ELKHART COUNTY SUPERIOR COURT NO. 3
ELKHART, INDIANA
CRIMINAL DIVISION

STATE OF INDIANA	)	
	)	
RESPONDENT,	)	Case No. 20D03-0309-MR-155
	)	
v.	)	
	)	
ANDREW ROYER,	)	
	)	
PETITIONER.	)	

ORDER GRANTING PETITION FOR POST-CONVICTION RELIEF, VACATING CONVICTION, AND ORDERING NEW TRIAL

Petitioner Andrew Royer's Successive Petition for Post-Conviction Relief ("Petition") was filed on June 4, 2029, based upon newly discovered evidence and constitutional violations. After the recusal of the Elkhart Superior Court 3 Judge, the Kosciusko Superior Court No. 3 Judge, Joe V. Sutton, was assigned to serve as Special Judge. The Elkhart County Prosecutor's Office filed an Answer to the Petition on September 4, 2019. On September 12, 2019, the parties participated in a scheduling conference with this Court to discuss the matters pending. At the conclusion of that conference, it was agreed that a bifurcated proceeding would take place where Petitioner would initially present undisputed facts and issues during the first phase. On October 2, 2019, the Petitioner and the State jointly filed a motion to bifurcate the proceedings in this case. In that joint motion, the parties came to an agreement to litigate the following issues at the first phase of this proceeding:

- The latent print exclusion and issues surrounding Mr. Chapman's original identification as alleged in Sections IV(L) and IV(Q) of Petitioner's brief. See pgs. 73-75; see also 94-96.

- Detective Conway's discipline and removal from the homicide unit as alleged in Section IV(E) of Petitioner's brief. See pgs. 42-44.

- Nina Porter's recantation as alleged in Section IV(A) of Petitioner's brief. See pgs. 32-36.

- Detective Daggy's admissions as alleged in Section IV(D) of Petitioner's brief. See pgs. 37-42.

- Detective Conway's admissions as alleged in Section IV(F) of Petitioner's brief. See pgs. 44-54.

- Jerome Johnson's recantation as alleged in Section IV(C) of Petitioner's brief. *See* pgs. 36-37.

A four-day evidentiary hearing took place on October 22-24 and November 1, 2019. At that hearing, this Court heard arguments and evidence on the claims raised in the Petition. At the conclusion of this hearing, the parties agreed to file Proposed Findings of Fact and Conclusions of Law. Those matters having since been filed, this Court finds that the matter is appropriate for review and disposition under Indiana Rules of Procedure for Post-Conviction Remedies (P.C. 1 and P.C. 12).

After considering the pleadings and materials submitted, the testimony and evidence presented to the Court, the arguments of counsel, and the various submissions of the parties, this Court enters the following findings of fact and conclusions of law and GRANTS Petitioner's Successive Petition for Post-Conviction Relief. In doing so, this Court finds as follows:

Background

1. The issues presented arise from the tragic death of Helen Sailor on or about November 28, 2002. On November 29, 2002, Ms. Sailor was found in her apartment deceased. (R. at 327).[1]

2. The Elkhart Police Department started a homicide unit in August of 2003, this case was the unit's first investigation. (R. at 398, 402-403). Detective Carl Conway was assigned to the unit and was the lead investigator at the time Mr. Royer was charged. (EH at 185:10-13). Detective Daggy assisted Detective Conway in the underlying investigation. (R. at 406).

3. Lana Canen and Andrew Royer had a joint trial in 2005. There, Detective Daggy informed the jury that police flagged Lana Canen's name during the investigation. (R. at 403). The jury learned that Ms. Canen was pulled over while driving in a car with Nina Porter. (R. at 481, 707). Ms. Porter ultimately provided a statement to Detective Conway on September 2, 2003. Ms. Porter's statement implicated Mr. Royer and Ms. Canen in the murder of Helen Sailor.

4. The jury learned the contents of Ms. Porter's September 2, 2003 statement. Ms. Porter testified at trial that she knew Mr. Royer and Ms. Canen and often saw them together. (R. at 675, 700). According to Ms. Porter, Canen controlled Mr. Royer's behavior and told him "what to do." (R. at 701). Ms. Porter further revealed that while she was drinking on the patio of the Highrise on July 3, 2003, Ms. Canen made several admissions to her regarding the Sailor homicide. (R.

