20 MR. HAYES: Please seat the juror.

21 THE CLERK: Thank you.

22 Please have a seat in the jury box.

23 Juror #155, Marcus Schoultz.

24 (WHEREUPON, Marcus Schoultz, a black male, came

25 forward.)

1 THE CLERK: What say you for the State?
2 MR. MILLER: Please present the juror.
3 THE CLERK: Thank you.
4 What say you for Defense.
5 MR. HAYES: Please seat the juror.
6 THE CLERK: Thank you.
7 Please have a seat in the jury box.
8 Juror #96, Julia Jordan.
9 (WHEREUPON, Julia Jordan, a white female, came
10 forward.)
11 THE CLERK: What say you for the State?
12 MR. MILLER: Please present Ms. Jordan.
13 THE CLERK: Thank you.
14 What say you for Defense?
15 MR. HAYES: Please seat the juror.
16 THE CLERK: Thank you.
17 Please have a seat in the jury box.
18 Juror #17, Sonya Bishop.
19 (WHEREUPON, Sonya Bishop, a white female, came
20 forward.)
21 THE CLERK: What say you for the State?
22 MR. MILLER: Please present Ms. Bishop.
23 THE CLERK: Thank you.
24 What say you for Defense?
25 MR. HAYES: Please excuse the juror from the trial of

1 this case.

2 THE CLERK: Thank you.

3 Please return to your seat.

4 Juror #33, Peter Burrows.

5 (WHEREUPON, Peter Burrows, a white male, came
6 forward.)

7 THE CLERK: What say you for the State?

8 MR. MILLER: Please present Mr. Burrows.

9 THE COURT: Thank you.

10 What say you for Defense?

11 MR. HAYES: Please seat the juror.

12 THE CLERK: Thank you.

13 Please have a seat in the jury box.

14 Juror #66, Marites Fonte.

15 (WHEREUPON, Marites Fonte, a white female, came
16 forward.)

17 THE CLERK: What say you for the State?

18 MR. MILLER: Please present Ms. Fonte.

19 THE CLERK: Thank you.

20 What say you for Defense?

21 MR. HAYES: Please seat the juror in the trial of
22 this case.

23 THE CLERK: Thank you.

24 Please have a seat in the jury box.

25 Juror #101, Anita Kirkey.

1 (WHEREUPON, Anita Kirkey, a white female, came
2 forward.)

3 THE CLERK: What say you for the State?

4 MR. MILLER: Please excuse Ms. Kirkey from the trial
5 of this case.

6 THE CLERK: Thank you.

7 Please return to your seat.

8 Juror #57, Joe Dunbar.

9 (WHEREUPON, Joe Dunbar, a black male, came forward.)

10 THE CLERK: What say you for the State?

11 MR. MILLER: Please excuse Mr. Dunbar from the trial
12 of this case.

13 THE CLERK: Thank you.

14 Please return to your seat.

15 The State has exhausted three strikes, the Defense
16 two.

17 Juror #150, Ronda Sampson.

18 (WHEREUPON, Ronda Sampson, a black female, came
19 forward.)

20 THE CLERK: What say you for the State?

21 MR. MILLER: Please excuse Ms. Sampson from the trial
22 of this case.

23 THE CLERK: Please return to your seat.

24 Juror #76, Gil Greytak.

25 (WHEREUPON, Gil Greytak, a white male, came forward.)

1 THE CLERK: What say you for the State?

2 MR. MILLER: Please present Mr. Greytak.

3 THE CLERK: Thank you.

4 What say you for Defense?

5 MR. HAYES: Please seat the juror.

6 THE CLERK: Thank you.

7 Please have a seat in the jury box.

8 Juror #165, Betty Smith.

9 (WHEREUPON, Betty Smith, a black female, came
10 forward.)

11 THE CLERK: What say you for the State?

12 MR. MILLER: Please present Ms. Smith.

13 THE CLERK: Thank you.

14 What say you for Defense?

15 MR. HAYES: Please seat the juror.

16 THE CLERK: Thank you.

17 Please have a seat in the jury box.

18 Juror #135, Joann Pierce.

19 (WHEREUPON, Joann Pierce, a white female, came
20 forward.)

21 THE CLERK: What say you for the State?

22 MR. MILLER: Please present Ms. Pierce.

23 THE CLERK: Thank you.

24 What say you for Defense?

25 MR. HAYES: Please excuse the juror from the trial of

1 this case.

2 THE CLERK: Thank you.

3 Please return to your seat.

4 Juror #28, Becky Brown.

5 (WHEREUPON, Becky Brown, a white female, came
6 forward.)

7 THE CLERK: What say you for the State?

8 MR. MILLER: Please present Ms. Brown.

9 THE CLERK: Thank you.

10 What say you for Defense?

11 MR. HAYES: Please seat the juror in the trial of
12 this case.

13 THE CLERK: Thank you.

14 Please have a seat in the jury box.

15 Juror #13, Jennifer Bice.

16 (WHEREUPON, Jennifer Bice, a white female, came
17 forward.)

18 THE CLERK: What say you for the State?

19 MR. MILLER: Please present Ms. Bice.

20 THE CLERK: What say you for Defense?

21 MR. HAYES: Please seat the juror.

22 THE CLERK: Thank you.

23 Please have a seat in the jury box.

24 Juror #175, Reid Talbert.

25 (WHEREUPON, Reid Talbert, a white male, came

1 forward.)

2 THE CLERK: What say you for the State?

3 MR. MILLER: Please present Mr. Talbert.

4 THE CLERK: Thank you.

5 What say you for Defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Thank you.

8 Please have a seat in the jury box.

9 Juror #194, Helen Williamson.

10 (WHEREUPON, Helen Williamson, a white female, came

11 forward.)

12 THE CLERK: What say you for the State?

13 MR. MILLER: Please present Ms. Williamson.

14 THE CLERK: Thank you.

15 What say you for Defense?

16 MR. HAYES: Please seat the juror.

17 THE CLERK: Thank you.

18 Have a seat in the jury box.

19 THE COURT: Let me have one alternate, two and one.

20 THE CLERK: Juror #94, Joanne Jones.

21 (WHEREUPON, Joanne Jones, a white female, came

22 forward.)

23 THE CLERK: What say you for the State?

24 MR. MILLER: Please present Ms. Jones.

25 THE CLERK: Thank you.

1 What say you for Defense?

2 MR. HAYES: Please seat the juror.

3 THE CLERK: Thank you.

4 Please have a seat in the jury box.

5 THE COURT: Any motions by the State in connection
6 with the selection of the jury?

7 MR. MILLER: None from the State, Your Honor.

8 THE COURT: By the Defendant?

9 MR. HAYES: I beg the Court's indulgence one moment.

10 (Pause.)

11 MR. HAYES: No motions.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury panel, we're going to start at 2:00. We're going to
14 start right at 2:00. The bailiff will show you where to
15 report at 2:00. And we'll start right on time, unless the
16 sky falls in. And you might want to get you a jacket.

17 UNIDENTIFIED JUROR: I left it in the car.

18 THE COURT: I doubt it, but if anybody tries to
19 discuss the case with you, you just tell them that you're
20 on the jury panel and, please, don't discuss it. If they
21 insist on it, just get their name and I will deal with
22 them.

23 All right. I'm going to let you go now. And we'll
24 see you back at 2:00. We'll run until about 5:00 this
25 afternoon.

1 Is that okay with everybody?
2 (WHEREUPON, all jurors indicated in the affirmative.)
3 THE COURT: And then we'll see where we are at that
4 point.
5 Thank you.
6 (WHEREUPON, the jury was excused from open court at
7 approximately 11:33 a.m.)
8 *****END OF REQUESTED TRANSCRIPT OF RECORD*****
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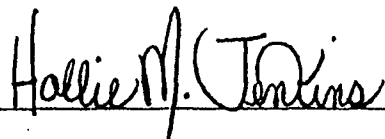
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for AIKEN County, South Carolina, on the 22nd day of August, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 8, 2012



Hollie M. Jenkins, Court Reporter
My Commission Expires: 09/24/20

State of South Carolina)
) Court General Sessions
 County of Aiken) 2011-GS-02-1031, 1032

State of South Carolina)
) vs.) Transcript of Record
)
 James Albert Cave, Jr.,)
)
) DEFENDANT

August 22, 2011
 Aiken, South Carolina

B E F O R E:

Honorable Doyet A. Early, Judge.

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

David Miller, Assistant Solicitor
 Kevin Molony, Assistant Solicitor
 Attorneys for the State

David Hayes, Public Defender
 Wallis Alves, Public Defender
 Attorneys for the Defendant

Joy E. Holston
 Official Court Reporter

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(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Ronnie Smiley

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(SW) Krystal Allen

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EXHIBITS

Court's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
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2	Jury Note	X		218

1 (Whereupon, Holly Jenkins was the Court Reporter for
2 the voir dire and drawing a jury for this case.)

3 THE COURT: Is the defense ready to proceed?

4 MR. HAYES: Yes, Your Honor.

5 THE COURT: Bring the jury in, please.

6 MR. HAYES: I had a couple of motions.

7 THE COURT: What kind of motions do you have.

8 MR. HAYES: One would be to exclude the witnesses
9 under 615, Your Honor. To limit the use of the two prior
10 convictions under 609 and 404.

11 THE COURT: We will do the convictions when he
12 decides whether or not he is going to testify.

13 MR. HAYES: And I had a small motion for suppression
14 based on the chain of custody.

15 THE COURT: We will go through the chain of custody
16 when they try to put it into evidence. Any objection to
17 the sequestration?

18 MR. MILLER: No, Your Honor.

19 THE COURT: We will sequester the witnesses. Bring
20 the jury.

21 (Whereupon, the jury came into open court at
22 approximately 2:10 p.m.)

23 THE COURT: Thank you. I wanted to start right at
24 2:00 o'clock but I had some matters with some death
25 penalty lawyers out of a case in Lexington, it took a

1 little while. And then we had a right significant bond
2 hearing out of Barnwell that was involved in criminal
3 sexual conduct matter so we went over for just a few
4 minutes. I wanted to start right at 2:00 but we are not
5 too far behind. The first thing we have to do is stand
6 and raise your right hand to be sworn in for this
7 particular case and the Clerk will do so.

8 (Whereupon, the jury was sworn at approximately 2:11
9 p.m.)

10 THE COURT: Let me just make a few comments to get
11 started and sort of to tell you where we are going and
12 what you can expect. First of all, in this case as I told
13 you when we selected the jury, Mr. Cave is charged in two
14 indictments. One is burglary in the first degree and the
15 other is grand larceny involving goods between the value
16 of \$2,000.00 dollars to \$10,000.00 dollars. He has plead
17 not guilty to both of those indictments. And as I told
18 you by a plea of not guilty, that puts the burden on the
19 State of South Carolina to prove his guilt to you beyond a
20 reasonable doubt. I have been doing this now going on
21 eight years and we try cases all over the State. There
22 are two types of cases that we try. We try, like Judge
23 Barber is trying today, you could have easily gotten on
24 one of those jurys. Those are civil cases, automobile
25 wreck, you are suing your lawyer for messing up, your

1 doctor for deviating from the standard of care, breach of
2 contract, those are civil cases where the person suing is
3 asking for monetary damages from the defendant. And in
4 those kind of cases those parties come into court on equal
5 ground which is the scales of justice. And for the
6 plaintiff to prevail he has to prove his case or her case
7 by what we call the preponderance or greater weight of the
8 evidence. They have to tip the scales ever so slightly if
9 you weigh in evidence to prove the case, they come in
10 equal. To win he has to tip the scales ever so slightly,
11 that is his burden of proof in a civil case. In a
12 criminal case such as this where people are charged with,
13 in this particular situation burglary first degree and
14 grand larceny which is stealing, they come in and under
15 the Constitution they are presumed to be innocent. So the
16 scales of justice are tilted heavily in their favor under
17 the Constitution of the United States and the State of
18 South Carolina, they are presumed to be innocent. For the
19 State to prevail they have to prove their case by not the
20 preponderance of the evidence but by, beyond a reasonable
21 doubt. So they have to tip the scales in that manner. So
22 it is your job as jurors to determine whether or not the
23 State has met their burden of proof in presenting their
24 case. As I told you earlier you and I have two distinct
25 jobs to perform. My job is twofold. I instruct you, I

1 tell you what the law is in the case, in other words I am
2 the Judge of the law in the case. So you have agreed by
3 your oath to accept the law as I give it to you. If you
4 come into the courtroom with some preconceived idea about
5 what the law is or what it should be and it doesn't agree
6 with what I tell you you have to set aside those notions
7 and accept the law as I give it to you. And I normally
8 charge you on the law at the conclusion of the case. My
9 other function is to rule on the admissibility of
10 evidence. What you will be considering is evidence that
11 comes from this witness stand and/or from exhibits that
12 are relevant to the case. These lawyers have to play by
13 the rules of evidence and the rules of criminal procedure.
14 Ninety-nine percent of what they will ask will be proper,
15 if they object I have to rule on that. But once it is
16 admitted into the trial of the case that is where your
17 responsibility or your duties take over because the twelve
18 of you collectively acted as one, you are the Judges of
19 the facts in the case. And if this case is like any other
20 case I have ever tried you will hear different versions of
21 the facts, a different spin on the facts. Some witnesses
22 may say one thing, some may say another. It is up to you
23 to determine what the true facts are, you judge the
24 credibility or the believability of the witnesses who
25 testified. Use your ordinary common sense in doing that,

1 you all deal with husbands, wives, children, employees,
2 employers, friends, whatever. You know how to judge when
3 someone is telling the truth. You judge the credibility
4 or believability of the witnesses so at the end you decide
5 what the true facts are and you take those true facts and
6 you apply it to the law as I give it to you and you will
7 be in a position to render a verdict in the case. So that
8 is how it works. The State has the burden of proof as I
9 told you. They go first so they will be presenting their
10 witnesses first. At the conclusion of their witnesses
11 then the defense, if they choose to do so, has the right
12 to call witnesses, et cetera. And then the State may have
13 something in reply. That gets us through the testimony.
14 Before the testimony starts the lawyers will make an
15 opening statement. After the testimony they will make
16 their final arguments, after the final arguments are made
17 I will charge and instruct you on the law and then you
18 will go back to your jury room and start deliberating
19 whether or not the State has proven the case beyond a
20 reasonable doubt. We will go to about 5:00 o'clock this
21 afternoon, we will start in the morning probably 9:30 if
22 that is okay. I will try to buy you some breakfast in the
23 morning. I am not trying to run an endurance race up here
24 but I am trying to be efficient. But at the same time if
25 any of you become uncomfortable, if you need to go to the

1 bathroom, need to get something to drink or you are tired
2 and you get tired of listening to me raise your hand and
3 we will take a break. We normally take a break in the
4 afternoon and we normally take one in the mornings but if
5 we need an extra one that is no problem, we will do that.
6 Don't get uncomfortable, raise your hand and I will make
7 sure that anything you need is taken care of. From time
8 to time you will recess back to your jury room whether it
9 be a break or whether I am having to handle a matter of
10 law that I need to do outside of your presence. And I am
11 going to tell you now and I will tell you that each time
12 we take a break please do not start deliberating the case,
13 talking about the case until it is completely finished.
14 You can talk about anything you want to in the jury room
15 but don't talk about the case until it is finished. I
16 will ask you when we take a break to select a foreperson
17 among the twelve of you. The foreperson is simply the
18 spokesperson for the jury. You will head up the
19 deliberations, you will bring any concerns any of the
20 jurors may have to my attention. It is not a real
21 tremendous responsibility but we need someone to serve in
22 that position and I normally let my jurors select among
23 them. If y'all can't decide on somebody then I will
24 randomly pick somebody's name. In just a few minutes you
25 will hear what we call the opening statements, the State

1 goes first followed by the defendant. Please bear in mind
2 that the opening statements is not, is not evidence in
3 this case. It is simply what the lawyers will contend on
4 the issues in the case, what they intend to prove to you,
5 sort of a road map to their case, which way they are going
6 and the defenses they intend to use but that is not
7 evidence. As I said earlier, the only evidence you can
8 consider comes from the witness stand from sworn witnesses
9 who have sworn to testify truthfully. So without having
10 anything further we are going to start. Any objections to
11 my opening remarks by the State?

12 MR. MOLONY: None by the State.

13 THE COURT: By the defendant.

14 MR. HAYES: No, Your Honor.

15 THE COURT: The State will make the first opening
16 statement followed by the defendant and then we will start
17 by having testimony. Mr. Molony.

18 MR. MOLONY: Thank you, Your Honor, if it please the
19 Court.

20 THE COURT: Yes, sir.

21 MR. MOLONY: Ladies and gentlemen, good afternoon. A
22 witness, no crime in the history of our criminal lawsuits
23 can be solved without a witness. Sometimes witnesses will
24 come in many different forms. We have all heard of an
25 eyewitness, someone who actually sees a crime take place

1 and then later can go and testify that I saw so and so
2 commit this crime. When you have videos in businesses
3 where there are surveillance images you can later go back
4 and look at those videos and see this person committing
5 this crime. You also have evidence that is found at the
6 scene that will be some of our best witnesses and that is
7 why we are here today. On May 2nd of 2011 the defendant
8 in this case, Albert Cave, decided that he was going to
9 break into the home of Mr. and Ms. Smiley located at [REDACTED]
10 [REDACTED] in North Augusta, South Carolina.
11 He did that, he took two televisions and he took a laptop
12 computer. See, Mr. Cave the defendant realized that no
13 one was going to be home, he waited until no cars were
14 there and made sure there would be no eyewitness. He did
15 it at a residence, he didn't go to a gas station or a
16 Walmart, something that had video surveillance. He made
17 sure there would be no videos in doing this. But what he
18 didn't count on, what he didn't count on was leaving a
19 witness so distinct to himself that it is impossible for
20 him to escape the culpability in this crime. He left
21 behind his fingerprint. You will hear from the victim in
22 this case, both of them. You will hear from Ms. Smiley,
23 she will testify that she left, she left her home in
24 working order, the TV is still there, the computer is
25 still there. When she came home everything had changed,

1 the TV is gone, the computer is gone and she went through
2 that house and was able to identify pieces of paper that
3 she knew had been moved from when she left that home until
4 she got back home. And you will hear why she knows that.
5 The papers are moved, she tells Deputy Kostyk with the
6 Aiken Sheriffs Office and you will hear from him, he takes
7 that evidence of those papers. Those papers later end up
8 at the forensic lab at the Aiken County Sheriffs Office.
9 Well you will get to see the pieces of paper, you will see
10 the fingerprints that were taken off of it and you will
11 see the fingerprints of the defendant. You will see them
12 side by side and you will hear almost like the TV shows,
13 exactly how they matched that piece of paper to the
14 fingerprints of the defendant. See Mr. Cave planned
15 everything to make sure no one or nothing saw him commit
16 this crime so he wouldn't be caught. But what he didn't
17 count on was actually catching himself to what he did.
18 Now, at the end of this trial Judge Early is going to tell
19 you what the law is in this case. Ultimately the
20 defendant is charged with burglary in the first degree and
21 grand larceny. So the State must prove beyond a
22 reasonable doubt that the defendant broke into the
23 Smiley's home without consent and that he had the intent
24 when he breaks into that home to commit a crime and that
25 crime is the grand larceny, the taking of the television

1 and the computer. And you will hear throughout the trial
2 that the case bears the burden of proving to you beyond a
3 reasonable doubt, you will hear what reasonable doubt is.
4 But I just want you to know that, Mr. Miller and I, that
5 it is the burden that we welcome with open arms. And we
6 will prove to you at the end of this case, you will go
7 back and deliberate, and we will have proven to you that
8 the defendant is guilty beyond a reasonable doubt of both
9 burglary and grand larceny. Thank you.

10 THE COURT: Mr. Hayes.

11 MR. HAYES: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. HAYES: Ladies and gentlemen, you just heard the
14 Solicitor state that they take on this burden with open
15 arms. They have got this burden to prove beyond a
16 reasonable doubt that a crime happened and that Mr. Cave
17 is the one that did it. Now, they do that by bringing you
18 evidence. And I pose this, in trying to think how I am
19 going to make my opening. I came across two different
20 quotes by Colin Powell and one is this. Don't be afraid
21 to challenge to pros even on their home field, in their
22 own back yard. And I am going to put it this way. The
23 State is the pros and I am saying challenge them, they
24 have to bring this, they have to bring to you enough
25 evidence for you to believe beyond a reasonable doubt that

1 a crime happened. He also says this, keep looking below
2 surface appearances, don't shrink from doing so just
3 because you might not like what you find. And I ask
4 y'all, take that quote into consideration and when you are
5 hearing the testimony and you are looking at possible
6 exhibits that are entered into evidence, look at them,
7 look deep past them. And in doing so you are challenging
8 the State. You are challenging the State to bring the
9 evidence. If they don't bring the evidence your job as
10 the jury would be to acquit Mr. Cave. If you believe they
11 brought the evidence your job is to find him guilty. All
12 I ask is that y'all listen carefully to each and every
13 individual who testifies, look closely at every exhibit
14 that is placed into evidence and then consider it in your
15 deliberations.

16 THE COURT: You may call your first witness.

17 MR. MOLONY: Judge, the State calls Ronnie Smiley.

18 RONNIE SMILEY, being

19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Molony:

22 Q Mr. Smiley, where do you live?

23 A [REDACTED] North Augusta, South
24 Carolina.

25 Q Can you explain to the jury where that is in North

1 Augusta?

2 A That is in Aiken County.

3 Q And who lives with you in this home?

4 A Me and my wife.

5 Q And how long have y'all lived there?

6 A 28 years.

7 Q Mr. Smiley, I am going to go back to May the 2nd of
8 this year. Do you recall what happened that day?

9 A Yes.

10 Q And what happened?

11 A My wife called me later on that evening and told me
12 the house had been burglarized.

13 Q I am going to show you what has been marked as
14 State's exhibit 1. Do you know what that is?

15 A That is the front of my house.

16 Q And is this picture a true and accurate photograph of
17 how the front of your house would have looked on or about
18 May the 2nd of 2011?

19 A Yes, it is.

20 MR. MOLONY: Your Honor, at this time the State moves
21 to introduce 1 into evidence.

22 THE COURT: Any objection?

23 MR. HAYES: No, Your Honor.

24 THE COURT: Without objection.

25

1 (Whereupon, State's Exhibit 1 was admitted into
2 evidence.)

3 Q Now, Mr. Smiley, I am going to show you what has been
4 marked as State's exhibit 2. Do you recognize this, just
5 yes or no.

6 A Yes.

7 Q And what is this?

8 A That is a board I put up after the one that has been
9 broken out of my house.

10 Q And what is the board over?

11 A It is covering a hole that was knocked out.

12 Q And when did you put this board up under this window?

13 A The day after the, the officer left after he did his
14 investigation and I went and got that board and put it up
15 at my house.

16 Q Now, is this photograph a fair and accurate
17 representation of how your window would have looked after
18 you boarded it up on May the 2nd of 2011?

19 A Yes, that is it.

20 MR. MOLONY: Your Honor, the State moves to introduce
21 exhibit 2 into evidence.

22 MR. HAYES: No objection.

23 THE COURT: Without objection.

24 (Whereupon, State's Exhibit 2 was admitted into
25 evidence.)

1 Q Mr. Smiley, what time did you leave your house that
2 morning?

3 A About 6:00 in the morning.

4 Q And where were you going?

5 A I was going to work.

6 Q And where do you work?

7 A I work in Augusta at Richmond County School System in
8 the maintenance department.

9 Q And how long have you been employed there, had that
10 job?

11 A 25 years.

12 Q What time did you return to your house that day?

13 A I came home after my wife called me and told me it
14 had been broken in, it was probably about 3:30. I get off
15 at 4:00.

16 Q You said your wife called you?

17 A Yes, she did.

18 Q And when you got there what did you notice?

19 A She was in the street waiting on the officer to come
20 do a report. We never did go into the house until he got
21 there.

22 Q Once you got in what did you notice had been taken
23 from your home?

24 A We noticed after we walked through with the officer
25 that two TV's was missing and my wife's laptop was

1 missing.

2 Q What was the value of those two television sets and
3 that computer that was taken?

4 A About \$2,200.00 dollars.

5 Q Mr. Smiley, do you know the defendant in this case?

6 A No, I do not.

7 Q Have you ever seen him before today?

8 A No, I did not.

9 Q Is there any reason he should be in your home on May
10 the 2nd of 2011?

11 A No, no reason.

12 Q Thank you, I don't have any more questions.

13 THE COURT: Mr. Hayes, cross.

14 CROSS-EXAMINATION

15 By Mr. Hayes:

16 Q How are you doing, Mr. Smiley?

17 A Doing good.

18 Q Mr. Smiley, in State's exhibit number 1, you are
19 saying that is your house?

20 A Yes, it is.

21 Q Where is State's exhibit 2, the window?

22 A It is on the back side of the house.

23 Q Is it behind the carport or is it on the other side
24 of the house?

25 A It will be behind the carport.

1 Q Okay. Behind your carport. How many windows do you
2 have back there?

3 A Two.

4 Q Is this one the farthest one out or is it closer in?

5 A It is, you have got one, two, three, big picture
6 window. It is right next to the picture window.

7 Q Then there is a corner right there by that picture
8 window, right?

9 A Yes.

10 Q Picture window is here if you are looking at it and
11 then this one?

12 A It would be right next to the picture window, yes
13 sir.

14 Q Do you store your trashcans underneath that window?

15 A We have got some trashcans, yes sir.

16 Q Is that the common place for them?

17 A Yes.

18 Q Were any of those moved?

19 A I am not sure.

20 Q When you got home did you notice any of them outside
21 of where you normally would store them?

22 A There was a lot of glass around so I guess they had
23 been moved.

24 Q Was the glass outside or was the glass inside?

25 A It was both, inside and outside.

- 1 Q How high up is that window from the ground?
- 2 A I would say about eight foot.
- 3 Q About eight feet from the ground to the ledge of this
- 4 window?
- 5 A To the ledge?
- 6 Q Yes, sir.
- 7 A The top would be about eight foot, the bottom
- 8 probably would be about five foot.
- 9 Q Okay. So when you are saying top--
- 10 A -- where the board is.
- 11 Q The top of the board or just where the board is here?
- 12 A Where the top of the frame is.
- 13 Q Okay. And at the bottom window, the windowsill is
- 14 how far off the ground?
- 15 A I would say about four or four and a half, five foot.
- 16 I am not sure.
- 17 Q Is there any ledges or steps or anything underneath
- 18 that window?
- 19 A No, sir.
- 20 Q Can you tell me a little bit about the inside of your
- 21 house. Do you have other items of value, other TV's?
- 22 A Yes, sir.
- 23 Q How many?
- 24 A In the den there was another flat screen mounted on
- 25 the wall. In my grandson's room there was another TV.

- 1 And in the kitchen there is one mounted.
- 2 Q Do you have any jewelry?
- 3 A Just watch and rings, that is it.
- 4 Q Do you have a jewelry box that you keep them in?
- 5 A Yes.
- 6 Q Was it disturbed?
- 7 A Our bedroom was ramshacked, yes.
- 8 Q Was any of those items taken?
- 9 A No, sir.
- 10 Q Do you have any guns?
- 11 A No, sir.
- 12 Q Do you have a Wii or a PSP or a Nintendo or a gaming
13 console?
- 14 A No, sir.
- 15 Q Do you have any cameras?
- 16 A No.
- 17 Q Do you have a DVD player or a Blue-Ray?
- 18 A DVD player.
- 19 Q DVD. Were any of those items disturbed or taken?
- 20 A No.
- 21 Q Where was the DVD player kept?
- 22 A In the den next to the TV that is mounted on the
23 mantle.
- 24 Q What is behind this window here?
- 25 A That is the dining room.

- 1 Q What is on the other side of the window, is there a
2 table or is there chairs or is there shelving?
- 3 A No.
- 4 Q So you come through your window and you are in your
5 dining room?
- 6 A Yes.
- 7 Q If you were to look left, what is left?
- 8 A Left you would be looking into the den.
- 9 Q Den. To the right?
- 10 A Kitchen.
- 11 Q Do you have a printer or a wireless router that you
12 use for your computer?
- 13 A Yes.
- 14 Q Do you have a desktop?
- 15 A Yes.
- 16 Q Mr. Smiley, what rooms were the TV's in that were
17 taken?
- 18 A One was in our bedroom, me and my wife's bedroom.
19 The other one wasn't used yet, it was still sitting in the
20 box we had bought at Christmas holidays.
- 21 Q How big were these TV's?
- 22 A One in our bedroom was a 37 inch and one in the box
23 was a 32 inch.
- 24 Q Tell me a little bit about your bedroom, what else is
25 in your bedroom?

1 THE COURT: Mr. Hayes, let's, if you want to know
2 what specifically is in his bedroom, I can sit here all
3 day long and tell you what is in my bedroom.

4 MR. HAYES: Yes, sir.

5 THE COURT: Clothes, how is that relevant. Go ahead,
6 ask specific questions.

7 Q Any other items of value in your bedroom, you said
8 you had some jewelry, was that in your bedroom?

9 A Yes.

10 Q You said you had the one in the box, the TV, that was
11 from Christmas. What room was it sitting in?

12 A That was in the front room.

13 Q What do you mean by front room?

14 A The very front room, it is my wife's office where the
15 laptop was.

16 Q Is there a filing cabinet in that office?

17 A A very small file cabinet.

18 Q There is paper stored I assume in that filing
19 cabinet?

20 A Yes.

21 Q Any other furniture in that room?

22 A Just a desk, a work desk, chairs.

23 Q Is there a lamp?

24 A Yes.

25 Q Is that where the wireless router was at?

- 1 A No.
- 2 Q Or the printer?
- 3 A There was a printer in there.
- 4 Q Where is your printer and wireless router at?
- 5 A The router is in the den.
- 6 Q Your den would be the living room?
- 7 A No, the living room, the den and the dining room.
- 8 When you come through the, the window he came through, you
- 9 go to the left you will be in the den.
- 10 Q And then from the den you would go into another room
- 11 and that would be your living room?
- 12 A You have to go through the dining room to get to the
- 13 den, that is right to the front door.
- 14 Q Okay. Mr. Smiley, how do you get the value of the TV
- 15 at Christmas. Do you have a receipt for it?
- 16 A Yes, we did.
- 17 Q Where was it purchased from?
- 18 A It was purchased from Sam's Warehouse.
- 19 Q And the TV in your bedroom, how old is it?
- 20 A We bought it at the same time.
- 21 Q And you have the receipt for it?
- 22 A Yes.
- 23 Q Do you remember specifically what the value of each
- 24 one was?
- 25 A No, not specifically.

