

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

REGINALD DEXTER CARR, JR., *Petitioner*

VS.

STATE OF KANSAS, *Respondent.*

*On Petition for Writ of Certiorari to the
Supreme Court of Kansas*

APPENDIX D

State v. Carr, No. 90,044 (May 4, 2022)(*order denying motion for rehearing or
modification*)

APPENDIX E

State v. Carr, No. 90,044, Record on Appeal, Volume 103, p. 65; Volume 104, p. 10-
15; Volume 90, p. 104-106

APPENDIX F

State v. Carr, No. 90,044, Record on Appeal, Volume 158, p. 119-121; Volume 103, p.
64; Volume 104, p. 6-10

APPENDIX G

State v. Carr, No. 90,044, Record on Appeal, Volume 159, p. 91-96; Volume 123, p. 124

APPENDIX H

State v. Carr, No. 90,044, Record on Appeal, Volume 56, p. 191

APPENDIX D

State v. Carr, No. 90,044 (May 4, 2022)(*order denying motion for rehearing or modification*)

17 CR 1825

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 90,044

STATE OF KANSAS,
Appellee,

v.

REGINALD DEXTER CARR, JR.,
Appellant.

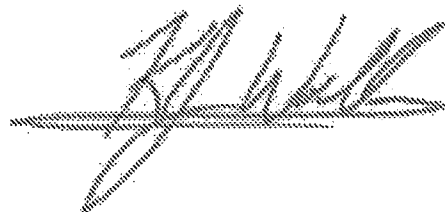
ORDER

The court has considered and denies Appellant's motion for rehearing or modification.

The mandate remains stayed. The court notes Appellant's report on the status of the filing of a petition for writ of certiorari. Appellant must file another status report upon the sooner of the petition's filing or August 3, 2022.

Dated this 4th day of May 2022.

FOR THE COURT

A handwritten signature in dark ink, appearing to read 'KEYNEN WALL', written over a horizontal line.

KEYNEN WALL, Justice

Luckert, C.J., dissents

APPENDIX E

State v. Carr, No. 90,044, Record on Appeal

Volume 103, p. 65

Volume 104, p. 10-15

Volume 90, p. 104-106

1 Q. Of blood?

2 A. Yes.

3 Q. Thank you. Did you receive an item of sealed
4 evidence identified as foreign material from the
5 left inner thigh?

6 A. Yes, I did.

7 Q. And on that test did you receive any -- or did
8 you receive any positive results looking at that
9 particular sample?

10 A. I did have an indication for blood on that.

11 Q. All right. And as to the or -- the foreign
12 material on the right inner thigh, in a separate
13 sealed envelope, did you receive a positive
14 result?

15 A. I also received a positive result for the
16 indication of blood.

17 Q. Okay. I want to talk to you about the white
18 envelope that was sealed and identified as the
19 introitus discharge from H - G -. Did you
20 receive any positive presumptive tests for that
21 sample?

22 A. I did receive a positive presumptive test for
23 the indication of blood, and also for the
24 indication of seminal fluid.

25 Q. Okay. How about the SP test for spermatozoa?

1 G' s mouth was what?

2 A. The probability of someone else other than from
3 the general population than Jonathan is 1 in
4 24 billion.

5 Q. Thank you. Did you also look at swabs of the
6 foreign material from the left inner thigh of --
7 from the rape kit of H. G' ?

8 A. Yes, I did.

9 Q. And did you receive a DNA profile from that
10 evidence?

11 A. Yes, I did.

12 Q. Now, was -- what biological material did you
13 use?

14 A. The extraction method was for semen.

15 Q. And we're talking about the F2 fraction?

16 A. That's correct.

17 Q. Does what's on this screen from Profiler Plus
18 represent what you obtained from that material?

19 A. Yes, it does.

20 Q. Okay. And again here we see that we only have
21 information at three of the loci on the Profiler
22 Plus?

23 A. That's correct.

24 Q. Can you explain why we don't have information at
25 the other loci?

1 A. As I said yesterday, when sometimes you don't
2 receive information on a particular part of the
3 DNA or the loci, it could be due to a low
4 quantity of DNA there that you can't detect it,
5 and it's -- you're not picking that loci up.

