

## Lost evidence: Fingerprints rarely used in Oklahoma cases

By: Lucia Walinchus The Journal Record September 30, 2015 0



Civilian Investigation Specialist Ashley Deeds processes a fingerprint from the trunk of a car. (Photo by Brent Fuchs)

Charles Silsby's wife, Patricia Champion, had struggled with depression for years before that hot day in July of 2012.

Silsby and his son, Charles Jr., were supposed to help a friend fix a well that morning. But their truck refused to start. So Silsby went back inside his Pawnee County home and found his wife with her hands tucked under her arms, almost as if she were hiding something.

And then Silsby realized what it

was: his gun.

Silsby said he tried to grab the gun from her but in the ensuing scuffle he pulled her chair over and he fell. She was able to break free and hold the gun to her ear.

Then she pulled the trigger.

In addition to the horror of watching a loved one commit suicide, a fate Silsby says he wouldn't wish on his worst enemy, Silsby got another surprise: a 15-year jail sentence.

At his trial, Champion's mother and doctor testified to her mental illness and thoughts of suicide. But authorities could not get over the fact that when they showed up at his house, they found a dying woman and Silsby had the gun.

The one piece of evidence that could have exonerated Silsby, the placement of the fingerprints on the gun, was never taken.

Oklahoma police rarely fingerprint crime scenes, except for the most serious of cases, such as rape, murder, and arson. And even in those cases, evidence is sometimes handled by police, without gloves, before being shipped to a lab for analysis. The vast majority of felonies, however, are not fingerprinted at all. Fingerprinting is especially rare in rural areas.

Both Oklahoma City and Tulsa have their own crime labs to analyze prints, though neither has a specific policy on when police should fingerprint a scene. The Oklahoma City Police Department fingerprinted 630 crime scenes last year. Tulsa Police spokesman Leland Ashley said that while they do not keep statistics on fingerprinting, every patrol car is equipped with a fingerprinting kit and officers may fingerprint any scene at their discretion.

The Oklahoma Bureau of Narcotics and Dangerous Drugs, which handles illegal substances, rarely submits evidence for fingerprinting, spokesman Mark Woodward said. Woodward said that such evidence usually only turns up the prints of low-level packers in Mexico, though fingerprint evidence can be helpful in methamphetamine cases, where police can track the drug to its local source. Instead, the bureau prefers to question suspects about the drug's origins, he said.

Capt. Paul Timmons, public affairs commander at the Oklahoma Highway Patrol, said officers do not have fingerprinting kits in their patrol cars, but do have the ability to call in other police departments if forensic evidence is needed.

The vast majority of fingerprint identification throughout the state falls to the Oklahoma State Bureau of Investigation, which performs crime scene services for police departments, sheriff's offices, the Oklahoma Highway

Patrol and the Oklahoma Bureau of Narcotics and Dangerous Drugs.

But the OSBI has a big job to do. In the last fiscal year, it responded to 428 requests from police and sheriff offices to assist in their investigation. In comparison, in 2013, Oklahoma agencies reported 142,999 index crimes, including murder, rape, robbery, aggravated assault, burglary, larceny and auto theft.

Non-index crimes include the majority of felonies, such as drug possession, driving under the influence, and possession of a gun by a felon. In 2013, the last year for which numbers are available, police made 24,513 arrests for index crimes and 135,892 arrests for all other offenses.

The OSBI tends to receive calls for more serious offenses, but technically can be called in for any crime, said spokeswoman Jessica Brown.

OSBI Criminalist Administrator Jim Stokes said there are 11 people, including a supervisor, in the latent print unit, and he would like to hire more but can't with the current hiring freeze.

The fingerprint unit faces other hurdles as well. Because of widely varying policies at different police units, sometimes analysts look at fingerprints after a defendant has already entered a guilty plea. Occasionally they receive tainted evidence. One analyst recently spent 24 working hours on a case, only to identify all the prints as the officer's.

But the biggest challenge is police departments that gather fingerprints and only run them in their local database, instead of also checking the OSBI's state database and the FBI's national database, Stokes said.