[1] Citations to the record in this case will be referred to as "R. at __" while citations to the evidentiary hearing transcript will be referred to as "EH at ___."

at 703-705, 713). In one of those admissions, the jury was informed that Ms. Canen confessed: "Thanksgiving, thanks for giving death." (R. at 707-708).

5. Detective Conway testified at length about his involvement in the underlying investigation, including his interrogations of Mr. Royer on September 3, 2003 and September 4, 2003. (R. at 478). According to Detective Conway, Mr. Royer waived his *Miranda* rights on September 3, 2003, seemed pretty "relaxed about the whole situation," and was "very articulate." (R. at 483, 520). Detective Conway testified that the interrogation began at 9:34 a.m. and that he engaged in what he considered to be a "pre-interview process." (R. at 485-486). In spite of having extensive knowledge of the homicide, Detective Conway told the jury that he did not "give any [information] at all" to Mr. Royer during the pre-interview process. (R. at 489). According to Detective Conway, he held back primary details and only confronted Mr. Royer "with very vague generalized information that we have..." (R. at 489). The following exchange is illustrative of what the jury heard with regard to the Detective Conway's interrogation techniques:

Q: When you were interviewing the defendant, Andrew Royer, for the first time on September 3, did you give him any details about Helen Sailor's murder?

A: No. As a matter of fact, in Mr. Royer's case I made a point not to do it.

Q: Why not?

A: I mean, I – we were well aware of Mr. Royer, and – and of – we had limited knowledge about his mental background. So I definitely wanted to make a point not to give to Mr. Royer just for the sheer fact that he might go ahead and dispose of the concept that we might have been spoon feeding him information.

(R. at 490-491).

6. Detective Conway also claimed that Mr. Royer knew details not released to the public, including that towels were used to clean the apartment and disposed of in the trash chute. (R. at 492, 493).

7. After more than four hours of interrogation, Detective Conway ended the "pre-interview process" and decided to audio-record Mr. Royer's statement at 1:30 p.m. (R. at 494, 513). Mr. Royer's twenty-two-minute statement was admitted into evidence as State's Exhibit 16. (R. at 495).

8. The jury learned that Detective Conway interrogated Mr. Royer a second time the following day. (R. at 502). Again, after more than three and one-half hours of interrogation, Detective Conway obtained a thirty-nine-minute audio-recorded confession from Mr. Royer that was admitted into evidence as State's Exhibit 18. (R. at 504).

9. Finally, the jury was presented with testimony about physical evidence linking Ms. Canen to the Sailor homicide. Joel Bourdon, an employee of the Elkhart Police Department, testified that he found a latent print in Sailor's kitchen. (R. at 572). Dennis Chapman, an employee of the Elkhart County Sheriff's Department, testified that he received several fingerprint lifts on August 29, 2003 from the crime-scene and standards from Ms. Canen. (R. at 621-22). After conducting a comparison, Mr. Chapman informed the jury that the latent print on Ms. Sailor's medicine bottle was a "match" to Ms. Canen. (R. at 621-22, 627).

10. In closing arguments, based on the testimony of Ms. Porter, Mr. Chapman, and Detective Conway, the State urged the jury to "see that picture. You

can see that writing on the wall. What was the writing on the wall? There you go. Let's start with that one. Thanksgiving. Thanks for giving death." (R. at 719-720). According to the State, Nina Porter's statement and corresponding testimony corroborated Mr. Royer's statements to Detective Conway and the fingerprint match to Ms. Canen. (R. at 720). Specifically, the State argued:

> Out of the mouth of Lana Canen. The day before Independence Day, the day before fourth of July 2003, as she sat on the patio with Nina Porter drinking some Root Beer Schnapps just hanging out. And what does she keep saying? No one was supposed to get hurt. That statement, folks, no one was supposed to get hurt is incredibly profound for what reason? There was a plan. No one was supposed to get hurt. What does that do? Corroborate virtually every piece of evidence that came from that stand. No one was supposed to get hurt and yet Helen did. It wasn't their intent to kill her when they went to her home. It was their intent to get money from her, money.

(R. at 720).

