

JAMES CURTIS GILES

1 Whereupon,

2 FRED E. MILLIGAN,

3 called as a witness by the Defendant, having been duly sworn
4 by the Court to testify to the truth, the whole truth and
5 nothing but the truth, was examined and testified as follows

6 DIRECT EXAMINATION

7 BY MR. FITZGERALD:

8 Q State your full name, sir.

9 A Fred E. Milligan.

10 Q How old are you?

11 A I am thirty-nine.

12 Q And you are a family man?

13 A [REDACTED]

14 Q Children?

15 A [REDACTED]

16 Q How are you employed?

17 A I am a police officer with the Dallas

18 Police Department.

19 Q How long have you been so employed?

20 A Sixteen years.

21 Q And are you in any particular section

22 today?

23 A Yes, sir.

24 Q What division?

25 A I am an investigator with the Physical

1 Evidence Section of the Identification Division.

2 Q And how long have you been so employed?

3 A I have got nine years in that bureau.

4 Q Now, that is the bureau you are in to-
5 day, is it not?

6 A Yes, sir.

7 Q And in your capacity in that bureau,
8 is it your responsibility to go to the scene of offenses
9 and preserve and protect evidence for future possible use
10 in criminal trials?

11 A Yes, sir.

12 Q Now, may I ask you if you had occasion
13 on August 1, 1982, to go to the location of the Susan and
14 David Law apartment in North Dallas?

15 A Yes, sir.

16 Q And about what time did you arrive at
17 that location?

18 A I arrived there at approximately 1:00
19 A.M.

20 Q And when you arrived there, were you
21 directed to Apartment 107?

22 A Yes, sir.

23 Q And did all of your activities in your
24 professional capacity revolve around that apartment?

25 A Yes, sir.

1 Q When you entered that apartment, what
2 did you have in mind to do?

3 A I went in -- you mean exactly what I
4 did?

5 Q Yes, what did you do?

6 A I went in and first off I looked the
7 scene over. First prior to that, though, I talked to the
8 officer at the scene, found out what had happened. Then I
9 looked the scene over, and after I had done that, I photo-
10 graphed the scene. Then I started to processing various
11 different items in the apartment for fingerprints.

12 Q All right, sir. Did you have occasion
13 to find any fingerprints?

14 A Yes, sir.

15 Q What kind of fingerprints did you find,
16 what type?

17 A I don't understand the question in re-
18 gard to the type.

19 Q Where did you find the fingerprints?

20 A I found some fingerprints on an ash
21 tray and also on a telephone and on a plastic cardholder
22 that was in a billfold.

23 Q That was in a billfold?

24 A Yes, the type that goes in a billfold.

25 Q It wasn't in it, you are saying it

1 could go in it?

2 A Yes, the type that goes in one.

3 Q Okay. What else?

4 A That is the only thing I got any
5 comparable fingerprints from.

6 Q Let me show you what we have had marked
7 as Defendant's Exhibits 2 through 7 and ask you whether
8 these are the photographs that you had occasion to take
9 at the scene, sir?

10 A Yes, sir.

11 Q All right. And you said you took
12 fingerprints off of an ash tray?

13 A Yes, sir.

14 Q Is that shown in the photographs?

15 A Yes, sir.

16 Q Would you step off the witness stand
17 and show us where it is?

18 A (The witness complies.)

19 Q Would you stand over here, sir, and
20 just point to it for the jury?

21 A It is in this photograph here. There
22 is one on the floor here right behind this couch area.

23 Q Okay. You mentioned a telephone.

24 A Yes, it is also in the photo. It is
25 the phone that is sitting over here on the couch.

1 Q All right. Is that the same telephone
2 that was ripped out of the wall or cut or extracted from
3 its mooring?

4 A I don't recall exactly how.

5 Q It wasn't connected?

6 A It wasn't connected.

7 Q And you said a plastic cardholder?

8 A Yes, it is here on this couch among
9 these items here that is one the couch, laying up there
10 where a bunch of that stuff was.

11 Q Okay. Now, you didn't find any other
12 fingerprints; is that right?

13 A No, sir, not -- none comparable.

14 Q Is the type of fingerprints that you
15 found called a latent fingerprint?

16 A Yes, sir.

17 MR. FITZGERALD: May we stipulate that
18 this gentleman is an expert qualified witness or
19 do you want me to qualify him?

