VOLUME X OF XII

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Court of Common Pleas Case No. 2011-CP-26-3907
(Capital PCR Action)
Appellate Case No. 2014-000904

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

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A Yes.

Q And before you signed that statement did you have an opportunity to review it?

A Yes.

Q Did you make any changes before you signed it?

A No.

Mr. Mills: Your Honor, if I could just briefly refresh his recollection?

The Court: All right.

Q Mr. Wallingford, do you recognize the document that I just showed you?

A Yes.

Q Is it the statement that you signed?

A Yes.

Q And have you had a chance to briefly review that document?

A Yes.

Q Having, having reviewed it do you recall whether you made any changes before you signed it, some strike throughs, perhaps?

A On two of them where I initialed it.

Q Right, and so you initialed those two change?

A Yeah.

Q Mr. Wallingford, just for the record do you mind telling the Court your race or ethnicity?

A Meaning?

Q Meaning are you an African American?

A Yes.

Q And were there, on the jury were there other African Americans?

A No, not that I'm aware of.

Q And were you initially an alternate juror?

A Yes.

Q Was, before you were placed on, on the jury was there an African American juror?

A There was, I think I took her place because she got ill.

Q Right, what did you think about being selected as, as the alternate?

A I didn't really want to serve if that's what you mean.

Q Sure, sure, and did you think there was a reason that you among the alternates were chosen?

A I think I was ---

Mr. Mabry: Objection to speculation.

The Court: Sustained.

Q Moving forward, Mr. Wallingford, in the penalty phase on what day of the week did the deliberations

begin?

A I can't, I can't remember when, I guess on a --

Q Would it refresh your recollection to review your statement?

A It might have been on a Monday.

Q You're not sure which day of the week it was?

A I'm not sure.

Q Okay, when the deliberations began was there an initial vote?

A Yes.

Q And was there a split among the jurors for life and for death?

A It was, it was split somewhat.

Q And what was that split?

A I know I wasn't with it at first so I don't, I can't remember.

Q So you would have vote for life?

A Right.

Mr. Mabry: Objection to leading, Your Honor.

The Court: Yeah, let's don't lead.

Q What did you mean by I wasn't with it?

A Meaning that at the beginning I wasn't for the death penalty.

Q And were there other jurors who weren't for the death penalty?

A Yes.

Q And approximately how many?

A I can't, I know maybe one or two, I can't remember exactly the number.

Q How long did the deliberations last on that first day?

A Lasted a while, for as the time I can't, hours I can't say.

Q Was it way into the night?

A Yes.

Q And when the deliberations finally ended on Saturday where did you go?

A Back to ---

Q Excuse me, when deliberations ended on the first day where did you go?

A I guess back to the motel, I mean after that.

Q And were you, when were you required to return to the Court?

A The next morning, I guess.

Q Were you tired when you returned?

A Not really.

Q No, did anything, was there anything, could

you describe anything that made it seem like you or other jurors just wanted to go home?

A No.

Q Okay, having slept on your decision had your vote changed?

A Had I slept on it?

Q In other words it was the next day had your, had your vote changed overnight?

A It was still pretty much the same, you know, I mean --

Q Why did you want to vote for life?

A I just felt like it, you know, it wasn't right, you know, to kill.

Q Did you feel for Mr. Winkler's family?

A Yes, I did.

Q Any, any particular members of his family?

A No.

Q No, and did you describe, did you try to explain your reasons to the, to the jurors?

A Yes.

Q What happened when you tried to explain?

A I mean it was just the pictures of the lady that was graphic that I guess had everybody and then they wanted the death penalty, I mean I wasn't with it, with this.

Q Did they hear you out?
A Yes, I explained myself.
Q At any point did a couple of jurors come and stand around you?
A Yes.
Q And were you seated at that time?
A Yes.
Q Were those jurors men or women?
A It's like I guess two men.
Q Two men?
A Yeah.
Q Were they your size or they larger?
A One was quite larger, one was a little bit, not too much bigger.
Q And what did they do?
A I mean they just started shouting and looking at the pictures and what he done to the lady.
Q And what do you mean by, who do you mean by the lady?
A I mean the lady that was in the, on the pictures that he, I guess, took her life.
Q Right, and they were, you said they were shouting at you?
A Yes.
Q What were they saying?

A I can't remember what but I remember them shouting up over me but I can't remember the exact words they were saying.

Q Did they suggest something might happen to you or to your family?

Mr. Mabry: Objection, leading.

The Court: Don't lead.

Q Did they say anything about what Mr. Winkler might do if he didn't get the death penalty?

A No, nothing of that sort.

Q Did they, was there any discussion about, about your family?

A No.

Q Would it refresh your recollection to look at paragraph 7 of your statement?

A I don't remember them saying that, I mean because I don't have a daughter.

Q Did things ever get physical between you and the other jurors?

A No, as far as, you know, touching or hitting no.

Q But did you think that they could, that it was building up to something like that?

Mr. Mabry: Objection, leading.

The Court: Sustained.

Mr. Mills: (Continuing)

Q Did you have any concerns about being threatened?

A I mean as far as I know I can't remember them threatening me; I can remember them being over me saying look at the pictures of the woman.

Q And they, at least one of them was a good bit larger than you?

A I mean ---

Mr. Mabry: Objection, leading.

The Court: I'll allow that but you are leading a pretty good bit, okay, let's kind of cut down on the leading questions but I'll allow that, go ahead.

Mr. Mills: (Continuing)

Q And at least one of the jurors was a good bit larger than you?

A Yes.

Q Was he standing, where was he standing relative to you?

A It's kind of like on the side, he was bamming on the desk.

Q Was he, what was he, what was he saying?

A I mean he was just shouting, you know, like I say something of the sort what the woman, I guess they was just looking at the, the graphic pictures of the woman

and just the fact that I wasn't with the death penalty and I guess he wanted me to, you know, plead for the death, I mean vote for death penalty. That's the only thing I can tell you.

Q Was there any racial tension in what he was saying?

A No, not that I'm recollect.

Q Now as a result of all of this did your vote change?

A Eventually yes.

Mr. Mabry: I object to the form of that, it's a leading question.

The Court: Overruled, I'll allow it, go ahead.

The Witness: (Continuing)

A Yes.

Q Was voting for death your choice?

A Yes.

Q At the time was the change because of the threats?

Mr. Mabry: Objection.

The Court: Sustained.

Mr. Mills: (Continuing)

Q At the time was it something that you regretted?

A No, I didn't regret it, just, you know --

Q Reviewing paragraph nine does that refresh your recollection?

A I guess, you know, in a sense of letting them, you know, change my mind is the only thing I can say, I mean as far as, you know, I mean as far as me I just say if, you know, you do the crime you do the time.

Q And by doing, what do you, by doing crime do the time is that referring ---

A Whatever time that the law serve, justice department is served, I mean, I mean I'm not, you know, just say how much time, you know, what to get, I just, I just voice my opinion on it, that's it.

Mr. Mills: Just a moment, Your Honor.

The Court: All right.

Mr. Mills: Nothing further, Your Honor, thank you.

The Court: All right, cross examination.

Mr. Mabry: May it please the Court?

Cross Examination

By Mr. Mabry:

Q Mr. Wallingford, is that, am I pronouncing it correctly?

A Yes.

Q Okay, I apologize for having to ask you questions about your deliberations but we're here, I'm

Anthony Mabry with the Attorney General's office, and I just have a few questions for you; do you remember in the voir dire, the individual voir dire, you remember when they brought each of you in and asked you questions about whether you could vote for death, whether you could vote for life?

A Yes.

Q Okay, and did you in fact tell the Judge and the lawyers that you could vote for the death penalty in the appropriate case?

A Yes.

Q Okay, and was that a true statement?

A Yes.

Q Okay, and as I understand during the penalty phase, during your deliberations you were initially for life but you ended up changing your opinion or changing your mind and voting ---

A Right, yes.

Q --- for death; is that right?

A Yes.

Q Okay, and at one point in time there were two jurors, one juror stood on one side of you and one stood on the other and they were pointing and asking you to look at a photograph of the lady that was murdered?

A Right.

Q Autopsy photographs?

A Yes.

Q Okay, is that what changed your opinion looking at that autopsy photograph?

A You can say somewhat after, after looking at them and going over them, you know, observing them.

Q Okay, and do you remember that each of you when ya'll came to a unanimous sentence to vote for death you remember each of you signed that form, you had to put your own signatures?

A Right, yes.

Q And did you do that?

A Yes.

Q Okay, and they brought the jury, when ya'll came out with your sentence; do you remember that?

A Yes.

Q Okay, and they polled the jury and they asked each of you if that was your verdict and still your verdict?

A Right, yes.

Q Okay, and did you say yes that's my verdict?

A Yes.

Q Okay, and was that the truth when you made that statement?

A Yes.

Q Okay, and could you just tell me, and I know it's a personal question but they had asked you about something, how, how tall are you, Mr. Wallingford?

A Probably about five-five.

Q Okay, and how much do you weigh?

A About two-hundred and six.

Mr. Mabry: Okay, that's all I have, thank you, sir.

The Court: All right.

Mr. Mills: Nothing further, Your Honor, thank you.

The Court: All right, you may step down, thank you, sir.

Mr. Mills: Your Honor, could we have about a ten minute break before the next witness?

The Court: All right.

Mr. Mills: Thank you.

The Court: All right, let's take about a ten minute recess, all right.

(Whereupon, a recess was taken and the following takes place on the record after the recess.)

The Court: All right, the Applicant can call its next witness.

Mr. Mills: Thank you, Your Honor, the Applicant

calls Mr. Stephen Fitzwater.

The Court: All right.

Stephen Fitzwater

being first duly sworn, testified as follows:

Madam Clerk: Please state your name for the Court?

The Witness: Stephen Fitzwater.

Direct Examination

By Mr. Mills:

Q Good morning, Mr. Fitzwater, could you, please, spell your name for the record?

A S-t-e-p-h-e-n.

Q And your last name?

A F-i-t-z-w-a-t-e-r.

Q Thank you, Mr. Fitzwater, where do you live?

A I live in North Myrtle Beach.

Q And in 2005 and 2006 where did you live?

A I lived in Little River, [redacted]

Q What address did you, was that if you recall?

A I can't really recall.

Q Who did you live with during the time period?

A Frank Patterson, my foster family.

Q Great, and what's your relationship with Mr. Patterson?

A He is my foster brother in law.

Q And who is that through?

A My foster sister Kathy Patterson.

Q Great, and who is Kathy Patterson to him, just trying to make the connection?

A Kathy Patterson is his wife.

Q Okay, how long did you, how long did you live on [redacted]?

A I think three or four years.

Q Including 2005 and 2006?

A Yeah, yes.

Q While you were living there did you have the occasion to meet Mr. Winkler?

A Yes, I met him through J[redacted] G[redacted].

Q Did you have, on approximately how many occasions did you have to meet Mr. Winkler?

A Well I would frequently visit J[redacted] G[redacted]'s house and spend the night so there was a good many occasions before he was under house arrest.

Q And who is, who is J[redacted] G[redacted]?

A Becky's son.

Q And did Becky live with Mr. Winkler?

A I believe so at the time, yes.

Q And so you knew her and could recognize her?

A Yeah.

Q Was there a time when Mr. Winkler was on home detention?

A Yes.

Q Was, when approximately was that?

A I think it was 2006, earlyish.

Q Did you have an occasion to spend time with Mr. Winkler during that time period?

A Yes, my foster family would oftentimes send me over to keep him company.

Q And did you, when you went to keep him company what did you observe?

A Well at first, you know, there was, it was kind of just normal but over time you could tell that the whole situation was emotionally taxing. He didn't really have many friends who would come over. He, he felt like he had lost everything and --

Q Did you have reason to think that he was suicidal?

A He would insinuate, I felt, he would talk about ending it or something of the sort, just very cryptic.

Q Pardon me?

A Very cryptic.

Q But insinuating, but you had a reason to think that he was suicidal?

A Yes.

Q While Mr. Winkler was on home detention would Ms. Rebecca Winkler sometimes drive through the neighborhood?

A Yes.

Q On approximately how many occasions did that happen?

A I can't remember approximately but it was at least four or five times.

Q And what would happen when she would drive through the neighborhood?

A For the, for the majority, you know, she would just drive through, drive by the house and just drive off but we had observed a couple of occasions where she would actually stop outside of the house and park.

Q And do you recall this was while Mr. Winkler was on home detention?

A Yes, sir.

Q And it happened on multiple occasions?

A Yes.

Q Did you ever have the occasion to video Ms. Winkler while Mr. Winkler was on home detention?

A I did it once, yes.

Q How did that come about?

A I remember I was just sitting around either reading a book or watching t.v. and my foster mom she tells me to hurry up and get the camera, she's doing it again, I remember that's what she said, and so I got up and got the camera and they sent me outside to video record Becky driving around.

Q Did you have an occasion to observe Mr. Winkler's reaction to that happening?

A He was very upset during every single one of the occurrences.

Mr. Mills: Your Honor, I'd like to briefly play a video at this point. I'm informed that the lights may slightly dim when we bring down the screen.

Mr. Mabry: No objection.

The Court: All right, let's go ahead, have you got it, is it on disk?

Mr. Mills: Yes, Your Honor.

The Court: All right, we'll need to mark -- do you need to mark it before or you can do it afterwards.

Madam Court Reporter: We can do it afterwards.

The Court: Okay, so that will be --

Mr. Mills: We have an extra copy of the disk actually, Your Honor.

The Court: Well I prefer to do the one we're going to show; what would that be, Applicant's [sic] Exhibit what?

Madam Court Reporter: Nine.

The Court: All right, without objection; is that correct?

All right, so that would be Applicant's [sic] Exhibit Number 9 admitted into evidence without objection. You can go ahead and publish it.

(Whereupon, Petitioner's Exhibit Number 9 marked and entered into evidence.)

Mr. Mills: Your Honor, I apologize the sound was muted.

The Court: All right.

Mr. Mills: As you can see it won't take but a second, Your Honor.

The Court: All right.

(Whereupon, Petitioner's Exhibit Number 9 played in open court.)

Mr. Mills: That's, that's it for the video.

The Court: All right.

Mr. Mabry: No objection, Your Honor.

The Court: All right.

Mr. Mabry: I don't object to the admission of it.

The Court: Okay, let's just make sure, I just want to make sure we get it marked.

Mr. Mills: Sorry for the delay.

The Court: That's no problem.

Mr. Mills: (Continuing)

Q Having viewed the video, Mr. Fitzwater, was that your voice on the video?

A It was.

Q And what happened prior, prior to you taking the video?

A Well I was either reading a book or watching television and my mother told me that she was at it again and so I raced, got the video camera, went outside and recorded what occurred.]

Q And who is, who is in the video?

A Well I remember Becky being the driver but there was also an elderly woman, yes.

Q Okay, And is this the only instance of Becky driving through the neighborhood?

A It was not.

Q And you observed multiple occasions?

A Yes.

Q Now can you describe the layout of that neighborhood?

A Yes, sir, well in the video they're driving

off after they see me videotaping they're driving to the entrance of St[redacted]. Our house was kind of in the back, mine and Mic's, and she was driving towards the entrance after she saw me getting ready to take the video.

Q Was your house, how far was your house from the entrance to the neighborhood?

A To the entrance just like two streets over.

Q But it was not on the street that's part of the entrance?

A No, it's not.

Q Are there any places of businesses in that neighborhood?

A None at all.

Q Is it a through street or is it more like a u-shaped neighborhood?

A Kind of u-shaped.

Q Prior to trial were you contacted by anybody on Mr. Winkler's team, defense team?

A No.

Q So did Vicki Childs interview you?

A Vicki what?

Q Vicki Childs, anyone named Vicki Childs?

A No, I don't believe so.

Q Carolyn Graham?

A I don't think so.

Q Dorian Hall?

A Not to my knowledge.

Q Paige Tarr?

A No.

Q No, and if you had been contacted would you have been willing to provide this information?

A Repeat that?

Q If you had been contacted by Mr. Winkler's defense team would you have been willing to provide them --

A Yes.

Q --- the information you testified to today?

A Yes.

Q And would you have been willing to testify at trial about what you've testified today?

A Yes.

Q Now does, does what happened in the video and the driving by in your mind excuse what happened to Ms. Winkler?

A Not at all.

Q But was it something that was upset to, upsetting to Mr. Winkler?

A It was obviously upsetting, yes.

Mr. Mills: Just a moment, Your Honor.

The Court: All right.

Mr. Mills: Beg your indulgence just a moment.

Q (Continuing) In the video where relative to Mr. Winkler's house was this taken?

A Our house was directly in front of his.

Q And you took this video from your house?

A From the front porch of my house, yes.

Q And so it's very close to your house and to Mr. Winkler's house?

A It was, it was just right across the road, yeah.

Mr. Mills: Nothing further, Your Honor, thank you.

The Court: All right, cross examination?

Mr. Mabry: Yes, sir.

Cross Examination

By Mr. Mabry:

Q Mr. Fitzwater, do you remember talking to Vicki Childs on January 31st, 2008, and telling her that you had saw Becky ride by with an older woman in a silver car and you saw her do it at least three times around midday and that Mr. Winkler saw her, too, and the car would circle the neighborhood and Mic told you the older woman was Becky's mother?

A I don't recall the exact instance but the scenario sounds very familiar.

Q Let me show you this, Ms. Childs interview, down at the bottom the last paragraph, so I ask you again after, I'll give you a chance to read it?

A Go ahead.

Q Okay, do you remember now talking to Ms. Childs and telling her that you saw the victim Becky riding through the neighborhood two or three times in a silver car and Mic Winkler told you that the elderly woman in the passenger seat was Becky's mother?

A I do recall now.

Q Okay, so you were talked to by Ms. Childs and that's what you told her?

A Uh-huh.

Q Okay --

The Court: Is that a yes?

The Witness: (Continuing)

A Yes.

Q Okay, but you didn't know who the older woman was?

A No, sir.

Q In fact Mic told you that the woman driving was also Becky, didn't he?

A The woman driving, no, I actually recognized her face.

Q Okay, how far away from the car were you

when you took the video?

A When I first started taking the video the car was driving away but when I had first stepped outside the car was directly in front of the house and I got a clear shot of Becky's face.

Q Okay, and you didn't know Becky's mother, right?

A I did not know Becky's mother.

Q And you told, you also told Ms. Childs that you were sure that it was Becky?

A Yes.

Q Stephen told me he's sure that the woman in the car was Becky but you didn't know Becky's mother?

A I did not know the elderly woman.

Q That's who the defendant told you the elderly woman in the passenger seat was?

Mr. Mills: Objection, Your Honor, asked and answered.

The Court: Overruled, go ahead.

Mr. Mills: (Continuing)

A Yes.

Q Okay, and Ms. Childs had talked to your father and your mother as well, correct?

A Foster sister and ---

Q I'm sorry?

A Yes.

Q Your foster sister and your foster brother in law?

A Yes.

Q Okay, and whenever this car would come through the neighborhood either Mic or your mother would say the car's out there again come out and videotape; that's basically what was happening, right?

A Yeah.

Q Okay, and you told that she was coming through in the silver car and that's the car we're talking about, right?

A Yes.

Q Okay, and do you remember talking to Ms. Childs on February the 3rd of 2008?

A I do not recall, remind me.

Q You told her that time you had not seen J[redacted], I ask you if you remember this, do you remember telling her you hadn't seen J[redacted] in a long time since he had changed schools?

A Yes.

Q Okay, and you said that Mic was nicer to you than Becky was?

A Well Mic was definitely more outgoing; he was, Becky was somewhat reserved. She wouldn't really

talk; Mic was a lot friendlier.

Q You also told her at that time that you were asked if you thought Mic deserved to die and you said that you didn't think that anyone deserved to die?

A I still hold that belief.

Q Still believe that, okay, you don't believe in the death penalty?

A No, sir.

Q Okay. and this car that you filmed it, when you filmed it it was going out to the entrance?

A Yes.

Q Okay, and did you know a lady by the name of Dorothy Freeman that lived in the neighborhood?

A Yes.

Q Okay, where did Ms. Freeman live?

A Well actually Dorothy Freeman didn't live in the neighborhood, she was James Freeman's mother but Dorothy Freeman, I believe at the time, lived with her, with her father and it wasn't too far away from the neighborhood. I can't remember the exact street but it wasn't really in the neighborhood.

Q Okay, where did her son live?

A Now he lived right up the road from us.

Q Okay, and did Ms. Freeman ever stay with her son or do you know?

A Not to my recollection, Mr. Freeman and Ms. Freeman had been, you know, divorced and to my knowledge she never went over there. Now I know that she visited frequently to see the children but that she was staying there the night, no.

Q I'm talking about the older Ms. Freeman, there's the mother?

A The mother of Mr. Freeman?

Q Uh-huh?

A Yes, well then that would happen.

Q Okay, where would she be at?

A She would stay at James Freeman's residence.

Q And where was that?

A It was right up the street like two houses beside "Mic's".

Q Okay --

A Yes.

Q And sometimes, I believe you also told Ms. Childs that that car, the silver Mercury Sable, would not only come thorough the neighborhood but it would stop and stay there for maybe twenty minutes and then leave?

A Yes.

Mr. Mabry: Okay, thank you, sir.

The Court: Redirect?

Mr. Mills: Briefly, Your Honor.

Redirect Examination

By Mr. Mills:

Q Mr. Fitzwater, when Ms. Winkler came into the neighborhood would she park in front of Mr. Winkler's house?

A In front of Mr. Winkler's house, yes.

Q And would she stay in the car?

A I never observed her getting out, however, my foster mom she said that she ---

Mr. Mabry: Objection.

The Court: Sustained.

Mr. Mills: Nothing further, Your Honor.

The Court: All right, you may step down. Let's go ahead and get that disk now and mark it.

Mr. Mills: Yes, sir.

The Court: As Applicant's [sic] Exhibit 9 which was admitted into evidence without objection.

All right, you can call your next witness.

Mr. Mills: Thank you, Your Honor, the Applicant calls Aaron Wilkes.

The Court: All right.

Aaron Wilkes

being first duly sworn, testified as follows:

Direct Examination

By Mr. Mills:

Q Good morning, Mr. Wilkes.

A Good morning.

Q Mr. Wilkes, for the record where are you employed?

A With the Horry County School District.

Q And in 2005 where were you employed?

A With the Horry County Sheriff's Office.

Q And at the Horry County Sheriff's Office what were your responsibilities?

A I was in charge of the home detention program.

Q And what does, what were your responsibilities in the home detention program?

A To place the people upon the ankle bracelet, make sure that they were secured in their homes, and at times they were given free time to look for jobs and things of that nature.

Q As part of the home detention program did you have the occasion to meet with the people that you were monitoring?

A I did.

Q How often would you do that?

A They would come in at least once a week and I would go out and do home visits probably like twice a

week.

Q And I'm turning your attention to the period of October 2005 to March 2006; was Mr. Winkler on home detention?

A Yes, he was.

Q And was he someone you worked with on detention?

A Yes.

Q Did you have the occasion to meet with Mr. Winkler as part of that?

A Yes, I did.

Q What were some of the requirements of Mr. Winkler's home detention?

A He had to come in weekly to pay his fees and to do random drug screenings at times. Also we had to discuss his free time, I think the Circuit Court Judge allowed him a couple of hours each week, I meant daily to look for job and so we discussed what ties he would use for that.

Q So Mr. Winkler was unemployed during that time period?

A No, he wasn't.

Q You, he was not unemployed?

A No, he was not employed at the time.

Q He was not employed?

A No.

Q Okay, there we go?

A Right.

Q Thank you. In working with Mr. Winkler did he make his payments?

A Yes, he did.

Q And other than on the day of the incident was Mr. Winkler to your knowledge compliant with his home detention?

A Yes, he was.

Q And you would have known if he was not compliant?

A Yes.

Q And that would have been based on, what would that have been based on?

A That would been based on any alerts that we would have received if Mr. Winkler was going out of range without permission.

Q And perhaps would it have anything to do with you meeting with Mr. Winkler?

A Well when he was meeting, when he was assigned to come in that was already arranged so there were no alerts to go off at that time.

Q Right, and he would that was the question?

A Yes.

Q Great, with your work with Mr. Winkler did you have the occasion to talk to Ms. Rebecca Winkler?

A I have not.

Q During the time period that Mr. Winkler was on home detention you did not have time, an opportunity to speak with Ms. Winkler?

A I don't think I can recall her contacting me about anything not that I can remember.

Q And working with Mr. Winkler did he express to you some, some concerns about his home detention?

A A few times he did.

Q And what were those concerns related to?

Mr. Mabry: Objection, hearsay.

The Court: Sustained.

Mr. Mills: Your Honor, it goes to Mr. Winkler's state of, state of mind that he was upset about what was happening and it would be related to a change.

Mr. Mabry: So it would be used for the truth of the matter asserted.

The Court: Yeah, I sustain the objection, hearsay.

Mr. Mills: (Continuing)

Q Did you have some reason to be concerned about Mr. Winkler?

A Sometimes he would come in and, you know,

state various things and I, you know, at the time I didn't really think too much into it but he was, you know, he made some complaints and I told him the right people to whom he needed to discuss those with such as his attorney and, you know, local, the other law enforcement agencies, county police department.

Q And so he, he made some complaints and the response was, what did you have him, what did you have him talk to his attorney?

A Yes.

Q Great, and in the time that Mr. Winkler was on home detention was there any trouble with him passing the drug tests?

A No, it wasn't.

Mr. Mills: Just a moment.

Q (Continuing) And what were the substance of those complaints?

Mr. McDonald: Objection.

Mr. Mills: They've opened ---.

The Court: Sustained.

Mr. Mills: Your Honor, they've opened the door by asking whether or not Mr. Winkler during his cross examination whether or not he made complaints to anyone about Ms. Winkler coming by his house.

The Court: Okay, I'll allow it, go ahead,

overruled.

The Witness: (Continuing)

A He complained about Ms. Becky riding by at times taking pictures. He also complained about having to go to Court and they were taking his vehicles from him so he didn't have any transportation and, you know, at times he would appear agitated because of that.

Mr. Mills: Nothing further, Your Honor.

The Court: All right, cross examination?

Mr. McDonald: May it please the Court?

The Court: Yes.

Cross Examination

By Mr. McDonald:

Q Mr. Wilkes, how are you doing today?

A All right, you?

Q I'm here. All right, so I want to start with you, you mentioned some complaints that were voiced by Mr. Winkler to you with regard to Ms. Winkler; isn't that right?

A Yes.

Q And he said that, that she was driving around; is that right?

A Yes.

Q Did he mention what kind of car she was driving around in?

A Not that I recall.

Q No, and you didn't know Ms., Ms. Winkler, Becky?

A No, I did not.

Q So you had no means of knowing whether what he was saying was actually true, did you?

A No, I did not.

Q And there was an incident, and I think this was alluded to in direct, he did go off monitoring, correct?

A Correct.

Q And you subsequently learned that he murdered Becky; isn't that right?

A Correct.

Mr. McDonald: Just a moment.

Q (Continuing) You in direct, I believe, testified that you had to go out to Mr. Winkler's house; is that right?

A Yes.

Q When you went out to his house did you observe any cars going around taking pictures, anything of that nature?

A No, I did not.

Mr. McDonald: Thank you, no further questions.

The Court: All right.

Mr. Mills: No questions, Your Honor.

The Court: All right, you may step down.

Mr. Mills: Your Honor, we have a couple of witnesses coming in this afternoon but I believe that concludes our witnesses for this morning.

The Court: All right, what time?

Mr. Mills: They're, they're expected to be here one at 1:30 and one at 2.

The Court: All right, so is that it until, we'll just break until 1:30, is that agreeable?

All right, anything from the Applicant before we recess?

Mr. Mills: No, Your Honor, thank you.

The Court: All right, anything from the Respondent before we recess?

Mr. Simon: No, sir, Your Honor.

The Court: All right, we'll stand in recess until 1:30.

Mr. Mills: Thank you, Your Honor.

The Court: All right.

(Whereupon, court was recessed for lunch and the following takes place on the record after the lunch recess.)

The Court: Anything from the Applicant before we get started?

Ms. Paavola: Nothing, Your Honor.

The Court: Anything from the Respondent?

Mr. Simon: Your Honor, we'd just like to, it's our understanding that the Applicant plans on calling more jurors this afternoon and we just want to renew our objection to the jurors testifying based on the Rule 606(b).

The Court: I understand, yeah, I'm going to go ahead. Like I say I don't, I don't know until I hear the testimony with it being a non jury I'm going to go ahead and allow them to call them. All right, you can call your next witness.

Mr. Mills: Thank you, Your Honor, Ms. Lauren, the Applicant calls Ms. Lauren Roughton.

The Court: Ms. Lauren who?

Mr. Mills: Roughton, we'll have her spell it.

The Court: All right, thank you.

Lauren Roughton

being first duly sworn, testified as follows:

Madam Clerk: Please state your name for the Court and spell it.

The Witness: Lauren Roughton, l-a-u-r-e-n, last name is r-o-u-g-h-t-o-n.

Direct Examination

By Mr. Mills:

Q Good afternoon, Ms. Roughton. Let's start with some basic background information, first. Ms. Roughton, what was your role in this case?

A I was a juror.

Q And just for the sake of the defense, do you mind pulling the microphone over?

(The Witness complies.)

The Witness: (Continuing) There you go?

A I was a juror.

Q And did you participate in the deliberations of this case?

A Yes, I did.

Q At the start of the penalty phase deliberations was there a vote?

A Yes, there was.

Q And were, what was your vote?

A I was in favor for life penalty.

Q And were there others with that same vote?

A There was two more.

Q And who are those other two people?

A I can't remember the woman's name, another woman, an older lady and a gentleman my age.

Q So there were two others, and during the course of penalty phase deliberations did the jurors send out a couple of questions?

A Yes, we did.

Q What were those questions about?

A We, one was we weren't unanimous what would happen.

Q Okay, and did the Judge answer, answer that question?

A I don't believe we got back an answer.

Q Okay --

A Not a yes or no answer.

Q Right --

Mr. Simon: Excuse me just a second. We have an additional objection, Your Honor, don't object as far as her testifying to things that she knew, but the objection would be to hearsay to what other jurors might have said.

The Court: I'll sustain that objection.

Mr. Mills: (Continuing)

Q And how did it make you feel when the, when the question was not answered?

A It's confusing not to, to know one, one vote means one thing versus if we go another way if it means, it's very confusing. There wasn't a black and white answer given.

Q And when you sent out the question why did you send out the question?

A Because we weren't unanimous, we wanted to

know what affect that would have.

Q And so was it a hypothetical question?

A Yes.

Q Were, I guess the question is were you not unanimous?

A We were not.

Q Okay, and you were having trouble coming to unanimous, I guess is the --

A That's correct.

Q Yeah, at the end of the first day of deliberations were you, what was your vote?

A Still for the life.

Q And were there others?

A Yes, I know one, I can't remember if the lady changed her mind that evening or the morning before but -

Q And at some point on the second day did your vote change?

A Yes, it did.

Q What led to that change?

A Several things, it was very intense with me not being strong enough to stay with what I felt and, and not getting answers to questions that we needed answers or I needed answers to.

Q Did the, was the change because of the

change in your preference to sentences?

A No.

Q When, at the end of the case when you left for home or, excuse me, when you left where did, where were you, where did you go?

A We went back to the hotel and got our belongings and we all went, I went home.

Q On the way home did anything happen?

A Yes, I remember getting about halfway home and pulling, pulling over somewhere off 17, I can't remember where, and just, just broke down, regret.

Q And I know this is difficult but what was the regret about?

A For not staying with what I thought was the right thing for my decision to be.

Q And what was the right thing?

A I believe that, I believe he was guilty, I believe he deserved to be punished, and I do believe in the death penalty in, in this case. I believe that there are evil people and I believe that this man did an evil thing but I don't think that he was an evil person. I think that from what I remember he did good things and that's why I don't, it's how I felt the way I felt.

Q And so you had a preference for life at some point?

A I did.
Q At some point was the vote eleven to one?
A Yes, it was.
Q And who was the one?
A Mr. Wallingford.
Q And was he a vote for life?
A Yes, he was.
Q Was there an effort by other jurors to get him to change his vote?
A Yes, there was.
Q Can you tell me about that?
A Specifics, no, but he was very, it was very intense, felt like it was everyone against him.
Mr. Mabry: I object, Your Honor, I think she testified he felt like, I object to that.
The Court: I didn't hear that, overruled.
Mr. Mabry: Okay, I may have misheard the testimony, move to strike it if that's in the record.
The Court: All right, overruled.
Mr. Mills: (Continuing)
Q So you're telling us about the effort made to get him to change his vote?
A Yeah, I remember most everyone wanted to know his reasoning why he believed that way and his, he, he couldn't explain it good enough to them. It wasn't good

enough the way he explained it. They wanted to know why and that's just how he felt.

Q Were there, what, was there any, at some point did any jurors, how were the jurors arranged when they were making this case to him?

A I remember being across the table from him. I know he was on one side and I know the foreman was on the other side. I really don't remember ---

Q Sure?

A --- everyone exactly.

Q Were there raised voices during that?

A Oh, yes.

Q And pounding on the table?

A Yes.

Mr. Simon: Object to leading the witness.

The Court: Let's don't lead the witness.

Mr. Mills: (Continuing)

Q Do you remember anything else about that effort?

A Cussing, loud voices.

Q And I believe you may have said this, but in your voir dire you said that in the right case you could give the death penalty; is that true?

A Yes, I could.

Q And is this the right case?

A No, sir.

Mr. Mills: All right, no further questions, Your Honor.

The Court: All right, cross examination?

Cross Examination

By Mr. Mabry:

Q Good afternoon, my name is Anthony Mabry. I'm the assistant attorney general and apologize for having to ask you these questions, but we're here today and you're under oath. Do you remember your individual voir dire as a juror when you were asked whether you could vote for the death penalty in the appropriate case?

A Yes, sir, I do.

Q And did you testify under oath that you could do that?

A Yes, sir, I did.

Q All right, and do you remember when you were sworn as a juror in this case you agreed to decide this case based on the evidence in the courtroom and the law as Judge Lockemy gave it to you?

A Yes.

Q Do you remember that?

A Yes.

Q Okay, and did you swear to do that as a juror in this case?

A I did.

Q Okay, now you have testified that you have regrets about your verdict. Did you go and tell Judge Lockemy at any time from when you returned the death sentence in this case until today that you had regrets about your verdict in the sentencing phase?

A I did not.

Q Okay, did you go and tell Solicitor Hembree or Deputy Solicitor Humphries that you had any regrets about your verdict in this case?

A I did not.

Q All right, did you go to Mr. Wilson or Mr. Rathbun, I believe his name is, the defendant's lawyers in this case, since this verdict came down and tell them that you had regrets about your verdict in this case?

A I told no one except my husband and my parents.

Q Okay ---

A And then Mr. Mills when he called me.

Q Okay, and Mr. Mills called you when?

A It's been a few months ago, I can't remember exactly the first time he called.

Q Okay, now you testified that at the end of the first day of deliberations it was, I believe you said, a nine to three split and you were one of the jurors voting

for life?

A Yes, sir.

Q Okay, do you remember that evening that Judge Lockemy gave ya'll a additional charge about trying to reach a unanimous verdict?

A I don't remember off hand.

Q Okay, I'm going to show you a transcript of the record in this case that took place actually at 12:26 a.m., so it was late that night; do you remember that night?

A I don't remember specifics but I remember it being late, yes.

Q And I apologize for coming forward ---

A That's okay.

Q I'm just going to set that right there. I have a copy, that's the charge that Judge Lockemy gave ya'll. Ya'll sent out a note that said you couldn't reach a unanimous verdict and he brought you in the courtroom and gave you this charge; do you remember that?

A I do remember that he did say it had to be unanimous.

Q Okay, and he also said more than just the fact it had to be unanimous verdict. He also said, and if you look down at line eight on that first page, said "when a matter is in dispute it isn't always easy for even two

people to agree so when twelve people must agree it's even more difficult. In most cases absolute certainty cannot be reached or expected, however, you have a duty to make every reasonable effort to reach a unanimous decision"; do you remember that?

A Uh-huh.

Q Okay, and then the next line is line fourteen and he instructed you "in doing so you should consult with one another, express your own views, sorry, listen to the opinions of your fellow jurors, tell each other how you feel and why you feel that way, discuss your differences with open minds, although the decision of the jury must be unanimous everyone of you has a right to your own opinion. The verdict, the decision you reach, the decision you've agreed to must be your own decision, the result of your own convictions, and you should not give up your firmly held beliefs merely to be in agreement with a fellow juror"; you see that?

A I do.

Q Do you remember him charging you on that?

A Yes.

Q All right, and then the next sentence says "the majority should consider the minorities position and the minority should consider the majorities position. You should carefully consider and respect the opinion of each

other and re-evaluate your position for reasonableness, correctness, and impartiality. You must lay aside all outside matters and re-examine the questions before you based on the law and evidence in this case"; do you see that?

A I do.

Q Do you remember that being charged to you?

A I do.

Q All right, and then he says "now, ladies and gentlemen of the jury, I'm going to give you an option at this time, going to ask you if you'd like to return and continue deliberations see if you can arrive at a decision, the unanimous decision within a reasonable time. If you wish to do so to continue deliberations tonight see if you can come to a unanimous decision within a reasonable time then I'll be glad to let you do so. I'll let you make that decision. If you'd rather go back to the hotel room come back tomorrow and see if you can reach a unanimous decision at a reasonable time you can do that and I'll let you make that decision"; do you remember that?

A I do.

Q Okay, and ya'll decided to go to the hotel for that night, correct?

A Correct.

Q All right, and then the next morning ya'll

came back and two of the jurors, if you go over to page two hundred thirty-two, take your time, still with me?

A Uh-huh.

Q Okay, you see where it says the jury enters at 9:09 a.m. on page two hundred thirty-two?

A Yes.

Q Okay, all right, "ladies and gentlemen, good morning to you, I gave you an additional charge last night and if you need me to recharge that then let me know. If not then you may begin your deliberations and let us know when you reach a decision,' and the Judge noted one juror is doing this, "do you hear me all right, Mr. Randall?" and the juror said "I can hear you fine but I'd like to hear," like you, "I'd like to hear the recharge." "Well if you would how about if ya'll would just step outside and if that's the request then I'll just wait right here. If that's your request come on in and I'll just recharge you if you haven't begun your deliberations," and that was at 9:11 a.m., okay, you remember that?

A I don't remember that.

Q Okay, well if you go on over to page two hundred thirty-six. Go down toward the bottom of the page you see ---

A Twenty-nine thirty-six?

Q I'm sorry, Twenty-nine thirty-six.

A Okay.

Q Yes, ma'am, you tell me when you're there?

A I'm there.

Q Okay, on line 18 down there it says the jury re-enters or jury enters at 9:15 a.m., okay?

A Okay.

Q Now it says, "Mr. Foreman, I take it the jury wants me to repeat what I said to you last night" and the foreman says, "yes, sir," and then the Judge recharges ya'll exactly what he told you shortly after midnight the night before; do you want me to read it to you again or you want to read it?

A I'm reading it.

Q Okay, I won't read it to you again, you can go ahead and read it.

A Okay.

Q Okay, so he, am I right he charges you again the same thing he had told you the night before word for word, that you didn't have to violate your convictions, you should listen to the opinions of each other, and you shouldn't just agree to just agree, it should be your own decision?

A It still doesn't answer the question. I remember at the time, though, we wanted to know if we didn't agree what were the ramifications if we didn't

agree. He's telling us we have to so someone has to change their convictions.

Q Well he doesn't say you have to agree ---

A Well he says it has to be unanimous.

Q The decision has to be unanimous?

A Right.

Q Right, okay, now I assume at that point you still were voting for life, that was at 9:18 when ya'll went out?

A That's right.

Q Okay, so sometime between 9:18 and 10:14 a.m., if you turn over to page Twenty-nine thirty-nine, it was just about forty five minutes later, and I'm just being rough approximation, 9:18 to, I'm sorry, almost an hour later, little less than an hour later ya'll came back with the unanimous decision on the sentence; is that correct?

A I guess that's correct time.

Q Okay, now why would where the Judge told you, well let me ask you this, what caused you to change your opinion from life to death or can you tell us?

A Well I can, I mean several things, one not having a clear it had to be unanimous; they were just talking between the jurors if we weren't unanimous they would have to ---

Q Let me stop you right there, let me stop

you right there?

A --- they had, they had fear, okay, I got you.

Q You can't get into what other jurors said?

A Right.

Q But can you tell me what ---

A My, my fear ---

Q --- your ---

A My fear was the ramifications if we didn't, if we didn't reach a unanimous, that was my, my thing, and another thing I said because I didn't stick to what I thought was the right thing to do.

Q Okay, you said that Mr. Winkler did a horrible thing?

A Yes, he did.

Q Did an evil thing?

A Yes, he did.

Q Murdered his, no question he murdered his wife?

A No question.

Q All right, did you have any problem reaching a unanimous decision on the aggravating circumstances in this case; there were two, burglary and the murder of a witness?

A I don't think so, no.

Q Okay, so you had no question he committed murder, no question there were two aggravating circumstances?

A Are you asking me personally?

Q Right?

A No, I had none.

Q Okay.

A None.

Q Now you reached a unanimous decision, you had to sign a form. Well let me ask you this, did you tell any of the other jurors I'm, I'm agreeing to a death sentence but I really don't agree to it?

A To, to say it out like that, no, I mean everyone knew where everyone stood.

Q Okay, did you tell ---

A And who changed their mind but ---

Q I'm sorry, did you tell the other jurors I'm agreeing to a death sentence but I'm violating my conscious in doing it?

A No, sir.

Q Okay, and did you, ya'll had a form you had to fill out to sentence him to death and every single juror had to sign it?

A Uh-huh.

Q Did you put your name, your signature on

that death sentence?

A I'm sure I did, I don't remember that specifics but yes, I'm sure I did ---

Q All right, when the jurors ---

A --- if it had to be done it was done.

Q I'm sorry, go ahead?

A I'm mumbling, that's okay.

Q When the jurors were brought out and the verdict was read they polled each one of you?

A Yes.

Q Okay, did you stand up and say, yes, that's my verdict ---

A I did.

Q --- and it's still my verdict?

A I did.

Q Why did you not tell the Judge at that time that you did not agree with that verdict and it was a violation of your conscious?

A Because of the previous reasons I just stated.

Q Was there anything that stopped you from being able to say that in open court, I don't agree with this verdict?

A Just myself.

Q Is there anything that stopped you from

telling Judge Lockemy that you didn't agree with the verdict?

A Just myself.

Q And what part of yourself told you, what part of yourself stopped you from doing that?

A Just not being strong enough person.

Q Is there any question, I asked you about Mr. Winkler murdered his wife, no question about the aggravating circumstances, and you also heard testimony about how he had physically abused his first wife, physically abused his second wife; is that correct?

A That's correct.

Q You're nodding your head, the court reporter has to take it down?

A Yes, yes, sir, that's correct.

Q Okay, and also had kidnaped and raped the victim in this case?

A Yes, sir.

Q And ya'll saw the pictures of how horribly she was beaten and her hair was pulled out?

A Yes, sir.

Q And you heard the DNA evidence, DNA evidence that he in fact did have intercourse with her?

A I did.

Q Okay, are you still telling this Court that

he did an evil deed but he's not an evil person?

A No, I didn't say that. I said he did an evil thing and I believe that there are evil people that are born evil and that's how they are. I don't believe that he was born evil. I think that he had, he did good things in his life, he did bad things, that's what I'm saying. I don't think that he was an evil person his whole life. He did an evil thing, an evil thing, and I, I do believe that in sometime in his life there was good in him from the testimony that I heard.

Q But when you were in the jury room deliberating ya'll also were discussing these evil things he had done in the past in addition to this murder, weren't you?

A Say that again?

Q In addition to the murder of Becky Winkler you were also discussing the other evidence that came in in the penalty phase that he had committed battered his first wife, battered his second wife, and kidnaped and raped Ms. Winkler?

A I don't remember much talk about anything but the, this case, I mean we may have but I don't recollect, most of it was not based on, it was just this.

Mr. Mabry: One moment, please. Nothing further.

The Court: All right, redirect?

Mr. Mills: Very briefly, Your Honor.

Redirect Examination

By Mr. Mills:

Q I just have a few short questions for you. First you were just taken through the charge that the Judge gave you, did that, did that charge answer your questions?

A No, did not.

Q Secondly, did the other jurors respect your opinion?

A No.

Q And did you have some concerns about what would happen if you had a unanimous verdict, didn't have a unanimous verdict, excuse me?

A Yes.

Q What were those concerns?

A What would they do, what would they do with Mr. Winkler, the fear was that he would be, be out, again it's hearsay, I mean I didn't say it, I just remember there was what would happen if we didn't agree.

Mr. Mills: Nothing further, Your Honor, thank you.

The Court: All right, you may step down.

Mr. Mabry: Your Honor, we move to strike the last answer regarding what another juror might have said.

The Court: I don't think she said about what another juror might have said. I think she said her testimony was she never got an answer and she was scared he'd be released.

Mr. Mabry: She said after that, she said, she said in quote, I'm quoting her, she said it's hearsay but somebody was concerned about what would happen, another juror, so she's quoting what another juror said so we'd move to strike that. I don't, I don't have an objection to her first answer the one you referred to but she went on after that and said it's hearsay but somebody else ---

The Court: I remember her saying it's hearsay but I don't remember her saying that, she said it was hearsay but I never heard any hearsay, I may be wrong.

Mr. Mills: That's my recollection as well, Your Honor.

The Court: All right, you can call your next witness.

Mr. Mills: Thank you, Your Honor, the Applicant calls Mr. Kenneth Martinelli.

The Court: All right.

Kenneth Martinelli

being first duly sworn, testified as follows:

Madam Clerk: Please state your name for the Court and spell your last?

The Witness: Kenneth Martinelli, —a-r-t-i-n-e-l-l-i.

Direct Examination

By Mr. Mills:

Q Good afternoon, Mr. Martinelli?

A Hello.

Q Are you employed?

A Yes, sir.

Q Where, where do you work?

A J. Reuben Long Detention Center.

Q And what do you do there?

A I'm a transport officer and corrections officer, also.

Q And how long have you been employed by J. Reuben Long?

A About seven years.

Q And did you work there in January of 2008?

A Yes.

Q What were your responsibilities there in January 2008?

A I was a correction officer just maintain the inmates in the housing units.

Q Did your responsibilities involve, well what all involved, was involved in maintaining inmates?

A Keeping the units, escorting to different

areas of the facility.