11. The prosecution in closing argument also highlighted Mr. Royer's statements to Detective Conway. (R. at 721). The State argued that they "could play that tape over again for you" and urged the jury to listen to it again during deliberations while imploring them to focus on a few specific details:

- "Andrew Royer talked about the fact that he strangled her for a long time, five, ten minutes." (R. at 721).
- "Also, profoundly important from his statement you saw on the slide the criss cross. Comes down like this and ends here. They don't meet up. How did Andrew Royer demonstrate that he strangled Helen? I'm quite sure that Andrew Royer had not had an opportunity to meet with Dr. Prahlow to find out about that little detail before he gave his statement." (R. at 721-722).
- "He had such intimate knowledge about this crime that there's no other way to explain it, folks." (R. at 722).
- "Andrew Royer talked about the fact that jewelry had been taken from the jewelry box, the red jewelry box that was underneath the bed." (R.

at 724).

- "Remember how he talked about the fact that he cleaned things up, organized things, put things back so that it didn't look like they had been tampered with." (R. at 724).

- "And while he's got intimate details many many intimate details, he never tells us the whole story. Intimate details such as I slapped her open handed on the cheek. I knocked her down in the kitchen." (R. at 729).

11. The State implored the jury to ignore the defense argument that the interrogation "was so unreasonable, boy, they just pounded it into him. They put all those words in his mouth, and then he just recited everything that the detectives wanted him to say." (R. at 728-729).

12. The State also argued that Mr. Royer's confessions were corroborated by the latent print discovered on Ms. Sailor's medication bottle. The State recounted Detective Chapman's testimony that he "took the fingerprint card of Lana Canen, and he compared it to the print from the tub, and he said, yep, that print is Lana Canen's. Her left pinky – left little finger." (R. at 732). According to the State, this proved Ms. Canen's statements to police—in which she denied being in Ms. Sailor's apartment—were lies. (R. at 732).

13. According to the State's closing argument, this case came down to the testimony of Nina Porter. In their view, Porter's testimony "**corroborate[d] virtually every piece of evidence that came from that stand.**" (R. at 720) (*emphasis added*). The State then implored the jury to combine Mr. Royer's statements to Detective Conway with that of Ms. Porter's statement: "listen to his statement and the way that he talked, you see his thought processes, you hear Nina

Porter's statement. He doesn't talk much. Lana controls him. Andy, go stand in the rain. And what did he do? He did it. Turn around and leave, and he did it." (R. 733-at 734). Based on the testimony from Ms. Porter, Mr. Royer did "whatever Lana told him to do." (R. at 734).

14. The jury was informed:

> To find them guilty, all you have to do is look at the statement and see her fingerprint. That's enough to find them guilty because the State of Indiana has to prove that they committed a robbery or attempted to commit a robbery. You got that from her statements. Nobody was supposed to get hurt. She just was supposed to give me money. Money is gone from Helen's apartment. There's the robbery, folks, and Helen is sure dead. That's all you have to find beyond a reasonable doubt. You have the power now to say you are guilty, and we know you are guilty, and now you have to take responsibility for it cause you have to wonder then will Lana say once again Thanksgiving, thanks for giving death.

(R. at 734-736).

15. With this, Mr. Royer was convicted of felony murder and sentenced to 55 years in prison.

FINDINGS OF FACT

I. Detective Chapman's Lack of Training and Experience as Latent Print Examiner

16. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the

documentary exhibits submitted to the Court, establish the following facts relating to the latent print issues:

17. At Mr. Royer's 2005 trial, the State presented the testimony of Dennis Chapman, a deputy at the Elkhart County Sheriff's Department, as an expert on latent print comparisons. There, Mr. Chapman testified that he was formerly a fingerprint analyst for the FBI where he was responsible for examining and comparing prints. (R. at 617). Mr. Chapman further testified that he made approximately 100 latent print identifications and comparisons in the past several years. (R. at 617). Ultimately, Mr. Chapman informed the jury that he compared a latent recovered from a medicine bottle at the crime-scene to Ms. Canen's standards and determined that it was a match. (R. at 621-22, 627).

