

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ANDERSON,

APPELLANT

Appellate Case No. 2012-210188

RECORD ON APPEAL

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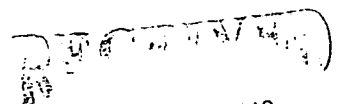
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SC COURT OF APPEALS

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

B E F O R E :

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

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

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Attorney for Plaintiff

Edward Chrisco, Esquire
Attorney for Defendant

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

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

3 MR. EMMING: Okay, all right, my name is Joseph Leonard
4 Emming, E-M-M-I-N-G.

5 THE COURT: All right, Ms. Richardson.

6 MS. RICHARDSON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. RICHARDSON:

9 Q Mr. Emming, how old are you?

10 A I am 17.

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

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

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

15 A Yes, I do.

16 Q And a truth and a lie?

17 A Yes, ma'am.

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

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

21 Q Okay, who was with you?

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

24 Q Okay, where were you sleeping?

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

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

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

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

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

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

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

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

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

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

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

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

6 Q Okay, okay.

7 MS. RICHARDSON: Nothing further at this time.

8 THE COURT: All right, cross examination.

9 MR. CHRISCO: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. CHRISCO:

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

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

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

15 A Yes, sir.

16 Q No doubt in your mind?

17 A No doubt.

18 Q No doubt whatsoever.

19 A No doubt, sir.

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

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

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

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

1 said.

2 Q You didn't tell the police that you could recognize him.
3 They didn't show you pictures; did they?

4 A No, sir.

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

6 A No, sir.

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

9 A That's correct.

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

12 A Yes, sir.

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

15 A At the closest five feet.

16 Q And what were the lighting conditions there?

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

19 Q And you had been texting?

20 A Yes.

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

22 A Medium sized screen.

23 Q Bright light, dim light?

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

1 Q You had been laying there texting for four or more hours?

2 A Quite some time, yes, sir.

3 MR. CHRISCO: No further questions.

4 THE COURT: Redirect?

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

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

7 MS. RICHARDSON: Your Honor, the State would request
8 that he be excused from his subpoena so he can make his
9 flight.

10 THE COURT: Any objection?

11 MR. CHRISCO: No objection.

12 THE COURT: All right, you're free to go. Thank you
13 very much.

14 MS. RICHARDSON: The State would call Ms. Christian
15 Vickery.

16 THE COURT: All right.

17 Whereupon, Christian Gail Vickery was called to the
18 stand, duly sworn by the clerk and testified as follows:

19 THE CLERK: If you'll state your full name and spell
20 your last name.

21 MS. VICKERY: Christian Gail Vickery, V-I-C-K-E-R-Y.

22 THE COURT: All right, Ms. Richardson.

23 MS. RICHARDSON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. RICHARDSON:

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

1 their own room.

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

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

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

6 A Bluewater Resort.

7 Q Is that where you stay every time?

8 A Yes, ma'am.

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

11 A It was night, definitely night.

12 Q Approximately what time?

13 A I know it was after 11.

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

15 THE COURT: All right.

16 BY MS. RICHARDSON:

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

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

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

22 A He was average size male.

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

24 A Black, African-American.

25 Q Okay, any other distinguishing features that you

1 remember?

2 A No, ma'am.

3 Q Okay.

4 MS. RICHARDSON: Nothing further from the State.

5 THE COURT: All right, cross examination?

6 MR. CHRISCO: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. CHRISCO:

9 Q You're from Anderson, South Carolina.

10 A Yes, sir.

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

12 A All the time.

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

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

15 Q What time did you go to bed?

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

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

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

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

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

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

4 THE COURT: Any objection?

5 MR. CHRISCO: No objection, Your Honor.

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

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

9 THE COURT: All right.

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

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

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

16 DIRECT EXAMINATION

17 BY MS. RICHARDSON:

18 Q Mr. Smith, where are you from?

19 A Anderson, South Carolina.

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

21 A She is my fiancée.

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

24 A Yes, ma'am.

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

1 in the hotel room?

2 A No, ma'am.

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

5 A No, ma'am.

6 Q What about your wallet?

7 A No, ma'am.

8 Q Were your cards ever used?

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

11 Q So, you cancelled them immediately?

12 A Yeah, I cancelled them that night.

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

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

16 MS. RICHARDSON: Nothing else from the State.

17 THE COURT: All right, cross examination.

18 MR. CHRISCO: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. CHRISCO:

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

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

25 MR. CHRISCO: No further questions.

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

4 THE COURT: All right.

5 (Court and clerk confer about scheduling.)

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

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

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

11 OFF THE RECORD

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

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

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

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

22 MR. CHRISCO: Yes, Your Honor.

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

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

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1 would call Crime Scene Specialist Brad McClelland.

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

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

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

8 EXAMINATION

9 BY MS. RICHARDSON:

10 Q Where are you employed?

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

13 Q Okay, where were you employed before that?

14 A Myrtle Beach Police Department.

15 Q What was your position?

16 A Crime scene investigator.

17 Q How long were you a crime scene investigator?

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

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

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

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

1 A Uh-huh.

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

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

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

11 A Between three and 500 prints.

12 Q How many have you compared?

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

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

17 A Yes, ma'am.

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

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

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

Proffer

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

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

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

7 Q Okay.

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

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

11 MR. CHRISCO: Yes, Your Honor.

12 THE COURT: All right.

13 EXAMINATION

14 BY MR. CHRISCO:

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

16 A Examiner.

17 Q Examiner.

18 A Yes.

19 Q What is that?

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

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

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

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

10 Q How many times have you done that?

11 A Probably three to 500 times.

12 Q And how many did you match?

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

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

18 A They were, they were all correct.

19 Q And how would you know that?

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

Proffer

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1 Q What's your error rate?

2 A I have no error rate.

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

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

10 EXAMINATION

11 BY THE COURT:

12 Q These courses that you took ---

13 A Yes, sir.

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

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

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

25 A No, sir.

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

3 A No, sir.

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

6 A Yes, sir.

7 Q Okay.

8 THE COURT: Any further follow-up questions?

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

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

13 MR. CHRISCO: No, Your Honor.

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

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

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

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

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

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

15 A No, no, no, no.

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

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

19 THE COURT: Any follow-up questions?

20 MR. CHRISCO: No, Your Honor.

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

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

1 admissibility.