Q What areas might you have escorted the inmates to and from?

A We escort them to medical; we escort them to attorney visits, stuff like that.

Q And did you have an occasion to meet Mr. Winkler as part of those responsibilities?

A Yes.

Q On how many occasions would you say you met Mr. Winkler?

A Several, I worked the unit that he was assigned to.

Q And during your time in January 2008 was it in part your responsibility to escort Mr. Winkler to and from attorney visitation?

A Yes.

Q And can you tell us about how attorney visitation worked in January 2008, I understand the facility is a little different now?

A Yeah, back then we would, we'd walk the inmate to a visitation booth, there would be one inmate on a one attorney kind of thing. In this case Mr. Winkler had several attorneys, they all couldn't fit in a booth, so we had to put them in what we call the small courtroom and we used that as a holding area and was Mr. Winkler and his

couple attorneys, three or four of them, something like that.

Q And where were you relative to the holding area?

A I was outside the door but if the room was like here I'd be on the other side of the door, not in it, we can't listen, but we're just on the, on the outside of it.

Q And could you see into the room?

A Yeah, it was a window on the door.

Q And was the room completely sound proof?

A No, no, no.

Q So if it got loud enough you might have heard something?

A Oh, yeah.

Q I'm turning your attention to late January 2008 did you have an occasion to observe Mr. Winkler's trial team?

A Yes.

Q And where were they?

A They were in the little courtroom and they had little table or something set up there couple of them talking.

Q During that meeting was there a dispute between Mr. Winkler and one of his attorneys?

A Yeah.

Q Can you tell us about that?

A Like I say I'm outside the door, it was just several minutes into the meeting, they're talking, the voices got loud, and I heard Winkler say ---

Mr. Mabry: Objection, hearsay.

The Court: Is it --

Mr. Mills: It's not offered for the truth, Your Honor, it's, it goes to the relationship between Mr. Winkler and his attorneys.

The Court: Yeah, I'm going to allow it. I don't, I mean, I don't know if they're offering it for the truth of the matter asserted or not, I'll strike it if it is. If he's offering it for the truth of the matter asserted I'll, I'll strike it but I don't know at this point in time so I'll allow the answer, go ahead.

Mr. Mills: Thank you, Your Honor.

Mr. Mills: (Continuing)

Q So we were talking about the dispute that Mr. Winkler and one of his attorneys had?

A Right, so I heard, heard Winkler get a little loud with his attorney, "don't call my sister a liar," and so I just brought my attention to them focused on it and he had his finger in Wilson's face, in Ralph Wilson's face. Then he turned and said, "get your hand out

of my face before I slap it down," and he said, "don't call my sister a liar," and he slapped his hand down.

Q What did you do at that point?

A I rushed in immediately. I cuffed up Mr. Winkler and immediately escorted him out of the room.

Q And where did you take Mr. Winkler at that point?

A Back to his assigned pod.

Q And was that a maximum security pod?

A Not at that time, no.

Q So you took him back to where he was previously?

A Correct.

Q And backing up somewhat, in, in your interactions with Mr. Winkler other than on this occasion did you ever have any problems with Mr. Winkler?

A No, I had no problems with Winkler.

Q And if you did have problems that might be something you'd remember?

A Yeah.

Mr. Mills: All right, just a moment, Your Honor.

The Court: All right.

Mr. Mills: (Continuing)

Q I think it may be clear but I just want to

repeat it one more time, who was it that slapped the hand down?

A Ralph Wilson.

Mr. Mills: All right, thank you, nothing further, Your Honor.

The Court: Cross examination?

Mr. Mabry: No cross, Your Honor.

The Court: All right, you may step down.

The Witness: Thank you, sir.

The Court: Call your next witness.

Ms. Paavola: Your Honor, that, that is the extent of the witnesses we have for today and apart from the three that we discussed this morning for tomorrow those are all the witnesses we have.

The Court: All right, anything from the Respondent before we break?

Mr. Simon: Your Honor, if you could just, if we could have just a few minutes, I know we have a few people that were subpoenaed to be here at 2:00. I know some of those we may want to hold until after the completion of the Applicant's case but we want to go ahead and make arrangements for that cause there might be a couple of witnesses that we can call today.

The Court: You mean call out of order before they've completed their case?

Mr. Simon: Yes, Your Honor.

The Court: Okay, what's ya'll's position on that?

Ms. Paavola: That's fine.

Mr. Mills: That's fine.

The Court: All right, how long a break do ya'll need?

Mr. Simon: Could we have fifteen minutes, Your Honor?

The Court: Okay, let's take about a fifteen minute break then let me know, I mean if you want to proceed you can, if you want to wait until they've completed their case, you know, you can. It's always difficult when you do these matters cause you're kind of, you know, mess up with any motions for directed verdicts or anything of that nature. I don't know what the status of that is at this point in time but I'll let ya'll, if everybody is in agreement and ya'll want to call some witnesses out of order I'll allow you to do that but just let me know what ya'll want to do, okay. All right, let's take about a fifteen minute break.

Mr. Simon: Can we approach real quick, Your Honor?

The Court: Yeah.

(Whereupon, a bench conference was held off the

record out of the hearing of the court reporter.)

(Whereupon, a recess was taken and the following takes place on the record after the recess.)

The Court: All right, sir.

Mr. Simon: Your Honor, it is our plan to call the one witness that we have available. At this time the Respondent will call Mr. Vello Pavel.

The Court: All right, now before we do this I want to make sure this is with the consent of the Applicant?

Ms. Paavola: Your Honor, it's my understanding that they were going to call jurors this afternoon, not actually prepared to cross Mr. Pavel at this time.

The Court: Okay, we'll have to do it tomorrow after they finish their case then. Once they finish their case in chief then we'll progress in that order, okay. If they don't consent to calling them out of order then we'll just wait and then when they finish their case then response, Respondent can present their case, okay?

Mr. Simon: That's fine.

The Court: All right, do ya'll have any other witnesses ya'll want to call?

Ms. Paavola: We don't.

The Court: Is this witness going to be available after they finish?

Mr. Pavel: I'm here today, I guess I can be here tomorrow.

The Court: Okay.

Mr. Pavel: Advise us ahead of time so we know when to get to here cause we're three hours away.

The Court: All right, so, yeah, and I was thinking ya'll were going to be finishing up today, that's what ya'll kind of led me to believe, so these witnesses need to know when can they be called as witnesses?

Ms. Paavola: I understand, Your Honor. I don't have any objection to them calling jurors today.

The Court: No, we're talking about this witness.

Ms. Paavola: The rest of our witnesses will be finished tomorrow afternoon, the three family members that I've mentioned that are coming at 10:40.

The Court: All right, we're going to, I mean ya'll dragging this out and you really bordering on whether or not the Respondent is getting a fair shake at this because I mean we've had to break several times to accommodate you and your witnesses and now you're objecting to them calling their witnesses out of order when it's hard for them to get here. Okay, so give them a time as to when they will be allowed to call their witnesses.

Ms. Paavola: The, after the three witnesses who

will be here early tomorrow afternoon we will be finished with those three witnesses. I expect they'll take ---

The Court: What time will you be ready to start tomorrow morning?

Ms. Paavola: 11:30 a.m.

Mr. Mills: And, Your Honor, if we wanted to go with Mr. Pavel tomorrow morning we could do that. It's really it's just that we expected it to be the jurors.

Ms. Paavola: I do apologize, Your Honor, the three out of town witnesses, and we did discuss them before, it was my understanding from the Court that as long as they could get here and we complete our testimony by the end of this week there would be some flexibility with accommodating their out of state travel.

The Court: Well and I agreed to some flexibility but ya'll are going overboard on the flexibility. I mean you're basically calling one, two, either some short witnesses and we're going into Wednesday and you're taking up the whole week and I'm telling you right now get ready. If we have to go into Saturday and Sunday to accommodate the respondent we'll do that because ---

Ms. Paavola: I understand.

The Court: --- we've lost a couple of hours yesterday. Why aren't the witnesses here and ready to go

at this point in time?

Ms. Paavola: They had some difficulty with their travel arrangements Monday and they could not get re-booked until Wednesday.

The Court: All right, I want all the attorneys, we're going to go ahead and break for today. I want ya'll here tomorrow morning bright and early with confirmation as to why they were not here, okay. I want to know when they've tried to get their flights, whether the flights were canceled, whether the flights were changed, when they were notified to be here, and what was the reason because, you know, I'm finding it hard that it's taken them two days to get here from wherever they're coming; where are they coming from?

Ms. Paavola: Ohio.

The Court: Okay, and it's taken them two days to get here. They can't get a flight, they couldn't get a flight to be here on Monday or Tuesday?

Ms. Paavola: Well it's my under-, they had a flight that was supposed to arrive here Sunday evening, that flight was canceled due to mechanical error. They spent the entire day at the airport on Monday waiting for the flight to be rescheduled and it was ultimately also canceled due to the same mechanical error on an airline that told them they do not fly on certain days of the week

including Tuesdays so we advised them to re-book on a different more reliable airline which they did for Wednesday morning. They were asked to be here Monday. We anticipated putting them up the very first part of our case on Monday morning.

The Court: Are they under subpoena?

Ms. Paavola: No, sir, they're out of state witnesses who are members of Mr. Winkler's family.

The Court: All right, well we'll go ahead and break, I just don't know what else we can do. They're really putting a strain on the Court's resources but, I'm sorry, Mr. Simon, we're just going to wait. We won't take up any of Respondent's case until the Applicant has totally finished his case, okay, all right.

Mr. Mills: Your Honor, just to reiterate, really if we wanted to go with Mr. Pavel first thing tomorrow --

The Court: No, no, no, no, we'll either go with him now, they're ready to call him now or we'll wait until ya'll finish ya'll's case completely and then we'll go forward, all right.

Mr. Mills: Very good.

The Court: That's probably the better way to do it anyway. I just wish that they had had their people here and we could progress cause we're wasting a lot of time but

be that as it may we'll go ahead and let the Applicant finish their case in full and then we'll go with the respondent's case, okay. All right, I apologize for that but sometimes that happens, all right.

All right, anything from the Applicant before we recess for the day?

Ms. Paavola: Nothing further, Your Honor.

The Court: Anything from the Respondent before we recess for the day?

Mr. Simon: Nothing, Your Honor.

The Court: All right, so you're saying we're recessing until what time tomorrow? You won't be ready to call a witness until 11:30?

Ms. Paavola: That's correct.

The Court: All right.

Ms. Paavola: We'll certainly be happy to contact the Court after we've confirmed that they're on the plane and expected to arrive and ---

The Court: Well see we've got court personnel, court reporters, clerks of court's and everybody that has to run on a schedule and so what we're going to have to do is just show up and then wait for ya'll's witnesses to get here if they're not here, okay.

Ms. Paavola: All right.

The Court: So let's go ahead we'll be in recess

until 11:30 tomorrow morning, all right, thank you.

(Whereupon, court was adjourned for the evening and resumes on June 20, 2012 at 11:30 a.m.)

(Reporter's Note: Circuit Court Reporter Kay H. Richardson took the proceedings in this matter on June 20, 2012 in this reporter's absence.)

(Whereupon, the proceedings continued on June 21, 2012 at 9:30 a.m. with this reporter taking the proceedings)

The Court: All right, anything from the State before we get started?

Mr. Simon: Your Honor, we are in the process of making sure that Mr. Wilson is here.

The Court: Okay.

Mr. Simon: And that's the only thing at this point.

The Court: All right.

Ms. Paavola: Nothing from the Applicant, Your Honor.

The Court: All right, well just let me know when he's here and ready to go, okay. All right, in other words you don't know if he's here just yet?

Mr. Simon: Yes, sir, my colleagues are out, let me go check with them. If you don't mind let me just go check with them?

The Court: That's all right, we'll just go ahead and we'll just stand in recess until he's ready to go, just let us know, okay.

Mr. Simon: Thank you, Your Honor.

The Court: All right, yes, ma'am?

Ms. Paavola: Oh, I'm sorry.

The Court: Okay.

(Whereupon, a recess was taken and the following takes place on the record after the recess.)

The Court: All right, anything from the State before we proceed?

Mr. Simon: Nothing, Your Honor.

The Court: Anything from the Applicant?

Mr. Mills: No, Your Honor.

The Court: All right, the State can call its next witness.

Mr. Simon: Your Honor, at this time the State would like to call Ralph Wilson.

The Court: All right.

Ralph J. Wilson

being first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

Q And before we begin if you'd, please, state your name and spell it for the court reporter?

A My name is Ralph J. Wilson, and that's r-a-l-p-h w-i-l-s-o-n.

Q Good morning, Mr. Wilson, how are you doing?

A Good morning.

Q I guess to start out could you give us a little bit of your educational background?

A Okay, I went to high school here at Whittemore High School. I went to Benedict College in Columbia where I graduated, then I went to the University of South Carolina Law School. I graduated from there in 1977. I passed the bar the first time and I started practicing with legal aid in Conway. Before that while I was in law school for the first two years I was a law clerk at the Richland County Public Defender's office for two years while I was in law school. In, I think I stayed at legal aid maybe two, two and a half years, I then came to the Horry County Public Defender's Office and I stayed there from 19, sometimes in late 1980 to 1986 when I went into private practice, but I remained on contract with them from '86 until '88 when I went to the Solicitor's office and became Deputy Solicitor for the Fifteenth Judicial Circuit and three years after that I was elected Solicitor and I served two terms as the elected Solicitor.

Q Okay, after your second term as solicitor

what did you do?

A I went in private practice and that was, that would have been in February of 1999.

Q Now while you were with the Solicitor's office did you try any death penalty cases?

A Yes, sir, I tried death penalty cases both with the public defender's office when I was there and I tried, I prosecuted death penalty cases when I was in the Solicitor's office.

Q Okay, do you recall how many you prosecuted while you were at the Solicitor's office?

A Exactly, no, in excess of ten, probably closer to twelve.

Q Okay, and as a defense attorney how many death penalty cases have you, how many death penalty cases have you been involved with?

A Total, you mean my career as a defense or as total?

Q In the defense?

A This would probably be my seventh or eighth as a defense lawyer.

Q Okay, now do you recall when you were appointed to represent Mr. Winkler in this case?

A Yes, sir.

Q When was that?

A In 2006, I don't remember the exact month, I don't remember the exact month. I know that I got a call from, from Ms. West from the Public Defender's office first and saying that Judge Lockemy wanted to talk to me about representing Mr. Winkler and I went over and I met with Judge Lockemy, I think the Solicitor was there and Ms. West there, who is the public defender, and at that time he asked me about representing Mr. Winkler and I was, you know, not opposed to it. I wasn't wanting to do it particularly but I wasn't opposed to it.

Q Okay, and who was your co-counsel on this case?

A Paul Rathbun.

Q And was he with the public defender's office?

A He was, he was with the public defender's office. He had been doing juvenile matters in the public defender's office as best as I knew.

Q And did you two put together a team for representing Mr. Winkler?

A We did.

Q Kind of take us through the members of that team?

A Okay, well starting at the very beginning because it had been a number of years since I had tried a

death penalty case as a defense lawyer. I had tried one within probably a couple of years or three years or so from leaving the Solicitor's office but I hadn't really done anything in terms of, of, of, of a, of a defense nature, so the first thing I did was I called some lawyers who I knew had done a lot of death penalty work. I called Jeff Blum who I had known for many many years and I talked with him. I called, I actually tried to call John Blum. I was never able to get a hold of him at the resource center to try to talk to him. I also called Bill Diggs who I knew had done a good bit of death penalty work and, and from there I was getting ideas about who I wanted to use and who they thought would be effective people to use as, as investigators and, and to help fill in the team. We started from there and Paige Tarr was the first investigator that I actually ended up hiring in, in the team, and of course, that didn't work out at some point. We ended up with Vicki Childs and with Carolyn Graham who was our mitigation specialist and Vicki Childs who testified, I think on yesterday, was our fact investigator, so we ended up with those two as the investigators. Then we had, we started looking for doctors to, to work with us on this case and ---

Q I hate to interrupt you but before you move on to the doctors, do you have any other investigators?

A Well from my office there were, there were people who were helping but, but the actual investigators for this case were Vicki Childs and Carolyn Graham.

Q Did you have an investigator in Ohio?

A Yes, I apologize, Dorian Hall. Dorian Hall was actually the investigator for the Public Defender's office in Richland County, I'm sorry, in Ohio, which is the county of which Mr. Winkler lived, and we got her, and actually get her name from the death penalty resource center.

Q And you were going into ya'll also retained some doctors?

A Yes.

Q Can you take us through who you retained?

A Well we, we were, we obviously were concerned about Mr. Winkler early on, our ability to communicate with him, his tantrums that he would throw from time to time. He was by anybody's definition difficult and I didn't know what was causing the problem and so I wanted to get him evaluated as quickly as we could. Of course the State Hospital doctors evaluate them, Dr. Dyer and Dr. Frierson, and also we, we then hired our own people.

The first person that I think I sent him to was Dr., Dr. Wade which was in Mt. Pleasant. Dr. Wade I had worked with on a number of other cases in the past. He's

very good at evaluating defendants and determine kind of what's going on with them and what they need and how we should kind of proceed with them and so I sent him there first. We later hired a psychiatrist Dr. Halavonich and, and, and she worked with us throughout. Dr. Halavonich is another doctor that I had worked with, a psychiatrist that I had worked with, a forensic psychiatrist by the way and so is Dr. Wade. Dr. Wade is not a psychiatrist, Dr. Wade is a, is a forensic, I guess you would call him, psychotherapist, but we got, we got her on board.

Then we, during the course of, of the case Mr. Winkler was having difficulty adjusting with his medication so we were using Dr. Ellison from Waccamaw Mental Health to also work with him from time to time to help get his medication adjusted and that kind of thing, and now those were the medical people.

Now we, we also hired a jury expert but I don't know if you want to go into that at this point.

Q Well that was actually going to be my next question, did you also hire a jury consultant?

A Yes, and, and a pharmacologist. we hired a jury consultant to try to help us determine what kind of jurors we, we might want to look for, kind of get an age range kind of, you know, a breakdown of what it is that we were looking for and what we should be looking for and

especially we were concerned about the sentencing phase of the case, and if we got that far, and what it is that we should be looking for at the outset to, to see how we could manage to get a jury that might be more inclined to give life if we got to that point.

Q Did you hire a crime scene expert?

A We did, we hired a crime scene expert by the name of Jeff Naylor, Mr. Naylor came highly recommended to us. In fact I talked to I know Bill Diggs and I think also Jeff Blum, both knew him and thought that he was a good person to hire so, yeah, we, we did hire him.

Q Okay, did you also hire a polygraph expert?

A Yes, we hired polygraph examiner and actually conducted polygraph with Mr. Winkler.

Q Okay, did you hire a social worker?

A Yes, we hired TeAnne Oehler who was, who I'd also worked and she had done a number of death penalty cases here in Horry County and I knew her very well so I, we also hired her to do the social history for Mr. Winkler.

Q And also did you have people in your office that worked on this case?

A Yes, other than myself my son worked a little bit but, but he, my son was licensed I think in November of 2007 but he was working for me before he took the bar and then when he took the bar in July of 2007 and

he passed, of course he was sworn in in November, and I think this trial was in February of 2008, so he was, he was helping out some but mainly his job was to like if I was out of the office and one of the investigators called and they needed something, a subpoena or they needed some documents to make sure that they got those things, and so he was helpful doing that kind of stuff. I also had a private investigator that my office used, his name was Montel Williams and we used him from time to time to maybe talk to Mr. Winkler and I think he only met Mr. Winkler once, maybe twice.

Q Okay, now in terms of the team you put together how did ya'll work together?

A How?

Q I guess did ya'll have meetings?

A Yes, you know, we, what I did was when, when we started out I tried to get, I met with each person individually at the outset and, for instance when I was getting ready to hire Vicki Childs, you know, what I did was meet with her, sit down with her, tell her what it is that I wanted and where I was going or what I thought I needed and wanted to know from her what it is that she needed from me. I did that with each of these professionals as we put this team together to try to figure out what, for them to understand what I needed and then for

me, for them to tell me what it is that they needed from me in order to be able to do what they needed to do to help me with the case, and we went through that process as we hired each one of them individually.

Q Okay, and --

A Your question was did we have meetings, yes, as a team once we got into the case, yes, we started having team meetings. I can't tell how many, I know we had many many of them, and a lot of them included Mr. Winkler. Some of them did not include Mr. Winkler; it just kind of depended on where I was going and what I was trying to do at the moment, but we, we tried to include him. Obviously he was locked up, he was in jail so the meetings that we had, you know, with him obviously had to be at the jail so we, we did meet with him multiple times at the jail as a team and but we met I know at my office, especially close to trial we were meeting probably weekly, if not more.

Q And now did your investigators provide reports to you?

A They did, both Vicki and Dorian Hall and, and Carolyn, yes.

Q Okay --

A Carolyn Graham, I apologize.

Q And did they, I guess, through your office did they have communications with the other experts you

hired?

A Yes, one of the, one of the things that we did was encourage everybody, and my, my policy and my philosophy is is that each expert needs to know what the other expert is doing and the reason for that is if one expert has information I want to make sure they share that information with the other expert so what I told each of them was, look, as a team I have no secrets here, I want everybody to know but I need to know first, but once you tell me then I want you to share whatever it is that you have with everybody else so that everybody knows what everybody else knows.

Q Now I want to start to get into specific allegations that were raised in the application here; have you had a chance to review the application?

A Yes, sir.

Q Now the first allegation of ineffective assistance of counsel was that, that you and your co-counsel should have assisted in ensuring that Mr. Winkler, that the Judge ruled on requests to relieve you and also to help get a ruling on a request to represent himself?

A Yes, sir.

Q Can you first describe what was your relationship like with Mr. Winkler during the course of your representation?

A Mr. Winkler is very, a very interesting individual, to say the least. I initially when he and I got together I, we got along I thought very well at first. His, his, the trouble started and, and, and, and this is just my way of doing things, is if a defendant tells me something then I rely on that and I will go out, but I tell every defendant up front, look, tell me the truth, whatever it is. I don't care if it's bad, if it's good, whatever it is tell me the truth because if I know the truth then I know how to best defend you. If I don't know the truth then I don't know what I'm going to find when I get out there and we're all going to get embarrassed or get in trouble as we go through the process. Mr. Winkler would not be honest. I mean that was the biggest problem we had from the very beginning.

The problem was when I would confront him with his dishonesty then we had a blow up and that got worse as we went through the process and, and the other problem with him was was that nothing was ever his fault. It didn't matter what it was; it didn't matter what happened it wasn't his fault, it was somebody else who did it, somebody else had to be responsible for it, it wasn't him, and so we kept having these, these series of disagreements about what the facts were and about what he had told us and, and, and that led us into a very contentious relationship, so as it

progressed it became more and more contentious.

As we got closer to trial it was extremely contentious as we got closer to trial. You know part of that, you know, and again this is my opinion and I don't know if that is worth anything, but as we got closer to trial I think he got more anxious, he got more nervous, he got more antagonistic, and it made it even more difficult to deal with it, and, and we were constantly, and you can see the record it speaks for itself, you can see that we were constantly in front of the Judge where he was asking for us to be dismissed from the case and that went on.

Early on, as I said, we, he and I got along pretty good. He didn't like Mr. Rathbun almost from the inception and he complained about Mr. Rathbun but it was never anything about Mr. Rathbun's ability, it was more a personality thing. He just didn't like Paul for whatever reason and I'm not sure what that was about but he didn't.

Q Okay, now talk to me about that, let me show you something in the transcript --

Mr. Simon: Your Honor, is it all right if I approach the witness?

The Court: Yes.

Mr. Simon: (Continuing)

Q Mr. Wilson, what I am handing you is Volume 6 of the record on appeal?

A Yes, sir.

Q Turn to page twenty-nine thirty-seven?

A Okay.

Q Would I be correct in stating that that is the beginning of the transcript of the hearing on June 15th, 2006?

A Yes, sir, that is correct.

Q And do you recall if that was the hearing at which you were appointed to represent Mr. Winkler in this case?

A Yes, sir, that is correct.

Q During that hearing do you recall if Mr. Winkler had any complaints about Mr. Rathbun?

A At that initial hearing?

Q Yes.

A I don't think so; I don't remember any at that time.

Q All right, if you'll just quickly take a look and see if that refreshes your recollection?

A Okay, I see on page twenty-nine ninety-two of the transcript that there is a conversation between the Court and with Mr., with Mr. Winkler regarding Mr. Rathbun, yes.

Q Okay, and the Court declined to ---

A Remove Mr. Rathbun.

Q Yes, is that correct?

A Yes, sir, his concern was, Mr. Winkler's concern, apparently, was that Mr. Rathbun had not tried any death penalty cases or murder cases, I think was the term he used, and, and the Judge decided that Mr. Rathbun was qualified.

Q Okay, now I'm going to ask you to look at Volume 7 of the record on appeal and if you'd, please, turn to, I guess, first starting on page three thousand two hundred and four.

A three thousand two hundred and four?

Q Yes?

A Okay, this is a transcript of record for a July 3, 2007, hearing.

Q Okay, well I'm just going to go ahead and ask you to flip to page 3260 and, first do you recall the July 3rd, 2007, hearing?

A Independently, no, sir.

Q Okay, well if you'd flip to 3260 then, please?

A Yes, sir, I'm familiar with this.

Q Okay, could you just, please, explain to the Court what happened at that point during the hearing?

A Mr.. Mr. Winkler had told me that, that, when I went to see him he was upset cause he said that Mr.

Rathbun had come out to the jail to visit him and that Mr. Rathbun was trying to tell him that he was guilty and, and he was real upset about that and he was saying to me that Mr. Rathbun didn't know enough about the case to, to tell him that or suggest that to him. Anyway he was really irate about it; he demanded that I put that on the record which is what we did.

Q Okay, now when Mr. Winkler indicated he wanted to get rid of, rid of either you and Mr. Rathbun what would you do?

A Every single time that he ever suggested to me that he either wanted me off the case or he wanted Mr. Rathbun off the case at the next opportunity I would bring that matter to the Judge's attention so that there would be a record of it.

Q And during those opportunities did you ask if the Judge would hear Mr. Winkler out?

A Every time, every time that I went before the Judge I would ask the Court to hear Mr. Winkler as well as myself. I would usually make the motion to be heard and then once we were there I would ask the Court to, please, hear Mr. Winkler's concerns.

Q Now I'm going to ask you to now turn to page 3300 of the record?

A This is a December 13th, 2007 transcript.

Q Okay, if you'd, please, just quickly review that transcript; first do you have an independent recollection of what occurred at that hearing?

A Not without looking at it, no, sir, I'm sorry. Okay, this is the Blair hearing that we had, yes.

Q Okay, I'm going to ask you now to flip to page 3319 and then read 3320; at a certain point during the hearing there's an indication that Judge Lockemy asked you to come up, can you just, please, share with the Court what was discussed during that ---

A Yes, sir.

Q --- that bench conference?

A What he was asking me, I don't know if you recall, we had, this trial had been previously scheduled and our witness, our primary investigator at that time, Paige Tarr, didn't do the things that should have been done so that, anyway we ended up having to postpone the trial and he called me up to ask me if there were anything going on that he needed to know about as to why we weren't going to be ready this time and so and I told him, no, that I thought everything was on track and that everything should be fine but that's what he was wanting to know from me.

Q So during that hearing were there any discussions about any complaints that Mr. Winkler had with you?

A No, sir, no, sir.

Q Do you recall if there, if anything or any discussions you had about your representation with Mr. Winkler occurred that day that would not be in the transcript?

A I have never had a discussion with Judge Lockemy or the Solicitor without Mr. Winkler being present and putting it on the record.

Q And would that also go for the July 3rd, 2007?

A That is correct.

Q Okay, now I'm going to ask you to turn to page, starting with page three thousand three hundred and eighty-five?

A Okay, this is the transcript from January 24th, 2008, before Judge Lockemy.

Q Now do you have any independent recollection of what occurred at that hearing?

A Not without looking at this.

Q Okay, I'm going to now ask you to turn to page three thousand four hundred and seven?

A Okay.

Q And is that still within that hearing?

A Yes, sir.

Q And if you'd just, please, read page 3407

to three thousand four hundred and thirteen?

A Okay, I'm familiar with this now.

Q Okay, and could you just, please, explain what led to that discussion at the hearing?

A I'd gone out to the jail, we were actually preparing for trial at this point in time and we, Mr., I was cross examining, had Mr. Winkler, I think, on the stand and I was cross examining Mr. Winkler trying to give him some idea of what to expect during the course of the trial. The issue came up about something I had said to his sister and he said that I told his sister, I never said to his sister that he might get convicted or that he could get convicted or something to that affect, I said, well if your sister said that I said that's not true. He said, are you calling my sister a liar. I said, well If she said that I said then, yeah, and at that point he jumps up and, you know, he was sitting down at the time, I was standing up, he jumps up and comes to me and puts his face to my face and then he takes his finger and he says to me, don't you call my sister a liar or something to that affect, and I don't remember the exact words, and, and we were, we were nose to nose, probably you couldn't have put your finger between his nose and mine, that's how close he had gotten to me at that point, and, and he was in one of his irate states at that point and, and kind of pitching a tantrum.

The officers were either right at the door or outside the door and I know they came in almost immediately and, and got him at that point and then they took him out.

Q And during that hearing did Mr. Winkler make a request to have either you or Mr. Rathbun –

A He did, he did, he told me that he wanted me removed so I got a hearing for him in front of the Judge so that he could be heard on that issue.

Q And did the Judge rule on that motion?

A He did, he refused to remove me or Mr. Rathbun.

Q Now at any point any time up to that point had Mr. Winkler ever indicated that he wanted to represent himself?

A Never.

Q And what was your understanding of what he wanted at that point?

A Mr. Winkler never wanted to represent himself. Even, even at the sentencing phase that was not what he wanted. He got, but at the sentencing phase during that portion, and I know we haven't gotten there yet in this discussion, his thing was he wanted me to conduct the trial in a certain way and when I didn't do it the way he wanted me to do it he became irate. He then wanted to do it himself but he wanted me and Mr. Rathbun to be there

with him but he wanted to, to, to do it himself because he didn't like the way that I did it or if I cross examined someone he would say I want you to ask them this question and I would say, well, you know, we can't ask that cause that's not relevant or that's not germane. For instance, one of the things he wanted me to do was he wanted me to put in the, the video sex tapes of him and his wife and I said to him, you know, repeatedly we can't do that, it's not relevant to any issue in this case, the Judge is not going to let us do it in the first place and I mean he would pitch a fit. In fact I think on one point I actually went before the Judge and explained that to the Judge and told the Judge that he wanted to put those tapes in because he was so adamant about it throughout the process, so I don't know if I've answered your questions, if I haven't I'll try to.

Q What I want to ask you to do now is now turn to page 3417 in the record?

A This is a Saturday January 26th, 2008, special meeting of counsel for Louis M. Winkler.

Q You have any independent recollection of what occurred during that meeting?

A No, not without looking at this transcript; I don't remember it offhand. Let me, if you'll give me a couple of minutes I can refresh my memory.

The Court: What was that last citation?

Mr. Simon: Page three thousand four hundred and seventeen in the record.

The Court: Oh, okay.

The Witness: (Continuing)

A Okay, I think I'm --

Q Does that refresh your recollection?

A Yes, yes, sir.

Q And just briefly can you just explain what occurred during that meeting?

A Yeah, he would, after the incident that he and I had at the jail apparently the jail put Mr. Winkler, he said, his terms was they put him in max, and he said that because of that he couldn't make any phone calls and he couldn't, and he didn't want to be locked down, plus, I think that there was something about him being on suicide watch and he was concerned about it and upset about it and I had contacted the jail to try to find out what, he was wanting me to find out from the jail what was going on and why they had him, you know, in max and that kind of thing, and so I met with him and at this point this is just a couple of days before trial, a few days before trial. So I wanted to have it transcribed so I asked to have a court reporter because at this point things are really contentious between Mr. Winkler and myself and, and so I

wanted to have a record of whatever took place other than just my notes.

Q And during that meeting did you also have a conversation about whether Mr. Winkler should testify at trial?

A Yes.

Q During that conversation did he ever indicate to you that he wanted to represent himself?

A Never.

Q And if he had done so what would you have done?

A If he had asked me to allow him to represent himself then I would have gone to the Court just I did with all the other inquiries he had and let the Judge know that that's what he wanted to do and I would have asked the Judge to let him do it. That would have been before the start of the trial and if he wanted to do it then that's his right, if he wants to do it.

Mr. Simon: Your Honor, if it's all right if I may approach the witness again?

The Court: All right.

Mr. Simon: (Continuing)

Q Looking at Volume 1 of the record on appeal, actually start with page one, would I be correct in stating that is the start of the actual trial, correct?

A That is correct, yes, sir.

Q Now if you would, please, turn to page 30?

The Court: What volume are we in now?

Mr. Simon: Volume 1, Your Honor.

The Court: Okay.

The Witness: (Continuing)

A Yes, sir, I'm, I'm familiar with this.

Q Okay, and could you just explain first what led to that discussion on the record?

A Well the, this is at the beginning of the trial and as I said we just talked about we had the, the transcribed meeting a couple of days earlier, I think it was on Saturday and I think this is the following Monday, so this is the first opportunity we had to get to the Judge to actually present these issues to him. I think we talked to him by phone earlier the week before but this was the first time we actually had an opportunity to get in front of him and for Mr. Winkler to be heard about his issues.

Q Okay, and have you had an opportunity here, I don't know that I'll necessarily question you, I guess when I handed it to you to look through, I guess, from page 30 to page 42?

A Okay, yes, sir.

Q All right, now during that conversation did Mr. Winkler request that you and Mr. Rathbun be relieved?

A Yes, sir.

Q And did the Judge make a ruling on that request?

A He did, he did not relieve us.

Q At any point in time during that conversation or during that discussion on the record did Mr. Winkler request to represent himself?

A He did not, no, sir.

Q Now were there times, actually before I ask the next question I want to show you one or two more sections of the transcript and then I'll question you about that?

Mr. Simon: Your Honor, will it be all right if I approach the witness?

The Court: Yes.

Mr. Simon: (Continuing)

Q I am now handing you Volume 3 of the record on appeal and ask you to, please, turn to page thirteen seventy-six. While you're looking at that if you'd, please, look from thirteen seventy-six to page thirteen eight-one?

A All right, sir.

Q And can you just explain what brought about that discussion in the record?

A Yes, sir, throughout my representation of

Mr. Winkler, Mr. Winkler gave me varying stories about what he said happened, the, the, during the course of the murder. One of his versions was was that the ex-husband of, of Ms. Grainger Winkler committed the crime, that her ex-husband committed it and that, that he was there when the crime took place and he wanted me to say to the jury in opening that we were going to show or prove that Mr. Grainger committed the murder and I told him that I couldn't do that in opening because, one, we had no proof of that. There was absolutely no evidence to suggest that other than what Mr. Winkler said and that if I said that in my opening then it would lock us into putting him on the witness stand in the trial phase of the case because otherwise what would end up happening is the jury would then understand and know that we just told a bald face story and that it wasn't true that there's, cause there is to be no proof of it unless I put him on the witness stand, so we'd be in a position where you either had to put on the witness stand or you had to basically lie to the jury at the outset of the trial which is a disaster waiting to happen if you do that.

Q And now during that discussion, I guess on page 1381 did Judge Lockemy mention anything about Mr. Winkler being able to represent himself?

A On thirteen eighty-one?

Q Yes.

A I don't see anything about him representing himself, no.

Q Well let me ask you this question, when you would have, when you would bring to the Court's attention, to Judge Lockemy's attention that Mr. Winkler was having issues with you did Judge Lockemy ever mention possibly having a discussion about Mr. Winkler representing himself?

A Not, not, not that I recall, no, not, not during the, prior to the sentencing phase; is that what you're asking me?

Q Yes?

A Prior to the sentencing phase I don't recall Judge Lockemy ever asking him directly if he wanted to represent himself.

Q Would Judge Lockemy ever throw the idea out when he was ruling on whether or not to, like other when he would rule whether he relieve you or Mr. Rathbun?

A I don't remember a specific instance of that prior to the sentencing phase. I do remember during the sentencing just, I think it was after the trial phase, after the trial phase had been completed but before we actually got into the sentencing phase that Judge Lockemy made the comment to Mr. Winkler about representing himself or if he wanted to represent himself or something to that

affect, yes, but, but not, not in the early parts prior to the trial I don't ever remember a specific instance where Judge Lockemy said to him do you want to represent yourself.

Q Well did Judge Lockemy ever ask him, if you know, if he, actually let, well let me ask you this, after Judge Lockemy ruled on, denied his request to have you relieved ---

A Yes, sir.

Q --- did Mr. Winkler ever indicate to you that he wanted to represent himself?

A Mr. Winkler never indicated to me at any point in time prior to the sentencing phase of this trial, of his trial, that he wanted to represent himself and he only did that in response to something that Judge Lockemy said at that time.

Q Okay, did you have an occasion to meet with family members of Mr. Winkler?

A Yes, sir, multiple times.

Q At any point in time did you ever go up to Ohio to meet with them?

A I did, yes, sir.

Q Do you recall in talking with them ever making any mention of Mr. Winkler wanting to represent himself?

A No, sir, never.

Q And when you went to visit with them were you under the impression he wanted to represent himself?

A When I went to represent, when I went where?

Q When you went to Ohio to meet with the family members?

A Was I under the impression that Mr. Winkler wanted to represent himself?

Q Yes?

A Absolutely not.

Q Or did you have any understanding he may be considering wanted to represent himself?

A Just so I'm clear at no point, at no point ever prior to the sentencing phase of the trial did Mr. Winkler, his family, or anyone else say or even suggest to me that Mr. Winkler wanted to represent himself at trial. I never, that never occurred ever prior to the sentencing phase.

Q Okay, and when he wanted to have you dismissed what was he asking, what was he asking?

A What he was asking, he wanted new lawyers. He didn't, he just wanted new lawyers. He never wanted to represent himself; I never even had the inkling that he wanted to represent himself. What he wanted was different

lawyers because he was angry at me or angry at Paul, depending on whatever the circumstances were at the moment.

Q Now do you recall at the beginning, before the sentencing phase started do you recall what he was actually requesting before the discussion about self representation?

A Yeah, I think ---

Q Well would it, would it assist you to refresh your recollection?

A Yes, it would.

Q Okay --

Mr. Simon: I've handed the witness Volume 4.

Q (Continuing) If you'd, please, turn to record page one thousand nine hundred and thirteen.

A Okay.

Q Okay, now at the outset of sentencing phase ---

A Yes, sir.

Q --- initially what questions you raised to the Court for Mr. Winkler?

A He was concerned. I, I'd gone out to visit with him the night before and he was concerned about his medications, indicating to me that they weren't giving him his medications in a timely fashion at the jail, and, and he wanted me to make sure that the Judge was aware of that

because the Judge had directed that they were to give him his medications in a timely fashion. That was one of the things that he wanted. The other thing that he wanted to do was he wanted to cross examine some of the witnesses in the, in the, in the, in the penalty phase of the trial.

Q Do you recall which witnesses he wanted to cross examine?

A Yeah, he wanted to do the daughters of Ms. Winkler and, and any of the family members of Ms. Winkler who testified.

Q Do you recall if he wanted to cross examine the other witnesses who testified?

A No, he wanted me to do that but he wanted specifically to do those people.

Q So at that point in time was it your understanding he wanted to represent himself?

A No, sir, in fact now this is the first time that Judge Lockemy actually indicates anything about Mr. Winkler representing himself and I think that comes up in his, he, and let me try to find it for you. I think it's on page nineteen, let me go back, yes, on page nineteen sixteen. It says, this is the Court speaking, says "I will discuss, I will discuss, I will be glad to let Mr. Winkler know if Mr. Winkler at some point in time wishes to represent himself. I'll discuss the pitfalls, pitfalls in

regards to that and see if he is making a knowing and voluntary decision to do that." That's the first time that I recall there was ever any talk about him representing himself either from the Court or from Mr. Winkler or anybody else.

Q And just to take a step back, from the time you were appointed until you get to the sentencing phase had you ever had a discussion with Mr. Winkler about the idea that if he wanted to he could represent himself, just in general?

A Prior to the trial starting?

Q Yes?

A I don't honestly remember a conversation that I ever had with him where I said to him, look, you can just represent yourself. I don't remember that, no.

Q Okay, and do you recall if he ever asked you about that?

A Well I know he never asked about it and we never discussed it, never came up.

Q Okay, and I apologize I just had a question and it just stepped out of head, and just to be clear if he had asked that question you would have brought that to the Judge's attention?

A Absolutely, without question.

Q The second issue that is raised in the

application is in regards to your cross examination of Vello Pavel who is the firearms and tool marks examiner?

A Yes, sir.

Q Do you recall, just in general, what he testified to at trial?

A I do.

Q And do you recall the fact that he determined that the projectile that was found in the wall in the condo where the victim was shot matched the firearm that Mr. Winkler had on his, had in his possession when he was arrested?

A That is correct, yes, sir.

Q Now what was the defense general theory in regards to that weapon?

A You know that's the thing and, there was never a real issue based on everything that Mr. Winkler had discussed with me, there was never an issue about whether that gun fired that bullet. The issue was who fired the gun; that was always the issue. Mr. Winkler from the time he was first arrested told the police that he had the gun, told them that he took it to the house. His story, every story that he told me involved him being in the house when that particular gun was fired, and his story was, one of his stories cause I said there were several, but in one of his stories the one where he says Mr. Grainger was actually

the person who, who fired the weapon, his story was is that Mr. Grainger when he got into the house that Mr. Grainger was in the kitchen or some room behind him and, and, and, and his back was turned to Mr. Grainger and that Mr. Grainger took the gun from him and that they struggled over the gun and that Mr. Grainger got possession of the gun and fired the gun which hit Rebecca, and that Mr. Grainger then, he then says he pushed Mr. Grainger down to the ground, he grabbed the gun off the floor and fled the room. That was one of the versions of his story to me about the gun and Mr. Grainger. There was never a version that where he never, he didn't have possession of the gun and didn't take the gun over there and that that gun wasn't responsible for the actual shooting of Ms. Grainger Winkler.

Q Now was it your understanding that this was the story he was consistently telling other members of the defense team?

A No, he told us all various stories, you know, Winkler's story changed based on what we presented to him. The more information we gave him, for instance, when he first talked with the police his story was, yeah, I took the gun over there, I cut off my bracelet, I took the gun over there. I know I went into the house but I don't remember anything after I got into the house. That was his

initial story to the police. Then when I went to see him, you know, and, and I've learned, I guess, from thirty years of doing this, is that defendant's are going to tell you different stories, that's, that's fairly typical; and so I knew when I went to him, the first thing I told him I said, look, just be honest with me, tell me the truth, tell me what happened so I know what happened so I'll know how to defend you. His initial story to me was the kind of the same as he told the police which was that he didn't really remember anything that happened in the house and that the first thing he remembered was he was running out of the house with the gun, ran into the woods, that he got the newspaper the next day and that he saw where Rebecca was dead, and then he started wondering if he was the one who had killed her. That was his initial version. Then the Roger Grainger story really was like the third or fourth version of the facts as he kind of progressed and as we got more information that we presented to him.

Q Now --

Mr. Simon: Beg the Court's indulgence for just a second?

The Court: All right.

Mr. Simon: Your Honor, may I approach the witness?

The Court: Yes, sir.

Mr. Simon: (Continuing)

Q Do you recognize this document?

A Yes, sir.

Q What is that?

A This is the, excuse me, this is his report from the South Carolina Department of Mental Health where he had a forensic evaluation at the State Hospital.

Q Was that something that you received during the course of your representation of Mr. Winkler?

A That is correct, yes, sir.

Mr. Simon: Your Honor, I move this in as Respondent's Exhibit 1?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit Number 1 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 1 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q Now, Mr. Wilson, if you would, please, turn to, let's see, page eight of that exhibit, actually page seven, I apologize.

A Okay.

Q And start, I guess, look at the first full paragraph there?

A Yes, sir.

Q Okay, now in that, that paragraph it indicates basically the same, the same story you just relayed about Mr. Grainger being there and the gun being the same gun, correct?

A That's correct.

Q And when he testified during the sentencing phase did he testify to the same affect, to your recollection?

A I don't honestly remember his testimony at the sentencing phase in detail enough to, to say yes or no, I really don't.

Q Okay, but all together what you knew from him that was your theory that Roger Grainger, the gun that, that fired the shot was the gun that Mr. Winkler had in his possession?

A That was, that was, that was, yes, when he finally said, as I said originally his story was he didn't know what happened, that was the original story, okay. As it progressed the working story became Roger Grainger and him tussling over the gun. Now that, that transfigured itself over a period of time and kind of metamorphized into, to the, the, the, the, them having to struggle and stuff, but that was developed over a period of months. That was not the original story, no, sir, but in the end

that was his story that Roger Grainger was there, that he and Roger Grainger struggled over the gun, that Roger Grainger got control of the gun, the gun went off and killed Becky.

Q Now in light of that when you were developing your ideas for crossing Vello Pavel what were you looking to do during that cross examination?

A Well my, I wasn't really that concerned about the weapon because there was no issue in my mind about whether or not that particular gun fired that bullet. The issue was who the person was who, who was handling the gun at the time that it was fired.

Q And during your cross examination did you also raise any questions about whether the bullet was the one that actually killed the victim?

A Did I raise a question about it or did I cross examine him?

Q Yes, did you cross examine Mr. Pavel about that?

A Yes, I did.

Q And did you cross examine him about the, whether other methods of identifying making matches in firearms and tool marks were reliable?

A I don't, I don't know that I went into that. I did, I remember, and I think the Judge objected,

well the Judge didn't object, I think the Solicitor objected, I did, I was asking him, I was asking Pavel about some studies that I had read about, but, and it really wasn't about, about tool mark identification. This was about the FBI had been using this process for determining the types of bullets that were, that, that could have been used and there had been a study that I had read a while before the trial which suggested that, that, that the FBI had been wrong in, in the method that they had used for a number of years with those, with, with that; and I asked him about that during cross examination and he said, well, you know, it really wasn't about this, this tool mark identification, that was really about the jackets that covered the bullets, and, and, yeah, the FBI was wrong about that for a number of years; and then I think I asked him about serology suggesting that they later found out, the FBI later found out that in, in, in, in serology that they were wrong about that, too, in that trying to get to the point that maybe he could be wrong with, with this; and, of course, then the Judge, the Solicitor objected because he said, well he's not an expert in, in serology and, and the Judge sustained the objection and that kind of ended the inquiry.