18. Retired Deputy Sheriff Dennis Chapman testified at the evidentiary hearing. There, unlike at trial, Mr. Chapman admitted that his experience at the FBI was limited to comparisons of known inked print cards (standards) to other known inked standards. (EH at 55:17-56:7). Importantly, Mr. Chapman did not compare known prints to latent lifts. (EH at 56:3-7, 56:15-17).

19. Mr. Chapman now admits that he was never trained to do latent print comparisons. (EH at 60:11-15). Given this, Mr. Chapman testified that he was even "surprised they wanted me to do this one since it was a homicide." (EH at 68:18-19).

20. At trial, the jury heard something very different altogether when Mr. Chapman testified that he had completed these types of examinations hundreds of

times. At the evidentiary hearing Mr. Chapman acknowledged that his trial testimony was not true and claimed that what he really meant was that he had compared ink print cards. (EH at 92:21-23).

21. It is undisputed that Mr. Chapman's lack of qualifications to conduct latent print comparisons was not disclosed to the defense prior to trial. (EH at 15-16).

22. Prior to trial, Ms. Becker and Mr. Williams divided witnesses to prepare and put on the stand. (EH at 15:14-16). Ms. Becker was the prosecutor responsible for meeting with Mr. Chapman and preparing him to testify. (Id. at 15:18-20). During those meetings, Mr. Chapman misled Ms. Becker into believing that he was qualified to conduct the type of latent print comparisons that exist here. (EH at 15:22-25). During her conversations with Mr. Chapman, Ms. Becker was never provided with his resume and it was never represented to her that he was not qualified to conduct comparisons of latent prints. (EH at 16:12-16). Pursuant to Rule 3.8, *Brady v. Maryland*, 383 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), Ms. Becker should have disclosed such exculpatory and impeachment evidence to the defense. (EH at 16:18-17:3).

23. The Court finds that Mr. Chapman's lack of qualifications to compare latent prints was not disclosed to Mr. Royer or his defense counsel at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

24. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Chapman's testimony that he was qualified to compare latent prints and that the latent left at the scene matched Ms. Canen was material to the State's case at trial. This new evidence demonstrates that Chapman's testimony and the State's argument to the jury were false and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

25. The Court also finds that the evidence presented satisfies the requirements of *Brady v. Maryland*[2] and *Giglio v. United States.*[3] It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is relevant, material, and exculpatory. The Court finds that the evidence is favorable to the defense as it would have constituted critical impeachment evidence of the State's main forensic witness. Finally, the Court finds that the withheld evidence was material to an issue at trial and the failure to

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[2] *Brady v. Maryland*, 373 U.S. 84, 87 (1963)
[3] *Giglio v. United States*, 405 U.S. 150 (1972)

disclose such evidence deprived Mr. Royer of this right to due process and a fair trial.

II. Latent Print Exclusions

26. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the documentary exhibits submitted to the Court, establish the following facts relating to the latent print exclusions:

27. Mr. Chapman received a request from the Elkhart Police Department to conduct a comparison of latent prints to known standards in the Sailor homicide. (EH at 60:18-23). Mr. Chapman had the evidence for approximately 189 days prior to forming his opinions in a written report. (EH at 79:10-13). Mr. Chapman estimates that he only worked on the comparison for approximately a week during the 189 days. (EH at 79). According to Chapman, he did not find a match to Ms. Canen until "just before" he returned the print back to the Elkhart Police Department. (EH at 80:17-18).

28. Mr. Chapman documented his opinions in this case in a report. (EH at 76; Petitioner's Ex. 12). Having reviewed the report, Mr. Chapman revealed that he first received the evidence in this case on August 29, 2003. (EH at 77). On that date, he received fingerprint standards and lifts that he needed to compare the standards to. (EH at 77-78). Mr. Chapman compared the standards of caregivers to the latent at issue. (EH at 86:1-9). In doing so, Chapman determined that "it didn't come from none of the caregivers." (EH at 86:8-9).

29. At trial, Mr. Chapman informed the jury that the print was a match to Lana Canen.

30. Mr. Chapman reviewed a latent print expert's power-point presentation prior to Ms. Canen's 2011 evidentiary hearing. (EH at 94:1-9). After his review, Chapman came to the realization that he "made a mistake in [his] original analysis." (EH at 94:12).