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

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

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

20 MS. RICHARDSON: Thank you, Your Honor.

21 THE COURT: Thank you.

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

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

Brad McClelland - Direct by State

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

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

4 MR. CHRISCO: No, Your Honor.

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

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

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

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

18 THE COURT: All right.

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

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

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

25 DIRECT EXAMINATION

- 1 BY MS. RICHARDSON:
- 2 Q Officer McClelland, where are you employed?
- 3 A Currently?
- 4 Q Yes, sir.
- 5 A At the Federal Bureau of Prisons.
- 6 Q Okay, where were you employed before that?
- 7 A Myrtle Beach Police Department.
- 8 Q What was your position?
- 9 A Crime scene specialist.
- 10 Q And how long we were employed with Myrtle Beach?
- 11 A Six years.
- 12 Q Okay, what education or training did you receive as it
- 13 relates to your crime scene job?
- 14 A I've had basic introduction to crime scene. I've had 40
- 15 hours of fingerprint comparison, 40 hours of palm print
- 16 comparison, a tour, four hours of advanced training and
- 17 there's some other classes that I can't recall, but there's
- 18 been a couple of others.
- 19 Q Do you have any certifications through SLED?
- 20 A I am an AFIS operator certified through SLED.
- 21 Q What is AFIS?
- 22 A It's an automated fingerprint identification system and
- 23 it's used to store, compare fingerprints.
- 24 Q What type of equipment do you use as it relates to
- 25 fingerprints?

Brad McClelland - Direct by State

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

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

6 A Between three and 500.

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

10 THE COURT: All right, challenges?

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

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

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

7 MS. RICHARDSON: Thank you, Your Honor.

8 BY MS. RICHARDSON:

9 Q What is an ink print?

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

14 Q What is a latent print?

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

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

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

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

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

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

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

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

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

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

19 A Yes.

20 Q Why is that?

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

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

7 Q What makes it possible to leave a fingerprint?

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

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

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

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

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

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

25 A Yes, ma'am.

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1 Q And what county is that located in?

2 A That's located in Horry County.

3 Q Okay, when you got there what did you do?

4 A Our normal processes we first arrive on scene. We're
5 notified by a supervisor. We get to the scene. We talk to
6 whoever the responding officer is or we'll talk to the victim
7 to see what, what evidence may have been or what was moved.
8 We take photographs of the area and then we begin to process
9 anywhere that the suspect may have touched, such as point of
10 entry, which is where the window that the suspect came
11 through. So, we would do, do the window and do the ledge; and
12 so, after we process we get - if we lift something we'll lift
13 it and then finish, finish the scene that way.

14 Q So, you lifted that print?

15 A Yes, ma'am.

16 Q And has it been in your - was it in your custody and
17 control up to point of testing?

18 A Yes, it was in my custody and control up to the point of
19 me examining it through the AFIS machine.

20 Q Okay, then what did you do with it?

21 A It goes into our evidence room, which it's dropped in a
22 locker we're given personally, to the evidence tech, and
23 they're responsible for housing the print.

24 Q Did you tamper it or alter it in any kind of way?

25 A No, ma'am.

1 Q How exactly did you lift that fingerprint?

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

17 Q Okay.

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

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

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

24 THE COURT: All right, any objection?

25 MR. CHRISCO: No, Your Honor.

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

3 MS. RICHARDSON: Thank you, Your Honor.

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

6 BY MS. RICHARDSON:

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

9 A Yes, ma'am.

10 Q What is that?

11 A That is the front door to the apartment or to the hotel
12 room 101A [sic].

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

15 A Yes, ma'am.

16 Q I'm sorry and that was?

17 A That's 1001, I'm sorry, I think I said 101.

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

21 A Okay.

22 Q And what is that?

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

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

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

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

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

10 A Yes, ma'am.

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

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

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

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

19 Q So, you just zoomed in on it?

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

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

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

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

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

7 A Sure.

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

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

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

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

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

15 A No, ma'am.

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

19 THE COURT: Any objection?

20 MR. CHRISCO: No objection, Your Honor.

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

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

1 marked.)

2 BY MS. RICHARDSON:

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

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

9 Q Okay.

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

13 THE COURT: I sustain, sustain the objection.

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

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

16 Q Yes.

17 A Yes, ma'am.

18 Q And what was that measurement?

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

21 Q So, two centimeters?

22 A Two centimeters approximately.

23 Q From where?

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

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

2 A On the inside of the window.

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

5 THE COURT: All right.

6 BY MS. RICHARDSON:

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

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

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

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

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

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

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

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

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

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

20 A Yes, I compared the two.

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

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

24 Q Okay, and what is a SID number?

25 A SID number is a South Carolina identification number and

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

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

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

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

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

13 Q How many are needed to make an identification?

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

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

20 A Yes, ma'am.

21 MS. RICHARDSON: The Court's indulgence.

22 THE COURT: All right.

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

25 THE COURT: Cross examination?

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

2 CROSS EXAMINATION

3 BY MR. CHRISCO:

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

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

9 Q When you got there what did you do?

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

14 Q Stop you there.

15 A Yes, sir.

16 Q Consent to search, what does that mean?

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

20 Q Then what'd you do?

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

25 Q How many fingerprints did you obtain?

1 A I obtained three total.

2 Q Three?

3 A Yes.

4 Q Where were those fingerprints?

5 A All three were on the windowsill ledge, two were on one,
6 there were two prints on one lift and there was a single print
7 on the other lift and they were all across the windowsill.

8 Q Were there doors to the bedrooms?

9 A Yes, sir.

10 Q There was how many doors going to the outside were
11 there?

12 A There was as far as - I'm not - I don't understand what
13 you're asking. You mean to the outside room?

14 Q How many ways to exit that room?

15 A There's one way to exit and that's through the front
16 door.

17 Q Now show you what's been marked as State's Exhibit
18 Number Three.

19 A Yes, sir.

20 Q Do you see an exit door in that exhibit?

21 A There's a sliding glass door but this is 11 stories up,
22 sorry, and there's also another door there that is locked
23 unless it's unlocked by the hotel.

24 Q And that door goes where?

25 A That goes to the next unit and would have an exit on

1 that side.

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

4 A Yes, sir, that's the front door of the, of the apartment
5 1001A.

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

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

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

9 A I don't remember.

10 Q Did you take fingerprints from that door?

11 A I did not, no.

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

13 A Yes, sir.

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

16 A Yes, sir.

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

18 A No, sir.

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

20 A Yes, sir.

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

22 A Yes, sir.

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

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

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

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

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

7 Q So, we'll never know that?

8 A That's correct.

9 Q Any other places that you lift fingerprints?

10 A No, just the windowsill.

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

12 A No, sir.

13 Q Why wouldn't you do that?

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

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

21 A Unless they've been arrested.

22 Q They've been arrested before?

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

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

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

5 A No, sir.

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

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

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

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

13 Q Uh-huh.

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

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

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

1 Q Water?

2 A Uh-huh.

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

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

7 Q How did you get this print?

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

14 Q The window was wet?

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

16 Q The area was wet?

17 A The outside was wet, the outside window.

18 Q Did you do a report?

19 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

22 Q Right.

23 A Correct.

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

25 A This is a ---

1 Q --- to lift it?

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

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

5 A Yes, sir.

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

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

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

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

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

18 A Uh-huh.

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

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

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

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

5 Q TIFF is what?

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

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

11 A JP ---

12 Q --- GIF?

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

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

22 A Correct, yes, sir.

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

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

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

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

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

7 A Yes.

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

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

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

16 A Uh-huh.

17 Q --- automated fingerprint ---

18 A Identification system, identification system.

19 Q And who is that run by?

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

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

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

25 Q You don't use the Lockheed Martin?

1 A Lockheed Martin? It's Morpho Trak.

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

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

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

11 THE COURT: All right.

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

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

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

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

12 THE COURT: All right, Mr. Chrisco.

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

24 THE COURT: All right, Ms. Richardson.

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

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

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

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

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

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

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

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

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

23 MS. RICHARDSON: Yes, sir.

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

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

2 A No.

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

5 A No, sir, they don't.

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

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

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

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

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

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

5 THE COURT: Yeah, all right.

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

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

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

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

1 you have gotten it on your on?