20 MR. O'CONNOR: We may so stipulate.

21 THE COURT: Does the Defendant himself
22 personally agree to that stipulation?

23 THE DEFENDANT: Yes.

24 THE COURT: Go ahead.

25 BY MR. FITZGERALD:

1 Q Would you explain what a latent finger-
2 print is?

3 A A latent fingerprint is an unknown
4 print. It is one that a person places upon another object
5 that can be visibly seen without some type of means of
6 either chemical or powder to bring that print out so it
7 can be seen. (Sic)

8 Q You then have to dust the object to
9 see whether something is there?

10 A Yes, sir.

11 Q You just don't wander around. If you
12 can't see it, you have got to put something on it?

13 A Yes, sir.

14 Q Did you do that in each area of the
15 apartment that you believed might have a fingerprint of
16 some nature on it?

17 A I processed various different items
18 within those two rooms of that apartment.

19 Q So the answer is, "Yes?"

20 A Yes.

21 Q All right. The fingerprints that you
22 lifted off the telephone, how many prints did you actually
23 obtain?

24 A I don't recall exactly how many. It
25 was on one of the cards -- a little three by five card

1 that we placed the latent prints on. To say there are
2 three or four prints on that one card is hard. I don't
3 recall exactly how many different prints on that one card
4 there would be.

5 Q Let me ask you this: You talked to
6 me for the first time a few minutes ago, didn't you?

7 A Yes, sir.

8 Q You were asked to come down here by
9 the prosecution, weren't you?

10 A Yes, sir.

11 Q I didn't subpoena you, did I?

12 A No, sir.

13 Q You have talked to Mr. O'Connor, haven't
14 you?

15 A Yes, sir.

16 Q You know that your presence was asked
17 down here in conjunction with the trial of James Giles,
18 don't you?

19 A Yes, sir.

20 Q Did you have occasion to review your
21 records so you would be in a position to testify about the
22 fingerprints?

23 A Yes, sir.

24 Q Can you give me an idea as to how many
25 prints actually were deposited on that telephone?

1 A No, I don't recall exactly how many
2 prints other than the lift was made and placed on a card.

3 Q And did you make an effort thereafter
4 to -- was there enough there to compare later with the
5 prints of another individual to see if they matched?

6 A Yes, sir.

7 Q Did you in fact match them or attempt
8 to match them with those fingerprints of James Giles?

9 A Yes, sir.

10 Q Did they match?

11 A No, sir.

12 Q The prints that were on the telephone,
13 can you tell whether they were from the right or left hand?

14 A No, sir.

15 Q Can you tell, if there was more than
16 one print, whether they were necessarily all made by one
17 person?

18 A No, sir.

19 Q Did you compare the prints on the
20 phone with the prints of the occupants of the apartment?

21 A No, sir.

22 Q So you don't know whether they belong
23 to Susan Law or David Law?

24 A No, sir.

25 Q With regard to the prints on the ash

1 tray and the plastic cardholder, were they sufficient to
2 enable you to attempt to match them to another identifiable
3 set of fingerprints?

4 A Yes, sir.

5 Q And did you attempt to match those
6 also with those of James Giles, the Defendant?

7 A Yes, sir.

8 Q And did they match?

9 A No, sir.

10 Q Were there any fingerprints lifted
11 from that Apartment 107 belonging to [REDACTED] -- were
12 there any fingerprints lifted there from that apartment
13 belonging to James Giles?

14 A Not to my knowledge, sir.

15 Q Who is responsible for taking items
16 out of the apartment which might be evidence in a case?
17 For instance, if there is a rape and it happens on a blanket
18 or a sleeping bag, would you be the one to direct it be
19 taken or would someone else?

20 A I would.

21 Q Did [REDACTED] ever indicate to you --
22 did you talk to her, by the way?

23 A No, sir.

24 Q Do you know whether an indication was
25 ever made by her that the very dress that she was wearing

1 when she returned to the apartment that night was placed
2 on the ground and that she was sexually abused on top of
3 that dress?