31. Mr. Chapman testified at the evidentiary hearing that the latent print left at the crime-scene on the victim's medicine bottle was not Ms. Canen's. (EH at 94:13-14). Mr. Chapman recalled that "the ridge count was way off. It wouldn't have been hers, well without you not knowing it (inaudible) sense. The distance from the delta to the core was a lot longer in the latent print then what her print was." (EH at 95:5-9).

32. Mr. Chapman also admits that he did not even look for dissimilarities when he conducted his original comparison. (EH at 95:21-22). This is critical, as even Chapman explains, "all I needed was that one error [dissimilarity], because it wasn't similar so I knew it wasn't hers then." (EH at 95:12-13).

33. The Court finds that the exclusion of Ms. Canen from the latent prints found at Ms. Sailor's residence was not disclosed to Mr. Royer or his defense counsel at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

34. The Court finds that evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On

this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Chapman's false testimony that the latent left at the scene matched Ms. Canen was material to the State's case against Mr. Royer at trial. As noted above, the State repeatedly argued to the jury that the latent print match to Canen corroborated the statements obtained from Mr. Royer. This new evidence demonstrates that Mr. Chapman's testimony and the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

III. Additional Evidence Relating to Mr. Chapman's Latent Print Opinion

35. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented at the evidentiary hearing, including the documentary exhibits submitted to the Court, establish the following facts relating to additional latent print issues:

36. After Ms. Canen's evidentiary hearing, in 2012, Mr. Chapman was disciplined by the Elkhart County Sheriff's Department for his role in this case. (EH at 96:11-25). As part of that process, on August 24, 2012, Mr. Chapman met with his supervisor Jeff Siegel about his testimony at trial. (Id.; Petitioner's Ex. 13). Sheriff Siegel was a Captain in the Elkhart Sheriff's Department at the time.

(EH at 108:4-6). Sheriff Siegel created a memorandum of that interview that was admitted as Petitioner's Exhibit 13.

37. In that conversation, Mr. Chapman revealed that he felt pressure to make the print comparison made during the underlying investigation. (EH at 97:1-5). He further felt pressured by phone calls he received from the Elkhart Police Department after receiving the evidence. (EH at 98:5-11). Mr. Chapman also confessed that these calls – and the fact that he "hadn't got it done yet" caused him more pressure. (EH at 98:9-11).

38. Sheriff Siegel, then Captain, also drafted a performance evaluation based on his investigation into Mr. Chapman's opinions in this case. (EH at 110:12-17; Petitioner's Exhibit 14). At the conclusion, Sheriff Siegel stopped any fingerprint analysis that Mr. Chapman was involved with and barred him from conducting any such examinations in the future. (EH at 110:19-111:2). Mr. Chapman was likewise barred from testifying in criminal cases. (Petitioner's Ex. 14). Sheriff Siegel agreed with the decision to ban Mr. Chapman from conducting and testifying about fingerprint analysis: "the analysis was such a big part of that case that we shouldn't make that, uh, put him in that situation again." (EH at 111:21-24).

39. This Court heard newly discovered evidence illustrating that Mr. Chapman was also provided with information that may have biased the opinions he formed. At the hearing, Mr. Chapman testified that Elkhart police officers told him their theory of the murder prior to completing his finger print analysis.

Specifically, Mr. Chapman was informed that Ms. Canen was the suspect prior to conducting his comparison and that she was the brains behind the murder. (EH at 74:21-24, 75:4-10). He was also informed that the actual killer was too simple to think up the plan that was carried out. (EH at 98:12-16).

40. When it comes to latent print analysis, Mr. Montooth, a highly experienced laboratory analyst from the Indiana State Police Laboratory, explained that ISP analysts try to limit the amount of information they are told about a case in order to eliminate bias and being unfairly influenced in making an identification. (EH at 817:11-14).

41. The Court finds that Mr. Chapman's admissions to feeling pressure and being provided with information that may have biased his opinions were not disclosed to Mr. Royer or his defense at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

42. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Chapman's testimony that he felt pressure to make an identification and was provided with information that may have biased his opinion

is material to the State's case at trial. This new evidence demonstrates that Chapman's testimony and the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

43. The Court also finds that the evidence presented satisfies the requirements of *Brady v. Maryland* and *Giglio v. United States* as well. It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is relevant, material, and exculpatory. The Court further finds that the evidence is favorable to the defense as it would have constituted critical impeachment evidence of the State's main forensic witness. Finally, the Court finds that the withheld evidence was material to an issue at trial.