1 Q How about the laptop, Mr. Smiley?

2 A That was purchased by my wife. I don't know exactly
3 how much that was.

4 Q Did you get any of the items back?

5 A Yes, sir.

6 Q What items did you get back?

7 A The laptop.

8 Q You got that back because Richland County brought it
9 to you?

10 A They found it, yes sir.

11 Q They call you and tell you to come get it or did they
12 bring it to you?

13 A They called my wife and I think she went and picked
14 it up.

15 Q Nothing further.

16 THE COURT: Anything on redirect?

17 MR. MOLONY: Very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 By Mr. Molony:

20 Q Mr. Smiley, I want to show you State's exhibit 2.
21 The window. Can you step down for one second. I just
22 want you to tell the jury, this is the top part of the
23 window?

24 A Yes.

25 Q And it was broken out?

1 A It was.

2 Q Now, how was the window opened?

3 A He broke the whole lock and let the window up.

4 Q To where the bottom part of the window would actually
5 have been opened?

6 A Yes.

7 Q I don't have any more questions.

8 THE COURT: You may step down.

9 MR. MILLER: The State calls Krystal Allen.

10 KRYSTAL ALLEN, being

11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Miller:

14 Q Ms. Allen, where do you live?

15 A I live in Augusta, Georgia.

16 Q And how long have you lived in Augusta?

17 A Since January the 28th of this year.

18 Q Do you have any family in North Augusta?

19 A Yes, I do.

20 Q And what family lives in North Augusta?

21 A Ronnie and Delane Smiley.

22 Q And how are you related to them?

23 A Aunt and Uncle.

24 Q Okay. Going back to the day of May the 2nd of this
25 year did you go to your Aunt and Uncle's house at [REDACTED]

1 [REDACTED] on May the 2nd?

2 A Yes, I did.

3 Q And what time did you arrive there?

4 A I first arrived there around 11:00, I came to speak
5 with my Aunt and she wasn't there and I came back again a
6 little before 3:00.

7 Q When you were there at 11:00 o'clock what did you do
8 while you were at the house?

9 A I knocked on the window in the back because I thought
10 she was inside, I thought her car was parked in the garage
11 and I rang the doorbell and everything and she wasn't
12 there. I even sat there for a little while and waited on
13 her.

14 Q When you say you rang the doorbell, where is the
15 doorbell located?

16 A It is in the front yard, the front yard.

17 Q Let me show you this picture real quick, this is
18 State's exhibit 1. Is the doorbell, is that the door
19 where the doorbell is located?

20 A Yes.

21 Q When you rang that doorbell was the door open?

22 A No, the door was not open.

23 Q Where was your car parked while you were waiting?

24 A The car was parked in the back by the garage.

25 Q Okay. Did you eventually leave your Aunt's house?

- 1 A Yes, I did.
- 2 Q Where did you go after that?
- 3 A I went back to Augusta, Georgia to call her.
- 4 Q Okay. And did you get in touch with her?
- 5 A Yes, I did.
- 6 Q What happened next?
- 7 A We discussed meeting up with one another to help for
8 the banquet that night.
- 9 Q What kind of banquet was it, do you know?
- 10 A It was a scholarship banquet for our church.
- 11 Q Did you eventually go back to your Aunt's house?
- 12 A Yes, I did.
- 13 Q And where was your Aunt at that time?
- 14 A Actually I pulled up first and she pulled up right
15 behind me.
- 16 Q Where did you park?
- 17 A I parked in the front right in front of the front
18 yard, the picture you just showed.
- 19 Q And where did your Aunt park?
- 20 A She pulled up along the side, not going into the
21 carport.
- 22 Q So she stopped, she was going--
- 23 A --she stopped, yes.
- 24 Q What happened after you parked your car?
- 25 A Well, when I parked my car, first of all when my Aunt

1 was pulling up she was in my Uncle's truck so I thought it
2 was my Uncle and I thought she was already inside because
3 I seen the front door open. And as I was getting out of
4 the car she rolled the window down and I realized it was
5 her. And she said did I open the front door and I said
6 no. And so she told me to go up and look and I went up to
7 the door and looked and seen the black bag in the middle
8 of the hallway floor toppled over that is normally not
9 there.

10 Q What did you do next?

11 A I told her what I saw and then she said someone has
12 broken into my house. So she reached for her cell phone
13 but I took it upon myself to go around in the carport and
14 look in the back and that is where I seen the glass
15 knocked out onto the ground, the glass window.

16 Q Did you call the police or did your Aunt call the
17 police?

18 A My Aunt called the police.

19 Q And when did you leave the house?

20 A I left the house when the police arrived.

21 Q Okay. And why did you leave the house?

22 A Because we were on a time schedule still for the
23 banquet, I had to go pick up the table cloths from the
24 cleaners for her.

25 Q Did you ever talk to the police that day?

1 A No, I never got a chance to talk to the police.

2 Q Did you ever, actually go inside of your Aunt's house
3 on May 2nd of 2011?

4 A No.

5 Q Do you know the defendant in this case, Mr. Albert
6 Cave?

7 A No.

8 Q Have you ever seen the defendant before sitting here
9 in this courtroom?

10 A No, sir.

11 Q Did you let the defendant or anybody else into the
12 house that day?

13 A No, sir.

14 Q Please answer any questions Mr. Hayes has for you.

15 CROSS-EXAMINATION

16 By Mr. Hayes:

17 Q Ms. Allen, you were there at 11:00 o'clock?

18 A Yes.

19 Q Did you see any cars?

20 A No.

21 Q Did you see anybody?

22 A No.

23 Q Did you notice anything out of the ordinary?

24 A No, sir.

25 Q And you came back at what time?

- 1 A A little before 3:00.
- 2 Q A little before 3:00?
- 3 A P.M., yes.
- 4 Q That is when you saw the front door open?
- 5 A Yes.
- 6 Q Nothing further.
- 7 THE COURT: Anything else?
- 8 MR. MILLER: Nothing.
- 9 THE COURT: Thank you, Ma'am.
- 10 MR. MILLER: Your Honor, the State would request Ms.
- 11 Allen to be released from her subpoena.
- 12 THE COURT: Okay. Next witness.
- 13 MR. MOLONY: The State calls Delane Smiley.
- 14 DELANE SMILEY, being
- 15 first duly sworn, testified as follows:
- 16 DIRECT EXAMINATION
- 17 By Mr. Molony:
- 18 Q Ms. Smiley, where do you live?
- 19 A I live at [REDACTED] Carolina [REDACTED] North Augusta,
- 20 South Carolina.
- 21 Q Do you live there with your husband?
- 22 A I do.
- 23 Q And how long have y'all lived there?
- 24 A Twenty plus years.
- 25 Q Is that in Aiken County?

- 1 A Yes, it is.
- 2 Q Ms. Smiley, I am going to take you back to May the
3 2nd of this year. Do you remember what happened that day?
- 4 A Yes, sir. I was coming home from Augusta and when I
5 got home I was supposed to be meeting my niece there and
6 she got there a little before I did. Both of us kind of
7 pulled up into the--
- 8 Q I am just going to stop you real quick, I am sorry.
9 Overall do you remember what happened that day?
- 10 A Yes, my house was broken into when I got home.
- 11 Q What time did you leave your house that morning?
- 12 A It was early, before 10:00.
- 13 Q Before 10:00?
- 14 A Before 10:00 a.m.
- 15 Q And where were you going?
- 16 A I went to Julian Smith Casino.
- 17 Q And where is that?
- 18 A That is in Augusta, Georgia, Broad Street.
- 19 Q What were you going there for?
- 20 A I was setting up for a church function for that
21 evening.
- 22 Q When did you return to your house?
- 23 A It was about ten minutes to 3:00.
- 24 Q Ten minutes to 3:00?
- 25 A Yes.

- 1 Q Who was with you, anybody when you returned home?
- 2 A My niece was in front of me in another vehicle.
- 3 Q Your car was behind her's?
- 4 A Yes, I was behind her in my husband's truck.
- 5 Q And where did your niece park?
- 6 A She parked directly in front of my front door.
- 7 Q And where did you park?
- 8 A I drove up the right side of my driveway.
- 9 Q When you got out and your car was parked could you
- 10 see your niece where she was parked?
- 11 A She got out of the vehicle when she parked. And when
- 12 I drove up the right side I saw that the front door was
- 13 open so I didn't get out, I rolled my window down to tell
- 14 her, ask her why was my door open. She had already went
- 15 up the steps to my door.
- 16 Q And then what happened next?
- 17 A I told her, I said the door is open. And she said I
- 18 thought you left it open for me. And she was telling me
- 19 she saw my black case on the door. I said, don't come in
- 20 the house, come out, somebody has broken into the house.
- 21 I said, come out, come down the steps and she did and went
- 22 around to my carport and when she looked on the back side
- 23 of the house she said the whole window is out, Aunt
- 24 Delane. I said come get in the truck, just get in the
- 25 truck.

- 1 MR. HAYES: Objection.
- 2 THE COURT: What is the objection.
- 3 MR. HAYES: Hearsay.
- 4 MR. MOLONY: I will ask another, Your Honor.
- 5 Q Who, if anybody, called the cops?
- 6 A I did.
- 7 Q And where were you when you called law enforcement?
- 8 A I was still in the truck backing out of my drive.
- 9 Q During this whole time did you see anybody enter the
- 10 home?
- 11 A I did not.
- 12 Q Did you see anybody exit the home?
- 13 A No.
- 14 Q Did a deputy ultimately arrive at your house?
- 15 A Yes.
- 16 Q And what happened after the deputy arrived?
- 17 A He went in to investigate and everything and we
- 18 stayed outside until he came back out to get us.
- 19 Q Okay. And then after he came back out what did y'all
- 20 do next?
- 21 A We went inside and he did a walk through in the house
- 22 for us to tell him what was missing and everything.
- 23 Q And during this walk-through what, if anything, did
- 24 you see that was out of place?
- 25 A My dining room window was broke and the glass and

1 everything was all over the floor. There was a shovel
2 leaning up against the outside of the window. Our bedroom
3 was basically tore up, stuff was just everywhere all over
4 the floor. We had a flat screen in there, it was gone.
5 Everything else was on the floor. And then also in my
6 living room, half of that is my office and so I had a
7 laptop that was sitting up there, the Dell laptop was gone
8 and stuff was just turned around and throwed around in my
9 office part.

10 Q Ms. Smiley, I am going to show you what has been
11 marked as State's exhibit 3. And this is a photocopy,
12 this is not the exact document but do you recognize this,
13 yes or no?

14 A Yes.

15 Q And what is this?

16 A Those are papers that were laying on the inside of my
17 laptop.

18 Q How do you know that these papers were all on the
19 inside of your laptop before you left to go to Augusta?

20 A Because I put them there the night before. I was in
21 my office that night working and so when I finished I laid
22 those papers on the top of the laptop.

23 Q And when you left to go to Augusta they were on the
24 top of that laptop?

25 A Yes, sir.

- 1 Q Where were they when you got back?
- 2 A They were in the chair, in the office chair.
- 3 Q And upon realizing that those papers had been moved
- 4 what happened next?
- 5 A The officer, the deputy asked me was I sure that I--
- 6 MR. HAYES: Objection, hearsay, Your Honor.
- 7 THE COURT: Sustained.
- 8 Q Did you eventually tell law enforcement that those
- 9 papers had been moved?
- 10 A Yes.
- 11 Q And what did the deputy do with those papers?
- 12 A He told me that he was going to--
- 13 MR. HAYES: Objection.
- 14 THE COURT: Stop. What did he do with them?
- 15 A He removed the papers, he dusted the papers, he was
- 16 going to take the papers for evidence to dust them for
- 17 fingerprints.
- 18 Q So he collected the papers?
- 19 A Yes.
- 20 Q Ms. Smiley, do you know the defendant in this case?
- 21 A No.
- 22 Q Have you ever seen Albert Cave before today in this
- 23 courtroom?
- 24 A No.
- 25 Q Is there any reason his fingerprints should have been

1 on those papers in your house?

2 A No.

3 Q I don't have any more questions.

4 THE COURT: Mr. Hayes.

5 CROSS-EXAMINATION

6 By Mr. Hayes:

7 Q Ms. Smiley, those papers, where did they originally
8 come from?

9 A They were papers that I had typed up.

10 Q So you created those documents?

11 A Yes.

12 Q How long had you had them?

13 A Since probably February of this year.

14 Q Were they always in your office?

15 A Yes.

16 Q So they never left the house?

17 A No, not those papers.

18 Q Where do you keep your papers?

19 A Those papers?

20 Q Where were they kept, where did you store them?

21 A In my office.

22 Q Did you have a filing cabinet that you stored them
23 in, did you have a folder that you stored them in or did

24 you just have them stacked up off to the side on the desk?

25 A They were previously, those were never in a folder or

- 1 anything. They were right there where that laptop is from
2 the time I printed them off.
- 3 Q When did you print them?
- 4 A Back in February.
- 5 Q Okay. And where did they go in February when you,
6 you just left them on top?
- 7 A No, there was several other copies. Those were
8 copies that were left, those were prepared for a meeting
9 that I chaired and so the other copies were taken to the
10 meeting and given to the members of those meetings, they
11 were extra copies that were left there.
- 12 Q How did you know that they didn't go to the meeting?
- 13 A Because I didn't take them.
- 14 Q But you took other copies?
- 15 A Yes, they were in a folder. I have a folder for that
16 specific meeting and I had the other copies in that
17 folder.
- 18 Q When was that meeting?
- 19 A That was in February.
- 20 Q What meeting is that?
- 21 A That was the Augusta District Scholarship meeting
22 that I chair. It is a church committee.
- 23 Q That is for scholarships?
- 24 A Yes.
- 25 Q Any particular school?

- 1 A Church scholarships.
- 2 Q Now your laptop, you purchased it?
- 3 A Yes.
- 4 Q You know what the value of it was?
- 5 A It was over \$1,200.00 dollars when I purchased it.
- 6 Q You still have your receipt?
- 7 A I do.
- 8 Q Where did you purchase it from?
- 9 A I purchased it from a, one of my church members has a
10 computer business and he ordered it for me from Dell.
- 11 Q How long have you had it?
- 12 A Five years or more.
- 13 Q The TV's, do you know how much you paid for each one
14 of the TV's?
- 15 A Total, over \$700.00 dollars.
- 16 Q Do you remember what each one cost by chance?
- 17 A No.
- 18 Q So they were purchased together?
- 19 A Yes, they were purchased together.
- 20 Q Your laptop, you had left it in the office?
- 21 A Yes.
- 22 Q Was it sitting in the chair or was it sitting on the
23 desk?
- 24 A It was sitting on a little side table, little side
25 desk table that set up where I always sit it on the top of

- 1 the fan, desktop fan.
- 2 Q Was the table moved that it was sitting on by any
- 3 chance?
- 4 A It was, the top of it was twisted and then the file
- 5 cabinet was moved.
- 6 Q How big is your filing cabinet?
- 7 A It is a two drawer filing cabinet.
- 8 Q How far was it moved?
- 9 A It was tilted sideways a little bit from the position
- 10 it usually sits in.
- 11 Q Anything in it disturbed?
- 12 A No, the drawers weren't open.
- 13 Q Now you testified about a black bag in the doorway,
- 14 what is this black bag?
- 15 A The black bag, it looks like a laptop bag but it was
- 16 my EKG machine that I usually use to work with, it was in
- 17 the middle of the floor going out of the door.
- 18 Q How big is it?
- 19 A It is about the size of a, a little bit bigger than,
- 20 it is about this wide.
- 21 Q That is two feet wide?
- 22 A Yeah, about two or three feet wide. It is a little
- 23 bit bigger than a laptop I guess.
- 24 Q Where do you normally store it?
- 25 A It is usually sitting in my office next to a chair

- 1 that is there, a green lounge chair.
- 2 Q How heavy is it?
- 3 A A couple of pounds.
- 4 Q Two pounds?
- 5 A Yes, two pounds.
- 6 Q When did you purchase those two TV's?
- 7 A We got those in December during the Christmas
- 8 holidays, I believe it was Black Friday we went out
- 9 shopping.
- 10 Q Can you tell me where you got those two TV's on Black
- 11 Friday?
- 12 A Sam's.
- 13 Q Sam's Club?
- 14 A Yes.
- 15 Q And you paid \$700.00 dollars for both of the TV's?
- 16 A It was over \$700.00 dollars.
- 17 Q Was it less than \$800.00?
- 18 A I believe it was.
- 19 Q It was less than \$800.00?
- 20 A Yes.
- 21 Q You paid \$1,200.00 for a laptop?
- 22 A Yes, I believe it was a little over \$1,200.00 dollars
- 23 for the laptop.
- 24 Q Five years ago?
- 25 A Yes.

- 1 Q Nothing further.
- 2 THE COURT: Redirect?
- 3 MR. MOLONY: No redirect, Your Honor.
- 4 THE COURT: You may step down. Next witness.
- 5 MR. MOLONY: Your Honor, may Ms. Smiley be released
6 from her subpoena?
- 7 THE COURT: Yes.
- 8 MR. MILLER: The State calls Deputy Darryl Kostyk to
9 the stand.
- 10 DARRYL KOSTYK, being
11 first duly sworn, testified as follows:
- 12 DIRECT EXAMINATION
- 13 By Mr. Miller:
- 14 Q Deputy Kostyk, who are you employed by?
- 15 A The Aiken County Sheriffs Office.
- 16 Q And how long have you been working at the sheriffs
17 office?
- 18 A For two years.
- 19 Q Prior to working in Aiken County did you have any
20 other experiences as a law enforcement officer?
- 21 A Yes, I did. I worked for approximately five years in
22 Orangeburg and approximately ten years in Pennsylvania.
- 23 Q What did your job duties consist of when you were in
24 Pennsylvania?
- 25 A I was a detective.

1 Q What are your current duties with the Aiken County
2 Sheriffs Office?

3 A I am a road patrol deputy.

4 Q Deputy Kostyk, were you working with the Aiken County
5 Sheriffs Office on May the 2nd of 2011?

6 A Yes, sir.

7 Q Did you respond to the burglary call at [REDACTED] [REDACTED]
8 [REDACTED] North Augusta in reference to a burglary?

9 A Yes, I did.

10 Q When you got to that incident location who did you
11 speak with?

12 A I spoke with and I am sorry if I mess up your last
13 name, sir, it is Smile's, Mr. Smile's.

14 Q Smiley?

15 A Smiley, yes..

16 Q Is this the first time you had ever worked a
17 burglary?

18 A No, sir.

19 Q What is your normal routine when you respond to a
20 home that has been reported as burglarized?

21 A I always meet with the complainant or victim that is
22 there and I ask them what happened, kind of walk me
23 through what you perceive as happened. I go through and
24 have them show me what was taken from where, go through
25 the whole thing from start to end. And from there I would

1 go back and start doing some of the paperwork. While we
2 are doing that, as we go through everything I take mental
3 notes about what areas I am going to focus on to see about
4 obtaining any possible evidence. And after we get the
5 paperwork started I go back and try to collect that
6 evidence.

7 Q Moving back to the incident at [REDACTED] Carolina Springs
8 Road is that the process generally you went through that
9 day?

10 A Yes, sir.

11 Q Did you take any pictures of the scene?

12 A I did not.

13 Q Why didn't you take any pictures?

14 A I didn't have a department issued camera.

15 Q After walking through the home to identify things
16 that had been stolen or moved what did you do next?

17 A I am sorry, sir, can you repeat that?

18 Q After you had walked, you testified that you walked
19 through the home with the Smiley's to identify what had
20 been stolen or moved. What did you do next after you had
21 that discussion with them?

22 A I went back through and started looking for evidence
23 to collect.

24 Q What kind of equipment do you have that is issued by
25 the County to help you discover potential evidence?

1 A All I have is what we call basic fingerprint kit.

2 Q Can you kind of describe that fingerprint kit?

3 A I can. It is a small amount of fingerprint dust and
4 a small applicator to spread it around with and some what
5 we call fingerprint lifting tape.

6 Q Were you able to identify any prints that would be of
7 value for identification using your equipment at the crime
8 scene?

9 A I was not.

10 Q There has been discussion previously about a shovel
11 that may have been used to break a window to gain entry
12 into the residence. Did you collect any fingerprints off
13 of the shovel?

14 A I did not.

15 Q And why not?

16 A The shovel was old with a wooden handle. It has been
17 my training and experience, it is extremely difficult and
18 unusual to be able to obtain any--

19 MR. HAYES: Objection, he is not an expert, he hasn't
20 been qualified as an expert.

21 THE COURT: He is not giving an opinion, he is
22 talking about his opinion, he is talking about experience,
23 overruled.

24 A It has been my training and experience that you are
25 not going to get any fingerprints off of it with what I

1 had available to me. In addition to that, I wasn't
2 one-hundred percent convinced that afternoon that that
3 shovel had actually been used in the commission of the
4 crime.

5 Q Were you able to collect any evidence out of the
6 Smiley's home?

7 A I was. The area that the laptop computer was taken
8 from was a desk, it had a filing cabinet and like a little
9 computer desk and Ms. Smiley had indicated to me that some
10 papers that had been on top of her laptop computer were
11 now laying in the chair. So I wanted to collect those and
12 it appeared the area there with the filing cabinet was had
13 been disturbed. So I did utilize the fingerprint kit in
14 an attempt to find some latent fingerprints on the filing
15 cabinet without any success. And I did then collect the,
16 from the papers that had been moved, I don't remember how
17 many sheets of paper it was but using a little bit of
18 experience the top piece of paper and the bottom piece of
19 paper is what someone is going to touch, they are not
20 going to rifle through all of the papers. So I collected
21 the top piece of paper and the bottom piece of paper for
22 further, for better processing at our laboratory.

23 Q I am going to show you what has been previously
24 marked for identification as State's exhibit 3. Do you
25 recognize those two pieces of paper?

1 A I do, sir.

2 Q And are those true and accurate representations of
3 the two pieces of paper that you collected in evidence
4 that day?

5 A They are, sir.

6 Q I want to show you what has been marked for
7 identification as State's exhibit 4. Without opening that
8 do you recognize that item?

9 A I do, sir.

10 Q And how do you recognize that item?

11 A This is the envelope that I used to package the
12 actual pieces of paper that I collected on that particular
13 day.

14 Q And what did you do with that envelope after you had
15 it sealed up?

16 A I sealed it up and put all of the information
17 required on it and I then passed them on to Deputy Roberts
18 for further transportation to the sheriffs office.

19 Q After you finished your paperwork on the case and
20 when you say, paperwork, are you referring to your report
21 when you say you would start your paperwork, is that your
22 report?

23 A Yes, sir. I had to do a complete initial report and
24 also the chain of custody sheet and also the forensic
25 analysis request.

1 Q Okay. And how do you do a forensic analysis request?

2 A It is just a simple sheriffs department form that you
3 fill out and request what you think should be done.

4 Q I am going to show you what has been previously
5 marked for identification as State's exhibit 3A. Can you
6 identify that document?

7 A That is the forensics request form.

8 Q And is that your handwriting on the document?

9 A It is, sir, with the exception of this number here
10 which I believe is a control number.

11 Q And if you compare that number that is written on
12 there that you didn't write on the forensics request form
13 with the State's exhibit number 4, is that the evidence
14 control number?

15 A Yes, sir.

16 Q And is that forensic request form, a photocopy that
17 you have in your hand 3A, is that a fair and accurate copy
18 of the document that you filled out?

19 A Yes, sir.

20 Q With the exception of that one number?

21 A Yes sir, it is.

22 MR. MILLER: Your Honor, at this time we would move
23 to introduce State's exhibit 3A.

24 THE COURT: Any objection?

25 MR. HAYES: No, Your Honor.

1 THE COURT: Without objection.

2 (Whereupon, State's Exhibit 3A was admitted into
3 evidence.)

4 Q Deputy, referring to State's exhibit 3A can you
5 explain to the jury what it was you were asking the
6 forensic section to do whenever you submitted that form?

7 A Yes, sir. I knew that with the equipment that I had
8 available to me at the scene there really wasn't much I
9 could do with the pieces of paper. I knew that better
10 methods were available at the lab. So what I did is I
11 submitted the paperwork and the documents I collected to
12 the lab and requested that they process them which would
13 give better methods for latent prints. A latent
14 fingerprint is a fingerprint that is not easily visible.

15 Q Thank you. Please answer any questions Mr. Hayes
16 might have.

17 THE COURT: Mr. Hayes.

18 CROSS-EXAMINATION

19 By Mr. Hayes:

20 Q Deputy Kostyk, is that how you pronounce it?

21 A Yes, sir.

22 Q You said you were two years here in Aiken, five years
23 in Orangeburg and then ten years as a detective in
24 Pennsylvania?

25 A Eight years as a detective in Pennsylvania, ten years

1 total with the agency.

2 Q Now, what training do you have to collect forensic
3 evidence?

4 A I have had multiple trainings to include a forty hour
5 crime scene investigation course and also, I am not sure
6 the exact name of the course was but it was a methods and
7 techniques class, various methods to collect evidence.

8 Q Now, they talk about using photography in these
9 courses in collecting evidence and preserving a crime
10 scene?

11 A Yes.

12 Q Is that something you would have done when you were a
13 detective?

14 A Yes, I would have.

15 Q Now, in Aiken County the policy would be for the road
16 deputy to show up and make a decision call whether a
17 forensic analyst needs to come out?

18 A No, sir.

19 Q No?

20 A No, sir.

21 Q So you wouldn't call for Clay Adams?

22 A Not as a road deputy, no sir.

23 Q No?

24 A No, sir.

25 Q Is it common for a forensic team to come out to a

1 crime scene?

2 A It depends on what the crime scene is, sir, and what
3 the supervisor determines needs to be done.

4 Q Who would let the supervisor know?

5 A Know what?

6 Q Who would let, who would contact the supervisor and
7 ask if a forensic team is needed?

8 A Well typically the supervisor would overhear the call
9 dispatched via radio. And if he thought it was going to
10 be a substantial incident he would automatically respond.
11 If you got to a, if a deputy got to a crime scene and it
12 was unusual or was going to be more involved then the
13 deputy would contact the road supervisor.

14 Q Okay. You said you didn't take a photograph because
15 you didn't have a department issued camera?

16 A Right, I did not have a camera, I don't have a
17 camera.

18 Q Wouldn't a road supervisor have a camera?

19 A He may have one, yes sir.

20 Q The sheriffs department has many cameras?

21 A I would assume they do, sir.

22 Q And you could have called and asked for one?

23 A I could have called and asked for one.

24 Q You could have called and asked for one?

25 A Technically I could have.

- 1 Q Do you have a cell phone?
- 2 A Yes, I do.
- 3 Q Does your cell phone have a camera on it?
- 4 A My cell phone?
- 5 Q Yes.
- 6 A My personal cell phone has a camera on it.
- 7 Q And there is several stores right there in that
8 location, isn't it?
- 9 A I am not sure.
- 10 Q Well, let's say within about a mile of that crime
11 scene would there be a Walgreen's, a Kroger?
- 12 A I am not sure, sir.
- 13 Q Do you normally patrol in North Augusta?
- 14 A I do not, sir.
- 15 Q You could have also left and gone and picked up a
16 camera, right?
- 17 A From where, sir?
- 18 Q From the store, you could have run back to the
19 precinct, you could have called and radioed and had
20 somebody to meet you half way?
- 21 A I could not do that, sir.
- 22 Q You could not?
- 23 A No, sir. There is no way I could run all the way
24 back to the sheriffs department and then back to the
25 scene.

1 Q And you said Ms. Roberts, was there somebody else
2 there present with you, any other deputies?

3 A Deputy Roberts showed up as I was finishing things
4 up.

5 Q Was she in another vehicle?

6 A Yes, sir.

7 Q She could have went and picked up a camera?

8 A No, sir.

9 Q She couldn't have left you there while you were
10 caring for the scene and picked up a camera?

11 A No sir, we have to continue to answer the calls. We
12 can't leave and go all the way back to the sheriffs
13 office.

14 Q Now you did a forensic request form for the papers.
15 You were saying that on the papers you knew what you had
16 available to you, you could not lift any prints, correct?

17 A That is correct.

18 Q Did you do a form for the shovel?

19 A No sir, I didn't collect the shovel.

20 Q That is because you believe it wasn't used or you
21 didn't think there was anything of value?

22 A I wasn't convinced that it was used and even if it
23 had been used it was my experience and training that I
24 wasn't going to be able to get anything off of it.

25 Q With what you had?

- 1 A With any method that I am aware of.
- 2 Q Couldn't you have collected it and requested for a
3 forensic analysis to be done?
- 4 A You can collect anything, sir, but you have to try to
5 use your training and your experience in what you collect.
6 You can't collect the entire household. So what you try
7 to do is focus on what you know was touched or tampered
8 with.
- 9 Q Was the shovel in the shed?
- 10 A No, sir.
- 11 Q Did they indicate whether that was a normal storage
12 place for their shovel?
- 13 A They indicated that it was out of place.
- 14 Q They indicated to you that the shovel was out of
15 place?
- 16 A Yes, sir.
- 17 Q What about the glass. Was any of the glass shards
18 dusted?
- 19 A I looked at the glass shards.
- 20 Q Were you able to retrieve anything from it?
- 21 A No, sir.
- 22 Q From the windowsill?
- 23 A No, sir.
- 24 Q Now there was some trashcans that was testified to
25 below that window?

1 A Yes.

2 Q Was any of the lids checked to see if there was any
3 shoe impressions?

4 A I looked at the lids, I didn't see anything.

5 Q Now you said you processed the filing cabinet and
6 that was because Ms. Smiley told you it was moved.

7 A That there was items that had been moved around on
8 it, she indicated. And it did look like things were
9 askew.

10 Q You weren't able to lift anything actually from it?

11 A I didn't get anything from it.

12 Q Did you process any of the doors to the house,
13 doorknobs?

14 A No, sir.

15 Q Did you process the garage door?

16 A No, sir.

17 Q In your experience wouldn't they have checked the
18 doors breaking a window to see if it was unlocked?

19 A I don't know what they would have done, sir.

20 Q Did you process the tops of the garage cans?

21 A No, sir.

22 Q Did you talk to any neighbors?

23 A No, sir.

24 Q Where were the papers that you collected, where did
25 you get them from?

- 1 A From the chair in front of the desk.
- 2 Q Did you process that chair?
- 3 A No, sir.
- 4 Q What was the shovel made of, what was the materials?
- 5 A The handle was wood.
- 6 Q It was wood?
- 7 A Yes, sir.
- 8 Q What was the actual spade part of it, was it metal,
9 plastic?
- 10 A I am not one-hundred percent sure. I believe it was
11 metal, it was old.
- 12 Q Was it rusty?
- 13 A I believe it was. I am not one-hundred percent sure.
- 14 Q When was the last time you had a class or training on
15 fingerprints?
- 16 A Specifically on fingerprints?
- 17 Q Yes, sir.
- 18 A Never.
- 19 Q In your report you stated that you believe that the
20 shovel was used to bust the window, correct?
- 21 A I said that is what they told me, that they indicated
22 it was apparently used.
- 23 Q Now, you used discretion on whether you collect it.
24 Now, on collecting fingerprints or processing it, are you
25 familiar with all the different ways to raise a

1 fingerprint from an item?

