PUBLIC SAFETY, DIVISION OF: Finger prints—admissible in evidence in criminal trials. Evidence—admissibility of expert testimony of fingerprints. Criminal law—fingerprint evidence admissible.

March 10, 1937.

Mr. Don F. Stiver, Director,
Department of Public Safety,
Indianapolis, Indiana.

Dear Sir:

I have your letter requesting an opinion upon the admissibility, in criminal cases, of evidence of fingerprints. Such evidence is offered because of its relevancy to the issue of identity. When offered by the prosecution, fingerprint evidence usually is intended to identify the accused as the person who was at or near the scene of the crime at the time it was committed by showing the similarity between the fingerprints of the accused and fingerprints found at the scene of the crime or connected with its commission.

While it does not appear that the question of the admissibility of this particular type of evidence has ever been presented to and decided by the Indiana Supreme Court, the rulings of that court upon the admissibility of identification evidence of a somewhat similar nature compel the conclusion that it would hold admissible testimony of experts, qualified to examine and interpret fingerprints, as to whether a defendant's fingerprints correspond with fingerprints found to be connected with the commission of the crime.

In the case of Craig v. State (1908), 171 Ind. 317, 86 N. E. 397, 400, the Supreme Court said:

> "As a general rule, a wide range is given to evidence upon the question of identity of the accused person with the guilty party. Generally speaking, the identification of the person charged with the commission of the offense is not required to be established by direct or positive evidence. The witness, upon his examination, may testify that he is of the opinion that the accused is the person who committed the crime. His means of knowledge, however, or the facts upon which he bases his opinion . . . in respect to the identity of the accused, may be thoroughly tested

> upon cross-examination. The weight to be given to the testimony of such witness is a matter for the determination of the jury, or the court trying the case."

The Indiana Supreme Court has sustained the admission of evidence of marks or scars found upon the body of the accused (O'Brien v. State (1890), 125 Ind. 38); of the shoes of the accused and testimony that tracks found at the scene of the crime corresponded with tracks made by the shoes (Biggs v. State (1929), 201 Ind. 200); of testimony identifying the accused, who, when seen after his arrest with a mask over part of his face was identified by the witness as the robber who had been partly masked (Ross v. State (1932), 204 Ind. 281), and in discussing a defendant's objections to his conviction which rested largely upon circumstantial evidence, which had been admitted, consisting, in part, of footprints, tireprints, and shot in defendant's back, the Supreme Court said:

> "The obvious fallacy in point 2 is in assuming that the jury inferred that the tracks were made in the cornfield on July 10 by defendant, and inferred that they 'were similar to tracks made at the time of the thefts on July 3rd and July 7th.' We may say that the jury inferred that the defendant was the man at whom Loehr shot (and the man whom he hit) on the night of July 10. But the direct testimony of Loehr established that the man at whom he shot ran through the cornfield at the place where the tracks were found. Also direct testimony established the correspondence between the tracks made by the defendant on the night of July 10 and those made at the time and place of the thefts on the nights of July 3 and 7. It was a matter of credibility and not of inference. If the contention of the defendant were sound, courts would be compelled to reject all conclusions based upon fingerprint evidence."

Gears v. State (1932), 203 Ind. 380, 395, 396.

The admissibility of fingerprint evidence has been upheld by the courts of last resort in other states. One of the earliest American decisions upon the subject comes from the Illinois Supreme Court. In the case of People v. Jennings

(1911), 252 Ill. 534, 96 N. E. 1077, 43 L. R. A. (NS) 1206, that court discussed the science of fingerprints and its value in establishing identity and approved the admission of the testimony of experts who had studied the subject and who, upon the basis of a comparison of fingerprints, stated their opinion which, in effect, identified the accused as the perpetrator of the crime charged. I quote the following from the court's opinion:

> "From the evidence in this record we are disposed to hold that the classification of fingerprint impressions and their method of identification is a science requiring study. While some of the reasons which guide an expert to his conclusions are such as may be weighed by any intelligent person with good eyesight from such exhibits as we have here in the record, after being pointed out to him by one versed in the study of fingerprints, the evidence in question does not come within the common experience of all men of common education in the ordinary walks of life, and therefore the court and jury were properly aided by witnesses of peculiar and special experience on this subject."

Other citations are to be found in cases reported and annotations contained in 3 A. L. R. 1694, 1706; 16 A. L. R. 362, 370; 63 A. L. R. 1319, 1324, from which the following rules are stated:

> 1. "It is uniformly held that evidence as to the correspondence of fingerprints is admissible to prove identity."
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> 2. "While the weight of the evidence of identity of the prisoner with the person who committed the crime, thus adduced, is a question for the jury, such evidence may be sufficient to support a conviction."

Furthermore, in view of the decisions of the Indiana Supreme Court upon the admission of evidence of marks and scars upon the body of the accused (O'Brien v. State, *supra)* and shoes and footprints of accused (Biggs v. State, *supra),* it is my opinion that compulsory taking of defendant's fingerprints, before trial against his will, would not make the use of such fingerprints in evidence a violation of the constitutional prohibition against self-incrimination.

Article 1, section 14, Indiana Constitution contains the following:

> "No person in any criminal prosecution shall be compelled to testify against himself."

The following excerpts from the Indiana Supreme Court's opinion in the case of Ross v. State, *supra,* would clearly indicate that the admission of fingerprint evidence does not violate the above quoted constitutional provision:

> "We do not think that the rule against compulsory self-incrimination properly applies to pre-trial efforts to identify a suspect as the probable perpetrator of a crime, even though these efforts involve physical examination or observation of the suspect against his will. * * *
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> "The essence of the privilege is freedom from testimonial compulsion. In the case of O'Brien v. State (1890), 125 Ind. 38, 25 N. E. 137, 9 L. R. A. 323, this court recognized and made the distinction between compulsory self-incrimination and compulsory submission to treatment which furnishes evidence for the purpose of identification of an accused. * * *
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> "We think that O'Brien v. State properly limits the privilege against self-incrimination to testimonial compulsion, i. e., a defendant cannot be required to be a witness in his own trial, nor can another person testify under such circumstances that he is a mere 'mouth-piece' of the defendant, the defendant being the 'real witness.' The privilege does not embrace testimony of a witness other than the defendant unless such testimony results in getting before the jury evidence which rests upon the testimonial responsibility of the defendant."

In view of the foregoing, it is my opinion that evidence of fingerprints found to be relevant to the commission of a crime, and testimony of experts, qualified by training and experience, as to the correspondence of fingerprints of the accused with such relevant fingerprints, are admissible in the trial of criminal cases in the courts of Indiana, and I do not believe legislative action is needed to make such evidence admissible.