6 Q. And you talk about low quantities of DNA, can
7 you give us some perspective on that?

8 A. As far as the quantitation for this sample was
9 .06 nanograms of DNA, which is a very small
10 amount. If you have a neat semen stain you're
11 going to have a lot of DNA there, in the height
12 nanograms, 10 nanograms you're going to have a
13 lot of DNA there. As the material -- you get
14 smaller and smaller amounts of material, the
15 amount of DNA is going to go down. So this is
16 in a small amount of DNA. It's not like a neat
17 semen stain or blood stain, a neat blood stain.

18 Q. What do you mean by neat?

19 A. Nothing else mixed in with it, a pure semen
20 sample or a pure blood sample.

21 Q. And did you also do COfiler on this particular
22 sample?

23 A. Yes, I did.

24 Q. Okay. Did you compare it to the knowns?

25 A. Yes.

1 Q. And were you able to exclude individuals?

2 A. Yes, I was.

3 Q. And who did you exclude?

4 A. I excluded everyone except H , Reginald and
5 Jonathan.

6 Q. And you mean H , G , Reginald Carr and
7 Jonathan Carr?

8 A. That's correct.

9 Q. Does this reflect Reginald Carr's profile?

10 A. Yes, it does.

11 Q. Does this reflect Jonathan Carr's profile?

12 A. Yes, it does.

13 Q. And does this reflect H , G 's profile?

14 A. Yes, it does.

15 Q. Now, looking at this, on the first loci Reginald
16 has a 14.

17 A. That's correct.

18 Q. That's not in the evidence?

19 A. That's correct.

20 Q. So why couldn't you exclude him?

21 A. You have to look at the entire profile. So when
22 I first started out doing the results of this
23 profile I looked at that and I did exclude him
24 starting out, but then when you look at the rest
25 of the loci you can't exclude him. And

1 sometimes when you have low content DNA and you
2 see alleles not showing up, you may have alleles
3 not showing up in some of the loci. So you have
4 to take that into consideration, and you have to
5 take into consideration the entire profile.

6 Q. So let's look at the rest of the profile, okay?

7 A. Okay.

8 Q. The rest of the profile would be what you
9 received from the COfiler Plus?

10 A. That's correct.

11 Q. Does this accurately reflect the evidence
12 profile?

13 A. Yes, it does.

14 Q. Okay? I'm going to put -- now in the COfiler
15 here, do you have any missing information from
16 the evidence on this -- on these particular
17 loci?

18 A. Yes. At D7, which is a large piece of DNA,
19 there's only an 11 allele showing up. So there
20 may or may not be missing alleles in D7.

21 Q. When we look at this, you said that you couldn't
22 exclude Reginald Carr from this sample because
23 looking at the whole profile. Is there anything
24 particular that kept you from excluding Reginald
25 Carr from this swab?

1 A. Yes. If you look at -- let's start with the
2 first loci at D3. There's nothing showing up
3 that would exclude him, actually he'd be
4 included. But it's not a very informative loci
5 since they all are consistent. At D16 Jonathan
6 and Reginald would both be included at TH01.
7 You would see Jonathan and Reginald both having
8 the same profile, both would be included. At
9 TPOX though they differ at one allele with
10 Reginald being an 8,9 and Jonathan being an 8,8.
11 And the evidence profile shows an 8,9 and 10.
12 Therefore, I can't exclude Reginald at the TPOX
13 loci. He's included in all the other loci. So
14 then I go back to that first loci or that first
15 part of the DNA where I wasn't picking up that
16 one allele, and I can't exclude him based on the
17 entire profile.

18 Q. So when you look at 2POX -- TPOX, I'm sorry, and
19 you see that 9, is that 9 present in any of the
20 profiles of the knowns that you looked at?

21 A. No. In comparing the knowns, that 9 is only
22 present in the known from Reginald Carr.

23 Q. And is it that information that kept you from
24 excluding Reginald Carr?

25 A. That and also the fact that he's included in the

1 other loci.

