

1. INTRODUCTION

In my capacity as a forensic scientist, I am a Fellow of the Fingerprint Society; an active member of the International Association of Identification; and a member of the Society of Expert Witnesses; and a registrant on the United Kingdom Register of Expert Witnesses. While I was employed by the Metropolitan Police Service, my name was on the register of Fingerprint Experts in England & Wales, which is held at The National Training Centre for Scientific Support to Crime Investigation in Durham, on behalf of the Association of Chief Police Officers.

In 1975, I joined the Metropolitan Police Service at New Scotland Yard as a Fingerprint Officer. I subsequently became an Identification Officer, a new grade that encompassed expertise in fingerprints and forensic scene examination.

I have successfully completed both the basic and advanced fingerprint courses and have become a recognised expert since 1981. In April 1998, I completed a forensic ridgeology course at xxxxxx in the United States. I have given evidence on finger/palm identifications and related matters in various courts in the United Kingdom and the United States, including the United States District Court for the Eastern District of Pennsylvania (Judge Pollack) in Philadelphia.

I have successfully completed the basic and advanced forensic scene examination courses within the Metropolitan Police Service and I have completed five operational tours of duty, examining scenes of crime covering burglary to murder scenes. In 1993, I received a commendation for my outstanding forensic scene examination.

From August 1996 until May 2001, I lectured at the Scientific Support College for the Metropolitan Police Training Establishment in Hendon, England. Subjects included basic fingerprint foundation, advanced fingerprint, cadavers/chemical, and forensic basic awareness courses. I researched forensic ridgeology (quantitative/qualitative analysis) of finger marks for the past three years, which included completing evidence, lecturing and giving advice on all types of finger marks.

I have been an advisor to the XXXXXXXXXXXXXXX (“ACPO”)-led Project Board for fingerprint training which includes ridgeology and designing a ridgeology course for future experts in the U.K.

Since June 2001, I have been employed as an independent consultant and adviser on all fingerprint and forensic scene examination matters.

2. INSTRUCTIONS

I have been instructed by Professor J. Liebman (Columbia University School of Law) to examine the police and forensic investigative reports, photographs transcript of pretrial and trial testimony maintained by the Corpus Christi Police Department, the Nueces County District Attorney’s Office, the Nueces County District Clerk, and the Texas Department of Public Safety in the case of State of Texas v. Carlos De Luna, No. 83-CR-194-A (28th Judicial District, Nueces County) and report my findings on (i) the progression of events during the occurrence of the offense, and (ii) the quality of the police and forensic investigation of the offense.

Your reference: DeLunaTX33

My reference: 52/AJB/04

On the 28th of October 2004, I received the following documents from Professor J. Liebman:

- A copy of the transcript of the pre-trial evidentiary hearing and trial of Carlos DeLuna.
- A copy of the reports on the forensic and other investigation of the case from the Texas Department of Public Safety.
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- 1. Three CD-R Discs containing the following:
 2. CORPUS CHRISTI POLICE DEPARTMENT (C.C.P.D.) police reports.
 3. C.C.P.D. SCENE Photographs.
 - ELECTRONIC SCANS OF THE PHOTOGRAPHS THAT WERE SUBMITTED AS EXHIBITS AT THE TRIAL.

Date of Incident: 4th February 1983.

Victim: Wanda Vargas Lopez

Age: 24.

Height: 5' 3"

Location: Sigmore Diamond Shamrock Gas Station, 2602, South Padre Island Dr., Corpus Christi, TX

Injuries: Fatal stab wound to the left side of the torso

Suspect: Hispanic.

Height: 5' 7" - 5' 9"

Weight: 160 lbs

Items taken (DeLuna) for physical evidence:

- One pair of black trousers.
- One pair of white tennis shoes.
- One long sleeve man's shirt.
- Swabs taken from suspect's face.
- Control Swabs.

All items analysed for blood with a negative result.

