

1 BY THE COURT: Swear the witness, clerk.

2 DOCTOR MICHAEL WEST,

3 upon being called to testify as a witness on behalf of the State,
4 after having been first duly sworn by Deputy Clerk, Lloyd Cobb,
5 testified as follows, to-wit:

6 BY THE COURT: You may proceed.

7 BY MR. ALLGOOD: Thank you, your Honor.

8 DIRECT EXAMINATION BY MR. ALLGOOD:

9 Q. Would you tell the ladies and gentlemen of the jury what
10 your name is, please, sir?

11 A. Uh, Doctor Michael West.

12 Q. And what is your occupation?

13 A. I'm a general dentist.

14 Q. And where are you presently practicing dentistry in this
15 state?

16 A. Uh, Hattiesburg, Mississippi.

17 Q. And how long have you practiced dentistry in this state?

18 A. Since nineteen eighty-one.

19 Q. Doctor West, uh, what capacities do you serve in Forest
20 County, Mississippi?

21 A. Uh, I'm the coroner; chief medical examiner/investigator
22 for Forest County, and I'm on the, uh, Metro Crime Scene Unit there
23 also.

24 Q. Doctor, during the course of a number of years of your
25 career I believe you have labored in the fields of forensic
26 odontology, is that correct?

27 A. Yes, sir.

28 Q. If you would, give the Court the benefit of your training
29 and experience in the field of dentistry and that specializing in

1 forensic odontology, uh, to include at this particular juncture
2 just your education. There are some other specifics I would ask in
3 a little bit.

4 A. Uh, after graduation from high school in Picayune, I went
5 to Pearl River Junior College for two years, University of Southern
6 Mississippi for two years where I received a B.S. Then I attended
7 the LSU School of Dentistry in New Orleans and upon graduation went
8 into the United States, uh, uh, Air Force for four years.

9 Q. And what did you do in the United States Air Force?
10 Explain that for the ladies and gentlemen of the jury.

11 A. Uh, during my tour of duty in the air force I was a
12 captain, I was a general dental officer, and also, uh, base
13 forensic dental officer.

14 Q. Doctor, if you would, tell the ladies and gentlemen of
15 the jury the number of occasions you have had to lecture in the
16 fields of forensic odontology and where those lectures took place
17 and who those lectures were to, what the assembled bodies were.

18 A. Over the past fifteen years, uh, I've had an opportunity
19 to lecture numerous times, uh, usually as a guest lecturer. A list
20 of some of the areas that I've lectured, uh, the Mississippi Law
21 Enforcement Training Academy, the Georgia Police Academy, the FBI
22 Academy Forensic Science Research Training Center in Quantico,
23 Virginia. I've guest lectured at the Metropolitan Police Forensic
24 Science Laboratory, New Scotland Yard, London; I've guest lectured
25 for the University Medical Center in Jackson, the University of
26 Southern Mississippi, the University of Mississippi, Loyola
27 University in New Orleans, Louisiana State Louisiana--excuse me--
28 Louisiana State University Law Enforcement Training Center in Baton
29 Rouge, uh, the Miami Valley Regional Crime Laboratory in Ohio, uh,

1 Southern Association of Forensic Scientists, Midwest Association of
2 Forensic Scientists, the Spectrum International Symposium, 1991, in
3 Detroit, uh, the Dade County Medical Examiner's office in Miami,
4 Florida, uh, the Mississippi Trial Lawyers Association, the
5 Mississippi Prosecutors Training, Ohio State Coroners Association,
6 uh, most recently for Polaroid, and numerous law enforcement, uh,
7 entities in and around the country.

8 Q. You mentioned the Dade County Medical Examiner's office.
9 I believe a man by the name of Doctor Richard Souviron works in
10 that particular office, is that correct?

11 A. Uh, yes, sir.

12 Q. And you have lectured in that particular area, is that
13 correct?

14 A. Yes, sir.

15 Q. Doctor, if you would, tell the ladies and gentlemen of
16 the jury the awards you have won for your research efforts in the
17 field of forensic odontology.