2 Q. Did you do a statistic --

3 A. Yes, I did.

4 Q. -- frequency on this?

5 A. Yes.

6 Q. And what did you come up with?

7 A. The estimated frequency of the mixed partial DNA
8 profile in the black population is 1 in 16,000.

9 Q. Okay. And when you consider the mix in this
10 instance your numbers have gone lower because
11 it's a mixture, is that fair?

12 A. It's a mixture and you're also missing some
13 information with the loci.

14 Q. Okay. Let's look at swabs that are cuttings
15 that are referred to as 93A. Have you found
16 those?

17 A. Yes, I have.

18 Q. How is it described in your report?

19 A. I received a Manila envelope containing a plaid
20 red and blue cutting.

21 Q. Okay. And I'm going to show you an exhibit.

22 It's been marked as State's Exhibit 650. It's a
23 pair of boxer shorts that were collected by
24 Detective Craig from the defendant Jonathan
25 Carr. Now, do you recognize this as having the

1 in consideration of the uniqueness of the 9 allele
2 is prior recorded testimony of Ms. Scheuler, is it
3 not?

4 A Yes. This is a page from -- or there are several
5 pages from that transcript.

6 MR. WACHTEL: Based on that, your Honor,
7 we'd ask permission to display that -- excuse me --
8 to display that particular slide and have Ms. Harman
9 testify regarding it.

10 MS. PARKER: Your Honor, the State would
11 object to the form, the relevancy, and also that
12 there's no foundation as to what she intends to talk
13 about.

14 In addition to that, the State also objects
15 that it is not proper opinion testimony.

16 THE COURT: It's -- I'll sustain the
17 objection as to its form and as to its foundation.

18 MR. WACHTEL: I'm sorry, your Honor, as
19 to foundation?

20 THE COURT: As to its form and as to
21 foundation. Improper use of the previously recorded
22 statement.

23 Q Let's talk about the number 9 allele. Mr. Carr had
24 a number 9 -- Reginald Carr had a number 9 allele at
25 one of the loci?

1 A Yes.

2 Q In your examination of the documents that were
3 provided to you by the State of Kansas, do you have
4 an opinion as to whether that's a particularly
5 unique allele to Mr. Reginald Carr?

6 A No.

7 Q Why not?

8 A Well, because it -- that allele is present in a
9 number of individuals with a certain frequency.

10 Q Do you have in your presentation representations of
11 those additional alleles?

12 A Yes.

13 Q Can you click on one before I open this back up?
14 Have you done that?

15 A Yes.

16 Q What -- what -- you put up a slide on the screen.
17 What particular slide -- what is that slide, please?

18 A This slide represents the expected frequency of
19 occurrence of the 9 allele at the TPOX location
20 within the African American race, the Caucasian
21 race, the Southwest Hispanic race, and the Southeast
22 Hispanic race, and --

23 Q Let me interrupt you. Where did this information
24 come from?

25 A This is from the FBI data base.

1 Q All right. And with regard to a 9 allele at TPOX
2 and the African American data base, what is the --
3 what is the expected frequency?

4 A 18 percent.

5 Q So translating that to English, what percentage of
6 the American black -- the African American blacks
7 have 9 allele at TPOX?

8 A Well, this is based on the African American
9 population.

10 Q Um-hum.

11 A And this is the Caucasian population, the
12 Southwestern Hispanic population, and the
13 Southeastern Hispanic population. The numbers here
14 correspond to the number of individuals from each
15 designated population that were tested. So, in
16 other words, 209 African American individuals had
17 their DNA typed. And of those 209, 18 percent
18 possessed this 9 allele.

19 Additionally, out of 203 Caucasian individuals
20 who were tested, 12 percent possess this 9 allele.
21 And the same follows for the Southwest and Southeast
22 Hispanic populations.