4 A I did not know about that, sir.

5 Q You did take the sleeping bag, though,
6 didn't you, or order it to be taken -- that was on top of
7 the bed?

8 A Something on top of the bed I took.

9 Q Okay. Now, have I covered substan-
10 tially what your investigation has yielded?

11 A Yes, sir.

12 MR. FITZGERALD: Pass the witness.

13 CROSS-EXAMINATION

14 BY MR. O'CONNOR:

15 Q Officer Milligan, did you try to get
16 some other prints or try to lift latent prints from other
17 objects there in the house?

18 A Yes, sir.

19 Q What other objects?

20 A There was the -- I don't recall exactly
21 all of the objects, but there was an object laying on the
22 couch -- on the coffee table.

23 Q Do you recall anything in the bedroom,
24 the stereo and dresser, perhaps?

25 A Yes, I processed the -- some stuff in

1 there -- the dresser drawers and the top of the dresser.

2 Q What about entrances and exits from
3 the house, door knobs and that type of thing?

4 A The door facing, I processed on that
5 back door.

6 Q And were you able to lift any prints
7 from those objects?

8 A No comparable prints.

9 Q Is that unusual for you to go to a
10 crime scene and not be able to lift comparable prints from
11 objects?

12 A Not very unusual, no.

13 Q Would it be fair to say that any time
14 you go to a crime scene and attempt to lift prints, that
15 you are going to be able to lift some prints that somebody
16 has left at a location?

17 A Not all the time, sir.

18 Q The prints that you were able to lift
19 from the objects you were able to lift the prints from,
20 you have no idea who those belong to, is that correct?

21 A No, I do not know.

22 Q They could have belonged to [REDACTED]
23 or [REDACTED] or some neighbor down the street or they
24 could have belonged to virtually anybody, as far as you
25 know, except not to Giles which you compared them with,

1 correct?

2 A Correct.

3 Q Would you describe just briefly the
4 process of taking latent prints from an object, specifically
5 a telephone?

6 A I would take the suspected item and
7 place a powder substance on it by using a brush. I would
8 take the brush and place it in the powder and then take
9 the brush and place it on the object lightly and the powder
10 itself would adhere to the latents if it has some on it.
11 Then I would look at the latent, take a transparent tape,
12 place it on the latent, lift it off the object and then
13 place it on a three by five contrasting colored card.

14 Q All right, officer. Do you recall --
15 well, strike that and let me ask you this: You mentioned
16 the term "comparable prints." What makes a print a comparable
17 print?

18 A A comparable print is a latent print
19 that has enough points of comparison on it to establish
20 that it belongs to a certain individual.

21 Q Would it be fair to say, officer, that
22 when you dusted the telephone for prints -- you testified
23 earlier you were able to find some comparable prints. Did
24 you also find some noncomparable prints?

25 A Yes, sir.

1 Q Smudges and that type of thing?

2 A Yes, sir.

3 Q Did you -- is there any way to compare
4 partial prints or smudged prints, that type of thing, with
5 the normal prints of a person and in any way determine if
6 they were made by the same person?

7 A There is no way, to my knowledge, that
8 it can be done.

9 Q And you did -- when you dusted that
10 telephone, did you find some prints that were not compar-
11 able and some smudges -- other types of prints besides the
12 ones you were able to lift; is that correct? (Sic)

13 A There was other smudges and stuff on
14 it.

15 Q So would it be a fair statement that
16 somebody could have handled that phone and you would not
17 be able to lift their prints from it?

18 A It is possible.

19 Q Would it be unusual for that to happen?

20 A No, sir.

21 Q So it would be totally within the realm
22 of possibility and would happen -- what percentage of the
23 time would -- if you are able to give a percentage of the
24 time -- would you say you are able to lift a print from an
25 object like that?

1 A A higher percentage I would say. You
2 know, in my personal experience, it is around sixty to
3 seventy percent of the time that you will not get any
4 comparable prints off of an object.

5 Q So if you boil it down, Officer
6 Milligan, would it also be a fair statement that when you
7 compared the prints that you lifted with the prints you
8 were told were from a man named James Giles -- would it be
9 a fair statement that the person that made the prints that
10 you were told were James Giles' prints that you compared
11 with the ones you lifted -- let me strike that and let me
12 rephrase it. Would it be possible for somebody to have
13 made prints on the telephone or on other objects in that
14 house and you were just not able to pick them up?

