

1 effect the background is having on this fingerprint  
2 that you're looking at, right?

3 A. Correct.

4 Q. And whether or not the surface is clean or  
5 dirty is going to effect how that print ends up  
6 being, right?

7 A. Correct.

8 Q. And the fact of the matter is, that when  
9 someone leaves a fingerprint, whether it's a latent  
10 print or 10 print card, you've got the situation  
11 where pressure is being applied, right?

12 A. Correct.

13 Q. So the skin is being stretched out one way or  
14 the other on the finger when that's being deposited,  
15 right?

16 A. Correct.

17 Q. And the deposit might be very brief with very  
18 little pressure or might be a lot of pressure say  
19 with a roll print when someone else is pushing down  
20 on someone else's finger?

21 A. Correct.

22 Q. So that's also going to effect how the  
23 fingerprint appeared and try to be valued and figured  
24 out?

25 A. Correct.

1 Q. Would it be accurate to say that when it comes  
2 to the area of fingerprint examination, that there  
3 are no established error rates for that discipline of  
4 science?

5 A. Can you explain what you're asking?

6 Q. You have people doing examinations, correct?

7 A. Correct.

8 Q. And sometimes people can make mistakes when  
9 they do them, right?

10 A. Correct.

11 Q. But the fact of the matter is, is that when it  
12 comes to fingerprint examination, that branch, that  
13 discipline, has never established an error rate, what  
14 the average error rate is going to be across the  
15 board, right?

16 A. Correct.

17 Q. And in fact the Department of Justice conceded  
18 that and started saying we need to start testing for  
19 this sort of thing, right?

20 A. I didn't hear that.

21 Q. Are you aware that in March of 2000 the Ohio  
22 Department of -- the U.S. Department of Justice sent  
23 out a solicitation to forensic friction ridge  
24 examination people to set up an evaluation study of  
25 fingerprint examination?

1 A. I wasn't aware.

2 Q. So clearly you aren't aware that established  
3 any kind of error rates since then, right?

4 A. Correct.

5 MS. TYLEE: If I might have  
6 one moment, Your Honor?

7 THE COURT: You may.

8 Q. Just a couple of more questions, ma'am.

9 You indicated that on the occasions of both  
10 your examinations of prints in this case that the  
11 national -- the Ohio link to the national database,  
12 that computer was down, correct?

13 A. Yes.

14 Q. Have you -- is it still down?

15 A. No. It's up and running.

16 Q. Have you done any kind of comparison or work  
17 or submitted any of these prints to the AFIS computer  
18 since the work that you did in September of 2006?

19 A. This case?

20 Q. Yes.

21 A. No.

22 Q. And by the way, were you ever asked to do any  
23 kind of an examination for fingerprints of a weapon,  
24 a pellet or a shell casing in this case?

25 A. No.

1 Q. Just what you presented to us today?

2 A. Yes.

3 MS. TYLEE: Thank you very  
4 much.

5 Nothing further, Your Honor.

6 THE COURT: Mr. Glenn.

7 MR. GLENN: Thank you, Your  
8 Honor.

9 CROSS-EXAMINATION OF BARBARA KUSZNIR

10 BY MR. GLENN:

11 Q. Ms. Kuzsnir, is that correct?

12 A. Yes.

13 Q. Good morning. My name is Douglas Glenn and  
14 I'm one of the attorneys that represents Richard  
15 Segines.

16 A. Okay. Good morning.

17 Q. How are you doing?

18 A. Good. How are you?

19 Q. Let's talk about the Ford Escort and the  
20 fingerprints that you obtained.

21 I believe you testified that one fingerprint  
22 was identified that was taken from the Ford Escort,  
23 it was identified as being Richard Segines', is that  
24 correct?

25 A. Yes.

1 Q. Where was that print located?

2 A. The driver's side rear wing window.

3 Q. Was that print located on the inside or the  
4 outside of the window?

5 A. I don't know.

6 Q. Now, I believe you indicated that the time  
7 sequence for the amount of time that a fingerprint  
8 may exist depends on the surface that's touched, is  
9 that correct?

10 A. Surface environment.

11 Q. And that particular fingerprint from the Ford  
12 Escort was obtained from a piece of glass window,  
13 glass in the car, is that correct?