2 MR. CHRISCO: No, Your Honor.

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

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

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

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

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

25 THE COURT: All right.

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

3 THE COURT: Law-enforcement.

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

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

8 MS. RICHARDSON: Thank you, Your Honor

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

13 A Uh-huh.

14 THE COURT: All right, thank you.

15 OFF THE RECORD

16 (On the record.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 MR. CHRISCO: No, Your Honor.

2 THE COURT: Anything else from the State?

3 MS. RICHARDSON: No, Your Honor.

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

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

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

10 MR. CHRISCO: Thank you, Your Honor.

11 BY MR. CHRISCO:

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

14 A It's a Morpho Trak.

15 Q A what now?

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

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

20 A I'm not sure.

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

23 A I got 30 respondents back.

24 Q Thirty respondents?

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

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

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

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

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

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

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

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

20 A No, sir.

21 Q And why is that?

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

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

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

9 Q And you did this with the naked eye?

10 A Yes, sir.

11 Q You don't use a magnifying glass?

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

13 Q So, the computer screen enhances it?

14 A It enlarges it, correct.

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

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

18 Q It's just a computer; right?

19 A Correct.

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

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

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

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

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

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

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

6 Q Whatever you use to look at fingerprints.

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

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

10 A Just the magnifying glass.

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

12 A I do not remember.

13 Q Okay, on the second one?

14 A 11.

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

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

18 Q What do you mean that is the match?

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

23 Q So, 11 is the magic number?

24 A There is no number.

25 Q Ten?

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

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

3 Q Comes back with a probability.

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

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

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

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

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

18 Q What about eight points; is that good?

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

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

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

1 prints.

2 Q Are you aware that an Israeli fingerprint expert found
3 two different people with eight points?

4 A It's not uncommon to have numerous points, but again,
5 I'm looking for the dissimilarities in the print, not the
6 similarities.

7 Q Where does this phrase points come from?

8 A It comes from minutia, which are the ridge endings,
9 bifurcations, dots and so on and so forth that I was talking
10 about. Those are what I call points or minutia points.

11 Q At the Federal Bureau of Investigation there the -
12 they've created the term points; did they not?

13 A I do not know who created the term. I - it's minutia is
14 what we go as far as that.

15 Q You said earlier you work for the Bureau of Federal
16 Prisons. What do you do with them?

17 A Corrections officer.

18 Q So, you don't deal with fingerprints ---

19 A No.

20 Q --- on a daily basis. You just guard inmates?

21 A I just, just started, yes, sir.

22 Q How many, including these fingerprints, have you
23 decided?

24 A Were matches or hits? Off the top of my head I don't
25 know. I mean, I've had - if you count victims, too, I've

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

7 Q What's your error ratio?

8 A I have no error ratio in fingerprints.

9 Q What do you mean by that?

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

12 Q You're always right?

13 A Yes, sir.

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

16 A Not to my knowledge, no, sir.

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

19 A Yes, sir.

20 Q And what is that?

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

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

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

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

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

4 Q Do you know who it is?

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

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

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

11 Q You see what you want to see.

12 A You see what is there.

13 Q And what is there?

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

19 Q A fingerprint is 98 percent water?

20 A Correct.

21 Q You take it off of a wet surface?

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

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

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

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

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

12 A Yes, sir.

13 Q You said that; right?

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

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

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

18 Q To enhance?

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

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

25 A Uh-huh.

1 Q --- you said if you use too much you could distort it?

2 A You can damage the print, yes, sir.

3 Q So, you don't know if you distorted it or not because
4 you couldn't see it originally with the naked eye.

5 A It won't distort it. It would just cause the ridges or
6 friction ridges to actually not be there or black out to where
7 you can't see them at all. It will not change what the print
8 is. It will not add a point. It will not take away a point
9 or minutia point. It only draws out those ridges. If you use
10 too much powder it will blacken in or fill in the ridges to
11 where it looks like just a black ---

12 Q Do you that a guy named Steve Grieves?

13 A No.

14 Q Stephen Grieves ---

15 A No, sir.

16 Q --- one of the highly renowned fingerprint experts.
17 Would it surprise you to learn that he says that when you put
18 that powder on if you use too much pressure you can distort
19 the fingerprint?

20 A What does he mean? I don't understand what he means by
21 distort. Is he talking about changing friction or friction
22 ends and ridges because ---

23 Q He used the phrase, he used the word distort.

24 A Distort would only be like I said to actually fill in
25 the ridges to where you cannot see the ridges. You're not

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

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

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

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

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

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

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

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

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

8 A It gives me no names.

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

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

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

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

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

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

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

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

21 Q How so?

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

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

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

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

7 Q Garbage in, garbage out?

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

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

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

14 Q Well, everything else you did there.

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

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

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

24 MR. CHRISCO: No further questions.

25 THE COURT: Redirect?

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

2 REDIRECT EXAMINATION

3 BY MS. RICHARDSON:

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

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

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

9 A That surface was dry.

10 Q Okay, what, what was wet?

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

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

20 A No, just, just a smear.

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

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

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

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

9 A A total of three.

10 Q Is that correct?

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

12 Q What happened to the other two?

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

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

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

24 Q And why would that be the case?

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

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

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

5 A Yes, ma'am.

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

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

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

20 A No, ma'am.

21 Q What about the second print?

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

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

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

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

5 Q It's a Court's Exhibit.

6 A Court's Exhibit.

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

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

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

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

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

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1 A Yes.

2 Q How do you know that?

3 A Again, I know from the ridges, ridge detail. You also
4 get the ridge detail you have like he said the minutia points,
5 all the minutia points matched up. I marked 11. There very -
6 there could have possibly been even more than 11 but I marked
7 11. You also have the number of ridges in between which I
8 count. I make sure that there's not an extra ridge in there
9 or I make sure that it's, it's the same print.