2 A I am not sure if I am familiar with all of them.

3 Q So there is methods out there beyond just dusting?

4 A Yes, sir.

5 Q You are aware of that but you are not aware of how
6 many different procedures there are?

7 A I wouldn't say that I am aware of every method that
8 there is, no.

9 Q On getting a fingerprint off of an item, wouldn't
10 that be something more appropriate left to forensics?

11 A It depends on what it is.

12 Q You are telling me you don't know all the different
13 methods?

14 A No, sir. But I do know what I can get off of an
15 object with this small kit that I have.

16 Q Right. How high was that window open?

17 A I can't be sure, sir.

18 Q Do you have a rough estimate?

19 A I don't know how high it was, it was higher than, you
20 know, ground level.

21 Q Was there anything under the window?

22 A I believe as you indicated there was trashcans under
23 it or a bucket.

24 Q Did you test the windowsill?

25 A I am sorry?

- 1 Q Did you test the windowsill?
- 2 A I don't know what test the windowsill is.
- 3 Q Did you dust the windowsill for fingerprints?
- 4 A I don't recall if I specifically dusted the
5 windowsill. There would be many, many reasons why I might
6 or might not.
- 7 Q Why would you dust a windowsill?
- 8 A If it is covered with dirt I would not dust it.
- 9 Q Was it covered with dirt?
- 10 A I don't recall sitting here today.
- 11 Q Did you see the black bag in the house?
- 12 A Did I see what?
- 13 Q A black bag?
- 14 A I don't recall a black bag.
- 15 Q Nothing further, Your Honor.
- 16 THE COURT: Any redirect?
- 17 MR. MILLER: No redirect, Your Honor.
- 18 THE COURT: You may step down. How many more
19 witnesses do you have?
- 20 MR. MILLER: Your Honor, we have got two real quick
21 ones and then we have two pretty lengthy ones.
- 22 THE COURT: Let's take a break, it is 3:30. Ladies
23 and gentlemen, we are going to take a short break.
24 Stretch your legs, please do not discuss the case, don't
25 deliberate and I would ask that you get me a foreperson.

1 Thank you. Everybody else remain seated.

2 (Whereupon, the jury was excused from open court for
3 a break.)

4 THE COURT: Anything for the record before we break
5 by the State?

6 MR. MILLER: Nothing from the State, Your Honor.

7 THE COURT: From the defense?

8 MR. HAYES: No, Your Honor.

9 THE COURT: The defendant is in custody, we will take
10 about a ten minute break.

11 (Whereupon, a short break was taken.)

12 THE COURT: Let's bring the jury in.

13 (Whereupon, the jury came into open court at
14 approximately 3:40 p.m.)

15 THE COURT: Are you ready?

16 MR. MILLER: Yes, Your Honor. Your Honor, the State
17 calls Jessica Roberts.

18 JESSICA ROBERTS, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Miller:

22 Q Deputy Roberts, who are you employed by?

23 A Aiken County Sheriffs Office.

24 Q And how long have you been employed there?

25 A I have been a deputy for a year but I was a

Jessica Roberts - Direct by Mr. Miller

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1 dispatcher five years before that.

2 Q And as a deputy what are your job responsibilities
3 with the sheriffs office?

4 A To patrol Aiken County and enforce the laws of South
5 Carolina, the State of South Carolina and County of Aiken
6 and handle complaints for crimes.

7 Q Were you performing those responsibilities on the
8 date of May the 2nd of 2011?

9 A Yes, sir.

10 Q I am going to show you what has been previously
11 marked for identification as State's exhibit number 4 and
12 ask you if you know what this is?

13 A That is the envelope that I transported to the
14 sheriffs office.

15 Q Okay. And why did you transport that envelope to the
16 sheriffs office?

17 A I responded to the location and took it from Deputy
18 Kostyk for evidence.

19 Q And the location, are you referring to [REDACTED] [REDACTED]

20 [REDACTED]

21 A Yes, sir.

22 Q Okay. Did you actually open up the envelope and mess
23 with anything inside of it?

24 A No, sir.

25 Q Did you look inside the envelope?

1 A No, sir.

2 Q Were you working on the same shift as Deputy Kostyk?

3 A Yes, sir.

4 Q What did you do with that evidence after you got back
5 to the sheriffs office?

6 A I put it in an evidence locker and locked the locker.

7 Q And while the envelope was in your possession did you
8 change or alter it in any way, any of the contents in any
9 way?

10 A No, sir.

11 Q No further questions.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 By Mr. Hayes:

15 Q Deputy Roberts, do you have a fingerprint testing kit
16 in your car?

17 A Yes, sir.

18 Q Can you describe that kit for me. Is it the little
19 tiny, little brush and a little bit of powder and that is
20 it?

21 A It is like a blue box about this big. It has got the
22 fingerprint dust container in it and then it has got a
23 brush in it about that long. And it has got tape in it.

24 Q Okay.

25 A I am sorry, I was going to say it has got tape.

- 1 Q Do you have a camera in your car?
- 2 A Yes, sir.
- 3 Q Like a digital camera you can take photographs of the
4 scene with?
- 5 A I do now but I didn't at the time, I just got it.
- 6 Q Did you collect anything?
- 7 A No, sir.
- 8 Q Do you have a cell phone?
- 9 A Yes, sir.
- 10 Q The cell phone you had there, was a camera on it?
- 11 A Yes sir, I got a new phone between then and now. So
12 I was trying to remember. But, yes sir, I did.
- 13 Q So your old phone did have a camera?
- 14 A Yes, sir.
- 15 Q Now could you have called for a camera to be brought
16 to the scene?
- 17 A I don't know, usually we call an investigator or a
18 sergeant or a lieutenant if we need a camera. But I don't
19 know.
- 20 Q So you are telling me a deputy would call if they
21 needed a camera?
- 22 A Not necessarily. If they needed a camera the
23 sergeant or lieutenant or the investigator would determine
24 if they needed one to be at the scene.
- 25 Q Did anybody else, any other supervisors of yours or

1 any other deputies show up at the scene other than you and
2 Deputy Kostyk?

3 A Not that I am aware, no sir.

4 Q Why were you so late arriving at the scene?

5 A Because I was taking paperwork to the sheriffs office
6 and I was told to stop and get the evidence to take it to
7 the sheriffs office because we were busy and we didn't
8 need two people at the sheriffs office.

9 Q So he didn't call you for support or backup or
10 anything like that?

11 A No.

12 Q Isn't it true that there is a Circle K about a half
13 mile from that location and a Walmart within a mile?

14 A I am not good at distances but if you are talking
15 about the one in North Augusta and the Circle K on
16 Jefferson Davis, I mean about a half mile and a mile, I
17 don't know.

18 Q Jefferson Davis would be 1.1 miles. I was referring
19 to the one on Atomic Road, 602 Atomic Road. Would that be
20 half a mile from there?

21 A I don't know, I really do not know.

22 Q Could you have taken photographs from your cell
23 phone?

24 A I guess I could have.

25 Q And downloaded it onto a computer if need be?

1 A I don't know how to do that.

2 Q Nothing further.

3 THE COURT: Redirect.

4 MR. MILLER: Nothing from the State.

5 THE COURT: You are excused.

6 MR. MILLER: Your Honor, can Deputy Roberts and

7 Deputy Kostyk be released from their subpoenas?

8 THE COURT: Yes.

9 MR. MILLER: Thank you, Your Honor. Your Honor, the
10 State calls Gerald Turner.

11 GERALD TURNER, being

12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Miller:

15 Q Mr. Turner, who are you employed by?

16 A I am the evidence custodian with Aiken County
17 Sheriffs Office.

18 Q And how long have you been with the sheriffs office?

19 A Since November of 2003.

20 Q And what are you job responsibilities with the
21 sheriffs office?

22 A I receive evidence, make sure it is properly
23 packaged, paperwork is correct, I place all pertinent
24 information in the computer, create a file for it and then
25 place it into storage until needed.

1 Q Okay. Is the evidence room an open area that any
2 deputy could enter?

3 A No, sir.

4 Q How does evidence get turned into the evidence room?

5 A We have five different size lockers that it is placed
6 in depending on what the evidence is and it is locked up
7 and I have the only set of keys.

8 Q Okay. And when evidence is checked out of the
9 evidence room how do you account for that evidence?

10 A By a chain, they sign the chain to make sure I know
11 where it is going.

12 Q And do you also back up that written chain with a bar
13 coding system through the computer?

14 A Yes sir, it is bar coded and placed into the
15 computer.

16 Q I am going to show you what has been previously
17 marked for identification as State's exhibit number 4 and
18 utilizing that bar code number there can you explain to
19 the jury what that is?

20 A Yes, sir. It is two pieces of paper. According to
21 the chain, moved, touched by unknown subject.

22 Q And how did that evidence get into your possession?

23 A It was placed in the evidence locker by J. Roberts
24 and of course like I said, I unlock it and get it out.

25 Q And what did you do with that piece of evidence in

1 particular when you took it out of the evidence locker?

2 A Once I made sure everything was correct I placed it
3 into storage until needed.

4 Q And did you open the envelope?

5 A No, sir.

6 Q And did you alter or change the contents of that
7 envelope in any way while it was in your possession?

8 A No, sir.

9 Q Did you ever release that envelope to anyone else at
10 the sheriffs office?

11 A Yes sir, to Chris Johnson.

12 Q And do you know when you released it to Chris
13 Johnson?

14 A Yes sir, on 5/4/11.

15 Q So that is May the 4th of 2011?

16 A May 4th.

17 Q And why would you have released it to Investigator
18 Johnson?

19 A There was a request for processing for latent prints.

20 Q No further questions.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 By Mr. Hayes:

24 Q Mr. Turner, you received this envelope and then it
25 was processed the next day?

1 A I received on 5/3, that is when I took it out of the
2 locker.

3 Q Okay. And then you went through and did the bar
4 coding and placed it into storage?

5 A And placed all of the information into the computer.

6 Q Now you said it was released to Chris Johnson. How
7 did he go about getting a piece of evidence if he was
8 going to test it or if there was a request for forensics
9 to be done?

10 A What happens is they fill out a form for it to be
11 done and I take the evidence, I would have taken this, put
12 the, a copy of the request to it and then I have got a
13 special box in my secure area that I place all evidence in
14 to be lab tested. And then when he gets his chance or
15 whenever he comes down and picks it up and signs it out.

16 Q And so once it was signed in you see that there is a
17 forensic request form. On the top you have a metal box,
18 filing cabinet, something you sit it in until somebody
19 comes and says, Mr. Turner, I need this evidence?

20 A Right. I have got, it is a plastic container, it is
21 set in a certain area, it is labeled for processing. And
22 what Chris does, he comes down to see what he has got, he
23 takes the information, well actually the case number and
24 then he will come and pull my file. Then he and I
25 together sign it out. I make sure he signs it out, let's

- 1 put it that way.
- 2 Q Okay. Now if it were to be brought back to you after
3 processing would he have to sign?
- 4 A No, when it comes back I would sign for it accepting
5 it and then I would place that information into the
6 computer, the date, time and who I got it from.
- 7 Q Was that done in this case?
- 8 A No, sir. This was, in this case right here Chris
9 turned it over to Lieutenant Clay Adams who brought it
10 down to me and then Clay signed it out for identification.
- 11 Q When was that?
- 12 A That was on 5/5/11.
- 13 Q Okay. So Chris didn't bring it back to you, Clay
14 Adams brought it back?
- 15 A Clay Adams brought it back, right.
- 16 Q One day later?
- 17 A Yes, sir.
- 18 Q Is it a common procedure to have something out and
19 have it tested beyond office hours?
- 20 A No sir, because that should be a secure area also.
- 21 Q What do you mean that should be a secure area?
- 22 A In other words, it is taken to the forensic lab and
23 in the forensic lab those doors are locked and of course
24 you have got to have a special ID to get in there too.
- 25 Q Where is the forensic lab compared to where your

1 office is at?

2 A It is actually on the side of the building probably
3 about fifty yards from me.

4 Q Is that the same building?

5 A Yes sir, same building.

6 Q And you said that Lieutenant Clay Adams brought it
7 back to you on 5/5?

8 A Well he brought it back to me to sign it out. In
9 other words he is telling me that, hey, Chris is giving me
10 this and I am taking possession of it at this point.

11 Q I assume you are referring to, what are you referring
12 to?

13 A This is my chain that I use. This goes with the,
14 let's put it like this. This is my records of who has got
15 it and who hadn't got it and all the information to that
16 case.

17 Q So it reflects that on the 3rd is when you received
18 it out of the locker?

19 A Right. It was placed in the locker on the 2nd, the
20 next day on 5/3 is when I got it out and processed it.

21 Q And then on May 4th?

22 A On May 4th Chris Johnson came through and took
23 possession of it at that point.

24 Q And it stayed with him until May 5th?

25 A May 5th.

1 Q What happened after May 5th?

2 A It has been in Clay Adams possession ever since then.

3 Q Can I look at what you are referring to. May I
4 approach, Your Honor.

5 THE COURT: Yes, sir.

6 A I have three of those bar codes. One goes on the
7 file, one goes on the evidence and one on that sheet
8 there.

9 Q Do you remember these particular incidences
10 specifically that you testified to today?

11 A No sir, I handle literally hundreds of pieces of
12 evidence.

13 Q So you don't remember specifically this chain?

14 A No, sir.

15 MR. HAYES: Can we have a sidebar?

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 Q Mr. Turner, did Chris do a form to request or how,
20 did he come because--

21 A He makes a regular check. If he is the one on duty
22 to do that. There is two forensics people that does it
23 and he would have been on that day.

24 Q So he just swings by your office at some point in the
25 day and--

1 A -- actually several times, yes sir.

2 Q Clay Adams returned it on 5/5 and after that point
3 that was only to--

4 A -- to sign it out. In other words, that let's me
5 know that he has got it in his possession.

6 Q Did he tell you how he got it?

7 A Yes, sir. In other words he tells me, well, he is
8 Chris' boss. So he and Chris looked at it and he came to
9 me and told me he wanted it in his office.

10 Q Is it common for him to keep evidence in his office?

11 A Yes, sir. He does his lab testing and all there.

12 Q Is it common for him to keep it overnight or for a
13 period of an extended time?

14 A Yes, sir. We have had various situations, yes sir.

15 Q What do you mean by that?

16 A Well it depends on the situation. In other words, we
17 have some evidence that might take a little longer to
18 process than others. They use, I am not really up-to-date
19 as far as what all they do down there but they do quite a
20 bit and I give them quite a bit to work on.

21 Q Nothing further.

22 THE COURT: Redirect?

23 MR. MILLER: Nothing on redirect, Your Honor.

24 THE COURT: You may step down. Next witness.

25 MR. MILLER: Your Honor, may Mr. Turner be released

1 from his subpoena.

2 THE COURT: Yes.

3 MR. MOLONY: The State calls Investigator Chris
4 Johnson.

5 CHRIS JOHNSON, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Molony:

9 Q Mr. Johnson, who do you work for?

10 A I work for the Aiken County Sheriffs Office.

11 Q How long have you been employed by them?

12 A I started at the Aiken County Sheriffs Office
13 December the 19th of 2003.

14 Q What are your duties with the sheriffs office?

15 A Currently I am a forensic investigator with the Aiken
16 County Sheriffs Office.

17 Q Now focusing on the part of your job involving
18 fingerprints, do you have any specialized training or
19 experience to allow you to identify, collect, examine and
20 compare fingerprints?

21 A Yes, I have took a 40 hour class through the South
22 Carolina Criminal Justice Academy for basic fingerprinting
23 which was basically powder, excuse me, pattern recognition
24 and also the NCIC Classification and Henry Classification
25 System of Fingerprints.

1 Q What type of technical equipment is available for you
2 to use in this line of work?

3 A At the sheriffs office we have a number of chemicals
4 we can use to develop fingerprints. We have a fuming
5 chamber which is cyanoacrylate or super glue fuming. We
6 also have a number of powders, anywhere from magnetic
7 powder to basic black powder, bichromatic powder. Along
8 with those powders we do have the AFIS work station which
9 is the Automated Fingerprint Identification System.

10 Q How many cases have you worked over the years
11 involving the collection by identification or examination
12 of fingerprints?

13 A A good estimate would be in the thousands.

14 Q And in your professional experience have you had
15 occasion to identify a person by comparing their latent
16 fingerprints with their own ink fingerprints?

17 A Yes.

18 Q What is a latent fingerprint?

19 A Latent fingerprints as far as the terminology we use
20 in our office, a latent fingerprint is an unknown
21 fingerprint that is deposited at a crime scene that we
22 either develop at the crime scene or an officer or
23 ourselves will collect an item from a crime scene and
24 process it at the lab and develop an unknown fingerprint.

25 Q What is an ink fingerprint?

1 A An ink fingerprint, the best way to describe it would
2 be a known fingerprint. A fingerprint that was deposited
3 by somebody who had their fingers rolled in ink and the
4 fingerprints were deposited on a surface, mainly a ten
5 print card.

6 Q I am going to show you what has been marked as
7 State's exhibit 4. Do you recognize this? You can open
8 it actually.

9 A Yes.

10 Q And what is that?

11 A These are the pieces of paper that I processed.

12 Q How do you know those are the, you can actually bring
13 them all the way out if you want.

14 A That is my handwriting right here.

15 Q Where did you get this exhibit from originally?

16 A This was, I got this from the evidence room at the
17 sheriffs office.

18 Q And you say evidence room, we have already been
19 through that. Just briefly where is the evidence room?

20 A The evidence room is a secure location at the
21 sheriffs office, it is on the back side where evidence is
22 stored.

23 Q And why did you get this evidence?

24 A It is part of my responsibility as a forensic
25 investigator to go to the evidence room and deputies and

1 other investigators will collect evidence from crime
2 scenes and submit the evidence for processing. Part of my
3 responsibility is to get that evidence from the evidence
4 room and process it for whatever they are wanting
5 collected or tried to be developed from it. So I went to
6 the evidence room and it was one of the items that I was
7 requested to process.

8 Q Did you develop latent fingerprints on State's
9 exhibit 4?

10 A Yes, I did.

11 Q And how do you examine pieces of paper, in this case,
12 how do you examine this piece of paper to discover whether
13 or not there are latent fingerprints present?

14 A Well typically with a paper, paper is considered a
15 porous item or a porous medium. In other words the
16 fingerprint or whatever we are looking for can be absorbed
17 into the paper. What I, the first step I do is when I am
18 looking at this evidence of course I wear gloves. I pull
19 it out and visually inspect it and I am looking for any
20 fingerprints that might be visible to the eye. Maybe it
21 is left in blood, maybe it is left in grease, maybe it is
22 left in dirt just transferred from fingers. If I don't
23 see any visible fingerprints what I do is I will photocopy
24 the paper document especially if it has any type of
25 writing on it whatsoever. I will photocopy the document

1 and then from there, in this case I widely used developers
2 ninhydrin-acetone. I used ninhydrin-acetone for this
3 process and I dipped the paper in the ninhydrin-acetone
4 and saturate it, allow it to dry. And then in the
5 development stage of this particular chemical developer
6 you have to use high heat and high humidity in order for
7 it to develop. So typically you use an iron, steam from
8 an iron and you just go over and let the steam heat the
9 paper, you have humidity and you have temperature right
10 there and the fingerprints will develop.

11 Q So just take you back real quick. The beginning
12 process is to photocopy the original you stated?

13 A Yes.

14 Q And why do you photocopy?

15 A The ninhydrin-acetone, in itself is a solvent so what
16 we run into is if we use the ninhydrin-acetone, if there
17 is any written, anything handwritten with ink on the paper
18 it will tend to distort it and make it run. So we always
19 photocopy it to preserve what it looked like before we
20 processed it.

21 Q I am going to now show you State's exhibit 3. Do you
22 recognize this?

23 A Yes.

24 Q And what is that?

25 A This is the photocopy before it was processed.

1 Q Referring to the photocopy of State's exhibit 4 that
2 I just showed you earlier?

3 A Yes.

4 Q Before it was processed for latent fingerprint?

5 A Yes.

6 Q And is this a true and accurate copy of State's
7 exhibit 4?

8 A Yes.

9 MR. MOLONY: Your Honor, at this time the State moves
10 to introduce exhibit 3 into evidence.

11 THE COURT: Any objection?

12 MR. HAYES: No, sir.

13 THE COURT: No objection, move along.

14 (Whereupon, State's Exhibit 3 was admitted into
15 evidence.)

16 Q After you put this in the chemical, exhibit 4 into
17 the chemical what happened next?

18 A Once a fingerprint is developed I look at the
19 fingerprint and determine if the fingerprint is a good
20 enough quality to be manually compared or entered in AFIS.
21 And in this case it was enough quality so I could enter it
22 into the Automated Fingerprint Identification System.

23 Q And how do you do that?

24 A If we don't have any suspect information or we don't
25 have any names that we can go and look on existing cards

1 that we have we enter it into AFIS. AFIS, the Automated
2 Fingerprint Identification System is a computer. In this
3 case the fingerprints actually developed on the paper so
4 there is nothing that I can lift, it has to stay on the
5 paper. The fingerprint on the paper is put underneath a
6 camera at the work station and it takes a digital image of
7 that fingerprint. Once the image is captured it is saved
8 on the computer. And it is, at that point it is given a
9 run number or we give it a run number. And then after the
10 image is saved on the actual computer we go in and we mark
11 the individual characteristics of that fingerprint. Once
12 those characteristics have been entered into the computer
13 we send it off on the computer for a search. So it sends
14 it off to search what we have in put.

15 Q And how long does this search usually take to
16 develop?

17 A It could take anywhere from just a few minutes to
18 days, there are a number of variables that determine the
19 length of time it takes for the computer to search and get
20 back to us.

21 Q And ultimately when the search gets back to you what
22 do you see?

23 A When the computer is ready for us to look at the
24 results the run ID number is going to be bold. In other
25 words it is not going to be just plain written, it is

1 going to be bold and we are going to know that it is ready
2 for us to look at. Once we pull it up on the computer,
3 what the computer shows us is a fingerprint that we
4 entered, the one we captured from the item and it is going
5 to give us a list, a preset number of respondents or a
6 preset number of fingerprints that that computer thinks is
7 similar to what we in put at the start of it. So we will
8 get thirty different fingerprints that the computer says
9 you need to look at these closely.

10 Q Thirty that you just described for the jury, why
11 thirty?

12 A Well thirty is a preset number. That is what our
13 computer is preset at. You could preset it at what number
14 that you want but thirty is the number that our computer
15 is set at so it sends us fingerprints for us to look at.

16 Q And out of these thirty prints that are displayed on
17 the screen how are they, how are you able to identify,
18 keep them separated?

19 A Well each fingerprint, each fingerprint is displayed
20 with an SID number and the SID is an acronym for state
21 identification number. So each fingerprint is going to
22 have a state identification number attached to it.

23 Q And is there a name attached to it?

24 A No. There is no names, we don't have any names when
25 it comes back from the computer.

1 Q So what is a ten print card?

2 A A ten print card, typically a ten print card is a
3 card that is generated whenever somebody is booked into a
4 detention facility. And the ten print card is going to
5 display twenty fingerprints. It is a ten print card but
6 it is going to display twenty fingerprints. It is going
7 to displayed a rolled impression of each finger and it is
8 going to display a simultaneous impression and the
9 simultaneous simply is that. And then this for the four
10 fingers. And the rolled impression, the difference
11 between the two is the rolled impression is you are going
12 from one side of the finger to the other. So you are
13 going to have ten rolled impressions and then ten
14 simultaneous impressions.

15 Q When do you find out the name of the person you have
16 drawn a ten print card?

17 A Whenever we get our results back from the AFIS
18 computer and I look at the results that it sent back or
19 the respondents that it sent back. Say number one or
20 number three or whatever, the one that I am looking at,
21 that I am thinking or I have got a pretty good idea that
22 it is going to be a match then I can take that SID number
23 and there is one of two ways that I can look it up. In
24 the AFIS, the work station itself we can in put that ID
25 number into a different area of the computer. And a

1 majority of the time it will give us a name and a date of
2 birth, sometimes it doesn't. Sometimes we have to call
3 SLED, give SLED, the person at SLED on the phone, we have
4 to give them the State ID number and they have to look it
5 up. And in this case I was able to look it up on the
6 computer and get a name from the computer.

7 Q Prior to May 4th of 2011 did you ever, to your
8 knowledge, personally work on a case involving the
9 defendant?

10 A No, sir.

11 Q Albert Cave, Jr?

12 A No, sir.

13 Q I am going to show you what has been previously
14 marked as State's exhibit 10. Do you recognize that?

15 A Yes, I do.

16 Q And what is that?

17 A This is a copy or photocopy of a ten print card
18 belonging to Albert James Cave, Jr.

19 Q And does this photocopy of this ten print card, is it
20 a fair and accurate representation of the actual ten print
21 card you used in this case?

22 A Yes, it is a photocopy of the card I used.

23 Q Thank you. Did you compare the fingerprints on
24 number 10 which I just showed you, State's exhibit 10 to
25 the fingerprint that was developed on State's exhibit 4

1 that you looked at earlier?

2 A Yes.

3 Q And what were the results of that comparison?

4 A The fingerprint that I--

5 MR. HAYES: Objection.

6 THE COURT: What is your objection?

7 MR. HAYES: Mr. Johnson has not been qualified as an
8 expert.

9 THE COURT: Sustained.

10 Q Investigator Johnson, when you look at these two
11 fingerprints, when you looked at these two fingerprints
12 that was on the ten print card and that was on State's
13 exhibit 4 what process did you do to compare them?

14 A The process or the protocol that we use is called
15 ACEV, A-C-E-V. It is a acronym. The A stands for analyze
16 and that step of the process is you are developing a
17 fingerprint. When you get your fingerprint you are
18 analyzing it, you are seeing if its the quality, you are
19 looking at the quality of the fingerprint to see if it is
20 identifiable and you are also seeing if, what the quality
21 is. If it is identifiable can you run it on AFIS or do
22 you have to do a manual comparison. The C part of the
23 ACEV is comparison. That is when if I have somebody that
24 I can compare it to, the investigator might find somebody
25 on the scene and you need to compare the fingerprints to

1 this person. That is, when we are doing a comparison. If
2 we don't have anybody, like I said before we will run it
3 on the AFIS computer. That is the comparison aspect of
4 it. The evaluation aspect of it is actually looking at
5 the fingerprints. When you have somebody that you know
6 and you have something that you don't know when you are
7 making your comparison, the evaluation is your lining up
8 these points of identification or minutiae, what is being
9 marked as you are entering it into the computer and you
10 are evaluating if they are going to be the same or not.
11 And once you have reached a conclusion that you think they
12 are the same fingerprint then the last step is called
13 verification. You get somebody to come behind you and
14 they look at your work and they verify your work.

15 Q And have you used that process in this case?

16 A Yes, I did.

17 Q And you ultimately, did you ultimately come to the
18 conclusion that before it was ready to go to be verified
19 and who would verify your work?

20 A Lieutenant Clay Adams.

21 Q And is he your boss?

22 A Yes, he is. He is my lieutenant.

23 Q Okay. And before it goes to him what do you have to
24 do, what conclusions do you come to before it goes to be
25 verified by your superior officer, the last step?

1 A The last step is, everything that I have worked on to
2 this point, the developed fingerprint, the ten print card
3 I am using, any paperwork that is generated, if it is a
4 run sheet through AFIS or if it is my actual lab report it
5 gets given to him and he comes behind me and he takes a
6 look at everything and he is basically saying, yes, I
7 agree one-hundred percent with you, it is an
8 identification.

9 Q Throughout this process, from when you actually put
10 the chemicals on the original piece of paper until you
11 pull the ten print card and did your comparison did you
12 keep paperwork, some kind?

13 A Yes, I generated a lab report where I developed the
14 fingerprints on the item and then when we are entering
15 something into AFIS we use a form called the worksheet or
16 the AFIS worksheet and that basically just is a running
17 track of what finger you ran, what your results were, how
18 many points of minutiae you had. So it is a running track
19 while you are entering stuff into AFIS.

20 Q I am going to show you what has been previously
21 marked as State's exhibit 5. Do you recognize those two
22 sheets of paper?

23 A Yes, I do.

24 Q And how do you recognize those?

25 A This is my lab report, it shows the bar code of the

1 item which is on that develop over there. It gives a
2 description of the item and the description comes from the
3 sheet that the officer turns in requesting a process or
4 latents to be done on it. And then my results down at the
5 bottom. Here it says identifiable fingerprints were
6 developed on the above item. The above item being two
7 pieces of paper touched/moved by unknown subject. And
8 then it says the fingerprints will be forwarded to AFIS
9 for further examination. And this is a automated
10 fingerprint identification system worksheet, this is the
11 worksheet I was telling you about. It has got a case
12 number, the originating agency, the date that the
13 fingerprint was entered, the offense, the AFIS run number
14 that is generated whenever we run the AFIS and then the
15 date that the incident occurred. In this case I ran one
16 fingerprint, it was latent number 1 on item number 1. I
17 ran it as a right loop and I ran it as finger number one
18 with 36 points of minutiae and I got positive results from
19 SLED or from the AFIS.

20 Q Now, these two pieces of paper, State's exhibit 5
21 are, these are photocopies?

22 A Yes.

23 Q Does these photocopies fairly and accurately
24 represent the actual worksheet and laboratory reports that
25 you conducted throughout the investigation in this trial?