14 A. Yes.

15 Q. Would you consider the glass to be a hard,  
16 smooth surface?

17 A. Yes.

18 Q. Can you tell me how long that fingerprint may  
19 have existed on that particular glass, whether it was  
20 from the inside or the outside, which we don't know,  
21 do we?

22 A. No.

23 Q. Now let's talk about the Ford van. You  
24 received latent prints that were taken or lifted from  
25 the Ford van and sent to you for comparison?

1 A. Yes.

2 Q. And you compare all those prints to that you  
3 received to the fingerprints of Richard Segines,  
4 correct?

5 A. Yes.

6 Q. And your conclusion was that none of those  
7 fingerprints that were submitted, that were taken  
8 from the Ford van, were those of Richard Segines,  
9 correct?

10 A. Correct.

11 Q. The only print that you found at the Ford van  
12 was that you could compare to that of Harry Briscoe,  
13 correct?

14 A. Correct.

15 Q. And the print was found on the passenger side  
16 of the Ford van?

17 A. Passenger door.

18 MR. GLENN: Thank you.

19 I have nothing further.

20 THE COURT: Mr. Dever.

21 MR. DEVER: Just a few more  
22 questions.

23 REDIRECT EXAMINATION OF BARBARA KUSZNIR

24 BY MR. DEVER:

25 Q. As far as being subject to peer review, you

1 have a very responsible position, is that correct?

2 A. Correct.

3 Q. And often times you are gathering evidence, or  
4 your opinions are used as evidence in cases just like  
5 this one, is that correct?

6 A. Correct.

7 Q. Now, at any time while this case was pending  
8 up until today, did anybody from outside of your lab  
9 come and visit to check your work?

10 A. Yes.

11 Q. Tell us about that.

12 A. The defendant.

13 MS. TYLEE: Objection.

14 Q. Make it more specific. Did experts for the  
15 defense come over and look at your -- at what you  
16 did?

17 MS. TYLEE: Objection.

18 Your Honor, can we approach?

19 THE COURT: Sustained.

20 MR. DEVER: Your Honor, can  
21 we approach?

22 THE COURT: I guess you can.

23 - - - - -

24 (The following proceedings were held out  
25 of the presence of the Jury at sidebar.)

1 - - - - -

2 THE COURT: Mr. Dever, I  
3 made a ruling denying the defense's request  
4 for independent expert on issue of  
5 fingerprints.

6 MR. DEVER: No, you didn't.  
7 There was an expert from -- former retired  
8 member of the Alcohol Tobacco and Firearms and  
9 expert from Cincinnati by the name of Connor,  
10 along with Ms. Webb, who visited SIU and made  
11 an independent comparison of all of these  
12 fingerprints, the latents and the known  
13 prints, Briscoe, Segines and Dockery.

14 And we think that it's misleading to  
15 this jury to seem to think that her opinion  
16 was not scrutinized or verified by the own  
17 defense experts. So that's why we asked to  
18 approach the bench, is to make the jury aware  
19 that that took place.

20 THE COURT: You have an  
21 independent review of the prints?

22 MS. TYLEE: Your Honor, I  
23 don't believe that the defense -- defense is  
24 required to have any discussions about the  
25 nature of our investigation in the case,



1 unless we're presenting evidence.

2 THE COURT: I'm asking you a  
3 question. Did you have an independent review  
4 of the prints?

5 MR. REIN: Judge, this is  
6 all work product.

7 MR. DEVER: Come on. So  
8 they can mislead the jury?

9 MR. REIN: I'm not  
10 misleading the jury. Cross-examination and  
11 testing her as an expert.

12 Everything we've done separately,  
13 independently, judge, is work product and  
14 covered by privilege.

15 MR. DEVER: It's not  
16 privileged. She was there.

17 Can I finish, please?

18 THE COURT: I'm not asking  
19 you to give me the report, I just want to know  
20 whether you had one or not, folks. I'm  
21 waiting.

22 This is not funny.

23 MS. TYLEE: Your Honor, I  
24 don't think it's funny.

25 THE COURT: Why are you

1 laughing?