15 A Yes, sir.

16 Q Would that be unusual at all?

17 A No, sir.

18 Q Would that be even more probable,
19 based upon your experience, than the probability that you
20 would be able to --

21 MR. FITZGERALD: To which we object.
22 That calls for speculation, not boils down to
23 this case.

24 THE COURT: Read it back, Mr. Hardy.
25

1 (Whereupon, the last question
2 was read back by the Court
3 Reporter.)
4

5 THE COURT: I will sustain it right
6 there.

7 MR. O'CONNOR: I believe I rephrased
8 the question after that, but I will rephrase it
9 again.

10 BY MR. O'CONNOR:

11 Q Officer Milligan, is it possible, if
12 not probable, that James Giles or some person could have
13 been in an apartment on August 1, 1982, and left prints
14 that you were not able to pick up?

15 A Yes, sir.

16 MR. O'CONNOR: That is all I have.

17 THE COURT: Anything further of this
18 witness?

19 MR. FITZGERALD: No, sir.

20 THE COURT: May he be excused?

21 MR. O'CONNOR: No objection.

22 MR. FITZGERALD: Let me ask him another
23 question.

24 REDIRECT EXAMINATION

25 BY MR. FITZGERALD:

1 Q How many smudges did you lift off of
2 the telephone?

3 A I don't know. I don't have the cards
4 with me, sir.

5 Q You have no idea?

6 A No, sir.

7 Q But you do know that you did definitely
8 lift several latent fingerprints from the objects there
9 and that they definitely did not belong to Mr. Giles?

10 THE COURT: Isn't that repetitious?

11 MR. FITZGERALD: Yes, but he didn't
12 object.

13 MR. JARVIS: We will object.

14 MR. FITZGERALD: No further questions.

15 MR. O'CONNOR: No questions.

16 THE COURT: Thank you.

17 MR. FITZGERALD: We will call Mr.

18 Robinson.
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1 Whereupon,

2 G. R. ROBINSON,

3 called as a witness by the Defendant, having been duly
4 sworn by the Court to testify to the truth, the whole
5 truth and nothing but the truth, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. FITZGERALD:

9 Q Would you state your name, please, sir?

10 A G. R. Robinson.

11 Q And how are you employed?

12 A Investigator with the Dallas Police

13 Department.

14 Q How long have you been so employed?

15 A Twenty years.

16 Q To what section are you assigned?

17 A Crimes Against Persons Section.

18 Q Did you have occasion to have a very
19 limited contact in the investigation in this case, sir?

20 A Yes, sir, I did.

21 Q Was there a Mrs. Hovey who was the in-
22 vestigator primarily assigned to the case?

23 A Yes, sir.

24 Q Did she have occasion to ask you to
25 present certain photographs to [REDACTED] and [REDACTED]?

1 A Yes, she did.

2 Q Do you remember the date?

3 A No, sir. It was in October of last

4 year but I don't know the date.

5 Q Could it have been the latter part of

6 August, in the neighborhood of August 27, 1982?

7 A I am really not sure, sir. I was

8 working evenings.

9 Q Do you have any records down here that

10 could help us with the date?

11 A No, sir, I don't.

12 Q Were you requested to show certain

13 photographs to the [REDACTED]?

14 A Yes, sir, I was.

15 Q And did you do that at the Courthouse?

16 A I did it at the Police and Courts

17 Building, down at our office.

18 Q And were both of them present when

19 they were shown?

20 A Yes, sir, they were.

21 Q And who went through the photographs

22 first?

23 A Mr. [REDACTED].

24 Q And did you tell him anything before

25 he looked at them?

