

WINFREY v. SAN JACINTO COUNTY  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT  
481 Fed.Appx. 969 – July 27, 2012

In August 2004, Murray Wayne Burr was found murdered in his San Jacinto County home. The crime scene was grisly. Officers followed a blood trail from the front room of the house, through the kitchen, and into a bedroom, where they found Burr's body. He had been stabbed over two dozen times and had suffered a number of other injuries, including a slit throat. There were no signs of forced entry.

Then-San Jacinto County Sheriff Lacy Rogers, and his deputy, Lenard Johnson, initially investigated. Rogers decided to call the Texas Rangers for assistance, and they assigned Ronald Duff and Grover Huff (the "Rangers") to the case. Huff brought in Keith Pikett, a canine handler and ostensible expert in scent-related evidence then working as a Fort Bend County deputy.

A few weeks after the murder, Pikett conducted a "scent line-up" using two of his bloodhounds and scent samples obtained from Winfrey and Megan. In the scent line-up, Pikett "scented" the bloodhounds on an item taken from the crime scene and then walked the dogs down a line of six cans, each containing a gauze "scent pad." According to Pikett, both dogs alerted to the can containing Winfrey's scent; Winfrey contends that Pikett cued his dogs.

The cans were then refreshed with another set of scent pads, including a scent pad obtained from Megan. The dogs alerted on the can containing Megan's scent. The scent pads were again replaced, this time introducing a scent pad from a suspect ultimately excluded by DNA evidence. The bloodhounds failed to alert during their final walk-throughs.

Pikett then conducted a "drop trailing" exercise. Starting at the crime scene, Huff scented the bloodhounds with what he believed was a scent sample taken from Winfrey. The dogs then followed the scent from Burr's house to the Winfrey residence. Huff later informed Pikett that he mistakenly had scented the dogs with a sample taken from Christopher Hammond, Megan's boyfriend.

#### **Pikett and the Scent Line-ups:**

The district court reasoned that Winfrey provided only speculation to show that Pikett cued his dogs. The scent line-up, however, was videotaped. Although the video is not in the record on appeal, the parties referenced it below, and Winfrey provided the affidavit of Steven Nicely, a police canine expert who reviewed the film.

Nicely concludes that Pikett manufactured his results, finding that "[t]he line-up procedures used by Deputy Pikett support[] [the conclusion that] behaviors the dogs do exhibit are more likely to be induced by conscious actions than unconscious actions." Nicely's conclusion rests on two general observations: First, he determined that Pikett's procedures "are more consistent with him using his ability to see inside the cans and identi[f]y which can contains the target pad than relying on his dogs to identify the can by odor."

Second, he observed actions that "were consistent with attempting to induce a behavior," i.e., cuing, specifically "jerk[ing]" on the dogs' leashes and strategically stopping as he paced down

the row of cans. Nicely's affidavit comports with those of experts retained in other cases challenging Pikett's methods, which reason that Pikett cued his dogs by manipulating their leashes and by altering his footsteps during scent line-ups. In another case, one of those experts concluded that the dogs gave no visible signs of alerting to the target scent.

Winfrey therefore raised a sufficient issue of material fact. Pikett denies that he cued the dogs or otherwise used procedures that allowed him to "cheat." Winfrey provided summary judgment evidence that he did. At this juncture, the evidence and all reasonable inferences must be construed in the light most favorable to Winfrey; "[t]he ultimate truth will be determined at trial . . . ." *Good v. Curtis*.

Winfrey alleged and presented evidence that Pikett made "knowing efforts to secure a false identification," and such actions violate clearly established constitutional rights. To that extent, Pikett is not entitled to qualified immunity, and we reverse the summary judgment granted to him.

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