2 MR. REIN: We're not  
3 laughing, judge.

4 MR. DEVER: We just went 15  
5 minutes of a dog and pony show about we may or  
6 may not rely and nobody checking her work, and  
7 they checked her work. And the --

8 THE COURT: We're going to  
9 take a recess at this point.

10 - - - - -

11 (The following proceedings were held in open  
12 court and in the presence of the Jury.)

13 - - - - -

14 THE COURT: Ladies and  
15 gentlemen, we're going to take our morning  
16 recess at this point. Leave your notepads  
17 face down. You can step out.

18 All rise.

19 - - - - -

20 (The following proceedings were had in open  
21 court and out of the presence of the jury.)

22 - - - - -

23 THE COURT: Everyone can be  
24 seated.

25 Don't talk to anybody about your

1 testimony while we're on break.

2 Okay. What question were you posing  
3 again?

4 MR. DEVER: Judge, I wanted  
5 to establish with this witness that an  
6 individual on behalf of the defense, Charles  
7 M. Connor, who is a latent fingerprint  
8 examiner, retired Bureau of Alcohol Tobacco  
9 and Firearms, life member of the International  
10 Association of Identification, and an officer  
11 of the Ohio Identification Officers  
12 Association, along with Ms. Webb, went over to  
13 the Cleveland Police Department Scientific  
14 Investigative Unit, viewed all of these items,  
15 and had an opportunity to independently review  
16 and evaluate them.

17 And I think that the jury should be  
18 aware of that. Multiple questions concerning  
19 peer review and validity of what she was doing  
20 and whether anybody checked her work. I think  
21 it's misleading to the jury to see this thing,  
22 that's what transpired here, there were no  
23 safeguards put in place to assure that what  
24 she was testifying to had been checked by  
25 others.

1 THE COURT: So according to  
2 your version, this Mr. Connor came over to the  
3 Cleveland SIU fingerprint lab?

4 MR. DEVER: Along with  
5 Ms. Webb. Yes.

6 MR. NICHOL: Your Honor, I  
7 walked them over.

8 THE COURT: This witness  
9 will be able to testify that they were there?

10 MR. DEVER: Yes, she was  
11 there, as well.

12 THE COURT: I want to know  
13 firsthand observations she had regarding  
14 Mr. Connor's work.

15 MR. DEVER: She was there,  
16 she presented the items for Mr. Connor to do  
17 the checking, provided the laboratory facility  
18 itself, and was there throughout the entire  
19 examination.

20 THE COURT: Does she know  
21 who Mr. Connor was or why Mr. Connor was  
22 there?

23 MR. DEVER: Yes. Mr. Nichol  
24 arranged the whole thing.

25 MR. NICHOL: She knows. She

1 knows he was defense expert. She was  
2 introduced to Terri Webb. When she  
3 received them they set up a room for him to  
4 look at prints, to do his own investigation of  
5 what she had done.

6 THE COURT: Are you going to  
7 be calling Mr. Connor?

8 MS. TYLEE: No, Your Honor.

9 THE COURT: Okay. You can  
10 inquire in that line. But she cannot give an  
11 opinion as to Connor's opinion obviously.

12 MR. DEVER: Right, Your  
13 Honor.

14 MS. TYLEE: Your Honor?

15 THE COURT: Anything else  
16 before we take a break?

17 MR. DEVER: No, Your Honor.  
18 Thank you.

19 MS. TYLEE: Your Honor, we  
20 would just -- I would suggest to the  
21 prosecutor's questions, I asked in the course  
22 of establishing her credentials, the  
23 prosecutor elicited she had gone to a  
24 particular school, then followed up with  
25 particular things, then subject to peer

1 review.

2 What I asked her was to establish the  
3 difference between having someone else in your  
4 laboratory check your results in a particular  
5 case, which she testified about, and some kind  
6 of review process where on a yearly basis or a  
7 biyearly basis they're basically tested by  
8 some outside agency, and that's what I asked  
9 her about. She said, no, that didn't happen,  
10 yes, there were people who would review.