23 Q Given that data collected by the FBI, a 9 allele --
24 is a 9 allele at TPOX unique to Reginald Carr?

25 A No.

APPENDIX F

State v. Carr, No. 90,044, Record on Appeal

Volume 158, p. 119-121

Volume 103, p. 64

Volume 104, p. 6-10

1 A. Aaron came back from the ATM, at which time I
2 was taken out of the closet. I believe that's
3 when the stockier one called me shorty, walked
4 out of the room and was lead over to the dining
5 room, but it didn't have any furniture in it. I
6 had put up -- I had put up some Christmas
7 decorations the week before and I had left the
8 boxes sitting in that room so there was a pile
9 of like storage boxes and with some Christmas
10 items in them there.

11 As I was walking over the stockier person
12 asked me about my earrings and if -- he just
13 kind of pointed to them and said what are those.
14 And I said well, they're fake, do you want them.
15 And then I took them out and laid them on the
16 boxes of Christmas decorations. At one point
17 when I was walking over to that area he had
18 jabbed me in the back with what I assumed to be
19 a gun, it was a hard -- it wasn't a hand, it was
20 kind of like a nudge and I'm not sure what move
21 I made but I had said something. And he said
22 don't worry, I'm not going to shoot you yet.
23 And then was somehow directed to kneel on all
24 fours, where he raped me.

25 Q. Did you have any reaction to the comment he made

1 to you about don't worry, I'm not going to shoot
2 you yet?

3 A. My description, I just kind of wiggled out, kind
4 of --

5 Q. What were your thoughts at that time?

6 A. I assumed that what he had told me was
7 incorrect, when I asked him if he was going to
8 shoot us, that he had lied. And I thought that
9 maybe at that particular time he was actually
10 going to shoot me.

11 Q. When you said that you were placed down on all
12 fours, that would have been in the dining room
13 area; is that correct?

14 A. Correct.

15 Q. Approximately where would it have been in
16 relation to the south windows in that room?

17 A. It was in between the window, the wall where the
18 windows were and the boxes, facing kind of -- I
19 could have been looking outside, facing
20 southeast.

21 Q. Now, the last sexual incident that had occurred
22 had been intruder one forcing you to have
23 intercourse; is that right?

24 A. Correct.

25 Q. And now you're with intruder number two?

1 A. Correct.

2 Q. Can you tell me what part of his body was placed
3 into your vagina?

4 A. His penis.

5 Q. And do you know whether or not he ejaculated at
6 that time?

7 A. No, he did not.

8 Q. Can you tell me what action he took towards you?

9 A. He kind of grabbed the back of me, pulled me up,
10 turned me around and ejaculated into my mouth.

11 Q. Did he make any statement to you?

12 A. Somehow indicated that I was to swallow it,
13 which is what I did.

14 Q. And at the time when you were forced to have his
15 penis in your mouth were your -- was your vision
16 in any way obstructed by anything?

17 A. No.

18 Q. Were you able to see or look at this individual
19 at that time?

20 A. I did.

21 Q. After he had ejaculated into your mouth can you
22 tell us the circumstances of what happened then?

23 A. He pulled up his pants, we turned around, I
24 walked in front of him over to Jason's bathroom
25 door, where I opened the bathroom door and saw

1 the phenolphthalein test?

2 A. Yes, that is true.

3 Q. You also received or indicated you received oral

4 swabs?

5 A. Yes, I did.

6 Q. And as to any positive results that you had, and

7 just -- in this particular instance you indicate

8 that you did AP tests, SP tests, phenolphthalein

9 tests, p30 tests, is that correct?

10 A. On the oral swabs?

11 Q. No. Did you do all of these tests in regards to

12 these samples that we're talking about?

13 A. Oh, yes, I did.

14 Q. All right. Then so as to the oral swabs, in any

15 of those tests did you receive a positive

16 result?

17 A. I did receive a positive result on the AP test

18 from the oral swabs.

19 Q. And that is for seminal?

20 A. That was an indication of seminal fluid.

21 Q. And then as to a rectal swab, did you see --

22 receive any positives under those presumptive

23 tests?

24 A. I did receive a positive for the presumptive of

25 blood.

1 A. We look at the entire profile that we generate,
2 and then we compare that profile to the knowns;
3 and we can exclude if those alleles do not match
4 up, and we can include if those alleles are
5 present.

6 Q. Okay. And as these particular lip swabs, these
7 are the two people that are included in that
8 sample, is that correct?

