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NO. 0257085D

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
)
VS.) TARRANT COUNTY, TEXAS
)
FREDDIE LEE CLARK) 297TH DISTRICT COURT

FILED
J. W. BOORMAN, DIST. CLERK
TARRANT COUNTY, TEXAS

NOV 11 1985

STATEMENT OF FACTS

Time 8:45 A.M.

By MD Deputy

VOLUME III OF III VOLUMES

Filed in Court of Appeals
For Second Supreme Judicial
District of Texas

NOV 27 1985

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DON L. WADDINGTON
Official Court Reporter
297th District Court
Tarrant County, Texas

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* * * * *

1 calls Penny Davis.

2 [At this time, the witness was sworn
3 by the Court.]
4

5 PENNY DAVIS,

6 a witness called by the State, after having been first duly
7 sworn by the Court to tell the truth, the whole truth and
8 nothing but the truth, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. PURCELL:

11 Q. State your name, please.

12 A. Penny Davis.

13 Q. How are you employed?

14 A. Tarrant County Sheriff's Department.

15 Q. What division of the Sheriff's Department
16 are you in?

17 A. Identification Bureau.

18 Q. What are your duties in the Identification
19 Department?

20 A. I roll fingerprints and compare fingerprints,
21 and I go to crime scenes.

22 Q. Tell the jury what you mean by prints, please.

23 A. When we take a rolled impression, we put
24 ink and take each finger and roll from thumb nail to thumb
25 nail or fingernail to fingernail, and we have ten spaces

1 for each ten fingers on an eight by ten card, and we make
2 a simultaneous print at the bottom.

3 Q. What type of prints are you talking about,
4 Ms. Davis?

5 A. Rolled.

6 Q. Fingerprints are what you are describing?

7 A. Yes.

8 Q. And you said something about comparing
9 prints. What do you mean by that?

10 A. When a person is in jail and is released,
11 they are thumbed in. When they come in and are thumbed
12 out, we have to make a comparison to see if it's the same
13 person.

14 Q. What does thumbed in and thumbed out mean?

15 A. When a prisoner is brought to jail, to make
16 sure that we have the right person to that charge, we thumb
17 him in, his right thumb, and when he is released, we make
18 sure that we have the right person, and we take a right
19 thumb impression and we compare them and see if they are
20 the same.

21 Q. Now, what do you compare when you say thumb
22 in and thumb out? Tell the jury exactly what it is.

23 A. The lines in your fingers, in your toes and
24 the broken lines and the dots and split lines, all in your
25 fingertips.

1 Q. So, by thumb in, you mean take a thumb print
2 from somebody?

3 A. Right.

4 Q. And when you thumb out, you mean you compare
5 a thumb print to the one that you got when you came in?

6 A. Yes.

7 Q. How many comparisons have you made like that?

8 A. I can't guess, thousands.

9 Q. Are you pretty sure about that?

10 A. Yes, sir.

11 Q. How often every day do you compare prints
12 like that?

13 A. Anywhere from approximately 50 to 150 per day.

14 Q. And consists of comparing a thumb print when
15 they come in and when they go out?

16 A. Yes, sir.

17 Q. Did you have any special training to do this
18 line of work?

19 A. Yes, sir.

20 Q. Tell us what it is, please.

21 A. I had 40 hours in latent fingerprint school
22 at the Council of Governments in Arlington.

23 Q. Now, just briefly, what do the 40 hours of
24 classes entail?

25 A. Lifting latent prints, reading them, comparing

1 them, taking and matching fingerprints to a partial
2 fingerprint.

3 Q. And how long-- how much experience have you
4 had in that line of work? How long have you been doing
5 this?

6 A. Three and a half years before, and I have
7 been with the Sheriff's Department a year, now.

8 Q. And did you take a break in between?

9 A. Yes.

10 Q. First, you did three and a half years and
11 now you've been at it a year?

12 A. Yes.

13 Q. You mentioned to the jury a latent print.
14 Are there different types of fingerprints, latent and some
15 other type?

16 A. Yes. There is latent and rolled.

17 Q. And what is a rolled print?

18 A. A rolled impression is a-- where you take ink
19 and place it on a card, take your finger and ink it and
20 place it on a card.