1 A Yes.

2 Q In this case?

3 A Yes.

4 MR. MOLONY: Your Honor, at this time the State moves
5 to introduce exhibit 5 into evidence.

6 MR. HAYES: I would object, Your Honor, to hearsay.

7 On the second page, not the first page.

8 THE COURT: Let me see it. What is the hearsay part?

9 MR. HAYES: They are putting in information that they
10 received from a computer, Your Honor.

11 THE COURT: The SID result?

12 MR. HAYES: Yes, sir.

13 THE COURT: Y'all step back to your jury room just
14 for a second, please. Don't discuss the case.

15 (Whereupon, the jury was excused from open court for
16 a break.)

17 THE COURT: All right, Mr. Hayes, as I understand,
18 exhibit 5, the second sheet.

19 MR. HAYES: That is based on information that
20 somebody had placed into--

21 THE COURT: Hold on a second. Your objection to the
22 SID number that he got back from the computer. Is that
23 correct?

24 MR. HAYES: Yes, sir. The SID number under SC0545432
25 stating that it was Mr. Albert James Cave and his

1 date-of-birth, race and sex.

2 THE COURT: Mr. Johnson, the SID number, is it
3 identified SC0545432, that number is given to you from the
4 computer?

5 A Yes sir, that is the number that shows up on the
6 fingerprint.

7 THE COURT: Is the name given to you by the computer?

8 A Yes, sir.

9 THE COURT: Date-of-birth?

10 A Yes, sir.

11 THE COURT: Race and sex?

12 A Yes, sir.

13 THE COURT: Mr. Molony, why is that not hearsay?

14 MR. MOLONY: When you pull--

15 THE COURT: Answer my question.

16 MR. MOLONY: I am sorry, Your Honor. What was your
17 question.

18 THE COURT: How can they cross-examine the computer
19 on how it came up with this? Show me a case that allows
20 the, AFIS, allows AFIS computer results be admitted
21 wherein the defense does not have the opportunity to
22 cross-examine how they came up with that result. In other
23 words, he is taking some information and plugging it into
24 a computer program which is not here and getting the
25 results. What allows you to do that?

1 MR. MOLONY: Your Honor, there is two possible ways
2 that he can get these numbers. One is through SLED, the
3 State Law Enforcement Division that keeps track of all of
4 these numbers as well as our secured server here. He
5 testified he used our secured server.

6 THE COURT: Well, I know that. The server is one
7 giving him the information.

8 MR. MOLONY: Right which goes in directly after the
9 arrest.

10 THE COURT: Prior arrest.

11 MR. MOLONY: After a prior arrest, yes Your Honor.
12 These ten print cards are made to go directly--

13 THE COURT: I understand how it is done. What do you
14 have that allows this type of evidence. You haven't
15 qualified him as an expert, as an expert in the analysis
16 of fingerprints. You haven't done that. If you were to
17 do that and obviously he can give opinion testimony and
18 obviously this document or means, which expert will
19 normally rely upon rendering opinion. Talk to Mr. Miller
20 and tell me how you are going to get it in.

21 MR. MOLONY: Your Honor, we can qualify the
22 investigator as an expert, Your Honor.

23 THE COURT: Qualify him as an expert so we can render
24 an opinion and then ask him if this AFIS computer
25 generated information is information that is normally

1 relied upon by fingerprint experts in rendering opinions.
2 And if it is then the rules of evidence will allow him to
3 use it but you haven't gotten to that point yet. That is
4 one way of doing it.

5 MR. MOLONY: Your Honor, we can qualify him as an
6 expert. The ultimate AFIS report that he gets back shows
7 30 possible fingerprints.

8 THE COURT: I understand that.

9 MR. MOLONY: And then it is up to the investigator at
10 that point and time to go through each individually and
11 decide which one he believes is an exact match.

12 THE COURT: And then he does, then he has to plug in
13 that SID number into AFIS to get the result. And what
14 they are complaining about, they don't have anybody here
15 to cross-examine him on that result unless you do it the
16 way I suggested.

17 MR. MOLONY: Yes sir, Your Honor. We can qualify the
18 investigator.

19 THE COURT: Mr. Hayes, what do you say.

20 MR. HAYES: Under State v. Anderson you would have to
21 have a SLED Agent present to qualify anything from the
22 AFIS report.

23 THE COURT: Why is that. Show me the case.

24 MR. MOLONY: Your Honor, that is just not an accurate
25 statement under the law.

1 THE COURT: Show me the case. Tell me where you are
2 looking. There is a 2009 case by Justice Beatty.

3 MR. HAYES: The case, in this case it says, evidence
4 matched with a fingerprint card on page five, Your Honor.
5 The fourth paragraph. Evidence as to when and by whom the
6 card was made and the time the prints were in fact those
7 of the defendant. I am not opposing the actual
8 fingerprint card, Your Honor. The computer generated
9 document I am opposed.

10 THE COURT: This is not a computer generated
11 document. This is, he wrote it down, this is what he
12 wrote down after reviewing the computer. This is all
13 about identification of fingerprint cards.

14 MR. HAYES: In Anderson, Your Honor, to go on to page
15 seven on the third paragraph. They had the SLED agent
16 present and talked about how the accurate records were
17 kept at SLED and they testified to that. We don't have
18 that here today as to this information that he is relying
19 on from SLED.

20 THE COURT: What do you say to that, Mr. Molony?

21 MR. MOLONY: Your Honor, Mr. Hayes has taken a, if
22 you look at page five of the opinion in Anderson. It said
23 Anderson never challenged the admissibility of the
24 fingerprint card on the ground, that it constituted
25 inadmissible hearsay.

1 THE COURT: That is correct.

2 MR. MOLONY: But if you look at the footnote it says,
3 even assuming Anderson had raised the hearsay challenge
4 such an argument would be without merit. So what he has
5 done is he has tried to work into the exception to the
6 rule, whatever the Court blows the exception to the rule
7 out in the very same footnote on the same paragraph. The
8 SLED agent who was called to testify in that case was
9 testifying that this ten print card was requested from
10 SLED and SLED maintains the secure facility that has the
11 ten print cards in it. And the Court specifically said
12 under a number of different exceptions that the ten print
13 card, he didn't have to testify who the officer was that
14 took it, he didn't have to testify about when the ten
15 print card was taken. All he had to do was testify to is
16 SLED regularly receives these ten print cards and when we
17 receive these ten print cards then we keep them secure
18 until somebody tells us that they need one. The way that
19 they tell them that they need one is because they get an
20 AFIS hit. So he then testified and this is all concerning
21 the testimony of Lieutenant Joe Means who was a SLED agent
22 that was in charge of their record section at that time.
23 Your Honor, in this case and he has not gotten to the
24 point in his testimony yet but in this case Investigator
25 Johnson is going to explain that whenever they get a hit

1 on the ten print card and they go to check the SID the
2 first place that they check is the Aiken County Sheriffs
3 Office on an internal server which has a digital copy of
4 the ten print card.

5 THE COURT: He hasn't done all of that and you are
6 trying to get it into evidence now.

7 MR. MOLONY: Understanding that, Your Honor, that is
8 the issue is that we need to put forth the evidence in a
9 different order but I think that the Court is correct, the
10 more logical way to go about it is just to introduce the
11 expert opinion and also to let him testify as to where the
12 actual ten print card came from in this case. It didn't
13 come from the SLED server, it came from the internal Aiken
14 County Sheriffs Office server because whenever the ten
15 print is taken, whenever the digital image of the ten
16 print is taken it has duplicate copies. It sends one to
17 SLED electronically and one stays on Aiken County server.
18 And he is going to testify to all of that information. We
19 got a little bit out of order but what we were trying to
20 do which is why he hasn't established that foundation yet.

21 THE COURT: Very well. Well I am not going to
22 introduce it yet.

23 MR. MOLONY: Yes, sir.

24 THE COURT: Do we have 25 more minutes of testimony
25 we can get?

1 MR. MOLONY: Not from the State's side, Your Honor.

2 THE COURT: Well you have got to get all of that in,
3 get this in.

4 MR. MOLONY: There is not much other than what we
5 have to do to get this ten print card in. Maybe a
6 question or two, he has basically answered everything
7 else.

8 THE COURT: All right, objection sustained. Bring
9 the jury in.

10 (Whereupon, the jury came into open court at
11 approximately 4:36 p.m.)

12 THE COURT: Mr. Foreman and ladies and gentlemen,
13 every now and then somebody makes an objection, I have to
14 get into things that may or may not be admissible. That
15 is why I had to ask y'all to step out. What we are going
16 to do is we are going to continue the testimony until the
17 State finishes this witness. And then we will break and
18 before we dismiss for the afternoon we will discuss what
19 time to start in the morning.

20 MR. MOLONY: Your Honor, at this time the State would
21 offer Investigator Johnson as an expert in fingerprint
22 analysis.

23 THE COURT: Before you do that you have got to
24 qualify him, education, training and experience.

25 CONTINUE DIRECT EXAMINATION

1 By Mr. Molony:

2 Q Investigator Johnson, going back to the very
3 beginning of this.

4 THE COURT: Ladies and gentlemen, I have been
5 practicing for 30 years and been on the bench up here 8
6 years. These two young lawyers, they are a little bit wet
7 behind the ears and when I was doing like they would I was
8 so scared that I would mess up and sometimes I did. So I
9 am trying to go, I am not fussing at them, just they have
10 got to ask a certain question. They are doing a great
11 job. It is not an easy thing to get up here and remember
12 all of the law. Don't think I am fussing at either one of
13 them. They are moving along fine. Plus Mr. Molony just
14 got married, he is somewhere else in Jamaica.

15 Q Investigator Johnson, at the beginning of this trial,
16 at the beginning of your testimony you stated. Let me
17 just ask you, how long have you been working in this
18 capacity at the sheriffs office in Aiken?

19 A Here in Aiken I have been a forensic investigator
20 since June the 16th of 2006.

21 Q And prior to that what was your experience, if any?

22 A Prior to coming to the Aiken County Sheriffs Office I
23 was a forensic investigator in Greenville, South Carolina
24 for approximately three and a half years.

25 Q And what classes, if any, have you taken to help you

1 in your field of studying for fingerprint analysis?
2 A As mentioned before I took a forty hour class, basic
3 fingerprinting at the South Carolina Criminal Justice
4 Academy which allowed me to recognize fingerprint
5 patterns, allowed me to classify fingerprints in the NCIC
6 Classification System and in the Henry Classification
7 System. The Henry Classification System allows me to be
8 able to take a ten print card or a ten finger roll and go
9 to the master fingerprint card file in Greenville with no
10 name, just a ten print card and be able to do what we call
11 a ten finger roll, take those fingerprints and make an
12 identification with the Henry Classification System, pull
13 a fingerprint card from a drawer of thousands of
14 fingerprint cards, go to a specific drawer, pull out a
15 handful of fingerprint cards that were in that range of
16 that classification system and make an identification or
17 on an unknown compared to a known. The Henry
18 Classification System is no longer used. I have also had
19 in Greenville six months on the job training. It was a
20 year before I was considered a senior forensic
21 investigator, was able to go and process crime scenes
22 without any question. Anything that came in I went on,
23 myself and other people if I needed help. Since I have
24 been a forensic investigator I am a member of the South
25 Carolina Division of the IAI. I have published an article

1 dealing with process of obtaining fingerprints from
2 plastic bags. The articles is named Easy Lifting. It was
3 published in the South Carolina IAI E-News letter. It was
4 also published in the Chesapeake Bay Division of the IAI,
5 their publication. And the Arizona branch of the IAI,
6 also published the same article. Gone to numerous
7 training, numerous training opportunities through the
8 South Carolina IAI. I try to attend a conference every
9 year.

10 Q How many cases have you been involved in such as this
11 in your experience?

12 A I have answered, documented in Greenville, 1,744
13 crime scene calls in Greenville alone. Probably another
14 500 or so while I have been here in Aiken.

15 MR. MOLONY: Your Honor, at this time the State does
16 move to introduce---

17 THE COURT: Moves what?

18 MR. MOLONY: Moves to--

19 THE COURT: Introduce this witness as an expert in
20 the field of fingerprint analysis?

21 MR. MOLONY: Yes, sir.

22 THE COURT: Any objection or any cross-examination on
23 his qualifications?

24 MR. HAYES: Yes, sir.

25 THE COURT: On his qualification only.

1 MR. HAYES: Yes, sir.

2 CROSS-EXAMINATION

3 By Mr. Hayes:

4 Q Mr. Johnson, is it Lieutenant?

5 A Investigator. My rank is sergeant but I am just
6 Investigator Johnson.

7 Q Investigator, on your training, you said you had
8 attended one class?

9 A Yes, sir. One class at the Criminal Justice Academy
10 but several other training seminars to the South Carolina
11 IAI.

12 Q I am having a hard time hearing you.

13 THE COURT: South Carolina what?

14 A The South Carolina Division of the International
15 Association for Identification.

16 Q Do you own any certificates or diplomas or degrees as
17 to that. Was there a certificate issued at the end of
18 them?

19 A Yes sir, there was. At the end of that forty hour
20 class and normally we do get, yes sir.

21 Q Beyond that you said you also had a class the very
22 first, the very first class?

23 A The South Carolina Criminal Justice Academy.

24 Q Yes.

25 A Yes sir, that was that basic fingerprinting.

- 1 Q How long was that class?
- 2 A That was a forty hour class.
- 3 Q When was that?
- 4 A That was probably 2001.
- 5 Q And then when was the other forty hour class?
- 6 A The other classes have been the conference and the
- 7 seminars and training opportunities through the South
- 8 Carolina IAI.
- 9 Q How many conferences and seminars?
- 10 A I would say a good estimate is three of the annual
- 11 conferences and then probably five to ten of the training
- 12 opportunities throughout the years.
- 13 Q Do you have a certification, is there a certification
- 14 for fingerprints?
- 15 A A certified latent print examiner?
- 16 Q Yes, is there a certification?
- 17 A There is a certain certified latent examiner.
- 18 Q Are you certified?
- 19 A No, I am not a certified latent print examiner.
- 20 Q What would it take to become a certified latent print
- 21 examiner?
- 22 A You have to take, you have to read, there is I
- 23 believe three books you have to read. You have to take a
- 24 written test and you also have to take and match a certain
- 25 number of fingerprints as part of the test.

1 Q Are you in any one of these process steps?

2 A Not currently at this time.

3 Q Who gives out that certification?

4 A The International Division, the IAI, the
5 International Association for Identification.

6 Q Is there one for the State?

7 A Yes, it is the South Carolina Chapter, yes sir.

8 MR. HAYES: Your Honor, I would object to him being a
9 certified expert under latent print examination based on
10 one, that he is not certified yet and number two he has
11 only attended two classes and several seminars.

12 THE COURT: I overrule your objection. I let doctors
13 testify in here all the time who aren't Board Certified
14 but they are doctors nevertheless. Ladies and gentlemen,
15 the rules of evidence normally will not allow a person to
16 give an opinion. But when we have a topic dealing with
17 some scientific situation such as fingerprints and the
18 witness has by way of education, training and experience
19 has gained knowledge in those areas then the law allows
20 him to render an opinion, i.e. whose fingerprint is this,
21 that is an opinion. And at the conclusion of the case I
22 will charge you on what weight you give to someone I
23 qualify as an expert. So I am going to qualify him as an
24 expert and that simply allows him to give opinion
25 testimony as to fingerprints involved in this case. And

1 like I say, I will instruct you at the conclusion of the
2 case on what weight you can give people who have been
3 qualified as an expert. Move along.

4 Q Investigator Johnson, did you compare the latent
5 fingerprints in exhibit 4 with the prints on exhibit 10?

6 A Yes, I did.

7 Q And what was your conclusion of the analysis of these
8 two sets of prints?

9 A Yes, sir. The fingerprint that I looked at which was
10 the thumb on the item that I processed was the same
11 fingerprint as the thumb, the number one thumb on the ten
12 print card.

13 Q And what factors did you base this conclusion on?

14 A All of the minutiae that I in put into the computer
15 and the minutiae that I saw on the ten print card matched
16 the same minutiae on the item that I processed.

17 Q You say minutiae, what did you do to match State's
18 exhibit 10 to State's exhibit 4, what is minutiae?

19 A Minutiae is the points of identification. Minutiae
20 is a verification where a ridge, it will separate and it
21 will be one ridge, it will separate into two. A ridge
22 ending or one ridge comes up and it just stops, that is a
23 ridge ending or there is dots or short ridges, just little
24 bitty small dots or little bitty short ridges. Those are
25 all points of identification inside of a fingerprint.

1 Q How many points of comparison did you find on these
2 fingerprints?

3 A Thirty-six points of identification.

4 Q And is that a relatively high or low number of
5 points?

6 A That is a very good number.

7 Q Good meaning?

8 A Good meaning, it is not the highest that you can get
9 but it is definitely a good bit away from the lowest
10 number that you can get.

11 Q Okay. What is live scan?

12 A Live scan is the electronic way to capture somebody's
13 fingerprint when they are being booked into the system.
14 It used to be you would go in and get your fingers inked
15 and roll your fingerprints. Now we have a live scan
16 computer which electronically captures your fingerprints
17 when you are booked into a detention facility.

18 Q Okay. And what happens when a ten print card is
19 created in live scan, where does that information go?

20 A The information is stored on the local data base and
21 it is also sent to SLED. And those are the two places
22 that I know it is sent, one is electronically transferred
23 to SLED and one is transferred to the local data base.

24 Q And when you say local data base?

25 A A secured server.

1 Q And where is, for the Aiken County Sheriffs Office?

2 A I don't know the physical location of the server, I
3 just know it is in the county.

4 Q That is fine. When you pulled the ten print card for
5 this case where did you get it from?

6 A I got it from our server, it was printed on a
7 dedicated printer on a secure line. That printer doesn't
8 print anything except for ten print cards and palm prints.

9 Q Okay. I am going to show you again what has been
10 marked as State's exhibit 5.

11 A It is my lab report and an AFIS worksheet.

12 Q And the AFIS worksheet, could you explain the process
13 of how you filled that worksheet out?

14 A When I am entering a fingerprint in the automated
15 fingerprint identification system I am going to be keeping
16 track of one of these, this is what I try to keep track
17 of, helps me keep track of what I have entered. The first
18 blank here, well actually if you go up here, this is just
19 the basic information as I explained before. It is our
20 case number, whatever case number is attached to the
21 fingerprint or the item that I processed. The originating
22 agency, Aiken County Sheriffs Office, that is what ACSO
23 stands for. The date of entry, that is the date that I
24 physically entered the fingerprint into the computer for
25 the search. The AFIS number is the number that is

1 assigned--

2 MR. HAYES: Your Honor, I want to object, he is
3 publishing that to the jury and it has not been entered.

4 THE COURT: Sustained.

5 MR. MOLONY: Your Honor, the State moves to introduce
6 exhibit 5 into evidence.

7 THE COURT: Any objection now?

8 MR. HAYES: I still object to the second page.

9 THE COURT: Overruled.

10 (Whereupon, State's Exhibit 5 was admitted into
11 evidence.)

12 Q After you made your conclusion and in your opinion
13 found that the ten print card matched that of State's
14 exhibit 4 which was found at the scene of the crime in
15 this case what did you do next?

16 A I sent my findings to be verified by Lieutenant
17 Adams.

18 Q Thank you. I have no more questions.

19 THE COURT: All right. We are going to break at this
20 time and will cross-examine in the morning. Mr. Foreman
21 and ladies and gentlemen, I have two bond hearings at 9:15
22 in the morning so we will start at 9:45. So please be in
23 the jury room ready to go shortly before that. We can get
24 you some sausage and ham biscuits or we can get fruit or
25 pastries. I always ask the women, what would y'all like.

1 They want biscuits. We will have that and some coffee.
2 Please be here by 9:30 because you can't bring it in here.
3 We have got this witness and one more and then I am not
4 sure how many the defense has but you should be getting
5 this case to deliberate around the lunch hour. I will
6 excuse you, please don't discuss the case tonight and do
7 not let anyone discuss it with you. Please do not go on
8 your computer, on the internet, Twitter, Facebook,
9 Myspace, don't look at stuff on the computer about
10 fingerprints and all of that other stuff. Enjoy your
11 evening and I will see you back in the morning. Everybody
12 remain seated.

13 (Whereupon, the jury was excused from open court for
14 the day.)

15 THE COURT: Investigator, you are right in the middle
16 of your testimony so the rules preclude you tonight from
17 discussing the case with anyone so don't discuss it with
18 the solicitors office or defense counsel. Be ready to
19 proceed in the morning at 9:45. Thank you, you are
20 excused. The defendant is in custody. Mr. Hayes, I want
21 to see y'all in chambers before we break for the evening.

22 MR. MILLER: Your Honor, there is a brief power point
23 presentation which Lieutenant Adams has done. If the
24 Court would like to review that before tomorrow and we
25 would like to leave all of our exhibits with the court

1 reporter.

2 (Whereupon, the trial will continue the next morning
3 at 9:45 a.m.)

4 AUGUST 23, 2011

5 THE COURT: Anything on behalf of the State before we
6 start back?

7 MR. MILLER: No sir, Your Honor.

8 THE COURT: Anything on behalf of the defendant
9 before we start back?

10 MS. ALVES: Yes, sir.

11 THE COURT: What is it?

12 MS. ALVES: Your Honor, we would like to revisit the
13 issue regarding the admission of the machine generated
14 data from the AFIS.

15 THE COURT: I have already ruled on it and you know
16 what the rules are when I rule.

17 MS. ALVES: Yes sir, Your Honor. But yesterday you
18 did indicate that you would allow us to revisit this issue
19 and I do have a new ground on which I would like to bring
20 to the Court's attention.

21 THE COURT: All right, go ahead.

22 MS. ALVES: Your Honor, at this point I object to
23 that, I further object to the introduction of the AFIS
24 report and the AFIS information under the, as it violates
25 the Sixth Amendment confrontation clause. Judge, in

1 arguing this I am relying on the U.S. Supreme Court case
2 of Bullcoming versus New Mexico which was decided on June
3 23rd of this year. In that case the defendant was charged
4 with driving while intoxicated. A blood sample was
5 obtained and sent to a lab and the analyst used a gas
6 chromatograph machine to determine the BAC. The analyst
7 in that case found a blood alcohol content of .21.
8 However the analyst was not available at the trial or
9 rather he just didn't testify at the trial because for
10 some reason he wasn't working. A different analyst
11 testified regarding that analyst's report. The Supreme
12 Court in New Mexico upheld the case arguing that the
13 initial analyst was merely the scrivener who transcribed
14 the machine generated report and that the second analyst
15 was qualified to discuss the testing machine and the
16 procedures. The Supreme Court did reverse. Judge,
17 specifically, going specifically into the discussion on
18 that case on page two they discussed what their holding
19 was. That the confrontation clause does not permit the
20 prosecution to introduce a forensic lab report containing
21 testimonial certification in order to prove a fact at
22 trial through in-court testimony of an analyst who didn't
23 personally perform or observe the performance of the test.
24 Judge, and we are saying in this case that would be the,
25 Investigator Johnson was not the person who in put the

1 information into the machine or who can determine whether
2 the information that was in put and the SID number that
3 came out was accurate. So I think that that would violate
4 the confrontation clause. Judge, the Supreme Court does
5 talk about specific examples, both on page two. Page two
6 and the paragraph that starts A, section I and they also
7 reference it again on page eight. They talk about
8 specific examples. One of their concerns was an analyst
9 testifying about machine generated data. And one example
10 they showed concern about was when one officer has a radar
11 gun and another officer testifies about the findings
12 because they have expert experience in using a radar gun.
13 They said that that would not be proper for that testimony
14 to come out even though that officer would have only been
15 testifying about the use of the radar gun and the report
16 of the number that was obtained by the first officer.
17 Judge, one of the things that this Court considered is
18 whether or not the testimony, well the report that came in
19 would be testimonial. And the Court did say yes. They
20 specifically say this in three places to the opinion that
21 I could find. They specifically talk about whether the
22 report is testimonial on page three of the opinion where
23 the Court does say that the--

24 THE COURT: So you are saying it violates Crawford.

25 MS. ALVES: It violates Crawford, it violates

1 Melendez-Diaz and it also violates this case. Judge, they
2 are saying it is testimonial and they specifically talk
3 about what is testimonial. They talk about it, in one
4 place it is in foot note six where there is a definition
5 of or an interpretation what is testimonial. Footnote six
6 is, on page 14 it says to write this testimonial a
7 statement must have a primary purpose of establishing or
8 proving past events potentially relevant to weigh the
9 prosecution. That is exactly what we have here. We have
10 information that was obtained from the AFIS computer
11 system that the primary purpose is to establish or prove
12 past events, whether or not the fingerprints in the AFIS
13 belong to, who did the fingerprints belong to. And in
14 this case the AFIS is saying they belong to the defendant.

15 THE COURT: Ms. Alves, do you have a case that deals
16 not with the BA test but with the AFIS fingerprint ten
17 print card and SSI number. Do you have a case?

18 MS. ALVES: Judge, no sir, I don't have a case with a
19 ten print card. What we are arguing is not the ten print
20 card coming in because of course the ten print card could,
21 the State could have put up evidence that they compared
22 the defendant's fingerprints to the ten print card and
23 that would have come in. But I don't think that the AFIS
24 information is saying that the State generated
25 information. I don't think it was proper for the officer

1 to testify about that or for the report to be introduced
2 because that is machine generated data that the officer
3 did not have a hand in creating.

4 THE COURT: Anything else?

5 MS. ALVES: Yes, sir. Your Honor, yesterday there
6 was some discussion about whether this is a business
7 record and in this court, it is actually in the concurrent
8 opinion but it quotes Melendez-Diaz which talks about
9 whether that business record would be admitted except if
10 the regularly conducted business activity is the
11 production of evidence to use at trial which this is what
12 we have in this case. So this would not be a business
13 record under Melendez-Diaz. Also, Your Honor, the Court
14 does talk about, specifically about, the Court does not,
15 it does clearly state in the opinion that the Court never
16 specifically addresses whether or not the State could
17 introduce raw data generated by a machine including,
18 assuming that they had an adequate chain to that data. So
19 the opinion is clear that it doesn't address that.
20 However the opinion does address concerns regarding
21 testing, it does, the opinion does address both in
22 footnote one and footnote eight the Supreme Court's
23 concerns over the possibility of human error in inputting
24 data into a machine. And also the Judge, the Court does
25 address that. A document created solely for an.

1 evidentiary purpose made in aid of a police investigation
2 ranks as testimonial. Also one more thing that I would
3 like to point out, Your Honor. On page eight of the
4 opinion they do talk about the fact that, in a quote from
5 them they say that the comparative reliability of an
6 analyst's testimonial report drawn from machine produced
7 data does not overcome the sixth amendment bar. That this
8 Court settled in Crawford that the obvious reliability of
9 a testimonial statement does not dispense with the
10 confrontation clause. I think that that specifically
11 relates to this case because I know that the fingerprint,
12 the testimony was that the fingerprint that was submitted
13 to AFIS came back with the SID number that corresponded to
14 Mr., to the defendant. However, in this case the officer
15 and I know that the testimony was that the officer did
16 examine the fingerprint and then ultimately decided and
17 determined that it was his fingerprint. I don't think it
18 matters that the data was found to be reliable. The Court
19 clearly says that the reliability of the testimonial
20 statement does not dispense with the confrontation clause.
21 And unless we have and they go on to talk about the only
22 way the confrontation clause can be satisfied is through
23 the crucible of cross-examination. Since we are not able
24 to cross-examine the people who input the data and
25 created the report on the computer that Investigator

1 Johnson testified about I think that the, that any mention
2 of the data obtained by the AFIS would violate the
3 confrontation clause and we would ask you to reconsider
4 allowing them to, the State to have entered the report, I
5 believe it is exhibit number 5, if I am correct, into
6 evidence. And we further renew our objection to the
7 testimony that Investigator Johnson gave detailing what
8 the AFIS information was from his computer.

9 THE COURT: I am going to stand by my ruling. I
10 carefully reviewed last night and again this morning the
11 State versus Anderson, 386 SC 120, that is a 2009 case
12 offered by Justice Beatty dealing with AFIS card, a ten
13 print card and the identification system and the assigning
14 of SSI number. They go through a thorough analysis
15 dealing with AFIS and allows the admissibility of it under
16 the public record exception to the hearsay as well as a
17 number of other exceptions which I found to be almost the
18 same testimony here as it was set forth in Anderson. I
19 find further that the records were authenticated as set
20 forth in this case. Further this case talks about the
21 confrontation clause and Crawford. Because here was a
22 hearsay challenge all raised yesterday and a footnote that
23 says, even assuming that Anderson in that case raised a
24 hearsay challenge such an argument would be without merit.
25 And Rich which was another case. This Court definitely

1 held that police fingerprint cards do not violate the
2 prohibition against hearsay given, they fall within the
3 business records exception or the public records
4 exception. Notably appellate courts have continued to
5 recognize this principle and have emphasized that
6 fingerprint cards are not, "testimonial", and thus do not
7 violate the rule. And Crawford versus Washington and they
8 cite a number of cases particularly in the Fourth Circuit
9 and that case in the Fourth Circuit relied on decisions of
10 the Fifth, Sixth and Ninth Circuits that concluded that
11 fingerprint cards were not testimonial and that the
12 admission of such business and public records does not
13 violate the rule set forth in Crawford. So I am going to
14 rely on the latest decision based on our Supreme Court
15 dealing with the AFIS card. Now, if you can find me a
16 U.S. Supreme Court that deals with the fingerprinting
17 situation which I think would be totally different, a
18 blood alcohol analysis I may reconsider it. But reading
19 an entire opinion in Anderson it appears that the
20 presentation yesterday by the State falls in all four
21 corners of that decision almost like a template or like a
22 protocol. They have used what was required for them in
23 Anderson and the testimony here yesterday. So I
24 respectfully stand by my decision. Anything by the State?

25 MR. MOLONY: Nothing by the State, Your Honor.

1 THE COURT: Additionally, on Anderson they also
2 talked about where the evidence did not precisely fit
3 within one of the numerated examples under Rule 901 which
4 is the authenticity rule. And they said the case or the
5 State in that case provided expert testimony which linked
6 the latent fingerprints with Anderson's known prints. A
7 sergeant in that case, Anderson testified as an expert as
8 did the officer yesterday in the field of fingerprint
9 analysis. And they said that that was a proper means of
10 putting it in through the expert witnesses opinion after
11 he was qualified and obviously these are the type of
12 records that an expert relies upon in rendering his
13 opinion. Any of those scenarios I find it to be
14 admissible. Anything else by the State before we proceed?