10 Q And at that point in time did you know who that
11 fingerprint belonged to?

12 A No, ma'am.

13 Q No idea?

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

15 Q And what is your practice after you've identified it?
16 What do you do next?

17 A After I identify it we take - we'll take the number. We
18 enter it into the system. The system will then kick back who
19 the, who the print belongs to. We print that off. We print
20 the 10-print card which has all 10 fingers on it and then we
21 take that back and then we give the print that we compared, a
22 screenshot of the print or the 10-print and the known or the
23 unknown print to another AFIS examiner who verifies your
24 results. He'll go over it and check to make sure that you are
25 correct.

1 Q And you did that in this case?

2 A Yes.

3 MS. RICHARDSON: Nothing further, Your Honor.

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

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

6 THE COURT: Yeah.

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

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

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

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

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

1 thoughts together we'll address it then.

2 MR. ANDERSON: All right, thank you.

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

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

6 THE COURT: All right, ladies and gentlemen, welcome
7 back. I hope everyone had a good lunch. We're ready to
8 resume the trial of this case. I remind you if you have any
9 cell phones or pager devices or other communication devices if
10 you would turn those off at this point in time. Also, if
11 you're taking notes make sure you have your own notepad and
12 make sure that you do not have anyone else's notepad. All
13 right, Ms. Richardson, call your next witness.

14 MS. RICHARDSON: Thank you, Your Honor. The State
15 would call Ms. Marilyn Sanders.

16 THE COURT: All right.

17 Whereupon, Marilyn Sanders was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Thank you. Please be seated. State your
20 full name and spell your last name.

21 MS. SANDERS: Marilyn Sanders, S-A-N-D-E-R-S.

22 DIRECT EXAMINATION

23 BY MS. RICHARDSON:

24 Q Good afternoon, Ms. Sanders. Where are you employed?

25 A South Carolina Law Enforcement Division.

1 Q Commonly known as SLED.

2 A SLED, yes.

3 Q What is your position there?

4 A I am an AFIS coordinator, fingerprint examiner. I
5 handle all correspondence with the AFIS system and do all the
6 training for AFIS.

7 Q Are you a keeper of the AFIS records?

8 A Yes, I am.

9 Q How long have you been employed with SLED?

10 A Thirty years.

11 Q What is, what is a 10-print card?

12 A A 10-print card is a fingerprint card with all 10
13 fingers and the palm impression, the palm impression sometimes
14 and the slats.

15 Q Where do you get those 10-print cards from?

16 A We at SLED house fingerprint cards for the 46 counties
17 in the State of South Carolina and they come in from the
18 surrounding agencies in South Carolina.

19 Q How would you get possession of one?

20 A By law each time you're arrested in the State of South
21 Carolina the fingerprint has to be submitted to South Carolina
22 Law Enforcement Division for processing.

23 Q What do you do with the fingerprints once you receive
24 them, the 10-print cards?

25 A When we get a 10-print card in, if the person has an

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1 arrest it will add to that arrest. If they have not been
2 arrested before in the State of South Carolina then we will
3 establish a unique number for that individual. Then we
4 forward the card on to the FBI.

5 Q What do you mean by a unique number?

6 A The S-I-D number is a number that's unique only to that
7 person. Each time you get arrested your first arrest and each
8 subsequent arrest after that adds on to that number. Now,
9 they're added on by fingerprints. No two people in the world
10 has the same fingerprints. So, when a card come in it goes
11 through our AFIS system. It picks out the top 10 respondents.
12 If there is a problem or something wrong with the card then we
13 have to look at it. If there's no problem then the card due
14 to a process called lights out comes into our system, searches
15 against our files and is forwarded to the FBI with little or
16 no human intervention.

17 Q Does this S-I-D number ever change?

18 A Never, never.

19 Q Regardless of the times you're arrested?

20 A No, it just keeps building from one to 47, however many
21 times you're arrested it keeps building.

22 Q I'm going to show you what's been marked as State's
23 Exhibit 10 for ID purposes only. Can you identify that for
24 me?

25 A Yes, this is a fingerprint card that was made, it was

1 sent in from Myrtle Beach Police Department and it came into
2 our system on July 28th, 2009, and it has this 12 digit
3 identifying number from the agency that sent it in. When the
4 card come in we don't know the name, we don't know anything
5 about the individual. The card comes in, searches our file.
6 If it's a hit it adds to his record, update our computerized
7 criminal history side and then we forward on to the FBI.

8 Q Okay, whose 10-print card is that?

9 A This 10-print card belongs to a James Anderson.

10 Q And who submitted it?

11 A Myrtle Beach Police Department and the fingerprints were
12 taken by Jay Barn.

13 Q And when was it submitted to your office?

14 A July 28th, 2009.

15 Q When was it taken?

16 A It had to have been taken on July 28th, 2009, because
17 with the AFIS system when an individual come in they're
18 fingerprinted. The system is live. You take the prints. You
19 complete all the demographics and then you send the print on
20 to SLED. You just hit a button and it automatically comes to
21 SLED. You can't reproduce. You can't pull this number up,
22 make copies or anything. You can't duplicate the number
23 because the number, whenever the number, the 18 number comes
24 off, it comes off numerically. Like this number here, the
25 last number is 75. The next number'll come up it would be 76.

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1 Q And I guess I'm confused. What number are we talking
2 about? Is that the, is that Myrtle Beach's number, the
3 arresting agency or the SID number?

4 A Each time an agency makes an arrest, regardless of the
5 person having an arrest or not, they're given this 12 digit
6 number. This is, this is a number here unique to Myrtle Beach
7 Police Department. It comes in to SLED and when it comes in
8 to SLED it goes through our system. If the systems says it's
9 a hit then it tacks to an S-I-D number, a South Carolina State
10 ID number which would be ---

11 Q And did it attach to an S-I-D number in this case?

12 A Yes, it did.

13 Q And what was that S-I-D number?

14 A South Carolina 00410955.

15 Q And who does that number belong to?

16 A James Anderson.

17 MS. RICHARDSON: The State would request to admit
18 State's Exhibit - I'm sorry, 10, at this time.

19 THE COURT: Any objection?

20 MR. CHRISCO: We would object at this time, Your Honor.
21 It seems that this witness didn't see this card until this
22 morning, this actual card from, from her testimony.

23 THE COURT: Let's, yeah, let's get a little bit - I'll
24 sustain it at this time.

25 MS. RICHARDSON: Okay, oh, okay.

1 Q But yet there's DNA.

2 A DNA is not fingerprinting.

3 Q Probably more exact than fingerprinting.

4 A So, what's your question?

5 Q How is it true, how can you make the statement that no
6 two fingerprints are alike in the world?

7 A In my 32 years of experience, all the studies that I've
8 done, all the classes I've had, there was never established to
9 be two people with the same fingerprints.

10 Q And when you say the same fingerprints, how do you
11 distinguish the fingerprints to the ones where they're
12 different?