1 A Nothing except to look through there
2 and see if he saw anyone he recognized.

3 Q Did he do that?

4 A He looked through them.

5 Q How did he look through them?

6 A He just went through them and looked
7 at them one at a time.

8 Q Did he identify anybody positively
9 as the person who raped his wife?

10 A No, sir, he did not.

11 Q Did he hand his wife the photographs
12 or you the photographs?

13 A He handed them to his wife.

14 Q What was his wife doing as he was look-
15 ing at the photographs?

16 A She was sitting on the other side of
17 the room.

18 Q Was she looking at him or away from
19 him or within earshot?

20 A No, I instructed her to look the other
21 way.

22 Q So she was what, ten feet away from
23 him?

24 A I wouldn't think quite that far. Prob-
25 ably maybe more like six or seven feet.

1 Q Okay. And then what did you do?
2 A Well, I watched Mrs. [REDACTED] go through
3 the pictures.
4 Q And how did she do that?
5 A One at a time.
6 Q Did she hesitate at any time over any
7 photograph?
8 A Yes, she did.
9 Q Which one?
10 A Of the Defendant Giles.
11 Q All right. And did she look through
12 all of them?
13 A Yes, sir, she did.
14 Q Did you direct her to look through all
15 of them when she hesitated?
16 A No, I didn't.
17 Q Your instructions, I take it, were
18 simply, "Look through those photographs and see if you
19 recognize the person or persons involved in the criminal
20 offense?"
21 A My instructions were to look through
22 the pictures and see if she saw anyone she recognized.
23 Q She picked out Mr. Giles' photograph,
24 did she not?
25 A Yes, she did.

1 Q Do you recall any statement being made
2 by Mr. [REDACTED] after she did that with regard to the identifi-
3 cation of Mr. Giles?

4 A The only thing I can remember him say-
5 ing is something like, "I couldn't be sure."

6 Q Who said that?

7 A Mr. [REDACTED].

8 Q I am going to show you State's Ex-
9 hibits 1 through 6, 6 being Mr. Giles' photograph, sir,
10 I think.

11 A Yes, it is.

12 Q May I assume that you didn't have the
13 custody of all of those photographs after you did the
14 identification? Did you give them back to Mrs. Hovey?

15 A Yes, sir, I did.

16 Q And you didn't preserve them one way
17 or the other?

18 A No, sir.

19 Q Would you recognize that as one of
20 the photos that were shown?

21 A Yes, sir.

22 Q How about the rest of them? Do you
23 have an idea one way or the other?

24 A I have no idea.

25 MR. FITZGERALD: Pass the witness.

1 THE COURT: Anything further?

2 MR. O'CONNOR: I think just maybe one
3 or two questions, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. O'CONNOR:

6 Q Mr. Robinson, do you recall anything
7 else Mr. [REDACTED] said when he -- well, when he handed -- when
8 Mr. [REDACTED] handed the photographs to [REDACTED] and after she
9 completed her view of them and picked one out, you said
10 you heard him say that he just couldn't be sure. Do you
11 remember anything else about the conversation?

12 A No, I don't.

13 Q To your knowledge, you don't remember
14 him saying anything about, "Well, I thought that was him,"
15 or, "I picked that one, too, but I just wasn't sure," or
16 anything like that?

17 A I don't distinctly remember anything
18 like that.

19 Q Was it your understanding that Mr.
20 [REDACTED], in your investigation of the case, during most of the
21 commission of the offense was prone on the floor with his
22 face down?

23 A Yes, sir.

24 MR. FITZGERALD: To which we object
25 unless he has personal knowledge, Your Honor.

1 THE COURT: Sustained.

2 BY MR. O'CONNOR:

3 Q When [REDACTED] was looking through the
4 photos that you showed her, were you watching her?

5 A Yes, sir, I was.

6 Q Did you notice any expression on her
7 face or any unusual activity on her part when she came
8 across the photo that she identified?

9 A Yes, when she got to Mr. Giles' picture,
10 she stopped and looked at it longer than the others and
11 she had what I would consider a look of recognition.

12 Q And then did she continue to go through
13 the other photos?

14 A Yes, she did.

15 Q When she did say, "That photograph is
16 him. I recognize this one," was there any hesitation in
17 her voice about that?

18 A No, there wasn't.

19 Q To your knowledge, was there any prior
20 relationships existing between the person she identified
21 and herself?

22 A Not that I know of.

23 MR. O'CONNOR: That is all. Thank you.

24 THE COURT: May he be excused?

25 MR. O'CONNOR: No objection.