21 Q. Have you taken-- is it easier to compare
22 inked prints or latent prints?

23 A. Inked.

24 Q. Is that part of your regular job, to identify
25 and classify and compare fingerprints?

1 A. Yes.

2 Q. Are you qualified to analyze and compare
3 fingerprints?

4 A. Yes, sir.

5 Q. To your knowledge, have any two persons ever
6 had the same fingerprint?

7 A. No, sir.

8 Q. And out of-- based on your experience in
9 taking thousands of fingerprints and your training and to
10 the best of your scientific knowledge, does the scientific
11 world know of any two persons having the same prints?

12 A. No, not to my knowledge.

13 Q. Now, you mentioned comparing fingerprints.
14 How do you tell if two fingerprints belong to the same
15 person?

16 A. You count the ridges of the fingertip that
17 you have, you count all of the ridges. Each fingerprint
18 has to match.

19 Q. And can you tell the jury what you mean by
20 ridges?

21 A. Yes, sir.

22 The lines in your fingers and the broken
23 lines and the dots and the split lines of your fingers.
24 You have those in your fingers, joints and your hand and
25 your palms and your feet.

1 Q Can you tell the jury what is meant by
2 points of comparison?

3 A Points of comparison are when you have two
4 ridges or lines that are identical.

5 Q Okay. So, you look at one print and then
6 the other to see if the line is identical?

7 A Yes.

8 Q And that's considered one point?

9 A Right.

10 Q Is it fair to say that's also considered a
11 point of reference or something like that?

12 A Yes.

13 Q Do you personally have a set number of points
14 that you look for in each fingerprint before you determine
15 if that fingerprint is the same?

16 A I try to get as many as possible.

17 Q Do you have a minimum, though, that you use?

18 A The minimum is ten.

19 MR. PURCELL: May I approach the
20 witness, Your Honor?

21 BY MR. PURCELL:

22 Q Ms. Davis, I would like to show you what's
23 been marked for identification purposes only as State's
24 Exhibit No. 2, and can you identify that, please?

25 A Yes, I can.

1 Q What is that?
2 A That's a rolled impression.
3 Q And do you know who those rolled impressions
4 belong to?

5 A Yes, I do.

6 Q Who?

7 A The Defendant.

8 Q Can you describe what he has on, please?

9 A Yes, sir. He has a black and white shirt on.

10 MR. PURCELL: Your Honor, I would like
11 the record to reflect that she has identified
12 the Defendant.

13 THE COURT: So reflect.

14 BY MR. PURCELL:

15 Q How do you know that the fingerprints on
16 this card belong to him?

17 A Because I rolled them this morning.

18 Q And how do you know you are the one that
19 rolled them and this is the same card?

20 A That's my name.

21 Q Did you put your name and date on there at
22 the time that you rolled his prints?

23 A Yes, sir.

24 MR. PURCELL: Your Honor, I would ask
25 that State's Exhibit 2 be admitted into

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evidence.

MR. ROSS: No objection.

THE COURT: State's Exhibit No. 2 is admitted into evidence.

[State's Exhibit No. 2 was received in evidence.]

MR. PURCELL: I would like to briefly publish it to the jury by holding it up.

[At this time, State's Exhibit No. 2 was displayed to the jury.]

BY MR. PURCELL:

Q. Now, there's ten spaces on here; is that correct?

A. Yes, sir.

Q. What is in each one of the spaces?

A. The top line, the first block is your right thumb. The second block is your index finger of the right hand and it goes all the way down to your little finger. The second line, starting with the thumb, works all the way back to the little finger.

Q. Now, are these inked impressions?

A. They are inked impressions.

Q. Can you just pretend like you've got an ink pad here and this is the paper, and show the jury what you did?

1 A. You take your fingers and you roll it and
2 you put it on the card, you roll it, and you put it on the
3 card, thumb nail to thumb nail, each finger.

4 Q. And you actually did that with Freddie Lee
5 Clark over here, the person sitting right there?

6 A. Uh-huh.

7 Q. And these are his prints on this card; is
8 that correct?

9 A. Yes, sir.

10 Q. So, are these known prints?

11 A. Those are known prints.

12 Q. You know that because these fingerprints
13 belong to that person?

14 A. Yes.

15 Q. These are different little lines on here.
16 Are those lines the ridges that you were talking about?

17 A. Yes, sir.

18 Q. I would like to show you State's Exhibit 3.
19 Do you recognize that?

20 A. Yes, sir, I do.

21 Q. Are there any fingerprints contained within
22 there?

23 A. Yes, sir.

24 Q. And can you turn to where the fingerprints are
25 contained?

1 A. [Witness complied.]

2 Q. Ms. Davis, how do you recognize State's

3 Exhibit No. 3?

4 A. Because I initialed it.

5 Q. And when did you do that, please?

6 A. This morning.

7 Q. At what time?

8 A. 9:25.

9 Q. Now, you have previously testified to the

10 jury that you are qualified to compare fingerprints?

