


One Fabulous Skyline

# TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783  
Austin, Texas 78767  
Tel. 512-354-7823  
Fax: 512-532-6282




Web Site: [www.texindbar.org](http://www.texindbar.org)

 Vol. 14, No. 17 - May 8, 2006

Case Name: Warren Keith Rodgers v. The State of Texas

- OFFENSE: Murder
- COUNTY: Wood
- COURT OF APPEALS: Texarkana 2005
- C/A CITATION: 162 S.W.3d 698
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0645-05
- DATE OF OPINION: May 3, 2006
- DISPOSITION: Court of Appeals Affirmed
- OPINION: Cochran, J. VOTE: 8-1-0
- TRIAL COURT: 402nd D/C; Hon. Timothy Boswell
- LAWYERS: James Volberding (Defense); Henry Whitley (State)

 **301.01 Witnesses / Experts / Qualifications (Motion to Strike Expert Witness' Testimony Based on Lack of Qualifications):** Appellant ran over his wife with his van and placed her injured body on a railroad track to be run over by a train. The State called a latent-print examiner to testify about comparisons of imprints from Appellant's shoes and tires with shoe prints and tire tracks found near the railroad tracks. Over objection, the trial court found the witness to be qualified as an expert and allowed him to testify that his comparisons revealed similar characteristics. Appellant continued to challenge the witness' qualifications on cross-examination and then moved to strike the testimony. The trial court denied the motion. On appeal, in addressing Appellant's argument that the witness was unqualified to testify as an expert, the court of appeals refused to consider evidence developed by Appellant during cross-examination of the witness and considered only the evidence before the trial court when it made its original ruling.

**Holding:** Appellant's motion to strike the witness' testimony based on his lack of qualifications, which was made after the witness testified, served as a renewed objection to the trial court's earlier ruling that the witness was qualified. Under these circumstances, the appellate court must review the trial court's ruling based on all of the evidence before the court at the time of the motion to strike. The Court of Appeals erred by excluding testimony developed during later cross-examination. However, the Court need not remand the case because shoe-print and tire-track comparisons have long been held liberally allowed in Texas and elsewhere by lay or expert witnesses. This is because the field of tire-track and shoe-print comparisons is not complex, the witness' opinions are not conclusive, and the witness' opinions generally are not pivotal to the resolution of the case.

**Concurring / Dissenting Opinions:** Judge Price delivered a concurring opinion. He agreed that the Court of Appeals should have considered evidence adduced during cross-examination when reviewing the denial of Appellant's motion to strike. However, he would remand the cause for the Court of Appeals to determine the admissibility of the witness' testimony.