Indiana State Police Laboratory Reviews Latent Print Evidence

44. Petitioner likewise presented evidence relating to examinations of the latent prints in the Sailor homicide by members of the Indiana State Police Laboratory (hereinafter referred to as "ISP Laboratory"). The Court finds that this evidence demonstrates that the latent prints at issue exclude Lana Canen and Andrew Royer from being contributors.

45. Marcus S. Montooth, a senior latent print examiner and current supervisor of the Latent Print Identification Unit at ISP, conducted the comparison and testified that in August 2012, the ISP received a request from the Elkhart Prosecutors office to rework the latent print evidence pertaining to this case. (EH at

792:11-14; 793:23-25; 794:1-13; Petitioner's Ex. 50). Per the request, Mr. Montooth compared one latent print found in item 001 to the exemplars belonging to Lana Canen. (EH at 797:10-14).[4]

46. The latent print recovered from item 001 was subsequently labeled as latent 001A. (EH at 806:3-4). Latent 001A was then compared to exemplars of all ten fingers and palms belonging to Lana Canen. (EH at 806:5-8). Mr. Montooth revealed that latent print 001A was eliminated as having been made by Lana Canen. (EH at 797:10-14; Petitioner's Ex. 51, Ex.52).

47. In conducting this analysis, Mr. Montooth looked at the differences and similarities between latent print 001A and the exemplars. (EH at 806:12-15). As an expert, Mr. Montooth made it clear that it is "standard practice" to look at both the similarities and differences when comparing print. (EH at 806: 12-23). He explained: "you start by looking for similarities, uh, to see if anything is there to continue your comparison...if you find anything that's similar then you move out from there to see if anything is different." *Id.* Ultimately, he created a report with the results of this comparison. (Petitioner's Ex.51; EH at 807:12-14.)

48. On October 1, 2012, Mr. Montooth received a second request to compare additional latent prints along with latent print 001A to the exemplar belonging to Lana Canen and "multiple other exemplars." (EH at 807:21-25, 808:1)

[4] Item 001 was previously identified as part of a group of latent lifts received by ISP analyst Frank Aldrich and identified as item 106A. (EH at 800: 24-25).

(Petitioner's Ex.55). In total, Mr. Montooth found and compared fourteen latent prints sufficient for comparison purposes. (EH at 810:19-21).

49. Through this comparison Mr. Montooth made two identifications. (EH at 810: 21-24). First, Mr. Montooth found that Latent 001A matched the left middle finger of Pamela Kruder, a health aide worker. (EH at 812: 16-17). Importantly, Latent 001A is the same latent print that Deputy Chapman erroneously matched to Ms. Canen's left pinky finger in 2004. (EH at 812: 22-24; Petitioner's Ex.51). According to Mr. Montooth's testimony, Chapman not only identified the wrong person, but he likewise misidentified the finger and hand as well.

50. The second print, latent 73A1, was identified to the right index finger of Angel Noe, not Canen's left pinky finger. (EH at 813:2-7).

51. As part of his comparison process, Mr. Montooth also reviewed portions of the entire Indiana State Laboratory file that were related to the latent prints he was asked to compare. (EH at 813: 17-20).

52. To provide context to Mr. Montooth's testimony, the Court recounts the following factual background regarding the transfer of the latent prints at issue. The Elkhart Police Department originally sent the latent evidence to the Indiana State Police laboratory. By October of 2003, Detective Bourdon removed all the latent evidence originally sent to the Indiana State Police and gave it to Mr. Chapman for comparison. (EH at 838: 6-15). Detective Bourdon testified that he removed the evidence because at the time the Indiana State Police laboratory was too busy to compare the evidence and because "it made sense" that all of the

evidence should be compared by one examiner; in this case Mr. Chapman. (EH at 838:18-25, 839:1-2).[5]

53. Detective Bourdon admits that contrary to the State's position for recruiting Chapman for this process due to a delay at the laboratory, the Indiana State Police Laboratory can "rush cases" that need to be reviewed immediately. (EH at 829:1). Here, Detective Bourdon testified that the Elkhart Police Department and the Elkhart County Prosecutor's Office did not request that the review of the latent print evidence in this case be prioritized or "rushed." (EH at 830:1-9).