Q Okay, so just briefly you were asking that because, can you just state again why you were going down

that line of questioning?

A Well, you know, I mean obviously you want as, as a defense lawyer you want to create any doubt that you can create. I mean, you know, that's what we want to do, I mean you want to try to create any doubt that you can possibly create especially in the, in the trial phase of the case and so just trying to be competent, or halfway competent defense lawyer, I wanted to try to punch any holes in, in the testimony of any witness who gets on the stand against my client.

Q Now I'm going to move on to a claim that's raised regarding the representation of Mr. Winkler during the sentencing phase. They have this one claim is 2(b)(2) regarding putting up evidence showing a change in Mr. Winkler's demeanor. First before we get into too much detail into that issue, do you recall where Mr. Winkler was last employed?

A I remember he was a maintenance man at, I don't remember the name of the place at this point but, yeah, he was a maintenance man at a housing development.

Q Does Tilghman Lakes sound familiar?

A Tilghman Lakes.

Q And do you recall when he was terminated from that job?

A It was prior to the 2005 kidnaping and rape

case.

Q And did you receive documents relating to his employment during the course of your investigation?

A Yes, sir, I did.

Mr. Simon: May I approach the witness, Your Honor?

The Court: Yes.

Mr. Simon: (Continuing)

Q I'm handing you these three documents, please take a look at those for me?

A All right.

Q Okay, first do you recognize these documents?

A Yes, sir.

Q Are these documents that you received during the course of your investigation of this case?

A Yes, sir.

Q All right, well let's start with the first one, could you, what is the first item?

A The first one is from Benchmark Management Group. It's an employee warning and this is apparently something that occurred back on September the 30th of 2005 where they were chastising him or warning him about his, his work performance where the pool, apparently he hadn't maintained the pool because they said that the pool was

green and it had mustard algae in it because it had not been attended and, and, and this was supposed to be his second warning for that.

Mr. Simon: Your Honor, at this time we'd move this exhibit into evidence as Respondent's 2?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit Number 2 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 2 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q Now what is the second document?

A Well the second one looks like this is a copy of the first, I mean that's what it appears to me. They're both dated October 3rd Monday and they both say warning number one, so I would think it's a copy, but now there's a second one here --

Q Well before I move on to the second one will you look at the bottom of both documents?

A Yeah.

Q Do you see a difference between the two?

A Well the difference is is that Mr. Winkler signed one of them and the other is, is not signed by the employee.

Q Okay, and is the second document that is signed by Mr. Winkler?

A That is correct.

Mr. Simon: Your Honor, at this time we'd move this document as Respondent's 3?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit Number 3 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 3 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q And could you identify the third document?

A The third document is also an employee, it's an employee termination which is dated October 3rd of 2005, from Benchmark Management Group Inc., says employee termination. It said that Mr. Winkler had called in that particular morning at, at 8:05 a.m. and said he wasn't, and that says he was not coming into work that day but and was giving no excuse as a reason as to his absence, and that it was decided to terminate him at that time.

Q And this is a document that you received during the course of your investigation and preparation for this case?

A That is correct, yes, sir.

Mr. Simon: Your Honor, at this time we'd move this document as Respondent's 4?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit 4 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 4 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q Now do you recall when exactly the kidnaping and rape occurred?

A If I make no mistake it was October of '05.

Q Okay, would October 10th of '05 sound --

A That sounds correct, yes, sir.

Q And prior to that incident do you recall if the Applicant was receiving any kind of mental health treatment?

A He had gone to Inlet, Inlet, I can't remember the name of the place. He had gone to some, it's one of these, what do you call them, it's like a Doctor's Care or something over in, in, in the north end of Myrtle Beach. He had gone to, gone there because, I remember reading something in there where he had gone there, I think, once complaining and they were trying to put him on some medication or something at that point for depression

or something.

Q Okay, now in preparing for trial did you or anyone from your defense team go and speak with people at Tilghman Lakes?

A Yes, yes, sir.

Q And to your recollection what kind of information did you obtain from those people?

A We talked to literally a couple of dozen people out there, I guess, and what we were trying to find out from them was what kind of person Mr. Winkler was and, and pretty much we were looking for people who, who knew him intimately and who could testify as to some positive things about him so that when we got to the sentencing phase; and pretty much we weren't looking for people for the most part for the trial phase, we were pretty much looking for people for, for the mitigation phase if we got to that point; and, and, and that involves mostly obviously character so we were looking for people who, who could help us try to portray a good positive image of Mr. Winkler for the jury.

Q Okay, and with the people you spoke with at Tilghman Lakes did they want to be involved in the trial?

A Initially when, when it first happened there were several who indicated that they were willing. As we got close to trial they started backing out, backing

out one by one. They either they were having surgery or they were going to be out of town or they really didn't want to get involved. I mean there was just something, there was always a reason why they weren't going to be able to come to participate. Honestly I think that a lot of that had to do with the fact that there was so much press that people were convinced by what they read and heard in the press that Mr. Winkler was guilty and that they just didn't want to be a part of it and so it made it extremely, extremely difficult to, to, to get them there. Mr. Winkler, though, was under the impression that all these people just loved him and that they were going to come and, you know, and, and save him, you know, literally. I mean he was convinced of that and, and it wasn't happening because they weren't doing it.

Q And just, just to take a step back, some of your interviews with these folks what was the impression you were getting from them of, I guess, what they thought of Mr. Winkler?

A Well the problem was most of them knew him superficially, that was the first problem for me. You know the vast majority of them said, well, you know, yeah, I seen him in the neighborhood or, you know, he, you know, he cut yards or he did, he, they knew him but not the majority of them. There were maybe three or four of them who

actually knew him like Archie Bethea and Pat White. There were a number of people who, Ms. Connor, there were a number of them who knew him but a lot of them just kind of knew about him and saw him on an infrequent basis but those people like everyone of them, Ms. White, Ms. Connor, you know, they all were afraid of him after the, after this murder and after he got locked up they didn't want anything to do with it. They just didn't want to be bothered with him or with the trial.

Q Okay, going to the, back to the, the people that lived at Tilghman Lakes what was the, what were they telling you how he was an employee?

A The ones who said that he was an employee said that, that he, that they got along with him well, that he seemed pleasant when they saw him, and the general story was was that he around close to or around this 2005 incident he started to change and that, that, that, you know, that his demeanor started to change around the 2005 or some incident, I mean that was pretty much what they were saying.

Q Okay, again with the, the people that were at Tilghman Lakes, well first did you present anyone who lived at Tilghman Lakes to testify at trial; do you recall?

A Ms. Wolfe.

Q And why did you present her testimony?

A Well Ms. Wolfe actually pursued us to be frank. I mean she, because I don't even think I had her name on my original list of people and I don't know that, that Mr. Winkler gave me her name. She called my office and said that she wanted to testify and that, and so I told her we'd be happy to have her come and happy to have her testify because at that point when she called we were struggling to try to find people who were willing to come to testify and, and, and she came and she did testify.

Q And in terms of the people that you had talked with that indicated that they were reluctant to testify did you ever consider subpoenaing them to come testify?

A I did and, and I talked with Mr. Winkler about this and I told him, I said, you know, as a trial lawyer I will tell you that if, you're in trouble, if you have to force your character witnesses to come to Court and testify when they tell you that they do not want to come and you force them you're in trouble because then you don't ever know what they're going to say. The problem is, and I'll give you a good example of that, which is, which was my concern with this, with, with his, with trying to call these people from either his employment or his or the neighborhood he, if we were trying to portray that all of this occurred after 2005 and that, and that, that his drug

use, his drinking, his, his violent behavior, that all those things started to occur after those things happened, not true; and, and there's no better example of that than when Ms. Wolfe testified, which is how you get in trouble with a jury, when Ms. Wolfe testified then the Solicitor was able to come back and cause she was saying, look, you know he was a nice guy, you know, I never saw any of this stuff until after he married Becky. Well she didn't see it because she wasn't around to see what was happening with the other people, so what, what happens is, which is what happened to us with her, I think personally that her testimony did us more harm than good because what it did was give the Solicitor an opportunity to come and show really you don't even know this guy because the guy that you're describing isn't the guy who's sitting here at the table; and I thought that was very effective because what they did, and every time they asked her, well did you know that he beat his wife, no, I didn't know that. Did you know that he hadn't paid child support for his child for umpteen years and he's $40,000 in the hole, no, I didn't know that. Did you know that he was using drugs and alcohol back such and such a time, no, I didn't know that. Well the, the, the problem with that is when you're on the defense and you're sitting there and this is your character witness, this is your person that you put on the stand and

the jury is sitting there listening to that stuff saying well, gosh, if that's the best person that they got can come in here and say something good about this guy then what kind of person is he really. That is the danger of putting up people who know very little about you, you're trying to, and I guess, you know, I don't want to say trying to fool the jury but trying to, to convince them that, that you're something that you're not because if you get caught in it then it hurts you more than anything else and I really think that that hurt us in, in, in this case.

Q And I want to ask you about a few more people that you talked with during the course of your investigation; do you recall talking with Edward Genet?

A i don't remember his name specifically; there were so many of them. I don't, I can't sit here and tell you I remember Mr. Genet but if you tell me or show me his affidavit then I will probably remember it.

Q Did you have an opportunity to go to Ohio? You testified earlier you had an opportunity to go to Ohio?

A I did.

Q And meet with the family?

A Yes.

Q Did you meet with, while you were meeting with the family do you recall meeting with anyone else?

A Yes, one of Mr. Winkler's life long high

school friends. I don't remember his name but it could be Genet but I don't remember his name but --

Mr. Simon: Your Honor, may I approach the witness?

The Court: Yes.

Mr. Simon: (Continuing)

Q I'm just going to hand you this document, if you'd just take a look at that and see if that refreshes your recollection?

A Yes, these are, these are my handwritten notes from July 9th of '07.

Q So did you meet with Mr. Genet?

A I did.

Q And do you recall the kind of information he provided to you?

A Yes, yes, he, he had known Mr. Winkler for quite some time and I think they were in high school together. I think they were involved in sports together and he said that they kind of kept in touch over the years but they hadn't really been close after Mr. Winkler moved here to South Carolina and I think he said that he, I'm not sure he made one trip here at some point or something, but, but I know that they had been, yeah, they were close early on in school.

Q Okay, did you consider calling Mr. Genet as

a witness?

A I did and, and he'd agreed, when I met with him back in July of '07, he'd agreed that he would come and testify but he told me at that time that he was struggling financially and that he didn't know, you know, but that he would make arrangements to be here and it wasn't until right close to the trial that he called, I called him to ask him if he was coming. He said, well, you know, he didn't, he didn't have any money, he couldn't come, times were hard and that he just couldn't come.

Q Did you ever speak with a lady by the name of Pat White?

A I did on, on more than one occasion actually.

Q And who is Pat White?

A Pat White was a friend of, of, of Mr. Winkler and one of those people who originally professed that she thought the world of Mr. Winkler and that she wanted to help him in every possible way and was, you know, kind of almost like a cheerleader, if you will, for Mr. Winkler at the beginning. I don't know what changed or what changed her but I know that as we got close to the trial when we tried to get her to come, didn't want to come, didn't want to be involved.

Q And during the course of your discussions

with her what kind of information did she provide to you?

A I'd have to see her affidavit to know that. I don't want to say something incorrect, I just, there was so many witnesses and and I don't want to misstate the testimony so if you'd show me her affidavit I will or my notes where I talked to her I'd be happy to --

Q But overall it ended up did she want to testify ---

A The bottom line is she wasn't going to come, she did not want to come and testify.

Q Did you stick with neighbors of Mr. Winkler?

A We did.

Q And did they give you a general impression of how he was as a person?

A Yes, and, and, you know, some of them liked him, some of them didn't. Most of them thought that he was more outgoing than his wife and that, you know, some said that he had anger issues. I mean it, it kind of varied depending on how they knew him.

Q Okay, now based on your overall investigation and preparation of this case did you have any, well first did you consider attempting to present evidence that he had a change in demeanor, I guess between the kidnaping and rape and the murder?

A Well I wanted to do that but was I said earlier I was really concerned about trying to do that because I don't think he changed and I don't think the evidence shows that he changed and I think that that was clear when Ms. Wolfe testified that they may not have known, which is, which is what I was saying earlier. When, when Ms. Wolfe got up and testified and the Solicitor came back with, okay, well let me ask you this, what about this, did you know about all this stuff and then he goes through this whole litany of things that Mr. Winkler had done that this lady had no clue about, you know; and, and now you're sitting there red faced because how you come back from that, how you, how do you recover your witness from that kind of attack by the Solicitor, I knew that they didn't know all these things that Mr. Winkler had been involved in before that. I knew that the Solicitor knew and I knew that when they got on the stand to testify that the Solicitor was definitely going to bring those things out to make them look like they didn't know what was going on with Mr. Winkler and that's exactly what he did with Ms. Wolfe.

Q And still looking at this same issue what was your thought process when you were putting up his family members?

A You know, there, therein lies a whole other set of problems. One of the, one of the things was, was

that during the course of dealing with the family I thought that they were closed, they were not forthcoming at all about the family, the family life. Mr. Winkler was extremely protective of his family. He did not want me to say anything negative about any of his family members. They didn't want to say anything negative about him and I found it very trying to get any helpful information and what we did get we almost had to literally read between the lines, you know, in order to get stuff to try to follow up with Mr. Winkler; and, I mean it was tough, so, for instance, the, the, the, the, there was, there was an incident supposedly where Mr., the father shoved Mr. Winkler and/or choked him and apparently, I think it was he was supposed to have some marijuana or something and the mom told the dad and the dad supposedly choked him or something, well they wouldn't talk about that kind of stuff. They didn't want to talk about it and there was apparently some conflict between the brothers and the father where they sued each other over the business. I couldn't get them to give me any details about anything. To hear them tell it it was a Leave it to Beaver family and nothing ever happened out of the ordinary and, and the truth of it was that wasn't true, but we had to dig and work to find anything because they weren't giving it to us.

Q And did they give you any kind of, do you

recall if they gave you any information about his -- what was your impression from talking with them his general demeanor over, over time?

A When I first met with them when I went to Ohio, which was my actual first face to face with them cause I tried to get them to come and they, for whatever reason, said they couldn't come, you know; and so I ended up going to Ohio to meet with them, and when I first met with them and, and, and we, they took me, for instance, to the school, the Catholic school where he had gone. They showed me around the town. We, we met at, I think it was a Holiday Inn or I can't remember what the hotel was, we met in one of the little rooms at the Holiday Inn or whatever the name of the hotel was, and I had them all together and I wanted to know from them to tell me about him. One of the first things I asked them was did he have any injuries, any major injuries, head injuries from, you know, from childhood, no. He had perfect normal upbringing. There was no trauma and no injuries, nothing, and so he played sports but that was the extent of it. They told me that, you know, they, they did tell me about his, his marriage, his first marriage and that that was basically her fault that things didn't work out and that Mr. Winkler was a typical normal teenager growing up there when he was in high school and that he then left, I think, in his twenties

to come to, to South Carolina or North Carolina, wherever he went from there, but there was nothing out of the ordinary in his upbringing according to them.

Q Based off the information that you reviewed during your preparation and in looking at your conversations with the family did it appear that they had an understanding of how Mr. Winkler's relationships with the women he married how those worked?

A That's a tough one, do I, what I got from them was that they blamed these women not Winkler for whatever occurred.

Q And would that have been something you would wanted to present at trial?

A No, no.

Q Within that same issue in the application there is also an assertion that you and your co-counsel should have presented evidence of the victim harassing Mr. Winkler while he was on house arrest; first with that did you have an opportunity to review documents that were in the family court proceedings?

A Yes.

Q That occurred after the kidnaping and rape?

A Yes.

Q Okay --

Mr. Simon: May I approach the witness, Your

Honor?

The Court: Yes.

Mr. Simon: (Continuing)

Q Do you recall seeing that document?

A Yes, sir.

Q What is that document?

A It's a petition for order of protection by Becky Winkler against the defendant Mr. Winkler.

Q And when was that document filed?

A This was filed October 20th of 2005.

Q Okay, is that a document you received during the course of your preparation for this trial?

A Yes, sir.

Mr. Simon: Your Honor, at this time we would move this in as Respondent's 5?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit Number 5 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 5 marked and entered into evidence.)

Mr. Simon: Your Honor, may I approach the witness?

The Court: Yes.

Mr. Simon: (Continuing)

Q I am handing you three more documents, first if you would take a look at those and let me know if you recall reviewing those in the course of your preparation for criminal trial?

A Yes, sir.

Q Could you, please, identify what the first document was?

A The first document is a family court order of protection from domestic abuse act which is filed on October 21st of 2005, and Ms. Rebecca Winkler is the Petitioner and Louis Winkler is the defendant.

Mr. Simon: Okay, Your Honor, at this time we'd like to move this in as Respondent's 6?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit Number 6 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 6 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q And, Mr. Wilson, in that, that first order --

A Yes, sir.

Q Okay, in reviewing that first order does it indicate who, is it, is this a restraining order?

A Yes, this is a restraining order.

Q And who is the restraining order for?

A It's in favor of Rebecca Winkler against Louis Winkler.

Q Okay, and can you just take a look through that document and let me know is there anywhere in that document where it says that Rebecca Winkler has a restraining order against her?

A No, sir, no, sir.

Q Okay, and also when did that particular order, does that particular order have an expiration date?

A October 25th, 2005.

Q Okay, now if you'd, please, take a look at the second document I handed you; do you recall seeing that document during the course of your preparation for trial?

A Yes, sir.

Q And could you, please, inform the Court what is that document?

A This again is a family court order of protection from domestic abuse; the Petitioner is Rebecca Winkler, the respondent is Louis Winkler.

Q And what is the file date on that document?

A The filing date on this document is October 25th, 2005.

Mr. Simon: Okay, Your Honor, at this time we'd

like to move this in as Respondent's 7.

The Court: Any objection?

Mr. Mills: None, Your Honor.

The Court: All right, Respondent's Exhibit Number 7 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 7 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q And, Mr. Wilson, in that document, actually in that document who is the restrained party?

A The restrained party is Louis M. Winkler.

Q And in that document is Ms. Winkler restrained from doing anything?

A No, sir.

Q And now if you'd, please, look at the third document I handed you, could you, please, identify that for the record?

A This is an amended family court order of protection for domestic abuse filed October 26th, 2005, Rebecca Winkler Petitioner Louis Winkler Jr. is the Respondent.

Q Okay, and is that a document that you received in the course of your investigation of this case?

A Yes, sir.

Mr. Simon: Your Honor, at this time we'd move

this order in as Respondent's 8?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: Respondent's Exhibit Number 8 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 8 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q And, Mr. Wilson, in looking at that document who was the restrained party?

A The restrained party is Louis Winkler, Jr.

Q And when did that order expire?

A This order expired April 25th of 2006.

Q Okay, are you aware if during the course of, I guess, after the kidnaping and rape if any kind of divorce proceedings were commenced by the victim?

A Yes, sir, I know that there were proceedings, yes.

Q And did you obtain copies of those documents during the course of your investigation of this case?

A I did.

Q Did you speak with Mr. Winkler's divorce attorney at any point in time?

A Mr. Norton, yes.

Q And why did you speak with him?

A Mr. Winkler had indicated to me that Mr. Norton told him that, that regarding the 2005 charges that if, if that Rebecca, I think she said Rebecca's lawyer was going, if they got $10,000 or, or if he paid $10,000 they were going to dismiss the charges, and, and I obviously didn't believe Mr. Norton would have any part of that so I called him because I wanted to make sure for myself.

Q Okay, in your conversation with Mr. Norton at any point in time did he ever provide you with any information that Mr. Winkler would have provided regarding any kind of harassment?

A No, sir, well to be fair the only thing I talked to him about was the offer cause that was the only thing I was concerned about. I never asked him about whether or not there were harassment. We didn't get into that, no, and I didn't ask that.

Q Okay, did you talk with Mr. Winkler's attorney who represented him in the kidnaping and rape charges?

A Yes, Scott Bellamy.

Q And what did you discuss with him in regards to ---

A He and I had more, way substantially more discussions than I did with, with Mr., with, with attorney

Norton. I talked to Mr. Bellamy probably three or four times over a course of many months and, and sometimes I would just see him over at the courthouse and we have conversation about Mr. Winkler cause he, he represented Mr. Winkler and apparently Mr. Winkler tried to retain him to represent him on, on these, on the murder charges but the family weren't able to come up with the money to, to retain him, I think is what he told me.

Q Did you ever have any discussions with Mr. Bellamy about whether the victim was harassing Mr. Winkler?

A I'm wanting to think that, that, that he, we did, but there was nothing but Mic's word that that was what was going on and there was nothing, he didn't have anything to offer to show that that was in fact what was happening, if I remember correctly.

Q Okay --

Mr. Simon: Your Honor, may I approach the witness?

The Court: Yes.

Mr. Simon: (Continuing)

Q I am going to hand you three more documents if you'd, please, take a look at those and let me know if you recall reviewing those during the course of your investigation and preparation for the criminal trial?

A Yes, sir.

Q What was the, the first document?

A The first document is the summons and then, is a summons signed by Melissa Frazier.

Q And on that, well what was the second document?

A The second document is a complaint for divorce.

Mr. Simon: Okay, Your Honor, at this time I'd move those in actually together as Respondent's 9.

Mr. Mills: No objection, Your Honor.

The Court: All right, Respondent's Exhibit Number 9 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 9 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q Okay, in looking at the summons and complaint could you just, when were those filed?

A The stamp is real vague but it's dated January, it's dated November 14th of '05; I can't really make out the stamp, the Clerk's stamp, it's real light and I can't make it out but that's the date that's on that it's dated.

Q Okay, and if you'll look at the last document that I handed to you?

A This document is filed February 1st of

2008.

Q And what is that document?

A This is a temporary order not ending the action.

Q Okay, and was this a document that you would have received during the course of your investigation in preparation for the criminal trial?

A Yes, sir.

Mr. Simon: Your Honor, at this time we'd move this in as Respondent's 10?

The Court: Any objection?

Mr. Mills: No, Your Honor.

The Court: All right, Respondent's Exhibit Number 10 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 10 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q Okay, Mr. Wilson, in looking at that temporary order first what date was it signed by the Judge?

A January, looks like January 26th but there's a, there is a dash between the two and the six so I'm not certain but that's what it looks like January 26th.

Q Okay, and can you take a look at that document and does it indicate that there is a restraining order placed on both of the parties of that action?

A Can I just look at it for a second?

Q Yes?

A Yes, it says both parties are restrained from harassing the other.

Q And during the course of your preparation for trial was there any discussion about whether there was a restraining order placed on both parties?

A Between me and who?

Q Well I guess what was your understanding of the situation in regards to restraining orders between Mr. Winkler and the victim?

A Well when I got the case I mean Ms., Ms., the victim was dead so I mean --

Q I guess when I'm asking the question I mean in terms of after the kidnaping and rape up until the murder what was your understanding of the situation with restraining orders?

A Well --

Q Actually let me strike that question, did you know of any other restraining orders that were placed on the victim other than the one mentioned in that temporary order?

A I'm not aware of any, no, sir.

Q During the course of your preparation for trial did you speak with neighbors of Mr. Winkler?

A Yes, sir.

Q And did you ask them, did you or someone from your team ask them questions regarding whether they had seen the victim in the neighborhood after the rape?

A Vicki Childs did, did that work, yes, sir.

Q And do you recall who they spoke, who she spoke with?

A I know she spoke to several people including the Patterson's and I think Stephen, I can't remember his last name, who allegedly took the video, his first name is Stephen, I don't remember his last name.

Q You were present in the courtroom when a video that was taped by Stephen Fitzwater was presented?

A Stephen Fitzwater that's his name, yes.

Q Have you seen that video before you saw it at this hearing?

A No.

Q During the course of your investigation did, did you and your team attempt to obtain documentation of the victim being in the neighborhood after?

A Yes.

Q And were you able to recover any, any documents?

A Nothing that I was satisfied with, no.

Q And in looking at the video would that have

been something that you would have considered presenting?

A Well now, no, if, if, if the video had been of Rebecca Winkler then, yeah, I would have been happy to try to use it. If it, if, if there was video of her with a picture of her, you know, at his house then, yes, but if they had brought me a video of a person that I don't recognize and, you know, then, no, I'm not going to try to put that into evidence.

Q Do you recall if anyone that was on the defense team spoke with Cathy Craft?

A I know we did; I know that Vicki spoke to her I know on more than one occasion.

Q And do you recall what kind of information you received from Vicki in regards to that?

A Yeah, I know that Vicki talked to her; I don't honestly remember the details of these conversations, I just don't offhand.

Mr. Simon: May I approach the witness, Your Honor?

The Court: Yes, sir.

The Witness: (Continuing)

A Thank you, okay.

Q Okay, and do you recall receiving that document during the course of your investigation and preparation for trial?

A Yes, sir.

Q And based upon that document if you, if you had seen the video that was presented would you have presented that video?

A No.

Q Did you consider calling Stephen Fitzwater as a witness at trial?

A I did, and actually we tried to find him and he was tied to the Patterson's somehow, somebody's brother or brother in law or something. Anyway we tried to find Fitzwater to have him come to the trial and testify and I even put his name on my list because Mr. Winkler had told us about a video, he did. He had said that there was a video, I never saw it.

Q And were you able to locate Mr. Fitzwater for trial?

A Could not find him.

Mr. Simon: Okay, beg the Court's indulgence for just a moment?

The Court: All right.

Mr. Simon: (Continuing)

Q Just briefly, do you recall speaking or having any conversations or some member of your team having conversation with Frank Patterson?

A Yes.

Q And was he willing to participate, was he willing to testify at trial?

A No.

Q Do you recall having any conversations or somebody from your team having any conversation with John Burch?

A Vicki did.

Q Okay, and do you, what do you recall from information you found out about Mr. Burch?

A I don't remember that, you'd have to show me his information; I don't remember.

Q Do you recall if Mr. Burch had any relationship with Charles Bryson?

A I'm sorry, it's not ringing a bell for me, I apologize.

Q Okay, the last question, going back I know earlier we discussed ya'll had a conversation with Pat White?

A Yes.

Q Did she ever indicate to you that Mr. Winkler told her that he killed Becky?

A Yes, we knew that, I think we knew that.

Q And do you recall what she, did she have any involvement with Mr. Winkler shortly after the murder?

A Yeah, the police had suspected that Ms.

White had harbored Mr. Winkler and, and, and I think that, and again I'm guessing now cause I don't know this for a fact, she didn't say this to me, but I think that was part of the reason she didn't want to get involved and testify any further, but she had actually called Mr. Winkler. Mr. Winkler contacted her when he was out on escape or while he was running, whatever you want to call it, and he contacted Ms. White and Ms. White then contacted his father and, and, and asked his father to send money to Mr. Winkler, you know, what the purpose of the money was I'm not real sure, but and so I think she was very skittish about that where that could lead for her.

Mr. Simon: Just beg the Court's indulgence for just one short moment?

The Court: All right.

Mr. Simon: No further questions, Your Honor.

The Court: All right, let me see the attorneys for a second.

(Whereupon, a bench conference was held off the record out of the hearing of the court reporter.)

The Court: All right, I've been discussing some scheduling with the attorneys, I think we're going to go ahead and break for lunch right now; I'll take the bench back at 1:00. Mr. Wilson, we're still in your testimony so don't discuss it with anyone.

Mr. Wilson: Yes, sir.
The Court: Even what you've testified to or what you anticipate testifying to in the future, okay?
Mr. Wilson: Yes, sir.
The Court: All right, anything from the Applicant before we break for lunch?
Ms. Paavola: Nothing from the Applicant.
The Court: Anything from the State?
Mr. Simon: Nothing, Your Honor.
The Court: All right, we'll stand in recess until 1:00.
(Whereupon, court was recessed for lunch.
(Petitioner's Exhibit number 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 marked for identification.)
(Whereupon, the following takes place on the record after the lunch recess.)
The Court: Please be seated.
Mr. Mabry: Your Honor, can we approach?
The Court: Yes.
(Whereupon, a bench conference was held off the record out of the hearing of the court reporter.)
The Court: Mr. Wilson, take the stand, please.
Madam Clerk: Do I need to re-swear Mr. Wilson?
The Court: No, he's still under oath.
Mr. Mabry: Your Honor, we'd ask that this

witness be subject to recall.

The Court: All right. All right, cross examination.

Mr. Mills: Thank you, Your Honor.

Cross Examination

By Mr. Mills:

Q Good afternoon, Mr. Wilson.

A Good afternoon, how are you, sir?

Q Very good, and yourself?

A I'm good.

Q Now I'm going to cover a lot of material you've already discussed and I'll also probably cover some additional areas?

A Sure.

Q Now first I believe you testified you're in private practice here in Horry County?

A I am.

Q And what sort of work do you do?

A General civil, general civil, criminal, but ninety percent of what I do personally is criminal.

Q And when was the last time you were appointed to a death penalty case as defense counsel?

A You mean prior?

Q To Mr. Winkler's case?

A Well I was actually appointed to, what's

his name in Georgetown, but I --

Q It's been a while?

A No, I got out of it, and I think Bill Diggs ended up with that case but I was originally asked by Judge, what's his name from Charleston, Jefferson, to do that and I didn't want to do it and I begged out of it and she let me out of it.

Q And is one, is one of the reasons you didn't want to do it because of how time consuming these cases are?

A No, after I left the Solicitor's office I really had had enough of death penalty cases for a while. I did so many when I was there and I really just wasn't that interested in doing another one right away. I just wasn't interested.

Q All right, and prior to that case, the one that you were not in fact appointed on or were briefly appointed and then withdrew, when was the prior?

A Not, not since I left the public defender's office which would have been in '86-7, somewhere.

Q And that would have been the last time that you prior to Mr. Winkler's case you actually represented someone?

A On the defense, yes.

Q In a death eligible case on the, that's

right?

A That is correct, yes, sir.

Q And I believe you testified earlier that the, working as a Solicitor on the case is a bit different than working as a defense attorney on a death penalty case?

A Oh, absolutely, yes.

Q And one of the differences is that you're trying to prove aggravating circumstances as the Solicitor and; is that correct?

A That's correct, yes, sir.

Q You were just nodding your head so I thought, you know ---

A I apologize, it's an old habit, I'm sorry.

Q Very nice, and when you're on the defense side on the other hand you're much more focused on establishing mitigating circumstances?

A Absolutely.

Q And it's a very different inquiry as defense counsel as opposed to a solicitor?

A No question.

Q Now the State went at length through your experience both as a prosecutor and a defense attorney; does your experience or for that matter in your anyone's experience does having a lot of experience mean that you can't make a mistake?

A Oh, no, I've made plenty.

Q And in your experience just because a lawyer has been practicing a long time that doesn't mean they don't make mistakes?

A Absolutely.

Q Even reversal mistakes?

A Absolutely.

Q I think you, I understand to be clear, and in Mr. Winkler's, in Mr. Winkler's case I believe you testified that someone from Judge Lockemy's office contacted you about getting involved?

A Ms. West called me first.

Q Oh, pardon me.

A Ms. West called me initially and told, asked me if I would consider doing it and I was kind of reluctant just like I was with Judge Jefferson and then I got a call from Judge Lockemy's office and I assume, and I don't know this for a fact, I assumed that she gave my name to Judge Lockemy and as a potential person to do it.

Q And you met with Judge Lockemy about it?

A I did, yes, sir.

Q And even after that meeting you had some hesitation?

A Yes, sir.

Q And perhaps there was even a second meeting

where he finally convinced you?

A I wouldn't say he convinced me, I mean he, he didn't convince me, he didn't make me do it, I agreed to do it. I mean I didn't have to, I mean I guess I could have begged off just like I did with Judge Jefferson if I, if I had felt strongly enough about it.

Q But would it be fair to say that there was at least some arm twisting going on?

A I'm reluctant to say arm twisting cause I don't really feel that way. I feel like the Judge believed that because of my experience that I would be a good person to handle this type of a case and that's why he was asking me and because he asked me and had the confidence in me to ask me if I'm always reluctant to say no to a Judge who would ask me something like that.

Q Fair enough, and I believe you also had other things going on during 2006 and 2007?

A I have other stuff going on throughout my life.

Q Specifically you were moving your practice into a new building?

A Well we moved, we moved the office in January of, I'm thinking it was January of 2008.

Q And is that a building that you had built for you to move into?

A Yes, sir.
Q And it was a big project?
A Yeah, but the project started in 2005.
Q So it was an ongoing large project?
A No, sir.
Q No?
A The project was not ongoing at that point. The project began in 2005 and there was about a year in there when nothing happened and, and then in 2006 we started working on the building again, but at that point the contractor was fully in charge, everything was done. There wasn't really much for me to do but sign orders.
Q Around that same time I believe you testified your son had just finished law school?
A My son, no, my son graduated from law school in 2006. He passed the bar in July of 2000 and, well I, he took the bar, I guess, in July of 2007 and, and he was admitted in November of 2007.
Q And that's when he joined your practice?
A No.
Q No?
A He had been working with me for maybe a year prior to passing the bar.
Q Oh, fair enough, and you were Mr. Winkler's attorney through the conclusion of his trial?

A Yes, sir.

Q And Mr. Paul Rathbun was appointed the same time as you?

A Yes, sir.

Q And to your knowledge had Mr. Rathbun ever worked on a capital case before?

A Not to my knowledge, no, sir.

Q How about a murder case?

A That question was asked, I thought that he had but I'm not a hundred person certain but I know that that question was raised with Judge Lockemy about whether he had or hadn't worked on a murder case.

Q If he had does it stand to reason that it would have been on the order where appointing him where his experience is outlined?

A Well that's actually a conversation with Mr. Winkler where Mr. Winkler is asking Judge Lockemy about that very issue about whether or not Mr. Rathbun is qualified to be on the case and I know that Judge Lockemy addresses it. I don't remember the colloquy offhand but I think we touched on it earlier in my direct.

Mr. Mills: Just a moment, may I approach, Your Honor?

The Court: Yes.

The Witness: (Continuing)

A Just one second, I can't see anything without these things anymore.

Mr. Mills: For the record I'm showing Mr. Wilson what's been marked as Petitioner's Exhibit 17 for identification at this point.

Mr. Mills: (Continuing)

Q What is it that I'm, what is it, do you recognize this?

A Yes, sir, I do.

Q What is it?

A This is the order appointing counsel for Mr. Winkler in this case.

Q Is it an accurate copy?

A Yes, sir.

Mr. Mills: Your Honor, I'd like to move to admit Applicant's [sic] Exhibit 17?

The Court: Any objection?

Mr. Simon: No objection.

The Court: All right, Applicant's [sic] Exhibit Number 17 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 17 entered into evidence.)

Mr. Mills: (Continuing)

Q And looking at that exhibit does it outline Mr. Rathbun's experience?

A It does, yes, sir.

Q Thank you --

Mr. Mills: May I approach?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson what's been marked for identification as Applicant's [sic] Exhibit 18.

Mr. Mills: (Continuing)

Q Mr. Wilson, do you recognize these?

A Yes, sir.

Q What are they?

A This is the, these are the sheets that we send to, to OID for work that we did on the case.

Q And are they your time sheets?

A Yes, sir, well they're not my time sheets but they're the OID sheets that we send to them because they won't, they don't cover everything so, so there are things that are, that, that we did that are not on this sheet, yes, but, yes, the answer is this is what we billed for.

Q You keep saying that word we, who else is, who else's time is represented there?

A Well when I say we, I mean my office.

Q Very good?

A I apologize.

Q No problem, so you can't bill for things like administrative time; is that correct?

A That's right or driving to the jail or things like that.

Q Excellent, and it's an accurate copy of that?

A Yes, sir, I think so.

Mr. Mills: Your Honor, we move to admit the time sheets.

Mr. Simon: No objection, Your Honor.

The Court: All right, Applicant's [sic] Exhibit Number 18 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 18 entered into evidence.)

Mr. Mills: (Continuing)

Q I want to talk a little bit about preparation for trial?

A Yes, sir.

Q You were lead counsel, correct?

A Yes, sir.

Q And it was your responsibility to assemble a team to work in Mr. Winkler's case?

A Yes, sir.

Q And Mr. Rathbun had not worked on capital cases previously?

A He had not that I'm aware of, yes, sir.

Q And so the responsibility for the positions on the case really fell on your shoulders?

A Absolutely.

Q You were carrying much if not all the water?

A That's correct.

Q And I believe you testified that you contacted Jeff Blum for suggestions about who to include?

A I did.

Q And it was based on those suggestions?

A Well not just Jeff Blum.

Q And Bill Diggs?

A Yeah, and, and as I said I talked with the Death Penalty Resource Center to get suggestions which is how I found Dorian Hall who is the, the investigator that I used in Ohio.

Q When you say the Death Penalty Resource Center are you referring to John Blum?

A Well I don't know if it's, I never spoke to Mr. Blum.

Q Okay, that's why I was confused?

A I never spoke to Mr. Blum directly and I can't remember the lady's name, if you call it I'll remember her name that I spoke to, but, but that's who it

was, that agency.

Q Okay, and late January 2007 I believe you contacted Vicki Childs to get her involved; is that correct?

A I did.

Q And that is when she got involved?

A That is true.

Q And her role was to act as the fact investigator?

A That's correct.

Q And to be clear that means she was investigating the guilt phase as opposed to the penalty phase?

A Well, yes, but if, if she uncovered something that we felt was appropriate to use in the sen-, in the mitigating phase then obviously we were going to use it, we weren't just ---

Q But it's clear that her focus was on the guilt phase?

A Absolutely, no question about that, that was her primary objective.

Q And in late February of 2007 your office reached out to Dale Davis?

A That's correct.

Q And Dale Davis could not complete the

penalty phase investigation prior to the then July 16 trial date; is that correct?

A That's correct, now actually if I remember correctly I tried even before I hired Paige Tarr I think I tried to get Dale and I couldn't for whatever reason.

Q Well is it your recollection that it was in fact Dale who recommended Paige Tarr?

A That may very well be true.

Q Well just a moment and see if we can refresh ---

A That sounds correct.

Q --- your recollection?

Mr. Mills: May I approach?

The Court: Yes.

Mr. Mills: (Continuing)

Q Having, having reviewed that, well have you had a chance to review ---

A Give me one second, I'm sorry.

Q Yes, sorry about that?

A Okay.

Q Having reviewed that email is your recollection refreshed?

A Yes, sir.

Q And is it Dale Davis who recommended Paige Tarr?

A Yes, sir.

Q And in fact you ended up getting Paige Tarr involved?

A I did, yes, sir.

Q And you first contacted Paige Tarr in late February the same time that Dale Davis did not have enough time?

A Yes, sir.

Q And she joined, joined the team in late February?

A She did.

Q What was her role in the team?

A Paige Tarr's?

Q That's correct?

A Yeah, well I mean Paige was going to be our mitigation specialist and her job obviously was then to go out and find me or help me find information that would be helpful to Mr. Winkler during the sentencing phase of the, of the trial.

Q Great, and part of that role was also, and so part of that role in finding information would be identifying potential witnesses?

A Yeah, if, yes, could be ---

Q Potential witnesses?

A Yes, sir, sure.

Q And you testified earlier that you had team meetings where reports were provided to you on the investigation?

A Well yes, oral reports sometimes and sometimes they would give me affidavit from witnesses that they talked to or whatever but, but those meetings were primarily to keep me informed and to bring us together so that everybody could hear what was going on with everybody else.

Q And receiving those reports it's very important to your preparation?

A Sure, yes, sir.

Q And at some point discovered that Ms. Tarr was not doing her job, correct?

A Yes, sir, that's correct.

Q In fact as you told the trial court three days before the trial was to begin Ms. Tarr had done little to no substantial work in preparation for the mitigation phase of the trial; is that correct?

A Yes, sir, that's absolutely correct.

Q And it's correct that she had done little to no work to prepare the case in mitigation?

A That's correct.

Q It's also true that three days prior to trial Ms. Tarr had provided you no written reports?

A That is correct.

Q She had not gathered social history records such as school records, birth records, and medical records?

A That is correct.

Q And those records, and those are records you expected her to gather?

A Absolutely.

Q So you had to ask for more time?

A Yes, sir, we asked for more time and we got it.

Q And on July 13th you asked for ninety days?

A I don't remember the number of days but you're right I did ask for more time, yes, sir.

Mr. Mills: May I approach, Your Honor?

The Court: Yes.

Mr. Mills: For the record ---

Q (Continuing) Excuse me, take a moment to look over that and let me know when you've had a chance?

A I'm familiar with this order, yes.

Q Having reviewed this, this order is your recollection refreshed?

A Yes, sir, I remember the order, I just didn't remember the number of days.

Q Right, and do you now remember that it was approximately ninety days you asked for?

A Yes, sir, yes, sir.

Q And so as you told the Court ninety days would be enough in your estimation to conduct a mitigation investigation?

A Yes, I thought so, yes.

Q And on July 12th, 2007, you reached out to TeAnne Oehler; is that your recollection?

A I don't remember the date but I did reach out to her, yes, sir.

Mr. Mills: Just a moment, I'm sorry, Your Honor.

The Court: All right.

Mr. Mills: Your Honor, may I approach?

The Court: Yes, sir.

Mr. Mills: (Continuing)

Q If you could just look at the date?

A Okay, the date, that's the fax date?

Q July 12th?

A Yes, it says ---

A Does that refresh your recollection as to when Ms. Oehler might have gotten involved?

A Well this is her bill that says consult with Ralph July 12th.

Q Uh-huh, and is that about the time ---

A Yes, sir, I would ---

Q --- that you would have expected to get her involved?

A Yes.

Q Okay ---

A TeAnne, yes, sir.

Q What was her role in the case?

A Her job was assist the mitigation specialist primarily and try to find as much social history as she could about Mr. Winkler and, and bring that to us so that we could try to use it for whatever our purposes was and primarily that purpose was going to be, you know, mitigation.

Q And on September 6th, 2007, you got expenses approved for Carolyn Graham, a new mitigation specialist, correct?

A That's correct, yes, sir.

Q And that's when she got involved?

A Carolyn, yes, sir.

Q And one week later on September 13th you got expenses approved for Dorian Hall; is that correct?

A Yes, sir.

Q And it was her job along with Carolyn Graham to fill Paige Tarr's shoes?

A That is correct.

Q And in October Judge Lockemy entered ---

A I apologize, you asked about Dorian Hall. Yeah, we, because of the time constraint I urged Judge Lockemy to allow me to use someone in Ohio in addition to someone here because we had to cover both states in trying to put together the mitigation and I knew that it was going to be a tall order for Carolyn to try to cover both Ohio and here by herself so that, that was the reason that that was done.

Q And in October Judge Lockemy entered a scheduling order setting trial for January 28th, 2008; is that correct?

A Yes, sir.

Q Now based on your testimony earlier it sounds like, it sounds at least at the end of all this you didn't care too much for Mr. Winkler?

A I wouldn't say, I wouldn't say I didn't care for him. I didn't care for his behavior and the antics that he performed during the course of the trial and, and the things that he did leading up to the trial. It was his behavior; it wasn't him, I just didn't like those things, no.

Q Okay, and between you and Mr. Rathbun was it primarily your responsibility to visit Mr. Winkler?

A Well we never, I was the lead attorney so, you know, as far as I was concerned everything was my

responsibility and if I got any help then that was great. If I didn't I wasn't going to, you know, slow down say, well, you know, he didn't go visit this time so I'm not going to go.

Q It sounds like everything was primarily your responsibility?

A Pretty much. I'm not going to dispute that, that I did the bulk of the work on this case, that is absolutely a correct statement. I don't dispute that one bit.

Q And part of the problem with Mr. Rathbun and Mr. Winkler is that they didn't have much of a functioning relationship?

A That is true, yes, sir.

Q And that was true pretty much from the beginning?

A Yes, sir.

Q And immediately prior to Mr. Winkler's trial it sounds like things between you and Mr. Winkler deteriorated?

A It did, no question.

Q And there was a dispute as you testified?

A Absolutely, there was.

Q And it happened on January 24th, 2008?

A That sounds correct, yes, sir.

Q And at some point the corrections officers intervened?

A Yes, sir.

Q And that was after you swatted Mr. Winkler's hand from in front of your face?

A I don't remember the swatting part. I remember the conversation and I remember, you know, him calling me the "N" word in the conversation and, and as I said the argument was over his sister, something that he said I said to his sister and when he got, I won't deny that if he put his finger in my face, yeah, I probably did push it out. I wouldn't say I didn't do that.

Q And if the, if the corrections officer who witnessed this said that that happened you wouldn't dispute that?

A I'm not going to dispute that.

Q You would suspect that at least some of the difficulty was related to Mr. Winkler's mental health and mental functioning?

A I do, yeah.

Q Now the State took you through the grounds for relief in Mr. Winkler's application?

A Yes, sir.

Q I'd like to briefly do the same thing?

A Sure.

Q Now Mr. Winkler, excuse me, you testified that, that when Mr. Winkler had a problem you went to the Judge and in front of the Judge and the Solicitor and on the record you would raise it?

A Well not every time.

Q A problem with representation wanting you to ---

A Well it depends on what the problem was, there were times when we had in camera hearings where we went outside of the presence of the Solicitor where he wasn't present. If I thought that it was something that was confidential that we didn't want the Solicitor to be aware of then we met with the Judge, you know, ex parte. Those issues that were trial related issues then, you know, I put those on the record in front of everybody.

Q Great, and one of those issues I believe you testified to earlier was the concern about the sex tape?

A I thought that was in in camera, I thought that that was actually in camera.

Q Okay --

A I'm pretty sure that was. Now the ---

Q I would have expected that but just based on your testimony earlier I felt like I should clarify?

A I thought it was, I mean, you know, I will

stand by whatever is in the transcript cause I don't remember to be honest, but I would have thought that, I know he wanted to put in the tapes and I think what I said was that he wanted to put in some tapes and then I thought we went into the Judge's chambers or something and then we, but I know that the court reporter was there for the entire conversation.

Q Uh-huh, okay, and ---

A So it's in the record whatever, whatever.

Q Fair enough, now was there an issue with Ms. Huggins-Ward, the Clerk?

A Was there an issue with her?

Q Uh-huh, that Mr. Winkler brought to your attention?

A Yeah.

Q Could you tell us about that?

A Yes, sir, and I'm trying to remember this as best I can. I remember he was upset because he said that she put Becky's name as Becky Grainger, Rebecca Grainger Winkler and he was upset about that because he said her name wasn't Grainger, her name was Winkler, and I don't remember much beyond that but I do know that that was an issue for him; and he also said that she was friends with somebody and I can't remember who it was that he thought she was friends with.