9 MR. WACHTEL: Object, that's leading
10 and suggestive.

11 MS. PARKER: I'm sorry, I'll rephrase.

12 Q. Who are the two people that are included in the
13 lip swabs?

14 A. Based on the evidence profile and comparing the
15 knowns that I had received from this case, the
16 two people for comparing the knowns to the
17 evidence would be H. and Jonathan.

18 Q. Okay. Let's take a look at the next swabs. Did
19 you obtain results from H.'s rape kit from
20 the oral swabs that were taken from her?

21 A. That's correct.

22 Q. Okay. And so from those swabs you obtained a
23 DNA profile?

24 A. Yes.

25 Q. Under Profiler Plus?

1 A. That's correct.

2 Q. What kind of biological material were you
3 looking at?

4 A. The extraction technique was for semen.

5 Q. And does what's on the screen represent the
6 profile that you obtained from the oral swabs
7 collected from her body?

8 A. Yes, it does.

9 Q. And does this reflect a single DNA profile or do
10 we have a mixture?

11 A. If you look at D21, that tells us it's a mixture
12 because there's more than two alleles.

13 Q. Okay. And were you able to compare those to the
14 known samples that you received from each of the
15 victims and the suspects Jonathan and Reginald
16 Carr?

17 A. Yes, I did.

18 Q. And were you able to exclude any of the
19 individuals?

20 A. I was able to exclude everyone except F and
21 Jonathan.

22 Q. Okay. Now, in this particular DNA profiling
23 were you able to determine whether or not you
24 had a major or minor contributor to the sample?

25 A. Yes. I was able to determine a major and minor,

1 and how we do that with mixtures is yesterday I
2 mentioned the peaks in the electropherogram.
3 What we do is we look at how high the peaks are,
4 so you can tell by the peak heights if you have
5 a major or minor contributor. So take D21 where
6 you have four alleles, you may have two alleles
7 that are very high and two alleles that are
8 lower. So then you would know those two high
9 alleles are from the major contributor. And you
10 look at the entire loci and make sure those
11 intensities are consistent throughout the entire
12 profile, and then you can assign a major and
13 minor contributor.

14 Q. Okay. And so did you assign a major
15 contributor?

16 A. Yes, I did.

17 Q. And who was that?

18 A. Jonathan Carr.

19 Q. Okay. Do those represent the profiles from
20 H () and Jonathan Carr?

21 A. Yes, they do.

22 Q. And can you see the comparison or explain a
23 comparison?

24 A. Yes. You can tell D3 they're all the same, so
25 that doesn't give us very much information.

1 Also at vWA that's not very discriminating,
2 meaning very descriptive in sorting out who may
3 have been that contributor. But at FGA you can
4 see there is a difference. You can tell H
5 is a 20,20, which shows up in the piece of
6 evidence as a 20, and then Jonathan is a 22,26,
7 again in the evidence 22,26. The most
8 discriminating or the most -- the loci that
9 gives us the most information as far as being
10 able to tell the results of this mixture is D21
11 where you see four alleles, and those four
12 alleles are all four accounted for through H
13 and Jonathan. Again, at D18 there is four
14 alleles, H , having a 15,17 and again Jonathan
15 having the 16,19.

16 Q. How about the D8?

17 A. D8 also is the same situation, where that you
18 have four alleles in the mixture, and H is
19 consistent with two of them and Jonathan is
20 consistent with the other two.

21 Q. You're saying Jonathan as a major, you received
22 a statistical frequency?

23 A. Yes, I did.

24 Q. And the probability of Jonathan being a
25 contributor to this oral swab taken from H

1 G s mouth was what?

2 A. The probability of someone else other than from
3 the general population than Jonathan is 1 in
4 24 billion.

5 Q. Thank you. Did you also look at swabs of the
6 foreign material from the left inner thigh of --
7 from the rape kit of ---

8 A. Yes, I did.

9 Q. And did you receive a DNA profile from that
10 evidence?

11 A. Yes, I did.

12 Q. Now, was -- what biological material did you
13 use?

14 A. The extraction method was for semen.

15 Q. And we're talking about the F2 fraction?

16 A. That's correct.

17 Q. Does what's on this screen from Profiler Plus
18 represent what you obtained from that material?

19 A. Yes, it does.

20 Q. Okay. And again here we see that we only have
21 information at three of the loci on the Profiler
22 Plus?

23 A. That's correct.

24 Q. Can you explain why we don't have information at
25 the other loci?

APPENDIX G

State v. Carr, No. 90,044, Record on Appeal

Volume 159, p. 91-96

Volume 123, p. 124

1 that you were shown photos of?