"It's tremendously being underutilized," he said. "Within the last couple years, we've actually helped solve several old cold cases utilizing this link to the FBI."

In Oklahoma, a person doesn't have to be physically holding contraband in order to be arrested and charged with a possession crime. Under the doctrine of Constructive Possession, the government must prove that the defendant knew of and controlled the material. If police find drugs in a suspect's bedroom, for example, the law recognizes that chances are those drugs belonged to the suspect. A more difficult question arises when multiple people share the same space.

On a late April night in 2007, Markice McCane went out with his buddy Joseph Carr. Carr was drinking, McCane was the driver. When they were pulled over, McCane immediately admitted to the Oklahoma City Police officer that he had been driving without a license.

With McCane handcuffed in the back seat, the officer searched the car, which belonged to McCane's mother-in-law. In the driver's side door, wrapped in cloth, the officer found an unregistered gun. Instead of preserving the evidence, the officer, without gloves, unloaded the gun.

Oklahoma City Public Information Officer Sgt. Ashley Peters said that is the department's standard practice, and that securing the area is an important policy.

"If there's a weapon that's in the middle of a crime scene, that's nowhere near where anyone can touch it, and the crime scene needs to remain that way until crime scene investigators can arrive, there's a potential that weapon can be loaded and stay there," she said. "It always depends on the situation and each situation is going to vary, but safety is always going to be number one."

McCane's trial lawyer, Bill Campbell, said that although McCane exercised his right to silence at the trial, McCane vigorously insisted that the gun was not his. Eight years later, McCane is still sitting in prison for possession of a firearm by a felon.

Campbell said it was especially a shame that the gun was not fingerprinted because on that particular model, each bullet had to be hand-loaded, which would have led to a fingerprint on each bullet. The gun also had enamel spray paint on it, which is a good fingerprint material. Campbell said fingerprint evidence is far from perfect, but in general he would like to see more fingerprinting.

"I would rather have something, and be able to deal with it, than to have the void," Campbell said. "Because there's nothing I can do with a void."

The U.S. Department of Justice declined to comment for this article.

Exactly why police don't often fingerprint is a matter of hot debate.

Police experts caution that although fingerprinting is more than 100 years old, it's still a complicated science.

John Bond, a senior lecturer in criminology at the University of Leicester in the United Kingdom, said the material to fingerprint is crucial: nonporous surfaces, such as metal and glass, work well for fingerprinting; porous surfaces such as paper and cardstock are a little more tricky and require a chemical treatment. Other surfaces yield nothing.

Bond spent 20 years in the Northamptonshire Police and received an Order of the British Empire award for his contributions to forensic science. Bond helped to pioneer a method that identifies fingerprints after a shot has been fired by examining corrosion on the bullet itself. But he noted that method is only about 5 percent successful, and a typical sweep of a burglary scene might yield prints only about 50 percent of the time.

"Probably the biggest misconception is the ease with which (fingerprints) can be identified," he said. "So, for example, on *CSI*, the print will be loaded, and in a minute or two it comes up with a 'match' or 'no match,' and it pops up on the screen with all the characteristics marked up. It never happens that way. It's still very much a manual exercise to properly identify fingerprints."

But critics contend that police should at least attempt to collect more forensic evidence.

Mayes County attorney Misty Fields said that in more than five years of practice, she has only seen fingerprinting evidence one time. She said she is able to request fingerprints if necessary, but often can't do so on the limited public defender's budget. Fields estimated that about half of her cases involve possession, but she said that police never fingerprint for possession cases, even if the question of who owned what is in dispute.

For example, last year, Fields had a case in which police stopped a car with four people and a backpack of drugs. Since no one admitted owning the drugs, the district attorney charged all four with possession.

Her client assured her not to worry, that the drugs were not his, and that his fingerprints would not be found anywhere on the backpack. That's when Fields had to have the difficult discussion: Oklahoma rarely fingerprints, especially for possession cases.