54. Even more, in November 2003, Detective Brown of the Elkhart Police Department submitted two hinged lifters along with four fingerprint cards to the Indiana State Police Laboratory for comparison in another homicide investigation. (Petitioner's Exhibit No. 57). Thus, at the same time as the Elkhart Police Department and the Elkhart County Prosecutor's Office were removing latent prints and physical evidence in the Sailor homicide investigation due to an alleged delay, they were contemporaneously seeking to use the Indiana State Police laboratory to conduct latent examinations in other homicide cases. Therefore, the reasons given for submitting the latent and known prints to Mr. Chapman for comparison is not supported by the evidence.

55. The Court finds that the two positions are contradictory.

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[5] In addition to the latent prints being transferred from the Indiana State Police Laboratory, the comparison cards were as well. On August 29, 2003, Detectives Conway and Hammel delivered fingerprint cards and lifts to Mr. Chapman of the Elkhart County Sheriff's Department for examination. (EH at 514:15-515:2; see also Petitioner's Ex. 12).

56. In March 2004, Mr. Chapman returned the latent evidence to the Elkhart Police Department. (EH at 331:4-333:8; 843:8-15). Explaining further, Mr. Montooth testified that his review revealed that in April 2004, one month after Mr. Chapman identified the latent print as belonging to Lana Canen, the Elkhart Police Department sent the same latent prints to the Indiana State Police Laboratory for entry in the Automated Fingerprint Identification System (AFIS). (Petitioners Ex. 55; EH at 842:22-25, 843:1-15).[6] This was confirmed by Detective Joel Bourdon who was in charge of collecting, processing and maintaining the physical evidence in the Sailor Homicide. (EH at 832:6-11; EH at 838: 6-12).

57. As Mr. Montooth testified, the purpose of AFIS is to identify prints and it is atypical to use AFIS after a print has already been identified. (EH at 816:21-25, 817: 1-6). Latent print science is based on the premise that no two prints – on earth – are identical. Given this, in his 16 years of practice at the Indiana State Police Laboratory, Mr. Montooth has never run an identified print through AFIS. (EH at 816:21-23). Mr. Montooth testified that in 2004 the lifts were found to be insufficient for comparison for the purposes of AFIS and no identifications were made. (EH at 815:8-11, 827:19-22; Petitioners Ex.56). The results of this analysis

[6] Mr. Montooth testified that according to the notes he reviewed in preparation for his second analysis, Item 106 was identified as a sealed plastic bag containing eight adhesive lifters. (EH 821:1-4). From these lifters, Indiana State Police Laboratory Analyst Mr. Frank Aldrich found seven lifts and labeled them 106A. When Mr. Montooth received the lifts in 2012, he received six lifts in item 106A, one lift in item 001, which was originally part of 106A. (EH at 823:7-25). Mr. Montooth testified that as part of his investigation he reviewed all of the eight lifts found in item 106, which most recently were categorized as one lift in item 106, six lifts in item 106A and one lift in item 001. (EH at 821-823; 800:24-25).

were communicated to Det. Bourdon who then disclosed the results to the Elkhart Prosecutor's office. (EH at 843:7-11).

58. The Court finds that the series of events recounted above indicates that the State had doubts before trial as to the accuracy of Mr. Chapman's opinion.

59. As Mr. Montooth recounted, there would be no legitimate reason for the submission of standards which purportedly had already formed a match to Ms. Canen through the AFIS system unless such doubts existed.

60. The Court further finds that the submission of the evidence to the ISP laboratory for an AFIS search along with the results that the latent prints were insufficient for comparison purposes should have been disclosed to the defense.

61. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). The Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that this evidence is material to the State's case at trial. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

IV. Detective Conway's Removal from the Homicide Unit

62. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the documentary exhibits submitted to the Court, establish the following facts relating to Mr. Conway's removal from the Elkhart Police Department's homicide unit:

63. In 2003, William Wargo Jr. was Sergeant of the Elkhart Police Department's homicide unit. (EH at 118:7-9). The remaining members of homicide included: (1) Lt. Paul Converse; (2) Det. Mark Daggy; (3) Lt. Peggy Snider; and (4) Carl Conway. Sergeant Wargo was the direct supervisor of Det. Conway in 2003. (EH at 119:17-19.