Q Might it have been Ms. Winkler?

A It was either Ms. Winkler or one of her close friends. yes.

Q And is that the sort of issue you might have brought up with the Judge?

A I'm pretty sure I would have probably brought it up, you know, if he, if he raised it then I, I would have brought it up to the Judge.

Q And if there were other similar issues you might have brought those up as well?

A Yes, sir.

Mr. Mills: Just a moment, Your Honor.

The Court: All right.

The Witness: (Continuing)

A And just to in clarification I would have brought it up to the Judge if, if it required any kind of action then, yeah, I was going to take it to the Judge cause what he was wanting was he was wanting, what he was wanting with the Clerk was he didn't want the Clerk to be involved in anything else from that point on because he was upset with her; and I was explaining to him that she was an elected official and that we can't really just tell her she can't run her office and, of course, that doesn't, that didn't satisfy him and so then I would have gone to the Judge with it to, to bring it up, yeah.

Q I believe you testified you got Jeff Naylor involved in this case?

A Yes, sir.

Q Were you satisfied with the work that he did for you?

A No, sir.

Q What were some of the problems with Mr. Naylor?

A It got off to a bad start. Mr. Naylor was supposed to be a crime scene investigator and I had never worked with Mr. Naylor before this and again he was recommended by some of the other people. I don't even remember who recommended him to me but I know I got his name from, from either from some of the people on my team or from or from some other place but I know I had his name. I contacted him; he agreed to, to help us. I got an order signed by the Judge to pay him. He went to meet with Mr. Winkler and, and it just never went well after that. He promised Mr. Winkler that he was going to come and one of the things with Mr. Winkler was if you said you're going to come on Tuesday at 3:00 then you need to be there Tuesday at 3:00?

Q And in your experience in working with, with people charged with a crime is it important to be ---

A Sure.

Q --- true to your word?

A Sure, and, and, and I don't have a problem with that.

Q Perhaps because of any mental health problems they might be having?

A And there's no question that that was a failure on Mr. Naylor's part, he didn't do what he should have done. He promised Mr. Winkler that he would come; he didn't come.

Q Did he follow through on the work that he told you that he was going to do?

A No, sir, no, sir, he didn't follow through on the stuff that he had ---.

Q And some of that work had to do with the crime scene investigation?

A Yes, sir, absolutely.

Q And perhaps the bulk of it had to with it?

A All of it, I mean that's what his role was.

Q Now at the time of Mr. Winkler's trial were you familiar with South Carolina's requirements for proper preservations, preservation of issues for appellate review?

A Well I mean as much as any lawyer, yes, sir, probably.

Q Can you explain this to the Court?

A What do you want me to tell you

specifically?

Q Do you need to object to preserve an issue?

A Absolutely, if you have, yes, if you, if something is objectionable and you have a reason for an objection or basis for it then, yeah, you're supposed to object and you put that on the record and you put the explanation for your objection on the record.

Q Right, so in addition to making an objection you state the basis for the objection?

A Absolutely.

Q And if one of those basis is a constitutional, a federal constitutional basis or a state constitutional basis you need to specifically state as much?

A Okay.

Q Is that correct?

A That's correct.

Q Sorry, I just wanted to be correct, and for the trial as a whole were you interesting in trying to preserve as many potential errors as possible for appellate review?

A Sure, yes, sir.

Q And put another way you sought to object to anything that raised a question because you wanted to make sure Mr. Winkler had a fair trial?

A Repeat that for me?

Q Just to put another way you sought to object to anything that raised a question in your mind just because you wanted to be sure that Mr. Winkler had a fair trial?

A I wanted to make sure he had a fair trial., I'm not sure I necessarily agreed that I would object to anything. If I thought that it was something that was going to interfere with his ability to get a fair trial, yes, would I object, yes, sir.

Q Great, in preparing for trial it was your job to decide the theory of the case; is that correct?

A Yes, sir.

Q It wasn't Mr. Winkler's job?

A No, sir, absolutely not.

Q And so you wouldn't have let him decide what theory you were going to present?

A I wouldn't let him decide what theory I was going to present but what, what, what happens and not just with Mr. Winkler is that you have to take what your defendant tells you and then you work from there; and, and that was the problem with formulating a theory is is that we had too many scenarios; and so it, it, it made, it made the attempt to formulate a theory frustrating to some degree, but, yes, the bottom line is that's my role.

Q And I believe you testified earlier that for the guilt phase you wanted to create any doubt that you could create and you wanted to punch as many holes as you could?

A Absolutely.

Q In the State's case?

A Yes, sir.

Q And at trial it was your job to conduct the cross examination of Mr. Pavel?

A Yes, sir.

Q And during your cross examination you sought to undermine the jury's confidence in the evidence he was presenting?

A Yes, sir, I did the best I could.

Q And prior to trial you had researched ballistic science and its potential limitations?

A Yeah, I had and not only had I done that I had, I have actually cross examined Mr. Pavel probably on a dozen occasions and probably did direct on him on two dozen occasions so I was very familiar with him.

Q And in fact you cross examined him about his failure to follow protocol on identifying potential DNA evidence prior to conducting the ballistic testing?

A Yes, sir.

Q You also sought to undermine the jury's

confidence in his results by pointing out the damage to the bullet that would impair his examination of it?

A Yes, sir.

Q And you also sought to have him limit conclusions he could draw based on his testing?

A Repeat that question?

Q You sought to have him limit the conclusions he could draw based on his testing?

A I guess to some degree yeah, I'm not specific. I don't remember specifically addressing that but I can't say that's not, that would certainly be one of the things that I would want to do but if you're asking me do I have a specific recollection of a question or a series of questions that I asked I don't, I don't remember it. If you'll show it to me then I'll ---

Mr. Mills: Your Honor, may I approach briefly?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson, I believe 1791 from the trial transcript.

Q (Continuing) Does that refresh your recollection that you were trying to limit the conclusions that he could draw of his testing?

A That, that would be a fair statement based on this, yes, sir.

Q And you also sought to have him acknowledge

the potential errors in ballistic testimony, I believe?

A Yes, sir.

Q So it's fair to say that if there were additional ways to undermine his testimony you had no strategic reason for not presenting them?

A That's a, that's a, I mean that's a pretty broad question and, and I don't know how to answer that. I mean if you asked me specifically what I did and why I did it I'll tell you. I can't, I don't know if I can answer what you asked me. If I ---

Q If there were other, if there were additional ways to significantly undermine his testimony you had no strategic reason for not presenting them?

A Well I mean I don't know how to answer that question. I mean that's a really, if it's a hypothetical question if there were, you know, I'd have to know what they were. I mean if you tell me what they were then I'd tell you why I did or didn't ask those questions, but I can't answer to you something that I don't even know what the question is.

Q Sure, if, for example, the forensic science literature outlined substantial limitations to the kind of testimony that Mr. Pavel had to offer that you had no strategic reason for not presenting that sort of limitation?

A I would say to you, that's correct if, if at the time, if at the time of his trial there was literature or some study done which showed that, that his limitations should be greater and I didn't go into it then, yeah, I would think that, that I should have gone into it if I had that information and if that information was out there.

Q And if it wasn't merely one article but like a debate within the ballistics community you would have wanted to present the criticisms of his limitations?

A If the debate, if the debate was a sound debate and I had read it and I was familiar with it and it, and it helped me prove any issue in my case or helped to discredit him in some way in front of the jury then, yeah, I would have used it.

Q Okay, at trial there was testimony that the victim's son was on the telephone at the time of the incident?

Mr. Simon: Objection, Your Honor, relevance.

Mr. Mills: Your Honor, at this point we'd just like to make a proffer as to what might have been presented regarding the claim regarding the phone records.

The Court: The what?

Mr. Mills: The phone records claim ---

The Court: What allegation does this go to in

your application?

Mr. Mills: The failure to cross examine J[redacted] G[redacted]?

The Court: I've already directed a verdict on that.

Mr. Mills: Thank you, Your Honor.

The Court: All right, go ahead.

Mr. Mills: Just wanted to make a record.

Q (Continuing) Now on direct examination you spoke about information regarding Mr. Winkler having head injuries; do you recall that testimony, that if you had that sort of thing you asked the family about it?

A Yes, sir.

Q But you didn't get any information about it?

A No, sir.

Q But had you gotten that kind of information it's something you would have been interested in presenting?

A Absolutely.

Mr. Mills: Your Honor, may I approach?

The Court: Yes.

Mr. Mills: And forgive me, I've lost count of where we are in exhibits, are we at 19? For the record I'm handing Mr. Wilson what's been marked for identification as

Petitioner's Exhibit 19.

Mr. Mills: (Continuing)

Q Do you recognize that, Mr., Mr. Wilson?

A Can I look over it for a minute?

Q Take your time?

A I don't really recognize it but let me, just give me a second let me -- okay, I think I see where you, where you are.

Q What is this?

A This says draft confidential attorney work product Karen Reaves witness sheet, Lou and Joan's relationship.

Q Okay, and is it a witness report?

A Yes.

Q From the time of trial?

A Yes.

Q And is it an accurate copy to your knowledge?

A Yes, I would think so, yes, sir.

Mr. Mills: Your Honor, the Petitioner would move to admit, excuse me, Applicant would move to admit this as Applicant's [sic] Exhibit 19?

Mr. Simon: No objection to the admission of the document, Your Honor.

The Court: All right, Applicant's [sic] Exhibit

Number 19 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 19 entered into evidence.)

Mr. Mills: (Continuing)

Q Now turning to the third page of that exhibit towards the bottom, do you see a section titled Mic's head injuries/illnesses?

A Yes, sir.

Q And does it list a car accident Mic was involved in?

A Yes, it does.

Q And does it mention an incident during which Mr. Winkler and his brother hit heads in the family pool?

Mr. Simon: Your Honor, at this time I'm going to object to this line of questioning on relevance grounds. I believe this is going to claim 10 and 11(b)(1) which you have already granted directed verdict on.

The Court: All right, what's relevant?

Mr. Mills: Your Honor, it's relevant to Mr. Wilson's testimony on direct that he was unable to obtain this information from Mr. Winkler's family, that they were reticent to provide this information and the fact that they did in fact provide this information speaks to the relationship that he did have with them.

The Court: Yeah, it was brought out on direct so I'm going to allow it, go ahead.

Mr. Mills: (Continuing)

Q Do you notice in the report of Mr. Winkler age seventeen bumping heads with his brother in the family pool?

A I see that in this report, yes, sir.

Q And another report of him having his head hit with a spear and as a result getting gauze wrapped around it?

A Yes, sir, but ---

Q And ---

A Go ahead.

Q And that he may have had other head injuries due to sports and fights?

A Yeah, they told me and I think I said that on direct that they told me that he had played sports and that they, but what they told me was that they weren't of any sports injuries that he had. Now and if you read this it says Jeff and Mic age seventeen hit heads when playing in the family pool. The brother hit, the brothers hit heads so hard that Jeff was knocked out, didn't say anything about Mr. Winkler.

Q One way or the other?

A Right, and on -- go ahead, I'm sorry, I

apologize.

Q And this is the kind of information you were hoping to get from the Winkler family, head injuries of Mr. Winkler?

A Yes, if, if there was some trauma then I wanted to know about it, yes, absolutely.

Q And they provided at least some information?

A No, I mean we can disagree about that, I don't think that it's but, yes, the affidavit speaks for itself, I mean it says what it says.

Mr. Mills: May I approach?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson what's been marked as Applicant's [sic] Exhibit 20.

Q (Continuing) Have you had an opportunity to review these?

A Yes, sir.

Q Do you recognize them?

A No, sir.

Q You don't recognize them?

A I do not.

Q What do they appear to be?

A Grand Strand General Hospital is what it says.

Q Is it a report of something?

A Yes, sir.

Q What is it a report of?

A It appears to be, it appears to be an emergency ---

The Court: Hold it for a second.

Mr. Simon: Objection, Your Honor, relevance and he's also indicating he does not recall this document.

The Court: All right.

Mr. Mills: I was making an effort to refresh his recollection, Your Honor.

The Court: He says he doesn't recognize it.

Mr. Mills: That's fine, thank you, Your Honor.

The Court: All right, go ahead.

Mr. Mills: (Continuing)

Q But suffice it to say that head trauma would have been something you wanted to present?

A Yes, sir.

Q And assuming brain injury was present that you would have wanted an expert to be able to testify about it?

Mr. Simon: Object, well again that goes to 10 and 11(b)(1), he was asking about you would want to present an expert.

The Court: I mean ya'll brought it out on

direct examination about asking family members about head injuries and things of that nature so I'm going to allow the questioning, go ahead.

Mr. Mills: (Continuing)

Q To repeat the question, assuming brain injury was present is that something you would have wanted an expert to be able to testify about?

A Not only did we want that we actually hired experts to examine him for that very purpose, yes, sir.

Q And one of those experts was Dr. Halavonich; is that correct?

A That is correct.

Q And she's a, is she a neurologist?

A No, she's a, she is a forensic psychiatrist.

Q Is she a neuro psychiatrist?

A I'm not, I don't think so not that I'm aware of.

Q And she's not a neuro psychologist either?

A No, sir, but we also sent him to Dr. Wade in, in Mt. Pleasant who is a psychologist and who is a forensic psychologist and who actually does evaluate defendants for this very purpose.

Q But he did not conduct neuro psychological testing, did he?

A Not that I'm aware of cause no doctor felt that it was appropriate.

Q Prior to trial you knew that Mr. Winkler's demeanor, at least at work, changed in the weeks and months leading up to the time of the kidnaping?

A Do I know that, you're asking me that ---

Q Yes.

A --- based on my recollection of this case?

Q Yes.

A No, sir, I do not know that.

Q All right, you do recall that Mr. Winkler was employed at Tilghman Lakes?

A Yes, sir.

Q And that he had been employed there for some time?

A Yes, sir.

Q Upwards of ten years?

A Yes, close to eleven, yes, sir.

Q And it's not like he had been fired and rehired from Tilghman Lakes, it was continuous employment?

A That is, that is correct.

Q And I believe earlier you reviewed some, his employment records from Tilghman Lakes?

A Yes, sir.

Q And they were dated October 4th, 2005 and

October 3rd, 2005; does that, oh, excuse me, just October 4th, 2005?

A I don't remember the dates but October --

Q Sure, immediately prior to the ---

A Yes, sir.

Q --- to the kidnaping?

A Immediately prior to the kidnaping and rape, yes, sir.

Q And there were no other reported problems with his employment prior to that?

A None that I received.

Q No, and in fact there were a number of people who reported that Mr. Winkler did well at work?

A Yes.

Mr. Mills: May I briefly approach, Your Honor?

The Court: Yes.

Mr. Mills: For the record I'm handing Mr. Wilson what's been marked as Applicant's Exhibits 21 and 22.

Q (Continuing) Do you recognize 21?

A Yes, sir.

Q Can you tell us what it is?

A Yes, sir, these are handwritten notes from my file, I know they're from my file, it says mitigation witnesses.

Q And is an accurate copy of your file?

A Yes, sir.

Mr. Mills: Your Honor, we'd move to admit Petitioner's, Applicant's Exhibit 21?

The Court: Any objection?

Mr. Simon: No objection, Your Honor.

The Court: All right, Applicant's [sic] Exhibit 21 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 21 entered into evidence.)

Mr. Mills: (Continuing)

Q And looking at Applicant's [sic] Exhibit 22?

A Yes, sir.

Q Can you tell us what that is?

A It says Tilghman Lakes By The Sea from the board of directors.

Q Do you recognize it?

A I do.

Q Is it from your file?

A Yes, sir.

Q As an accurate copy?

A Yes, sir.

Mr. Mills: We'd move to admit Exhibit 22.

Mr. Simon: No objection, Your Honor.

The Court: All right, Applicant's [sic] Exhibit Number 22 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 22 entered into evidence.)

Q Is it true, Mr. Wilson, that Carolyn Samuels attended, attended Mr. Winkler's trial?

A Carolyn Samuels?

Q Someone from, from Tilghman Lakes, you don't recall?

A I don't, I'm not saying she didn't, I just don't recall.

Q And but you did know that people from his employer paid for and attended his wedding to Denise?

A Yes, I do recall that being one of the things that we, we uncovered, yes, sir.

Q And you knew that after Mr. Winkler's change in demeanor at work, as you put it, he was no longer productive?

A Repeat the question because I ---

Q And, and, and you knew that after his change in demeanor he was no longer productive at work?

A Well again based on what I know I don't necessarily know that there was a change in demeanor. I know that, that he started having trouble sometimes in October or September at work but you keep calling it a, a

change in demeanor, I don't think that his demeanor ever changed from, from when he ---

Q It was at least a change in trouble ---

A --- Ohio till ---

Q --- at work?

The Court: Hold for a second just one speak at a time.

Mr. Mills: Yes, Your Honor.

The Court: Let him finish his answer first.

A I don't think that his, his demeanor ever changed from when he left Ohio till he came here. I just but there were some things that occurred at work starting in like late September, that's true.

Q And they hadn't occurred prior to that at work?

A At work, that's correct.

Q And you also knew that Mr. Winkler in 2005 and 2006 was suicidal?

A Yes, sir.

Q And that even the South Carolina Law Enforcement Division considered him suicidal?

A SLED, I mean I know the jail did but I'm not sure about SLED.

Mr. Mills: Your Honor, may I approach?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson what's been marked as Applicant's [sic] Exhibit 23.

The Witness: (Continuing)

A Yeah, this is from the Horry County jail, from Horry County Police Department.

Q And if you could, if you'd look at, fair enough, and so based on this you knew that he was suicidal?

A Yes, sir, yes, sir, yes, sir.

Q Do you recognize this, I think you believe, already identified it?

A This?

Q Uh-huh?

A Yes, sir.

Q And it's, what is it?

A This is a activity sheet from the Horry County Police Department.

Q And it's an accurate copy?

A Yes, sir.

Mr. Mills: Move to admit ---

A As far as I know, yes, sir.

Mr. Mills: Move to admit as Applicant's Exhibit 23?

The Court: Any objection?

Mr. Simon: No objection, Your Honor.

The Court: All right, Applicant's Exhibit 23

admitted into evidence without objection.

(Whereupon, Applicant's Exhibit Number 23 entered into evidence.)

Mr. Mills: May I approach?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson what's been marked as Applicant's [sic] Exhibit 24.

Q (Continuing) Do you recognize these?

A If you'll just give me one second.

Q Yes, of course, I'm sorry?

A I apologize -- yes, sir.

Q What are they?

A These are Waccamaw Mental Health records regarding Mr. Winkler during his incarceration.

Q And they're an accurate copy?

A Yes, sir, it's an accurate what I had, yes.

Mr. Mills: We'd move to admit these Applicant's [sic] Exhibit 24?

The Court: Any objection?

Mr. Simon: No objection, Your Honor.

The Court: Applicant's [sic] Exhibit 24 admitted in evidence without objection.

(Whereupon, Applicant's Exhibit Number 24 entered into evidence.)

Mr. Mills: (Continuing)

Q And they show that Mr. Winkler in fact took, made a couple of attempts on his life?

A Yes, sir.

Q And if you were able to link Mr. Winkler's change in behavior at work to brain damage or to a major mental health problem you would not have a strategic reason for not presenting the change in demeanor or change in behavior at work?

A Yes, sir, if, if, if I could have linked his behavior to a major mental illness, yes, you're absolutely right.

Q Or brain damage?

A Or brain damage, yes, sir, well let me, let me back track, I apologize, but if the brain damage was cause, if that's what you're asking me and I assume it is, if I, if I, if I had reason to believe that the brain damage was causing the behavior; is that what you're --

Q Sure, or that he had brain damage that affected him, his behavior?

A Right, yes, that, that, yes, my answer is yes.

Q All right, changing gears somewhat, prior to trial you had evidence other than from Mr. Winkler that, that Ms. Winkler, Ms. Becky Winkler had been driving her car by his house, didn't you?

A Seems like there was someone who told Vicki in one of the statements that they thought that they saw her, yes, I do remember that.

Mr. Mills: May I approach, Your Honor?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson what's been marked as Applicant's [sic] Exhibit 25.

Q (Continuing) Do you recognize this?

A Yes, sir.

Q What is it?

A This is an affidavit, well actually it's an interview that Vicki Childs did on Mr. Patterson.

Q Looking at the, and is it an accurate copy of it?

A Yes, sir.

Mr. Mills: We'd move to admit —

The Witness: (Continuing)

A There's some more of it but, but this is part of it.

Mr. Mills: We'd move to admit as Applicant's [sic] Exhibit 25?

The Court: Any objection?

Mr. Simon: Your Honor, we don't have an objection to its admission but we would request that the full document be put into evidence.

Mr. Mills: Your Honor, it's not something that we've received; we've often wondered where the rest of it as well.

The Court: What now?

Mr. Mills: We've not received, we've not received page two. I concede that it says page one of two. If they would like to, if they have it and would like to admit page two we'd be happy to have it admitted as well.

Your Honor, if we could just briefly withdraw this exhibit and submit their copy, I can't imagine there'd be an objection to that?

Mr. Simon: No, Your Honor.

The Court: Well let's do this, you've got Applicant's Exhibit 25, the one that he has now we'll call that 25(a) then the one that has the second page to it we'll just call that Applicant's Exhibit 25(b) and do it that way, how is that?

Mr. Mills: That's fine, thank you, Your Honor.

The Court: 25(a) is just page 1, 25(b) is page one and two, correct?

Mr. Mills: Yes, Your Honor.

The Court: All right, any objection?

Mr. Simon: No, Your Honor.

The Court: All right, Plaintiff's [sic] Exhibits 25(a) and, excuse me, Applicant's [sic] Exhibit

25(a) and Applicant's [sic] Exhibit 25(b) admitted into evidence without objection.

(Whereupon, Petitioner's Exhibits Numbers 25(a) and 25(b) entered into evidence.)

Mr. Mills: (Continuing)

Q So that was at least one report besides from Mr. Winkler that references ---

A Yes, sir, but if I remember correctly ---

Q Thank you, I think that was the --

The Court: He needs to explain his answer he can explain his answer.

Mr. Mills: (Continuing)

Q Fair enough, I'm sorry, I'm sorry?

A Yes, sir, and if I remember correctly I didn't think he, he refused to cooperate and testify but, but, yes.

Mr. Mills: Okay, could I briefly approach, Your Honor?

The Court: Yes.

Mr. Mills: (Continuing)

Q Do you recognize this?

A If you'll let me just give me a second, I apologize -- yes, sir, I do recognize this.

Q What is it?

A It's a interview that Vicki did, Ms. Childs

did with a young lady by the name of Denise Bellamy.

Q And is it an accurate copy?

A Yes, sir.

Mr. Mills: We move to admit this as Applicant's [sic] Exhibit 26?

The Court: Any objection?

Mr. Simon: No objection, Your Honor.

The Court: Applicant's [sic] Exhibit 26 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 26 entered into evidence.)

Mr. Mills: (Continuing)

Q And at the bottom of this report does it say that Ms. Winkler made, "made Mic crazy"?

A Yes, sir, it does say that.

Q Now I believe on direct you spoke some about Mr. Ed Genet, do you recall that?

A I'm sorry?

Q Changing gears somewhat, I mean if you'd like to, I don't mean to interrupt?

A I'm sorry, I was still, no, I apologize, go ahead.

Q Takes you back to trial, I'm sure?

A That's all right.

Q I believe on direct you spoke some about

Mr. Ed Genet, okay, a friend of Mr. Winkler's in Ohio?

A Yes, yes, sir.

Q And I believe you testified that he had some financial problems that kept him from coming down to trial?

A Yes.

Mr. Mills: May I approach, Your Honor?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson what has been marked as Applicant's [sic] Exhibit 27.

Q (Continuing) Do you recognize that?

A Yes, sir.

Q What is it?

A This is, these are my handwritten notes from July 9 where I had interviewed Mic's family and Mr. Genet.

Q Is it an accurate copy?

A Yes, sir.

Mr. Mills: Move to admit, Your Honor, as Applicant's [sic] Exhibit ---

The Court: Any objection.

Mr. Simon: No objection, Your Honor.

The Court: Applicant's [sic] Exhibit 27 admitted into evidence without objection.

(Whereupon, Petitioner's Exhibit Number 27 entered into evidence.)

Mr. Mills: (Continuing)

Q At the, about two thirds of the way down of the page does it note that Mr. Genet had some financial problems?

A It does.

Q But does it also note that you will accommodate those problems, if possible?

A Yes, I said I would try to do what I could, yes, and there was actually another conversation with him closer to trial where we did try to get him to come but he said he couldn't come.

Q Do you have any recollection of seeking funding to have him come down?

A No, I never got funding.

Q Backing up somewhat to the driving by issue, you're aware of the statutory mitigator about the victim provoking the defendant?

A Yes, sir.

Q An why did the mitigator, if you did have evidence of it you wouldn't have a strategic reason for not presenting the victim's provoking the defendant?

A No, except I didn't feel like I had evidence of it.

Q Now you've provided post conviction counsel with your, your file, correct?

A Yes, sir.

Q And nothing in your file demonstrates that prior to the alleged kidnaping and rape Mr. Winkler spent more than a few days in jail?

A That is correct.

Q Changing, changing gears somewhat do you recall the jury's questions during the penalty phase deliberations?

A Do I recall the questions that the voir dire questions or what questions?

Q The, the jury had some questions during the penalty phase deliberations?

A I remember there were some questions, do I remember them off hand, no, sir.

Q As you might expect I'm going to work on that?

A I understand that.

Mr. Mills: May I approach, Your Honor?

The Court: Yes.

Mr. Mills: (Continuing)

Q Was one of the questions about what would happen if the jury was unable to reach a unanimous decision?

A This document that you showed me is this --

Mr. Mills: Oh, for the record I'm showing Mr. Wilson page 2921 of the trial transcript. Oh, goodness, I may have shown you the wrong page from trial, I'm sorry.

A This is about his medication.

Q Yeah, I know -- towards the bottom of the page?

A Okay, okay, the jurors sent out a question wanted to know could you explain, could you please explain what happens if we're not able to reach a unanimous decision.

Q And a little later they asked a similar question, didn't they?

A I remember that there were some questions, I honestly do not remember and I don't want to misstate anything so show it to me, it will help me.

Q Of course --

Mr. Mills: May I approach?

The Court: Yes.

Mr. Mills: And for the record I'm showing Mr. Wilson page 2925 from the trial transcript.

The Witness: (Continuing)

A Okay, and I'm familiar, yes, with, with these two.

Q And if they had not, if they were unable to

reach unanimous decision, if they're ultimately deadlocked ---

A Right.

Q --- what would the outcome be?

A Life.

Q And that was obviously your goal for this ---

A Sure.

Q --- penalty phase proceeding?

A Sure.

Q And it's fair to say that based on both of those questions the jury was considering a non unanimous outcome?

A At least some of them, yes.

Q And you would like, you would have liked for the jury to have known that if they were not unanimous it would be a life verdict?

A Sure.

Q And it's your understanding that during initial jury instructions a Judge is not required to inform the jury what happens if they deadlock?

A I don't think he can inform them.

Q He's not required to inform them?

A Right, I don't think that he can, as I understand it, this is, again this will get you a cup of

coffee, but my understanding is that, that at least at this, at the time if a jury asks a question about what happens if they're deadlocked then the Judge can't then tell them, you know, that at that initial time that, that you're going to go home and that this defendant is going to get a life sentence. Now he can do an Allen charge with them at some point if he thinks that that's appropriate, you know, and, but, but that's my understanding of how it would work.

Q So if the law did not say that a Judge couldn't answer that question, couldn't answer, couldn't respond to the jury's question that they asked you wouldn't have had a reason to ask the Judge to answer their question? If the law didn't say that a Judge was unable to answer their question, in other words if the law said that the Judge at that point could answer that question or if the law didn't say anything about that, you wouldn't have a reason to not ask the Judge to answer the question?

A Well I can just tell you that it's been my understanding, and if I'm wrong then I'm wrong, but my understanding of the, of the law at the time was was that the Judge could not tell the jury that if they asked they came back the first time and said what happens if we deadlock he can't then tell them, oh, well, he's going to get a life sentence and you go home and you guys go home,

no.

Q But if the law, if the law were different, if the law didn't say that he wasn't prohibited from answering the question then you wouldn't have a reason?

A No, absolutely, I would want him to tell them that he's going to get life in prison because I think that that might help them, you know, come to a decision in our favor.

Q And that's all I was trying to get at?

A Yeah.

Q Sorry to do it so --

A That's all right, that's okay.

Q Now on the first day of deliberations they went out, the deliberations went until after midnight; is that correct?

A Yes, sir.

Q And eventually the jury sent out a third note; is that correct?

A You'll have to remind me. I know there was some notes and I apologize, I'm not being difficult, I just do not remember and I don't want to misstate stuff any more than I can help.

Q Certainly understand?

A Thank you.

Mr. Mills: For the record, Your Honor, I'm

showing Mr. Wilson trial court Exhibit 25. I'm also showing Mr. Wilson trial transcript page twenty-nine twenty-six.

A Okay, okay.

Q Does that refresh your recollection?

A Yes, sir.

Q Did the jury send out a third note?

A Yes, sir.

Q And after the jury sent out a third note you agreed that they were deadlocked?

A That's, that was my belief at the time, yes, sir.

Q And the Court gave an Allen charge to the jury at that point?

A He did.

Q And the jury deliberated a little while longer or at least went back into the jury room before asking to go to the hotel?

A Right.

Q And in response to, backing up a bit, in response to the first note you suspected that at least some of them were hung?

A Yes, sir.

Q And, and if they deadlocked you expected the Court to give an Allen charge?

A I expected they would before he would just declare a mistrial, yes.

Q And again your goal is to obtain a life verdict, of course?

A Sure.

Q Whether it's by a unanimous vote for life or a non unanimous outcome?

A Eleven to one is good as twelve zero.

Q And you know that an Allen charge can generally only properly be given once?

A Yes.

Q And that if they deadlock after that Allen charge the results is life verdict?

A Okay.

Q That's your understanding?

A That's my understanding.

Q The next morning when the jury returned one member of the jury asked to hear the recharge, to hear a recharge, didn't he, asked to hear the Allen charge again?

A If I, I think that's correct.

Q And despite your having reservations about having the jury receive two Allen charges you withdrew your objection to the second Allen charge?

A Well because my understanding he wanted to hear part of it, I wasn't, and again I'm going on

recollection, you can correct me if I'm wrong and or if the transcript doesn't bear this out, but it was my understanding he wanted to, one of the jurors wanted to hear part of whatever the Judge's charge was and I'm not, that's, to me that was not the same as the Judge recharging doing a second Allen charge to come back and let the Clerk or the court reporter or whoever do it.

Mr. Mills: May I briefly approach, Your Honor?

The Court: Yes.

Mr. Mills: For the record I'm showing Mr. Wilson trial transcript pages twenty-nine thirty-three through twenty-nine thirty-six.

The Witness: (Continuing)

A Okay.

Q This will be backing up a little bit but you agree that if after the first note, you agree that after the first note you could have requested an Allen charge?

A After the first note, right.

Q And that if then once the jury came back with the second note they would have been hung and it would have been a life verdict?

A Are you asking me if that was my understanding of the law ---

Q Yes?

A --- or are you asking me -- no, not at that point, no, sir.

Q But after the first note it is your understanding that you could have asked for an Allen charge?

A Yes, sir.

Q And you also agree that if the jury was hung or couldn't reach a unanimous decision after the Allen charge it would have been a life verdict?

A He would get a life sentence, yes, sir.

Q Now back to where we left off with the transcript, is your recollection refreshed that you had some reservations about the jury receiving two Allen charges?

A Yes, sir, I don't like Allen charges, period, I mean I don't think they're ever good for the defense so I just don't like them, so if I can keep them from doing it then I always want to try to keep them from doing it; and, and, and I had, obviously you can look at the transcript I obviously had some concerns about but at the same time I was of the impression that it was what the jury wanted to do and I remember when I, when we were there they were like waving their hands wanting to, to hear it.

Q But you, you withdrew your objection?

A I did.

Q Even knowing the rules about preserving objections, preserving the issues for appeal?

A Obviously I know the rules so, yes.

Mr. Mills: Nothing further, Your Honor, thank you.

The Court: All right, let's take about a ten minute break, okay, we've been at it an hour and a half now. All right, let's take about a ten minute break, we'll be back in just a minute.

(Whereupon, a recess was taken.)

The Court: All right, redirect examination?

Mr. Simon: Thank you, Your Honor.

Redirect Examination

By Mr. Simon:

Q Mr. Wilson, during your cross examination you indicated that you did not care for Mr. Winkler's behavior and antics?

A That's correct.

Q Did that prevent you from representing him to the best of your ability?

A Absolutely not, no, sir.

Q And did that cause you not to give a, a full effort in, in defending him in this case?

A It did not, no, sir.

Q There were some questions about the

construction of your office, I guess your new office, did that hinder your preparation for representing Mr. Winkler in this trial?

A No, sir, actually my son handled most of that office stuff and he still does.

Q Okay, and they asked you a question regarding Edward Genet about in your handwritten notes you indicated that you would make, you would attempt to make accommodations for him to be able to come down, if necessary, when you got back in contact with him did you have, did you have that discussion with him?

A Yes, if, if he wanted to come, he did not want to come and he indicated to me that he couldn't come and that he had things going on and that he didn't have finances but apparently from my conversations with him I had the impression he had other things going on, too, that wasn't related to money but that he didn't want to come, yeah. This was just shortly before the trial.

Q If it was solely a, a matter of funding for getting him down here would you have been able to ---

A I would have gotten the money even if I had to pay it myself if it was just a matter of dollars and I had told him that from the beginning.

Q Now earlier you were shown a statement from Frank Patterson, I believe that was Applicant's [sic]

Exhibit 25 and 25(a), 25(a) and (b)?

A Yes, sir.

Q And what was the, the date on, on that interview?

A June 13th of '07.

Mr. Simon: May I approach the witness, Your Honor?

The Court: Yes.

Mr. Simon: (Continuing)

Q Mr. Wilson, do you recognize that document?

A Yes, sir.

Q Was that something that you had in, you received in the preparation and investigation of this case?

A Yes, sir, as we started preparing for trial and as we got closer to trial we were getting ready to do our subpoenas that's when I got this.

Mr. Simon: Okay, Your Honor, at this time we'd like the move this in as Respondent's 11.

The Court: Any objection?

Mr. Mills: None, Your Honor.

The Court: All right, Respondent's Exhibit Number 11 admitted into evidence without objection.

(Whereupon, Respondent's Exhibit Number 11 marked and entered into evidence.)

Mr. Simon: (Continuing)

Q Okay, and in looking at those notes in reviewing those did you come to an understanding of whether Frank Patterson wanted to participate at trial?

A Yes, sir.

Q And what was your understanding of his willingness?

A He did not.

Q And does that note also reflect any efforts that he, that were made in attempting to find Stephen Fitzwater?

A Yes, sir, it does, in fact it indicates that we spoke to him by phone on January 31st trying to get him to come.

Q Now there's some discussion during your cross examination about Carolyn Samuels, do you recall who Carolyn Samuels was or who Carolyn Samuels is?

A Off hand, no, sir, not without --

Q Well okay, now I'm going to move on to the what you discussed during the end of your cross examination but before I do so I'd like to have you take a look at Volume 6, I believe it's up there?

A Six, yes, sir.

Q Okay, and I'm going to ask you to turn to page, starting on page twenty-nine twenty-one, some of these pages you have, you looked at during the course of

the cross examination, I'd like to give you the opportunity to look from twenty-nine twenty-one to twenty-nine thirty-six completely?

A All right, sir.

Q Okay, in looking at what occurred during the discussions about whether, about the Allen charge, first in hearing the Allen charge did you hear anything objectionable about the Allen charge that was given by Judge Lockemy?

A No, sir.

Q After he gave the Allen charge would I be correct in stating that after he gave the Allen charge he gave the jurors the option of either continuing deliberations or choosing to go back to the hotel, correct?

A That is correct.

Q And they chose to go back to the hotel, correct?

A That is correct.

Q They chose not to go back and deliberate?

A That is correct.

Q And then the next morning when they come in more than one jury asked for the Judge to make the, to re-give the Allen charge, correct?

A That is correct.

Q And in the discussion about whether the

charge should be given you agree that they have not deliberated since the Judge gave the first Allen charge?

A That is correct, they had not deliberated.

Q And you initially started to object to the Judge giving a second Allen charge, correct?

A That's correct.

Q And you withdrew that because your original, because of your original position in terms of giving the Allen charge the first time, correct?

A Right.

Q And along with that when the jury sent the question about what happens if we do not reach a unanimous verdict did you consider objecting to the Judge refusing to give a response to that?

A The second, the second one?

Q Well actually I'm moving away from the Allen charge and now going back to before the Allen charge when the jurors sent the one of the earlier questions about what happens if we do not reach a unanimous verdict?

A Okay, and what was your question in regard?

Q Did you consider objecting to that, to the Judge, Judge's refusal to respond to that question?

A Well I considered it but, but I mean he can't tell them, he couldn't tell them what happens. That would not have been appropriate, that's my understanding of

it, it would not have been appropriate for him to tell them at that point that, that if you deadlock then we, I'm going to declare a mistrial and the defendant will get a life sentence based on the law that existed at that time.

Mr. Simon: Beg the Court's indulgence for just a second.

The Court: All right.

Mr. Simon: No further questions, Your Honor.

The Court: All right, thank you, you may step down.

Mr. Wilson: May I be excused?

The Court: Any objection?

Mr. Simon: No, Your Honor.

Mr. Mills: No, Your Honor.

The Court: All right, free to go, thank you very much. All right, the State would call their next witness?

Mr. Simon: Your Honor, that's the State's case and at this time we would renew our directed verdict motions, excuse me, we would renew our 12(b)(6) motion regarding ground 10 and 11(c) and the directed verdict motion and the 12(b)(6) and directed verdict motion with regarding ground 10 and 11(d); and our basis for that, Your Honor, is that what they're asking, those two grounds are grounds of trial court error and they're asking this Court

to reverse another circuit judge on an issue that was never raised to that circuit judge. That would be no different than if you were the trial judge and Judge Lockemy was holding this PER and they were asking him to reverse a decision you made that was never made to you, never raised to you at the trial which you cannot do under Drayton v. Evatt which came after torts and the Supreme Court has made clear a PER judge is not to make those decisions about trial court error on another circuit judge.

The Court: Okay, and you're referencing which causes of action, I mean which allegations?

Mr. Mabry: Ground 10 and 11(c).

The Court: And what are those?

Mr. Mabry: That is applicant's right to self representation is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, of Article I Section Fourteen South Carolina Constitution was violated by the trial Court's refusal to permit him to discharge appointed counsel and proceed pro se.

The Court: All right, let me hear from the Applicant on that?

Mr. Mabry: That's the first ground.

Ms. Paavola: Your Honor, this is the same motion that they've made now three times, our argument is the same. Our position is that these claims are not

procedurally barred at post conviction; they could not have been raised on direct appeal cause they were not attempted to be preserved on the record they were procedurally barred for appellate review.

The Court: Okay, well what he's saying is that it's an independent, you can make the argument based upon ineffective assistance of counsel based upon counsel's failure to raise that objection but you can't attack it as a separate allegation.

Ms. Paavola: We believe you can; there's case law that you can attack it as a separate allegation if it could have been raised previously and our argument is that it could not been raised previously because nobody preserved it for appellate appeal.

The Court: But that would be the ineffective assistance of counsel.

Ms. Paavola: Correct, if you find that they're ineffective we believe that the merits of the underlying claim itself should be addressed.

The Court: I see what you're saying, okay. All right, I'm going to take that under advisement, go ahead.

Mr. Mabry: Yes, sir, and the other ground, Your Honor, is Applicant's right to a fair and impartial jury, determination of his sentence, free from influence of passion, prejudice, and any arbitrary factor guaranteed by

the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I Section 3-1415 of the South Carolina Constitution and the South Carolina Code annotated 16-325(c) was violated by the trial court's repeated refusal to answer the jury's question about what would happen if they could not reach a unanimous sentencing verdict and the Court's improper instructions to the jury under unduly coercive circumstances.

The Court: All right, I'll take that under advisement as well. Anything else?

Mr. Mabry: No, sir.

The Court: All right, ya'll have anything in reply?

Ms. Paavola: Nothing, Your Honor.

The Court: All right, well then that's, that's it. I'll take everything under advisement and let you know my decision, all right.

Mr. Mabry: Yes, sir.

Mr. Mills: Yes, sir.

Mr. Mabry: Thank you, Your Honor.

The Court: Thank you, anything, well before we break anything further from the applicant?

Ms. Paavola: Your Honor, we would just like to note based on our earlier conversations in chambers I don't recall that, it's our understanding the record is now

closed in this proceedings?

The Court: All right, in a, well I mean I'm not going to leave it open for anybody to submit anything else, if that's your question, yeah.

Ms. Paavola: Right, termination, that's correct.

The Court: That's right.

Mr. Mabry: Just to be clear everything that occurred at the trial including the trial exhibits and the trial record are also part of this record; that's my understanding of what the law is in the state?

Ms. Paavola: That's right.

The Court: That's correct, yeah, in other words I think she was referencing you wanting to leave the record open to submit an affidavit or deposition of somebody who wasn't here and I'm not going to allow that, okay.

Mr. Mabry: That's fine, Your Honor.

The Court: So you're correct in that, anything further from the State before ---

Mr. Mabry: Yes, sir, we do have those trial exhibits, we're going to turn those over to the Clerk, that we brought from the Supreme Court in this case.

The Court: All right.

Mr. Mabry: We'll do that as soon as you close this hearing.

The Court: All right, and then if I need to review them I'll just contact the Clerk of Court and let them know, okay.

Mr. Mabry: Yes, sir.

The Court: All right.

Ms. Paavola: Nothing further, Your Honor.

The Court: All right, that's it, thank ya'll very much. I'll let ya'll know my decision, okay.

Mr. Mabry: Yes, sir.

Mr. Mills: Thank you, Your Honor.

The Court: Thank you.

End of requested transcript- - - -

CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina.

I do further certify that I am neither kin, counsel nor interest to any party hereto.

November 9, 2012

Brenda R. Babb

Brenda R. Babb, CVR-Master
OFFICIAL REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	**2011-CP-26-3907**
LOUIS MICHAEL WINKLER, Plaintiff, vs. STATE OF SOUTH CAROLINA, Defendant.	)	**Transcript of Record** June 20, 2012

B E F O R E:

Honorable Benjamin Culbertson
Horry County Courthouse
Conway, South Carolina

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(June 20, 2012.)

THE COURT: Good morning, everyone. Before we get started, we have a different court reporter today so let me get everyone to stand again and give your name and who you represent. Okay?

MS. PAAVOLA: I'm Emily Paavola and I represent the Applicant, Mr. Winkler.

THE COURT: All right.

MR. MILLS: John Mills for Mr. Winkler.

MR. SIMON: Alphonso Simon, Jr. for the Respondent.

MR. MCDONALD: Brendon McDonald for the Respondent.

MR. SIMON: And also we have another attorney with us, Anthony Mabry for the Respondent.

THE COURT: All right. Anything preliminary before we call our next witness?

MS. PAAVOLA: Your Honor, just as a matter of housekeeping we have marked Applicant's Exhibits Ten through Fourteen, which are the affidavits that were discussed on Monday morning that the Court ruled were admissible and we would just formally move those for admission.

THE COURT: All right. So, that's Applicant's Exhibits ---

MS. PAAVOLA: Ten through ---

MR. MILLS: Fourteen.

MS. PAAVOLA: --- Fourteen.

THE COURT: All right.

MR. MILLS: And for the record, the affidavits are Carolyn Graham, Ed Genet, Ben Hege, Vicki Childs and TeAnne Oehler.

THE COURT: All right. Mr. Simon, any objection?

MR. SIMON: The only objection we would raise would be again to the ones of the out-of-state witnesses, Ed Genet and Benjamin Hege based on the fact that of the -- proceedings and not being able to formally get them here.

THE COURT: Okay. All right. I'm gonna rule that Applicants Exhibit's Ten, Eleven, Twelve, Thirteen and Fourteen are admitted into evidence over the Respondent's objection.

MS. PAAVOLA: Thank you, Your Honor.

THE COURT: All right.

APPLICANT'S EXHIBIT NUMBERS TEN, ELEVEN, TWELVE THIRTEEN AND FOURTEEN ADMITTED INTO EVIDENCE.

MS. PAAVOLA: We're ready to proceed.

THE COURT: All right. Anything from the Respondent before we take the next witness?

MR. SIMON: Not at this time, Your Honor.

THE COURT: All right. You can call your next witness.

MS. PAAVOLA: The applicant calls Ms. Jody McDougall.

JODY MCDOUGALL, HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION OF JODY MCDOUGALL BY MS. PAAVOLA:

Q: Good morning, Ms. McDougall.

A: Morning.

Q: Could you please tell the Court where you reside?

A: I live in Doylestown, Ohio.

Q: And could you explain how you are related to Mr. Winkler, please?

A: He is my brother.

Q: How many siblings do you have in your family?

A: There are a total of six of us.

Q: And could you just give us their names and what order they come in?

A: Laura is the oldest, then Rick, then Karen, and then Mick, Jeff and myself.

Q: Thank you. Can you briefly explain your family background, where you grew up and that sort of thing?

A: We were all raised in Doylestown, Ohio and most of us spent most of our life there except for a few who live out of town now.

Q: And what did your father do for a living?

A: He was in the insurance business.

Q: And your mother?

A: She was a stay-at-home mother.

Q: Do you still live in the Doylestown area?

A: I do.

Q: And you're married?
A: Yes, I am.
Q: Do you have any children?
A: I have seven.
Q: All right. Could you tell us what kind of person Mick is as a brother to you?
A: He is a wonderful brother. He was always so good to me, always there for me. I looked up to him when I was younger. You look at photographs from the past, I was always sitting on his lap. He was very trustworthy, kind, generous, hard worker.
Q: What about Mick's relationship with your seven children; was he close to them?
A: He was very close to them. He spent a lot of time with my kids from the time they were born and he was actually the first to take my four younger children fishing. He taught them how to fish. He was the first to fly a kite with them on the beach.
Q: Now, you live in Doylestown and you did at the time that Mick was living here in South Carolina?
A: Yes.
Q: Did your family ever come to visit him when you lived at the beach?
A: Yes, we came quite a bit actually. We came at least once or twice a year every year.