11 A. Yes, sir.

12 Q. Are there any fingerprints contained upon

13 the page that you are presently looking at?

14 A. Yes, sir.

15 Q. Did you compare those fingerprints with the

16 prints contained on State's Exhibit No. 2?

17 A. Yes, sir.

18 Q. Did you look for points of comparison?

19 A. Yes, sir.

20 Q. Is there a minimum number that you found on

21 each finger?

22 A. No, sir.

23 Q. Did you look to see if each one of these

24 single fingerprints matches with the fingerprints on this

25 card, State's Exhibit No. 2?

1 A. Yes, sir.

2 Q. And in fact, did each fingerprint on State's
3 Exhibit 3 match with each fingerprint on State's Exhibit 2?

4 A. Yes, sir.

5 Q. Based on your opinion and based on your
6 experience and your training and examination that you
7 made this morning, is the person that made these fingerprints
8 on State's Exhibit No. 2, the same person that made the
9 fingerprints on State's Exhibit 3?

10 A. Yes, sir.

11 MR. PURCELL: Your Honor, I would ask
12 that State's Exhibit 3 be admitted into
13 evidence.

14 MR. ROSS: Your Honor, may I take the
15 witness on voir dire outside the presence of
16 the jury?

17 THE COURT: Will the jury please
18 retire to the jury room?

19 [At this time, the jury was retired to
20 the jury room, and the following proceedings
21 were held outside their presence:]

22 VOIR DIRE EXAMINATION

23 BY MR. ROSS:

24 Q. Ms. Davis, I believe that you have before you
25

1 State's Exhibit No. 2; is that not correct?

2 A. Yes, sir.

3 Q. Did you have Mr. Clark to sign a signature
4 there?

5 A. Yes, sir, I did.

6 Q. I would like to show you what is a part of
7 State's Exhibit No. 3, and ask you if there, in fact,
8 appears to be a signature of Freddie Lee Clark anywhere on
9 that page?

10 A. No, sir, there is not.

11 Q. Do you have any knowledge of who made the
12 prints that appears to be a part and parcel of State's
13 Exhibit No. 3?

14 A. I don't understand your question.

15 Q. I'm asking you that, in reference to the
16 prints that appear as a part and parcel of State's Exhibit
17 No. 3, do you have any knowledge of who may have taken
18 those prints?

19 A. No, sir.

20 Q. Were they taken by you?

21 A. No, sir.

22 Q. I would like to ask you-- you have in your
23 hand State's Exhibit No. 2?

24 A. Yes, sir.

25 Q. And I would like for you to explain to me, or

1 explain for me, how you would account for-- we have an
2 area here that appears to be in somewhat of a smudge, and
3 why that doesn't appear here?

4 A. Because it's two different people taking the
5 prints.

6 Q. So, would it not be a fair assessment to say
7 that two different people taking the prints and making an
8 assessment of those prints could reach a different
9 conclusion?

10 A. No, sir. The same print appears on it.
11 They are the same.

12 Q. If the same print appears on the same, again,
13 I would ask you that in comparing State's Exhibit No. 2,
14 which you have before you, and State's Exhibit No. 3, how
15 would you account for the fact that in thumb 16 of the
16 right hand, how you would account for a smudge appearing
17 on the thumb print there and an absence of same in State's
18 Exhibit No. 3, which I hold here in my hand?

19 MR. PURCELL: Your Honor, I would
20 object to any further questioning along that
21 line on State's Exhibit 3. The witness has
22 testified she did not take the prints and
23 she has testified that she compared them to
24 the prints in State's Exhibit No. 2.

25 THE COURT: Overruled.

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MR. ROSS: Thank you.

Your Honor, we would object to the admission of State's Exhibit No. 3 for such a reason that it cannot be properly authenticated or identified and should not be admitted into evidence as being inadmissible hearsay.

THE COURT: By authenticated and identified, you mean by this witness?

MR. ROSS: By this witness, yes, Your Honor.

THE COURT: Overruled.

Ready for the jury?

MR. ROSS: Yes.

THE COURT: Bring in the jury.

[At this time, the jury was seated in the jury box, and the following proceedings were held in their presence:]

THE COURT: State's Exhibit No. 3 is admitted into evidence.

[At this time, State's Exhibit No. 3 was received in evidence.]