15 MR. MOLONY: None from the State, Your Honor.

16 THE COURT: By the defendant?

17 MR. HAYES: None, Your Honor.

18 THE COURT: All right, sir, come on back up. You are
19 still under oath. I have been informed by the Clerk that
20 a juror, Talbert Reid called in this morning and has a
21 child that was sick and had to go to the doctor or
22 hospital or somewhere. Anyway we all know children come
23 ahead of everything. So he has been excused and I will
24 elevate the alternate to the jury, to the regular jury
25 panel.

1 MR. MOLONY: No objection from the State, Your Honor.

2 MR. HAYES: No objection.

3 THE COURT: Bring the jury.

4 (Whereupon, the jury came into open court at
5 approximately 9:47 a.m.)

6 THE COURT: Ladies and gentlemen, I have excused
7 juror number 175, Mr. Reid has some issues with one of his
8 children, got sick last night. So, Mr. Jones, I am
9 elevating you to the regular jury panel. You are good
10 sitting right there, you can move down if you want to. We
11 are going to get started back with the cross-examination
12 of this witness. As I understand the State has one more
13 witness after this and I am not sure how many witnesses
14 the defense has if any and we will go from there. Good
15 morning. Right on time.

16 CROSS-EXAMINATION

17 By Mr. Hayes:

18 Q Good morning, Mr. Johnson.

19 A Good morning.

20 Q In your direct testimony you had said you had been to
21 1,744 crime scenes?

22 A Yes, sir.

23 Q And then was that an additional 500 in Aiken County
24 or was that included in that?

25 A It is an additional.

1 Q It is an additional. Of those crime scenes how many
2 of them were burglaries?

3 A A good majority of them were. That was normally the
4 most common type of call.

5 Q So burglaries would be the most common call that you
6 would go on?

7 A Yes.

8 Q Do you know how many of them are in Aiken?

9 A No, I can't give you an exact number of how many
10 burglaries I have responded to in Aiken County, it is a
11 good number.

12 Q Would it be, would it still be the majority of your
13 calls?

14 A Yes.

15 Q How do you get called out to a crime scene?

16 A The officer is dispatched to the crime scene or to
17 the call, he goes out to the call. From that point he
18 determines what he has and basically he advises his
19 supervisor of what is going on and the supervisor makes
20 the decision to give us a call and have us respond or have
21 CID respond.

22 Q When you get to a crime scene what do you do, what
23 would be your role at a crime scene?

24 A When I respond to a crime scene the first thing that
25 I am going to do is an initial survey of the scene. I am

1 going to look at where I am at as far as what type of
2 residence I am at, mobile home, house, business. I am
3 just going to take an initial survey then what I would do
4 is document the crime scene. I would photograph the
5 evidence and then I would go into collecting the evidence,
6 the physical evidence and I can take away from the crime
7 scene that an unknown person has come into, has come into
8 the house and has moved items. Those items I can either
9 process on the scene or if I have to collect them I will
10 collect them for later processing. And then typically I
11 will process the house, if there is anything that is
12 considered a good surface or a surface that would hold a
13 decent fingerprint I would process for fingerprints on the
14 crime scene. And once that is done I would come back to
15 the office and work on the evidence if I collected any,
16 put everything on a property receipt that I collected from
17 the crime scene and eventually would be submitted into
18 evidence.

19 Q When you get to the crime scene you said you would
20 photograph it to preserve what you are seeing and then you
21 would collect evidence?

22 A Yes, sir.

23 Q How do you determine what you would actually collect?

24 A The practice that I follow is if the victim is on the
25 scene I like to ask the victim, like if your house is

1 broken into you would know more what was moved than I
2 would. So my practice is to, once I have surveyed and I
3 have documented and I know, documented the crime scene as
4 I responded to it I would ask the victim to come in behind
5 me and tell me what has been moved. What do you see that
6 has been moved from one point to another point or what has
7 been disturbed in your house and I would work from that
8 point as far as what has been moved and what I can
9 process.

10 Q So you would start trying to dust for prints at the
11 scene as well or for the items that they told you were
12 moved?

13 A If i is an item that I can process on the scene, I
14 typically like to process it on the scene. The less stuff
15 I have to take away from the house it is better for me and
16 it is better for the victim.

17 Q So you can do it two different ways. You can process
18 it there at the scene or you can collect it and take it
19 back to the lab and process it for prints?

20 A There are certain items that you can't process on the
21 scene like paper items. I can't process paper on the
22 scene, I don't have the chemical with me. It wouldn't be
23 a good idea to carry around these chemicals in a truck.
24 If there is something like paper or something like that
25 that I have to treat and there is a good chance that there

1 is fingerprints on it I will collect that and process it
2 at the office. If there is other items that I can't
3 process on the scene because I don't have the equipment I
4 will collect it and process it back at the office. But
5 otherwise if I can leave it I typically process it there
6 on the scene and leave it there.

7 Q So there is more than one way to collect
8 fingerprints. You can dust for them. You heard earlier
9 about another method called ninhydrin. I believe you also
10 testified something that was similar to super glue?

11 A Yes sir.

12 Q Can you tell us a little bit about each one of those?

13 A Sure. When you are dusting with powders a
14 fingerprint is composed of, majority of a fingerprint is
15 composed of water and amino acids and other secretions
16 from the pores in your fingerprints. Once you have
17 touched an item and you have left your fingerprints on the
18 items I can come back with a powder, it is a fine powder,
19 use a brush and I can develop those fingerprints. That is
20 one way. After I develop the fingerprints I put tape on
21 it, lift tape and then I pull the fingerprint off the
22 surface and I put it back on a fingerprint lift card.
23 That is one way to get a fingerprint. Another way to get
24 a fingerprint is if you have a porous item and what I mean
25 by porous is I mean it will absorb, it will absorb the

1 fingerprint. So paper, if you touch a piece of paper with
2 your hands that fingerprint will be absorbed into the
3 paper. Just like if you take a drop of water and drop it
4 on a piece of paper eventually the paper will absorb the
5 water and it will dry. The same thing happens with a
6 fingerprint. The fingerprint is transferred onto the
7 paper and then it is absorbed into the paper. And we can
8 process that with ninhydrin acetone and then develop the
9 fingerprint. The fingerprint will turn a purple color
10 because it is reacting with the amino acids left behind in
11 the fingerprint. Another way that we can fingerprint and
12 it is more of a development and a preservation is using
13 what we call super glue fuming. I don't know if anybody
14 has seen Beverly Hills Cop, kind of the same thing. When
15 he puts the super glue in the coke can and puts it in a
16 light bulb and puts it in a fish tank. The super glue
17 fumes will adhere to the fingerprints if you have an item
18 that has been touched. It is a good idea on a rigid
19 surface or a surface that has got a little bit of a
20 texture, you can actually put it in there and develop the
21 fingerprint and it will actually preserve it. It will
22 preserve it somewhat. I am not going to say it is not
23 going to be indestructible but it will be preserve it
24 somewhat. It will make it more stable, more sturdy where
25 you can put powder on it and then lift it and the

1 fingerprint will still be together, the fumes and the
2 super glue will still be there and you come back if you
3 had to and apply more powder and lift it again. That is
4 another way we can collect fingerprints. It is just like
5 the first way, the only thing we are doing is we are using
6 a cyanoacrylate for the super glue to make the print more
7 rigid and more durable.

9 Q And there is other possible methods as well or are
9 these the only ways?

10 A There is a number of different chemicals. There is a
11 number of different, you can use iodine fuming which is, I
12 am not sure if I can, go ahead.

13 Q You were saying about the print being more stable
14 with the super glue. Isn't it possible that even after it
15 has been super glued and try to be dusted the print could
16 just disappear?

17 THE COURT: That is an improper question, anything is
18 possible. Ask a proper question. The proper way to do
19 it, is more likely than not.

20 Q Is it more likely than not that after having been
21 fumed that once you go to dust the print that it could
22 disappear to the visible eye and that other methods would
23 have to be used to collect the print?

24 A Are you questioning if the fingerprint is going to
25 disappear?

1 Q Not that it would disappear, it would still be
2 present but you wouldn't be able to see it with your naked
3 eye.

4 A Once you apply the powder?

5 Q Right.

6 A I am, yes that is possible.

7 THE COURT: No sir, we are not dealing with
8 possibilities. That calls for speculation which I can't
9 allow. We have to deal, you are an expert witness, you
10 have to give an opinion to a reasonable degree of
11 certainty in the fingerprint world, more likely than not,
12 not possible, more likely than not.

13 A Yes, sir.

14 THE COURT: If you are going to render an opinion it
15 has to be more likely than not.

16 A Yes, sir. When you fume it and you put powder on it
17 the fingerprint doesn't go anywhere. It is still there,
18 you just might not be able to see it with your eye. And
19 one, like I had said yesterday: I stumbled upon a way
20 that you can get a fingerprint from a plastic bag and that
21 is typically what happens. You develop a fingerprint
22 using super glue on a plastic bag. You put powder on it
23 and it is, you can't see the fingerprint anymore. The
24 fingerprint was still there, you just had to lift it
25 differently or obtain it differently from that surface.

1 Q So the dust, necessarily you can dust something and
2 not see a print but if you would use another method you
3 may been able to develop a print that was existing on that
4 item?

5 A Different items like porous and non-porous, there is
6 different ways to process for fingerprints. I wouldn't
7 treat a piece of glass with ninhydrin acetone.

8 Q Let's go back to a crime scene when you go to a
9 burglary. What type of items would you actual dust, would
10 you dust the doorknobs?

11 A You can dust the doorknobs, yes.

12 Q Would you dust the windowsills?

13 A Yes.

14 Q If that was a point of entry, a presumed point of
15 entry?

16 A I would, I like to say I would dust for fingerprints
17 or try and get fingerprints from all affective areas. And
18 by affected is, I try to follow as far as if he came in
19 the window, you know, the area around the window. If he
20 came in the door the area around the door and any of the
21 areas affected inside the residence where he has actually
22 moved stuff around. That just limits turning the whole
23 house black with powder.

24 Q If the point of entry was a broken window, a presumed
25 broken window would you dust the shards of glass around

1 the window?

2 A I would, yes sir.

3 Q On the shovel, there was testimony about a shovel.

4 Is it possible to, is it more likely--

5 THE COURT: Just ask him, can you.

6 Q Can you get a fingerprint off of a shovel handle be
7 it plastic and/or wood?

8 A It depends on the condition of the shovel handle. A
9 fiberglass, a nice smooth fiberglass shovel handle that
10 has not been used and not all scratched up and tore to
11 pieces, yes you can get a fingerprint from. An old wooden
12 weathered shovel handle, more likely than not you are not
13 going to get an identifiable fingerprint off of it. A
14 brand new wooden handle that is nice and shiny that still
15 as the lacker coating and everything on it you can get a
16 fingerprint from it, yes. So it all depends on the
17 condition of the handle that you are dealing with.

18 Q When you say, if you had gone to a crime scene and
19 you were told that these items were on a desk and the
20 items were moved around would you dust the desk itself?

21 A It depends on the surface, a lot of things depend on
22 the surface that you are dealing with. If I go to a house
23 and there is an antique table or an antique desk that the
24 victim said they moved so and so and such and such off of
25 this desk. And I will instruct the victim that I can

1 permanently damage this piece by putting powder to it and
2 I would let the victim make the decision whether or not
3 they want me to damage their property. So I mean it all
4 deals with the type of surface you are talking about.

5 Q How about the pull handles on drawers?

6 A Typically the pull handles on drawers are not going
7 to give you enough surface area. Now when you are talking
8 about pull handles I am just thinking of the little small,
9 the beveled and the decorative handles that are looped on
10 a drawer. Is that what you are talking about?

11 Q Any kind of handle that would be on a front of a
12 drawer. You would have a round knob on some. I don't
13 know what was in the, the possibilities, I don't know what
14 was in the house in this case. But are there some handles
15 that are pull handles that you would be able to get a
16 print off of?

17 A It all depends on the handle itself. There are some,
18 it is almost like trying to fingerprint this right here.
19 There is not enough surface area on this cord to leave an
20 identifiable fingerprint. But a larger pull knob or
21 something, yes, you could probably get an identifiable
22 fingerprint from it. There is a lot of factors involved
23 in fingerprinting.

24 Q Would you fingerprint, if TV's were taken would you
25 fingerprint any remaining TV's in the house?

1 A Once again, I will go back to the victim. If the
2 victim says that TV has been moved then yes I am going to
3 fingerprint it, I am going to try to get a fingerprint
4 from it. But the victim says that TV has been sitting
5 there and it has been sitting there for years and you can
6 see the dust around it, it has not been disturbed why
7 create more of a mess.

8 Q Have you ever had a case where items of evidence were
9 collected by another jurisdiction?

10 A Have I been on a scene where evidence, are you asking
11 where I have been on a scene--

12 Q Where evidence has been recovered from another
13 jurisdiction?

14 A And they have submitted it to me for processing?

15 Q What would happen on that.

16 THE COURT: First of all ask him has he ever.

17 Q Have you ever worked on a case where evidence was
18 collected or recovered in another jurisdiction?

19 A I have assisted other agencies with crime scenes, yes
20 sir. I hope that answers your question.

21 Q Have you ever been involved, it was in Aiken County,
22 a case or when you were in Greenville and evidence from
23 one of the crimes scenes that you were working was
24 collected or recovered in another jurisdiction?

25 A Yes.

1 Q How would you, would you get the evidence back or
2 what would be the process in that?

3 A Typically if we have a burglary in Aiken County and
4 they find property and recover property in Edgefield
5 County. If they recover it typically the investigators
6 will handle recovering the evidence and it will be their
7 decision if they want it processed or if they even think
8 it needs to be processed.

9 Q So the recovery agency will decide whether or not to
10 process the evidence that they collected?

11 A The investigator, say my house was broken into and I
12 had a flat screen TV missing and the serial number was
13 entered into the NCIC computer and my TV was found in
14 Edgefiled County. The investigator that was assigned to
15 my burglary case would be the one that would be
16 coordinating getting that TV back. I wouldn't, as a
17 forensic investigator and I am probably using me as a bad
18 example, just I am a citizen. But the forensic
19 investigator that came out to the burglary of my house
20 would be the one to coordinate the recovery of the
21 property.

22 Q Okay. How long could a fingerprint stay on an item?

23 A I am trying to stay away from possibilities. The
24 environment which the fingerprint is in will have a great,
25 will be a very strong determining factor as far as how

1 long a fingerprint can last. So I mean there is no set
2 time a fingerprint can last this long or this long. There
3 is no set factor, it is all environmental. It is all what
4 is around the fingerprint as to how long it is going to
5 last.

6 Q I asked you earlier about a windowsill. If a
7 windowsill was dirty and had soot on it or dirt is it
8 possible to get a fingerprint from that surface.

9 THE COURT: Can, I am not going to tell you again.

10 Q Can you get a print on that surface?

11 A It is possible. I mean, excuse me, sorry, Your
12 Honor.

13 THE COURT: I mean it is not me, it is the rules of
14 evidence. You have got to comply with it. I am not
15 fussing at you, just the rules require that.

16 A Depending on the amount of dirt or dust that is
17 involved and depending on how heavy or a secreter the
18 individual who is going through the window is you can get
19 a fingerprint. But it is a lot of variables involved.

20 Q You were stating that you got 36 points of minutiae
21 that was entered into AFIS in this case?

22 A Yes.

23 Q How many points does it require before you can enter
24 a point or a print into AFIS?

25 A Are you asking about what does AFIS require?

1 Q What does AFIS require you to have before you can
2 enter a print?
3 A AFIS requires 8 points.
4 Q Now is there a maximum number of points that you can
5 enter into AFIS?
6 A You can enter as many points as you can find. There
7 is not a set maximum number to my knowledge.
8 Q How many points is there on a finger or a thumb?
9 A On average there is 50 to 60 points of identification
10 on a fingerprint.
11 Q Now once that print is entered into AFIS you told us
12 earlier, you testified earlier it kicks back a set number
13 of 30?
14 A Yes, sir.
15 Q Individual cards or numbers?
16 A It sends back 30 respondents.
17 Q And you said that was a number that y'all had chosen
18 as what you wanted to receive. What is the possibilities,
19 how high can you go in that number?
20 A I have never tried to increase the number.
21 Q How, do you know how many cards are stored or how
22 many print identification cards are stored in AFIS?
23 A I do not know an exact number of how many
24 fingerprints cards are stored into AFIS.
25 THE COURT: You can give us a guesstimate.

1 A Millions, there would literally be millions, probably
2 millions of cards.

3 Q AFIS doesn't actually give you, like you see on TV,
4 one-hundred percent match, is that correct?

5 A No sir, it doesn't. It doesn't give you the CSI
6 picture and overlay and everything like that, no sir.

7 Q That is sort of, identification is up to the
8 investigator that is looking at it?

9 A Yes sir, ultimately it is up to a human being to look
10 at and make the determination. The computer does not make
11 the determination.

12 Q Okay. But it narrows from several million for you
13 based on a set of little patterns and minutiae that there
14 is possibilities within this 30?

15 A Yes. Think of, think of the AFIS computer as a tool.
16 That is exactly what it is, it is a tool. Previously when
17 I was asked what tools or what can we use, what is
18 provided. One of the things that I said was the AFIS
19 workstation. The AFIS workstation is a tool. It allows
20 us to take this huge database and narrow it down. It is a
21 tool, it allows us, rather than looking at every
22 fingerprint that has ever been rolled we can narrow it
23 down to 30.

24 Q Did you look at the other 29 prints in this case or
25 how many cards did you go through before you stopped?

1 A If I am not mistaken the first one that I looked at
2 was matched, I want to be careful to say not an
3 identification. When we, there was a match. The first
4 print is what I went on to look at further. And it was
5 such a strong match and such a, I was you know one-hundred
6 percent sure that this was the match. So there is not any
7 reason to go look at the other 30.

8 Q So none of the other or 29 other cards were not
9 examined?

10 A No sir, after that initial match and the following,
11 the protocol that we use, the ACEV. After going through
12 those steps there was not a reason to go back and look at
13 the other 29. We had already made the match.

14 Q And that would be by 36 points, the 36 points.

15 A My work, yes, 36 points is what I entered and 36
16 points is what I matched.

17 Q And you said there is a possibility of 56 to 60
18 possible points?

19 A 50 to 60, yes sir, that is what I said.

20 Q 50 to 60?

21 A Yes sir, 50 to 60.

22 Q But if one of them points doesn't match it wouldn't
23 be one-hundred percent identification then?

24 A If one of those points does not match, yes sir. If
25 one of those 36 that I was looking at did not match then I

1 would not have made the match.

2 Q So there was only 36 possible points in that
3 fingerprint to identify?

4 A The 36 is what I entered.

5 Q What I am asking is, is there, you are telling me 50
6 to 60 possible points a finger that can be used at any one
7 time?

8 A On average.

9 Q On average. If any point from 0 to 60 was not
10 identical to the other it would not be a match?

11 A Yes.

12 Q On this paper that, the print that was developed on
13 was there any other prints on this paper?

14 A There were two sheets of paper.

15 Q On any of those papers, was there any other prints?

16 A Yes.

17 Q Were they able to be identified?

18 A I did not, I did not identify anything of those. I
19 did not make any type of comparison on those.

20 Q Was it because they weren't of quality to make an
21 identification or was it because you didn't look at them?

22 A Once I made the initial match I submitted it to
23 Lieutenant Adams.

24 Q Okay.

25 A And that was as far as I went in the case, as far as

1 the match.

2 Q Was there any exclusion cards taken, any prints taken
3 from the homeowners or the officers to say, hey, these
4 possible prints may be found on these items that we
5 collected so that you could look at it to the exclusion of
6 homeowner or anyone else?

7 A To my knowledge that was the only thing that was
8 submitted to me.

9 Q So you couldn't tell me if Ms. Smiley's prints were
10 on that piece of paper then today?

11 A Whose?

12 Q Ms. Smiley, the victim, the homeowners?

13 A No, I could not tell you if her fingerprints were on
14 that piece of paper at this point and time today.

15 Q Is there an error rate in fingerprint science. Kind
16 of like in SLED reports, you do a DNA report and they come
17 back with so many trillion that there is a possibility,
18 their exclusion of one person versus another?

19 A No. It is all or nothing in a fingerprint
20 identification.

21 Q Have you ever had a situation where you and
22 Lieutenant Adams disagreed on a identification?

23 A Yes, sir.

24 Q What happens on those situations?

25 A I don't make the identification, I don't make the

1 match. If he cannot see what I see it is not him.

2 Q On items how long, I think I have already asked this
3 one. How long can a print last and you said it would
4 depend on a different timeframe?

5 A It depends on the environment, it depends on what
6 that fingerprint is in, what it is on, what is around it.

7 Q How long could it remain on a piece of paper in an
8 air-conditioned home?

9 A It could last quite a while.

10 Q What do you mean by quite a while, can you quantify
11 that to a number possibly?

12 A I can't get you an exact number of days, no. Like I
13 said, it depends on a number of different variables. I am
14 not going to tell you a fingerprint can last one-hundred
15 years. I am not going to tell you that a fingerprint can
16 last one-hundred days because it all depends on the
17 environment.

18 Q Do you have the list that AFIS gave to you with the
19 30 different individuals?

20 A Do I have the printout of the screen?

21 Q Yes.

22 A There is a printout of the screen, I don't have it
23 with me but the screen was printed out, yes sir.

24 Q Was Mr. Cave's name the first one on the list?

25 A There are no names on the list.

- 1 Q Was his identification the first one on the list
2 going down the list?
- 3 A Yes, as far as the SID number, the first fingerprint
4 I looked at.
- 5 Q Nothing further.
- 6 THE COURT: Redirect?
- 7 MR. MOLONY: No redirect, Your Honor.
- 8 THE COURT: You may step down.
- 9 MR. MILLER: The State calls Lieutenant Clay Adams.
- 10 MR. HAYES: We would object, Your Honor.
- 11 THE COURT: Object on what?
- 12 MR. HAYES: Bolstering and cumulative.
- 13 THE COURT: Overruled.
- 14 CLAY ADAMS, being
15 first duly sworn, testified as follows:
16 DIRECT EXAMINATION
- 17 By Mr. Miller:
- 18 Q Lieutenant Adams, who do you work for?
- 19 A I work for the Aiken County Sheriffs Office.
- 20 Q And how long have you been employed by the sheriffs
21 office?
- 22 A Since February 23rd of 2001.
- 23 Q What are your job responsibilities with the sheriffs
24 office?
- 25 A I am the forensic lieutenant for the sheriff.

1 Q And how many people do you supervise in the forensics
2 office there?

3 A Four people.

4 Q And so you have experience involving fingerprints,
5 specifically do you have any specialized education,
6 training or experience to allow you to identify collecting
7 and examining and compare fingerprints?

8 A I do.

9 Q What kind of classes have you taken?

10 A I have had advanced classes through the criminal
11 justice academy and basic fingerprint identification,
12 fingerprint processing, crime scene processing, advanced
13 fingerprint identification and other forensic courses.

14 Q What kind of certifications do you hold?

15 A I currently hold two statewide certifications as a
16 certified law enforcement officer and a firefighter. I
17 hold a national certification as a certified fire arson
18 and explosions investigator. And I hold an international
19 certification as a certified latent print examiner.

20 Q As a what?

21 A Certified latent print examiner.

22 Q What type of technical equipment do you use to
23 identify, collect, examine and compare fingerprints?

24 A We typically use just magnifying glasses or we can
25 also use the automated fingerprint identification system

1 or AFIS.

2 Q How many cases have you worked on over the years
3 involving the collection, identification and examination
4 of fingerprint evidence?

5 A I cannot give an exact number but it is well in the
6 thousands.

7 Q And in your professional experience have you had
8 occasion to identify a person by comparing latent
9 fingerprints with their own ink fingerprints?

10 A I do on a daily basis.

11 Q Have you ever been qualified as an expert witness to
12 testify about fingerprints in the courts of this State?

13 A I have fifteen times.

14 MR. MILLER: Your Honor, at this time the State would
15 offer Lieutenant Adams as an expert in the field of
16 fingerprint analysis subject to any voir dire that Mr.
17 Hayes may have.

18 THE COURT: Any voir dire as to qualifications?

19 MR. HAYES: No, sir.

20 THE COURT: Mr. Foreman and ladies and gentlemen, he
21 will be qualified as an expert in the identification of
22 latent and/or fingerprints and will be allowed to give
23 opinions in that field.

24 Q Lieutenant Adams, what is an ink print?

25 A An ink print is a known fingerprint of a person.

1 Q What is a latent print?

2 A A latent print is basically an unknown fingerprint.
3 Those are ones that we will develop at a crime scene or
4 from items taken from a crime scene that need to be
5 identified.

6 Q Are there different distinguishing characteristics of
7 fingerprints?

8 A Yes.

9 Q What are some of those?

10 A Each person's fingerprints are completely different
11 to everybody else's. They are very specific to you and
12 inside those fingerprints are what we call minutiae or
13 points of identification. And basically what that is is
14 we look for those characteristics such as bifurcations
15 which is where a ridge in the fingerprint would travel and
16 then split into two or a ridge ending where the ridge will
17 travel and stop and dots which are very short ridges. So
18 we look for those individual characteristics and where
19 they are located in the fingerprint that makes that unique
20 to that person.

21 Q What kind of surfaces can a person leave a
22 fingerprint on?

23 A Numerous. There is really only two types of surfaces
24 in this world, a porous surface and a non-porous surface.
25 Non-porous surface being metals, wood, any hard surface

1 where the fingerprint will actually stay on top of the
2 surface. Then you have a non-porous surface such as
3 paper, cardboard that will absorb the fingerprint so the
4 fingerprint is actually in it.

5 Q I am sorry, I might have misheard you. The porous
6 surfaces are the ones that absorb and the non-porous
7 surfaces like for metal would be stuff that doesn't
8 absorb?

9 A Correct.

10 Q Is it possible for a person to touch a surface and
11 not leave his fingerprint on it?

12 A Very.

13 Q What types of surfaces are not conducive of leaving
14 identifiable fingerprints?

15 A Your surfaces such as cloth, carpet, anything that is
16 very rigid and very sporadic. A fingerprint typically
17 requires a very smooth surface or a kind of a dimpled
18 surface, something that the fingerprint would actually
19 adhere to.

20 Q Are fingerprints impaired for purposes of
21 identification?

22 A We take an unknown or latent fingerprint and we
23 compare them to inked prints or the known prints.

24 Q Are everyone's fingerprints unique?

25 A Yes.

1 Q I want to call your attention to the exhibit
2 previously marked as State's exhibit 4. Are you familiar
3 with this exhibit and you can take a look inside if you
4 need to.

5 A I am.

6 Q Why are you familiar with that exhibit?

7 A Because I have done a comparison on this exhibit.

8 Q Where did you get that exhibit from?

9 A From Investigator Chris Johnson.

10 Q Do you know when you got it from Investigator
11 Johnson?

12 A May 5th of 2011.

13 Q Where did you get that exhibit, where were you when
14 you got it?

15 A In my office.

16 Q Did you examine that exhibit for latent prints?

17 A I did.

18 Q I want to call your attention to what has been
19 previously marked for identification as State's exhibit 10
20 and can you tell the jury what that is?

21 A This is a copy of a ten print card with the name,
22 Albert James Cave, Jr.

23 Q Is that photocopy of that ten print card fairly and
24 accurately represent the actual ten print card of Albert
25 James Cave, Jr. that you used during this case?

1 A It does.

2 Q And where did you get that, where did you get the ten
3 print card that that is a photo copy of from?

4 A From Investigator Johnson.

5 Q And what day did you get that, would that have been
6 the same day, May the 5th of 2011?

7 A Yes.

8 MR. MILLER: Your Honor, at this time the State would
9 move to introduce exhibit 4 and exhibit 10 into evidence.

10 MR. HAYES: No objection, Your Honor.

11 (Whereupon, State's Exhibit 4 and 10 were admitted
12 into evidence.)

13 Q Lieutenant Adams, did you compare the latent print
14 marked number 1 on State's exhibit 4 with the fingerprints
15 on this card, State's exhibit number 10?

16 A I did.

17 Q What was the result of your comparison?

18 A My results were that developed on the front of AD
19 Scholarship Committee piece of paper as identified as the
20 number one for the right thumb finger of the person whose
21 prints appear on the fingerprint card bearing the name,
22 Albert James Cave, Jr.

23 Q And what factors did you base that conclusion on?

24 A The individual characteristics of the fingerprints.

25 Q And you actually looked at the individual

1 characteristics of the fingerprints or did you just rely
2 on what Investigator Johnson told you?

3 A No, sir. I did the examination.

4 Q And how many points of comparison did you find?

5 A At the end of the identification process I identified
6 50 points of reference.

7 Q And based on your experience and training how many
8 points of comparison are needed to render an opinion as to
9 the identification of a person?

10 A It really depends on the clarity of the fingerprint
11 itself. We can make identifications as low as 6 to 8
12 points of reference.

13 Q But you had 50?

14 A Yes.

15 Q Based upon your experience in the field of
16 fingerprint analysis are the points of comparison
17 conclusive as to the identity of the latent print marked
18 number 1 on State's exhibit 4 with the known ink print of
19 the defendant's, State's exhibit 10?

20 A Very conclusive, yes sir.

21 MR. HAYES: Objection.

22 THE COURT: What is the objection?

23 MR. HAYES: He is saying he goes to the ultimate
24 decision as conclusively, Your Honor.

25 THE COURT: Overruled.

1 Q Did you compare the latent fingerprint marked number
2 3 on State's exhibit 4 with the fingerprints on State's
3 exhibit 10?

4 A I did.

5 Q And what was the result of that comparison?

6 A Developed on backup exam 1 HIV consent form is
7 identified as the number 3 or the right middle finger of
8 the person whose prints appear on the card bearing the
9 name, Albert James Cave, Jr.

10 Q And did you also base that conclusion on the
11 identified characteristics of the number 3 versus the
12 latent print that you found?

13 A I did.

14 Q Based upon your experience in the field of
15 fingerprint analysis are the points of comparison
16 conclusive as to the identity of the latent print marked
17 number 3 on State's exhibit 4?

18 MR. HAYES: Objection.

19 THE COURT: All right, rephrase your question, more
20 likely than not.

21 Q Based upon your experience in the field of
22 fingerprint analysis do you have an opinion more probable
23 than not regarding the identity of the latent print marked
24 number 3 on State's exhibit 4 with that ten print card?

25 A I do. It is my opinion that the same contributor

1 made the same marks from the ten print card to the latent.