Q: Did Mick host you when you came to visit him?
A: Yes, he was always very open with his home and always offered for us to stay there and spent a lot of time, cookouts and things like that at his house.
Q: Would you say that family was particularly important to Mick?
A: Family was always very important to Mick and he always made a point of making sure he was at all family gatherings. Holidays were very important. Any event that he could get to even though he was in South Carolina, he would make a point of coming back to Ohio for those.
Q: When you visited Mick in South Carolina, did you have any occasion to learn about his job at Tilghman Lakes?
A: Yes, he was very proud of his work there. He took us over, showed us the area, told us everything that he did, told us how close he was to many of the tenants and how much they trusted him with their property. When they would go away, they would have him watch things. He did a lot of extra little jobs for them, moving furniture and things like that, so.
Q: And just to be clear, what was his job there?
A: He was groundskeeper and maintenance and took care of the landscaping and things like that.
Q: So the things you are describing about moving furniture and I think you said extra, those were not part of his normal

job duties?
A: No, those were things that tenants asked him to do on the side because they trusted him.
Q: At some point did you have occasion to meet Rebecca Winkler?
A: Yes.
Q: When did you meet her?
A: It was the summer of 2004. He had talked about her quite a bit, told us all about her prior to that but the Summer of 2004 he came up for my brother's pig roast and then also stayed for my triplets birthday party.
Q: Okay. He brought Becky with him?
A: He did.
Q: And did you have much opportunity to observe them in their relationship?
A: Yes.
Q: What was their relationship like?
A: Wonderful. He adored her. He was very proud of her. He always talked about how beautiful she was, always wanted us to be around her. They were very affectionate with each other.
Q: After Mick and Becky had been married for a while, did you at some point notice a significant change in Mick's behavior?
A: Yes. It was, I believe, September of 2005 when he started telling me that they were having some problems. He

didn't go into detail about that but it was upsetting to him. And I know he had told me that he had missed even a few days of work which was very unusual for him so I knew that it was -- had him rather distraught and frazzled at the time hoping that things would get better for them.

Q: Okay. And did you have some occasion sometime after that to come down and actually visit Mick?

A: I did. My brother Rick and I came down in January of 2006 to see him.

Q: And at that time, was he on house arrest?

A: He was.

Q: And can you describe that visit, please.

A: It was very unusual for him. He was not himself from the time we got there. He was, again, very distraught, seemed like he was unraveled a little bit. Paced back and forth a lot, was very concerned about the pending charges. He -- we left to go get him some food and groceries because he had absolutely nothing at his house, he had no food, nothing there. And he was yelling some, just I think because he was so upset. Glad to see us but upset at the whole situation. So, we left and gave him some time to calm down and relax because it wasn't like him to ever raise his voice at us. He was always very happy to see family. Now, when we did go back and he had calmed down, he said that he had not been able to get his anti-anxiety medications.

Q: Okay. And did you do anything to try and help him with that?
A: Yes. We -- on the time he was allowed away from his house, we drove him to a Bi-Lo where they had record of his medications and prescriptions and they actually showed us a sheet that had been signed out by Becky to take his medications, to pick them up.
Q: So, was he able to get his medication?
A: No, they had already been picked up.
Q: And you viewed this paper showing that Becky signed for the medication?
A: Yes, I did.
Q: During this period of time in your interactions with Mick, did you ever have any reason to believe that he was suicidal?
A: Yes, I would say he was. He made reference several times that he had lost everything that there was to live for. He'd lost his job and had no money and no life and his wife wasn't with him.
Q: After Mick was charged with murder, did you have much contact with his trial attorneys, Ralph Wilson and Paul Rathbun?
A: There was one occasion where they came to Ohio to meet with my siblings and my mother and a friend of Mick's and I think we spent maybe two hours with them at that point. But

after that, there was hardly any contact at all until the time of the trial.

Q: And when they came to Ohio about how long had the charges been pending?

A: Quite some time. I can't give you an exact time but quite some time had passed.

Q: All right. And then you -- your next point of contact with them was when you came down for the trial?

A: Yes. We met with them at their office just to talk with them briefly. I think it was maybe a day or so before the trial.

Q: In your observations with them prior to trial, what was Mick's relationship like with trial counsel?

A: Not very good at all. I don't think he trusted them. He had made mention that Mr. Wilson had told him that he didn't believe his story and their relationship was not very good.

Q: Prior to the trial, were you aware that Mick wanted to represent himself?

A: Yes. He said that to us several times that he wanted to represent himself.

Q: And when he said that to you, was that before the trial had started?

A: Yes.

Q: Thank you, Ms. McDougall. I have no further questions.

THE COURT: Cross examination.

MR. SIMON: Thank you, Your Honor.

CROSS EXAMINATION OF JODY MCDOUGALL BY MR. SIMON:

Q: Good morning, Ms. McDougall.

A: Good morning.

Q: How are you doing this morning?

A: Fine, thank you.

Q: First I want to -- you testified at his criminal trial, correct?

A: I did.

Q: And prior to that, you testified here today that you had -- trial counsel came up to Ohio and met with you and other members of your family, correct?

A: Yes.

Q: And you had contact with investigators from the defense team, correct?

A: Yes.

Q: You spoke with Carolyn Graham?

A: Yes.

Q: And you also spoke with Dorean Hall (spelled phonetically)?

A: I believe at some point. I don't recall exactly.

Q: In your direct testimony, you indicated that you -- you and your family would come down to Myrtle Beach once or twice a year, correct ---

A: Yes.

Q: --- to visit with the Applicant?
A: Correct.
Q: And he would come up to Ohio once or twice a year, too, correct?
A: As often as he could.
Q: But in terms of seeing each other, that was about it, correct?
A: Yes.
Q: And when you had interactions with the victim, Rebecca Grainger, it was only within the context of those one or two visits, correct?
A: Yes.
Q: And you were -- you did not witness how they were outside of your presence other than on those -- correct?
A: Correct.
Q: And any idea of how they interacted, your knowledge of that would be based off of what the Applicant told you, correct?
A: And my observations.
Q: Your observations of those three or four times a year?
A: Yes.
Q: You testified that one time when you came down here, he took you out to Tilghman Lakes, correct?
A: Yes.
Q: And he told you about the other responsibilities he had

outside of his normal responsibilities?
A: Correct.
Q: Did you speak with any of the folks that lived there that asked him to do these extra things?
A: No, I did not.
Q: And so your understanding of what the additional responsibilities he may've taken is all completely based off of what he told you, correct?
A: Correct.
Q: In terms of -- you indicated that you recognized that there was some kind of significant change in him around September of 2005?
A: Yes.
Q: Are you aware of when Mr. Winkler was fired from his job at Tilghman Lakes?
A: I do not recall exactly. I remember hearing about it but I don't recall exactly when.
Q: Do you remember if it would've been before the kidnapping and rape?
A: I believe so.
Q: Now, you testified that you and your brother Rick came down to Myrtle Beach in January of '06, correct?
A: Yes.
Q: And you said that Mr. Winkler was not himself?
A: Correct.

Q: And that was based off of your previous interactions with your brother, correct?
A: Yes.
Q: And that would've been based off of, I guess, in terms of looking at the most recent times would've been those visits -- three to four visits y'all would've had each year, correct?
A: Yes.
Q: And you wouldn't know in-between those visits how he acted on a regular basis, would you?
A: No.
Q: You indicated that your brother said that he wanted to represent himself?
A: Yes.
Q: But you were not a party to any discussion he had with counsel about representing himself, were you?
A: No.
Q: And you were not in court during any pretrial proceedings, were you?
A: No.
Q: And you were not present for any conversations he may've had with Judge Lockemy, were you?
A: No.
Q: So, you do not know personally if he made any kind of attempt to ask the judge to represent himself?
A: Just based on what he told me.

MR. SIMON: I beg the Court's indulgence for just a second.

THE COURT: All right.

BY MR. SIMON:

Q: Okay. Now, you're aware that your brother starting drinking in high school, correct?

A: No, actually, I was younger at that time, so I wouldn't have known that.

Q: How -- you do know that the Applicant drank on a regular basis, though, correct?

A: No.

MR. SIMON: Beg the Court's indulgence for just one more minute.

THE COURT: All right.

BY MR. SIMON:

Q: Just a couple of more questions. Are you aware if Mr. Winkler did any drugs in high school?

A: No, I'm not.

Q: And are you aware if he did any drugs after he left Ohio?

A: No, I'm not.

Q: No further questions.

THE COURT: All right. Redirect?

REDIRECT EXAMINATION OF JODY MCDOUGALL BY MS. PAAVOLA:

Q: Ms. McDougall, I understand your testimony is that after Mick moved to South Carolina and you visited him sometimes two

or three times a year and Mick would come to Ohio as often as he could?

A: Correct.

Q: But apart from those visits in person, did you have any other contact with him?

A: Yes, we spoke on the phone all the time.

Q: And of course, before he moved to South Carolina, you saw him more often?

A: Yes, regularly.

Q: You grew up in the same house with him?

A: Correct.

Q: And do you think that a person might become a totally different person in their later years of life?

MR. SIMON: Objection, speculation.

MS. PAAVOLA: I'll rephrase it.

THE COURT: Yeah, yeah, I'll sustain that objection.

BY MS. PAAVOLA:

Q: Did you have any indication in your interactions with Mick after he moved to South Carolina that somehow he had suddenly become a totally different person?

A: No.

Q: Thank you.

THE COURT: All right. You may step down.

Call your next witness.

MS. PAAVOLA: The Applicant calls Karen Reeves.

KAREN REEVES, HAVING BEEN SWORN,

TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION OF KAREN REEVES BY MS. PAAVOLA:

Q: Good morning, Ms. Reeves.

A: Good morning.

Q: Could you please tell the Court where you reside?

A: Doylestown.

Q: Okay. And you are also related to Mr. Winkler?

A: Yes.

Q: And how is that?

A: He is my brother.

Q: And do you -- you live in Doylestown with your family?

A: Yes, my husband and son.

Q: Okay. Do you have any other children?

A: Yes, I have three other daughters.

Q: Okay. And Mick is your brother; he's older or younger?

A: Younger brother.

Q: He's your younger brother. And can you tell us just generally what kind of person he is?

A: Very loving. We've always been close. He's a very caring person about the family. He loves kids. He loves family. Being together is very important to him.

Q: Did he have a good relationship with your children?

A: Yes, he did.

Q: Did he spend much time with them?

A: We would visit yearly down at Myrtle Beach and he was always -- met us with open arms and a smile and just tears because we just loved being together.
Q: Was Mick involved in any activities in the community in his adult years?
A: Adult years? He played softball, baseball and flag football with my husband and other friends.
Q: Okay. And did he participate in a youth softball league in some capacity as well?
A: He -- him and a friend did have a softball league.
Q: That they coached?
A: Yeah, they coached; uh-huh (affirmative response).
Q: One second. Your Honor, may I approach the witness, please?
THE COURT: Yes, ma'am.
Q: I'd like to hand you what's been premarked as Applicant's Exhibit Number Fifteen.

APPLICANT'S EXHIBIT NUMBER FIFTEEN
MARKED FOR IDENTIFICATION.

A: Uh-huh (affirmative response).
Q: And I would just ask you if you recognize that photograph?
A: Yes, that's my brother Mick and his friend Henry Yates and their softball team.
Q: And this is the youth softball team that he was coaching?

A: Correct, yes.
Q: All right. When you visited Mick here in South Carolina, did you have any occasion to learn about his job at Tilghman Lakes?
A: Yes. Many occasions he would tell us about his day's work. He took much pride in his job. He expressed so much how he loved going to work and that was his life, you know, aside from the home and he did many things for a lot of the tenants there.
Q: Would you say that Mick was particularly neat in his daily living?
A: Yes, very neat. His room was always very, very neat and he -- I remember one day I cleaned the house and he came home from somewhere and he was like ecstatic because the house was so clean and neat. I mean, he raised his voice like was so excited that Karen cleaned the house today, you know, not that it was, you know ---
Q: That was just something that was particularly important to him?
A: Yeah, and I always remember that that he was so excited. That is very important.
Q: And did that apply to his work at his job as well?
A: Yes, yes, indeed.
Q: Did you have occasion at some point to meet Rebecca Winker?

A: Yes, I did.
Q: When did you meet her?
A: I think it was the summer after they were married up at my brother's pig roast in Doylestown.
Q: In your observation of their relationship, what was their relationship like?
A: To me it was very good. I mean they were very cuddly and like love -- you could tell they loved each other and he was so proud of her, to introduce her to us.
Q: And so did you ever Mick in South Carolina while he was married to Becky?
A: Yes, we did. We would go down on vacation with the family, four children and -- in fact, one time they invited us on a Sunday morning to visit their church with us, asked us to come and attend with them. And then I remember, I'll never forget looking over at Mick and Rebecca and the family and just being so proud of him and -- just because he had what he's always wanted in a family and he was worshipping and they were singing and I just remember tears rolling down my face because I thought he has it now. He has it together, his family is there and so -- that's was always what he wanted.
Q: After these charges were pending, did you have any contact with Mick's trial attorneys, Ralph Wilson and Paul Rathbun?
A: I just remember the meeting in Wadsworth, Ohio near

Doylestown where we met at a hotel in the room and -- with my brother and sister and my mother and a good friend and sat for a little while with them.

Q: Okay. So there were several members of your family at this meeting and a family friend as well?

A: Yes.

Q: Do you know about how long that meeting lasted?

A: Probably an hour to two hours; it was in the evening.

Q: And do you recall when this meeting occurred?

A: No, I don't.

Q: Do you recall about how long it was before the trial?

A: Quite a bit of time had passed before the trial.

Q: Do you mean quite a bit of time after the charges or before you came for the trial?

A: Before we came to the trial.

Q: Okay. And then did you have any other interaction with trial counsel until you came to the trial?

A: No.

Q: In your observations of Mick, Mick's relationship with his trial attorneys, did they have a good relationship?

A: No.

Q: And why not?

A: He didn't believe that they were doing anything or everything they could for Mick, that they didn't believe him, they didn't really want to be there and represent him and he

felt that from the very beginning.

Q: Were you aware prior to the trial that Mick wanted to represent himself?

A: Yes.

Q: And he told you that?

A: Many times.

Q: Before the trial began?

A: Yes.

Q: Are you aware of a significant head injury that Mick experienced in his teenage years?

A: Yes.

Q: Can you tell us about that incident?

A: We grew up with a pool at the house and the water was cloudy, kind of green and my other brother was -- had dove into the water and Mick, I believe, dove off the diving board and they collided underneath and they were both actually knocked unconscious.

Q: And this was your other brother Jeff?

A: Yes.

Q: Did either of them go to the hospital as a result of this?

A: Yes, they did.

Q: They both did?

A: Uh-huh (affirmative response).

Q: Thank you, Mr. Reeves, I have no further questions.

MR. MCDONALD: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION OF KAREN REEVES BY MR. MCDONALD:

Q: Good morning, Ms. Reeves.

A: Good morning.

Q: How you doing today?

A: Good.

Q: You closed noting a head injury.

A: Uh-huh (affirmative response).

Q: And you said your brother Jeff was involved; is that right?

A: That's correct.

Q: And you don't hold any beliefs that this head injury had anything to do with any sort of future events in your brother's life, do you?

MS. PAAVOLA: Objection, calls for speculation.

MR. MCDONALD: It's her belief.

THE COURT: And that's -- you'd have speculate as to whether or not it had anything -- so, I mean, the burden of proof is on them to prove that it had something to do and so I would sustain the objection. Go ahead.

BY MR. MCDONALD:

Q: Did your brother Jeff murder anybody?

A: No.

Q: Did you meet the Applicant's first wife, Carla?

A: Yes.
Q: Were you aware what was going on with their relationship at the time of their divorce?
A: No.
Q: So, you weren't aware that he pulled a rifle on her and asked her if she wanted to die today?
A: Absolutely not.
Q: No? You didn't know about the Christmas incident when he threw the eight-by-tens at her, right?
A: No.
Q: You weren't aware that when his daughter Tiffany was born that he kicked his wife six times in the stomach, were you?
A: (Indicates negatively.)
THE COURT: You need to give a verbal response.
A: No. I'm sorry.
Q: Did you have the opportunity to meet Ms. Ricketts, Denise?
A: Yes.
Q: And were you aware about the incident that occurred with Ms. Ricketts?
A: No.
Q: So, you didn't know about the Applicant grabbing her, pulling her out of bed, dragging her around and kicking her in the legs?
A: No.

Q: Are you familiar with the allegations with respect to Becky, specifically the rape and kidnapping allegations?
A: No.
Q: And so you weren't aware that he grabbed Ms. -- Mrs. Winkler at the time, I suppose, and pulled her around by her hair and kicked her in the legs; you weren't aware of that, were you?
A: No.
Q: Okay. Were you aware that your younger brother -- it is your younger brother, correct?
A: Yes.
Q: Were you aware of whether he drank in high school?
A: No.
Q: Whether he did cocaine in high school?
A: No.
Q: You weren't aware if he abused alcohol?
A: No.
Q: No. You said that you would visit him at the beach; is that right?
A: Yes.
Q: And one to two times a year, would you say?
A: Yes.
Q: And family was a big deal to Mr. Winkler, correct?
A: Correct, absolutely.
Q: What about wives?

A: Very, very important.
Q: Clearly, right?
A: We talked several times on the phone, other than visiting the beach.
Q: Your basis for saying that the Applicant's relationship was good with Becky, was that based on what he told you and ---
A: We actually talked on the phone, yeah, we actually talked with Becky also.
Q: So, it was based on what he told you?
A: But I talked with Becky also.
Q: Okay.
A: She was very pleasant.
Q: Right. You also noted that he told you many times that he wanted to represent himself at trial?
A: That's correct.
Q: But were you present for any time when he would've told the Court that before his trial?
A: Not the Court but at recess, I know -- I believe Mr. Wilson was in the room when he stated to the siblings that he ---
Q: Did he say he wanted to represent himself or he wanted to fire his attorneys?
A: He wanted to represent himself.
Q: Okay. But you never heard him tell the Court that, did

you?
A: I don't remember that exactly.
Q: Just a moment, please. I have no further questions.
THE COURT: Redirect?
MS. PAAVOLA: Very briefly, Your Honor.
REDIRECT EXAMINATION OF KAREN REEVES BY MS. PAAVOLA:
Q: Ms. Reeves, you were asked if you knew Mr. Winkler's first wife, Carla.
A: Yes.
Q: Were you aware that Mick believed that the baby Carla claimed was his wasn't his?
A: Yes.
Q: And you were also asked about Mick's second wife, Denise Ricketts.
A: Yes.
Q: And you were asked about a number of allegations that she made against him.
A: That's correct.
Q: Were you aware that Ms. Ricketts was a cocaine addict?
A: I had heard that she was.
Q: No further questions. Thank you.
THE COURT: All right. You may step down.
You can call your next witness.
MS. PAAVOLA: Your Honor, the applicant calls Rick Winkler.

RICK WINKLER, HAVING BEEN SWORN,

TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION OF RICK WINKLER BY MS. PAAVOLA:

Q: Good morning, Mr. Winkler.

A: Good morning.

Q: Could you please tell the Court where you reside?

A: I live in Doylestown, Ohio.

Q: And how are you related to Mr. Winkler?

A: I'm his older brother.

Q: And you live in Doylestown now with your wife and children?

A: Yes, I do.

Q: And how many children do you have?

A: Four children and two grandchildren.

Q: All right. Can you just generally describe what kind of person Mick is?

A: Well, he was always a good brother. We always had a good time and did a lot of things together. We hunted and fished and played golf and played a lot of games in the backyard we made up, homerun derby and all that, so it was -- we always -- we always were good brothers.

Q: So, you spent a lot of time outdoors?

A: Yes.

Q: Did Mick's interest in outdoor activities continue in adulthood?

A: Oh, sure, yeah, we went hunting later and golfing and did several different things outside. We were always out when we were younger, you know, out -- we lived in the country and outback by the creek and everything like that, so ---

Q: And did Mick have a good relationship with your family and your children?

A: Oh, yeah, it was great. In fact, when my oldest ones, you know, they'd come down and visit him and they, you know, him and my son, David, and his friends would come down and they would stay at his house and actually they said that was the best part of the trip when they stayed three or four days with him down there, so --- and then we'd always visit, too, probably once a year. Come down with the family and then he would come up. I had a pig roast every year and he'd come up for that and come up for Christmas and stuff like that.

Q: And when you came to visit him in South Carolina, where did you stay?

A: Usually, we stayed at a hotel. He would set us up over where he worked through some of the people that he, you know, allotment there or condos, you know.

Q: So, sometimes you would stay at the condo where he was employed?

A: Right. I had met some of the people he worked with there and he, you know, introduced us to them and we were, you know, they -- we stayed there several times for like a week at a

time in some of their apartments.
Q: Okay. Did you come to South Carolina for Mick's wedding to Becky Winkler?
A: Yes.
Q: Where did your family stay for that event?
A: At the Tilghman Lakes.
Q: Did you have to pay for your stay at Tilghman Lakes?
A: Yeah, we paid whatever the fee was for -- they gave us a discounted rate, whoever the tenants were.
Q: And so obviously, you met Ms. Becky Winkler at some point?
A: Yes, uh-huh (affirmative response).
Q: Well, I think you already said that Mick would often come to Ohio to visit?
A: Yeah, that's when I first met her. They came up to one of my pig roasts.
Q: And when they would come to Ohio to visit with you, where did Mick and Becky stay?
A: They stayed at my place. One time they brought J[redacted] up with them too.
Q: And so in your observations of them, what was their relationship like?
A: Everything seemed fine. They were always, you know, she would have a good time, laughing and hugging and kissing and seemed to get along real well.

Q: Did you come with your sister Jody and -- in January of 2006 to visit Mick?

A: Yes.

Q: And can you tell us about that visit?

A: Well, when we got there, it was late. I know we had gotten lost on the way up but when we got there, he wasn't his usual self. He's a little upset at stuff and out of sorts just from different things, you know. He said -- you know, he had said how Becky had driven by and, you know, and he was mad at that. The neighbors were telling us that too when we were there.

MR. MABRY: Your Honor, I would object to the hearsay.

THE COURT: Sustained.

MR. MABRY: And we'd move to strike the last two answers.

THE COURT: Well, I sustained your objection for hearsay.

BY MS. PAAVOLA:

Q: Mr. Winkler, without telling us what anybody else said to you, can you finish your description of that visit that you had in January 2006.

A: Well, he was pretty upset. We went and -- Jody and I went and got him a bunch of groceries and stuff and came back with the food and -- you know, with just everything going and all, we ended up going to stay at a hotel that night and then the next day we came back.

Q: And did you view his demeanor at that time as unusual?

A: Yeah, he just wasn't himself. I mean, usually everything was fun, you know, and -- there was just a little bit of tension there that night.

Q: And were you present during this trip the following day to the BI-LO to get his medication?

A: Yes.

Q: And so what were your observations during that visit.

A: Well, we went up there and he asked for it and they said, you know, it was already signed out.

MR. MABRY: Objection, hearsay.

THE COURT: I'm gonna allow it, go ahead.

A: You know, we went up there and he asked for the -- to get the prescription and it was already signed out, you know, she had signed for it. They showed us the signature.

BY MS. PAAVOLA:

Q: Okay. By she, who do you mean?

A: Becky had signed it out.

Q: After Mick was charged with this crime, did you have any contact with his trial attorneys Ralph Wilson and Paul Rathbun?

A: Just in Wadsworth for an hour or so. They came up and, you know, that was about it, when we all got together up there.

Q: Did you speak to them again before you came for the trial?

A: No.
Q: Now, you testified at Mr. Winkler's trial in the penalty phase, do you remember that?
A: Yes.
Q: Before you testified, did you have any meetings with trial counsel about that testimony?
A: I believe when we came down before the trial we might've sat in the room a little bit and he just told us what we would go over. It wasn't very thorough or anything.
Q: In your observations of Mick with his trial attorneys, what was their relationship like?
A: Not very good. If they were my attorneys, I'd have fired them. They were pretty -- they seemed too nonchalant, they didn't really care and they -- to me, they acted like they didn't believe what was going on and they just wanted to get it over with.
Q: And were you ever aware before the trial started the Mick wanted to represent himself?
A: Oh, yeah, they told us that in the Wadsworth meeting that he had talked about, you know, wanting to get another attorney or representing himself, one way or the other he didn't -- that he didn't want them and, you know, they said, well, that's probably not gonna happen.
Q: They told you -- the trial attorneys told you this at the meeting in Wadsworth?

A: In Wadsworth, yes.
Q: All right. Now, your sister previously testified about a head injury Mick sustained in his teenage years in this pool.
A: Uh-huh (affirmative response).
Q: Were you present when that event happened as well?
A: Yes.
Q: And can you just briefly described what you observed during that event?
A: Well, it was like she said, the water was cloudy and one was in and the other dove in and they hit heads and we had to pull them out because they were both unconscious, so ---
Q: And were they taken to the hospital?
A: Yes.
Q: Are you aware of another head injury that Mick sustained as a younger child?
A: Yeah. One time we were out playing with the neighbors and one of the neighbors had a spear and hit him in the head and hit him pretty good, knocked him out at that time, too, and gashed his head good.
Q: Was he taken to the hospital as a result of that injury?
A: Yes, uh-huh (affirmative response).
MS. PAAVOLA: Your Honor, may I approach the witness, please?
THE COURT: Yes, ma'am.
BY MS. PAAVOLA:

Q: Mr. Winkler, I would like to hand you what's been marked as Petitioner's Exhibit Sixteen and ask you if you recognize that, please.
A: Yeah, that's a family picture shows the bandage on Mick's head. That had happened the day or so before.
Q: All right. So, that's a photo of the aftermath of this injury that you've just described?
A: Right, yeah.
Q: And it may be difficult for you but can you just point to what it is that you're saying is the photo of Mick?
A: Well, there's a bandage on his head. He's standing right in front of my grandma there. It's a whole family picture. Right there (indicating).
Q: So right there in the middle on the bottom half of this photograph?
A: Right.
Q: One moment, Your Honor.
THE COURT: All right.
Q: Mr. Winkler, approximately how old was Mick when this head injury that you've just identified in the photo occurred?
A: He was about seven or eight, I believe.
Q: All right. Thank you. No further questions.
MS. PAAVOLA: Your Honor, I would move to admit Exhibits Fifteen and Sixteen.
THE COURT: Any objection?

MR. MABRY: No, sir.

THE COURT: Plaintiff's Exhibit Fifteen and Plaintiff's Exhibit Sixteen admitted into evidence without objection.

PLAINTIFF'S EXHIBIT FIFTEEN AND SIXTEEN

ADMITTED INTO EVIDENCE

MR. MABRY: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION OF RICK WINKLER BY MR. MABRY:

Q: You are Rick Winkler; is that correct?

A: Yes.

Q: Mr. Winkler, where do you live?

A: Doylestown, Ohio.

Q: Okay. Now, your family life has not been perfect, has it?

A: Mine?

Q: Your whole family.

A: Oh, whole family. What do you mean by -- I don't know how to ---

Q: You haven't always gotten along, have you?

A: With who?

Q: With your other family members.

A: Every now and then there's something, yeah.

Q: Oh, why don't you tell us about the lawsuit?

A: Which lawsuit is that?

MS. PAAVOLA: Objection, relevance.

THE COURT: What's the relevance?

MR. MABRY: It will become relevant, Your Honor, when Mr. Wilson testifies. There were problems within the family. The Defendant did not want his family to testify, instructed them not to and there was a lawsuit between one of the brothers and a brother and the father over the business and the ---

A: That's not true ---

MR. MABRY: And the family members were split up over the United States.

MS. PAAVOLA: Your Honor, we haven't made any allegation that the family ---

A: That's not true.

THE COURT: Hold it. Okay. I'm gonna sustain the objection. I don't see where that's at issue at this point in time. It's sustained.

BY MR. MABRY:

Q: Well, let's find out, where do all your family members live, the brothers and sisters? You live in Ohio?

A: Now?

Q: At the time of this trial, where did they live?

A: Well, Mick and Laura lived down here and everyone else lived in Ohio.

Q: Okay.

A: --- or -- well, let me think now. I believe -- I'm not sure about my one brother Jeff, if he lived in Florida or

Ohio.
Q: At the time of this trial, your mother and father had divorced; is that correct?
A: Yes.
Q: Okay. And your father had moved to Florida with one of your brothers; is that correct?
A: He moved at one time down there. They didn't move together.
Q: Well, your brother moved to Florida first, correct?
A: I believe, yeah.
Q: What's his name?
A: Jeff.
Q: Okay. And you had a sister that lived here?
A: Correct.
Q: What's her name?
A: Laura.
Q: Can you tell us why Mr. Winkler would not tell his trial lawyers that he had a sister that lived here in Myrtle Beach?
MS. PAAVOLA: Objection, relevance.
THE COURT: I'm gonna allow that. Go ahead.
A: I'm not aware of that.
BY MR. MABRY:
Q: Okay. Do you know any reason that he would not tell them that he had a sister that lived here in Myrtle Beach?
A: I know of no reason, no.

Q: Were there some problems in the family that he did not want his lawyers to know about?
A: Not that I'm aware of.
Q: But there's no question your sister Laura lived here at the time this murder occurred?
A: Sure, yeah.
Q: All right. Now, did you know Mr. Winkler's first wife?
A: Yes. I knew who she was.
Q: All right. Were you aware that he physically abused his first wife?
A: No.
Q: Were you aware that your brother was locked up for forty-five days at one time for criminal domestic violence?
A: No.
Q: Okay. So, you had no idea? Your family didn't discuss that and you had no idea that was going on?
A: I had no idea that he was locked up for forty-five days.
Q: Well, were you ever aware that he was locked up for anything prior to this -- the kidnapping Becky and the murder of Becky?
A: The alleged kidnapping?
Q: Well, we'll get to that in a minute. Were you aware prior to the kidnapping and rape of Becky Winkler and her murder that your brother had ever been locked up for anything?
A: No, not locked up, no.

Q: Had he ever been arrested for anything?
A: Boy, I -- I -- not that I'm aware of, no.
Q: Okay. Were you aware that he was -- that he owed $40,000 in child support for a child?
A: Yes.
Q: Okay.
A: I don't know if it was 40; I know he owed some.
Q: He owed some. You weren't aware that it was $40,000?
A: No.
Q: Okay. Did you know his second wife, Denise?
A: Yes.
Q: Did you know he physically abused her?
A: No, I did not.
Q: He never -- he never told you that?
A: No.
Q: Did they ever tell you about any physical abuse, either of his first two wives?
A: No.
Q: Did you ever see bruises on them?
A: No.
Q: Did you know he pulled one of his wives around by her hair in the house?
A: No, I didn't know that.
Q: Where did he and Denise live?
A: They lived in Myrtle Beach.

Q: And you lived in Ohio?
A: Yep.
Q: So, you didn't know what he was doing inside the walls of his home?
A: I'd stayed there with him a couple of times, yeah.
Q: How many and how long did you stay with him a couple ---
A: Two or three times, maybe three/four days at a time.
Q: Okay. So, nine to twelve days you stayed with him.
A: Right.
Q: Okay. So, you don't know what went on inside their home the other times?
A: Oh, I do. She was -- she was -- she'd come home from work and pull out some cocaine and start doing it, smoking and drinking, that's -- you know, all she did almost the whole time I was there.
Q: Did you see her do it?
A: Yes, I did.
Q: Where did she get the cocaine?
A: I don't know.
Q: Did your brother do cocaine?
A: He -- no, he didn't do that.
Q: All right. Well, let's go back to when he was high school, okay, did your brother drink heavily in high school?
A: Not that I know of.
Q: Did he do cocaine in high school?

A: Not that I know of.
Q: Did he do marijuana in high school?
A: Not that I know of.
Q: Do you remember an instant when your dad beat him with a belt for catching him with marijuana?
A: No, I didn't know that.
Q: Didn't know that?
A: My dad beat us a lot.
Q: Okay. Well, his social worker testified in the penalty phase that he had been doing cocaine and marijuana and drinking alcohol heavily his whole life, your brother. Where did she get that information? Did she get it from you?
A: No, not from me.
Q: Okay. Because you didn't know any of that was going on?
A: That he did it?
Q: Yes, your brother.
A: No, no.
Q: Did you know he was doing cocaine when he was married to Becky?
A: No.
Q: He never told you about that?
A: No.
Q: He testified in the trial of this case that he was doing eight balls of cocaine on the weekends? Did you know that was going on?

A: Not that he did it. I know Denise had it. I didn't know Becky did any of that at all.
Q: Well, you were here during the trial, weren't you?
A: Yeah.
Q: Okay. Did you hear your brother testify in the penalty phase?
A: Yes.
Q: And he testified he was doing eight balls of cocaine, correct?
A: Well, I wasn't aware of that.
Q: Right, but you know it now?
A: If that's what he said, yeah.
Q: So, I'm asking you as his brother that's known him his whole life, when did he start doing cocaine?
MS. PAAVOLA: Objection; he's already answered he doesn't know.
THE COURT: Sustained.
BY MR. MABRY:
Q: Did you know that he physically abused Becky Winkler?
A: No.
Q: And he told you that he didn't kidnap her and he didn't rape her, didn't he; isn't that what he told you?
A: That's right.
Q: When did he lose his job?
A: Sometime after all that happened, when he had to be on

house arrest.

Q: Okay. So, it's your testimony he lost his job at Tilghman Lakes after he was arrested for kidnapping and rape?

A: Boy, let me think. It may've been before.

Q: And why -- do you know why he was fired from Tilghman Lakes?

A: I don't know. I -- something that he didn't -- he wasn't going -- wasn't showing up or something.

Q: You think that was involved with cocaine and alcohol abuse?

MS. PAAVOLA: Objection, speculation.

THE COURT: sustained.

BY MR. MABRY:

Q: Did -- I believe you testified your brother told you he did not kidnap and rape his wife; is that correct?

A: Yes.

Q: And then when you knew him, he was a loving brother?

A: Yes.

Q: Let me show you some exhibits from the trial. This is State's Exhibit 156 and 151. If you can, tell me who that lady is right there in the picture.

A: It looks like Becky.

Q: Okay. That's the victim in this case, Becky Winkler?

A: Yes.

Q: Is that right? And who is this a picture of, State's

Exhibit Forty-two?

A: That's Mick.

Q: Okay. That's the loving brother you're talking about?

A: That's right.

Q: And can you tell me whose hat this is, States Exhibit Thirteen?

A: I don't know whose hat that is.

Q: This is a photograph of Becky's apartment from the trial. Can you see it?

A: I don't know, you're shaking there.

Q: I'm sorry. My hands are shaking, sorry. You get a look at it?

A: I had never been there. I don't know if that's her apartment.

Q: I'll show you State's Exhibit Number Eight. That's another photograph of her apartment.

A: If you say so.

Q: Do you see where the door has been kicked in?

A: I can't see a footprint; I don't know.

Q: Look at the other photograph. Does it look like the door has been kicked off the frame?

A: It could've been kicked, it couldn't shoved in, I don't know.

Q: Okay. Is that the kind of thing your loving brother would do?

A: Not when I knew him, not before all this happened.
Q: I show you State's Exhibit Number Two. Who is that young man?
A: I don't -- I don't -- is it J[redacted], I don't know.
Q: His stepson? That's another picture of J[redacted]; do you see that bruise on his face?
A: No, not really.
Q: You can't see the redness on his face?
A: It looks like a pimple to me.
Q: Okay. You can't see those red marks on his face?
A: That's bruise right there? Is this what you're talking about?
Q: I'm talking about all around that bone under his eye. You don't see those red marks?
A: I guess, I -- if that's what it is; I don't know.
Q: Is that something your loving brother would do?
A: I don't know.
Q: Okay. I show you State's Exhibit Twenty-seven. This is a photograph of Becky after she was killed. Look right next to her leg. That was testified to be a can of Mace at the trial. Do you know why she would be carrying a can of Mace?
A: No, I'm not sure.
Q: In her own home?
A: Is that a question?
Q: Yes, sir.

A: In her own home is a question?
Q: Yeah. Why she would be carrying a can of Mace in her own home?
A: You got me. I don't know.
Q: You think it maybe had something to do with your brother?
MS. PAAVOLA: Objection, speculation.
THE COURT: Sustained, asked and answered.
BY MR. MABRY:
Q: I show you three exhibits -- well, I'm gonna show you two, State's Exhibit 116 and 117. These were taken of Becky at the hospital after the kidnapping and rape.
MS. PAAVOLA: Objection, Your Honor, this witness already testified he doesn't have any knowledge of the events of these ---
THE COURT: I sustain.
A: I don't think it was every proved, was it?
MR. MABRY: I want to ask him specifically about her hair, if he ever saw her hair like that before?
THE COURT: You're gonna have to lay more foundation that he has knowledge of it, okay, other than just showing all these exhibits from the trial ---
MR. MABRY: Yes, sir.
THE COURT: --- when my understanding is he doesn't have any information about any of these exhibits, okay?
MR. MABRY: Yes, sir.

THE COURT: So lay a better foundation.

BY MR. MABRY:

Q: You said you came down here -- how many times did you come down here when your brother was married to Becky?

A: Two or three.

Q: Okay. And how many days would you stay down here with Becky?

A: We never stayed with them; we stayed at a hotel or a condo.

Q: You didn't even stay in the same house with them?

A: No.

Q: Okay. But you got to meet Becky?

A: Yes.

Q: And you saw her hair when you met her, correct?

A: Yeah.

Q: Okay. The photographs I showed you a moment ago, did you ever see her hair missing from her head like in these photographs?

A: I didn't look at them.

Q: This is State's Exhibit 117 and 116 from the trial.

A: That's her. I don't know, that's -- no, I never saw it like that.

Q: Okay. That was my question. These are photographs of your brother, State's Exhibit 98 and 100 after his arrest for this murder. Did you ever see his hands like that?

A: Yes.
Q: When was that?
A: Oh, different times. We'd go hunting, things like that, get all scratched up, go back through the woods.
Q: What about the scabs on his knuckles?
A: Let me see it. Occasionally.
Q: Well, was that when he was married to his first wife and his second wife?
A: No, never. You're a smartass.
Q: Let me show you picture, two pictures, State's Exhibit 114 and 115. You said you knew Becky. Is that Becky Winkler?
A: Looks like it, yeah.
Q: You ever seen her like that before?
A: Nope.
Q: Okay.
A: I understand she was in a car accident, so I ---
Q: Who told you that?
A: The attorneys.
Q: The attorneys. How about your brother, did he tell you that?
A: Yeah.
Q: Okay. And that's what he told his attorneys, right?
A: I imagine. Isn't that what happened?
Q: Let me show you some more photographs, State's Exhibit 129, 130 ---

MS. PAAVOLA: Objection, Your Honor. He said all -- more photographs of the SCS arrest to follow up. He's already testified, he doesn't have any personal knowledge of these events.

THE COURT: I sustain it.

BY MR. MABRY:

Q: Mr. Winkler, the fact of the matter is you didn't know what was going on in your brother's home with Becky Winkler, did you?

A: Well, I knew that there was a lot of drinking. When they came up to visit, you know, we'd have a beer and offer her something, she always had a -- she's, oh, I got my own. She'd carry around a flask. She liked to drink a lot.

Q: So, did your brother, right?

A: Sure. Yeah, they both did. It ---

Q: And the only three times you were ever down here when they were married, you stayed at a different location; you didn't even stay in the same house with them, did you?

A: No but I saw them every day.

Q: And you weren't down here when he kidnapped and raped his wife, were you?

A: Allegedly, you mean? Was that ever proven?

Q: Well, she was killed before the trial, wasn't she?

A: Yeah.

Q: And were you down here when your brother murdered Becky

Winkler?

A: I don't know that he really did.

Q: No further questions.

THE COURT: All right. Redirect?

REDIRECT EXAMINATION OF RICK WINKLER BY MS. PAAVOLA:

Q: Mr. Winkler, you testified that when you came to visit Mick here in South Carolina, you stayed either in a hotel or at the condo where he worked?

A: Yes.

Q: When you would come for those visits, about how many people did you bring?

A: Five.

Q: Would all five of those people fit in his house that he lived in with Becky?

A: No.

Q: And you testified previously that your children would sometimes come to visit without you?

A: Right.

Q: The older children would come by themselves?

A: Well, with friends, yeah.

Q: And where did they stay when they came?

A: They stayed with Mick.

Q: You were asked about a number of different allegations related to all three of Mr. Winkler's wives.

A: Right.

Q: And do you have any personal knowledge that any of those allegations are actually true?

A: No.

Q: No further questions.

THE COURT: All right. You may step down.

All right. It's about twenty-three to 1:00. Let's go ahead and break for lunch. We'll take about an hour break. We'll stand in recess until, I guess, 1:45.

Anything from the Applicant before we recess?

MS. PAAVOLA: Nothing further, Your Honor. Just for scheduling purposes, we would note that the Applicant rests.

THE COURT: Okay. All right. Anything from the Respondent before we break for lunch?

MR. SIMON: Your Honor, at this time, we would move for a directed verdict on some of the issues that were raised in the ---

THE COURT: All right. We'll take up all those after lunch. Okay?

MR. SIMON: Yes, sir.

THE COURT: All right. We'll be in recess until 1:45.

*******OFF THE RECORD*******

(On the Record.

THE COURT: All right. Mr. Simon, motions?

MR. SIMON: Yes, Your Honor, at this time, the Respondent would move for a directed verdict on the following issues.

First we'd move for a directed verdict on the grounds 10 and 11(A)(1); further we'd like to move for a directed verdict on ground 10 and 11(A)(3); also 10 and 11(B)(1); and ground 10 and 11(E); and we would further renew our motion for -- under Rule 12(B)6 for 10 and 11(C) and 10 and 11(D).

THE COURT: 10 and 11(C) and 10 and 11 -- what?

MR. SIMON: D.

THE COURT: All right. Let's start of first. 10 and 11(A)(1), what is that allegation?

MR. SIMON: That allegation is that trial counsel failed to object to the Trial Court's pretrial refusal to permit the Applicant to discharge appointed counsel and allow him to proceed pro se. Your Honor, there has been -- there is nothing in the record that indicates that he made such a request before -- the request to proceed pro se in front of Judge Lockemy. And without evidence of that, we believe that that allegation of -- since there hasn't been new evidence presented of that, that allegation should be dismissed.

THE COURT: All right. Who wants ---

MS. PAAVOLA: Your Honor, there has been evidence that those requests were made in front of Judge Lockemy, that was introduced through Mr. Winkler's testimony.

THE COURT: Okay.

MS. PAAVOLA: Furthermore, the basis of the claim is that trial counsel should have made every effort to preserve Mr.

Winkler's Sixth Amendment right to self-representation. So, they also had an obligation to bring that request to Judge Lockemy's attention even if it wasn't made directly in front of him which we believe it was based on the evidence that we've introduced.

THE COURT: All right. I'm gonna deny your motion. All right. What is the 10 and 11(A)(3)?

MR. SIMON: In -- 10 and 11(A)(3), they assert trial counsel was ineffective for failing to impeach the state's witnesses. The evidence regarding that J[redacted] G[redacted] was not on the telephone with L[redacted] C[redacted] or E[redacted] C[redacted] at the time the murder occurred. There has been no testimony or evidence presented regarding that claim at this point.

THE COURT: All right.

MS. PAAVOLA: Your Honor, we believe that evidence will come in with trial counsel's testimony through phone records that they've previously indicated to us they recognized and had as part of their file in their preparation for Mr. Winkler's trial.

THE COURT: But nothing has been put into evidence thus far?

MS. PAAVOLA: No, sir, not yet but we believe it will come in through trial counsel's testimony and they've already indicated to us that they recognize and identified those records that they had in their possession.

THE COURT: All right. I'm gonna grant your motion. Burden of proof is on the Applicant. He has not presented any evidence so I'm gonna grant your motion for a directed verdict as to allegations in 10 and 11(A)(3).

All right. Now, 10 and 11(B)(1).

MR. SIMON: Your Honor, that asserts that trial counsel was ineffective for failing to investigate and present evidence of Applicant's neurological and cognitive impairments and/or dysfunction. They have not presented any evidence of Applicant's neurological and cognitive impairment and/or dysfunction.

THE COURT: All right. Let me hear from you on that.

MS. PAAVOLA: Your Honor, we've introduced social history supporting what we believed would be evidence of neurological dysfunction had the motion for continuance not been denied and that is the subject of our proffer what -- the evidence that we believed we would've made available to the Court would have been introduced through the analysis of brain images that have been completed but aren't available here today due to the denial of the continuance motion.

THE COURT: All right. But I'll grant that motion for directed verdict as to allegations 10 and 11(B)(1).

All right.

MR. SIMON: Your Honor, our next portion of the directed verdict motion is in regards to claim 10 and 11(E), which is

the freestanding claim of what they assert that the Applicant's right to a fair and impartial jury determination was violated when Juror Wallingford (spelled phonetically) was allegedly coerced into voting for death by threat of physical harm and intimidation by his fellow jurors. Mr. Wallingford testified, he indicated that there were no threats of physical violence made towards him. Since there has not been evidence in support of that claim, we submit that that should be -- a directed verdict should be granted on that.

THE COURT: All right. Let me hear from you on that.

MS. PAAVOLA: Your Honor, we concede that the evidence introduced through Juror Wallingford and the other juror that testified yesterday does not support an allegation of physical coercion and we withdraw that claim.

THE COURT: All right. I'll grant the motion for directed verdict as to that.

All right. 10 and 11(C).

MR. MCDONALD: I'll take this. Your Honor, of course, you can always renew a 12(b)(6) under South Carolina law at trial. Here there are no facts sufficient to support that cause of action.

THE COURT: What is the cause of action?

MR. MCDONALD: The cause of action, and I apologize for that, in 10 and 11(C) -- 10 and 11(C) has raised self-representation was violated by the Trial Court's refusal to

permit him to discharge appointed counsel and proceed pro se but that's a freestanding claim. That freestanding claim could've been addressed by 29(b), motion for a new trial. It could've been addressed thereafter in a timely motion for a new trial in a 29(a). That wasn't done here and it's a freestanding claim. So, while he couldn't make this claim under, I believe 10(A)(1) as an IAC claim because that's not what this is under *Drayton* under *Simmons*, those cases, it's not a classic upon which relief can be granted. And as a result we would respectfully request that with respect to 10(C) and I can go into 10(D) as well and ---

THE COURT: All right. Let me hear from you on 10(D) -- 10 and 11(D).

MR. MCDONALD: Okay. And that's about his right to a fair and impartial jury determination of the sentence, again, it's just because it's a freestanding claim of trial court error. Specifically, there's an allegation that the Trial Court's repeated refusal to answer the jury's question about what would happen. This is a claim of trial court error. They didn't -- even if there is additional information in the record, that would be raised by a motion for new trial and that's exactly what *Drayton* says, that's exactly what *Simmons* says. This is simply not a classic case. PCR isn't the right remedy. I think that's really the bottom line.