18 A. Uh, the American Society of Forensic Odontology gave me
19 their award for research publications back in nineteen eighty-nine,
20 the Reider F. Sognaes Award; uh, I'm also listed in the marquis
21 who's who in science and engineering; and received a letter of
22 commendation from the City of Kenner, Louisiana, for the work I did
23 in a airplane crash there in, uh, eighty-two.

24 Q. Doctor, if you would, would you relate for the ladies and
25 gentlemen the number and the size of the research grants that you
26 have had granted to you in the past in the particular area of
27 forensic odontology or at least in areas associated with the
28 investigation of forensic odontology.

29 A. I received a grant in nineteen ninety from the American

1 Board of Forensic Odontology dealing with the, uh, rating of the UV
2 output of electronic flash sources for UV photography.

3 Q. UV stands for what?

4 A. Oh, excuse me, ultraviolet.

5 Q. Go ahead.

6 A. I'm currently finishing up a research project that was
7 funded by the National Institute of Justice, the Department of
8 Justice, dealing with narrow band illumination sources for the
9 fluorescent photography of patterned injuries on skin. I believe
10 that is the largest, uh, research grant ever, uh, given out in
11 forensic odontology research.

12 Q. What academic appointments do you currently enjoy?

13 A. I'm a clinical instructor at the University Medical
14 Center in Jackson; I'm a clinical assistant professor Department of
15 Oral Diagnosis, Medicine and Radiology at the LSU School of
16 Dentistry in New Orleans.

17 Q. What professional organizations are you currently a
18 member in good standing of?

19 A. Uh, the South Mississippi Dental Society, your dental
20 organization; uh, the Mississippi State Coroner/Medical Examiner
21 Association. I've been president of District Seven, eighty-nine,
22 ninety, and this year. Uh, I'm a member of the American Society of
23 Forensic Odontology. I'm a diplomat in the American Board of
24 Forensic Odontology. I was on the board of directors from eighty-
25 six to eighty-nine. I was on the article and--by-laws and article
26 committee in eighty-six. I was on the research committee in
27 eighty-seven. Uh, I was on the nominating committee in eighty-
28 eight. I'm currently under suspension from the board which is to
29 upheld till eighteen March of this year--eighteen May--excuse me.

1 Q. And we will go into that suspension I believe later, is
2 that correct, Doctor?

3 A. Yes, sir.

4 Q. Doctor, insofar as your articles and media sighting work,
5 if you would, give the Court and the jury the benefit of any
6 articles and media sighting work you have to your credit in this
7 area of research, that is, forensic odontology.

8 A. Uh, I've been on CNN science and technology week back in
9 eighty-nine, uh, the Journal of American Medical Association in
10 ninety-two, uh, Medical Rounds, a television show on CNBC in
11 ninety-three; uh, also the U. S. Department of Justice Office of
12 Justice Programs, National Institute of Justice executive technolo-
13 gy brief research applying it on the front lines, and, uh, several
14 other newscast. There's one pending, uh, the BBC is doing an hour
15 on my current research, uh, supposed to be aired either this summer
16 or the fall in England.

17 Q. Doctor, uh, if you would, how many times have you had the
18 occasion to present papers to professional associations or
19 gatherings on just bite mark evidence, just bite mark evidence?

20 A. Just bite mark I've presented papers on numerous
21 occasions. I think my latest total here is--I presented new papers
22 in, uh, dealing with bite marks on, uh, thirty-nine occasions; uh,
23 sixteen other occasions were non-bite mark forensic dental related.
24 So I'm going to say--

25 Q. And there were sixteen--

26 A. --thirty-nine times.

27 Q. Thirty-nine times on just bite mark, sixteen times on
28 forensic--extra times on forensic odontology in addition to that
29 thirty-nine then, is--

1 A. And crime scene--

2 Q. --that correct?

3 A. --yes, sir.

4 Q. How many total papers have you had, uh, presented to
5 professional groups, associations or bodies in the course of your
6 career, total--

7 A. Sometimes--

8 Q. --which would in--

9 A. --we repeat a presentation; you'll present a presentation
10 over and over, but I have a listing of fifty-five presentations.