13 A By bifurcations, minutia, dots, ending ridges.

14 Q So, six points, is that a, is you got a known proof and
15 a latent print and there's six points is that a match?

16 A I am not so much so a point person. I work with 10-
17 print fingerprint cards. When I look at a fingerprint card
18 I'm looking at all 10 fingers versus a latent examiner. So,
19 when I examine the fingerprint card I have a glass, I have the
20 fingerprint cards. I put my two cards together and I use my
21 glass to pick out the permanence, the persistence of the
22 ridges and I pick out bifurcation, minutias and ending ridges
23 and points, dots to make my determination, and I do blind
24 verification where I give it to somebody, one of my peers,
25 have them look at it and they determine if they see what I

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1 see, but first and foremost most of our cards are done
2 electronically.

3 Q And how is that done?

4 A Through the AFIS system, the automated fingerprint
5 identification system.

6 Q How does that work?

7 A Through algorithms, points of minutia, different points,
8 it's set up - it's a scientific rule or fact that is set up in
9 the machine that it does most of the work.

10 Q Doesn't do all the work.

11 A In some instances.

12 Q How many determinations have you made on fingerprints in
13 your career?

14 A Thousands.

15 Q And what's your error ratio?

16 A Zero. I don't ---

17 MS. RICHARDSON: Your Honor, I would object to this
18 line of questioning. He's getting into expert testimony
19 questioning and she - we haven't qualified her as an expert.
20 She's only here as a custodian of records.

21 MR. CHRISCO: Your Honor, she made the statement that
22 no two fingerprints are alike.

23 THE COURT: Well, that was elicited through your
24 questioning. I'm going to sustain the objection.

25 MR. CHRISCO: And for the record, Your Honor, it was

1 not. She made the statement through the prosecution.

2 THE COURT: Did she?

3 MR. CHRISCO: Yes, Your Honor.

4 MS. RICHARDSON: I don't think I asked the question,
5 Your Honor, but she might have said it through her testimony
6 in response to my questions.

7 THE COURT: Okay, well, then I'll allow the
8 questioning. Go ahead then.

9 BY MR. CHRISCO:

10 Q What is your error ratio over those thousands of
11 determinations of fingerprints?

12 A Zero.

13 Q You've never ever been wrong?

14 A No, no, sir.

15 MR. CHRISCO: No further questions.

16 THE COURT: Redirect?

17 MS. RICHARDSON: None, Your Honor.

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

19 MS. RICHARDSON: Your Honor, the State would request
20 that should be released from her subpoena so she can return to
21 Columbia.

22 THE COURT: Any objection?

23 MR. CHRISCO: No objection.

24 THE COURT: All right, you're free to go. Thank you
25 very much.

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1 minute. If they need to go out that'll be fine. We'll be
2 taking about a 15-minute break.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, any motions at this time?

6 MR. CHRISCO: Yes, Your Honor, I reserve on the last
7 indictment I would object to it coming in because it's not
8 been proven that it's the same person, Your Honor. One is a
9 James Anderson, one is a James Lee Anderson. My client has no
10 middle name whatsoever. That's the first one I would make.

11 The other objection is I would ask for any fingerprint
12 testimony to be stricken from the record based upon the fact
13 that the discovery which I have received did not have the 30
14 other individuals in it and that I could have used those, that
15 evidence to have an expert to look at it because I do not have
16 access to their computer, and also as the testimony indicated
17 he only did two before he stopped. So, we don't know what
18 number 27 how many points that or even what the fingerprint
19 looks like. I think the client has been prejudiced to the
20 point where without that information it could have been
21 something in there, we do not know, that would have said that
22 it wasn't him, somebody that had 14 points or whatever they
23 called it, and in the absence of strikening that testimony
24 would ask the Court for a new trial.

25 THE COURT: All right, let me see those State's

1 Exhibits 11 and 12. All right, I'm going to deny your motion
2 as to the fingerprint testimony, excuse me, as to the
3 indictments on the prior 2000-GS-26-2557 and 2005-GS-26-907,
4 granted one of them does say James Lee Anderson, but all of
5 them, including the present indictment state James Anderson.
6 They have identical dates of birth. They have identical
7 Social Security numbers except for 2005-GS-26-907 which is off
8 by one number. In other words, rather than - it doesn't have
9 any Social Security number on the sentencing sheet. On the
10 indictment it has [REDACTED] and all the others have [REDACTED]
11 [REDACTED]. So, I'm going to deny that.

12 Now, I do want to hear from the State - I'm not so
13 concerned about the full 30 fingerprints because as I
14 understand the testimony he stopped after the second one. In
15 other words, he didn't look at the others. So, we don't know
16 what's on those others. That's not part of the case. He
17 could have requested a thousand fingerprints to do it but he
18 requested 30, some request 50. My concern and I want to hear
19 from the State though is their failure to present the first
20 photograph that he did compare it to and denied and threw it
21 out. Why should that not be presented to the Defense?

22 MS. RICHARDSON: Your Honor, our position on it is
23 that it would not be a discovery violation in this case. We
24 provided him everything we had on which a printout that we've
25 made as a Court's Exhibit says that there were 30 returned

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1 prints. At that point in time he could have requested from
2 our office and I would have done to the best of my ability to
3 be able to provide that to him, Your Honor. It's nothing
4 that's within our possession.

5 THE COURT: When you say within your possession you're
6 talking about the Solicitor's Office or the police department
7 or within whose possession when you say our possession?

8 MS. RICHARDSON: The Solicitor's Office possession,
9 Your Honor.

10 THE COURT: Okay, well, but there's often things that
11 are within the possession of the police department that the
12 Solicitor hasn't obtained yet that you've got to go get.

13 MS. RICHARDSON: And Your Honor, to me it's almost
14 like a CI video where we have the CI video, we keep the CI
15 video. We let them know that the CI video is available and
16 upon their request they can come watch the video or they can
17 come get the video. To me this is similar to that. We let
18 him know these others, based upon that exhibit, these others
19 were - he tested them against it. So, for us, Your Honor, my
20 position on it is that it's not a discovery violation. This
21 officer used those prints as a test for him and we provided
22 the fact that there were 30 additional ones out there.

23 THE COURT: All right, all right, anything in reply,
24 Mr. Chrisco?

25 MR. CHRISCO: I don't think anything in the discovery

1 rules make it incumbent upon the Defense to ask for every
2 single thing that the Solicitor has. If it's there it should
3 be provided. When they say it's not in their custody I think
4 even the courts have said that if it's in the police custody
5 then it's in the domain of the Solicitor's custody also.
6 They can't use one another to shield the evidence in the case
7 to give it to the Defense. It's a hard enough job defending
8 cases when you get some evidence. When you don't get it all
9 it makes it extraordinarily hard and it puts the Defendant
10 who's been charged in a very, very, in a very bad position
11 that but for not getting the item that could have made a
12 difference on how the case was presented, Your Honor.