2 MR. MILLER: Your Honor, at this time we would like
3 to publish State's exhibit 4 to the jury and I would like
4 to note, because of the materials that were used to
5 identify the fingerprint they are in plastic sheets now
6 because if you touch them you can actually get, it can
7 turn your fingers purple is what I have been told. So we
8 don't want that to happen. And I am pointing out to the
9 jury the circled fingerprint that was developed off of the
10 page.

11 MR. HAYES: We would object, Your Honor, he is
12 pointing out, he can publish it without showing and
13 pointing directly to it.

14 THE COURT: Overruled. Mr. Foreman and ladies and
15 gentlemen, y'all will have all of that evidence back in
16 the jury room. You will have ample opportunity to look at
17 it.

18 Q Lieutenant, did you prepare a power point
19 presentation to explain in detail how the comparison of
20 the latent print marked number 1 and the ink card was done
21 in this case?

22 A I did.

23 Q And did you prepare a power point presentation to
24 explain in detail how the comparison of the latent print
25 number 3 of the ink card was done?

1 A I did not.

2 Q And why didn't you do that?

3 A For court purposes the number 1 finger identification
4 shows a lot of clarity and that is what we wanted to
5 present to show how we do our fingerprint comparisons.

6 MR. MILLER: Your Honor, with the Court's permission
7 we would like to have Lieutenant Adams step down so we can
8 go through the power point presentation on the big screen
9 here and it will take just a second to get it set up and
10 put it into position.

11 MR. HAYES: I would object, it is cumulative and they
12 have already had testimony on that point.

13 THE COURT: Overruled. This is just a demonstrative
14 situation, Mr. Miller?

15 MR. MILLER: It is, Your Honor, it is demonstrative
16 for explaining how the process went.

17 (Whereupon, the witness steps down from the witness
18 stand to present a power point presentation.)

19 A The first thing I have done is I have taken an
20 additional picture of the latent that was developed. This
21 is the latent print, this is a digital photograph of the
22 inked print of the right thumb from the ten print card. I
23 then put them side by side so that I could see them. The
24 first thing that we do when we are doing a fingerprint
25 examination is first we have to determine if the pattern

1 is correct. We are looking for three different patterns.
2 You have a loop pattern, you have a whorl pattern and you
3 have an arched pattern. Once we identify that we are of
4 the same pattern type then we can proceed. Had the two
5 pattern types been different then it is obviously not a
6 match and we stop right then. So once we identified this
7 right slope loop meaning that the ridge comes into the
8 pattern area from the right side, travel around the center
9 or the core of the fingerprint and go back out the right
10 side, vice versa, left slope loop, the ridge detail would
11 come in from the left side of the fingerprint, go around
12 the patterned core area and back out the left side. A
13 whorl would look like a circle and an arch would just be a
14 little bump. So we have identified that both of these are
15 right slope loops so it allows me to proceed on with my
16 identification. Now what we do is we take the latent
17 print and we look for the minutiae, the ridge detail that
18 makes it very specific to that person. Like I said, the
19 detail that we are looking for are bifurcations, ridge
20 endings and dots. And what I do is I map out the ones
21 that we can see. And in this case I have done 24. And
22 this is for court presentation purposes only otherwise it
23 would be too jumbled and you wouldn't be able to see it
24 very well. So here on the latent print I have identified
25 24 points of reference. I take the ink print and I look

1 for the same ones. Now in this case even though I have
2 identified 24 for the court presentation purposes I went
3 ahead and I marked all of the bifurcations, the ridge
4 endings and the dots that were visible in the print. In
5 this case I have identified 50 in each. Each one of these
6 x's represents a ridge ending, a bifurcation or a dot.
7 Now what we do is we can also take away the fingerprint so
8 that you can see the pattern or what we call the
9 constellation. This is actually what AFIS looks for.
10 When we enter a fingerprint into the AFIS system and we
11 plot those points of minutiae it is looking for these
12 constellations and it is mathematically looking for a
13 similar constellation. That is how the AFIS system
14 generally works without getting into its algorithms and
15 such like that. So by looking for the same constellation
16 that is how it narrows the search down to us. But we do
17 the exact same thing when we are doing our comparisons.
18 We are looking for--

19 MR. HAYES: Objection, narrative, Your Honor.

20 THE COURT: Overruled.

21 A So our fingerprints also have what we call, we have
22 three levels of detail. We have level one detail of a
23 fingerprint. That is where we can maybe see what the
24 pattern type is but we can't see any of the ridges. We
25 have level two detail of a fingerprint which we can see

1 the ridges and we can make an identification. On level
2 one detail we cannot. We can simply say that they have a
3 similar pattern but we cannot say that it is specific to
4 one person. Level two detail which is we identified the
5 pattern, we can also see the ridges, we can specifically
6 say that it is a person or it isn't a person. Now level
7 three detail gets it down almost to a micro level where we
8 can actually see great details as far as the ridge
9 structure, sweat pores. So in this case I have identified
10 the delta region of this fingerprint and the pattern type.
11 We are going to get a little bit closer. I have
12 identified even closer part of the delta region of the
13 fingerprint and we are going to get even closer so that
14 you can really see the micro detail of the fingerprint. I
15 draw your attention to the two dots, the third dot. See
16 how this ridge travels up and stops. The two dots on the
17 other side, a dot, this ridge comes up and stops, another
18 short little ridge, this ridge comes in that ridge. That
19 is the same thing. Once again we have got the 50 points
20 of reference.

21 MR. MILLER: Your Honor, at this time the State would
22 move, I am sorry.

23 Q Lieutenant Adams, you did create this power point
24 presentation yourself?

25 A I did.

1 Q And is the copy of the power point presentation that
2 was just shown to the jury?

3 A It is.

4 MR. MILLER: Your Honor, at this time we would move
5 to introduce State's exhibit 11 into evidence.

6 THE COURT: Any objection?

7 MR. HAYES: Nothing.

8 (Whereupon, State's Exhibit 11 was admitted into
9 evidence.)

10 Q Lieutenant Adams, I want to ask you if you can
11 identify this photograph, State's exhibit 7?

12 A I can.

13 Q And is that a photograph of the inked print pointing
14 out the points of comparison that you identified from the
15 slide show?

16 A It is.

17 Q And State's exhibit 8, is that a photograph pointing
18 out the points of comparison from the slide show of the
19 latent print in this case?

20 A It is.

21 Q And State's 9, can you identify that?

22 A I can.

23 Q Is that the photograph of the two prints side by side
24 for comparison purposes?

25 A It is.

1 THE COURT: Your Honor, at this time the State would
2 move to introduce exhibits 7, 8 and 9 into evidence. And
3 they have previously been shown to defense counsel.

4 MR. HAYES: They are cumulative, Your Honor.

5 THE COURT: They are cumulative but a lot easier to
6 handle than the slide so I am going to allow it.

7 (Whereupon, State's Exhibits 7, 8 and 9 were admitted
8 into evidence.)

9 Q From the standpoint of an expert witness in
10 fingerprint comparison and identification when is an
11 identification of a fingerprint made?

12 A An identification, an official identification of the
13 fingerprint is made once we followed all of our steps.
14 And we have protocol in place at the sheriffs office that
15 we call ACEV.

16 THE COURT: Called what?

17 A ACEV, A-C-E-V. That stands for analysis, comparison,
18 evaluation and verification. Once we have completed all
19 the steps through the verification process then the
20 identification is made.

21 Q So it is your testimony that no identification of the
22 fingerprint was made in this case until you verified
23 Investigator Johnson's findings?

24 A That is correct.

25 Q What would happen if you disagreed with Investigator

1 Johnson's findings regarding the fingerprint?

2 A Then an identification is not made.

3 Q Okay. In your experience as an expert witness
4 regarding fingerprints what is your opinion of the quality
5 of the latent prints developed in this case?

6 A The two fingerprints that were developed, that were
7 identifiable, the one that was identified as the right
8 thumb had level 3 clarity. The 1 of the number 3, the
9 right middle finger had level 2 clarity.

10 Q And level 3 clarity again, is that the third level
11 that you were talking about of the magnification on the
12 slide show?

13 A The third level detail is a greater quality.

14 Q Did you prepare a written report on your findings in
15 this case?

16 A I did.

17 Q I am going to show you what has been marked for
18 identification as State's exhibit 6. Is that a true and
19 accurate photocopy of your written report in this case?

20 A It is.

21 MR. MILLER: Your Honor, at this time the State would
22 move to introduce State's exhibit 6 into evidence.

23 MR. HAYES: Without objection.

24 (Whereupon, State's Exhibit 6 was admitted into
25 evidence.)

1 Q Lieutenant Adams, we have heard a little bit about
2 the terms come up a couple of times, secreter. What does
3 that mean?

4 A A secreter, we are all secreters. And when we say
5 secretion, that is the release of the sweat through your
6 sweat pores, be it under your arms, your groin area but
7 also on your hands where you have your sweat pores. So a
8 secreter is one that allows for the sweat to leave the
9 pores.

10 Q Do people secrete at different rates?

11 A Yes.

12 Q Is one sex more likely, does one sex secrete heavier
13 than another sex?

14 A Sometimes. It all goes back to the amount of sweat
15 pores that you have. If you have a lot of sweat pores you
16 are going to sweat a lot. If you don't have very many
17 sweat pores then you typically are not going to sweat as
18 much.

19 Q Based upon your examination of the fingerprints in
20 this case, specifically level 3 detail examination can you
21 offer an opinion as to Mr. Cave's level of secretion?

22 MR. HAYES: Objection. Improper question.

23 THE COURT: Improper question? Overruled.

24 Q Can you offer an opinion?

25 A I can.

1 Q And what would you base that opinion on?

2 A The amount of detail in the fingerprint.

3 Q And what would your opinion be as to his level of
4 being a secreter, would he be a high secreter or not?

5 MR. HAYES: Objection, Investigator Adams is not an
6 expert in biology or human anatomy or analysis.

7 THE COURT: Sustained, move along.

8 Q What would you be looking at to make a determination
9 such as that, Lieutenant Adams?

10 THE COURT: You haven't qualified him as an expert in
11 human secretion now.

12 MR. MILLER: Can we have a sidebar, Your Honor?

13 THE COURT: You may but I don't think you are going
14 to change my mind.

15 (Whereupon, a bench conference was held in the
16 presence of the jury but out of the hearing of the
17 jury.)

18 Q Lieutenant Adams, when you looked at the level three
19 details on the defendant's fingerprint were you able to
20 visually identify his sweat glands in that level three
21 magnification?

22 A Sweat pores were identified.

23 Q No further questions.

24 CROSS-EXAMINATION

25 By Mr. Hayes:

1 Q Lieutenant Adams, when you are looking at a
2 fingerprint or a latent unknown how many points are
3 possible for identification?

4 A Depending whether it is a finger or a palm. There is
5 a greater amount of detail in palms because the surface
6 area is obviously greater.

7 Q In a thumb print, how many possible points of
8 minutiae would you use to find for identification is there
9 in a fingerprint, in a thumb print?

10 A Typically in a full rolled fingerprint there is
11 anywhere from 60 and 80 points on average. Everybody is
12 different but on average.

13 Q So it is plus or minus some as well?

14 A Yes.

15 Q Okay. Did you examine the paper yourself for prints
16 or were you given the findings from Investigator Johnson
17 to review?

18 A No, I actually examined the pieces of paper.

19 Q When you were given the pieces of paper from
20 Investigator Johnson had he told you what his conclusion
21 was before you viewed it?

22 A Yes.

23 Q So you knew when you were looking at it he came to a
24 conclusion and who that suspect he believed it was?

25 A Yes.

- 1 Q I guess my question would be, it is not double blind?
2 In a double blind experiment he had no answer before he
3 looked at it and you didn't know his answer before you
4 looked at it, you knew his answer?
- 5 A Yes, on the first print.
- 6 Q Okay. Do you ever get called to crime scenes?
- 7 A I do.
- 8 Q Do you have an idea to how many you have been to?
- 9 A No, sir.
- 10 Q Okay. Do you go to burglaries?
- 11 A Yes, sir.
- 12 Q When you get to a burglary how do you get there?
- 13 A By my county issued vehicle.
- 14 Q Who gives you the call and request your presence?
- 15 A It can depend, it can be the road supervisor or it
16 could be an investigator with the criminal investigations
17 division or their lieutenant, really anyone at the
18 sheriffs office can, with rank, can request that forensics
19 be requested.
- 20 Q Once you get to a crime scene what would be your
21 role, what would be your job for you to do once you
22 appeared?
- 23 A Would be to process the scene for any physical
24 evidence.
- 25 Q And processing the scene, how would you determine

1 what you need to process?

2 MR. MILLER: Judge, he didn't go to the crime scene
3 in this case, he is asking about speculating what he would
4 do at an imagined crime scene.

5 THE COURT: We are getting a little off field in this
6 case. I am going to give him a little bit of lead way
7 but, Mr. Hayes, the crime scenes can be anything from
8 murder down to you writing a bad check.

9 Q At a burglary what do you base what you needed to
10 collect or dust on?

11 A Based on what I see and what the homeowners that are
12 familiar with the house tell me.

13 Q Is it possible to get--

14 THE COURT: Not possible.

15 Q Can you get prints off of wood items?

16 A Depending on the wood.

17 Q How many prints did you find on the paper other than
18 Mr. Cave's?

19 A I am sorry?

20 Q How many other prints, were you able to identify any
21 other prints on the paper?

22 A No sir, there was only two identifiable prints on the
23 two pieces of paper.

24 Q So there was only two prints that you were able to
25 make identification. Was there any other prints on the

- 1 paper?
- 2 A Yes.
- 3 Q They were just too smudged, too small, not enough
4 clarity?
- 5 A Yes, sir.
- 6 Q Were any of the other 29 cards also examined by you
7 from AFIS?
- 8 A No.
- 9 Q The only card you reviewed was Mr. Cave's?
- 10 A That is correct.
- 11 Q Looking at a fingerprint, if there is one minutiae
12 different that would mean it wouldn't be one-hundred
13 percent match, correct?
- 14 A Not necessarily, no sir.
- 15 Q How is that?
- 16 A A fingerprint which we call in motion, it could be a
17 double tap, it could be a tap and a turn. But sometimes
18 there are forces of the pressure of the fingerprint that
19 can allow for distortion. So it really depends on the
20 clarity, if it was a very high clarity fingerprint with no
21 motion or distortion and there is a obvious ridge ending
22 or an obvious bifurcation then yes. If it is not there
23 and it cannot be explained due to the slipping or the
24 pressure of the fingerprint then yes, you can say that it
25 is not a match.

1 Q And the only way to know that would be to go and find
2 all of the minutiae, correct?

3 A I am sorry, I don't understand.

4 Q The only way to know if there was not one minutiae
5 not matching would be to go through and look and compare
6 each minutiae until you ran out of possible minutiae?

7 A No sir, not necessarily. When we look at the clarity
8 of the print we look at the areas that are identifiable
9 because a full fingerprint is not captured typically.

10 Q Was a full fingerprint captured in this case?

11 A It is very rare to have a full fingerprint capture
12 and it is by the way we handle items.

13 Q My question is, was there one found in this case?

14 A I am sorry, ask the question again.

15 Q Was there a full fingerprint found in this case?

16 A No, sir.

17 Q How much of that print then would you say is
18 captured?

19 A I would say probably nine-tenths of it?

20 Q Nine-tenths of it?

21 A About ninety percent of that fingerprint. A full
22 fingerprint is what we call a full roll which is cuticle
23 to cuticle. Because we have ridge detail all the way to
24 the sides of our fingers. However when we handle an item
25 we are not really handling it with the side of the

1 fingers. So typically we wind up with the core and delta
2 regions of the fingerprint.

3 Q Is there any way to tell how long a fingerprint is on
4 one piece of paper?

5 A No, sir.

6 Q How long can a fingerprint survive on a piece of
7 paper?

8 A There is no way for us to tell. It all depends on
9 environmental factors, it depends on a lot of factors as
10 to how long a fingerprint's life span will last.

11 Q On your report, you wrote your report on the 11th of
12 2011 however Gerald Turner has testified that you
13 collected it from Chris Johnson on the 4th. What is the
14 difference in timeframe?

15 A I am not sure.

16 MR. MILLER: Objection, Your Honor, that is not what
17 the testimony was.

18 THE COURT: What was your question?

19 MR. HAYES: His report was written on the 4th, I am
20 sorry, written on the 11th. However he picked up the
21 print from Gerald Turner or brought the print from Gerald
22 Turner that he collected from Chris Johnson on the 4th.

23 THE COURT: What is your question?

24 Q Why the discrepancy in the timeframe?

25 A First of all, that is wrong. I got it from Chris

1 Johnson on the 5th.

2 Q You got it on the 5th?

3 A Yes, sir.

4 Q Why the discrepancy then from the 5th to the 11th?

5 A Well, there are several probably factors to it. One,
6 the second fingerprint identified was of poor quality. It
7 takes a while to do a fingerprint examination as well.

8 Also I believe we were in general sessions court at the
9 time of, the week of the 11th, the early part of the week.

10 Q So you got the print the week before?

11 A Yes sir, on the 5th which I believe was a Thursday.

12 Q How come on your report you don't have any mention of
13 the number of points of minutiae on any of the prints?

14 A Because the points of the minutiae, how many we get
15 is irrelevant. It is whether or not we have come to a
16 conclusion that we have identified.

17 Q When you get evidence, you are suppose to sign it out
18 yourself?

19 A I am sorry?

20 Q You go to Mr. Turner and tell him you want to pick
21 something up and you would have to sign for it?

22 A It really depends on what the evidence is. Typically
23 the fingerprints, no sir. When they are developed they
24 come straight to me.

25 Q Once they are developed they come to you?

- 1 A Yes, sir.
- 2 Q But the processing wouldn't be completed until you
3 confirm the findings of Chris Johnson?
- 4 A That is correct. What the chain of custody is
5 showing is that Chris Johnson had control of the
6 fingerprint, he then signed it over to me and then I had
7 control of the fingerprint.
- 8 Q Where do you store your fingerprints?
- 9 A The identified latent fingerprints are identified,
10 they are stored in what we call ID one which is in a
11 filing cabinet inside my office.
- 12 Q Which is not in the evidence locker, with under the
13 supervision of Gerald Turner?
- 14 A No sir, it is under my supervision. It is stored in
15 my office which is a secured facility of the sheriffs
16 office.
- 17 Q Nothing further.
- 18 THE COURT: Redirect.
- 19 REDIRECT EXAMINATION
- 20 By Mr. Miller:
- 21 Q Lieutenant Adams, you testified that a rolled print,
22 you described that as cuticle to cuticle would have 60 to
23 80 points of minutiae on average?
- 24 A On average.
- 25 Q How about a slap print, would it have fewer points of

1 minutiae because of the fact that it would have less
2 detail?

3 A It will have--

4 MR. HAYES: Objection, leading.

5 THE COURT: Sustained. Rephrase your question.

6 Q Would a slap print have more points of minutiae than
7 a rolled print or fewer points of minutiae than a rolled
8 print?

9 A Fewer.

10 Q No further questions.

11 THE COURT: You may step down.

12 MR. MILLER: Your Honor, at this point the State
13 would put its stipulation on the record.

14 THE COURT: Ladies and gentlemen and Mr. Foreman, a
15 stipulation is just an agreed upon facts that both sides
16 agree that is truth. They are going to enter the
17 stipulation that deals with one of the elements of
18 burglary first. And I will tell you all about that at the
19 conclusion. There are many elements to burglary first and
20 many ways to prove it but one of the elements deals with
21 this stipulation and I will tell y'all about that when I
22 charge you. A stipulation means that both sides agree.

23 MR. MILLER: Your Honor, as to indictment
24 2011-GS-02-1031, the indictment for burglary in the first
25 degree. The State and the defense stipulate that the

1 defendant, Albert Cave, Jr. has two prior convictions for
2 burglary. And that is dated yesterday's date, August 22nd
3 of 2011.

4 Your Honor, the State rest.

5 THE COURT: Mr. Foreman and ladies and gentlemen of
6 the jury, that means that the State has completed all of
7 its evidence. I have to take up a couple matters of law
8 and motions with them before I bring you back out. I have
9 asked the bailiff and she has got the menu from the Bowery
10 which is up the street. Go ahead and place your order and
11 it looks like you will be deliberating around lunch time
12 so I will have that order delivered to you so we don't
13 have to waste time going out to eat. Go on back and take
14 a break and please don't talk about the case.

15 (Whereupon, the jury was excused from open court for
16 a break at 11:00 a.m.)

17 THE COURT: Anything else by the State?

18 MR. MILLER: Nothing from the State, Your Honor.

19 THE COURT: By the defendant?

20 MR. HAYES: Your Honor, as to the charge of grand
21 larceny the defense would make a motion for a directed
22 verdict taking the evidence in the light most favorable to
23 the State, Ms. Delane Smiley testified that the laptop was
24 purchased five years ago--

25 THE COURT: For about \$1,300.00 dollars or \$1,200.00

1 and the TV's are about \$700. So right at \$2,000.00
2 dollars. The laptop is more than five years old. Mr.
3 Miller.

4 MR. MILLER: Your Honor, the testimony from Mr.
5 Smiley was the value of the items was \$2,200.00 dollars
6 and for the purposes of a directed verdict motion that
7 should be sufficient to submit the question to the jury as
8 to the value of the items that were stolen.

9 THE COURT: Mr. Hayes.

10 MR. HAYES: She actually had specifics though, Your
11 Honor, as to the value and when they were purchased. And
12 she was able to tell that the laptop was purchased five
13 years ago and for the purposes of the grand larceny the
14 value is not the replacement or the purchase value but the
15 value of the property at the current time.

16 THE COURT: I will take that under advisement. What
17 if I grant the motion for the directed verdict on the
18 value. Isn't there another grand larceny less than
19 \$2,000.00?

20 MR. MILLER: It would be just lessor included of
21 grand larceny, less than \$2,000.00, Your Honor. Your
22 Honor, what the defense is doing is putting Mr. Smiley's
23 testimony against Ms. Smiley's testimony and saying her's
24 is more credible. If you take it in the light most
25 favorable to the State then Mr. Smiley said without any

1 . . .equivocation it was \$2,200.00 dollars worth of stuff that
2 had been stolen.

3 MR. HAYES: Your Honor, she was the one that claimed
4 she purchased the laptop.

5 THE COURT: I understand that. As in all cases you
6 have got a little bit of difference in the testimony. I
7 will charge the lessor included grand larceny. What is
8 the next one down.

9 MR. MILLER: It would just be petty larceny is less
10 than \$2,000.00.

11 THE COURT: Okay. I will do a lessor included.

12 MR. MILLER: Without any objection from the State,
13 Your Honor.

14 MR. HAYES: As to the burglary first, Your Honor, the
15 defense would make a motion for a directed verdict taking
16 the evidence most favorable to the State that a reasonable
17 jury could not possible conclude that Mr. Cave burglarized
18 this home based on a single fingerprint.

19 THE COURT: Well we have a lot of cases, cases that
20 you handed up to me yesterday. The Anderson case where
21 there was a single fingerprint on a burglary case. And I
22 seen a lot of fingerprint testimony over the years. And
23 this new power point presentation with the comparisons is
24 awfully compelling. From my review of it there is
25 obviously evidence in the record that if the jury believes

1 that it is his fingerprint. He wasn't suppose to be in
2 there and the victims don't know him and they could
3 reasonably conclude that he was the burglar. At this
4 stage of the game I have to be concerned not with the
5 weight of the evidence but the existence of the evidence.
6 Not only the power point presentation and the evidence in
7 the record but the testimony by Lieutenant Adams believed
8 by the jury it can certainly support a conviction.
9 Respectfully denied.

10 MR. HAYES: I will also like to add, they couldn't
11 add a date as to when the print was placed.

12 THE COURT: Respectfully denied. That all goes to
13 the weight of the evidence, not the existence of it. Tell
14 me about your defense, how many witnesses do you intend to
15 call?

16 MR. HAYES: The defense would rest, Your Honor.

17 THE COURT: Let me make sure Mr. Cave understands.
18 Mr. Cave, if you will stand and raise your right hand,
19 please.

20 ALBERT CAVE, JR., being
21 first duly sworn, testified as follows:

22 THE COURT: Mr. Cave, we have reached the stage of
23 the trial where obviously you can present a defense and
24 included in that presentation you have the right to take
25 the witness stand and testify about the facts in this

1 case. You also have the right to claim the protections
2 that are given to you or any defendant among the Fifth
3 Amendment of the Constitution of the United States which
4 basically says that no person shall be compelled in any
5 criminal case to be a witness against themselves. Which
6 means this, if you take the witness stand which you have a
7 right to do you will be subject to the same rules of
8 evidence that everyone else has, in other words you will
9 be subjected to cross-examination. I am informed that you
10 also have a prior record, one is more than ten years old
11 but one is within the ten years and it could be used
12 against you for impeachment purposes or to attack your
13 credibility if I determine it is more relevant than
14 prejudicial to you. If you decide not to testify like
15 your lawyer says you have made that decision, then I will
16 tell that jury that they cannot hold the fact that you did
17 not testify against you in any manner whatsoever. And I
18 would further tell them that you have the absolute right
19 to remain silent and I will further tell them that they
20 can't consider the fact that you did not testify during
21 their deliberations. It is a matter that cannot be
22 discussed by them at all when they decide your guilt or
23 innocence. Now, do you understand your rights to remain
24 silent and do you understand your right to testify?

25 MR. CAVE: Yes, sir.

1 THE COURT: And you will need to make a decision
2 whether you want to testify or don't want to testify. And
3 I assume you made that decision and do you need any
4 additional time to review it?

5 MR. CAVE: No, sir.

6 THE COURT: And I assume you do not want to testify?

7 MR. CAVE: No, sir.

8 THE COURT: Any questions you need to ask me about
9 that decision?

10 MR. CAVE: No, sir.

11 THE COURT: All right. So by not testifying, Ms.
12 Alves, you have got the last argument, correct?

13 MS. ALVES: Yes, sir.

14 THE COURT: Since you haven't put in any evidence in
15 you get the last argument. Is that correct, Mr. Miller?

16 MR. MILLER: Yes sir, Your Honor.

17 THE COURT: It is ten after 11:00. We will take
18 about a ten minute break. As far as the charge goes, we
19 have the standard charge, the burglary first charge that
20 y'all handed me yesterday dealing with the elements, two
21 prior burglaries, I will charge grand larceny, lessor
22 included offense of petty larceny or I might just say find
23 the defendant guilty or not guilty of the crime of grand
24 larceny and I will have a interrogatory, please state the
25 amount of goods or the value of the goods or I will do it

1. however you want to.

2. MR. MILLER: We will be at ease to just put larceny.

3. MS. ALVES: Put it at larceny over \$2,000.00 and
4. larceny less than \$2,000.00.

5. THE COURT: I will do that. We find the defendant
6. guilty of larceny over \$2,000.00 or under \$2,000.00 or not
7. guilty.

8. MS. ALVES: Yes, sir.

9. THE COURT: There are three checks.

10. MR. MILLER: That is fine, Your Honor.

11. THE COURT: There will be two verdict forms. We find
12. the defendant not guilty or guilty of burglary first
13. degree. We find the defendant guilty or not guilty of,
14. guilty of larceny over \$2,000.00, under \$2,000.00, not
15. guilty. We will take a break.

16. (Whereupon, a short break was taken.)

17. THE COURT: Is the State ready to proceed?

18. MR. MILLER: The State is ready, Your Honor.

19. THE COURT: Mr. Hayes?

20. MR. HAYES: Yes, sir.

21. THE COURT: Bring the jury in.

22. (Whereupon, the jury came into open court at
23. approximately 11:30 a.m.)

24. THE COURT: The State has completed their testimony
25. and the defendant is not going to offer any testimony so

1 we have concluded all of the testimony in the case. What
2 we have left are the final arguments of the lawyers.
3 Under our rules where the defendant does not put up any
4 evidence they go last in the argument so the State will
5 argue first followed by the defendant. Once they have
6 completed their arguments then I will charge and instruct
7 you on some general propositions of law and then the law
8 dealing with burglary first and grand larceny. Please
9 bear in mind that you have heard all of the testimony,
10 that is what you will consider the case on. That is what
11 you will determine what the true facts are. The lawyers
12 final arguments is not evidence in the case, obviously
13 their adversaries for each others particular side and they
14 will be arguing the evidence in the light most favorable
15 to their side but that is not evidence in the case, you
16 have already heard all of the evidence. But please pay
17 close attention and we will complete the arguments, I will
18 charge you and your lunch ought to be here about the time
19 if everything goes according to plan, by the time we
20 finish this and you can have the case and you can start
21 your deliberations. Mr. Miller.