THE COURT: All right.

MS. PAAVOLA: Your Honor, the State is incorrect on this position. The case law is that the -- a claim that could've been raised on a direct appeal is procedurally barred in post conviction. Neither of these claims could've raised on direct appeal because they were not on the record to the extent that trial counsel new about the facts supporting these claims, they failed to make an objection to preserve that for appellate review. *Drayton* and *Simmons* are both decided under -- in favor of -- where the Appellate Court previously would review any claim on the record even if there was no objection to preserve it for appellate review. That standard was abolished in 1991. Under our current standards the only way for it to be preserved for appellate review was for there an objection to be raised at trial and for the trial defense attorneys to obtain a ruling on that. They didn't do that. These claims have not been previously addressed. Post conviction is the only place where they could be remedied.

THE COURT: All right.

MR. MCDONALD: Your Honor, if I could?

THE COURT: Well, let me hear from you first on the freestanding charge for jury intimidation.

MS. PAAVOLA: I'm sorry?

THE COURT: 10 and 11(D), jury intimidation; let me hear from you on that one.

MS. PAAVOLA: 10 and 11(D) is not about jury

intimidation, Your Honor. It's about the Trial Court's refusal to answer the question that the jurors asked ---

THE COURT: Oh, okay.

MS. PAAVOLA: --- on at least two occasions. And their -- the Court's improper instructions to the jury under unique course of circumstances when they indicated that they could not reach a unanimous decision.

THE COURT: Okay. I got you.

All right. Anything in response?

MR. MCDONALD: Yes, just very quickly. I believe opposing counsel was referring to *State v Torrence* when she said that that was abolished -- 1993 case, it's the opportunity to raise not raising it. It is the opportunity and that's why the IAC claims ---

THE COURT: Well, how could he have raised it on appeal?

MR. MCDONALD: On appeal?

THE COURT: Yeah.

MR. MCDONALD: It's the opportunity to raise it.

THE COURT: Okay. How would he have had the opportunity to raise it on appeal?

MR. MCDONALD: Because of trial counsel's failure to object that would be independent ground under the IAC claims.

THE COURT: But, I mean, who is gonna raise that for him?

MR. MCDONALD: The IAC claim can be raised here in PCR and it has been raised but this is freestanding claim of Trial

Court error. It's just the opportunity. The trial counsel could've objected and that's what their claims are.

THE COURT: Okay. All right. I'm gonna deny your motion for a directed verdict as to allegation in 10 and 11(C). 10 and 11(D), I'm gonna take under advisement. Let me -- I want to go back and read Judge Lockemy's Allen charge again, okay? Does anybody have -- I know I can look there here -- off the top of your head where it is. I had it earlier.

MR. MILLS: I had it with the -- we can provide it to you, Judge.

THE COURT: I'm sure it's ---

MR. MABRY: It's on Volume Six.

MR. MILLS: I think it's 2128 is where it begins.

MR. MABRY: 2928.

MR. MILLS: Right 2928.

THE COURT: Yeah.

MR. MABRY: They actually -- he charged it to them at 12:30 A.M. The next morning, two jurors asked to hear it again, so ---

MR. MCDONALD: It goes through 2936, I believe.

MR. MABRY: That's correct.

MS. PAAVOLA: It should be clear, Your Honor, this is not related just to the text of the charge itself but rather the events leading up to the charge when the jury sent two separate notes that the Trial Judge refused to answer before

he gave the charge.

THE COURT: So, you're saying that they sent him two notes.

MS. PAAVOLA: That's correct.

THE COURT: And he just never addressed them?

MS. PAAVOLA: He responded that he could not answer those questions.

MR. MABRY: I believe one note, Your Honor, was sent to him and I can't remember about the second note but he responded he could not answer it as asked, they'd have to be more specific. I believe that's in the record and if I'm wrong, I'm wrong but that's what happened. They never sent a more specific request to him.

And as to this issue, Your Honor, Mr. McDonald is correct and Ms. Paavola is wrong. The simple fact the trial court ---

THE COURT: Well, she's saying y'all are wrong and she's right; so y'all don't have to go into that. Just argue your point.

MR. MABRY: Well, the fact the trial counsel didn't object at that point in time is irrelevant. The issue could still be raised by appellate counsel to the Supreme Court and while that might see it's procedurally barred, then she can turn around and raise it -- you know, a consistence claim to PCR failing to object. What she can't raise here now is the Trial Court erred, whether it was preserved or unpreserved.

That's what the case law clearly says.

MS. PAAVOLA: That's not correct, Your Honor. Appellate counsel ---

THE COURT: I know, y'all are gonna go back and forth; he's gonna say you're wrong and you're gonna say he's wrong and it's up to me to decide who's right and who's wrong. Be that as it may, regardless, I'm denying the motion for a directed verdict on that. Okay?

All right. Now, so you're saying -- is your allegation that the Allen charge was ineffective ---

MS. PAAVOLA: No, Your Honor ---

THE COURT: --- or that it was -- that it did not adequately answer the ---

MS. PAAVOLA: We have two allegations related to this. One, that the Allen charge, when it was ultimately given after the third note came out was given under unduly coercive circumstances given the events leading up to the charge.

THE COURT: Okay, now these notes -- excuse me for interrupting. These notes that came from the jury are they in the record?

MR. MABRY: They should be, Your Honor.

MS. PAAVOLA: Yes, sir.

THE COURT: Okay. That's what I've got to look and see then. Let me go review those. All right. Those are marked as exhibits?

MR. MCDONALD: Your Honor, one of them is marked as a Court's Exhibit Number Twenty-five. The other, the text of the other two are in the transcript of the proceedings.

THE COURT: Okay. Let me see Court's Exhibit Number Twenty-five.

MR. MABRY: And Your Honor, the problem with this ground is, first of all, Judge Lockemy did not know what the count was in the jury room. He didn't know what the split was or he didn't know what occurred in the jury room. The second problem with this ground is they are trying to use a juror's testimony about maybe one factor that caused her to change her mind to undercut the verdict, which you can't do. Nothing from the female juror that testified here yesterday fits within the case law.

THE COURT: All right. Where is the exhibit, the notes from the jurors, that's what I wanted to know. I've heard enough arguments on it.

MR. MABRY: Yes, sir.

THE COURT: I want to see the exhibits, okay?

MR. MABRY: Yes, sir. It should be in the Court's file.

THE COURT: There is no Court's Exhibit Twenty-four in the record -- I mean, Twenty-five in the record. There's a juror note Twenty-one. Y'all are saying that there's how many?

MS. PAAVOLA: Three, Your Honor.

MR. SIMON: Your Honor ---

THE COURT: Yes.

MR. SIMON: With the exhibits that were transported from the Supreme Court, I have Court's Exhibit Twenty-five here. May I approach?

THE COURT: Well, I mean, I guess what I'm asking and I was of the impression that it was in the record here. I see Court's Exhibit Twenty-one that is one of the notes. Y'all are saying that there are three notes. Unless I'm just missing it, I do not see the other two exhibits that everyone is arguing about.

MR. MCDONALD: And to be clear, Your Honor, the text of the notes are in the transcript rather than in the exhibits. I think that's maybe one point of the confusion.

THE COURT: Okay. All right.

MS. PAAVOLA: And Mr. Simon does have the Exhibit Twenty-five which is one of the notes.

MR. SIMON: Yes, that was sent to the Supreme Court for direct appeal.

THE COURT: Okay. All right.

MR. MCDONALD: I can point you to, I believe it's 2925, page 2925 is the first note.

THE COURT: Okay. Hold for a second. 2925 ---

MR. MCDONALD: Oh, pardon me, that's the second one, the second question from the jury.

THE COURT: That's the second note.

MR. MCDONALD: And 2921 would be the first.

THE COURT: Okay.

MR. MCDONALD: And the third is the piece of paper that Mr. Simon just gave you.

THE COURT: All right. And is there anything, any response to Court's Exhibit Twenty-five?

MS. PAAVOLA: In response to that exhibit, the Judge gave an Allen charge.

THE COURT: Allen charge, okay.

All right. We'll stand in recess for a while. Let me go take a look at these. Okay?

*******OFF THE RECORD*******

(On the Record.)

THE COURT: Thank you very much. Please be seated. Mr. Simon, here is Court's Exhibit Number Twenty-five.

All right. I've looked back over the transcript and the charges, read that again. This is a motion for directed verdict. The question is whether or not any evidence has been provided. So, I'm gonna deny the motion for directed verdict as to allegations in 10 and 11(D), which is the failure to answer the question on what would happen if they could not reach an unanimous verdict and 10 and 11(C) on proceeding pro se and 10 and 11(A)(1) which is the ineffective assistance of counsel for not allowing the Defendant or preserving the

Defendant's right -- or the Applicant's right to proceed pro se. I'm granting the motion for directed verdict on allegations 10 and 11(A)(3) which is failure of the allegations that trial counsel did not properly cross examine -- conduct cross examination, 10 and 11(B)(1) regarding the social history of the applicant and the 10 and 11(E) which is the jury intimidation.

All right. Anything further?

MR. MABRY: Yes, sir, Judge. I just wanted to apologize, Judge, I had not seen the actual note in Twenty-five and I stated earlier he didn't know the count; he did when he -- before he gave the Allen charge and I apologize for that.

THE COURT: All right. That's fine.

MR. MABRY: It's not in the record but now it's in the note and it is in there.

THE COURT: That's fine.

All right. Anything further from the Applicant before we proceed?

MS. PAAVOLA: Nothing further, Your Honor.

THE COURT: Anything further from the Respondent before we proceed?

MR. SIMON: Nothing, Your Honor. And we are ready to proceed with ---

THE COURT: All right. You can call your first witness.

MR. SIMON: Your Honor, at this time, the Respondent

calls Vello Paavel.

VELLO PAAVEL, HAVING BEEN SWORN,

TESTIFIED AS FOLLOWS:

CLERK: Please state your name and spell your name for the Court.

MR. PAAVEL: All right.

THE COURT: We've got these exhibits up here -- oh, they're not exhibits, they were trial exhibits, do we need to leave them there. Are you getting ready to use them. I know ---

MR. SIMON: No.

THE COURT: --- Mr. Mabry brought them up here in the previous cross examination. All right.

All right, sir. Give us your name and spell your name, please.

MR. PAAVEL: Yes, sir. My name is Vello Paavel, spelled V-E-L-L-O P-A-A-V-E-L.

THE COURT: All right, Mr. Simon.

MR. SIMON: May it please the Court?

THE COURT: Yes, sir.

DIRECT EXAMINATION OF VELLO PAAVEL BY MR. SIMON:

Q: Good afternoon, Mr. Paavel, how are you doing?

A: Fine, sir.

Q: First I just want to ask you a little bit about your background. First, how are you currently employed?

A: I'm not. I'm retired.
Q: When did you retire?
A: I retired in June of 2010.
Q: Before you retired, where were you employed?
A: I worked for the South Carolina Law Enforcement Division which is commonly known is SLED.
Q: What did you do at SLED?
A: I was a firearm and toolmark examiner.
Q: How much time -- how long have you been a firearms and toolmarks examiner?
A: I started my employment at SLED in April of 1987. Now, initially, when I joined SLED, the firearms department was responsible for latent prints, the crime scene, firearms and toolmarks and other impression evidence. So, the first two years, my main responsibilities were latent prints, crime scenes and other impression evidence and limited firearms identification. Then in May of 1989, one of the firearms examiners actually went to Quantico for a class for literally a year and I took his place and then my responsibility was primarily firearm and toolmark examination and being trained for that. And then later that year, we opened up our new forensic laboratory and when we moved into that building, the firearms department was separate from the latent print/crime scene department and I stayed in that firearms department.
Q: Now, as a firearms and a toolmarks examiner, did you do

any training?

A: Yes, sir, I did.

Q: What was that training?

A: Well, first of all, based on my previous background, prior to law enforcement, I'd actually been in the firearms business. I worked at a local gun shop for several years where I bought, sold and repaired firearms. So, a lot of my training involving how firearms worked, their actual function was pretty well covered when I went to work at SLED. In my initial training program at SLED involving firearms and toolmarks, I worked under the supervision of court qualified firearm and toolmark examiners. I was questioned about the various books and literature I had to read. I had to assist the examiners while they were preparing cases. I did a whole lot of examination of test specimens or fired specimens just to see what these specimens looked like. That was part of my training. After I completed all this training, I was allowed to work cases on my own and during that timeframe, I was also able to attend some armorer's courses that had to do with functioning of firearms and how they work. Let's see, later on -- that was much later on, I was able to attend the FBI School of Specialized Techniques and Firearms and Toolmark Identification. I've attended a couple of the AFTE Annual Training Conferences regarding, again, firearms and toolmarks. But the bulk of my training in firearms and toolmarks was

literally a on-the-job training program administered by other qualified firearm and toolmark examiners.

Q: And while you were with SLED, were you a member of any professional organizations?

A: Yes, sir. I was a member of the Association of Firearm and Toolmark Examiners known as AFTE and I still am; I retain that membership. I also was a member of the International Association for Identification and I still retain my membership in that.

Q: Now, to the best of your recollection, how many cases have you testified in regarding your examination of firearms?

A: As I recall, the last time I had looked at my record of that, because I haven't looked at that and I don't really know where that record is at this time, I believe I've testified in at least 310 cases and testified as an expert in South Carolina General Sessions Court and in Federal Court.

MR. SIMON: Your Honor, at this time, we would offer Mr. Paavel as an expert in firearms and toolmarks examination.

THE COURT: Any challenges or questions?

MS. PAAVOLA: No objection, Your Honor.

THE COURT: All right. So qualified as an expert.

BY MR. SIMON:

Q: All right. Before -- again and going with some of the other questions I have for you, you mentioned that you were currently a member of the AFTE.

A: Correct.
Q: Who can be a member of the AFTE?
A: It is my understanding that AFTE members have to be in essence practicing or retired firearm and toolmark examiners.
Q: Is there any requirement that the -- to become a member you have to be a member of law enforcement?
A: No, not that I know of.
Q: Is there any requirement that you have to -- okay -- let me strike that, that last part of that question. Could you please share with the Court and what is the theory of identification when you're looking at firearms and toolmarks?
A: All right. Since I haven't really -- I've been out of the field for quite some time, if it's okay with you, I'm gonna refer to my notes here and it's better that I simply just read it if it's all right with you, sir, give it to you. Would that be suitable?
THE COURT: You just need to respond to the questions.
A: All right, sir. The theory of identification as it pertains to the comparison of toolmarks enables opinions of common origin to be made when the unique surface contours of two toolmarks are in sufficient agreement.
MS. PAAVOLA: Your Honor, we object to him reading whatever these notes are. I haven't been provided them and I don't know what he's referring to.
THE COURT: All right. Let's lay the foundation as to

what he's referring to.

A: I'm ---

BY MR. SIMON:

Q: Well, let me ask you, you have a notebook with you. What is that notebook?

A: These are copies of various studies, information that's available on the internet, some that's available through AFTE, some that's available through the scientific working group for firearms known as SWGGUN and many of these articles and these definitions can be found through internet sources.

Q: Now, are these notes things that you collected during your time with SLED?

A: Yes, I've collected these during my time at SLED and some of the newer ones, you know, I looked over the past week or so in preparation for this event.

MS. PAAVOLA: Your Honor, we haven't provided any discovery with regard to any expert witnesses in this case from the State.

THE COURT: Was it requested?

MS. PAAVOLA: Yes, sir.

THE COURT: All right. Show me where you requested it and let me see what y'all have produced to them in response to their discovery requests.

MR. SIMON: Your Honor, I can say for the record, we did not provide any notes from Mr. Paavel that he's using now

because we actually didn't have any notes from Mr. Paavel and I didn't realize he had a notebook of notes and so those were not provided to opposing counsel.

THE COURT: Okay. But I mean I thought you said -- did they notify you of this witness?

MS. PAAVOLA: Yes, Your Honor. I was aware of Mr. Paavel from his prior testimony. I'm just saying for discovery purposes, I don't know what he's referring to, they've never produced it to us. If he's reading from a specific article ---

A: Just -- I'll -- may I quote the article?

THE COURT: Just a minute.

A: Yes, sir.

THE COURT: All right. So, you requested them to identify expert witnesses, they identified this witness?

MS. PAAVOLA: Yes. And we requested that they produce anything their experts intended to rely upon.

THE COURT: Okay. And what did they submit in response to that question.

MS. PAAVOLA: Nothing.

THE COURT: All right. All right. Well, then you can -- I'm gonna allow you to cross -- I'm gonna allow you to question the witness but we're gonna have to -- I don't know that he's gonna be able to use that publication if they requested the publications and it wasn't produced to them.

All right?

MR. SIMON: Okay, Your Honor.

BY MR. SIMON:

Q: In examining firearms and toolmarks, what's the process you normally go through?

A: If we're talking about a firearm related toolmark such a bullet, something you may find on a bullet or a cartridge case, normally what you do is examine, say, a fired bullet. Generally examine it, look for any sort of trace material, measure the bullet, weigh the bullet, document how many lands and grooves it has or landing groove impressions, the direction of twist and you may have to even determine the dimensions of the rifling depending on the type of examination that you're doing. Once you've documented that then what you would do is either compare it to another evidence bullet or compare it to a test bullet that you found or actually that you have generated as a result of you firing a suspect firearm. Now when we go into actual comparison process, I use a comparison microscope which allows me to look at one specimen on one side or one stage and the second specimen on the second stage on the other side. And through the optical system, I can look at both of these items at the same time and I can see an image of one on the left and an image of one of the right. I can move the bullets back and forth sideways or back and forth and up and down for focus. I can also rotate

these bullets. And first what I would start looking for is the so-called class characteristics of these particular ---

Q: And what are class characteristics?

A: The class characteristics are features that are found on the bullet that are literally put there by the manufacturer and determined by the manufacturer of the particular gun barrel itself. Class characteristics would be things like the caliber or diameter of the bore, the number of lands and grooves in the barrel, the direction of the twist, the type of rifling and the dimensions of the rifling. Class characteristics may be found on many different bullets and many different guns. For instance, Smith & Wesson may make a firearm and make hundreds or thousands of them and they may have the same class characteristics. If the class -- go ahead, sir.

Q: If the class -- after you look at class characteristics, what else do you look at?

A: If I'm looking at these two bullets under the microscope and they share similar class characteristics, meaning they could've come from the same firearm or same type of firearm, then what I would do is look for individual characteristics. And individual characteristics are the random accidental markings that are found on the outside of the bullet in the rifling repressions as a result that a bullet being driven through the gun barrel and being engraved by the rifling.

Now, these individual characteristics are generated by the manufacturing process where the tool that is used to manufacture the barrel meaning either drilling the barrel or rifling the barrel will leave small markings on the inside of the barrel and these markings can actually transfer markings to the bullet as it passes through. Through the studies that have been done over the years regarding these markings and regarding these individual characteristics, firearms examiners are able to link the particular bullet to a particular gun barrel because of the characteristics that are found that are the individual identifying characteristics.

Q: Now, when you're looking to make an identification, how do you determine that there is sufficient agreement?

A: In the AFTE theory of identification, agreement is sufficient when it exceeds the agreement that you would expect to see in a known non-match and it is equal to what the agreement that you would normally see in a known match. It may sound a little confusing but in essence what I'm doing is I'm looking at the individual markings, the striated markings that are found on that particular bullet or in this case two bullets and then I'm looking for similarities in these striated markings and groups of striated markings. I simply don't look at a little scratch on one side and a scratch on another, I'm looking for groups or patterns of these markings and to see whether these markings are consecutive. And based

on my experience and training from looking at literally thousands and thousands of comparisons, I can generally tell when there's a sufficient quantity and quality of markings that are present to render a positive conclusion.

Q: Now, as an examiner, do you do any testing in terms of determining -- do you do any proficiency testing?

A: Yes, sir. I believe it was -- in the early 90s, we started -- I know I took some proficiency tests starting in the early 1990s and surely when our laboratory became accredited through ASCLD, the American Society of Crime Laboratory Directors, which I believe was in 1994, we've had proficiency testing every since then, every year. If I recall in the early years, we took at least two per year. We normally were taking a firearm related proficiency test and a toolmark related proficiency test and as I recall what we did is on alternate years we took one on bullets and one on cartridge cases. So, in one year, I would take a proficiency test on bullets and a toolmark test; the next year, I would have a proficiency test on cartridge cases and toolmarks; the next year it would be back to bullets and toolmarks and so on. I believe in 2010, the year that I leave -- left, it may've been 2009, I don't recall for sure, we also started to take proficiency tests in serial number restoration. So, there were three tests that usually were administered or would be administered and there may be more now. I don't know for

certain whether they were taking serial number restoration test, a firearm related test and a toolmark related test.

Q: And I apologize for what I -- could you just explain for the Court what exactly is proficiency testing?

A: The way our proficiency tests are done, we buy or the laboratory buys premade proficiency test materials from a company called CTS, Collaborative Testing Services. And what that company does is generate tests by -- for instance if you're looking at a bullet test, they would take a firearm, shoot test specimens with it, shoot additional specimens that would be used as unknowns and they would normally take multiple firearms and do it so when you had a test, you normally had tests from two or three firearms and you may have unknowns, two or three unknowns, and then you had to correctly link the unknowns to the knowns.

Q: And to your recollection, have you failed any proficiency tests?

A: No, I've never been notified that I failed any of the proficiency tests.

Q: Now, while you were at SLED and you were doing examinations, was there any -- was there any review of your determinations of -- of your examinations?

A: Yes. Before we became an accredited agency, we actually had a review process where your case notes and conclusions were normally reviewed by another examiner especially if you

were a young examiner or new examiner, you got a senior examiner to look over your notes. When we became an accredited agency, we started to use a microverification and peer review and admin review. So, what that meant was if I did a comparison under microscope and I rendered a conclusion about these two specimens, I would have to get another qualified examiner to come and microscopically compare and render his or her conclusion to see whether I was correct in mine and see whether we came to the same agreement and that had to be done prior to the issuance of any sort of results.

Q: Now, when you -- in that review process, does the second examiner know what the results of the first examiner's determination?

A: Sometimes they might, sometimes they don't. I know that in recent years, we leaned toward you did not tell anybody. It was literally blind to that person. You literally said come look at this and tell me what you got.

Q: Now, you did the examination in this particular case, correct?

A: Correct.

Q: If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

Q: I am going to be handing you what was marked as Petitioner's Exhibit Four.

A: That's the laboratory case file.

Q: If you could just please take a look at that and ---
A: Okay. Yes, sir, I recognize these items in this exhibit.
Q: Okay. Is that a copy of your case file on this case?
A: Yes, sir. It's a copy of the laboratory case file that was generated in reference to this case. The material that's in here with the exception of the enlargements of some of these photographs is the same that I have here.
Q: Now, what were you asked to examine in this case?
A: Bear with me one moment. I received a -- you want specific or just general? I received a Walther Model PPKS pistol that was of 380 auto caliber with a specific serial number. It had a magazine which contained seven unfired .380 auto caliber cartridges. I received a Jennings Bryco model .38 pistol and .380 auto caliber with serial number so-and-so, with a magazine containing five unfired .380 auto caliber cartridges and eighteen additional unfired .380 auto caliber cartridges and then I received one fired bullet or projectile in a container that was marked in part Number Eight. Those are the items that I examined.
Q: Okay. Can you walk us through your examination relating to the Walther PPK?
A: Yes, sir. As with most handguns or other firearms, when I receive that type of evidence, I'm going to document the condition of the firearm, what I found on it, was it loaded, was the magazine in the gun, is there any obvious trace

material on the firearm. I'm going to make sure that the information on the firearm is consistent with the information that's on the document that was sent to me, trying to make sure all the evidence is there as reported or as submitted or indicated on the form. Then I will take the firearm again after doing all the documentation, taking some photographs, I will take the firearm, mark it usually with the item number, case number and my initials. Then I will test fire the firearm to collect the test specimens. After completing that sort of -- all this examination, I normally do a trigger pull weight test on it to determine what the trigger pull weight of the firearm is and whether or not it is normal. Then I will use the test for comparison purposes. Then when I'm finished, this evidence will be normally repackaged and prepared to be returned to the contributor.

Q: Now, in terms of the Walther PPK, what determination did you make in relation to that weapon?

A: The PPK was in proper working order. I found no obvious defects with it. It had a little bit of surface rust on the firearm. It was a blued-steel firearm which will rust if it's not kept oiled. The magazine that was with it held a total of seven cartridges and there were seven unfired cartridges in that magazine when I received it. The trigger pull weight was normal for this type of firearm. That's the -- I see in my notes, I noted here for the condition of the bore or the

inside of the barrel that there was dust, lint and oil in the bore. And those are -- it looks like the extent of the examinations of that particular firearm.

Q: Okay. Did you do any comparisons of any projectiles from that firearm to the one you were provided?

A: Yes, sir. The test specimens that were generated from firing the Walther were compared to the item -- my item five bullet which is in the container marked in part Number Eight.

Q: And what were your findings with that?

A: I concluded that this particular bullet was not fired by the Walther pistol.

Q: Okay. Now, did you also examine another weapon?

A: Yes, sir. The next firearm in numerical order was the Jennings Bryco model .38 pistol. I literally did the same to that, examined it, examined it for trace material, photographed it, wrote down the serial number, made sure ultimately it was in proper working order, tested fired it, checked the capacity of the magazine, did the trigger pull weight and was able to obtain test specimens for comparison purposes. I noted on this particular firearm, the bore or inside of the barrel was filed. I have question mark that says dirt, with a question mark, at muzzle. There appeared to be some dirt or something at the muzzle of the firearm. The magazine at this particular pistol held a total of six cartridges and there were five cartridges in the magazine and

there were an additional eighteen cartridges in an envelope with the gun.

Q: And what was the result of your examination?

A: The microscopic comparison of the evidence specimen which is my item five or also from the box marked part Number Eight, I concluded that this particular bullet was fired by this particular Jennings Bryco pistol.

Q: Now, when did you do this examination?

A: This examination, let's see, it looks like I started this particular examination based on when I opened the packages on March the 28th of 2006 and finished the actual examinations and sealed the container on March the 29th of '06, the next day.

Q: I beg the Court's indulgence for just one second.

THE COURT: All right.

Q: No further questions at this time, Mr. Paavel, please answer any questions that opposing counsel may have.

A: Yes, sir.

CROSS EXAMINATION OF VELLO PAAVEL BY MS. PAAVOLA:

Q: Good afternoon, Mr. Paavel.

A: Paavel.

Q: Paavel, I'm sorry. I'm Emily Paavola, spelled very much like yours.

A: Yes.

Q: And I represent Mr. Winkler.

A: Yes, ma'am.
Q: All right. Mr. ---
A: Paavel.
Q: Paavel, thank you, you testified at trial in this case that when you first receive an assignment, the first thing you do is look over the case file.
A: That's correct.
Q: And does the case file typically include?
A: A case file at SLED if I'm looking at -- excluding the envelope, obviously ---
Q: Sure.
A: The case file usually has some type of log-in sheet. That is something that the submitter of the evidence will fill out and it lists on it the evidence that's being submitted and what type of requests are being asked and there will be other types of information as to what is the agency submitting it, their information, address, phone number, who is the subject, who is the victim, the type of crime, the agency case number, offense date and various other information like that. But the most important thing for us as the examiners is what evidence is being submitted and what type of request do they want.
Q: Okay. Does the file include the SLED Laboratory Forensic Services Request Form?
A: Are you referring to SLED Laboratory Forensic Services Request, this particular piece of paper?

Q: Yes, sir. And if -- not that form that you're looking at there but if you look at Exhibit Four, I'm not sure if they're in the same order, it's roughly page twenty-nine of that exhibit.

A: This is not numbered. Is -- are you talking about the handwritten form?

Q: Yes, sir.

A: Okay. All right. Yes, I see it.

Q: Okay. Would that be something that you would review in your initial review?

A: At the time that -- this particular case is one of the first cases that I believe we worked in our new laboratory management -- information management system, which is called the BEAST. I don't recall for certain whether or not I would actually see this. Normally, what would happen is this would go to the ladies who work in the log-in section, in the evidence section and then what they do is they type this information into the BEAST computer and then I can look at this electronic generated form which I was asking which is -- one, two -- about page six, actually, page one of mine. If you look on the bottom, it'll say P1BP. That's what I get to see normally. And at sometime later on, I may have the opportunity to actually see this particular handwritten form but, during the examination, I may or may not see this handwritten one.

Q: Okay. Do you recall in this particular case whether you saw this form before you did your testing?
A: Let me look at one thing here. I do not see this particular form with my page number or initials on it.
Q: Okay.
A: And normally, if I had that form when I was generating my case file, I would put that into the case file and mark it and give it a page number. So based on that information, I don't think I saw it.
Q: Okay. Thank you. Now, along with the case file, you've already testified you received two handguns, a Walther PPK pistol.
A: That's right.
Q: And a Jennings Bryco.
A: Correct.
Q: And according to the chain of custody reports in your file, you already testified that you received all of that evidence on March 28th, 2006 or you opened it ---
A: No, I opened it. If I look at the chain, I may've received it on a date obviously prior to that.
Q: I believe it's the same date, but that's -- that doesn't matter. And when you opened that evidence to begin the testing, that was obviously after Mr. Winkler's arrest on March 20th, 2006?
A: Yes, ma'am.

Q: And it was approximately twenty-two days after the murder at issue in this case occurred on March 6th, 2006.
A: It -- was it March 6th or March 3rd? The only reason -- I see March 3rd on one document.
Q: Okay, well regardless, that would be after.
A: It was literally three weeks after, yes.
Q: Okay. According to your file, you issued a final report in this case on March 29th, the day after you opened the evidence.
A: That is correct.
Q: And I think you're already explained to us that in order to reach the conclusions stated in your final report you test fired both weapons four times.
A: I don't think I talked about the number but I did say I did test fire. Bear with me one moment, normally, I shoot three or four. Four were fired out of the Bryco and four were fired out of the Walther.
Q: Yes. And then with each weapon, if I heard you correctly, you received some unfired cartridges as well; is that right?
A: That is correct.
Q: And when you did the four test fires for each weapon, did you use the unfired cartridges that you received with those weapons?
A: No, ma'am.

Q: Where did you get the ammunition that you used for the test firing?
A: That comes out of the SLED laboratory ammunition collection that we have that was located in the -- on the second floor in the firearms department. The firearms department maintains a reference collection of ammunition for test purposes and what I did was find some Remington -- same type and brand of ammunition as was submitted to me.
Q: All right. And you testified at trial that when you conduct the test firing, you fire the test bullets, if that's the right term, into a tank of water; is that right?
A: Yes. Let me explain that briefly. When I refer to a tank of water -- in the SLED laboratory, our bullet recovery tank is approximately three feet in diameter, I think it's -- if I remember correctly it's about thirty-nine inches in diameter, inside diameter. The mouth of it is on the second floor. The bottom of the tank is on the bottom of the first floor. So, this huge tank is about fifteen, sixteen-feet long, goes through the floor of the second floor and literally rests on the floor of the first floor. It has a large stainless steel lid on top of it. In essence, what I do is close the lid. The lid has a hole in the top of it about six inches in diameter and I will take the firearm and shoot down into this tank of water. There's probably four to six hundred gallons of water in this tank and there's roughly ten to

twelve feet of water that's used to slow that bullet down. And so I shoot into the tank, the bullet strikes the water, the water slows the bullet down and does not add any extra marks to it because it is water. It has a filtration system on it that keeps any sort of trash out of it. Then the bottom of the tank, instead of being cylindrical all the way a thirty-nine inch diameter, it tapers down like a cone into a smaller diameter piece of pipe. Inside that piece of pipe sits a stainless steel basket. On the end of this basket is a chain that comes up to the mouth of the tank. So, in essence, what I do is when I shoot, the water slows the bullet down, the bullet literally falls down onto this conical portion and rolls into the cup. And after I shoot the specified number of test specimens, I pull on the chain and pull the cup up and the bullets will be in the cup.

Q: Okay. Thank you. And the reason that you do that way is so that the test fire bullets don't get damaged?

A: That's correct. As I said, the water won't add any additional markings to the outside of the bullet.

Q: Right. And you don't want the bullet to be damaged because you want the markings to be clearly visible?

A: Right. I don't want to damage any of the markings that were left on the bullet as a result of the bullet traveling down the gun barrel.

Q: Yeah. And you wouldn't want them to get distorted or

anything like that?
A: That's correct.
Q: Now the projectile that you received from the crime scene to compare to these test fired weapons, it was damaged, right?
A: Yes. It displayed impact damage. This particular bullet was what was known as a full metal jacket round nose bullet which means it has an external copper jacket or covering and the inside or core of the bullet is made out of lead. And let me refer to the photograph to make sure I'm referring to it correctly. The nose portion of the bullet and that portion of the bullet which is literally between the nose and the base and the rifling area was damaged on one side and one of the impressions, one or two of the impressions on one side of the bullet were damaged.
Q: Okay. And do you agree that an accurate identification is more difficult with you're dealing with a damaged bullet?
A: Depending on the degree of damage, yes, that's correct.
Q: And in fact, your SLED protocols caution you specifically about that issue?
A: I don't recall exactly that particular term but that is something that an examiner must take into account when doing a comparison is to make sure that you have sufficiently large area of markings to examine.
Q: All right. And now the Jennings Bryco and the Walther that you received, you testified they're the same basic model

and type of gun?
A: Not the same basic model. They're same basic type of gun in the sense that they are both semiautomatic pistols which means you have to load a magazine, place the magazine into the firearm, pull back on the slide, let the slide go forward to load the gun barrel, then you can shoot it by pulling the trigger. Then each time you pull the trigger and let it go, let the trigger go and then pull it again, the gun will fire. It's -- it literally automatically loads itself as a result of the functioning of the firearm as opposed to a revolver where you have a cylinder that has to be loaded with cartridges and then as you pull the trigger the cylinder turns.
Q: Okay. And they both had the same number of lands and grooves?
A: That's correct.
Q: Right. And they also have the same direction of twist?
A: Correct.
Q: In the right direction?
A: Correct.
Q: And they also both have conventional rifling; is that right?
A: Correct.
Q: As opposed to some less common form of rifling.
A: Which is polygonal or polygonal some people may refer to it.

Q: Right. And there are a few brands, like a Glock for example that has a polygonal rifling.
A: Yes, and that is currently the one that is usually encountered because of the prevalence of the Glock firearms used in police services but the Glock -- most of the Glock barrels are polygonally rifled.
Q: Okay. But the conventional rifling is the most common form of rifling or ---
A: Based -- if you look throughout history, yes. I would say that conventional rifling is more common if you start looking at firearms overall than polygonal rifling.
Q: Okay. So the -- both of the guns that you analyzed in this case, they have the same class characteristics?
A: Yes, they had similar class characteristics in the sense that they had six lands and grooves or right twists. I did not -- I normally do not indicate what the dimensions of the rifling are especially if I had to make an identification of one of the firearms. There may've been some differences in the rifling dimensions itself but there were six lands and grooves, right twists and conventional rifling.
Q: What do you mean by the dimensions of the rifling?
A: When I -- when I refer to the dimensions of the rifling, I'm referring to the dimensions of the land impressions and subsequently the dimension of the land itself of the barrel. And to explain that, when the barrel is manufactured, in

essence, you have a barrel blank and then some type of hole is drilled through it, that's so you can get some sort of rifling tool to get through this barrel blank. And what that rifling tool does rather it removes metal or whether it displaces metal by swaging the metal, it cuts or forms grooves in the inside of the barrel. Now, the portions of the barrel between these grooves will now be raised above the grooves and those are called the lands. So when the bullet goes through the barrel, the lands in particular will mark the bullet and leave land impressions. The grooves normally will too unless you have a grossly undersized bullet. So, looking at the dimensions of the lands and the grooves, I would measure how wide is a land and how wide is a groove and normally I do that in cases when I don't have a firearm and I'm trying to determine potentially what type of firearm could've fired a bullet based on the general rifling characteristics, meaning the dimensions of the lands and grooves, the number of lands and grooves and direction of twist.

Q: So, in this case, you did not measure the dimensions of the lands and grooves?

A: No, ma'am. Normally I do not. I don't think any of the other examiners, there may be one examiner that does measure, I think he was a retired FBI examiner and that's how he did it at the FBI. Our protocols as I recall did not require measuring lands and grooves when you're doing a comparison and

it results in an identification.
Q: Why not?
A: Mainly because the information on the dimensions would normally be used for determination of general character -- rifling characteristics to determine a source or potential source for that bullet if you don't have the firearm. If I'm doing a comparison and the land and groove dimensions are similar and they're close enough that I can go to the next step and start looking at the individual characteristics, we normally would not measure the land and groove dimensions.
Q: If you don't measure them, how do you know they're the same?
A: Looking at the microscope. When you're using the comparison microscope, you have one bullet on one side and one bullet on the other side, and as long as you have the objectives on the same power, you know, ten power, twenty power or whatever power you're using at the time, you can clearly see what size these lands and these grooves are, the dimensions of the lands and grooves.
Q: Okay. So, you look at it and you say this looks the same to me and then you don't write down ---
A: In dimension, that's correct.
Q: Okay. And if you don't write down the dimensions to verify that you believe they were the same, would anybody else who is later reviewing your notes have any way to determine if

you're right about that?
A: They would look at it because they would be also microscopically comparing it. They would probably be looking at on my microscope where I did the actually comparison so that person will be looking through the same scope, looking at the evidence in the test or evidence and evidence or test and test, and make a determination as to whether or not, first of all, the class characteristics are the same and land and groove dimensions are one of the class characteristics you'd be looking at. So if they look the same in the scope for our purposes or our protocols, we did not have to measure those dimensions.
Q: Okay, so, but that would be if someone is in your lab looking at the bullets that you fired?
A: Correct.
Q: But if all you produce is the written documentation, outside of your lab no one else would have any way of verifying that you're correct that the lands and grooves are the same width.
A: If another qualified examiner would come behind me and look at the case file, they would see that I had two photographs of the comparison and they can look and see if the land and groove dimension was there.
Q: Okay. Let's talk about the photographs.
A: Yes, ma'am.

Q: If you could turn to the back of the exhibit where the color photographs begin.
A: The enlargements, yes, ma'am.
Q: There are two photographs there; is that right? I'll give you a second to get there.
A: Let me get there. Yes.
Q: Right after the photo of the box.
A: Yeah. These are enlargements of or appear to be -- let me make sure. I see no reason why they aren't. Ma'am, what I am doing is simply referring to my copies that I have just to make sure.
Q: I understand.
A: I'm sorry. Yes, ma'am. These are further enlargements of the photographs that I had.
Q: Now, these are two photographs, right, are they of different bullets?
A: Yes, ma'am. Let's look at the first one. Are they -- let's see which one we're looking at. Yes, that appears to be the same one I'm looking at right now. I was just making sure we got the same one. Yes, ma'am. All right. What you see in this photograph and since it doesn't have the markings on the bottom of it since the enlargement didn't bring these out -- let me pull this out of here. This is an enlargement of a photograph that I took of an evidence bullet, this particular evidence bullet in this case and one of the test bullets that

I test fired out of the Bryco pistol.
Q: Okay. Which test fired bullet is it.
A: That I could not tell you without going back and looking at that. At the time that we did this particular examination, our protocols did not require indicating which test bullet it did. It is, I think, if I remember correctly, we were in the process before our I left changing that to indicate which test bullet it would be. But at that time, our protocol did not require telling you which specific test bullet out of the box of the tests that we had for that particular gun it was. This would be one of the test bullets.
Q: Why wouldn't you photograph all of the test bullets?
A: Well, normally what we do in a comparison and I believe that's in our protocol and the older protocols and the newer protocols, one of the things that you would do in the comparison process is after you do the test firing and you've got your test specimens and before you start a comparison of the unknown specimen to the test, you have to compare the tests to each other and you're doing that to make sure, first of all, that you can identify the test to each other, to make sure that the bullets are behaving consistently. There are some firearms that simply don't mark consistently. I mean, they don't mark repetitively. If you have a situation like that, you may have some difficulty in rendering a positive conclusion even if you can identify it to one of the tests or

think you have.
Q: Did you have a situation like that in this case?
A: No, ma'am. These particular ones apparently did fine. If I had a situation like that, I normally note it in my case file on the page where it says test fired. It says yes, no or how many I did. If it marked poorly or I had a problem with it, one, I probably would've shot more tests. If you have a situation like that a conscientious examiner would probably shoot several more tests to see if it consistently does it or if it's something that could've been in the barrel of the gun that was creating the problem and if the shooting remove that material. In this particular case, apparently, I had no problem with that so ---
Q: Well, how do we know if you didn't photograph all of the test bullets?
A: We don't have a protocol or requirement to photograph tests versus tests. We have in the protocol a strong recommendation to photograph identifications and that was done in this particular case.
Q: Okay. I understand that you're saying your protocol didn't require it but do you agree that it would be a lot easier to later verify whether you're right or not if you had photographed all the evidence that you had in the case?
A: No, ma'am, because a qualified examiner, won't look at a photograph and render a conclusion from the photograph.

Another examiner coming behind me would look at this and say I can see why you rendered the conclusion. However, in order for another examiner to come behind me and come to the same conclusion, that examiner has to microscopically compare the evidence to the test to verify that. No examiner that I know of will render a positive conclusion from looking at a photograph.

Q: I understand. And again that's if someone is in your lab and they can look at exactly what you've just done.

A: Or anybody from any other laboratory. If I were to take this case file and send it to another qualified laboratory, another qualified examiner, they could look at this and say yes, I can see why -- why he made this decision and rendered this conclusion. However, in the absence of examining the evidence itself, I won't agree with that conclusion necessarily because I didn't -- he or she did not examine the evidence.

Q: Okay. Let's talk about the standard you would use to make the interpretation once you're looking at the items under the microscope.

A: Yes, ma'am.

Q: If I got this right, you testified on direct that in order to call it a match ---

A: Or to identify to a particular ---

Q: --- or identification ---

A: Right.
Q: --- you have to determine whether there's sufficient agreement?
A: Correct.
Q: And you're definition of sufficient agreement is there's sufficient agreement when the similarity exceeds a non-match.
A: I may've said that backwards. What you have is, in my training and experience, what examiners do is they look at test bullets and test cartridge cases all the time. You're comparing test specimens to each other. And in doing so, what an examiner does after a while is you get to a point where you build up an idea of what is required or how much information is required in a comparison to determine whether it is an identification.
Q: How much information is required?
A: Currently, the way the pattern-matching type of personnel do, like we do, there is no numerical requirement. There's not a number where I look at it and count them and say specifically, okay, it has to be twenty-five striated markings or anything like that. The criteria that is used is established literally by each examiner based on their experience in looking at matches and looking at non-matches.
Q: Based on your experience?
A: Correct.
Q: Do you agree that that standard is subjective in nature?

A: Yes. The actual decision making and, in fact, in the active theory of identification, which I didn't finish reading earlier, I think the last portion of that theory in essence says that currently the decision making process is a subjective examination or a subjective conclusion based on objective examination of the features or characteristics that are found here. I'm doing an examination for class characteristics, I'm doing an examination for individual characteristics, I'm looking for similarities, I'm looking for differences. And similarities and differences that can be, you know, shown in some sort of display or shown in notes but the actual final decision currently is subjective in nature. I have to base that on what I've seen in the past and what I know.

Q: All right. And based on your subjective opinion, you look at it and you try to determine if it meets this standard, which according to SLED protocol is sufficient agreement. What does that mean?

A: Well, in the AFTE, again, it has to do with the fact that what you've seen in the past, based on looking at bullets and cartridge cases -- or let's talk about just bullets, since we're talking bullets -- in looking at bullet specimens in the past that you know were fired by a particular firearm and seeing how much agreement you have there and then how much disagreement and agreement you may see in bullets that were

fired from different firearms.
Q: Okay. And another way to say that is sufficient agreement is when you think there's enough agreement to call it a match?
A: Right.
Q: Do you agree that that standard is inherently vague?
A: I think the proper -- I think it's subjective in nature.
Q: You don't find it circular in any way?
A: It could be but again, since it is based on an objective observation, it's not simply something that I pull out of my mind and say, okay, this is it. I'm looking at these markings that are present. I look for the groups of striated markings, I look for consecutive markings that are present and again if I see what I consider to be substantial agreement or significant agreement based on my experience and training, I will, you know, render a conclusion as a positive or have an identification.
Q: But there's no standard about how many marks need to be the same, right?
A: No, there isn't a standard that's accepted by anybody or by everybody rather. There are some techniques that are used by some examiners where they count what are known as consecutive matching striations.
Q: Right, but you didn't use that method in this case?
A: I don't use that specific method as indicated by the

practitioners of that but everybody who does a comparison who is doing a -- even the pattern match personnel like I -- like I am, I'm actually doing an examination and tabulating of these consecutive markings that are present but I simply don't record or indicate those as some practitioners of the consecutive matching striation theory use or practice use.

Q: So, you do count them but you just don't record it?

A: I do look at them and count and see how much is there and particularly if there are groups of what I consider to be matching striated or consecutive striated markings.

Q: When you counted, how many do you feel need to be the same in order to call it a match?

A: Again, I don't necessarily use a numerical criteria. I'm looking at the totality of the comparison and the markings that are there. And again, I don't want to sound like a broken record, but I have to rely on what I've seen in the past.

Q: And so do all the other examiners in your field, right?

A: I don't know that all do. I know that the examiners when I were there, most of them or virtually all of them were pattern -- used pattern matching fairly well exclusively.

Q: And wouldn't it be possible although that some other examiner based on his different experience from your personal experience would have some different subject of standard in his head about what might be a match or not a match?

A: Yes, another examiner may potentially have another threshold based on his or her experience and training and methodology.

Q: Now, Mr. Paavel, do you agree that it is improper by the standards in your field to testify that your findings are absolutely certain?

A: I don't think that we can testify to the absolute certainty of this. I don't think I testified to that previously that this was -- that this bullet was fired by this particular firearm to the exclusion of all other firearms. I think what ---

Q: Correct. So, you agree that it would be improper to testify that this gun and no other gun fired this particular bullet?

A: I would not particularly say that. I would say that the likelihood of there being another firearm that marked a bullet with this much agreement would be so remote that it's virtually impossible.

Q: Would it be improper to tell the jury that your conclusion in that regard is 100 percent certain?