3. ANALYSIS

I agree with the reports that the victim was behind the counter at the time of the attack. The assailant was agitated especially when the victim started talking to the Police and WHEN SHE tried to hand the money over to him. Behind the counter there was a red carpet on the floor. I would say this was where most of the action took place.

The victim was stabbed when she was behind the counter. The assailant was still in front of the counter. I qualify this statement, because the petrol switching machine, acted as a barrier for the blood to shoot out, see photograph 6. The assailant might have pushed the victim through the door LEADING FROM THE AREA BEHIND THE COUNTER TO THE SMALL ROOM ON THE NORTHWEST CORNER OF THE BUILDING, there was no sign of the assailant stepping on to the tiled area. The area behind the counter was carpeted, there doesn't appear to be much blood on the same carpet.

The knife probably remained in her body and she possibly pulled the knife out herself, which would have had fatal consequences. First of all [IS THERE A SECOND OF ALL], the blood started to flow more. SECOND OF ALL AND as a result, the floor became wet and slippery (see photo 8). She was wearing flip-flops and could not keep herself steady, which resulted in her falling to the ground, hence the blood splattering on the door LEADING INTO THE SMALL ROOM. Her shoes either fell off when she fell on the floor or she kicked them off.

Photograph 3 shows that the victim had left the premises at the front with no shoes on her feet, as her right plantar was clearly shown in the photograph between the hat stand and the front door.

The suspect did not have had any blood on him whatsoever.

[BOTH EYEWITNESSES REPORT SEEING THE VICTIM AND ASSAILANT "WRESTLING."]
There was no evidence of any wrestling between the assailant and the victim on the tiled surface, if there was, then the assailant would have blood on his clothing. [BUT OUR THEORY IS THAT THIS IS THE WRONG SUSPECT, SO CAN'T INFER FROM BLOOD ON CLOTHING.]

Sometimes, a weapon may not show any blood at all, especially if the victim is wearing a certain amount or type of clothing and wipes the knife as it withdraws from the body. DNA usually proves that the knife would have been in contact with the body fluids.

Sergeant Escobedo was [DELETE WAS] broke all the rules when it came to the scene examination. She should have been wearing clothing and shoe protection. She contaminated the scene and she should not have been in the scene when forensic photographs were taken. The scene examiner and his case was also shown in the photographs. He was not properly protected either and should not have been in the photographs.

4. CONCLUSIONS

There were some big problems with the scene examination for the following reasons:

- DeLuna's clothing should have been checked for fibres from the victim and from the red carpet.
- The victim's clothing should have been taken and checked for HAIRS AND fibres from

the suspect.

- The floor should have been powdered for shoe marks. Any marks found, should have been compared with the suspect. The powder would have also enhanced any latent marks. The tiled floor was an ideal surface for this type of examination.
- If the suspect had pulled the victim's hair, were his fingernails scraped?
- If DeLuna had scratches on his body were THE VICTIM'S fingernails scraped for his blood?
- Was the money recovered from DeLuna chemically treated for fingerprints? It may have had the victim's latent marks on the banknotes.
- The knife should not have been fingerprinted at the scene. It should have gone to the laboratory for dual examination. First of all for blood, then chemically treated for latent marks. It should not have been powdered.
- If the weather condition had showed that it was raining and wet, that would not have eradicated all the blood FROM THE ASSAILANT'S CLOTHING AND SHOES. THE CLOTHING would still be stained and would still show a positive result.
- The fingerprint examination was very poor. The scene examiner treated it as a burglary. The equipment used was of a poor standard for this particular crime. The counter should have been treated possibly with chemicals. The cash till and the victim's chair should have been examined.
- The assailant probably used the excuse of buying cigarettes as a decoy to attack the victim.
- With regard to the chair, the assailant would not have moved the chair by his own volition, but in my opinion, the victim probably tried to hit him with the chair, and he therefore wrestled with it and grabbed hold of it, and put it down in the main area of the shop.

Signed:

Date: 8th November 2004.

ALLAN BAYLE FFS MIAI