22 MR. MILLER: Thank you, Your Honor, may it please the
23 Court, Mr. Hayes, Ms. Alves. Ladies and gentlemen of the
24 jury, I don't have any quotes from Colin Powell but this
25 case does bring to mind something that my father used to

1 tell me all of the time. When I went to law school I came
2 home after that first semester and I was ready to argue
3 the finer points of everything. It didn't matter what we
4 were talking about, I was going to take the contrary
5 review and I was going to try to prove that something was
6 or something wasn't. My father told me, just because you
7 have a law degree and just because we are paying all of
8 this money for you to go to law school doesn't mean you
9 don't have any common sense. And that is something that
10 is interesting to me because realistically this case is
11 about common sense. Common sense tells you Mr. Smiley and
12 Ms. Smiley and Ms. Allen, none of them know Albert Cave,
13 none of them has ever laid eyes on Albert Cave before they
14 saw him sitting here in this courtroom. But Albert Cave's
15 fingerprints are inside of the Smiley's home. Common
16 sense, only one way that Albert Cave's fingerprints got
17 inside the Smiley's home, because Albert Cave's
18 fingerprints were attached to his fingers, they were
19 attached to the rest of him and Albert Cave was inside the
20 Smiley's home. He was in their home when it got
21 burglarized. Common sense. What was taken. You heard
22 the testimony. The flat screen televisions, one 37 inch I
23 believe and one 32 and a laptop. Those televisions and
24 that laptop were valued at more than \$2,000.00 dollars
25 then that is the cutoff in our law, there is a cutoff

1 there. If is more than \$2,000.00 dollars it is one
2 charge, if it is less than \$2,000.00 dollars it is another
3 charge. But that is where the cutoff is is the \$2,000.00
4 dollars. And Mr. Smiley testified yesterday it was
5 \$2,200.00 dollars worth of stuff that got stolen. Okay.
6 But the value of the stuff that was stolen doesn't tell
7 you who did it. There has to be some other evidence of
8 who actually was the one that took it. And so when Ms.
9 Smiley calls the sheriff's department and Deputy Kostyk
10 comes out there, Deputy Kostyk from his testimony told you
11 what he did. And that had a lot of common sense to it.
12 You heard the same thing from Investigator Johnson and
13 Lieutenant Adams. He did exactly what one of the crime
14 scene guys would have done. Talked to occupants of the
15 home, find out from them where stuff has been disturbed,
16 work your way from the point of entry, suspected point of
17 entry through the house and try to process it. And Deputy
18 Kostyk is there with admittedly not a whole lot of
19 resources and Deputy Kostyk is looking for fingerprints
20 and he is not seeing any. You heard him testify, he
21 dusted several areas on the house, didn't find any
22 identifiable fingerprints anywhere else but Ms. Smiley
23 knew these papers had been moved. Ms. Smiley knew that
24 those papers had been taken off of her laptop and put into
25 that chair. And Deputy Kostyk knew that if he was going

1 to get a fingerprint off of those pieces of paper he
2 didn't have the equipment to do that. So what did he do.
3 He testified he used rubber gloves so he wouldn't leave
4 any of his own prints on the paper and he secured them in
5 an envelope, he wrote all of the information on the
6 envelope and he filled out the forensics request form and
7 he gives it to Deputy Roberts and Deputy Roberts goes and
8 turns it into evidence. And then Gerald Turner says,
9 okay, log in the evidence and keep it secure, nobody else
10 is putting fingerprints on that stuff, keep it secure and
11 get it to Investigator Johnson so he can see what is on
12 it. And you have heard all about the process of how they
13 pulled that fingerprint out, how they made that
14 fingerprint stand out so that they could compare it to the
15 known fingerprint images. And all of this talk about
16 AFIS, all this talk about how that works. Ladies and
17 gentlemen, the testimony leaves me to believe that it was
18 similar to Google. You tell Google what you are looking
19 for and Google comes back with a bunch of responses. How
20 do you figure out if Google has gotten the right responses
21 for you. You click on the link and when you click on the
22 link it takes you to a web page and it is either what you
23 want or it is not. If it is not you click on the next
24 link down. And in this case all of this information gets
25 submitted into evidence and it comes back with 30

1 possibilities and they go to the number one possibilities
2 and Investigator Johnson starts making those comparisons
3 between the known print of the defendant and that thumb
4 print that is on State's exhibit 4. And after he does all
5 of the things that he needs to do he says I think this is
6 a match. But the process doesn't end there. He has to
7 submit it to Lieutenant Adams who has to verify what he
8 does and how does he verify what he does. He goes through
9 and replicates the matching process. Investigator Johnson
10 said 36 points of comparison when I submitted it to AFIS,
11 36 points of minutiae. He looked at those 36 points.
12 Investigator or excuse me, Lieutenant Adams came up with
13 50, 50 points of comparison. Ladies and gentlemen, there
14 is no doubt, none whatsoever Albert Cave's thumb print is
15 on State's exhibit 4. So what do we know about State's
16 exhibit 4. Well the defense claims you don't know why
17 that fingerprint got put there, you don't. But you are
18 not checking your common sense at the metal detector
19 whenever you came up here and served on jury duty.
20 State's exhibit 4, top page, bottom page, the pages all
21 stacked up together like you would expect them to be
22 stacked up if they were in your house and you take four
23 prints right there and a thumb print right there. Pick
24 them up, set them down. Where did these pages come from.
25 If you want to just argue about something where did those

1 pages come from. Well maybe Mr. Cave was the person at
2 the paper mill who put the papers into the ream of papers
3 that Ms. Smiley later put into her printer and printed
4 them out. That is not reasonable. Maybe these papers
5 made it out of their house, went somewhere, Mr. Cave got
6 this fingerprint on them somewhere else and then Ms.
7 Smiley brought them back into the house but completely
8 forgot that she had ever taken these pages out of her
9 house. This is really, really bad luck that Mr. Cave's
10 fingerprints are on this paper. That is not reasonable.
11 Maybe Albert Cave is on the AD Scholarship Committee and
12 that is where he touched them at. Come on. The Judge is
13 going to talk to you about reasonable doubt and he is
14 going to tell you that reasonable doubt under our law is
15 proof that leaves you firmly convinced of the defendant's
16 guilt. And why. Because, ladies and gentlemen, although
17 it is the highest standard in our legal system we as the
18 State are not required and are not commanded to prove
19 something to you beyond any doubt because most often it
20 just can't be done. So we have to look at and we have to
21 require of you and we have to impress upon you that proof
22 beyond a reasonable doubt does not mean proof beyond any
23 conceivable way, there is just no way that this could have
24 happened any other way. It is that proof that leaves you
25 firmly convinced of the defendant's guilt. Albert Cave

1 was in their house and Albert Cave left his fingerprints
2 on these two pieces of paper. Thumb print on the top,
3 third finger, middle finger, sorry it was upside down,
4 third finger on the bottom. Matched by Investigator
5 Johnson, verified by Lieutenant Adams. I want you to
6 think back to all of the cross-examination questions that
7 were asked by the defense in this case. There has never
8 been a question asked of any member of law enforcement or
9 of the Smiley's or of their niece, not one question asked
10 that challenged their credibility. There were questions
11 that ask them to clarify some things that they said.
12 There were questions that ask them to explain some things
13 that they said. But nobody challenged their credibility
14 and credibility simply means believability. And the Judge
15 is going to tell you when he charges you that credibility
16 is something that you have to weigh as a juror when you
17 are deciding how much of a witnesses testimony you
18 believe. How much of that testimony you believe and how
19 much weight do you give to that. You do that by judging
20 their credibility. And when Mr. Smiley says \$2,200.00
21 worth of equipment was, electronic equipment was stolen
22 from his house that day and Ms. Smiley comes up and says
23 well, I think the total of the TV's was over \$700.00
24 dollars but I am not entirely sure, it was probably under
25 \$800.00 dollars. And I think that the laptop cost

1 \$1,200.00 dollars. Neither one of them, at least the
2 defense has not alleged that either one of them is not
3 being truthful. They are testifying as to what they know
4 and what they remember. But when it comes to Deputy
5 Kostyk, he is not challenged either on whether or not he
6 is being believable or he is being honest. Deputy Kostyk,
7 why didn't you take the shovel. I didn't think we would
8 get any identifiable prints off of the shovel.
9 Investigator Johnson, would you expect to get identifiable
10 prints off of a shovel. Not if it was an old shovel with
11 a wooden handle. They weren't in the room, I don't know
12 if you noticed this but they weren't in the room,
13 Investigator Johnson wasn't in here whenever Deputy Kostyk
14 was testifying. Lieutenant Adams wasn't in here when
15 either one of them were testifying. And yet their
16 testimony is remarkable somewhere all the way through.
17 Well, would you take the wooden shovel. I looked at the
18 wooden shovel to determine what kind of condition it was
19 in and then probably wouldn't expect to get any prints off
20 of it. Let me ask you something else. What does a wooden
21 shovel prove. The wooden shovel is outside the house.
22 Uncontradicted that the wooden shovel was outside the
23 house. Now the defense wants them to take the shovel and
24 the defense wants them to take all of these pictures and
25 the defense suggests that he could go to Walgreens or the

1 Circle K and go buy a camera so that he could take all of
2 these photographs. Ladies and gentlemen, this is a very
3 disturbing and sad fact but a lot of burglaries don't get
4 solved. That is just the way it is. Whenever you don't
5 have an eyewitness and you don't have video surveillance
6 very often burglaries go unsolved. And Investigator
7 Johnson and Lieutenant Adams and the other two people that
8 work under Lieutenant Adams, they don't go to every
9 burglary scene, they testified to that. They go to some
10 where they think there is going to be evidence that can be
11 collected. But what happened with Deputy Kostyk that day.
12 Deputy Kostyk told you, I got there, I looked in all of
13 these places, I didn't find any identifiable fingerprints.
14 So is he going to call his Lieutenant and tell his
15 Lieutenant, hey Lieutenant, you better send out the crime
16 scene guys because I haven't been able to find anything
17 here. Of course not. The one thing that he felt like
18 there was a really good chance he could get fingerprints
19 off of, Investigator Johnson said you don't develop those
20 prints in the field, you send them to the lab. So what
21 did he do, he took the best chance to recover evidence
22 that he had. He secured State's exhibit 4 and he sent
23 State's exhibit 4 to the lab. And fortunately,
24 fortunately for the Smiley's that evidence was there. The
25 defense wants a disposable camera from Walgreens. Ladies

1 and gentlemen, that picture tells a thousand words, that
2 picture is unique to that man. That picture tells you
3 that he was there better than any video, better than any
4 eyewitness because we have all seen surveillance footages
5 on television and we have all seen the websites in the
6 newspaper and they say, authorities are looking for these
7 people and you can't tell who they are. We have all heard
8 stories about eye witnesses who got involved. I was
9 absolutely convinced it was this guy but it turned out
10 later I was wrong. Ladies and gentlemen, this doesn't
11 lie, it doesn't have a dog in the fight. And as far as
12 pictures go, pictures that could have been taken by Deputy
13 Kostyk or pictures that could have been taken by Deputy
14 Roberts if she had only driven all the way back from North
15 Augusta to the Aiken County Sheriffs Office on Hampton
16 Avenue to go get a camera. This is better than any
17 picture they could have taken. Why didn't Deputy Kostyk
18 take the shovel. Why is Albert Cave's fingerprint on
19 these documents inside of the house. Why didn't Deputy
20 Kostyk take photographs. Why are Albert Cave's
21 fingerprints on these documents inside of the house.
22 Ladies and gentlemen, Albert Cave's fingerprints, no
23 matter what shortcomings the defense argues there are to
24 the investigation that was done, this is all the proof
25 that you need. This is proof beyond a reasonable doubt

1 that Albert Cave was inside of the home of the Smiley's.
2 This is it. Here is how you know he was in that home.
3 Because his fingerprints are on that piece of paper and
4 this isn't a piece of paper that was found in the kitchen.
5 This isn't a piece of paper that was found underneath the
6 kitchen. These are the pieces of paper that were found in
7 the chair in front of the desk where the laptop was taken
8 from. They are the pieces of paper that Ms. Smiley
9 testified were sitting on top of that laptop before that
10 laptop was taken. They were the pieces of paper that
11 Albert Cave picked up and moved so that he could steal
12 that laptop and those TV's. Let's talk about common sense
13 some more and reasonableness. Ladies and gentlemen,
14 reasonableness, Albert Cave got careless. He picks up a
15 shovel, he busted out not the bottom window, the top
16 window. Think about that for a second. He busted out the
17 top window so he could unlock the latches on the window
18 and raise the window up so he doesn't have to climb over
19 the glass go get into the house. He is going to do what
20 he can do whether it is just pulling his sleeves over his
21 hand, whether it is just using his arm and not using his
22 hand. He is going to do whatever he thinks he needs to do
23 to make sure he doesn't leave fingerprints right there
24 where everybody is going to look for fingerprints. By
25 that same token, because he is going out the door, he is

1 going to do whatever he thinks he needs to do not to leave
2 fingerprints on the door. Cover up his hand in some way.
3 He got careless because the one place he didn't realize
4 that they would look for fingerprints was on the one item
5 he picked up and left sitting there. And we heard
6 Investigator or Lieutenant Adams, I am sorry, we heard
7 Lieutenant Adams talk a good bit about what kind of
8 materials do you get fingerprints from and what kind of
9 materials do you not get fingerprints from. And
10 Investigator Johnson talked about the same type of thing.
11 You are looking for hard non-porous surfaces to get
12 fingerprints from. So if the bedroom is ransacked there
13 might not be anything in there. And, ladies and
14 gentlemen, that is another thing that we need to really
15 concentrate on. Nobody has testified that there were no
16 fingerprints. Deputy Kostyk said I was unable to find any
17 identifiable fingerprints. Lieutenant Adams testified
18 that you could touch stuff and you could move stuff around
19 and you could manipulate stuff without leaving an
20 identifiable fingerprint. It may be smudged to the point
21 that it is useless. You may not have made contact with
22 that item where it would transfer something that could be
23 compared, looked at, compared to another image. There is
24 lots of ways you wouldn't leave a fingerprint which is why
25 this is so significant. This is everything that they want

1 out of a fingerprint, 50 points of comparison Lieutenant
2 Adams testified to. Why would it leave such a good
3 looking print on that piece of paper. Ladies and
4 gentlemen, it is common sense. It is May in South
5 Carolina when you are burglarizing a house, your hands are
6 going to be sweaty. You are carrying TV's, you are
7 snatching up laptops, your hands are going to be sweaty,
8 you are going to leave a print on that porous paper
9 whenever you handle it. Ladies and gentlemen, when you go
10 back into the jury room and deliberate you are going to
11 have to answer a couple of questions and you have to
12 answer them unanimously. And the first question I submit
13 that you need to answer is does everybody agree this is
14 Albert Cave's fingerprint. And if everybody agrees this
15 is Albert Cave's fingerprint then common sense tells you
16 Albert Cave was inside the Smiley's house. Ms. Smiley,
17 Mr. Smiley and Ms. Allen all testified he had no business
18 in that house. Now you have got the, the defense is going
19 to say, well we don't know when that fingerprint got put
20 on there. Well Ms. Smiley testified she printed these
21 documents off of her computer at her home. These papers
22 had never left her home. So common sense and my
23 recollection is that Ms. Smiley said that she had done
24 that sometime in February and they have been there since
25 February. So common sense gives you two options. Option

1 number one is, on the day of the burglary Albert Cave
2 moved these papers and that is when his fingerprint got on
3 him or the other possibility that sometime in February or
4 March or April or the first day of May Albert Cave somehow
5 got into their home with anybody knowing about it, put his
6 fingerprints on this item and left without disturbing
7 anything. That is not realistic, that is completely
8 unbelievable. These documents put Albert Cave in the
9 house. The testimony of Deputy Kostyk and all of our
10 chain witnesses and Investigator Johnson and Lieutenant
11 Adams proved beyond a reasonable doubt that these are
12 Albert Cave's fingerprints. So what is reasonable, what
13 is common sense. That Albert Cave went into the house on
14 May the 2nd, sometime between the time that it was
15 burglarized or maybe before and put his fingerprints on
16 there but didn't do anything else in the house and left or
17 that Albert Cave touched those documents while he was
18 burglarizing the house, while he was stealing those two
19 televisions, those two flat screen televisions, while he
20 was stealing the laptop. Just because it can be argued
21 another way doesn't mean that argument makes any sense.
22 That is what my dad was trying to tell me. Just because
23 you can come up with some hypothesis out there of how this
24 set of circumstances happened doesn't mean it makes any
25 sense. Common sense, ladies and gentlemen. Albert Cave

1 went in the house, moved these papers, put his
2 fingerprints on those documents, left the house with the
3 TV's, left the house with the laptop. That is a burglary.
4 The Judge will tell you burglary in the first degree is
5 entering into a dwelling house, all that means is a place
6 where somebody leaves. Both Mr. and Ms. Smiley testified
7 they live there. Entering into a dwelling house without
8 consent, they both told you that we never told him he
9 could come in our house. With the intention to commit a
10 crime inside, and you can infer intent from other
11 circumstances. Well, the TV is missing and the laptop
12 missing, it is pretty good evidence that there was an
13 intent to steal what was inside. And the last thing the
14 Judge is going to tell you is and it is committed by a
15 person who has two prior convictions for burglary. That
16 is what that stipulation was, that was the last thing that
17 we talked about. It is an element that we have to prove
18 beyond a reasonable doubt that he has two prior
19 convictions for burglary. The defense agreed, we agreed,
20 every ones agrees he has got two prior convictions for
21 burglary. That is why it is a stipulation and that is
22 what makes some other types of burglaries into a burglary
23 first. It is a burglary of someones house by a person who
24 has two prior convictions for burglary. Ladies and
25 gentlemen, when you go back and you look at all of the

1 evidence in this case and you consider the facts through
2 the commons sense that you all have and you apply those
3 facts to the law as the Judge gives it to you there is
4 only one verdict as to the burglary first charge and that
5 is guilty. Albert Cave broke into the Smiley's house with
6 the intent to commit a crime and he has two prior
7 convictions for burglary. It is up to you to decide
8 whether or not during the course of that burglary he stole
9 more than \$2,000.00 dollars worth of stuff or less than
10 \$2,000.00 dollars worth of stuff. And quite frankly, I
11 will be the first to admit, there is contradictory
12 evidence on that. But you can decide from listening to
13 the witness who you felt was more confident and you can
14 decide which one of the witnesses you want to believe was
15 more confident than the value of the items. And you can
16 decide whether or not it was \$2,000.00 dollars or less
17 than \$2,000.00 dollars, more than \$2,000.00 dollars. But
18 ladies and getnlemen, common sense will not let you reach
19 a verdict other than guilty as to burglary in the first
20 degree because we all know that your fingerprints don't
21 get on a piece of paper without them being attached to
22 you. We know the only way those prints got on that page
23 was because of the fact that Albert Cave touched it. And
24 we know from Ms. Smiley that those papers, until that day
25 on May 2nd when Deputy Kostyk put them in this envelope

1 never left that house. I thank you for your time and I
2 appreciate the fact that you have a difficult decision
3 ahead of you. But when you apply common sense and you
4 look at all of the facts and you consider the evidence you
5 will find the defendant guilty. Thank you.

6 MR. HAYES: Ladies and gentlemen, at the beginning of
7 the trial I gave you two quotes from Colin Powell. One
8 was don't be afraid to challenge the pros even in their
9 own backyard. That is what you are here for. Y'all will
10 determine whether the evidence is sufficient or not. And
11 the second one was, keep looking below the surface of
12 appearance, don't shrink from it because you are afraid of
13 what you might find. Well, as the Solicitor is stating,
14 he is saying on appearance it looks like Mr. Cave went
15 into that house. Well, what I submit to you that the only
16 thing we do know beyond a reasonable doubt is that the
17 papers were touched. And I would ask you to look at the
18 orientation. Does it look like where somebody handed it
19 to somebody and they read it or does it look like where
20 somebody just slid it off of a computer to move it to
21 steal it and that is a decision you will have to make
22 about that. And backing up, let's talk about Mr. Ronnie
23 Smiley. He tells you there was trashcans underneath the
24 window. They could have been processed, we don't know if
25 they were. It could be photographs but there is none. He

1 also tells you about lots of glass outside of his house,
2 there is lots of glass outside of his house. Whether any
3 of it was touched, we don't know. He also tells you there
4 are two TV's, a 37" TV and a 32" TV as well as a laptop.
5 He gave us just a ballpark one sum of \$2,200.00 dollars.
6 But asked specifically about the values he really couldn't
7 tell me. When asked specifically about the laptop he said
8 it was his wife's, he really didn't know. Ms. Smiley,
9 when she got on the stand then told you she purchased this
10 laptop at \$1,200.00 dollars or thereabouts more than five
11 years ago or five years ago. When asked about the TV's
12 she says specifically \$700.00 dollars but less than
13 \$800.00 dollars. And she had receipts from Sam's Club.
14 But I also asked her the question as to these documents,
15 where did they come from. You remember what she said, the
16 printer. And she was very adamant in February, very
17 adamant. I also asked her, did you create them. Yes, she
18 created them. I could see that on the first one, she
19 created it. But look at the bottom corner, it says it was
20 updated on January 11th, she was very adamant though that
21 she printed it in February. Look at this second point.
22 Exam one. Notice of consent for blood, urine, saliva
23 which may include aids virus, HIV. This looks like a
24 corporate waiver for some kind of test. I highly doubt
25 that she created it. Maybe she was mistaken as to my

1 question but she was very adamant when I asked her more
2 than once. Then I asked her about, well, why did you
3 create it, why did you print it. Well she printed
4 numerous to take to a meeting. Okay. Why would you print
5 a document and leave one at the house when you are making
6 numerous copies to take to this meeting. I don't know.
7 And I will argue that the fingerprints are oriented on the
8 paperwork is as if somebody had picked it up and looked it
9 over and read it. There is no testimony as to this. But
10 could there have been in a conference, could they have
11 when she got back, taken some that she had in her folder
12 out and switched them out not knowing. She also told us
13 about an EKG machine that she had in the office that was
14 found in the hallway, in the living room. Obviously it
15 had been moved. Deputy Kostyk got up on the stand and
16 started telling us about how he goes through a house and
17 taken mental notes and a walk through as to what has been
18 disturbed. Then afterwards he comes back out, starts
19 doing paperwork and then goes back in the home with the
20 victims and starts analyzing and deciding whether or not
21 he was going to test something or not. How do you
22 determine what you are going to test. What if the victim
23 tells me it was moved, what if the victim tells me it was
24 disturbed. When I asked him about the photographs, I
25 didn't have a department issued camera. Well, cell phone,

1 he could bother to use his personal cell phone, too much
2 to download a photograph off of your cell phone, erase the
3 memory on your cell phone and leave it at the data base at
4 the sheriffs department. Too much to ask for them to
5 bring me one to preserve what he saw, to preserve where he
6 found items. He also, asked him about the testing, the
7 fingerprint dust. He had a little brush, he was aware of
8 other methods, couldn't name any. Also Deputy Roberts
9 came and I asked her, do you have anything. Yes, I have a
10 little kit. She said she could use her camera. She
11 didn't know how to download it but I am certain she could
12 with help. Deputy Kostyk also said he was an investigator
13 or detective in Pittsburg for eight years. I think that
14 he would know the value of a photograph, preserving a
15 crime scene. And he did five years after that in
16 Orangeburg, South Carolina. And he had another two years
17 here in Aiken. When I asked him about how do you get an
18 investigator there he really didn't answer. He didn't
19 really know. He said well, they hear it over the radio
20 and they send somebody sometimes. I asked Investigator
21 Johnson and Lieutenant Adams, how do you get to a crime
22 scene. I am usually requested. By who, deputy, shift
23 patrol, superiors. When I asked Chris Johnson too. Where
24 do you go to, what kind of crime scenes. Majority of them
25 are burglaries. And I asked him, what do you decide when

1 you are there looking at it what you need to collect.
2 What they tell me was moved and then I look at it and
3 start collecting. If it is something that I can get a
4 print off of I do it there. If it is something that I
5 cannot process on the scene I will take it back with me to
6 the lab because there are other numerous ways to collect a
7 fingerprint. And he also stated, when you dust often it
8 does not necessarily mean that the fingerprint is going to
9 arise to the human eye. And there are sometimes other
10 methods that you have to use to develop this fingerprint.
11 It is like a photograph, you have to develop it, you can't
12 see it with the naked eye until it is developed and it is
13 brought up. Mr. Turner tells you that he is the gate
14 keeper of the evidence. Evidence is checked into him and
15 then has to be checked out. We also heard that Lieutenant
16 Adams had to come back to him to get a signature on the
17 report as to the fingerprint on the 5th because he had
18 picked it up from Chris Johnson. And I asked, why are you
19 doing that. Chris Johnson is directly supervised by
20 Lieutenant Clay Adams, he has to check his work. When
21 asked, did you know who he suspected. Yes. So he has
22 taken a print that he knows, a conclusion he knows and is
23 checking it. And I asked him about, well, how many other
24 ones were looked at. None, just the first one. But you
25 are telling me a computer kicked back 29 other

1 possibilities, out of the 30 you just picked the first one
2 and bam, we got absolute answer right then. I also asked
3 him, how many points of minutiae. And they contradict
4 each other on that a little bit. One says 50 to 60, one
5 says 60 to 80. Lieutenant Clay Adams says 60 to 80.
6 Chris Johnson says 50 to 60.

7 THE COURT: Hold on a second. Are you okay.

8 JUROR: I will be in a minute.

9 (Whereupon, a juror takes a short break.)

10 THE COURT: You may proceed.

11 MR. HAYES: When I asked Lieutenant Adams and Johnson
12 as to the number of points they differ a little bit. Now
13 Chris Johnson is telling you you have got 36 points out of
14 a possible of 50 to 60 or 60 to 80. When I asked
15 Lieutenant Adams he says he got 50. But the ultimate
16 decision is yours. When I asked Investigator Johnson
17 about it, at one point of minutiae is different, is it a
18 one-hundred percent match. His answer was no. Lieutenant
19 Adams contradicted that a little bit stating there could
20 be distortion or something other in nature as to the
21 print. That is a decision for you. I asked both of them
22 specifically can you tell me when did it get there. No
23 was the answer. I asked them how long can it survive.
24 They were very unspecific answers as to how long it could
25 survive. That would depend on a multiple of situations.

1 I am not asking you to check your common sense as the
2 Solicitor suggest. What I suggest is this, there was a
3 burglary, the whole scene was processed. The only thing
4 that is going to have a print is a piece of paper. Now
5 there was a laptop recovered by Richland County and it was
6 returned back to the Smiley's. Why wasn't it gone and
7 picked up, why was it not tested. If the prints can
8 survive for any period of time wouldn't there possibly be
9 prints from the perpetrator on this laptop that we don't
10 have. I would suggest this, how does one man rampage the
11 house, just destroy it from what the testimony sounded
12 like and carrying out a 37" TV, a 32" TV and a laptop and
13 manage to leave an EKG machine right there at your feet at
14 the front door. We don't even know if the front door was
15 even processed. And there was no other prints found in
16 the house. So why was somebody who was burglarizing the
17 house take their glove off to touch a piece of paper that
18 is irrelevant that has absolutely no value. And it is the
19 way it is being held here I submit that when it was
20 touched it was being read, not snatched around and thrown
21 or moved. If you were going to take a piece of paper off
22 of something and you were going to steal wouldn't you just
23 swipe it out of the way and take it or would you carefully
24 place it over somewhere. That doesn't make sense to me.
25 We heard a lot of testimony about this thing called AFIS,

1 this computer that has two million prints, cards in it
2 from various people for various reasons. There was 30
3 returns. Only one of those returns was identified and
4 looked at. Is that sufficient. The Solicitor talked
5 about a Google search, you type it in and you get all of
6 these returns and you check and start reading, what are
7 you looking for. When you do a Google search do you stop
8 it at the first link. You might look at it and say, okay,
9 this looks relevant but let me see what the other couple
10 are. We know the first one is always advertising or has
11 some kind of payment to Google to be placed at the top.
12 Why wasn't there any further move into it. Why should we
13 settle on 50 or 36, why aren't we after the full 80. We
14 are trying to determine whether or not somebody is guilty
15 of a crime that has got the highest burden in our legal
16 system. Are we satisfied with a percentage. Some
17 percentages are failing. Some are average and some are
18 perfect. That is your scale. You have to determine on
19 that scale where does this fall. If he found 50 why
20 couldn't he do a few more and find out whether or not all
21 points of minutiae matched. Why did Chris Johnson stop at
22 36. Why does AFIS have a minimum of 8. If you add more
23 points does it narrow the search for AFIS, I don't know.
24 So could the other 30 people, could there have been one
25 that could have been identical. Could there be one point

1 of minutiae that doesn't match. We talked about the
2 value. The Solicitor says there are issues there and
3 frankly that is a decision that you have to make. It is a
4 question of fact. Mr. Smiley testified \$2,000.00 dollars,
5 just a round ballpark price. I asked Ms. Smiley. Ms.
6 Smiley was very specific, very firm as in what the price
7 of each was. And the value of the laptop was based on a
8 price that she paid five years ago. I am sure it has
9 fallen in value being that a computer that was produced
10 last year within a few weeks is already outdated and the
11 price has dropped. You have to determine what the value
12 is. When I asked her about the TV's, she was very
13 specific. Somewhere around \$700.00, maybe a little more
14 but not more than \$800.00. The value was less than
15 \$2,000.00 dollars because we add it that way. You have
16 probably one of the hardest task in a trial in front of
17 you and it is to determine whether or not, what facts to
18 believe. As the Solicitor stated and the Judge is going
19 to tell you you can believe all, you can believe some, you
20 can believe portions of each witnesses testimony. After
21 you make that determination you then weigh it as to what
22 those facts come to. You ultimately are the producers of
23 the story as to how it becomes together. Me and the
24 Solicitor, we are the story tellers, the Judge is the
25 director. Y'all are going to be in the editing room in

1 making this decision. I asked you this, is it sufficient
2 to have a couple of smudges on the back of a piece of
3 paper to convict somebody of burglary in the first degree.
4 If you believe or you have a hesitation to act on your
5 feelings then it is reasonable doubt and you must find in
6 favor of the defendant. If you don't your job then would
7 be to come back with a guilty. Thank you.

8 THE COURT: Mr. Foreman and ladies and gentlemen, my
9 instructions are about 10 to 12 minutes. Is everybody
10 okay, do you need a break.

11 (No response.)

12 THE COURT: Mr. Foreman and ladies and gentlemen, the
13 first part of the charge, when I say charge that simply
14 means instructions deals with general propositions of law
15 that I charge all over the State in criminal cases. The
16 second part of the charge will be specific as to the two
17 indictments in this case. Let me remind you once again
18 that the indictments charges the defendant with two
19 offenses, burglary in the first degree and grand larceny
20 of goods between the values of \$2,000.00 and \$10,000.00
21 dollars. I remind you that the fact that the defendant
22 was arrested, charged and indicted is not evidence in this
23 case and it cannot be considered by you as evidence in the
24 case and cannot be considered as guilt in the case nor
25 does it create any presumption or inference of guilt. The

1 indictments are simply the formal documents by way the
2 defendant comes into the courtroom.

3 We have two indictments in this case as I said,
4 burglary first and grand larceny. Each indictment
5 contains a separate and distinct offense and you must
6 decide each indictment separately on the evidence and the
7 law applicable to it uninfluenced by your decision as to
8 any other indictment. So you will be asked to consider
9 both indictments in the case. As I said, the defendant
10 has plead not guilty to both indictments and that plea
11 puts the burden on the State of South Carolina to prove
12 the defendant's guilt beyond a reasonable doubt. A person
13 charged with committing a criminal offense in South
14 Carolina is never, ever required to prove himself
15 innocent. I charge and instruct you it is an important
16 constitutional rule of law that a defendant in a criminal
17 trial no matter what the seriousness of the crime may be
18 will always be presumed innocent of the crimes which he
19 was indicted unless guilt has been proven by evidence
20 satisfying you of that guilt beyond a reasonable doubt.
21 The presumption of innocence does not end when you begin
22 your deliberations but it stays with the defendant
23 throughout the trial until you reach a verdict of guilt
24 based on the evidence satisfying you of that guilt beyond
25 a reasonable doubt. The presumption of innocence is not a

1 mere legal theory and it is not just a legal phrase. It
2 is a substantial constitutional right to which every
3 defendant is entitled unless you the jury are satisfied
4 from the evidence of the defendant's guilt beyond a
5 reasonable doubt. Reasonable doubt has been defined by
6 our courts, rather simply it says a reasonable doubt is
7 the kind of doubt that would cause a reasonable person to
8 hesitate to act. A reasonable doubt is the kind of doubt
9 that would cause a reasonable person to hesitate to act.
10 And I described what reasonable doubt was at the beginning
11 of the case by illustrating the scales of justice. Proof
12 beyond a reasonable doubt and it has also been said it is
13 proof that leaves you firmly convinced of the defendant's
14 guilt. There are very few things in this world that we
15 know with absolute certainty and in criminal cases the law
16 does not require proof that overcomes every possible
17 doubt. If based on your consideration of the evidence you
18 are firmly convinced that the defendant is guilty of the
19 crimes charged you must find the defendant guilty. If on
20 the other hand you think there is a real possibility that
21 the defendant is not guilty you must give him the benefit
22 of the doubt and find him not guilty.