DIRECT EXAMINATION (CONT'D)

BY MR. PURCELL:

Q. Ms. Davis, again on State's Exhibit No. 3, there are ten fingerprints; is that correct?

A. Yes, sir.

Q. In your opinion, were the fingerprints on State's Exhibit 3 made by the same person who made the fingerprints on State's Exhibit No. 2?

A. Yes, sir.

Q. And it's your testimony that each one of these ten fingerprints matches up?

A. Yes, sir.

Q. I would like to show you what's been marked as State's Exhibit, and do you recognize that?

A. Yes, sir.

Q. How do you recognize it?

A. By my initials.

Q. And when did you initial it?

A. This morning at 9:13.

Q. Does State's Exhibit 4 contain any fingerprints in there?

A. Yes, it does.

Q. Can you turn to those fingerprints?

A. Yes, sir [Witness complied].

Q. Did you compare those fingerprints with the

1 fingerprints on State's Exhibit No. 2?

2 A. Yes, sir, I did.

3 Q. Did you compare the print from each and
4 every finger?

5 A. Yes, sir, I did.

6 Q. Did you determine-- in your opinion, did you
7 form an opinion whether the fingerprints on State's Exhibit
8 No. 4 were made by the same person whose fingerprints are
9 on State's Exhibit No. 2?

10 A. No, sir-- I'm sorry?

11 Q. Did you compare the fingerprints on State's
12 Exhibit No. 2 with State's Exhibit No. 4?

13 A. Yes.

14 Q. Did you form an opinion whether they belonged
15 to the same person?

16 A. Yes, I did.

17 Q. What is that opinion?

18 A. That they are one and the same.

19 Q. And then, is it your opinion that the
20 fingerprints on State's Exhibit No. 4 belong to the
21 Defendant in this case?

22 A. Yes, they do.

23 MR. PURCELL: Your Honor, I would ask
24 that State's Exhibit No. 4 be admitted into
25 evidence.

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MR. ROSS: No objections.

THE COURT: State's Exhibit No. 4 is admitted into evidence.

[At this time, State's Exhibit No. 4 was received in evidence.]

BY MR. PURCELL:

Q Ms. Davis, I would like to show you what's been marked as State's Exhibit No. 5, and do you recognize it?

A Yes, I do.

Q How do you recognize it?

A My initials.

Q And when did you place your initials on there?

A This morning at approximately 9:35.

Q Did you examine State's Exhibit No. 5 at that time?

A Yes, I did.

Q Does State's Exhibit 5 contain fingerprints there?

A Yes, sir, they do.

Q Can you turn to those fingerprints?

A Yes, sir [Witness complied].

Q How many fingerprints appear there?

A Ten.

Q Did you compare each one of those fingerprints

1 in State's Exhibit 5 with each one of the fingerprints on
2 State's Exhibit 2?

3 A. Yes, sir, I did.

4 Q. Were you able to make a good comparison for
5 each and every one of those fingerprints?

6 A. Yes, sir, I could.

7 Q. Did you form an opinion as to whether the
8 fingerprints in State's Exhibit 5 were made by the same
9 person whose fingerprints appear on State's Exhibit 2?

10 A. Yes, sir.

11 Q. And what does-- what is that opinion?

12 A. They are the same people.

13 Q. So, is it your opinion that the ten finger-
14 prints in State's Exhibit 5 belong to the Defendant in
15 this case, Freddie Lee Clark?

16 A. Yes, sir.

17 MR. PURCELL: Your Honor, I would ask
18 that State's Exhibit 5 be admitted into
19 evidence.

20 MR. ROSS: We would ask to take the
21 witness on voir dire outside the presence of
22 the jury.

23 THE COURT: Would the jury please
24 retire?

25 [At this time, the jury was retired to

1 the jury room, and the following proceedings
2 were held outside their presence:]

3
4 VOIR DIRE EXAMINATION

5 BY MR. ROSS:

6 Q. Ms. Davis, I would show you what's been
7 marked as State's Exhibit No. 5, and I would ask you if
8 there appears to be a signature there?

