

THE STATE OF TEXAS)(

COUNTY OF TARRANT)(

Before me the undersigned notary public in and for the State and County aforesaid, on this day appeared Fred Pendergraf, who after being duly sworn deposes and says:

My name is Fred Pendergraf. I am 55 years old and my date of birth is 12-7-44. My work address is 131 East Exchange Avenue, Suite 216, Fort Worth, Texas 76106. My office phone number is 817-336-8999. I have completed 16 years of schooling. I can read, write, and understand the English language. I am a Private Investigator, State of Texas License #A-09111.

In February, 2000, I was retained by Mr. Richard Alley to assist in the investigation of the David Lynn Carpenter case.

In reviewing the Trial Transcripts from the Capital Murder Trial of David Lynn Carpenter, I noticed in Volume 31, Exhibits 1-6, that all of the Exhibits appear to be photographs taken by a Law Enforcement agency, assumed to be the Dallas Police Department or the Dallas County Sheriff's Office.

Exhibit #1 appears to be a photograph of the defendant, David Lynn Carpenter. The photograph has what appears to be height bars in the background. On what is believed to be the back of the photograph are two names with dates and times:

M. McBay 10-27-97 12:23 p.m.	Signed
T. Rainey 10-28-97 10:57 a.m.	Printed

Exhibit #2 is a photograph of a White Male. Identity is unknown.

Exhibit #3 is a photograph of a White Male. Identity is unknown.

Exhibit #4 is a photograph of a White Male. Identity is unknown.

Exhibit #5 is a photograph of a White Male. Identity is unknown.

Exhibit #6 is a photograph of a White Male. Identity is unknown. The photograph has the height bars in the background. It also appears the subject in the photograph has a mustache.

While I am aware that the above listed Exhibits are the photocopies of the originals, I have the following concerns with the Photo Lineup:

1. Of the six photographs, Exhibit #1 and Exhibit #6 are the only two photographs with the "height bars" in the background.

2. Exhibit #6 is the only photograph in which the subject has a "mustache".
3. The other four Exhibits have no "height bars" and they do not appear to have "mustaches".
4. Exhibit #1 appears to have the names of the persons who viewed the Photo Lineups AND made identifications.

Before becoming a Private Investigator in 1998, I had retired from the Fort Worth Police Department with over 28 years of experience. During the approximately last fifteen years of my career, I was involved in investigations as a Detective or as a Sergeant in Internal Affairs or supervising the Crimes Against Children Unit.

During my career, I have shown many Photo Lineups. Some of the Photo Lineups were conducted with six photographs in a stack, and others were conducted with six photographs contained in a folder which had six pre-cut slots for the photographs. In either case, I would be able to identify the Names of the individuals in the photographs by the Criminal ID Number of each person in the Photo Lineup.

If there was an identification made by an individual, I would have that person sign his/her name, date and time of viewing on the back of the photograph, and I would have that individual initial the backs of the other photographs used in the Photo Lineup. If I used a pre-cut folder containing a Photo Lineup, I would have the individual sign the space below the Number he/she identified. *At no time would I use the same set of photographs or folder where an identification had been made by an individual. I would obtain a complete different set of photographs of the same individuals, either as a set or in a pre-cut folder so that I was not showing the original that had been previously identified. This would require multiple sets of photographs if multiple witnesses identified my suspect. I would under no circumstances show a photograph where an individual had previously identified a suspect with a signature on the back.*

I would also make sure that all of the photographs were of the same appearance as the suspect I was attempting to have identified, such as hair color, hair length, mustache, background, color, etc. During my career, I have taken my Photo Lineup to the Crime Lab to have all of the photos converted to black-and-white because of color variances or because a suspect's photo was black-and-white and the others were in color.

In Volume 23, Page 88, Line 9, Detective Kenneth Penrod of the Dallas Police Department Homicide Unit was called to testify by the defendant. On Page 93, Line 21, Detective Penrod testifies in response to a defense question:

"If you will notice like in the background, we want to be sure and include another background of height just like his so his wouldn't be pointed out. So there are some differences".

Detective Penrod also states during his testimony that States Exhibit #1 appears to be an older photograph, Page 94, Line 12, and that it has a glossier finish than the rest, Page 94, Line 24.

In Volume 32, Page 39, States Exhibit #158, are copies of what appear to be Police Photographs of suspects. The tops of the photographs appear to have been cut off and the faces of the suspects are not visible. The CID numbers are visible and all are from the Dallas County Sheriff's Office. I am unsure of their significance. These are portions of States Exhibit 1-6.

States Exhibit #165, Volume 32, Page 44, is a penitentiary packet of David Lynn Carpenter. Included in the packet is a fingerprint card with a Dallas County Photo of David Lynn Carpenter dated 11-9-87 attached. The photograph has no Height Bars.

States Exhibit #166, Volume 32, Page 45, is a penitentiary packet of David Lynn Carpenter and has a photograph of David Lynn Carpenter dated 1989 with no Height Bars. The photograph appears to be from the Texas Department of Criminal Justice-Institutional Division.

In my opinion, the Photo Lineup shown to the witnesses should not have been used due to:

1. The Height Bars are visible in only two of the six photographs, one of which was David Lynn Carpenter.

This narrows the Photo Lineup from six to two suspects.

2. Of the six photographs shown, only one appears to have a subject with "mustache" which is also one of the two photographs with Height Bars in them. David Lynn Carpenter does not appear to have a Mustache in the Photo Lineup.

This narrows the Photo Lineup from two to one suspect.

3. There were at least two other photographs of David Lynn Carpenter within the Dallas County Sheriff's Office and possibly the Mesquite Police Department files which could have been used.

This would have given more credibility to the Photo Lineup.

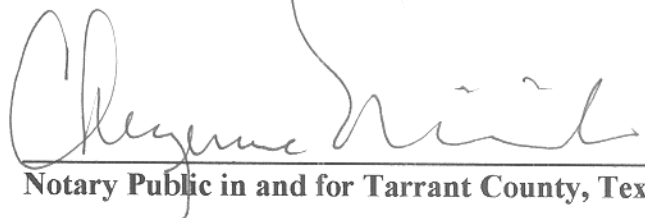
4. Exhibit #1 has two signatures on the back of the photograph which are apparently the witnesses who identified David Lynn Carpenter.

This makes one wonder if the second person, T. Rainey, identified the photograph because it was the right person or because she had seen that someone else had previously identified the photograph.

While you certainly want your suspects to be identified, you do not want the process to be one that would put the Photo Lineup in jeopardy of being reversed. While I am not an attorney nor an appellant attorney nor a judge, I do not feel these photos should have been used for the reasons stated above.


Fred Pendergraf

Subscribed and sworn to before me this the 29th day of June, 2001.


Notary Public in and for Tarrant County, Texas

My commission expires 8/25/01.