23 I remind you that during the trial of this case you
24 and I have had certain duties to perform. As the trial
25 Judge it is my responsibility to rule on the admissibility

1 of evidence and it is also my duty to charge you on the
2 law in the case. I am in my position makes me the Judge
3 of the law in the case and you must accept the law as I
4 give it to you. But like importance, you are the judges
5 of the facts in the case. You determine what the true
6 facts are in the case. So if at any time during the trial
7 of this case I have yawned or stretched or rolled my eyes
8 or did something that you thought I may have some opinion
9 about the facts please disregard that. The law does not
10 allow me to have any opinion about the facts. You are the
11 sole finders of the facts in the case. Your job is to
12 find what the true facts are and apply it to the law as I
13 give it to you and at that time you will be in a position
14 to render a true and just verdict.

15 Because you are the finders of the facts you
16 necessarily must determine the credibility of the
17 witnesses who have testified in this case. Credibility
18 means believability. It becomes your duty as jurors to
19 analyze and evaluate the evidence and determine which
20 evidence convinces you of its truth. In determining the
21 believability or credibility of witnesses who have
22 testified in this case you may believe one witness over
23 several witnesses. You may believe several witnesses over
24 one witness. You can believe a part of what a witness
25 says and disregard the other part. You can believe

1 everything a witness says or you can disregard everything
2 that a witness says. You may consider whether the witness
3 has exhibited to you any interest, bias, prejudice, or
4 other motive in the case. You may also consider the
5 appearance and manner of a witness while on the witness
6 stand.

7 Ladies and gentlemen, I instruct you and charge you
8 and emphasize that the fact the defendant did not testify
9 in this case is not a factor to be considered by you in
10 any way in your deliberations and in your consideration on
11 the question of the guilt or innocence of the defendant.
12 It must not be considered by you in any manner whatsoever.
13 A defendant has the constitutional right to remain silent.
14 And the assertion of that constitutional right must not be
15 considered by you in your deliberations. I repeat, under
16 your oath you are to draw no conclusion whatsoever from
17 the fact that the defendant in this case did not testify.
18 The fact that he did not testify should not be discussed
19 at all in the jury room. The burden of proof, as I have
20 stated to you is on the State. The defendant is not
21 required to prove his innocence. The burden of proof
22 remains on the State to prove his guilt beyond a
23 reasonable doubt.

24 Let's turn now to the charges that are set forth in
25 the indictment. In the first indictment I will talk about

1 he is charged with burglary in the first degree. That is
2 set out in our code of laws in section 16-11-0311. The
3 defendant is charged with first degree burglary. The
4 State must first prove beyond a reasonable doubt that the
5 defendant entered a dwelling without consent, must prove
6 beyond a reasonable doubt that the defendant entered a
7 dwelling without consent. A dwelling is any building or
8 portion of a building in which a person ordinarily sleeps.
9 A building is a dwelling even if the residents are
10 temporarily absent from the building. In order to prove
11 that the defendant entered the dwelling the State does not
12 have to show that the defendant's entire body entered the
13 dwelling, the smallest entry is sufficient. It may be any
14 part of the body such as a hand, foot or even an
15 instrument. In addition, the State does not have to prove
16 that force was used to gain entry. So the first thing
17 they have to prove beyond a reasonable doubt is that he
18 entered a dwelling. Then the State must prove beyond a
19 reasonable doubt that the defendant intended to commit a
20 crime, either a felony or a misdemeanor at the time of the
21 entry. The mere entry into a dwelling without consent is
22 not a burglary. If the intent to commit a crime is formed
23 after the entry, it is not burglary. On the other hand,
24 if the defendant intended to commit a crime at the time of
25 the entry it is a burglary even if the intent was

1 abandoned after the entry. It does not matter that the
2 intended crime was not completed. Intent may be shown by
3 acts and conduct of the defendant and other circumstances
4 from which you may naturally and reasonably infer intent.
5 And finally the State must prove to you beyond a
6 reasonable doubt that the defendant has a prior record of
7 two or more convictions for burglary. In this case the
8 State and the defense have stipulated or agreed that the
9 defendant has two prior convictions for burglary. Now,
10 notwithstanding the fact that they have stipulated that he
11 has two prior offenses for burglary, the stipulation
12 concerning these prior offenses committed by the defendant
13 was not offered to prove the defendant has a bad character
14 or to prove the defendant committed the burglary on this
15 occasion. The prior convictions may be considered by you
16 only for the purpose of determining whether or not it
17 satisfies that element of the offense that makes it first
18 degree burglary if you have entered a dwelling without
19 consent to commit a crime and you have two prior
20 convictions for burglary.

21 Before you can even consider the evidence of the
22 defendant's prior burglary convictions you must first find
23 the State has proved beyond a reasonable doubt that a
24 burglary was committed by the defendant. If you find
25 beyond a reasonable doubt that the burglary was committed

1 and the defendant has two prior convictions for burglary,
2 prior convictions would make the burglary first degree
3 burglary.

4 The other offense that is charged is grand larceny
5 and that is simply stealing. The State must prove beyond
6 a reasonable doubt that the defendant took and carried
7 away property of another against the will or without the
8 consent of the person. The slightest removal of the
9 property or the complete possession of the property even
10 for an instance by the defendant is enough to show a
11 taking and a carrying away of the property. The State
12 must also prove beyond a reasonable doubt that the
13 defendant intended to permanently deprive the owner of the
14 property. Under our law we have several degrees of
15 larceny. In this case you will be asked to, if you find
16 him guilty of stealing of grand larceny you will have to
17 make a determination as to the value of the goods taken.
18 \$2,000.00 dollars is the cutoff line. You will have to
19 find whether the goods were worth more than \$2,000.00 or
20 less than \$2,000.00.

21 Mr. Foreman and ladies and gentlemen, your verdict
22 obviously has to be unanimous. You have no friends to
23 reward or enemies to punish. You want to base your
24 verdict simply on the evidence that you have heard today
25 determining what evidence is true, applying it to the law

1 as I have given it to you so you will be in a position to
2 render a true and just verdict. You will be asked to
3 render a verdict as to each indictment. I have a verdict
4 form. This is the one on burglary in the first degree,
5 very simple. You either find him not guilty or guilty.
6 Obviously if you find him not guilty then he couldn't have
7 taken anything out of the house. But if you find him
8 guilt of burglary then you would obviously look at the
9 grand larceny charge and then the grand larceny charge you
10 find whether or not he is guilty or not guilty of grand
11 larceny and then you have to decide whether or not it is
12 \$2,000.00 dollars or more. If you think it is less than
13 \$2,000.00 then you would go to the lessor included which
14 means the value of the goods was less than \$2,000.00, not
15 guilty or guilty on either of those. Your food should be
16 back there. We can do one of two things. You can go back
17 and eat your lunch and not deliberate, you can go back and
18 deliberate while you eat. That is entirely up to y'all.
19 I will let you go back to the jury room in just a second.
20 I am going to ask you not to start deliberating quite yet.
21 I have to ask the lawyers if I have left anything out and
22 then I have to gather the exhibits. That shouldn't take
23 but about two minutes. Once that is done the bailiff will
24 bring back the verdict forms and the exhibits. If during
25 your deliberations you have any questions about anything

1 please write it out on a piece of paper, knock on the door
2 and one of the bailiffs will bring it to me. Sometimes I
3 can answer it and sometimes I can't. I will send you back
4 whatever is proper. So at this time I am going to let you
5 go back to the room, you can start eating but don't
6 deliberate until I send all of this back. Go with Mr.
7 Whittle.

8 (Whereupon, the jury was excused from open court.)

9 THE COURT: Any exceptions, additions or deletions by
10 the State?

11 MR. MILLER: Nothing from the State, Your Honor.

12 THE COURT: By the defendant?

13 MR. HAYES: No, sir.

14 THE COURT: Please come agree upon the exhibits.

15 (Whereupon, the court reporter and attorneys go over
16 exhibits.)

17 THE COURT: The stipulation is a court exhibit so we
18 will keep it up here.

19 (Whereupon, Court's Exhibit 1 was marked for
20 identification only.)

21 THE COURT: Let the record reflect that both the
22 State and the defense have reviewed the exhibits and all
23 are in order. The bailiff is turning it over to the jury
24 for deliberations at 12:41. We will stand at ease.

25 (Whereupon, the jury starts deliberations at 12:41

1 p.m.)

2 THE COURT: Bring the jury in.

3 (Whereupon, the jury came into open court at
4 approximately 2:02 p.m. with a verdict.)

5 THE COURT: Let the record reflect that we have the
6 defendant present and all of the people are present. Mr.
7 Foreman, have y'all reached a verdict.

8 MR. FOREMAN: We have, Your Honor.

9 THE COURT: If you will hand it to the bailiff,
10 please. Madam Clerk, if you will publish it.

11 CLERK OF COURT: Your Honor, we have the State of
12 South Carolina, County of Aiken versus Albert James Cave,
13 Jr. Indictment number 2011-GS-02-01031, as to the offense
14 of burglary in the first degree we find the defendant
15 guilty. We unanimously agree on August 23rd, 2011,
16 Foreperson, Gil Greytak.

17 Your Honor, we have the State of South Carolina,
18 County of Aiken versus Albert James Cave, Jr. Indictment
19 number 2011-GS-02-01032, as to the offense of grand
20 larceny of goods valued at more than \$2,000.00 dollars.
21 We, the jury, find the defendant not guilty.

22 The verdict as to grand larceny of goods valued at
23 more than--

24 THE COURT: Less than.

25 CLERK OF COURT: Okay. As to the lessor included--

1 THE COURT: Let me hold it. Grand larceny of goods
2 valued at less than \$2,000.00.

3 CLERK OF COURT: Less than \$2,000.00. We the jury
4 find the defendant guilty. We unanimously agree August
5 23rd, 2011. Signed by the Foreperson, Gil Greytak.

6 THE COURT: Anything for the jury before I dismiss
7 them?

8 MR. HAYES: We would like them polled, Your Honor.

9 MR. MILLER: Nothing from the State, Your Honor.

10 THE COURT: I am going to ask you a question, I will
11 call each of your names. The question is this, is this
12 your verdict and is it still your verdict. Kenneth
13 Parkman, is this your verdict and is it still your
14 verdict?

15 JUROR: Yes, sir.

16 THE COURT: Ronald D. Staggs, is this your verdict
17 and is it still your verdict?

18 JUROR: Yes.

19 THE COURT: Marcus A. Schoultz, is this your verdict
20 and is it still your verdict?

21 JUROR: Yes, sir.

22 THE COURT: Julia D. Jordan, is this your verdict and
23 is it still your verdict?

24 JUROR: Yes, sir.

25 THE COURT: Peter E. Burrows, is this your verdict

1 and is it still your verdict?

2 JUROR: Yes, sir.

3 THE COURT: Marites R. Fonte, is this your verdict
4 and is it still your verdict?

5 Juror: Yes, sir.

6 THE COURT: Gil G. Greytak, is this your verdict and
7 is it still your verdict?

8 JUROR: Yes it is, Your Honor.

9 THE COURT: Betty J. Smith, is this your verdict and
10 is it still your verdict.

11 JUROR: Yes.

12 THE COURT: Becky S. Brown, is this your verdict and
13 is it still your verdict?

14 JUROR: Yes, it is.

15 THE COURT: Jennifer H. Bice, is this your verdict
16 and is it still your verdict?

17 JUROR: Yes, sir.

18 THE COURT: Helen K. Williamson, is this your verdict
19 and is it still your verdict?

20 JUROR: Yes, sir.

21 THE COURT: Joanne Jones, is this your verdict and is
22 it still your verdict?

23 JUROR: Yes, sir.

24 THE COURT: Thank you. Let the record reflect that
25 the jury has been polled. They all answered

1 affirmatively. Anything else for the jury before I
2 dismiss them?

3 MR. HAYES: No, sir.

4 THE COURT: Mr. Foreman and ladies and gentlemen, I
5 want to thank you, y'all have paid wonderful attention and
6 you have really performed your civic duty. It is not easy
7 sitting in this type of situation but all you have got to
8 do is turn on the TV tonight and look at what is going on
9 in Libya and other places and how they resolve their
10 disputes. We run our country under the rule of law and
11 that is the way it should be done. I appreciate all of
12 y'all participating in the judicial system. I don't know,
13 we have got another jury starting the other case at 2:00
14 o'clock. They are trying a civil case over in another
15 courtroom. I am not sure if we will have anything else.

16 MR. MILLER: Nothing from general sessions, Your
17 Honor.

18 THE COURT: I am not sure if they have anything left
19 on the civil side. I am going to ask you to call back
20 again tonight after 6:00. I doubt there will be anything
21 else but I will have to make sure. Thank you on behalf of
22 the citizens of Aiken and the judiciary. Thank you. You
23 are free to go out this door. Everybody else remain
24 seated.

25 (Whereupon, the jury was excused from open court at

1 2:10 p.m.)

2 THE COURT: We will sentence late this afternoon. I
3 just got a handful of stuff right now.

4 MR. HAYES: I would like to renew you my directed
5 verdict motion and also a motion for a new trial.

6 THE COURT: Why don't you do this, give you a little
7 time to think about it and when we come back and before
8 sentencing you can do all of that.

9 (Whereupon, there is a break in the case, the
10 sentencing will be held at 4:15 p.m.)

11 THE COURT: We are ready to go back on the record of
12 the State versus Albert James Cave, Jr. Mr. Cave, the
13 jury has found you guilty of burglary in the first degree
14 and that carries a minimum of 15 years to life. It is
15 classified as violent and most serious. And I assume this
16 is your second strike now. Is that correct, Mr. Miller?

17 MR. MILLER: Third, Your Honor, I believe the other
18 burglary was a non-violent if I remember correctly for the
19 record.

20 THE COURT: The lawyer can explain to you what
21 serious or most serious and violent mean. It also
22 convicted you on what we call petty larceny, it is a
23 larceny less than \$2,000.00. It carries up to 30 days.
24 Mr. Miller, tell me about his record please and anything
25 else the State wants to say.

1 MR. MILLER: Your Honor, Mr. Cave was convicted of
2 burglary in the third degree in 1986; he had two forgery
3 convictions in 1990, a forgery conviction in 1992, a
4 forgery conviction, another forgery conviction in 1992,
5 two forgeries and a resisting arrest in 1993, he had a
6 possession of cocaine in 2001, a burglary in the second
7 degree in 2004; another forgery, excuse me, four counts of
8 forgery in 2004, and a possession marijuana second offense
9 and resisting arrest from 2008. Your Honor, we have
10 additional burglary first charges pending against Mr.
11 Cave. Actually we have another fingerprint case pending
12 against him now. I will be meeting with the Solicitor
13 later on this week or after the term of court for us to
14 determine whether or not we intend to notice him for life
15 without parole and try him on one of those additional
16 burglary cases. In all candor, Your Honor, I think that
17 the other burglary cases are actually even stronger than
18 this one. And in one of those cases they did have the
19 crime scene unit go out and take photographs and do the
20 full blown investigation at the scene. Your Honor,
21 present in the courtroom are Mr. and Ms. Smiley who have
22 been here throughout the trial. The Court has heard from
23 them and they didn't feel like they needed to say anything
24 else at this time except they did point out something to
25 me during the course of getting ready for this trial, that

1 this was the fifth time their home had been burglarized in
2 the 20 plus years that they have lived there and this is
3 the first time that somebody has ever actually been caught
4 and prosecuted for breaking into their home. They have
5 been very cooperative with our office and they echo the
6 sentiments of some of the, expressed by some of the jurors
7 as they were leaving after the verdict was announced that
8 they want to see justice done in this case. And it is
9 apparent from the State's perspective that Mr. Cave is not
10 going to stay out of peoples houses so Mr. Cave needs to
11 stay away from peoples houses and be put somewhere where
12 he cannot get to peoples houses. And the State would
13 accordingly ask the Court to sentence him in light of his
14 record, in light of his conviction on this date to an
15 appropriate sentence in the Department of Corrections.

16 THE COURT: Mr. Cave, you want to sign the sentence
17 sheet or do you choose not to?

18 MR. HAYES: Judge I would like to also, at this time
19 while we are on the record. I would like to renew the
20 motion for a directed verdict for all the previous reasons
21 stated while we were in trial. I also would like to make
22 a motion for a new trial based on the fact that the
23 testimony from the AFIS results in accordance with
24 Anderson which is a 2009 case and Bullcoming which is a
25 six month old case from the Supreme Court was more

1 prejudicial that South Carolina could give more
2 constitutional protection to its citizens. However I
3 don't believe that South Carolina can actually take away
4 constitutional protection that would have been afforded
5 under Bullcoming.

6 THE COURT: Bullcoming was a breathalyzer test.

7 MR. HAYES: Yes, sir. The statements in between the
8 two is that Bullcoming wasn't truly about the breathalyzer
9 or a DUI. It was about the results that were obtained
10 from a machine and the person who entered the actual data
11 into the machine was not present to testify as to the
12 results that were obtained to it.

13 THE COURT: Suggestion in order to use the AFIS
14 system that I would require the State to bring in the
15 people who did the original, fingerprints that were
16 originally entered into AFIS?

17 MR. HAYES: That which was addressed under Anderson
18 and of course that is not an issue or having a person who
19 at SLED can testify how they had come about receiving and
20 entering into the actual AFIS program, the fingerprints.
21 And that was also, I believe one of the issues that was
22 addressed in Anderson and in Anderson they also had the
23 SLED agent present who testified to that process.

24 THE COURT: I find the investigator covered it all in
25 his testimony. It is simply entered into a computer

1 system when anybody is arrested and then the system takes
2 over, the program takes over and they send back 30 closest
3 matches and then the investigator does the actual matching
4 or the actual identification confirmed by the detective
5 and confirmed by the lieutenant in this case, Clay Adams.
6 I don't know how much more protection you can get.

7 MR. HAYES: And in Bullcoming and under Crawford
8 stated, it wasn't about the reliability, it was about
9 protection afforded under the Sixth Amendment. They are
10 not saying that the credibility was at an issue, it is the
11 confrontation issue.

12 THE COURT: I think you have protected your client on
13 the record on that issue and I stand by my rule that was
14 made during the trial of the case and I respectfully deny
15 your motion for a new trial and I find that obviously it
16 was a jury issue as to whether or not this man committed
17 the burglary. I mean the fingerprint to me, you could
18 have taken a picture of my face and another picture of my
19 face and put them right together and that is how those
20 fingerprints were to me, they were an absolute match when
21 I looked at them and I just think the evidence is
22 overwhelming that he was in that house and he wasn't
23 suppose to be at the time all of these items were missing.
24 It is a classic case of proving the case by fingerprint.

25 MR. HAYES: Yes, sir. I would also like to add for

1 the record that the testimony of one expert following a
2 subsequent expert was bolstering of expert witnesses and
3 all things taken in conjunction were, there was only one
4 fingerprint and all of it taken into conjunction would
5 have bolstered the State's evidence. And that would be
6 the grounds for my motion.

7 THE COURT: It might have been a tad cumulative but I
8 think the detective, strike that, I think the lieutenant's
9 testimony was different even though they came to the same
10 result. I mean, he explained part of how he came about
11 his opinion and demonstrated it and I don't find it to be
12 cumulative nor bolstering. I thought it was tried as
13 efficiently as could be done and I think both of the
14 testimonies were needed and both witnesses were needed.
15 Respectfully denied.

16 MR. HAYES: Yes, sir. Your Honor, Mr. Cave is 42
17 years of age. He is a lifelong resident of Aiken County,
18 he tells me he was born and raised here. Right before his
19 arrest he tells me he was working for an Anthony Concrete
20 and Finishing and that he had been there about a week.
21 Prior to that his work history is all labor, brick mason,
22 roofing. He also was a cook at the Bowery. Your Honor,
23 he attended South Aiken High School and made it to the
24 tenth grade. However, he had obtained his GED in 1992 at
25 Aiken Technical College. He tells me that currently he

1 any way and I don't believe Your Honor would even consider
2 that. But I want to put that on the record.

3 THE COURT: No, I didn't mean it that way. I would
4 just, Mr. Cave breaking into them, notwithstanding all the
5 rest of them. Here you have got, I watch them sit back
6 there, they are all like we all want to be. They both
7 work hard and they are probably like my mama and daddy. I
8 mean they work hard but don't have a whole, whole lot but
9 what they got they enjoy and don't want anybody taking it
10 away from them. And here is a young man, not a young man,
11 middle aged that has got a record that goes back a long
12 ways, a history of all of these break-ins.

13 MR. HAYES: Your Honor, also for the record, he was
14 not sure as to the forgery convictions of 2004.

15 THE COURT: I guess it just comes time after all of
16 this criminal activity, how else do you deal with somebody
17 like that other than getting them off the streets.

18 As to the petty larceny, the sentence of the Court,
19 you be committed to the County Detention Center for 30
20 days which is timed served.

21 As to the burglary first, the sentence of the Court
22 is you be committed to the State Department of Corrections
23 for a period of 25 years. Good luck to you.

24 MR. MILLER: Thank you, Your Honor.

25 MR. HAYES: Thank you, Your Honor.

1 (Whereupon, Court's Exhibit 1 was marked for
2 identification only.)

3 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Aiken County, South Carolina on the 22nd day of August, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 9, 2012



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016



Aiken County Sheriff's Office

FORENSIC INVESTIGATIONS SECTION
LABORATORY REPORT



Inv. Chuck Cain
Aiken County Sheriff's Office
420 Hampton Avenue NE
Aiken, South Carolina 29801

EVIDENCE PROCESSING
May 4, 2011
Case No. 11-027587
[V]Smiley, Ronnie
[S]Unknown

This is an official report of the Aiken County Sheriff's Office Forensic Investigations Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of the evidence submitted in this case have been or will be conducted by any other laboratory or agency.


Michael E. Hunt, Sheriff
Aiken County Sheriff's Office

ITEMS OF EVIDENCE:

A0041127- 2 pieces of paper touched/moved by unknown subject.

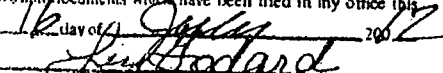
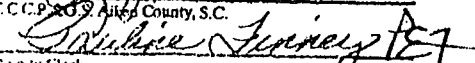
RESULTS:

Identifiable fingerprints were developed on the above item. The fingerprints will be forwarded to AFIS for further examination.


Inv. Chris Johnson
Forensic Investigations Section

STATE'S EXHIBIT

5

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
16 day of July 2011

Liz Godard
C.C.C.P. Clerk, Aiken County, S.C.

Christine Finney



Alameda County Sheriff's Office
Automated Fingerprint Identification System
Work Sheet

Case Number 11 - 027587Originating Agency ACSODate of Entry 5-4-11Offense BURGLARYAFIS Number 60.11027587.01Date 5-2-11

INQUIRY							RESULTS		
Item No.	Latent #	Pattern	R	S	Finger #	No. of Min.	CODE	SID	Finger
1	1 (RL)	ATURW			1	36	A	SC00545432	1
		ATURW							
		ATURW							
		ATURW							
		ATURW							
		ATURW							
		ATURW							

PERSONS IDENTIFIED


SID	Name	DOB	Race / Sex
<u>SC 0545432</u>	<u>CAVE, ALBERT James Jr</u>		<u>B / M</u>

LABORATORY AFIS RESPONSE (INDICATED IN CODE BOX ABOVE)

- A. Latent has been searched against SLED data base with positive results.
- B. Latent has been searched against the SLED data base with negative results. Image of the latent has been stored in the unsolved latent file for continuous search against all new cards entering the system.
- C. Latent has been searched against the SLED Data Base with negative results. Latent does not meet criteria for storage in the unsolved latent file but may be requested to be re-searched at any time.
- D. Latent submitted is not of sufficient quality for entry and search in the AFIS system.
- E. Additional comments _____

DISPOSITION OF EVIDENCE

- () Latent(s) will be returned separately.
- () Latent(s) enclosed with report.


 Examiner's Signature
 Date: 5/2/11

WITNESSES

DOCKET NO. 2011GS0201031

Aiken County Sheriff

The State of South Carolina

Chuck Cain

County of Aiken

Law Enforcement Case #: 11-027587

DWM

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JULY TERM 2011

1041110

FILED July 14 2011

Liz Godard
C.C.C.P. & G.S.

Ann Sanders

THE STATE

vs.

ALBERT JAMES CAVE JR

SECTION OF GRAND JURY

TRUE BILL

[Signature]

Representative of Grand Jury
date: July 14, 2011

CDR #: 0079

INDICT

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

Representative of Petit Jury

name:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on July 18, 2011, the Grand Jurors of Aiken County present upon their oath:

That **ALBERT JAMES CAVE, JR.** did in Aiken County on or about May 2, 2011, wilfully and unlawfully enter the dwelling of Ronnie Smiley located at , North Augusta, without consent and with the intent to commit a crime therein and the defendant has two prior convictions for Burglary, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

258 COUNTY OF Aiken STATE VS. Albert James Cave Jr. AKA: Race: 2 Sex: M Age: 42 DOB: SS#: Address: City, State, Zip: DL# 008659844 SID# SC00545432 *CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

INDICTMENT/CASE#: 2011GS0201031 A/W#: M041110 Date of Offense: 5/2/2011 S.C. Code §: 16-11-0311 CDR Code #: 0079

SENTENCE SHEET 15 yrs - life

[X] CONVICTED OF or [] PLEADS

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 [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS [] \$17-25-45 (CSC w/minor 1st or Lev'd Act)

The charge is: [X] As indicted, [] Lesser Included Offense, [] Defendant Waives Presentation to Grand Jury. (def.'s initials) The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST David W. Miller Solicitor 69553 SC Bar # [Signature] Defendant [Signature] Attorney for Defendant 7783 SC Bar #

WHEREFORE, the Defendant is committed to the [X] 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 years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/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 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 PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: [] Set by SCDPPPS Obtain GED [] Attend Voc. Rehab. Or Job Corp.

Recipient: *Fine: \$14-1-206 (Assessments 107.5%) \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$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 \$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 3% to County (If paid in Installments)

TOTAL \$ 133.90

Clerk of Court/Deputy Clerk Leckastin Bell Court Reporter: Joy E. Holston SCCA/217 (03/2011)

Obtain GED [] May serve W/E beginning Substance Abuse Counseling [] Random Drug/Alcohol Testing [] Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other:

[] Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature] Judge Code: 0136 Sentence Date Aug 23, 2011

TNESSES

en County Sheriff

uck Cain

Enforcement Case #: 11-027587

DWM

ARREST WARRANT NUMBER

FILED July 14 2011

141109

L. Hodard
C.C.P. & G.S.

Amey Sanders
Deputy Sheriff

TION OF GRAND JURY

TRICE B. II

W. Hodard

person of Grand Jury
July 14, 2011

DICT

person of Petit Jury

DOCKET NO. 2011GS0201032

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2011

THE STATE
vs.

ALBERT JAMES CAVE JR

CDR #: 3420

Indictment for

GRAND LARCENY MORE THAN
\$2,000 BUT LESS THAN \$10,000

§ 16-13-30(B)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
GRAND LARCENY MORE THAN
\$2,000 BUT LESS THAN \$10,000

§ 16-13-30(B)

At a Court of General Sessions, convened on July 18, 2011, the Grand Jurors of Aiken County present upon their oath:

That **ALBERT JAMES CAVE, JR.** did in Aiken County on or about May 2, 2011, feloniously take and carry away a Dell Inspiron Laptop computer and two 32' Vizio Flat Panel televisions collectively valued at more than Two Thousand Dollars but less than Ten Thousand Dollars and belonging to Ronnie Smiley, with intent to deprive the owner permanently of such property. All in violation of §16-13-30, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
STATE)

vs.
Albert James Cave Jr)

AKA:)

Race: 2 Sex: M Age: 42)

DOB: SS#:)

Address:)

City, State, Zip:)

DL# 008659844* SID# SC00545432)

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Larceny / Petit or Simple Larceny

In violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 0480

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lawd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST

David W. Moore Solicitor 69553 SC Bar # Benjamin Defendant [Signature] Attorney for Defendant 7785 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/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. Time Served
 The Defendant is to be placed on 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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ prnts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

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 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90 Presiding Judge [Signature]

Clerk of Court/Deputy Clerk Ann Sanders Judge Code: 0136

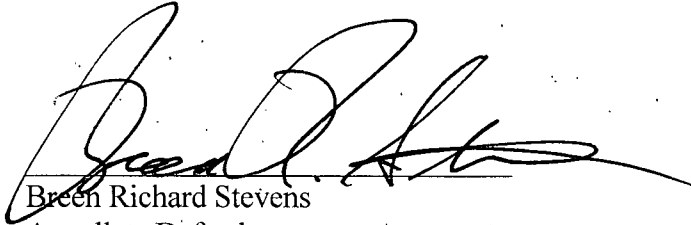
Court Reporter: Joy Holston Sentence Date: Aug 23, 2011
SCCA/217 (03/2011)

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 8th day January, 2013



Green Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

RECEIVED

JAN 07 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

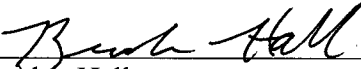
ALBERT J. CAVE,

APPELLANT

Appellate Case No. 2011-198190

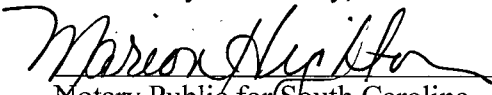
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Mr. James Albert Cave, Jr., at Kirkland Correctional Institution 4344 Broad River Road Columbia, SC 29210, this 7th day of January, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2013.



Notary Public for South Carolina

(L.S.)

My Commission Expires: October 30, 2022.