A: Since there is no -- since I don't use a statistical certainty to it, I cannot say that it is 100 percent certain. I'm saying that in my opinion, this particular bullet, which I'm referring to this bullet -- let me just briefly say, when I'm showing you this picture on the left-hand side, you're

seeing the evidence bullet; on the right-hand side, you're seeing the test bullet. I'm saying that this particular bullet was fired by this particular firearm and the likelihood of there being another firearm that could've made these particular markings is so remote that I consider it to be a near impossibility. So, that's not 100 percent.

Q: Do you think it would likewise be improper to tell a jury that this gun absolutely fired this bullet and there no question about that?

A: In my opinion, based on what I see here, I believe that this particular bullet was fired by this particular gun. Based on the current ---

Q: My question, Mr. Paavel, is do you think it would be improper to tell the jury that this gun absolutely fired this bullet and there is no question about that?

A: That's probably not a term or terminology that I would use. So, based on what you're saying, I would not say that so that would be ---

Q: All right. And if the record reflects that you did use that terminology, you would consider that improper?

A: I don't -- you're saying -- I would think that I did not sure this particular terminology. I may have used that terminology but I ---

Q: Okay. Let's talk about your examination of the Walther PPK.

A: Yes, ma'am.
Q: You conducted your test firing in the same procedure that you've outlined for us now a couple of times.
A: Right.
Q: And you concluded that the projectile from the crime scene was not fired by this gun; is that right?
A: That's correct.
Q: Now, for the Jennings, you reached the reverse conclusion. You determined that the projectile was fired from that gun?
A: Correct.
Q: And when you made that determination about the Jennings Bryco, you've documented that on this bullet worksheet in your file; is that right? Give me second and I'll give you the page number.
A: Yes, ma'am, I think I know, yes -- oh, yes, I know. I said that Item 5, which is that particular bullet was fired by the Item 4 Bryco pistol based on matching individual identifying characteristics found in the land and/or groove markings.
Q: Correct. Now my question is, when you determined that the Walther did not fire the bullet from the crime scene, did you document that in the same way that you documented your conclusion about the Bryco on bullet projectile worksheet?
A: No. At that time, normally I would not especially if I

found that the particular -- that one bullet was fired by this particular firearm, I would not necessarily document on this sheet that that bullet was not fired by the Walther.

Q: Why not?

A: Because I'm saying that the bullet was fired by the Bryco.

Q: Is there any reference in your file to your testing of the Walther that resulted in the exclusion of the projectile not being fired from the Walther?

A: No, there's no specific documentation indicating that the land -- like a photograph or anything like that ---

Q: Right.

A: --- with a negative or an elimination.

Q: Maybe verification ---

A: There would not be at that time. At that time, I don't believe we were doing any photographs or notes of that specificity for an elimination. I know that later on and it may be done now, I think some of the examiners now are taking photographs of eliminations but at that time, I wasn't doing it.

Q: And not just photographs, but do you -- have you written anywhere in your notes, in the case file, any verification of how you reached the conclusion that the Walther was excluded?

A: No, I don't. And in particular, probably the main reason I did not is because I reached a conclusion that the

particular bullet was fired by the Bryco.
Q: All right. Now, you've already testified that the Walther and the Bryco had the same class characteristics.
A: Same general class characteristics. Again, I did not mention or measure the Walther rifling characteristics.
Q: Right, we don't know because it's not in the documents.
A: Correct.
Q: And you also testified at trial that you've previously attended an FBI school on specialized techniques and firearms identification.
A: Right.
Q: Do you remember that testimony?
A: Yes, yes, ma'am.
Q: Are you aware that the FBI's policy is that it is improper to exclude a suspect firearm on the basis of individual characteristics?
A: It is if they -- if that's the only firearm they have. I'm quite familiar with that. In fact, one of the examiners who is -- was a retired examiner from the FBI, when he came to work for us, we discussed that at length because the FBI policy was if a bullet and a test -- evidence specimen and a test bullet had the same rifling characteristics they normally would not eliminate that because of the general characteristic similarities. However, in this particular case, since I did make an identification on one of these, the fact that I, you

know, I'm making an elimination based on the fact that I make an identification on one.

Q: So, the Walther is excluded because you think the Jennings is included?

A: That's correct.

Q: And do you think that's consistent with what the FBI policy is?

A: I think the FBI policy is they did not want to -- well, actually, I don't know for certain what the root of it was but I'm certain they did that because they were concerned about the possibility of potentially having changes in the suspect firearm barrel between the time that the bullet was fired and the time that the firearm was recovered and there may've been slight changes in that where it may be the correct firearm but something has happened to the firearm barrel to change the characteristics or individual characteristics in the particular gun so they were hesitate to do any sort of elimination based on general characteristics alone if they were similar.

Q: Are you aware that virtually every other reputable forensic lab in this country would say that the right conclusion in these circumstances is an inconclusive result?

A: For ---

Q: For the Walther.

A: For the Walther? No, I don't think it would

inconclusive. I ---
Q: So, you don't think that when the class characteristics are the same, you should not make an absolute exclusion, you should at a minimum reach an inconclusive result?
A: No, what you do is and in this case I would've done that and did so, I actually physically compared the test bullets from both firearms. I compared a test to -- from the Walther and compared a test from the Bryco. If I can't identify the Walther pistol, it's a negative, it -- the bullet was not fired by that gun. Examination of the Bryco indicated or my conclusion was the bullet was fired by the Bryco. So, it's not an inconclusive in my opinion on the Walther. I could -- the bullet was not fired by the Walther and there wasn't any information that would say that it was.
Q: You testified that you're a member of AFTE, or the A-F-T-E?
A: Yes, ma'am, I maintain my membership, correct.
Q: Are you aware that they also publish the AFTE Journal?
A: Yes, I get the journal.
Q: Are you aware of any publications in the AFTE Journal also stating that an exclusion in these circumstances is not an appropriate exclusion -- conclusion for a firearms and toolmark examiner to make?
A: May I see which article you're referring to?
Q: I don't have any articles. I'm asking you are you

familiar with any ---

A: I don't recall that specifically, no.

Q: Are you familiar with the concept of subclass characteristics?

A: Yes, ma'am.

Q: Can you tell us what those are?

A: Subclass characteristics are a set of characteristics somewhat between class characteristics and individual characteristics. Again, we talked about -- I talked about class characteristics in the sense that these are general characteristics that can be found in a very large set of specimens. For instance, .38 caliber five right with a certain dimension of rifling. There could be tens of thousandths of firearms that have that. There will be individual characteristics which I talked about which are individual characteristics or markings that are found in a specific firearm. In between, there are subclass characteristics which may be found on a smaller set of firearms that were produced by the same tool. You can have a situation depending on the type of tool that was used to rifle the barrel where markings might be carried over and these are usually gross larger markings from one barrel to another as a result of some sort of large defect or potentially even a small defect that's found on this rifling tool. As a result of that, you may have more than one barrel that has these

subclass markings.
Q: Do you agree that the presence of subclass characteristics would make it more difficult to make an accurate identification in any given case?
A: I agree that subclass characteristics can make an identification more difficult but a conscientious examiner and someone who is trained and experienced and who is the familiar with the manufacturing techniques and rifling techniques should be aware of the possibility of subclass characteristics and be able to look at the subclass characteristics if they are present and be able to distinguish those between -- and the individual characteristics.
Q: Right. And your SLED policies also note that that's an issue that you should be aware of and take into consideration?
A: I don't know whether it specifically does. I know it talks about potential individual characteristics with eliminations. I know that it refers to documents that -- about subclass characteristics, they are found in the AFTE Journal, that's one of the references and it's part of the training. During training the examiners, the senior examiners will explain and show to the examiners, the other examiners -- I was shown this -- about subclass characteristics and what to do about them and recognize the fact that they are there.
Q: Do you agree that SLED policy also notes that the existence of subclass characteristics can be particularly

problematic when you're dealing with a damaged specimen as you were in this case?

A: That can be -- I don't know that it's specifically in SLED policy or protocol. However, that can be a potential problem if you have a bullet in which the bearing surface, meaning that area where the land and groove impressions are found, if that area is badly damaged and areas where the individual characteristics may be located are badly damaged and then you are looking at areas where subclass characteristics are found. If you're not careful, if you're not conscientious, that can be a problem.

Q: Do you agree that subclass characteristics are more likely to occur in weapons that are mass manufactured?

A: It depends on the method of manufacture or method of rifling.

Q: All right. In this case, was the Jennings Bryco a very cheaply made gun?

A: I consider this -- if I remember correctly, I would consider this to be a lower quality firearm than the Walther.

Q: And in fact, you had some articles in your file about the manufacturing of the Jennings Bryco that indicated it is a low cost weapon because it is mass manufactured?

A: Yes, but the Walther is a mass manufactured firearm also. You don't have a guy over there just making one at a time, you have multiple parts being made by machinery and the parts are

being assembled by people, so ---
Q: That's right. They were actually both mass manufactured handguns.
A: Yes, I mean, using that term that you have mass manufactured, most firearms that you find nowadays are, quote, mass manufactured. They're not made one a time from a block of steel into a firearm.
Q: But in particular, between the two guns, the Jennings Bryco was the lower quality, more cheaply made weapon?
A: It's a lower quality firearm in the way that it is put together, in particular the safety and a few other items on it. It is not the same quality as the Walther.
Q: Now, when you received the Walther, you testified at trial that it had some lint in the barrel; do you recall that?
A: Yes, ma'am. And I think I mentioned that earlier when I was asked about what -- about documentation -- let's see the Walther -- yes, I have on here the bore condition. And the bore is the inside of the barrel where the lands and grooves are found. I have on here dust, lint, oil, -- which in my observation, I noticed these items in the barrel.
Q: All right. And you also testified that you concluded that the Walther had not been fired since it was last cleaned?
A: Well, I mean, that's an observation that I would make. If it has a oily barrel, that indicate -- and it has dust and lint in the barrel, that tends to indicate to me that it

hasn't been fired since those materials were put in there.
Q: Okay. But of course, there's no way for you determine when the gun was last fired?
A: That's correct. I have no idea when that particular gun was fired prior to me getting it, I can tell you when I fired it but ---
Q: Correct. And you have no idea prior to you receiving it when it was last cleaned?
A: That's correct.
Q: And you also cannot tell us how long the lent might've been inside the barrel before you received it?
A: I truly cannot tell. I don't know how to determine that.
Q: Were you aware that the Walther was located under a bed pillow when it was recovered at the scene of the crime?
A: I don't specifically recall that. That may be in the information that was in the case file information.
Q: And if that was where it was located when it was recovered, you wouldn't have any way of knowing how long it had been under the pillow before it was recovered?
A: No, ma'am; I would not.
Q: Now, you testified on direct that you do participate in proficiency testing at SLED or you did?
A: I did, yes, ma'am. Again, right now, I'm retired, I'm not doing independent work or independent examination; I am literally fully retired.

Q: And you testified that you've never failed one of those tests?
A: To the best of my knowledge, I have not because if I would've failed a proficiency test, I probably would've been taken off of case work, had to do some sort of remedial training. And depending on when that occurred, there would've been some sort of committee drawn up in the laboratory to determine why I failed the test, you know, what type of error was made and why that error was made. I have never been a part of anything like that.
Q: And you also testified that you have a peer review process at SLED where a micro review is done.
A: Yes. We actually -- as a result of ASCLAD, the process that we had was, again, if I looked at two specimens under the scope and I rendered a conclusion, I would get another examiner, qualified examiner, firearm's examiner, to come behind me, look at that specimen and see if they come to the same conclusion.
Q: Who was the examiner who did that review in this case?
A: That would've been Ken Whitler (spelled phonetically), I believe, let me make sure I -- let me see his initials. Yes. That is Ken Whitler.
Q: Do you know if Mr. Whitler has ever failed a proficiency test?
A: Not that I know of.

Q: As far as you know, if I wanted to see the results of your proficiency test, where would I go to get them?
A: I think currently, I believe Lieutenant Emily Reinhart is the person who is in charge of the quality system. If that won't do, I would talk to Major Todd Huey, he's the laboratory director. Another contact to start with potentially if you want start this rolling is Lieutenant Tracy Thrower, he is the supervisor of the firearm's department.
Q: All of those people would be at SLED?
A: That's correct.
Q: And so if I had requested those documents from SLED, in your opinion is there any reason why they wouldn't be available there?
A: I don't know. I mean, not any more, I don't know.
Q: When you came this morning, did you bring this document that I'm handing you now?
A: No, ma'am, I didn't.
Q: You did not?
A: No, ma'am. The first time I saw that particular -- saw that document was on the trunk of the car in Mr. Throw -- sitting on top of Mr. Thrower's folder that he has. I think he had it stuck in between a plastic binder, that's the first time I've seen that document and then y'all were talking about it here in the courtroom before ---
Q: So, you have seen this document?

A: About that far away. I haven't read the document.
Q: All right. Now, let's talk a little bit more about your peer review process.
A: Oh, yes, ma'am. Yes, ma'am, I'm sorry, I got sidetracked on that; I'm sorry. Again, the micro-verification as we call it is completed and then the micro-verifier -- there's a portion over here where the micro-verifying officer or agent writes on -- their initials and writes the date that they did the micro-verification. Once this is done, then I can -- if I get all the examinations completed, then I can issue a report on this. Once the report is done, there's an actual peer review and that is done usually by another qualified examiner where they look over the case file to make sure I have sufficient information to support my conclusions. I've got all the information that's necessary about documenting the condition of the firearm, the bullet diameters, bullet weights and such, everything is found on the forms and then once that's done there's actually -- I can generate a draft report, I believe that's the way we're doing in our BEAST, the SLIMS or LIMS system. Then after that was done, it could be administratively reviewed and that was normally done by another examiner. Although an administrative review, which is simply a review for grammar and, you know, typographical errors and things like that could actually be done by the examiner of record. But the peer review and the micro-

verification had to be done by another examiner.
Q: Okay. And so if I understand this right, the person who does the micro-verification, that was Mr. Whitler?
A: That's correct.
Q: And he doesn't do his own test firing, but he looks at all the bullets that you test fired and ---
A: That's correct. He would look at the test specimens that I generated and look at the evidence bullet. However, if he looked at that and if he had any questions, he'll certainly could say, shoot some more tests. I mean, it was not unusual for us to do that, not necessarily Mr. Whitler, any examiner. It would not be unusual for us to say, listen, I need to see some more tests before I, you know, make my conclusion. That was -- that's not an unusual practice.
Q: Okay. And then the peer reviewer looks through your paper file and makes sure everything is ---
A: Yes, the peer reviewer is normally the person who micro-verifies it. That's what we tried to do because the peer reviewer would also be familiar with the evidence because the peer reviewer would have looked at the evidence.
Q: Okay. So, it's the same person?
A: Q: Yes, normally, that's how we tried to do it. Normally, the micro-verification and peer review was done by the same person. In fact, we even tried to get the admin review to be done by the same person because that person would

be familiar with it. On some occasions if they weren't available, another person could do the administrative review, meaning the typographical information and dates and things like that and grammar?

Q: Okay. And you testified under oath that sometimes the peer reviewer might already know what you think the right answer is and sometimes not.

A: In the past, depending on who it was or what was going on, you may say come look at this, I think it's him or you say come look at this, I don't think it's him. Sometimes you wouldn't say anything, you'd say, you know, Ken, come over here and look at this for me.

Q: Do you recall which it was in this case?

A: I do not.

Q: Now, if your peer reviewer agrees with your findings, he signs his name on your worksheet.

A: Yes, ma'am. Actually, he -- the normal convention was to initial it. There's a little place down here, it says micro-verified, it's yes or no, and he circled yes, by and it has Ken's initials and it has a date that he did the verification.

Q: And if your peer reviewer does not agree with your conclusions and you can't resolve your differences, you have to notify the department supervisor.

A: Normally, that was that was the process that we would do or before we did that also sometimes you would get another

examiner to look at it but if was something that was a contentious issue, you would go the departmental supervisor. And when I say a contentious issue, if I said it was positive and the reviewer said it was negative, it was not him, that's an issue, that's a serious issue that somebody has to resolve. If I'd said it was positive and the reviewer says I really don't think it's enough, that's something we might be able to work out by looking at more test specimens, maybe possibly getting another examiner to look at it and that's really not too unusual in some cases depending on the condition of the bullet and the quality of the markings that are present on the bullet.

Q: Okay. But if the peer reviewer looks at it and says this all looks fine to me, you don't have to notify the department supervisor or anyone else ---

A: That's correct.

Q: --- he just signs on the bottom of the form?

A: He signs the form. I can complete the rest of my case file, I can enter the information, I can complete a report in the BEAST. And again, the BEAST was our laboratory management system. And that was when we changed over to the point where the individual examiner typed -- we had to type our own reports. Prior to that, we had draft reports and we had an administrative person who would actually generate a final document. The BEAST made it mandatory just about for the

examiner to generate the report in the computer system. And so I would generate the draft report in the system. I would tell the examiner, review this particular -- or I would print out that draft report, I would give the case file and the draft report to the peer reviewing officer. He or she would examine the case file, examine the draft report, say that's okay and then if it's okay, he would go into the BEAST and do the proper functions and press the proper buttons and what that would do would be put be put his reviewing signature as a peer reviewer and then I would get the -- I would do a final report and then the final report would be reviewed usually by the peer reviewer or if there was some particular reason the peer reviewer wasn't available, another person could admin review it. And they do the same thing in the BEAST, they would go into it, put their information into it and that would sign -- put their initials in there indicating that they approved it and then I could finally generate the true final report that would have my signature on it, electronically.

Q: For the first level of review, the micro-verification where the person actually looks at your testing, do you agree that SLED's policy on this level of review could create an institutionalized bias in favor of just singing off on your original examination?

A: I would say that that potential exists. I don't think I ever saw anything like that. With the examiners that we had,

we had some fairly stubborn examiners who were relatively independent. The people that I had over there that I dealt with for the most part, they weren't gonna just sign off on something or just peek in the microscope and say it's him. They did what I considered to be rigorous re-examinations of the evidence.

Q: Do you agree that it would be a lot less work for the micro-verifier to simply agree with your findings?

A: Well, I guess theoretically a micro-verifier could do so. I don't think that was being done at our agency.

Q: All right. Thank you very much.

A: Yes, ma'am.

THE COURT: Redirect?

MR. SIMON: Very briefly, Your Honor. May I approach the witness, Your Honor?

THE COURT: Yes, sir.

REDIRECT EXAMINATION OF VELLO PAAVEL BY MR. SIMON:

Q: Mr. Paavel, you were asked a question regarding one of your answers you gave during the comparison I am going to be showing you -- starting on bottom of page 1787 and then the top of page 1788. If you'll take a look at that for me, please.

A: Are you talking about where it says we're not conducted -- starting there or would you please share the ---

Q: Start at line 18.

A: Okay. Do you want me to just read over it and kind of ---

Q: Yeah, just read over it to yourself.

A: And how far down the next page? Oh, I see, I see. All right, sir.

Q: Okay. When you gave that response, what were you saying?

A: I was simply saying that in my opinion, that particular bullet was fired by that particular gun.

Q: Okay. I beg the Court's indulgence for -- no further questions, Your Honor.

THE COURT: All right. You may step down.

A: Thank you. Mr. Simon, do you want me to leave this here or ---

MR. SIMON: Yes, please.

A: And this I believe is a court exhibit; I'd better leave that here. And these are mine. Thank you, sir.

THE COURT: Thank you.

A: Your Honor, are we -- am I excused or ---

MR. SIMON: Your Honor, may he please be excused.

THE COURT: Any objection to excusing this witness?

MS. PAAVOLA: No objection, Your Honor.

MR. MILLS: No, Your Honor.

THE COURT: All right. You're free to go. Thank you very much.

A: Thank you, sir.

THE COURT: All right. We'll take about a ten-minute break. Okay?

*****OFF THE RECORD*****

(On the Record.)

THE COURT: All right, sir. You can call your next witness.

MR. MABRY: Your Honor, the Respondent calls Cathy Craft to the stand.

THE COURT: All right.

CATHY CRAFT, HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:

CLERK: You may be seated.

DIRECT EXAMINATION OF CATHY CRAFT BY MR. MABRY:

Q: If you would, state your name for the record and spell your name for the court reporter, please.

A: Cathy, C-A-T-H-Y, Craft, C-R-A-F-T.

Q: Okay. Thank you. Let me take this down. And Ms. Craft, if you would, tell the Court where you work?

A: For the Horry County Council on Aging.

Q: All right. And how long have you worked there?

A: Eleven years.

Q: And what are your duties there at the Horry County Council on Aging?

A: I'm a site manager at North Strand Senior Center.

Q: Okay. And do you have elderly people that you work with

there at the ---
A: Sixty and older.
Q: Okay. How many people do you work with there, sixty and older?
A: On an average day, at least thirty.
Q: All right. And did you know Becky Winkler at the time of her death?
A: Yes.
Q: Okay. And tell the judge how you knew Becky?
A: Becky and I met thirty-two years ago, at the time of her death ---
Q: Okay.
A: --- in Atlanta, Georgia. We were at the same college.
Q: All right. And were y'all best friends?
A: Yes.
Q: And had you been for those whole thirty-two years?
A: Yes.
Q: All right. Do you remember being with Becky the night after she was kidnapped and raped?
A: Yes.
Q: Okay. Were you actually with her at the hospital?
A: Yes.
Q: Okay. And at the time -- at the time Becky was kidnapped and raped and at the time of her murder, what kind of vehicle did you drive?

A: A 2001 Sable station wagon.
Q: All right. And who made that station wagon?
A: It's Ford Mercury.
Q: Okay. And did you ever have an occasion to be in the neighborhood where the Defendant Mr. Winkler lived?
A: Yes. I had a client there and I had many clients on [redacted], [redacted], and [redacted].
Q: Okay. And who was the client that lived there in the neighborhood with Mr. Winkler?
A: It was a couple of doors down, Ms. Loretta Freeman.
Q: Okay. And who did she live with?
A: Her son Eric.
Q: Okay. And why would you have to be in Mr. Winkler's neighborhood because of Ms. Freeman, if you'd explain that to the Court?
A: Ms. Freeman came to our center for a few months and then she became disabled where she couldn't go.
Q: Uh-huh (affirmative response).
A: And this was after everything had happened and occasionally I would go by and visit her or some days I had clients that instead of driving the county van, and I also went through that neighborhood in the county van many days delivering food.
Q: Okay.
A: But on many occasions I would just take them home in my

car and not have to go back to the center. I'd be finished for the day.

Q: All right.

A: And if I came that way, I would stop by and see Ms. Freeman.

Q: Okay. And how long would you stay when you stopped to see Ms. Freeman?

A: Fifteen maybe twenty minutes, not long because I have to be at work at 7:30.

Q: All right. And I'd asked you to come down for just a moment. I want to show you a video and see if you can identify something.

THE COURT: All right, if she's -- if there's gonna be any testimony, she needs to be near a microphone or something. Okay?

MR. MABRY: I won't ask her any questions until I show her both -- I'm gonna show her both videos.

THE COURT: All right. That'll be good.

A: That's my car.

MR. MABRY: Hang on a minute. She's got to take down -- I'm gonna show you -- let the record reflect, I'm showing the two videos now that are Defendant's Exhibit -- Applicant's Exhibit Nine.

(REPORTER'S NOTE: Video was played.)

MR. MABRY: If you'd have a seat back up there on the

witness stand.

Thank you, Madam Clerk.

BY MR. MABRY:

Q: Ms. Craft, do you recognize the vehicle in the video I just showed you, Applicant's Exhibit Nine?

A: Yes, I do.

Q: Okay. And could you tell the Court whose vehicle that is?

A: It was my vehicle.

Q: Okay. And there's an elderly woman in the passenger seat of the car. Do you recognize her?

A: Yes. It's Kay, K-A-Y, B, initial, McDowell, M-C-D-O-W-E-L-L.

Q: Okay. And was she also -- she attend your senior citizen or did she ---

A: She attended and she was also an employee there.

Q: Okay, all right. And would she be with you every time or was it for -- on occasion or ---

A: Any -- anytime I went out and delivered or went out to visit, she would go with me.

Q: Okay. And where is she today, Ms. McDowell?

A: Ms. McDowell suffered an injury two years ago, two broken shoulders and had three major surgeries and she most recently in April had started having MIAs, you know, mini-strokes, TIA's actually and had a stint put in, one hundred percent on

one side and she's in therapy at home and getting ready to back to the hospital to have the other side done.

Q: All right. Thank you.

A: Physically, she's not able.

Q: All right. Did -- is there any question that that's who is in the passenger seat with you?

A: Absolutely none.

Q: And is that you driving the car on that occasion?

A: Yes, it is.

Q: All right. Did you ever take Becky Winkler over there in that neighborhood when you were either in the Mercury Sable or in the van that belonged to the Citizens Center?

A: Not in the van because you have to be member and you to be over the age of twenty-one to ride on our van. I took Becky over there one time ---

Q: When was that?

A: It was within a day or two after the rape.

Q: Okay. And was Mr. Winkler still in jail at that time?

A: Yes, he was.

Q: Okay. So, he wasn't there in the neighborhood?

A: No.

Q: What did you take her over there for?

A: She went to get -- take some bills and a letter and the keys to the house and she got a sofa, a T.V. and a small refrigerator.

Q: All right. Was there any other time that she went over there with you in your car?
A: Not in my car.
Q: All right. Did she ever go over there with you at any time?
A: No.
Q: All right. Did you ever let Becky borrow your car between the time of the rape and kidnapping and the time of her murder?
A: Absolutely not.
Q: Okay. And why is that?
A: Because with my job, we have a van driver and at that particular point in time, until four years ago, we delivered the hot homebound meals from our center five days a week. Okay. While my van driver was out delivering, I was at the center and occasionally, you would have someone get sick but not to the point to go to the hospital and you could not reach a family member, so I had to have my car. Plus, at that particular point in time, my husband was taking J[redacted], Becky's youngest son and my youngest daughter Ma[redacted] E[redacted] to school in the mornings and if either one got sick, I'd have to be available to pick them up.
Q: Okay.
A: At that particular time, Becky did not have a car.
Q: Okay.

A: And I also picked them up every afternoon from school.
Q: Let me ask you this, you said she didn't have a car. What had happened to the car that they had?
A: She had sold her car when they got married. They only had one car and that belonged to Mick.
Q: What was that? Do you remember?
A: A Mitsubishi.
Q: SUV vehicle?
A: A small SUV.
Q: Okay.
A: It was kind of silver, grey. It was a Rodeo, Pathfinder, I'm not sure. I never rode in the car.
Q: All right. Did Becky ever have a small white car to your knowledge after the rape and between the rape and the murder?
A: No. The rape and the murder? No.
Q: Okay. And do you remember her having a white SUV that somebody had later borrowed?
A: Yes, I do.
Q: And who let her borrow that SUV?
A: Her son-in-law and daughter.
Q: Okay. Let me ask you another question. Did you ever take Becky's mother with you over there into the -- where the Defendant lived, in the Defendant's neighborhood?
A: No.
Q: All right. And you said you were with Becky at the

hospital the night she was -- after the rape and kidnapping occurred?

A: It was the next morning but her children and her mother were there.

Q: Okay. All right. And what type of injuries did Becky have to her?

A: Brutal.

Q: Okay. I'm gonna show you some photographs from the trial.

MS. PAAVOLA: Objection, relevance; this doesn't relate to any claim in the PCR application.

THE COURT: What's the relevance?

MR. MABRY: I'm gonna make it relevant, Your Honor, because they contend that the victim was driving by his house after the rape and kidnapping. This victim is gonna talk about her injuries and her state of mind after the rape and kidnapping that she was afraid of the Defendant, she progressively got more depressed and could not even work.

THE COURT: Okay. Well, what is the relevancy of showing her photographs?

MR. MABRY: She can say these are the injuries that she had that day in the hospital when she saw her after she was kidnapped and raped by the Defendant.

MS. PAAVOLA: Your Honor, that's a matter of records and those exhibits are part of the record also.

THE COURT: Yeah, they're part of the record. You don't need to get into that. You can ask her questions.

MR. MABRY: That'll be fine, Your Honor.

BY MR. MABRY:

Q: Did Becky have injuries all over her body?

A: Yes.

Q: Okay. And what was her state of mind that you witnessed? Were you with her in the months after the kidnapping and rape occurred?

A: Yes.

Q: If you would, tell the Court what her state of mind was.

A: Devastated. We never -- Becky never came back to us. He destroyed her.

Q: And was she able to continue working?

A: She worked as much as she could.

Q: Did there ever come a time where she wasn't able to work anymore?

A: She did some work every day but she had someone that was also helping her do work. She just wasn't able. She was frightened, she was scared to death.

Q: Did you know she had a can of Mace in the house?

A: No, I didn't but I probably would've done the same thing.

Q: Do you -- to your knowledge did Becky ever leave her home where she was killed and go over to the Defendant's neighborhood after the kidnapping and rape?

A: Not to my knowledge. I don't think she was able.

Q: All right. That's all I have.

THE COURT: All right. Cross examination.

CROSS EXAMINATION OF CATHY CRAFT BY MS. PAAVOLA:

Q: Good afternoon, Ms. Craft. You testified on direct that you were Becky's best friend.

A: Yes, we were.

Q: And does that include the period of time that she was married to Mr. Winkler?

A: Yes, we talked every day.

Q: Did you ever visit Becky at her home during that period?

A: Yes, I did.

Q: How many times did you visit her there?

A: Maybe eight or ten times.

Q: During this period of time when Becky was no longer living with Mr. Winkler and you said you were driving through the neighborhood to assist your client, Ms. Freedman -- Freeman?

A: Freeman.

Q: Did you ever stop your car when you were driving through the neighborhood and park in front of Mr. Winkler's house?

A: No.

Q: Would you have pulled into the driveway and parked your car there?

A: No.

Q: If there was some other car doing that, it wasn't you?
A: It wasn't -- it wasn't me.
Q: Now, during the period that Mr. Winkler was on house arrest and Becky no longer lived with him, were you with her every hour or every day?
A: No, I worked five days a week.
Q: So, if she had borrowed someone else's car and driven through the neighborhood, you wouldn't know?
A: Absolutely not.
Q: And at the time -- this period of time, do you know what kind of car Becky's mother drove?
A: It was a little Altima.
Q: Do you know what color it was?
A: Silver or -- yeah, silver.
Q: Could it have been white?
A: Becky had a white car when she married Mick. The car was sold within a few weeks or a week or so after they got married. To my knowledge, if someone had a white car, I don't know who it was.
Q: All right. Thank you.
THE COURT: Redirect.
MR. MABRY: Nothing. Thank you, ma'am. You may step down.
THE COURT: All right. You may step down.
THE COURT: Call your next witness.

MR. MCDONALD: The Respondent calls Vicki Childs.

VICKI CHILDS, HAVING BEEN SWORN,

TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION OF VICKI CHILDS BY MR. MCDONALD:

Q: Good afternoon, Ms. Childs.

A: Good afternoon.

Q: I'm just gonna start with a little bit of background. Could you tell me how ---

A: Should I spell my name for her?

THE COURT: Yes, go ahead and spell your name.

A: It's Vicki, V-I-C-K-I, last name Childs, C-H-I-L-D-S.

THE COURT: All right.

Q: How long have you been in investigations, generally speaking?

A: As a private investigator, twenty-six years, before that as a state and federal law enforcement for five years.

Q: And have you worked as an investigator in any death penalty cases prior to Mr. Winkler's?

A: Yes.

Q: Do you have any idea how many?

A: Prior to his, probably six, seven.

Q: Tell me generally about your involvement in this case. What was your role?

A: My role was as a fact investigator.

Q: And do you recall when you were retained by defense

counsel in this case?
A: June 2007, I think.
Q: And as a part of your role, were you supposed to report back the result of your investigations to counsel?
A: Yes.
Q: Did you have the occasion to interview potential witnesses for this case?
A: Yes.
Q: Did you interview anyone from Tilghman Lakes?
A: Yes.
Q: Did you interview anybody from Mr. Winkler's neighborhood?
A: Yes.
Q: I'm actually going to shift you back to Tilghman Lakes, sorry about that. Specifically what I want to know is was there a general impression based upon your interviews with those people from Tilghman Lakes that you were left with about their willingness to testify?
A: I think initially one or two of them said they would be willing. It's my recollection that at court time, none of them were willing but generally they had pretty good things to say about him and his work ethic and his work around Tilghman Lakes. It was after his marriage to Becky that they started seeing things kind of go downhill, seeing him go downhill.
Q: And do you recall whether he lost his job prior to the

kidnapping and CSC charges?
A: I believe so.
Q: Finally, you indicated -- and you may've already answered this so, bear with me if this is redundant, but once the facts came out regarding the murder ---
A: Uh-huh (affirmative response).
Q: --- did the witnesses from Tilghman Lakes become more reluctant to testify?
A: Yes, because of things they had seen on the news and heard and, I guess, the newspaper and T.V. stories. And the fact that he hid out for a while in the community, I think, scared some of them as well.
Q: Is that inconsistent in your experience in investigating death penalty cases, is that -- for witnesses to be reluctant?
A: If you're talking about character witnesses ---
Q: Yes, sorry.
A: You know, some people do change their impression of a defendant once they start hearing things that actually happened and I think that's generally true. Good friends, though, good friends who believed in him or believe in him and I'm not just speaking about Mick but in general, I think typically would still come and they have in death penalty cases I've worked, they've still come and they've said, look, I don't condone what he did but here's how -- there's the guy I used to know. And in this case, for some of them not to

come was surprising to me.
Q: I'm gonna move on to your interviews concerning people from Mr. Winkler's neighborhood. Did you interview anyone from Mr. Winkler's neighborhood?
A: Yes, I interviewed the people across the street, the Pattersons.
Q: And did you have occasion to interview Denise Bellamy?
A: I don't remember.
Q: Okay. What about ---
A: If I gave you a report then I did but I don't remember specifically.
Q: Okay. But and if you generated a report, would you have turned that over to defense counsel?
A: Yes.
Q: All right. May I approach the witness, Your Honor?
THE COURT: Yes.
Q: I'd just ask that you review that.
A: Okay.
Q: After reviewing that, do you recall?
A: Yes.
Q: Did you conduct an interview of Ms. Bellamy?
A: Yes.
Q: Thank you. Do you recall during your interviewing and, again, if you need to refresh your recollection please do. Do you remember Ms. Bellamy saying anything about Mr. Winkler

being taunted by the victim?
A: Well, yeah, that Becky made Mick crazy. Is that what you're referring to?
Q: I was just more wondering if there was anything where it said that she was taunting him.
A: I don't know that I used the word taunting. Let's see.
Q: And if it's not there, you can say that as well.
A: No, I didn't use the word taunting but she did say that Becky would make Mick crazy and that's consistent with what some of the other witnesses told us as well.
Q: Okay. Did you have the -- you said you interviewed the Pattersons ---
A: Yes.
Q: --- or was that one Patterson?
A: I think was -- it was the male and I believe I spoke to somebody else there. I know I spoke to his mother-in-law, I think, Mr. Patterson's mother-in-law.
Q: Did you recall speaking with his wife Cathy?
A: I think so, yes.
Q: All right.
A: And also with Steven, who is Cathy's brother.
Q: Okay. I'm gonna turn your attention -- did you have the occasion to interview Mr. Roger Grainger?
A: Yes.
Q: And why did you interview Mr. Grainger?

A: Well, it was Becky's ex-husband, he was J[redacted]s father. He also was accused -- Mick had accused him of being the shooter and being there at the time of the shooting. Actually, Mick accused him of being the shooter and being there at the time of the shooting and coming there at the time of the shooting. So there were different stories. So, what -- it was important for me to interview him.

MS. PAAVOLA: Objection. This is irrelevant and also what Mr. Winkler reported is privileged. We haven't made any claim about Mr. Grainger and the privilege remains covering any communications unless they are necessary for them to respond to our specific allegations.

A: I'm just responding to the question.

MR. MCDONALD: I'd be happy to respond to that. Specifically, the claim is that counsel was ineffective for failing to impeach. If there was a strategy based on information that was given by the Defendant here, then it seems to me that you would be able to go into that specifically because you also have to prove prejudice.

THE COURT: But I mean, I was thinking I granted a directed verdict on the cross examination of J[redacted] G[redacted], did I not?

MR. MCDONALD: I think I was referring to Mr. Paavel.

MS. PAAVOLA: Impeachment of a ballistics examiner does not hinge on a third-party guilt theory involving Roger

Grainger.

MR. MCDONALD: But it would be about the defense strategy decision.

THE COURT: Wait a minute, wait a minute now. Why are you offering this testimony?

MR. MCDONALD: With respect to Mr. Grainger it would be to show that the defense counsel has strategic decision based on the information provided to him by the Defendant in this case that he didn't -- there was no question about what the gun was that was used. So, impeaching him about a ballistics expert really would have held no weight when his own client is telling him I was there and we struggled over the gun that shot her.

THE COURT: Okay. All right. Overruled. I'll allow the question. Go ahead.

BY MR. MCDONALD:

Q: So, you felt that it was important for -- to interview Mr. Grainger based upon statements you had had with Mr. Winkler, correct?

A: Correct.

Q: And did you interview a gentleman by the name of Archie Bethea?

A: Yes.

Q: Did Archie tell you anything about Mr. Winkler's use of drugs and alcohol?

A: I believe so, yes.
Q: Do you recall what he told you?
A: Not specifically. If you have my report I can refer to it.
Q: Certainly.
A: Okay.
Q: Do you recall now having a seen your interview ---
A: Yes.
Q: --- whether Mr. Bethea indicated that Mr. Winkler had an issue with drugs or alcohol?
A: Well, that he had used pot, marijuana, on -- with his previous wife, Denise, and that Mick had told him he used cocaine.
Q: Finally -- probably not finally -- I wish it was finally for you -- did you interview Charlie Bryson?
A: Yes.
Q: Based on your interview with Mr. Bryson, did you have an opinion as to where the firearm, the Jennings .380 Bryco came from?
MS. PAAVOLA: Objection as to asking for her opinion.
THE COURT: What's the relevance?
MR. MCDONALD: Again, if -- the Defendant's access to the firearm would be and the -- and that the firearm was the firearm that was used would seem to defeat a claim that the firearm may not have been with respect to impeachment of Mr.

Paavel.

THE COURT: I sustain the objection.

MR. MCDONALD: All right.

BY MR. MCDONALD:

Q: Based upon -- previously you indicated that you spoke with Mr. Winkler.

A: Yes, sir.

Q: Do you recall whether a transcript was made of your interview with Mr. Winkler?

MS. PAAVOLA: Objection, again this is privileged -- a privileged that Ms. Childs had with Mr. Winkler.

THE COURT: They haven't gotten into the contents of it. He just asked if there was a transcript made of it so I'll allow that question.

A: Yes.

BY MR. MCDONALD:

Q: And based upon your interview, did you have reason to interview Mr. Bryson?

A: Yes.

Q: Based upon the content of your interview, did you have any question whether the Jennings .380 Bryco was the murder weapon?

MS. PAAVOLA: Objection. This is the same question in a different form.

THE COURT: Yes, sustained.

BY MR. MCDONALD:

Q: How many times did you interview Mr. Grainger?

A: One in person and I believe I talked with him on the phone as well.

Q: Did you interview -- excuse me, did you indicate -- review phone records to see specifically pinging cell towers or attempt to look -- to figure out where Mr. Grainger was at the time of the murder?

A: Yes. I don't believe -- I don't recall the records that we had that we'd been given in discovery showed tower information. I attempted to get tower information or I inquired about getting tower information but I had known from a previous case in this county that those records were purged after ninety days and I found that same information as far as cell tower information. Now, we did have copies of cell phone records that the police had gotten and given during discovery.

Q: And so you believed that based on the information that was available to you that it would be important to find where Mr. Grainger was?

A: Yes.

Q: Did you -- was there a defense strategy related to Mr. Grainger's whereabouts that you're aware of?

A: The defense strategy or at least my strategy for investigating what I had been told by the Defendant and what I had been told by -- and had discussions with Mr. Wilson and

the rest of the defense team was to try and verify everybody's place when this happened based on -- primarily based on the police interviews and also based on our information from our client. So Mr. Grainger's whereabouts were important based on what he was telling us and also based on the fact that he showed up, witnesses said that he showed up, he being Mr. Grainger, showed up at the murder scene some minutes after it had happened.

Q: So, you wanted to determine where he was when the 911 call took place; is that right?

A: Not just where he was when the 911 call was made but where he was when the actual shooting happened and pre and post. So when I met with him, we talked about that. We talked about what he did that day, where he worked that day and how long it took him to get there. And mind you, Ms. Craft, who previously testified, had also told me that she was at the murder scene when Mr. Grainger arrived. So, all those things sort of came together and confirmed his story as opposed to our defendant's story.

Q: So, you say his, you do mean Roger Grainger?

A: Roger Grainger's story.

Q: When speaking with Mr. Grainger, did he indicate to you that he -- he knew Charlie Bryson?

MS. PAAVOLA: Objection, hearsay.

THE COURT: Overruled, I'll allow it.

A: I don't recall asking him. If it was in my interview that I asked him, I did, but I don't recall.

BY MR. MCDONALD:

Q: Okay. Did you know of any link between the two?

A: Not that I recall, no.

Q: Okay. What was your experience in dealing with the Defendant?

MS. PAAVOLA: Objection, relevance?

THE COURT: I'll allow it; go ahead.

A: I'm not sure I understand what you mean by my experience. I interviewed him on multiple occasions, went to see him on multiple occasions, talked with him. Is that what you mean?

BY MR. MCDONALD:

Q: Were communications difficult?

A: I wouldn't say communications were difficult. I would say that me getting his cooperation to help me with information that was accurate was difficult.

Q: When you say help me, do you mean chasing down false leads; what do you mean?

A: Well, one of the things that I try to do in a fact investigation case is talk with the defendant about facts based on the police reports, based on their own statements to the police, based on everybody else's statements to the police, based on information that can be confirmed or has been confirmed and that that hasn't. So, I try to get a picture,

an idea of where we are. The reason that initial interview was even taped, which I never do with defendants really but he -- I had been told that he had told various stories about what happened. So, Mr. Wilson and I, when we talked, thought that it might be good to get it on tape so if we had to play it for him later or show it to him later and say, well, look, this is what you told me the first time and why are you telling me something else now that we would have it. So, that said, yes, I did feel like he sent me on some wild goose chases that -- and told me things that weren't accurate and he, he -- if I can say what he told me, I don't know if I can say what he told me.

MS. PAAVOLA: Well, we would object to her saying what he told her.

MR. MCDONALD: It'd be an emission of a party ---

MS. PAAVOLA: It's ---

THE COURT: Well, I don't know what she's gonna say. I don't know if it's offered for the truth of the matter asserted or the ---

A: I was just gonna give an example, that's all.

MS. PAAVOLA: In addition to -- client's communication with defense team members are privileged unless they are specifically waived by a specific allegation in our PCR application. So unless it relates to a specific allegation we've got in the application, we object to it as privileged.

THE COURT: Okay. I'm gonna sustain the objection. I mean, I understand you're trying to get into trial strategy but I think Mr. Wilson is gonna be more in line with that testimony that this witness. So, go ahead.

MR. MCDONALD: Understood.

BY MR. MCDONALD:

Q: But it was fair to say but you were -- went on a couple -- I think you termed it -- wild goose chases?

A: Yes.

Q: Okay. Nothing further.

THE COURT: All right. Cross examination.

CROSS EXAMINATION OF VICKI CHILDS BY MS. PAAVOLA:

Q: Good afternoon, Ms. Childs.

A: Good afternoon.

Q: You testified under oath that you talked to some of the people that Mr. Winkler worked for or with at Tilghman Lakes?

A: Yes.

Q: And you were aware were you not from your investigation that he had worked there for ten years approximately.

A: I don't recall specifically but, yeah, that sounds right.

Q: And there were a number of people there who said good things about him?

A: Yes.

Q: And in terms of deciding strategy on the defense team, was it your responsibility to determine what the strategy

should be?
A: No.
Q: Would it have been your responsibility to decide which witnesses to ask to testify?
A: No. I'm sometimes asked my opinion or my thoughts but no.
Q: And during your -- the course of your investigation, did you ever become aware of information that neighbors and others reported that Ms. Winkler was driving by Mr. Winkler's house while he was on house arrest?
A: Yes.
Q: And did you convey that information to trial counsel?
A: Yes.
Q: And again would it have been your job to decide whether that information would be presented as a matter of strategy at trial?
A: No.
Q: You were asked some questions about your interviews of a man named Archie Bethea.
A: Yes.
Q: During the course of your investigation did you collect any information that Mr. Bethea had a number of prior arrests related to alcohol and cocaine abuse?
A: Yes.
Q: Were you aware of any information in your investigation

that Mr. Bethea may have been having an affair with Becky Winkler?

A: I was told that he was.

Q: Were you aware that ---

A: Let me. I'm sorry. I was told that he was by the Defendant but no one else.

Q: Were you aware from your investigation that Mr. Bethea was on the telephone with Ms. Winkler for an extended period of time sometime shortly before the crime?

A: Yes.

Q: When you dealt with Mr. Winkler and met with him, do you know if he was on any medication?

A: I believe he did have prescriptions. I don't know what he was taking or if he was taking any but I believe there were prescriptions, yes.

Q: You don't know what the prescriptions were or in what quantity or anything like that?

A: No.

Q: And so you wouldn't know if that was the appropriate medication for him at that period in time?

A: No.

Q: Or if was being given enough of that medication?

A: No.

Q: You testified that in your opinion Mr. Winkler sent you on some wild goose chases?

A: Yes.
Q: Is that uncommon in these kinds of cases in your experience?
A: He -- he is the first capital murder defendant that I have ever worked with that was very, very difficult to work with as far as getting facts and getting good information that turned out to be accurate. I mean, a lot of information he gave me was accurate but a lot of it wasn't. And accusations he made, I don't believe were accurate.
Q: Have you ever had clients before that you felt were difficult to work with?
A: Oh, clients in general, yes; capital murder case clients, some.
Q: And in your view, if a client is difficult to work with, does that mean you shouldn't try to do your very best job?
A: No, absolutely not.
Q: Thank you very much.
THE COURT: Redirect.

REDIRECT EXAMINATION OF VICKI CHILDS BY MR. MCDONALD:

Q: Just to address the last question, did you try your best here?
A: Yes.
Q: Moving back to the claims that have been made about the victim taunting Mr. Winkler, you were told this information, correct?