13 THE COURT: Okay.

14 MS. RICHARDSON: Your Honor ---

15 THE COURT: All right, I'm fine.

16 MS. RICHARDSON: Okay.

17 THE COURT: All right, I'm going to deny your motion.
18 They did present Court's Exhibit Number, I think it was Two to
19 you that had the list on there. I'm kind of persuaded by the
20 State's argument it's like the CI video. We say, "We've got a
21 video. If you want to come look at it you can come look at
22 it." So, based upon that I'm going to deny your motion to
23 exclude the fingerprint testimony. All right, anything else?
24 Any other motions?

25 MR. CHRISCO: No, Your Honor.

James Anderson - Direct by Defense

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1 Q What happened, going back you were arrested when for
2 this charge?

3 A For this charge I was arrested like 2000, in 2009.

4 Q And you've heard the evidence here. Where were you on
5 that day that they claim, the July 8th?

6 A On July the, July 8th?

7 Q July 8th and early July - well, early July 8th and late
8 July 7th, where were you?

9 A Well, I live on the - I live on Myrtle Beach and I live
10 in hotels. So, I was on, I was on Myrtle Beach. Around July
11 7th and 8th I'm not sure where I was at at that present moment
12 because, like I say, I live in different motels and I
13 probably was somewhere on the north end. I live at various
14 different motels. I was probably at the Odyssey Hotel or
15 Sailfish or someplace like that, and then again, I could've
16 been on the south end. I - because I got arrested on the
17 south end. This place is on the 20, 21st, but I didn't get
18 arrested on the 21st. I got arrested at another motel. The
19 police arrested me for this charge at Palmetto Vista.

20 Q Have you ever been on this property before?

21 A Yes, sir, I used to go to Bluewater all the time
22 visiting friends.

23 Q And how many times would you say that you've been there?

24 A I would say I've been there hundreds of times because I
25 used to go like two, three times a week to my friend's house

1 and sometime I would have a friend that would get a room there
2 overnight, maybe two nights, two or three nights and I would
3 be there with them.

4 Q Did you know anybody that worked there?

5 A That worked there? No, ma'am - no, sir. I tried to
6 stay out of the manager's way because I wouldn't be the one
7 rented the room and I know how some hotels are about that, you
8 know, you be in there without being a registered guest.

9 Q Had you ever been in this particular room?

10 A I think so, yes, sir.

11 Q And when did you think that was?

12 A I think I was there with my - a friend of mine. She's
13 from Marlboro County and we stayed like two nights and this
14 was back before then. It was like maybe sometime in June,
15 last part of June or something like that. I'm not for sure,
16 but we stayed like two nights.

17 Q Are you married?

18 A No, sir, ain't never been married.

19 Q You got any kids?

20 A No, sir, I don't have no kids.

21 Q Anything else you'd like to say to the jury?

22 MS. RICHARDSON: Objection, Your Honor. What's,
23 what's the question?

24 THE COURT: Well, I'm going to allow it. Go ahead.

25 A Yes, sir, I just wanted to say to the jury that I don't

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

3 THE COURT: All right, ladies and gentlemen, the
4 Defense has concluded their case. So, now is the time of the
5 trial where I need to take up some matters of law with the
6 attorneys again. So, I'm going to excuse you back to the jury
7 room for just a brief moment and we'll bring you back out in
8 just a second. Leave your pads here. Do not discuss the
9 case. It's too early for deliberations. Thank you very much.

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

12 THE COURT: All right, any motions at this time?

13 MR. CHRISCO: Your Honor, I'm going to renew the same
14 motions that I had at the end of the State's case and that
15 motion is to suppress the fingerprint testimony, anything
16 related to the fingerprint because the discovery rules were
17 violated. They did not - it prejudiced my client and would
18 have had a different style of trial had we had all of the
19 evidence and I don't think it's incumbent upon the Defendant
20 to ask for every single thing and I don't think that that
21 would be in the judicial economy of the court system to have
22 the attorneys file a motion on every little box or checkmark
23 or whatever that's located in discovery just to make sure that
24 they get everything that they're entitled to get to begin
25 with. It behooves me that everything is placed on and made

1 the burden of the Defense to make sure that they get
2 everything that is involved in a case in a timely manner and
3 not a week before trial or two days before trial or even 30
4 days before trial but hearing the ruling of this Court the
5 computers in the Public Defender's office will be reprogrammed
6 and will be inundating the Court for a lot of things, Your
7 Honor.

8 THE COURT: All right, I understand your motions and
9 I'm going to deny them. Like I said, I don't know, there's no
10 case on point that deals with it. So, I was somewhat
11 persuaded by the State's argument that it's the same thing as
12 a video in the, in the store that has a shoplifting. They
13 don't send you the video but you're at liberty to come look at
14 it. Whether I'm right or wrong I don't know but that's going
15 to be my ruling. So, I deny your motion. All right, anything
16 else?

17 MR. CHRISCO: Not from the Defense, Your Honor.

18 THE COURT: Anything from the State?

19 MS. RICHARDSON: Not from the State, Your Honor.

20 THE COURT: All right, are we ready to go forward with
21 the reply?

22 MS. RICHARDSON: If I can have just a moment.

23 THE COURT: All right.

24 MS. RICHARDSON: We're ready to go, Your Honor.

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

Closing Argument by Defense

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1 says only took that one, that one. Didn't take fingerprints
2 from everybody else in the room to rule them out. As it comes
3 back we'll know this person was in there. Didn't ID the
4 people, "I believe the people to be who they are," a lot of
5 things that he didn't do.

6 Now, Mr. Anderson yesterday said he stayed over there at
7 that hotel many times. Fingerprint could have been there, may
8 possibly. We also heard from the crime scene guy who did the
9 fingerprints with the AFIS. That's where they store the
10 print. It was odd that his testimony was 50,000 prints in a
11 computer. When the person that did the computer from the
12 State came in, Ms. Sanders, it was two and a half million in a
13 computer. You heard both of them testify that their ratio or
14 their probability of error was zero. Nothing is certain in
15 this, in this world. They used to say nothing is certain but
16 death and taxes. I believe that the only thing that's certain
17 is death.

18 You heard the questioning about DNA. DNA was when it's
19 used they give probability because it's scientific, it's
20 objective. Fingerprint analysis is subjective. What I mean
21 by that it's that person's opinion, not anything else. There
22 is no objective standard used. It is subjective and that's
23 the reason they have a probability of error of zero because no
24 one is going to ever say that they made a mistake. You heard
25 him say that how a fingerprint can be distorted and what I was

1 elevating circumstance for burglary in the first degree, you
2 have to have that elevator. You're looking for nighttime,
3 which I believe every witness testified it was the nighttime,
4 somewhere between ten and two, ten and three, definitely the
5 nighttime. If you find it's not the nighttime, two prior
6 burglaries. Now, even if you think that those indictments are
7 wrong, that somehow there are two James Andersons in Horry
8 County with the exact same birthday, the exact same Social
9 Security number except two being flipped, he told you on this
10 stand he's got two prior burglaries. Thank you for your time
11 and your attention to this case.