11 THE COURT: What is your  
12 point?

13 MS. TYLEE: My point is,  
14 that I think that the prosecutor is twisting  
15 those questions in an attempt to get in  
16 information from Mr. -- information relating  
17 to Mr. Connor. And I don't think that the  
18 subject -- the questions -- the subject was  
19 whether or not there's some kind of outside  
20 proficiency testing, which she said doesn't go  
21 on and she indicated that, yes, there's  
22 certification, and, no, she isn't certified.  
23 But I don't think that goes to anything.

24 THE COURT: Ms. Tylee, you  
25 went well beyond that. Perhaps you're getting

1 your questions with the blowup and those  
2 items -- you spent at least 15 minutes during  
3 the cross-examination doing things other than  
4 questioning her credentials, calling into  
5 question her entire identification. You may  
6 have walked a tight line as to whether you  
7 potentially were misleading the trier of fact.  
8 I'm not going to make a decision on that now.  
9 But Mr. Dever is clearly entitled to follow up  
10 on this issue.

11 MR. REIN: Judge, may I put  
12 one thing on the record, please, in regards  
13 to --

14 THE COURT: This is  
15 Ms. Tylee. I told you at the start of the  
16 trial there's no tag team objections.

17 MR. REIN: Just for the  
18 record, please?

19 Again, this violates our client's  
20 right under the U.S. and Ohio Constitution so  
21 that --

22 THE COURT: Mr. Rein, it  
23 doesn't violate your client's rights.

24 I'm taking my break.

25 - - - - -

1 (Recess taken.)

2 - - - - -

3 (The following proceedings were held in open  
4 court and in the presence of the Jury.)

5 - - - - -

6 THE COURT: Everyone, please  
7 be seated.

8 You may retake the stand.

9 Mr. Dever, redirect.

10 REDIRECT EXAMINATION OF BARBARA KUSZNIR

11 BY MR. DEVER:

12 Q. Anybody from outside come over to your  
13 laboratory to take a look at your work?

14 A. Yes.

15 Q. Who is that?

16 MS. TYLEE: Objection.

17 THE COURT: In this case?

18 MR. DEVER: In this case,

19 yes.

20 A. Yes.

21 Q. Who that was?

22 MS. TYLEE: Objection.

23 THE COURT: Overruled.

24 A. I believe his name was John Connors.

25 Q. And who was Mr. Connors?



1 MS. TYLEE: Objection.

2 THE COURT: Overruled.

3 A. He is considered to be a fingerprint expert  
4 from the ATF who's retired.

5 Q. And did Mr. Connors come over there with  
6 anyone else?

7 MS. TYLEE: Objection.

8 THE COURT: Overruled.

9 A. Yes.

10 Q. Who was that?

11 A. The lawyer wearing --

12 MS. TYLEE: Objection.

13 THE COURT: Overruled.

14 A. The lawyer --

15 THE COURT: Note a  
16 continuing line of objection.

17 MS. TYLEE: Thank you, Your  
18 Honor.

19 A. The lawyer wearing the pink sweater. I'm not  
20 sure of her name.

21 Q. Terri Webb?

22 A. Yes.

23 Q. So Mr. Connors and Terri Webb came over to  
24 take a look at what you had done, is that correct?

25 A. Yes.

1 Q. Did you make everything available to them?

2 A. Yes.

3 Q. Did you create a space for them to review  
4 these things?

5 A. Yes.

6 Q. And those items that you have in front of you,  
7 the known fingerprint cards, Briscoe, Dockery,  
8 Segines, were those available?

9 A. Yes.

10 Q. Then as well as all of these latent  
11 fingerprints?

12 A. Yes.

13 Q. Okay. Did you hurry them in any way?

14 A. No.

15 Q. Did they have enough time to do whatever they  
16 needed to do?

17 A. Yes.

18 Q. You had indicated that your work was checked  
19 by someone else in the office, is that correct?

20 A. Yes.

21 Q. Had your work been checked by that other  
22 person prior to Ms. Webb, Mr. Connors coming over to  
23 visit?

24 A. Correct.

25 Q. So as you sit here today, are you confident to

1 a reasonable degree of scientific certainty and in  
2 your opinions that you have given to the ladies and  
3 gentlemen of the jury?

4 A. Yes.

5 Q. Looking at these latent cards that are there,  
6 the latent prints and the known cards, why is it  
7 difficult for a lay person to make those kind of  
8 comparisons?