64. In 2003, Detective Conway was assigned to the Gwen Hunt homicide investigation. (EH at 129:19-130:1). Beginning in August 2003, Detective Conway was also assigned as the lead investigator in the Sailor homicide investigation. (EH at 185:10-16; 204:8-13).

65. During the investigation into the Hunt homicide, Sergeant Wargo was informed that Detective Conway spoke to an attorney representing Stacy Orue around February 2004. (EH at 130:7-10). In this conversation, Sergeant Wargo was presented with complaints surrounding Detective Conway's questioning of Ms. Orue. (EH at 130:17-131:2). Specifically, Detective Conway made a request to interview Orue to her attorney to interview Orue without counsel's presence. In doing so, Detective Conway falsely represented that Orue was a witness and not a suspect in a criminal investigation.

66. After conducting interviews with Conway, Sergeant Wargo and Lieutenant Converse requested that "Detective Conway ... be removed from the homicide unit." (EH at 135:2-3).

67. Detective Conway was removed from the homicide unit because his supervisors had concerns about the impact that his misrepresentations would have on future homicide investigations and his credibility at trials if called to testify. (EH at 137:12-21). For these reasons, Lieutenant Converse and Sergeant Wargo requested Detective Conway's removal, a request that was ultimately accepted by the Chief of Police at the Elkhart Police Department. (EH at 142:5-19).

68. Detective Conway admits that he was removed from the homicide unit of the Elkhart Police Department prior to Mr. Royer's trial. (EH at 517:11-13). Detective Conway testified that he was informed at the time of his removal that it stemmed from the "possibility [of] misrepresentation to an attorney." (EH at 519:23-25).

69. Detective Conway's removal from the homicide unit was not by choice. (EH at 532:18-22). In fact, Detective Conway attempted to appeal his removal to the Chief of Police, which was summarily denied. (EH at 533:2-6). To this day, Detective Conway has never been placed back in the homicide unit of the Elkhart Police Department. (EH at 533:7-9).[7]

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[7] Detective Conway was later removed from the sex-crimes unit as well. (EH at 534:5-6). During that removal process, Detective Conway made a complaint to Assistant Elkhart County Prosecutor Vicki Becker. (EH at 536:15-22). A disciplinary proceeding ensued that resulted in an agreement between Mr. Conway and the Elkhart Police Department. (Petitioner's Ex. 41; EH at 537:1-22). As part of that agreement, the Elkhart Police Department agreed to withdraw any allegations alleging or suggesting that "he caused the Office of the Prosecuting Attorney to lose faith in the Elkhart Police Department or to

70. Pursuant to a stipulation between the parties, "it is undisputed that any discipline against or demotion of Detective Conway from the homicide unit was not disclosed by the Elkhart Police Department to Mr. Royer's defense prior to his 2005 trial." (EH at 19:20-25).

71. As the lead investigator in the Sailor homicide, responsible for obtaining statements from Mr. Royer, Detective Conway's credibility was a critical factor in the case. Detective Conway's testimony regarding his interrogations of Mr. Royer and his claims that Royer confessed to the murder subsequent are matters clearly material to Royer's innocence or guilt. The decision made by leadership in the Elkhart Police Department to remove Detective Conway from the homicide unit is material impeachment evidence. The new evidence significantly undermines Detective Conway's credibility and testimony at trial.

72. This Court finds that the State introduced no evidence contradicting Sergeant Wargo's findings or the supporting documentary evidence submitted by Mr. Royer.

73. The Court finds that this new evidence would have been material to the jury's determination of Detective Conway's credibility as a witness at trial. This new evidence would have been material to the jury's ultimate determination of Mr. Royer's innocence if known and if available at the time of trial.

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question its ability to supervise its detectives, investigate sex crimes, or to perform any other form of police activities." (Petitioner's Ex. 41; EH at 538:5-11). In exchange, Detective Conway accepted a written reprimand. (EH at 541:18-542:10).