12 THE COURT: All right, ladies and gentlemen, all of the
13 evidence to be presented in this case has now been presented to
14 you. The attorneys have made their closing arguments and now
15 is the time for me to charge you with the law to be applied in
16 this case. The indictment charges the Defendant with first
17 degree burglary. I remind you that the fact that the Defendant
18 was arrested, charged and indicted in this case is not evidence
19 in this case and cannot be considered by you as evidence of
20 guilt in this case, nor does the Defendant's arrest, charge or
21 indictment create any presumption or inference of guilt. The
22 indictment is simply the formal written instrument which
23 contains the charge made against the Defendant. It is the
24 formal document by which this case is brought into this court.

25 The Defendant pleads not guilty to this indictment. That

Charge

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1 and reject the remaining part of the testimony of that same
2 witness. You may believe the testimony of a witness in its
3 entirety or reject the testimony of a witness in its entirety.
4 You may consider whether any witness has exhibited to you any
5 interest, bias, prejudice or other motive in this case. You
6 may also consider the appearance and manner of the witness
7 while on the witness stand.

8 The rules of evidence ordinarily do not permit witnesses
9 to testify to opinions or conclusions. An exception to this
10 rule exists for witnesses we call expert witnesses. A witness
11 who, by education and experience, has become expert in some
12 art, science, profession or calling may state an opinion as to
13 the relevant and material matter in which the witness claims
14 to be an expert, and may also state the reasons for the
15 opinion. You should consider any expert opinion received in
16 this case and, like any other evidence, give it the weight you
17 think it deserves. If you decide that the opinion of an
18 expert witness is not based on sufficient education and
19 experience or if you conclude that the reasons given in
20 support of the opinion are not sound or that the opinion is
21 outweighed by other evidence, you may disregard the opinion
22 entirely. An expert witness' testimony is to be given no
23 greater weight than that of other witnesses simply because the
24 witness is an expert. Further, you are not required to accept
25 an expert's opinion, even though it is not contradicted.

Verdict

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1 Court with call-in instructions.)

2 (Deliberations begin at 11:12 a.m.)

3 THE COURT: All right, we'll stand in recess until the
4 jury reaches a verdict.

5 OFF THE RECORD

6 (On the record. Verdict reached at 11:35 a.m.)

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

9 THE COURT: All right, I understand the jury has
10 reached a verdict. Anything from the State before we bring
11 the jury in?

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

13 THE COURT: Anything from the Defense?

14 MR. CHRISCO: No, Your Honor.

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

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: All right, ladies and gentlemen, welcome
19 back. Mr. Mellen, I understand the jury has reached a
20 verdict; is that correct?

21 FOREPERSON: Yes, we have.

22 THE COURT: Have you written the verdict on the
23 indictment and signed your name?

24 FOREPERSON: Yes, I have.

25 THE COURT: All right, if you'd please hand the

Verdict

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1 indictment to the bailiff.

2 (Complies with request and Court reviews.)

3 THE COURT: All right, I'll ask the Clerk if she'd
4 please publish the verdict. The Defendant please stand.

5 THE CLERK: Indictment number 2010-GS-26-2883, the
6 State of South Carolina, County of Horry versus James
7 Anderson, on the charge of burglary first degree we, the jury,
8 unanimously find the Defendant guilty, dated March 14th, 2012,
9 signed by foreperson, Paul Mellen.

10 Ladies and gentlemen of the jury, if this is your verdict
11 so signify by raising your right hand.

12 (All jurors raise right hand.)

13 THE CLERK: Thank you.

14 THE COURT: All right, let the record reflect that all
15 jurors raised their right hand. Any polling of the jury by
16 the Defense?

17 MR. CHRISCO: No, Your Honor.

18 THE COURT: All right.

19 Ladies and gentlemen, that will conclude your services as
20 jurors for this particular case. I want to thank you for your
21 service. I'll also excuse you for the remainder of the day.
22 You have been given a phone number that you'll need to call
23 back that number after six p.m. today and that'll give you
24 some direction as to when you need to return or if you need to
25 return. I want to thank you for your service in this case and

1 for your service this week. I don't know if there's any more
2 trials this week. I know it's not a fun job serving as jurors
3 but I do want to thank you for your service not only in this
4 case but for this week as well. You're free to go for the
5 remainder of the day and please call that number after six
6 p.m. today. Thank you very much.

7 (Whereupon, jury exits courtroom.)

8 THE COURT: All right, any post-trial motions at this
9 time by the Defense?

10 MR. CHRISCO: Yes, Your Honor, I would renew the motions
11 that the Defense made at the end of the State's case and at
12 the end of the Defense's case, Your Honor.

13 THE COURT: All right, your motions are noted.
14 However, I am going to deny those motions. All right, any
15 objection or any reason as to why we cannot go ahead and
16 impose sentence at this time?

17 MR. CHRISCO: No, Your Honor.

18 THE COURT: All right.

19 MR. CHRISCO: Your Honor.

20 THE COURT: All right, Mr. Chrisco, any mitigating
21 circumstances?

22 MR. CHRISCO: Your Honor, we would just ask the Court,
23 the Court already knows the prior record of Mr. Anderson, we
24 just have the Court to understand as late as last Tuesday the
25 State was offering a 15-year sentence for burglary second,

Sentencing

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1 robbery; '99 shoplifting, possession of stolen vehicle,
2 possession of cocaine, possession of stolen vehicle, assault
3 on a correctional officer; 2000 petit larceny; 2001 burglary
4 third, distribution of crack, PWID Schedule I, II or III,
5 possession of a stolen vehicle, possession of crack; 2005
6 burglary second degree, possession of crack; 2006 petit
7 larceny, false information to police, breaking and entering;
8 2008 financial transaction card theft; 2010, shoplifting, DUI,
9 DUS, petit larceny; 2009 FTC theft, receiving stolen goods
10 three counts; 2010, receiving stolen goods; Your Honor, 2009
11 is when he committed this burglary first. Since then we have
12 several pending charges in our office. I just don't want you
13 to think that he has no prior record since 2010.

14 THE COURT: All right, now, this, this is under -
15 this is prior to July of 2010. So, burglary first degree then
16 it still carried?