11 Q. Doctor, how many times have you had published articles
12 concerning bite mark evidence in any one of a number of various
13 professional and scientific journals?

14 A. I've had, uh, forty-nine articles published, thirty of
15 them deal with, uh, bite marks.

16 Q. And what about, uh, forensic odontology? You said you
17 had forty-nine total articles published, thirty some odd of them
18 dealt with bite marks. What about forensic odontology in general?
19 How many of those articles would have something to do with that?

20 A. Uh, all of them. There's a couple here on, uh, pathology
21 and crime scene, but the vast majority is forensic odontology.

22 Q. And, Doctor, how many times have you ever qualified as an
23 expert in the fields of forensic odontology in the courts of just
24 the State of Mississippi?

25 A. Oh! Just the State of Mississippi, I'm sorry I don't
26 have that number. One, two, three, four, five, six, seven, eight,
27 nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
28 seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two,
29 twenty-three, twenty-four--twenty-eight.

1 Q. In the courts of other states, how many times have you
2 qualified as an expert, and if you would tell us what states those
3 are, please, sir.

4 A. I've also given sworn testimony in, uh, Louisiana,
5 Arkansas, Kansas, Georgia, California, and Washington. I've given
6 sworn testimony forty-seven times, twenty-eight times in Mississip-
7 pi, and twenty-one times concerning bite marks.

8 Q. Now you are I think currently suspended from the American
9 Board of Forensic Odontology, is that correct?

10 A. Yes, sir.

11 Q. And I believe to be fair, you were--you resigned from the
12 American Academy of Forensic Sciences, and I think the Interna-
13 tional Association of Identification, but that would have been just
14 before they would have expelled you, is that correct?

15 A. Yes, sir.

16 Q. Now in--in those particular areas, in the Academy of
17 Forensic Sciences, the International Association of Identification,
18 and the American Board of Forensic Sciences, what does all of that
19 stem from? What is the source of all of those difficulties, if you
20 will, please?

21 A. There was a case out of Meridian that I was asked to
22 investigate, was ordered to perform some tests, and I made a report
23 and testified to what I'd done, what I'd seen. It was the State
24 versus Larry Maxwell, I think three years ago.

25 Q. And that occurred in nineteen hundred and ninety what, do
26 you recall?

27 A. I believe ninety-two.

28 Q. Do you recall what month in ninety-two off the top of
29 your head?

1 A: It was over a period of several months. I know I
2 testified in December and I believe in June. There were, uh, two
3 court appearances on hearings in State versus Maxwell.

4 Q. Now this particular testimony that you rendered in State
5 of Mississippi versus Larry Maxwell, thumbnail sketch, what was the
6 scenario, what occurred, and what did you testify to? Explain that
7 for the ladies and gentlemen of the jury.

8 A. A triple homicide had occurred just outside Meridian.
9 Three elderly black adults, two females, one in her sixties, one in
10 her eighties, and a black male in the nineties, had been, uh,
11 bludgeoned with a butcher knife, a hundred and fifty wounds were
12 applied to the bodies. I was asked to, number one, examine the
13 bodies of the victims and render an opinion as to whether or not a
14 certain weapon was the weapon that created these wounds. Uh, we
15 did examine the bodies, we did examine a large butcher knife that
16 had some chips in the blade, and we came to the opinion that this
17 was the murder weapon. Several days later, under court order, I
18 was asked to perform a test on Mr. Maxwell. Mr. Maxwell had been
19 arrested and charged with the murder of these three individuals.
20 I was asked, number one, to scan his body using special lighting
21 techniques that I had developed to see if we could find any
22 documentation or signs that he had been in a recent struggle. The
23 other part of the test was to perform a trace metal test. Trace
24 metal is where if you grab a metal object, a gun, a knife, et
25 cetera, you will leave a coating of metal on the skin. This
26 coating of metal can be detected by spraying a chemical on to the
27 skin, letting it dry and then illuminating it with either a--
28 usually an ultraviolet light. Uh, the test is only good for about
29 twenty-four to thirty-six hours. Uh, it had been eight to ten days