9 A. Yes, sir, there is.

10 Q. And what does that signature purport to be?

11 A. I'm sorry, what?

12 Q. Whose signature does that purport to be?

13 A. Freddie Lee Clark.

14 Q. Okay. Was that signed in your presence?

15 A. No, it was not.

16 Q. And are you aware who may have taken those
17 prints?

18 A. No, sir.

19 Q. Okay. Are you aware of when it may have been
20 taken?

21 A. No, sir.

22 Q. And I wonder if you could tell me that, in
23 terms of State's Exhibit No. 2, the top row refers to
24 which hand?

25 A. The right.

1 Q To the right hand?

2 A Yes, sir.

3 Q And which would be the thumb print?

4 A The first one on the top row.

5 Q And in accordance with State's Exhibit No. 5,

6 which would be the right thumb print?

7 A The first one on the top row.

8 Q How would you, in fact, account for the

9 fact that in State's Exhibit No. 2, there appears to be a

10 darkening on the left portion of the print, this [indicating]

11 area, and the absence of same on this one?

12 A I did not take those.

13 Q Would it not be possible that two experts

14 would have a different opinion as to the person whose

15 prints these might represent?

16 A No, sir.

17 Q And what would you base that opinion on, if

18 you, in fact-- how could you reach that conclusion when

19 you, in fact, did not take the print that is purported

20[inaudible]?

21 A In comparison of the lines and ridges.

22 Q How many lines and ridges-- how many ridges

23 are there in State's Exhibit No. 5, as to the right thumb

24 print?

25 A All of them?

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Q Yes.

MR. PURCELL: Your Honor, I object. It's not properly testing the qualifications of this witness, to testify as to the comparison of prints. She has testified that she compared the two thumb prints and in her opinion, they belong to the same person.

THE COURT: Sustained. That's more a matter of cross-examination in front of a jury, I would think, Counsel.

MR. ROSS: Your Honor, we would object to the admission of State's Exhibit No. 5 for such reason that the witness is not qualified to express an opinion on same.

THE COURT: Overruled.

Bring in the jury.

[At this time, the jury was seated in the jury box, and the following proceedings were held in their presence:]

THE COURT: State's Exhibit No. 5 is admitted into evidence.

[At this time, State's Exhibit No. 5 was received in evidence.]

DIRECT EXAMINATION (CONT'D)

BY MR. PURCELL:

Q. Ms. Davis, you personally compared the fingerprints contained in State's Exhibits 3, 4 and 5 with those contained in State's Exhibit 2?

A. Yes, sir.

Q. There are ten fingerprints in each one of the documents?

A. Yes, sir.

Q. There are ten fingerprints in State's Exhibit 2?

A. Yes, sir.

Q. And you compared each and every one of the prints?

A. Yes, sir.

Q. And based on your experience and training, the fingerprints in each of State's Exhibits 3, 4 and 5 belong to the same person that made the fingerprints on State's Exhibit 2; is that correct?

A. Yes, sir.

Q. And you personally took the Defendant's fingerprints and put them on State's Exhibit 2; is that correct?

A. Yes.

Q. And you personally compared each and every

1 fingerprint?

2 A. Yes, sir.

3 MR. PURCELL: Pass the witness.

4 THE COURT: Cross-examine.

5

6 CROSS-EXAMINATION

7 BY MR. ROSS:

8 Q Ms. Davis, I believe that you testified that
9 you took the prints that appear in State's Exhibit No. 2?

10 A. Yes, sir, I did.

11 Q And what time were those taken?

12 A. Approximately 9:00 o'clock.

13 Q And did you take the prints in State's
14 Exhibit No. 3?

15 A. No, sir, I did not.

16 Q Do you know who took the prints in State's
17 Exhibit No. 3?

18 A. No, sir, I do not.

19 Q Okay. As to State's Exhibit No. 4, did you
20 take the prints that appear in State's Exhibit No. 4?

21 A. No, sir.

22 Q Do you know who took the prints in State's
23 Exhibit No. 4?

24 A. No, sir, I do not.

25 Q Did you take the prints in State's Exhibit

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No. 5?

A. No, sir.

Q. Do you know who took the prints in State's Exhibit No. 5?

A. No, sir, I do not.

MR. ROSS: I'll pass the witness.

MR. PURCELL: No further questions.

THE COURT: You may step down.

[Witness was excused.]

MR. PURCELL: State rests.

THE COURT: Are you ready to proceed?

MR. ROSS: Yes, Your Honor.

THE COURT: Call your first witness.

MR. ROSS: Your Honor, the Defense will rest at this time.

THE COURT: State close?

MR. PURCELL: State closes.

THE COURT: Defense close?

MR. ROSS: Defense closes.

THE COURT: Ladies and gentlemen, that's all of the evidence that you will hear. We will get the charge ready and the lawyers will argue the case. It will probably be about 30 minutes. Would you like