Fields said she thought it was ridiculous to think that four people could jointly own a backpack, but said that her client, a first-time offender, did not want trial publicity and felt pressure to plead guilty to the drugs he didn't own.

Both the district attorney and the client declined multiple requests for an interview.

A recent study published in the *Journal of Forensic Science* looked at 4,205 cases in city, state and county jurisdictions in California and Indiana, specifically focused on six crimes: homicide, rape, aggravated assault, burglary and robbery. It found that examination of forensic evidence at a crime scene increased the likelihood that a case would result in charges, conviction at trial, and a longer sentence. Forensic crime scene evidence increased arrests to 47 percent, compared to 20 percent in cases in which no such evidence was collected. Suspects were then charged in 32 percent of cases in which police collected forensic evidence, in contrast to just 14 percent of cases with no forensic evidence.

Matthew Hickman is a Ph.D. at Seattle University and co-author of the article on the study, *Effect of Forensic Evidence on Criminal Justice Case Processing*. He said that although crime rates are diligently reported, crime evidence and outcomes are much harder to track and deserve further study. Hickman said a lack of data on such forensic evidence compelled the Bureau of Justice Statistics to conduct a survey on U.S. crime labs when he worked there in 2009. An analyst at the agency, Matthew Durose, said BJS conducted a follow-up study in 2014 but the data is still under review and results will not come out until early next year, so there is no current data available.

A brief survey of other states found that jurisdictions that fingerprint more often tend to be larger, but not necessarily.

Jodi Silva of the Houston Police Department said all patrol stations are equipped with fingerprint kits, and while they do not keep statistics on how often the kits are used, officers will fingerprint anytime there is an opportunity to collect additional evidence.

Senior Cpl. Tramese Andrews of the Dallas Police Department said that officers in her city also fingerprint at their discretion. She said that last year they processed more than 16,000 crime scenes and were able to recover prints in more than half of the cases.

Trooper Nate Reid of the Colorado Highway Patrol said officers hardly ever collect fingerprint evidence, except for rare cases such as encountering a stolen car. Reid said the CHP prefers to question suspects about the origin of the contraband instead.

D'Anna Markley of the Los Angeles Police Department said they fingerprinted 14,377 scenes last year and have specially trained fingerprint personnel, both civilian and officer.

Jonathan Howard of the Phoenix police force said that all officers have black powder fingerprint kits in their cars and are trained to take prints if, in their opinion, prints are needed. Howard said they also take DNA evidence, and are often able to determine who last touched an object just by swabbing it.

In Oklahoma, despite no history of violence, Silsby was convicted of second-degree murder in 2013. The Court of Criminal Appeals affirmed his conviction last year in an unpublished decision.

Silsby said he originally told officers that his wife’s death was an accident because he was traumatized and he didn’t want anyone else to know she killed herself. He was especially concerned about his two youngest sons, who were not home when she pulled the trigger. The state said if the gun did accidentally go off while Silsby was holding it he is still guilty of second-degree murder; specifically a death that occurs while pointing a loaded gun at someone.

Silsby said that if police had taken fingerprints, they would have found evidence that backed up his story: hers from where she had shot herself and his from where he had taken it away after he finally got to her. Instead, the officer who arrived at the scene took the gun and, without gloves, placed it in a bag to give to the OSBI. The OSBI noted the contaminated evidence.

Today, in the wide, arid expanse of western Oklahoma, the Wichita Mountains rise like testaments to the timelessness of the hard stone that created them. Set in their foothills is a tall stone fortress, with a top ring of barbed wire that gleams in the desert sun. Inside lives Charles Silsby Sr., who has another 13 years to think about the worst day of his life.

“I told her once that I wanted to die in her arms, Silsby said. “She was 10 years younger than me, so I always thought it would be that way.”

Instead, he held his dying wife of 18 years, and each time she stopped breathing, he squeezed her to get the blood flowing again.

And he screamed for his son to call 911.

And he screamed, “Why did you do this?”

And he screamed and he sobbed and he cried into an ear that just kept bleeding.

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