1 after the, uh, murder had taken place. I informed the sheriff that
2 there was no need in me taking--doing this test because it was
3 all--if there was any trace metal evidence it had long been gone,
4 and I was informed that you've got a court order, do the test. So
5 I turned off the lights and shined the light into the suspect's
6 hands; you have to wear yellow goggles to look at it.

7 Q. Let me stop you just for a second. This light that
8 you're talking about I think is what we term a, uh, four hundred
9 and fifty nanometer blue light I think is what it's called. Is
10 that correct?

11 A. Yes, an alternative light source.

12 Q. Okay. And it was shown on to the suspect, along with you
13 were wearing yellow goggles I think, is that correct?

14 A. Yes, sir.

15 Q. This is a technique, an alternate imaging technique which
16 you have pioneered, is that correct?

17 A. Yes, sir.

18 Q. Is there any person in the United States of America, for
19 that matter in the world, who has done more work with alternate
20 light imaging than yourself?

21 A. On wound patterns on skin, no, sir.

22 Q. On this particular occasion, what did you see? Explain
23 what you saw on that particular instance.

24 A. We first scanned Mr. Maxwell's body to see if there were
25 any bite marks or ring marks or any signs on his arms, legs, et
26 cetera, that he had been in a fight or a struggle. Those turned
27 out to be negative. We, uh, then, if you would, shifted gears from
28 the four-fifty light, we were going to get ready to do the trace
29 metal test on his hands, I informed the sheriff that the trace

1 metal test was invalid. It's no way it was going to work, and I
2 shined the blue light on to his hands; we looked at it with the
3 yellow goggles; I wanted to show him that there was no trace metal
4 there, and to my surprise, and I say surprise because for twelve
5 years I've been photographing wounds on people's bodies, abrasions,
6 scrapes, bruises; it never occurred to me that you could develop a
7 bruise in the palm of your hand or a pattern in the palm of your
8 hand if you held a weapon and wielded it very intensely. Uh, what
9 I'd found in the palm of Mr. Maxwell's hand was a pattern that
10 happened to match the murder weapon. The murder weapon was a
11 butcher knife about yea long, about a foot and a half. The handle
12 consisted of two pieces of wood riveted together over the shank of
13 the handle. One side of the wooden handle had broken off so you
14 had two rivets like nail heads sticking out and then a third rivet
15 that had broken, and in the palm of his hand we found two circular
16 bruise patterns and then a doughnut shaped pattern, and when you
17 put the knife back into his hand and let him close around it, you
18 could see that these bruise patterns matched exactly the position
19 and size and location of the rivets in the knife. Uh, I became
20 very excited because I had never seen anywhere in the forensic
21 literature anybody being able to put the weapon back into a
22 suspect's hand, and, uh, we tried to photograph; we had the
23 sheriff, my assistants look at it; we photographed it; we made
24 charts and diagrams. My problem was I overexposed my film. I
25 didn't get a picture that I thought was sufficient quality to give
26 to the jury and say, "Here, you look at it for yourself."

27 Q. But you did take photographs, is that not correct?

28 A. Yes, sir.

29 Q. Now subsequently I believe you testified in court as to

1 what you had seen and to the fact that this was a match, is that
2 correct?

3 A. Yes, sir.

4 Q. And I believe as a result of that testimony, uh, you were
5 disciplined by both the American Academy of Forensic Sciences,
6 International Association of Identification, and suspended from the
7 American Board of Forensic Odontology, is that correct?