9 A. It takes years of training to identify  
10 fingerprints. They can be very difficult especially  
11 when you're looking at reverse ridges.

12 Q. Now, as it relates to the Briscoe latent  
13 fingerprint pulled off of the claimed to be van, did  
14 you have enough points of comparison to make that  
15 identification?

16 A. Yes.

17 Q. How many points of comparison did you have?

18 A. Approximately 16.

19 Q. Sixteen. So your threshold is seven to  
20 twelve?

21 A. Yes.

22 Q. Now, the database that's maintained by the  
23 FBI, do you know what the quantity of that database  
24 is?

25 A. No.

1 Q. Do you know how long that database has been in  
2 existence?

3 A. No.

4 Q. When you first joined the Cleveland Police  
5 Department Scientific Investigative Unit what year  
6 was that?

7 A. 1997.

8 Q. The database existed in 1997?

9 A. Local one?

10 Q. No. The FBI, the national database.

11 A. Yes.

12 Q. And it's been maintained ever since, is that  
13 correct?

14 A. We don't have access to the FBI, we have it to  
15 the state.

16 Q. The state database, is that tied into the  
17 national database?

18 A. Not from our terminal.

19 Q. I'm asking you, as far as your knowledge of  
20 these databases that are maintain on fingerprints.

21 A. Yes.

22 Q. And they're all linked nationally, is that  
23 correct?

24 A. The state is, yes.

25 Q. All right.

1 MR. DEVER: Thanks very  
2 much.

3 THE COURT: Ms. Tylee,  
4 anything else?

5 MS. TYLEE: Yes, Your Honor.

6 RECROSS-EXAMINATION OF BARBARA KUSZNIR

7 BY MS. TYLEE:

8 Q. You indicated that Ms. Webb came over to your  
9 laboratory?

10 A. She assisted Connors.

11 Q. In fact she was never in the room with  
12 Mr. Connors, was she?

13 A. No. She brought him over to it.

14 Q. But she wasn't allowed to go in the separate  
15 room with him, was she?

16 A. I don't know if they asked her if she wanted  
17 to go. She brought him and waited in the hallway.

18 Q. So she wasn't -- when you talk about them  
19 being in the room, they were in this -- they were --  
20 that she was out in the hallway, right?

21 A. Yes.

22 Q. And again there is such a thing as  
23 certification for fingerprint people, correct?

24 A. Yes.

25 Q. And you are not certified, correct?

1 A. Correct.

2 MS. TYLEE: Thank you very  
3 much.

4 THE COURT: Mr. Glenn?

5 MR. GLENN: No questions,  
6 Your Honor.

7 THE COURT: Mr. Dever?

8 REDIRECT EXAMINATION OF BARBARA KUSZNIR

9 BY MR. DEVER:

10 Q. Just to be sure, Mr. Connors who came over on  
11 behalf of -- was in fact certified, is that correct?

12 MS. TYLEE: Objection.

13 A. Correct.

14 THE COURT: Overruled.

15 Anything else, Ms. Tylee?

16 MS. TYLEE: Nothing else,  
17 Your Honor.

18 MR. GLENN: No, Your Honor.

19 THE COURT: Okay. You may  
20 step down. Thank you.

21 \* \* \* \* \*

22 \* \* \* \* \*

23 \* \* \* \* \*

24

25

C E R T I F I C A T E .

1  
2 I, Gregory L. Koterba, Official Court  
3 Reporter for the Court of Common Pleas,  
4 Cuyahoga County, Ohio, do hereby certify that  
5 as such reporter I took down in stenotype all  
6 of the proceedings had in said Court of Common  
7 Pleas in the above-entitled cause; that I have  
8 transcribed my said stenotype notes into  
9 typewritten form, as appears in the foregoing  
10 Partial Transcript of Proceedings; that said  
11 transcript is a partial record of the  
12 proceedings had in the trial of said cause and  
13 constitutes a true and correct Partial  
14 Transcript of Proceedings had therein.  
15  
16  
17

18 -----  
19 Gregory L. Koterba, RPR  
20 Official Court Reporter  
21 Cuyahoga County, Ohio  
22  
23  
24  
25