2 A Yes.

3 Q Other than the photos?

4 A Yes.

5 Q What else do you recall?

6 A There were two different pieces of paper, each
7 had several pictures on it and he asked me if I
8 could identify any of the people in the pictures
9 as my intruders.

10 Q And did you have an opportunity to take a look
11 at those items?

12 A Those pictures, yes.

13 Q And did you make any determinations regard to
14 each piece of paper?

15 A I did.

16 Q I'm going to place before you what's been marked
17 for identification purposes as State's Exhibit
18 No. 714 and ask if you can identify this
19 document?

20 A This is one of the two lineups that Detective
21 Relph had shown me.

22 Q And how are you able to identify that? Does
23 your name appear on it?

24 A My signature's on it and I had written under the
25 comment section, I think it's number two.

CARRI L. MILES, C.S.R.

1 Q Now, on that same occasion you indicated that
2 you received a second similar document; is that
3 correct?

4 A Correct.

5 Q And I'm going to show you what's been marked for
6 identification purposes as 715. And can you see
7 that document?

8 A It's also a lineup with my signature and a
9 comment on it.

10 Q Do you recall which one of those you looked at
11 first?

12 A I do not.

13 Q And since the hospital stay in December have you
14 seen these photos?

15 A Yes, I have.

16 Q Now, look at State's Exhibit No. 714. Can you
17 describe whether the photos are color or black
18 and white?

19 A They're in black and white.

20 Q And did you observe them on that occasion in
21 black and white as you see them there today?

22 A Yes, I did.

23 Q When you look at number 714 you indicated a
24 response to identification of one of the
25 individuals; is that correct?

CARRI L. MILES, C.S.R.

1 A Correct.

2 Q Can you tell me how you went about reviewing
3 that particular document?

4 A I looked at it, Detective Relph gave it to me, I
5 looked at all the pictures. There's six. And
6 he asked me if I could identify any of the
7 people in the pictures. I said I think it's
8 number two. He asked why I thought that. My
9 response to him was his eyes and I just
10 recognized him by his features, his hair, his
11 eyes. And then I wrote in the comment section I
12 think it's number two.

13 Q Those photographs would be in black and white;
14 is that correct?

15 A Correct.

16 Q I'm going to show you what's been marked for
17 identification purposes as State's Exhibit No.
18 209 and ask you to take a look at that
19 photograph.

20 A It is a color version of suspect number two.

21 Q And is it larger than the one you're seeing in
22 Exhibit 714?

23 A Yes.

24 Q And the difference as well is that it's color
25 versus the black and white paper?

CARRI L. MILES, C.S.R.

1 A Correct.

2 Q And the paper's smaller than the photograph
3 that's in front of you?

4 A Yes.

5 Q And you were not shown a color photograph on
6 that date, were you?

7 A No.

8 Q You were not shown anything of that size?

9 A No.

10 Q Were you suggested to pick any individual in
11 that particular array?

12 A No.

13 Q Did Detective Relph give you any information to
14 lead you to choose any one in particular in that
15 array?

16 A No.

17 Q At the time when you went through that photo
18 array and after you had chosen number two, did
19 Detective Relph indicate to you in any manner
20 whether or not your choice was correct or
21 incorrect?