8 A. Yes, sir.

9 Q. Since your suspension from the American Board of Forensic
10 Odontology, how many times have you been qualified as an expert in
11 the field of forensic odontology in the courts of any jurisdiction?

12 A. It'll take me just a minute here. The American Board--
13 since the American Board action I've testified in court one, two,
14 three, four, five, six, seven times.

15 Q. All as an expert in the field of--

16 A. Of forensic odontology, uh, in seven of those.

17 BY MR. ALLGOOD: If your Honor please--

18 A. Excuse me, six of those.

19 BY MR. ALLGOOD: If your Honor please--

20 A. Child abuse in the other.

21 BY MR. ALLGOOD: If your Honor please, we would
22 tender this witness as an expert in the field of
23 forensic odontology.

24 BY THE COURT: Voir dire on qualifications.

25 VOIR DIRE EXAMINATION BY MR. KESLER:

26 Q. Are you telling this jury that you testified before a
27 jury in State versus Larry Maxwell?

28 A. No, sir.

29 Q. That testimony was before the judge down there so he

1 could decide if the jury would hear your testimony.

2 A. Yes, sir.

3 Q. And the judge decided that you were not of sufficient
4 expertise in this alternate light imaging to so testify.

5 A. As it was explained to me, if I didn't have a photograph
6 for the defense to do their own independent analysis I could not
7 testify about what I saw in his hand. He limited my testimony, but
8 did allow me if we continued to testify on a limited basis.

9 Q. Who gave you that explanation?

10 A. Uh, Bilbo Mitchell, the district attorney of--it's
11 Meridian--Lauderdale County.

12 Q. Did he tell you that the judge ruled that it was a novel
13 technique?

14 BY MR. ALLGOOD: If your Honor please, what he was
15 told I am going to object to. There is a court order
16 which has been entered in that affair. I have a copy of
17 that court order; I would assume defense counsel has one
18 also. I will object to hearsay, your Honor.

19 BY THE COURT: The objection is overruled. He can
20 answer.

21 BY MR. ALLGOOD: Very well, your Honor.

22 A. Yes, sir, it was a--it was new; yes, sir. It--that was
23 the case that we discovered the ability of the light to find
24 patterns in the palm of the hand; that was the first time.

25 Q. Were you told that the judge ruled that it was not an
26 accepted technique in the forensic science field?

27 A. Yes, sir.

28 Q. Did Bilbo Mitchell tell you that the judge was not
29 convinced that you had done the necessary studies on the technique?

1 A. Yes, sir.

2 Q. Did he tell you that the judge in State versus Maxwell
3 was concerned about your use of the term indeed and without a
4 doubt?

5 A. Yes, sir.

6 Q. Had you in fact used that terminology as a preface to
7 your opinion in that case?

8 A. Yes, sir, I did.

9 Q. Is that a term that you have employed throughout your
10 career in giving opinions as a forensic odontologist?

11 A. Up to February thirteenth of this year.

12 Q. Of nineteen ninety-five?

13 A. Yes, sir.

14 Q. Your testimony is then that prior to February the
15 thirteenth, nineteen ninety-five, your opinions were expressed with
16 the terminology indeed and without a doubt?

17 A. If I had a opinion which warranted my greatest satisfac-
18 tion of being a match, in other words, if I thought that it was a
19 hundred percent, I had not doubt, I was totally assured of my
20 results, then I rendered that opinion. If I wasn't a hundred
21 percent sure, then I would use the term highly probable or highly
22 consistent.

23 Q. You said that you had lectured in a number of locations
24 throughout the--the south and indeed the country?

25 A. Yeah. China, England, all over America.

26 Q. Do you remember giving a presentation to the Southern
27 Association of Forensic Scientists in Nashville, Tennessee, on May
28 thirteenth, nineteen ninety-one?

29 A. Yes, sir.