17 MS. RICHARDSON: Fifteen, Your Honor.

18 THE COURT: Fifteen.

19 MS. RICHARDSON: Fifteen minimum up to life.

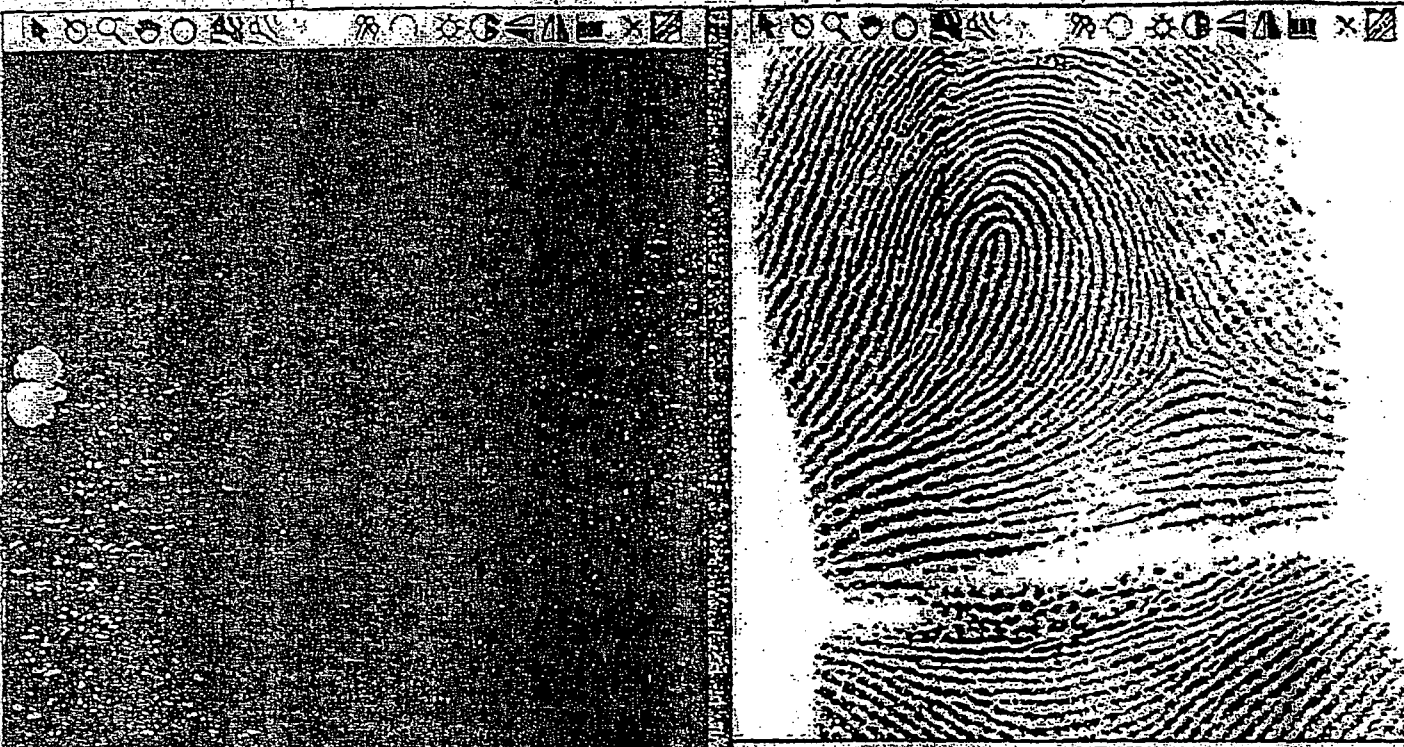
20 THE COURT: Up to life, okay, that's what I was
21 thinking.

22 All right, Mr. Anderson, the sentence of the Court is
23 that you be confined to the State Department of Corrections
24 for 25 years. You'll be given credit for any time served thus
25 far.

Latent Search Verification

User: bmccland 5:04:58 AM

Latent vs. Tenprint Verification | Latent vs. Latent Verification | Tenprint vs. Latent Verification | Latent vs. Latent Verification



Search Id: 6001090051497000

Person Id: SC00410955

281600020006

Finger: 8

Result: **Ident**
 No. Idents: 1
 No. Resp.: 30
 Current Resp.: 2
☐ Retain Search Print
☐ Discard Search Print

Latent Print No.: 1
 Previous Respondent:
 Next Respondent:

[Display Match Report](#)

[Chart this Case](#)



Id: 360300011497
 Rank: 1
 Score: 2655

Id: 281600020006
 Rank: 2
 Score: 2625

Id: 231600155102
 Rank: 3
 Score: 2580

Id: 231600109327
 Rank: 4
 Score: 2555

Id: 422100139256
 Rank: 5
 Score: 2555

Id	Score	Rank
360300011497	2655	1
281600020006	2625	2
231600155102	2580	3
231600109327	2555	4
422100139256	2555	5
422000072634	2525	6
990000404657	2525	7
140000505520	2515	8
422100146844	2500	9
99000062739	2495	10
990000432431	2495	11
990000133960	2485	12
990000332956	2485	13
104005022046	2475	14
210000510401	2475	15
214000066907	2465	16

Start | Latent Case Manager | Web Browser

COURT'S
 EXHIBIT NO. 2
 IDENTIFICATION EVIDENCE
 DKT#
 DATE:

5:04 AM

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on July 29, 2010, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE**CDR: 0079 16-11-0311**

That James Anderson did in Horry County, on or about July 8, 2009 enter the dwelling of Christian Vickery located at 2001 South Ocean Blvd, Apt. 1001A, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, and has a prior record of two or more convictions for burglary or housebreaking in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Gerodie Livingston - 15th Circuit Solicitor Office

The State of South Carolina

County of Horry

Lauree Richardson

09H03094

COURT OF GENERAL SESSIONS

July, 2010 TERM

ARREST WARRANT NUMBER

2010GS2602883

CDR: 0079 16-11-0311

DOA: 7/28/2009

THE STATE

VS.

ACTION OF GRAND JURY

TRUE BILL

James Anderson

B/M

Bennettsville, SC 29512

DOB: 1963-11-08

SSN: [REDACTED]

ATTORNEY: Chrisco, William Edward

Foreperson of Grand Jury

Date: JUL 29 2010

VERDICT

GUILTY

Indictment for

Buglary, First Degree

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date: 3-14-2012

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

James Anderson

AKA:

Race: BLACK Sex: M Age: 48

DOB: 11-08-1963 SS#: -

Address:

City, State, Zip: Myrtle Beach, SC 29577

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

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2010 GS 26 - 2883
INDICTMENT/CASE#: 2000032604325 (BUC)
A/W#: M345397 Direct Indictment
Date of Offense: 7/8/2009
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, Lauree

SCB76142

SC Bar#

Defendant

Attorney for Defendant

12886

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 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 (SCCA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ 25.00 beginning 03/14/2037

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Margaret Culbertson
21408
March 14, 2012

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."

February 13th, 2013



Susan B. Hackett
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