22 A No.

23 Q So when you signed that and returned it to him
24 did you have any idea of who you might have
25 chosen?.

1 A No.

2 Q And had you had an opportunity -- during this
3 time you were hospitalized?

4 A Yes.

5 Q And you were suffering the effects of a gunshot
6 wound to the head?

7 A Yes.

8 Q And do you believe you were still alert and
9 aware enough to make that choice in that
10 picture?

11 A Yes.

12 Q At the time of preliminary hearing were you
13 brought into a courtroom where two individuals
14 were located?

15 A Yes.

16 Q And at that time were you able to identify the
17 second intruder into that home?

18 A I was not.

19 Q Can you tell me why?

20 A I identified in preliminary hearings the taller
21 of the two individuals, intruder number one.
22 The second person in the courtroom had shaven
23 his head and also, intermittently had on
24 glasses.

25 Q Do you see that person in the courtroom today?

1 A He's right here (indicating).

2 MS. FOULSTON: The record should
3 reflect that the witness has identified --

4 Q Well, give a better description. Can you tell
5 me what he's wearing and who he's seated next
6 to?

7 A He has on a plaid shirt, shaven head, glasses,
8 gray undershirt under the plaid shirt, sitting
9 in between counsel with red glasses and one with
10 half glasses.

11 MS. FOULSTON: For the record, the
12 witness has identified Reginald Carr. Now, the
13 State seeks to admit State's Exhibit No. 714.

14 MR. EVANS: No objections.

15 MR. WACHTAL: We object to the
16 admission of 714, for reasons stated earlier and
17 pursuant to motions filed in this case.

18 THE COURT: 714 is admitted.

19 MS. FOULSTON: Your Honor, in 714 is
20 displayed the photograph number two of Reginald
21 Carr and we have a color duplicate of that
22 enlarged and we have numbered it 209, which does
23 not appear on your exhibit listing because we
24 just had to put that in a vacant space and put
25 it at 209.

CARRI L. MILES, C.S.R.

6:45 1 Q. They are all in black and white?

6:45 2 A. That's right.

6:45 3 Q. Now, after reading her the admonition -- and did you
6:45 4 make a presentation of the photo array to her?

6:45 5 A. I presented the -- at 1825 hours I presented the photo
6:45 6 array containing the picture of Jonathan Carr.

6:46 7 Q. Okay. That's State's Exhibit 714.

6:46 8 A. That is right.

6:46 9 Q. And did you tell her who to pick?

6:46 10 A. No.

6:46 11 Q. And did you make any indication whatsoever, shift your
6:46 12 eyes, wave your hand, nod your head, anything like
6:46 13 that?

6:46 14 A. No.

6:46 15 Q. Okay. Now, what did she do with that particular item?

6:46 16 A. The first photo array she -- I could see that her eyes
6:46 17 were moving from photograph to photograph and she
6:46 18 paused for a little bit. And then she said that the
6:46 19 best that she could remember, that she thought was
6:46 20 No. 1. I then handed the form to her and had her
6:46 21 write the comment that she chose to write and she
6:46 22 wrote No. 1, I think it's No. 1.

6:46 23 Q. Okay. And looking at those pictures, is there any
6:46 24 similarity between No. 1 and No. 4?

6:47 25 MR. WACHTEL: Objection, Your Honor, calls

APPENDIX H

State v. Carr, No. 90,044, Record on Appeal

Volume 56, p. 191

1 MS. FOULSTON: Okay. That's fine.

2 MR. FOULSTON:

3 Q. Do you see those people in the courtroom today?

4 A. He's the one that I called the skinny one
5 (indicating), only his hair is flat to his head,
6 and I do not recognize the fat one.

7 MS. FOULSTON: The record should
8 reflect that the witness has identified Jonathan
9 Carr.

10 THE COURT: It does.

11 (A sotto voce discussion between
12 Ms. Foulston and Ms. Parker was had.)

13 MS. FOULSTON: No further questions.

14 THE COURT: Thank you.

15 THE COURT: Mr. Wachtel.

16 MR. WACHTEL: No questions, Your Honor.

17 THE COURT: Thank you, Mr. Wachtel.

18 Mr. Evans.

19 MR. EVANS: Ma'am, I have a few
20 questions.

21 CROSS-EXAMINATION

22 MR. EVANS:

23 Q. The other people in the courtroom today as you sit
24 there, I know we're all sitting in front of you,
25 but can you -- do you have an ability to see other