A: I -- I'm sorry, what ---
Q: You received information whether it was from Mr. Winkler or other sources about the victim allegedly taunting Mr. Winkler, is that right?
A: You mean the riding by the house and things like that?
Q: Right.
A: Yes. I mean, today was the first time I've ever seen that video. I knew about that there was supposed to be a video but I'd never seen it.
Q: Did you -- and you spoke to the Pattersons, correct?
A: Yes.
Q: And you also spoke to Mr. Fitzwater who took the video, isn't that right?
A: Yes, but he never provided me a copy even when I asked.
Q: Did you ask Frank Patterson if he had a copy?
A: Yes.
Q: Did you ask the Defendant if he had a copy or, I'm sorry, Mr. Winkler?
A: Probably; I don't specifically recall. I did talk to Cathy Craft about the drive-bys.
Q: Based upon your conversation with Cathy Craft, did you have an impression as to whether Becky was doing the drive-bys?
A: Yeah, when she told me what she told you here today that no -- as far as she knew Becky wasn't doing the drive-bys.

Q: Thank you.

THE COURT: All right. You may step down.

(REPORTER'S NOTE: A bench conference was held off the record.)

MR. MABRY: Mildred Scoggin.

MILDRED SCOGGIN, HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:

CLERK: Please state your name for the Court.

MS. SCOGGIN: Mildred Scoggin, M-I-L-D-R-E-D S-C-O-G-G-I-N.

DIRECT EXAMINATION OF MILDRED SCOGGIN BY MR. MABRY:

Q: All right. Mrs. Scoggin, I just want to ask you a few questions and I'm only asking you what you know of your own knowledge. Okay?

A: Okay.

Q: All right. When -- back when Becky was kidnapped and raped, okay, what kind of car if any did she have?

A: She was driving a car from her -- that her son-in-law had given her, I think.

Q: Okay. Was that the white SUV?

A: I think so. I'm not sure of that.

Q: All right. And to your knowledge, did she have a little white car at that time?

A: No.

Q: Did she ever have a car of her own?

A: Yes, when they -- before they were married, she had a practically new car but they sold it right after -- right after they started going together.
Q: Okay. So, then they only had the one car ---
A: Yes.
Q: --- that belonged to the Defendant? All right. And can you tell the Court what kind of car you had at the time of ---
A: A ninety ---
Q: I'm sorry. At the time she was kidnapped and raped until the time of the murder, what kind of ---
A: '93 Nissan Altima.
Q: All right. Is that a station wagon or is that like a ---
A: No, that's just a little four-door car.
Q: All right. And what color was it?
A: It was silver.
Q: Okay. Did you ever go over -- after the Defendant was arrested for the rape and kidnapping of your daughter and he was still in jail, did you ever go over to the Defendant's house with your daughter?
A: Not after the rape. When Becky first moved out in October ---
Q: Okay.
A: --- we did -- he was in jail then.
Q: Okay.
A: We went over there to get the dog because there was

nobody at home and the dog was chained up outside and she was giving it to the pound, I guess you call it.

Q: Okay. And you said the Defendant was still in jail at that time?

A: I say he was in jail at that time.

Q: He was not there at the house?

A: No.

Q: Okay.

A: We pulled in and she had already called the people to come get the dog but they wanted her to be there to give it to them. She -- they had a fenced-in yard.

Q: Uh-huh (affirmative response).

A: She opened the gate, the dog was chained up. They gave the dog to the people and we left.

Q: Okay. Did you -- after she was kidnapped and raped until the time of her murder, did you ever go back over there again with your daughter?

A: No.

Q: And to your knowledge, did she ever go back by herself?

A: Not to my knowledge.

Q: Did you ever go over there with Ms. Cathy Craft?

A: No.

Q: Can you tell the Court what was your daughter's state of mind after the kidnapping and rape?

A: She was a total wreck. She was -- she stayed at home and

worked. She was a medical transcriptionist.
Q: Okay.
A: And she got -- she tried to work but she would -- she just couldn't concentrate. She was scared. She wouldn't go anywhere. She was entirely different.
Q: Did she have a car during that period of time?
A: Yes. She was having the car but I don't know where -- which car it was she had.
Q: All right. Would it have been either the Rover SUV or the Defendant's car that she got?
A: I don't know.
Q: Okay. But did she ever have a little white car?
A: The one they sold when she first started going with Mick.
Q: Okay. Well, I mean after that, did she ---
A: No.
Q: And where did your daughter live at the time she was killed?
A: She lived -- I live in the [redacted], which is a mobile home park on [redacted] it's in the Little -- it's called Little River. And there's a [redacted] -- there was a [redacted] Golf Course right before that and a resort.
Q: Uh-huh (affirmative response).
A: And her daughter had a townhouse there.
Q: Okay.
A: And Becky moved in -- she and J[redacted] moved in with him --

with Haley, who is her daughter.

Q: With her daughter. All right. Thank you, ma'am.

A: Uh-huh (affirmative response).

MS. PAAVOLA: Very briefly, Your Honor.

THE COURT: All right.

CROSS EXAMINATION OF MILDRED SCOGGIN BY MS. PAAVOLA:

Q: Good afternoon, Ms. Scoggins. In the Fall of 2005, was there ever an occasion where you offered to pay for Mr. Winkler to stay in a Super 8 Motel?

A: Yes, ma'am.

Q: And you paid the bill for that hotel?

A: I beg your pardon?

Q: And you paid the bill for his hotel?

A: Yes.

Q: Now, after Ms. Winkler -- after Becky and Mr. Winkler separated and she moved in with Haley, right?

A: Yes.

Q: Did -- you didn't live there?

A: No.

Q: Is it possible that Becky could've gone places that you don't know about?

A: Certainly, I worked.

Q: Thank you. No further questions.

A: Yes, ma'am.

THE COURT: Redirect?

MR. MABRY: No, sir. Nothing.

Thank you, ma'am. You may step down.

THE COURT: You may step down.

Let's go ahead -- it's after 5:00. Let's go ahead and recess for the evening. We'll get started at 9:30 tomorrow morning.

MR. MABRY: Yes, sir.

THE COURT: All right. Anything from the State before we recess?

MR. MABY: No, sir, Your Honor.

THE COURT: All right. Anything from the Applicant before we recess?

MR. MILLS: No, Your Honor.

THE COURT: All right. We'll stand in recess until 9:30 tomorrow morning.

(RECESS)

*******OFF THE RECORD*******

ORIGINAL

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the PCR hearing held in the case of Louis Michael Winkler, Jr. versus State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 20, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson, CVR
Official Reporter

October 31, 2012.

ADINA SCHWARTZ
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POSITIONS HELD

Professor, Department of Law, Police Science and Criminal Justice Administration, John Jay College of Criminal Justice, City University of New York 2006-
Associate Professor, Department of Law, Police Science and Criminal Justice Administration, John Jay College of Criminal Justice, City University of New York 1993-2005
Associate Appellate Counsel, The Legal Aid Society, Federal Defender Services Unit Appeals Bureau, New York City 1988-1991
Litigation Associate, Reinhardt & Schachter, P.C., Newark, N.J. 1988
Litigation Associate, Paul, Weiss, Rifkind, Wharton & Garrison, New York City 1985-1988
Assistant Professor, Department of Philosophy, Yale University 1975-1982

EDUCATION

J.D., Yale Law School 1985
Ph.D., The Rockefeller University 1976
B.A., Oberlin College (Phi Beta Kappa, Fall 1970; Highest Honors in Philosophy) 1971

PUBLICATIONS

Security and Privacy: Global Standards for Ethical Identity Management in Contemporary Liberal Democratic States with John Kleinig, Seumas Miller, Peter Mameli and Douglas Salane (ANU (Australian National University) E Press 2011)

"Putting the Science in Forensic Science: Helping Congress and the Administration Do What Is Possible," with Clifford Spiegelman and Katherine Philpott, *Amstat News*, Issue 410: 17-18 (Aug. 1, 2011), available at http://magazine.amstat.org/blog/2011/08/01/scipoliaug11

"NAS Roundtable: How Scientific Is Forensic Science?" with William C. Thompson, Michael Burt, and The Honorable Jed S. Rakoff, *The Champion* 28-35 (August 2009)

"Wiretapping," *World Book Encyclopedia,* 2009, Vol. 21: 345, available at http://www.worldbookonline.com/student/article?id=ar607240

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"Challenging Firearms and Toolmark Identification-Part One," *The Champion* XXXII (8):10-19 (Oct. 2008)

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Review of *Genetic Witness: Science, Law and Controversy in the Making of DNA Profiling* by Jay D. Aronson, *New York Law Journal,* April 4, 2008

"Commentary on Nichols R.G., Defending the Scientific Foundations of the Firearms and Tool Mark Identification Discipline: Responding to Recent Challenges, J. Forens. Sci. 2007 May; 52(3): 586-94," *Journal of Forensic Sciences* 52(6):1414-15 (November 2007), cited in *United States v. Glynn,* 578 F.Supp.2d 567, 569 n.2 (S.D.N.Y. 2008) and *United States v. Willock,* 696 F.Supp.2d 536, 567 (D.Md. 2010)

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"Firearms and Toolmark Identification," in Jane Campbell Moriarty, *Psychological and Scientific Evidence in Criminal Trials,* West (2004 edition & ann. supp. 2006), Volume 2: 12-50 through 12-91

"A Market in Liberty: Corruption, Cooperation, and the Federal Criminal Justice System," in William Heffernan and John Kleinig (eds.), *Private and Public Corruption,* Rowman & Littlefield, 2004, 173-223

Review of *Drug Courts in Theory and in Practice* by James L. Nolan, Jr. (ed.), *New York Law Journal*, February 14, 2003

Review of *Suspect Identities: A History of Fingerprinting and Criminal Identification* by Simon A. Cole, *New York Law Journal*, February 7, 2002

Review of *Actual Innocence: Five Days To Execution and Other Dispatches From the Wrongly Convicted* by Barry Scheck, Peter Neufeld and Jim Dwyer, *Punishment and Society* 3: 446-447 (2001)

Review of *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons* by Malcolm M. Feeley and Edwin L. Rubin, *Punishment and Society* 2: 246-247 (2000)

"Homes as Folding Umbrellas: Two Recent Supreme Court Decisions on 'Knock and Announce'," *American Journal of Criminal Law* 25: 545-594 (1998), cited in *State v. Barnes*, 618 N.W.2d 805, 811 (Minn. Ct. App. 2000), review denied (2001)

"Public Defenders," *Encyclopedia of Applied Ethics*, San Diego: Academic Press, Inc., 1998, Volume 3: 745-754

"A 'Dogma of Empiricism' Revisited: *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and the Need to Resurrect the Philosophical Insight of *Frye v. United States," Harvard Journal of Law and Technology* 10:149-237 (1997), cited in *Goeb v. Tharaldson*, 615 N.W.2d 800, 812-813 (Minn. 2000); *Brim v. State*, 779 So.2d 427, 438 & 438 n.16 (Fla. 2d DCA 2000); *State v. Coon*, 974 P.2d 386, 391 n.25 & 397n.67 (Alaska 1999); and *United States v. Cordoba*, 991 F.Supp. 1199, 1203 n.11 (C.D. Cal. 1998), affirmed, 194 F.3d 1058 (9th Cir. 1999), cert. denied, 529 U.S. 1081 (2000)

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"'Just Take Away Their Guns': The Hidden Racism of *Terry v. Ohio*," *Fordham Urban Law Journal* 23: 317-375 (1996)

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"Towards a Jurisprudence of Labor Law: Methodological Preliminaries," *Valparaiso University Law Review* 19: 71-94 (1984)

"Autonomy in the Workplace," in Tom Regan (ed.), *Just Business: Introductory Essays in Business Ethics*. New York: Random House, 1984: 129-166

Review of *Karl Marx* by Allen Wood, *The Philosophical Review* 92: 258-261 (1983)

"Meaningful Work," *Ethics* 92: 634-646 (1982), reprinted in Rita Manning and René Trujillo (eds.), *Social Justice in a Diverse Society*. Mountain View, Ca.: Mayfield Publishing Co., 1996; Will Kymlicka (ed.), *Justice in Political Philosophy*. Brookfield, Vt.: Ashgate Pub. Co., 1992; A.L. Gini and T. Sullivan (eds.), *It Comes with the Territory: An Inquiry Concerning Work and the Person*. New York: Random House, 1989

Review of *Birth Control and Controlling Birth: Women-Centered Perspectives* by Helen B. Holmes, Betty R. Hoskins and Michael Gross, *Human Rights Quarterly* 4: 140-144 (1982)

"Against Universality," *The Journal of Philosophy* 78: 127-143 (1981)

Review of *Equality, Liberty and Perfectionism* by Vinit Haksar, *Ethics* 92: 134-137 (1981)

Review of *Working for Capitalism* by Richard Pfeffer, *Ethics* 90: 602-603 (1980)

"Aristotle on Education and Choice," *Educational Theory* 29: 97-107 (1979)

Review of *Reason and Morality* by Alan Gewirth, *The Philosophical Review* 88: 654-656 (1979)

Review of *The Theory of Morality* by Alan Donagan, *The Philosophical Review* 87: 649-651 (1978)

Review of *Reading Rawls: Critical Studies of John Rawls' A Theory of Justice*, edited with an introduction by Norman Daniels, *The Philosophical Review* 86: 238-241 (1977)

"Moral Neutrality and Primary Goods," *Ethics* 83:294-307 (1973), reprinted in G.W. Smith (ed.), *Liberalism: Critical Assessments,* Routledge & Kegan Paul, 2003; Chandran Kukathas (ed.), *John Rawls: Critical Assessments of Leading Political Philosophers*, Routledge & Kegan Paul, 2002; Henry Richardson and Paul Weithman (eds.), *The Philosophy of Rawls : A Collection of Essays,* Garland Pub., 1999

GRANTS

Award from John Jay College Special Research Support Fund to obtain documents needed for analyzing the errors found in the Michigan State Police Forensic Science Division Audit of the Detroit Police Firearms Unit laboratory in 2008 — July 2010

Special Co- Principal Investigator on "Security and Privacy: Global Standards for Ethical Identity Management in Contemporary Liberal Democratic States," Science and Society Program, NSF 0619226 — 2006-2008

Co- Principal Investigator on Cyber Trust Proposal NSF 043044 — 2004-2007

PRESENTATION OF PAPERS AND PARTICIPATION IN CONFERENCES

"Challenging Firearms and Toolmark Identification," webcast recorded for the Criminal Justice Section of the New York State Bar Association," September 16, 2011

"Firearms and Tool Mark Evidence," presented at "Confronting the Science: Challenging Unreliable Forensic Evidence," sponsored by North Carolina Advocates for Justice, Raleigh, NC, April 1, 2011

"*Frye* and Challenges to Firearms and Toolmark Identification," a Continuing Legal Education presentation to The Legal Aid Society, New York City, March 30, 2011

Panelist, "Forensic Evidence –Evidence in Criminal Trials: Demystifying the CSI Effect," sponsored by the New York County Lawyers Association, December 2, 2010

Panelist in a session on "Principles and Procedures for Scientifically Validating a Subject as Science," at "Litigating Forensic Evidence in New York Courts," sponsored by the New York State Bar Association, October 21, 2010

Panelist in a session on "Firearm and Toolmark ID," at "Whatever Happened to the Science in Forensic Science?," sponsored by the Wisconsin Association of Criminal Defense Lawyers, Wisconsin Dells, WI., October 8, 2010

"Firearms and Ballistics," presented at "Uses and Abuses of Forensic Scince: Deconstucting the Myth," Annual Western All-Star Conference and Confabulation," sponsored by Federal Defender Services of Idaho and The Idaho Association of Criminal Defense Lawyers, October 1, 2010

Panelist in a session on "Rising to the Challenge of the NRC," at a program on "Forensic Science on Trial," New York City Bar Association, April 19, 2010

"Firearms and Toolmarks," presented at Missouri State Public Defenders 2010 Defense College, Branson, Missouri, April 8, 2010

"Challenging Firearms and Toolmark ID," presented at "Making Sense of Science III," National Association of Criminal Defense Lawyers and California Attorneys for Criminal Justice's 3rd Annual Forensic Science Seminar, Las Vegas, NV, March 26, 2010

"Forensic Firearms Evidence," presented at "Life in the Balance: A Capital Defense Training Program," sponsored by the National Legal Aid & Defender Association and the Tennessee District Public Defenders Conference, Nashville, Tenn., March 7, 2010

Panelist in a plenary session on "Introduction and Overview of National Academy of Sciences Report, Strengthening Forensic Science in the US: A Path Forward" and in a breakout session for members of the Bar, at a seminar on "Finding and Interpreting the Science in Forensic Evidence: Impact of the NAS Report on the Judicial System," sponsored by the Massachusetts Committee for Public Counsel Services, the Flaschner Judicial Institute and the Suffolk University Law School Center for Advanced Legal Studies and Macaronis Institute for Trial and Appellate Advocacy, Boston, MA, February 11, 2010

Panelist in a Plenary Session on "Is is science?: Fingerprints, toolmarks, and firearms identification" and presenter on toolmarks and firearms in "Breakouts to brainstorm forensic science with the experts," 6th National Seminar on Forensic Evidence and the Criminal Law, sponsored by the Habeas Assistance and Training Counsel Project, San Diego, CA, January 7-10, 2010

Presented a Continuing Legal Education seminar on firearms and toolmark identification to the Bronx Defenders, December 10, 2009

"Challenging Firearms and Toolmark Identification," presented at "A Forensic Science Summit, Moving into the 21st Century: Rethinking Forensic Evidence," sponsored by the Maryland Office of the Public Defender, June 30, 2009

"Biting the Bullet: Challenging Firearms Evidence," presented at the Fifth Annual Indigent Criminal Defense Seminar: Advanced Skills for the Experienced Practitioner, sponsored by the Supreme Court of Virginia and the Virginia State Bar, Richmond, VA, April 3, 2009

Panelist on "The Future of Forensics," 4th Annual Harry F. Guggenheim Symposium on Crime in America: "A New Beginning? Exploring the Criminal Justice Challenges over the Next Four Years," John Jay College of Criminal Justice, New York, NY, February 3, 2009

"*Daubert* Challenges to Firearms Identification," presented at the 5th National Seminar on Forensic Science and the Law, sponsored by the Administrative Office of the U.S. Courts, Philadelphia, PA, January 10, 2009

"Firearms & Tool Marks," presented at the Texas Criminal Defense Lawyers Association 6th Annual Forensics Seminar, Dallas, Tx, October 23, 2008

Guest Speaker, " 'I Know It When I See It' and Criminalistics," presented at the 34th Annual Northeastern Associaton of Forensic Scientists (NEAFS) Meeting General Session on "Debating the Forensic Science in Forensic Science," October 3, 2008

"Challenging Firearms and Toolmark Identification," presented at the 2008 Ohio Juvenile Defender Leadership Summit, May 29, 2008

"Firearms and Toolmarks," presented at the Pennsylvania Juvenile Defender Statewide Training, April 18, 2008

"Overview of *Terry v. Ohio*," presented at the Second James Fyfe Police Accountability Conference, "Stop and Frisk: Policy, Practice and Research," John Jay College of Criminal Justice, February 28, 2008

"The Science/Junk Science of Firearms and Toolmark Identification," presented at the Criminal Justice Section Annual Meeting and CLE, North Carolina Bar Association, November 16, 2007

Panel Member, Plenary on "CSI Portland: Using Forensic Science in Juvenile Defense," and presenter of session on "Challenging Firearms & Toolmark Identification," 11th Annual Juvenile Defender Leadership Summit, Portland, Oregon, October 20, 2007

"A Case Study in Science and the Law: Firearms and Toolmark Identification," presented at the Legal Studies Workshop, John Jay College, October 9, 2007

"Firearms and Toolmarks," presented at the Texas Criminal Defense Lawyers Association 5th Annual Forensics Seminar, Dallas, Tx, October 5, 2007

"Firearms," presented at the Los Angeles Public Defender Forensic Science Conference, September 14, 2007

"Challenging Firearms and Toolmark Identification," presented at the National Seminar for Federal Defenders, Miami, FL, May 31, 2007

"Gunshot Cases," presented at the 2007 Capital Case Defense Seminar in Monterey, California, sponsored by the California Attorneys for Criminal Justice and California Public Defenders Association, February 18, 2007

"Firearms and Toolmark Identification: Legal and Scientific Issues," presented at the New York University Law School Criminal Law Luncheon, October 10, 2006

"Challenging Firearms and Toolmark Evidence" and "Firearms and Toolmark Evidence: Advanced Issues and Bring Your Own Case," presented at a conference on Death Penalty Defense and Forensic Science in Indiana, sponsored by the Indiana Public Defender Council, Sept. 15, 2006

"Firearms and Toolmark Identification: Legal Steps Forward, Scientific Steps Back," Science Department Lecture Series, John Jay College, April 2006

Guest Speaker on Daubert/Frye Issues and Firearms and Toolmark Identification at the Forensic Science Ph.D. Student Colloquium, John Jay College, April 21, 2005

"Forensic DNA Analysis and The Admissibility of DNA and Other Scientific Evidence," presentation (with co-presenters Henrietta Nunno and Lawrence Kobilinsky) to Spanish prosecutors (arranged by the U.S. Department of State, Office of International Visitors), John Jay College, March 2005

"The *Daubert* Revolution: Why Judges Get Decisions about the Admission of Scientific Evidence Right for the Wrong Reasons (and Then They Get Them Wrong)," presented at the Forensic Psychology Research Forum, John Jay College of Criminal Justice, November 2002

"A Market in Liberty?: Corruption, Cooperation, and the Federal Criminal Justice System," presented at a conference on Corruption—Public & Private, Institute of Criminal Justice Ethics, John Jay College of Criminal Justice, September 2002

"The *Daubert* Myth of the Super-Expert Judge," presented at the Annual Meeting of the Law and Society Association, May 2000

"Judges, Juries and Experts," presented to the New York Group of the Society for Philosophy and Public Affairs, March 2000

External evaluator for a conference on Matters of Life and Death, hosted by the Department of Philosophy, Rutgers University-Newark, and the New Jersey Medical School-UMDNJ, March 2000

"Daubert and Falsifiability," presented at the Annual Meeting of the Law and Society Association, June 1999

Roundtable moderator and commentator at a conference on Crime, Neo-Liberalism and the Risk Society, John Jay College of Criminal Justice, April 1999

"Judges as Super Scientists," presented to the Princeton University Psychology Department, December 1998, and at annual meetings of the American Society of Criminology (November 1998) and the Law and Society Association (June 1998)

"Homes as Folding Umbrellas: The Supreme Court's Recent Cases on 'Knock and Announce'," presented at the Annual Meeting of the Law and Society Association, May 1997

"*Daubert v. Merrell Dow Pharmaceuticals*: The Supreme Court Versus Science," presented to the Philosophy Department, the School of Criminal Justice and the College Honors Program at Rutgers University-Newark, April 1997; and in the Provost's Lecture Series on Philosophy and Criminal Justice, John Jay College of Criminal Justice, December 1995

"'A Man's House Is His Castle': The Supreme Court's New Decision on the 'Knock and Announce' Rule," presented at the Annual Meeting of the American Society of Criminology, November 1995

"'Just Take Away Their Guns': The Hidden Racism of *Terry v. Ohio*," presented to the CUNY Law and Society Study Group, March 1995; to the New York Group of the Society for Philosophy and Public Affairs, February 1995; at the Annual Meeting of the American Society of Criminology, November 1994; and at a conference on International Perspectives on Crime, Drugs and Public Order, John Jay College of Criminal Justice, June 1994

Chaired panel on "Legal and Extra-Legal Issues in Law Enforcement" and delivered "Who's the We: Relations among the Citizenry, Criminal Defendants and the Police" at the Annual Meeting of the American Society of Criminology, November 1994

Delivered papers at conferences at the Westminster Institute for Ethics and Human Values (1982 and 1983) and Montclair State College (1979); at meetings of the American Philosophical Association (1983), the New York Group of the Society for Philosophy and Public Affairs (1978 and 1981), and the Public Choice Society (1981); and to the Philosophy Departments at The University of Wisconsin at Milwaukee (1981), Vassar College (1980), Oberlin College (1979), The Catholic University of America (1978), and The University of Maryland at Baltimore (1978)

Commented on papers at meetings of The American Political Science Association and the Public Choice Society (1980) and at a conference sponsored by the Rutgers University Philosophy Department (1978).

PROFESSIONAL ACTIVITIES

Defense Expert on Firearms and Toolmark Identification, *United States v. Nelson Otero and Maxcime Cagan,* Criminal No. 11-cr-023 (submitted affidavit, testified at admissibility hearing)	Feb. 2012
Defense Expert on Firearms and Toolmark Identification, *Commonwealth of Virginia v. Robert E. Roy,* CR No. 20440-00, -01, -02, -03 (Circuit Ct. Loudoun Cty. Va.) (submitted declaration, testified, via deposition, for admissibility hearing)	Sept.-Nov. 2011
Defense Expert on Firearms and Toolmark Identification, *United States v. Krasniqi*, S9 10 Cr 464 (S.D.N.Y.) (submitted affidavit)	Sept.-Oct. 2011
Defense Expert on Firearms and Toolmark Identification, *United States v. Albert Taitano et al,* Criminal Case No. 10-00037 (D.N.Mariana Islands) (submitted affidavit; testified at	December 2010 – May 2011

Daubert hearing)	
Defense Expert on Toolmark Identification, *State of Florida v. Gary Michael Hilton,* Case No. 08CF697 (Circuit Ct. Second Judicial Cir. Leon Cty) (submitted affidavit, testified at *Frye* hearing and, via deposition, at trial)	June 2010-Jan. 2011
Defense Expert on Firearms and Toolmark Identification, *People of the State of New York v. Dajon Givens,* 912 N.Y.S.2d 855 (NY Supreme Court Bronx County 2010) (submitted affidavit)	Aug. 2010 – Oct. 2010
Defense Expert on Toolmark Identification, *United States v. Billi Jo Smallwood,* CRIMINAL ACTION NO. 5:08CR-38-R, 2010 WL 4168823 (W.D.Ky. Oct. 12, 2010), *aff'd* No. 10–6347. 2012 WL 171042 (6th Cir. Jan. 23, 2012) (submitted affidavit, testified at *Daubert* hearing)	April 2010–August 2010
Defense Expert on Firearms and Toolmark Identification, *Commonwealth of Massachusetts v. George Duarte,* Indictment Nos. BRCR2008-00372 (New Bedford Superior Court) (submitted affidavit, testified at admissibility hearing)	June 2010
Defense Expert on Firearms and Toolmark Identification, *People of the State of New York v. Nicholas Jerome Morgan,* Indictment #: 2005-0783 (NY Supreme Court Monroe County) (submitted affidavits)	Feb. 2010 –May 2010
Defense Expert on Firearms and Toolmark Identification, *United States v. Marius St. Gerard,* SGT, U.S. Army, HSC, 1st Bn, 10th SF Group (Airborne) APO AE 09107 (U.S. Army Trial Judiciary 5th Judicial Circuit, Germany June 7, 2010) (testified at *Daubert* hearing)	May 2010
Defense Expert on Firearms and Toolmark Identification, *People of the State of California v. Ahmed Ali,* Case No. SCD 215890 (Superior Ct. San Diego Co.) (submitted affidavit)	May 2010
Defense Expert on Firearms and Toolmark Identification, *United States v. Guerrero,* 09-cr-0339 (SDNY 2010) (submitted affidavit, testified at *Daubert* hearing)	May 2010
Defense Expert on Firearms and Toolmark Identification, *United States v. Anh The Duong,* Action No. CR 01-20154 JF (N.D. Cal.San Jose Div.) (submitted declarations)	Dec. 2009-May 2010
Defense Expert on Firearms and Toolmark Identification,	June 2009, March 2010

State of North Carolina. v. Vonzeil Adams, File No. 05CRS5889, 05CRS53713 (Superior Ct. Div. Pitt County) (submitted affidavit, testified at admissibility hearing)	
Defense Expert on Firearms and Toolmark Identification, *State of Ohio v. Joseph Hudson*, CR: CR-08-517997-A ,Cuyahoga County Common Pleas Court, Case No. 514703 (submitted affidavit, testified at admissibility hearing)	Aug. 2009- Feb. 2010
Defense Expert on Firearms and Toolmark Identification, *United States v. Walik Williams*, 09 CR 590 (FB) (E.D.N.Y.) (submitted affidavit)	Dec. 2009
Defense Expert on Firearms and Toolmark Identification, *Commonwealth of Massachusetts v. Robert Iacoviello, Jr.*, Indictment No. 2007-11310 (Mass. Superior Court Department of the Sussex Trial Court) (submitted affidavit)	Dec. 2009-Jan.2010
Advisory Board, Ohio Public Defender Wrongful Conviction Project	August 2009-
Defense Expert on Firearms and Toolmark Identification, *Maryland v. Whittingham*, Case No. CT-08-1682X (Cir. Ct. Prince George's Co. (submitted affidavit)	Sept. 2009
Defense Expert on Firearms and Toolmark Identification, *People of the State of Colorado v. Bryan Nickerson*, 08CR4722 (Dist. Ct., City & County of Denver, Colorado) (submitted affidavit)	Aug. 2009 – Feb. 2010
Defense Expert on Firearms and Toolmark Identification, *United States v.Tavon Mouzone*, Magistrate's Report and Recommendation adopted and incorporated in *United States v. Willock*, 696 F.Supp.2d 536 (D.Md. 2010) (submitted affidavits; testified at *Daubert* hearing)	Sept.-Oct. 2009
Defense Expert on Firearms and Toolmark Identification, *State of Ohio v. Demonte Merriweather*, Cuyahoga County Common Pleas Court, Case No. 514703 (submitted affidavit, testified at admissibility hearing)	July-Oct. 2009
People of the State of Colorado v.Willie Clark, 08CR10425 (Dist. Ct., Denver County, Colorado) (submitted affidavit)	August 2009
Defense Expert on Firearms and Toolmark Identification, *People of New York v. Giovanny Eligio*, Indictment No. 4097-08 (Supreme Court of the State of New York Bronx County, Criminal	July- Oct. 2009

Division) (submitted affidavit)	
Defense Expert on Firearms and Toolmark Identification, *Commonwealth of Massachusetts v. Kieson Cuffee and Daniel Williams,* Indictment Nos. 08-0664 and 08-0665 (Mass. Superior Court Department of the Hampden Trial Court) (submitted affidavit)	July – Sept. 2009
Defense Consultant on Firearms and Toolmark Identification, *Commonwealth of Virginia v. Chappell,* Case Number CF 000157 (Circuit Ct. for the City of Alexandria) (submitted affidavit)	June 2009
Defense Expert on Firearms and Toolmark Identification, *State of Wisconsin v. Christopher Jones,* Milwaukee County Case No. 2006CF4929 (Circuit Ct. Milwaukee County) (submitted affidavit)	May- July 2009
Defense Expert on Firearms and Toolmark Identification, *United States v. Donald Scott Taylor,* 663 F.Supp.2d 1170 (D.N.M. 2009) (submitted affidavits; testified at *Daubert* hearing)	May – Sept. 2009
Defense Expert on Firearms and Toolmark Identification, *State of California v. Earl Eugene Rose, Jr.*, Case # FVA 010494 (Superior Ct. San Bernardino Co.) (testified at admissibility hearing)	April – Aug. 2009
Defense Expert on Firearms and Toolmark Identification, *Cannon v. Belleque*, Case No. 04C10127 (Cir.Ct. Marion Co. Oregon) (submitted affidavit)	March 2008- Dec. 2009
Defense Expert on Firearms and Toolmark Identification, *State of South Carolina v. Edward Freiburger,* CA No. 06-CP-40-3866 (Richland Co. Ct. of Common Pleas) (testified at post-conviction relief hearing)	Oct. 2008-Aug. 2009
Defense Expert on Firearms and Toolmark Identification, *United States v. Damion Jones*, 2008 CF2 23353 (D.C. Super. Ct.) (submitted affidavit)	April 2009
Defense Consultant on Firearms and Toolmark Identification, *Commonwealth of Pennsylvania v. Steven Carl Colegrove,* No. CP-08-CR000785-2007 (Court of Common Pleas Bradford County) (submitted affidavits and testified at admissibility hearing)	Dec. 2008 – Mar.2009
Defense Consultant on Firearms and Toolmark Identification, *People v. Joseph Melcher*, Ct.Nos. 2288575 & 2292777	Dec. 2008-Mar. 2009

(San Francisco Superior Ct.) (submitted affidavit)	
Defense Expert on Firearms and Toolmark Identification, *State of Ohio v. Eashawn Anderson,* Case No. 50953 (Court of Common Pleas Cuyahoga Co.) (submitted affidavit; testified at admissibility hearing)	Dec. 2008 –Mar. 2009
Defense Expert on Firearms and Toolmark Identification, *Joshua Cain v. Belleque* (D.Or.) (submitted affidavit)	Oct. 2008- Jan. 2009
Defense Expert on Firearms and Toolmark Identification, *United States v. Willie Gayden*, 2006 CFI 27899 (D.C. Super Ct.) (submitted affidavit)	Oct. 2008
Affidavit and Testimony from *United States v. Damian Brown et al., 05 Cr. 538* (SDNY) and "Commentary on Nichols R.G., Defending the Scientific Foundations of the Firearms and Tool Mark Identification Discipline: Responding to Recent Challenges, J. Forens. Sci. 2007 May; 52(3): 586-94," *Journal of Forensic Sciences* 52(6): 1414-15 (November 2007) considered as evidence at *Daubert* hearing in *United States v. Glynn,* 578 F.Supp.2d 567 (S.D.N.Y. 2008)	June 2008
Defense Expert on Firearms and Toolmark Identification, *United States v. Damian Brown et al.,* 05 Cr. 538 (S.D.N.Y.) (submitted affidavit, testified at *Daubert* hearing)	June 2008
Defense Expert on Firearms and Toolmark Identification, *United States v. Worsley,* Criminal No.2003 FEL 6856 (Superior Ct. of the Dist. of Columbia Criminal Division-Felony Branch) (submitted affidavit)	Mar.-Sept. 2008
Defense Expert on Firearms and Toolmark Identification, *United States v. English,* Criminal N. 2007 CF1 16618 (Superior Ct. District of Columbia Criminal Division-Felony Branch) (submitted affidavit)	Feb.- Mar. 2008
Defense Expert on Firearms and Toolmark Identification, *United States v. Khalid Barnes,* et al., S9 04 Cr.186 (SCR) (SDNY) (submitted affidavit)	February 2008
Assistant Director, Cybercrime Studies Center, John Jay College of Criminal Justice	February 2008-
Defense Consultant on Firearms and Toolmark Identification, *Maryland v. Fleming*, Criminal Case No. 06-46624 (Circuit Ct. Howard Co.) (submitted affidavits for pre-trial motion; consulted on	Jan.-Feb. 2008, Jan. 2010

appeal before the Md. Special Ct. of Appeals)	
Participant, Fordham Law School Information Law and Policy Roundtable	Spring 2007-
Defense Expert on Firearms and Toolmark Identification, *United States v. Natson No.: 4:05-CR-21* (M.D. Ga. Columbus Div.) (submitted F.R.Cr.P. 16 Statement)	February 2007
Defense Expert on Firearms and Toolmark Identification, *United States v. Diaz*, Slip Copy, NO. CR 05-00167 WHA, 2007 WL 485967 (N.D.Cal. Feb 12, 2007) (testified at *Daubert* hearing)	November 2006
Steering Committee, Cybercrime Studies Center, John Jay College	Fall 2006-
Defense Expert on Firearms and Toolmark Identification, *Commonwealth of Massachusetts v. Meeks and Warner*, NO. CRIM.A. 2002-10961, CRIM.A. 2003-10575, 2006 WL 2819423 (Mass.Super. Sep 28, 2006) (testified in admissibility hearing and submitted affidavit)	April- May 2006
Defense Expert on Firearms and Toolmark Identification, *United States v. Saldana*, CR 04-415 (A)-PA (C.D. Cal.) (submitted affidavit)	April 2006
Defense Expert on Firearms and Toolmark Identification, *United States v. Monteiro*, 407 F. Supp. 2d 351 (D.Mass. 2006) (submitted affidavit)	October 2005
Defense Expert on Firearms and Toolmark Identification, Post-Con-Viction Proceedings in *North Carolina v. White* (N.C. General Court Of Justice, Superior Ct. Div., Craven County, 99 CRS 10229-30) (submitted affidavit)	May 2005
Defense Expert on Toolmark Identification, *United States v. Kain*, Crim. No. 03-573-1 (E.D.Pa. 2004) (advised defense counsel on scientific issues and cross examination of prosecution expert)	Feb.- Mar. 2004
Ph.D. Examiner, Philosophy Department, University of New England, Armidale, Australia	Dec. 2003 – March 2004
Appellant's Brief, on Behalf of Adina Schwartz as Amicus Curiae, in *Ramirez v. State*, 810 So.2d 836 (Fla. 2001) (distributed and discussed by Bruce Moran, Criminalist IV, Sacramento County District Attorney's Office, at a meeting of the California Association	December 2001

of Criminalists (CAC), March 2002)

Comments to Senator Hillary Clinton on a Draft of a Bill to Prohibit Racial Profiling	June 2001
Reviewer of test materials for ETS	1999-2001
Comments on Proposed Rule 702 of the of Practice and Procedure of the Administrative Office of United States Courts, summarized at http://www.uscourts.gov/rules/archive/1999/propevid.pdf	January 1999
Associate Editor, *Criminal Justice Ethics*	1997-present
Participant, Hoffinger (formerly, Fortunoff) Colloquium on Criminal Justice, New York University	1993-present
Editorial Review Board, *Human Rights Quarterly*	1981-1983
Editorial Board, *Ethics*	1980-1983

CASE

NO L06-04368
SLED Case Type: HOMICIDE
Submitting Agency: Horry County
Agency Case #: 06010298

CATEGORY: _____

SUBJECT: _____ CHARACTER: IBIS

VICTIM: _____

CITY OR COUNTY: _____ DATE: _____

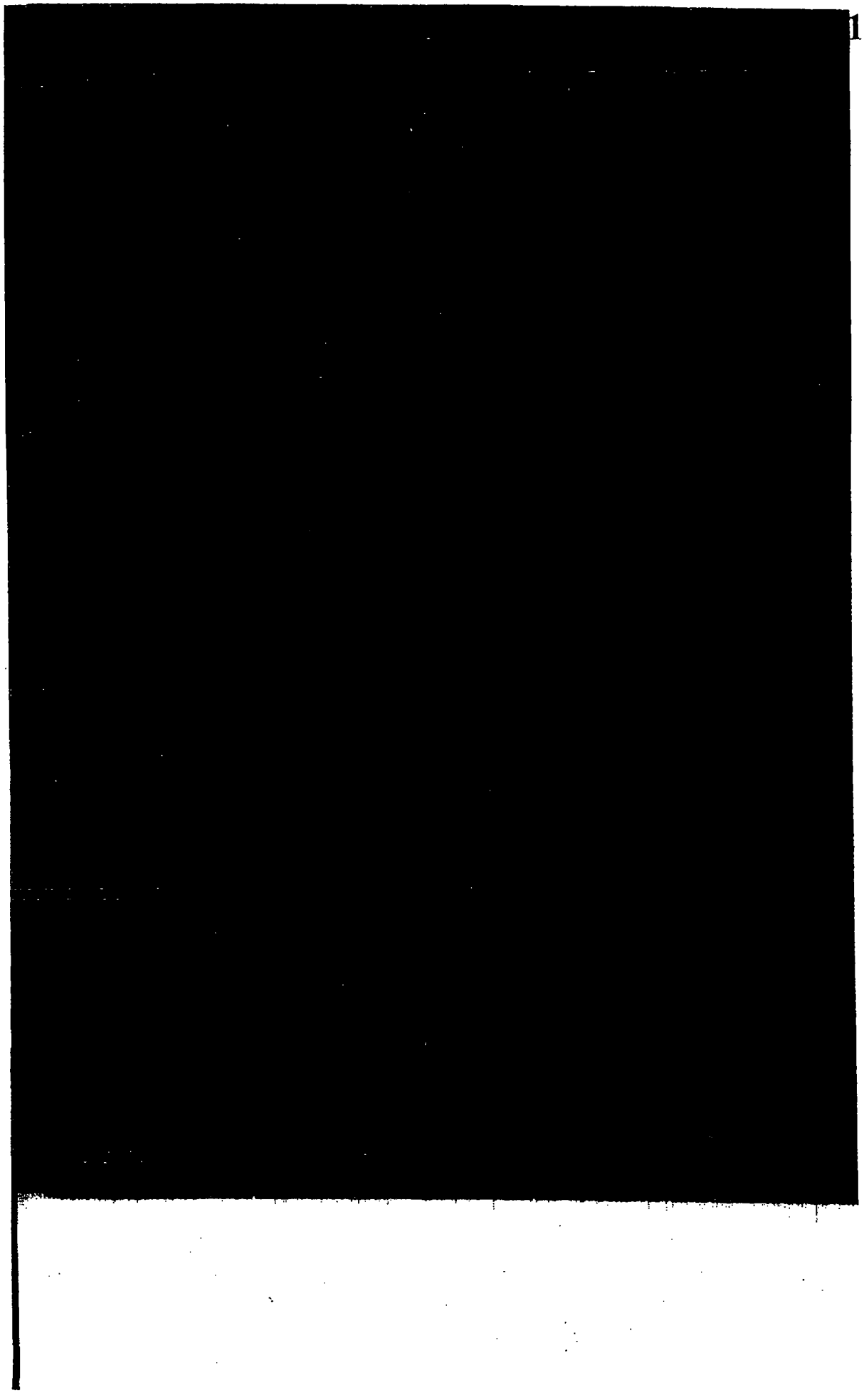
INVESTIGATING OFFICER: VP

4 CR 3.30.06

PETITIONER'S EXHIBIT 4
ID/EV 6/18/17 BB

L06-04368

SLED Case Type: HOMICIDE
Submitting Agency: Horry County
Agency Case #: 06010298



4772

SLED FORENSIC SERVICES LABORATORY
SWORN TESTIMONY DOCUMENTATION FORM

☒ Testimony ☐ Appearance Only (no testimony)

Testifying Employee: Vello Paavel
Date Form Submitted: 020408
Case Caption: State v Winkler
SLED Lab Number: L06-4368
Date of Testimony: 020208
Location: Conway SC
Prosecutor: Greg Hembree
Defense Attorney: Ralph Wilson
Judge: Lochemy
Testimony Duration: 1 Hours 05 Minutes
Reason for Court Appearance Only (No Testimony): na
Testimony Requested By: ☒ State ☐ Defendant (Criminal) ☐ Plaintiff ☐ Defendant (Civil)

TYPE OF HEARING

- ☒ General Sessions (Criminal)
- ☐ Common Pleas (Civil)
- ☐ Magistrate
- ☐ Municipal
- ☐ Admin. (specify): _____
- ☐ Federal Court (specify): _____
- ☐ Deposition
- ☐ Pre-Trial Motion
- ☐ Coroner's Inquest
- ☐ Other (specify): _____

TESTIMONY DISCIPLINE

- ☐ Arson
- ☐ Drug Analysis
- ☐ Evidence Control
- ☐ Evidence Processing
- ☒ Firearms/Toolmarks
- ☐ Forensic Administration
- ☐ Implied Consent
- ☐ Latent Prints
- ☐ Photography
- ☐ Questioned Documents
- ☐ Serology/DNA
- ☐ Toxicology
- ☐ Trace Evidence

TESTIMONY SUBDISCIPLINE

- ☐ Alcohol (Blood) or ☐ Alcohol (Breath)
- ☐ Blood Spatter or ☐ Crime Scene Processing
- ☐ Chain of Custody (Check if no other issue)
- ☐ DNA (PCR) or ☐ DNA (RFLP)
- ☐ Drug Screen
- ☐ Explosives
- ☐ Fibers or ☐ Trace Other
- ☒ Firearms or ☐ Toolmarks
- ☐ Footwear/Tiretrack or ☐ Latent Prints
- ☐ Gunpowder Residue or ☐ Gunshot Residue
- ☐ Paint
- ☐ Serology
- ☐ Other (specify): _____

NOTES (OPTIONAL):

DP case

Original to Quality Manager
Copy to Case File
Copy to Testifying Employee

SLED Forensics Form # FSA 005, October 2002

Receipt # 1

4773

This Space Reserved For Lab Receipt Barcode.

SLED LABORATORY
FORENSIC SERVICES REQUEST

SLED LAB No. L06-04368
Submission: 1 03/24/2006

Name of Investigating officer: Toby Boyd
Agency: Horry County Police Department Phone No: 843-248-1790
Fax No: _____ Email: _____
Mailing Address: 2560 Main St, Suite 7
City / State / Zip: Conway, SC 29528-1075
CC: _____

ORI No: SC0260400
Agency Case No: 06010298
Offense: HOMICIDE
County: Horry
Offense Date: 03/03/2006
Officer Involved Shooting ☐ Yes
Rush: ☐ Yes

Is this evidence related to another lab number?
☒ Yes ☐ No
If yes, Lab Number: L0601396 ← NO FA evidence - has DNA + other evidence.

[redacted]	Agency Item No.	Description of Evidence	Analysis Requested
1		gun shot residue - J[redacted]G[redacted]	TRACE EVIDENCE
2		gun shot residue - Rebecca Winkler	TRACE EVIDENCE
3		handgun - Walther PPK/S 9mm handgun bearing ser	FIREARMS
4		handgun - Jennings Bryco 38 .380 handgun bearing :	FIREARMS
5		miscellaneous - Spent projectile marked #8	FIREARMS
6		Clothing - One pair of white Athletic socks	EVIDENCE PROCESSING
7		Clothing - Leather braided belt with metal buckle	EVIDENCE PROCESSING
8		Clothing - Wrangler blue jeans	EVIDENCE PROCESSING
9		Clothing - Cut off sweat pants	EVIDENCE PROCESSING
10		Clothing - Long sleeve T-shirt with lizard print	EVIDENCE PROCESSING
11		Clothing - Short sleeve T-shirt with Dale Earnhardt	EVIDENCE PROCESSING
12		shoes - One pair of Adidas sneakers	EVIDENCE PROCESSING
13		Clothing - Izod Fleece pull over shirt	EVIDENCE PROCESSING
14		fingernail clippings - Nail cuttings from Rebecca Win	DNA ANALYSIS
15		Blood standard - Rebecca Winkler	DNA ANALYSIS
16		swab(s) - Swab marked #17	DNA ANALYSIS

P I W

Receipt # 1

4774

This Space Reserved For Lab Receipt Barcode.

Subject(s)	Sex	Race	DOB	SSN
Louis Michael Winkler	M	W	03/24/1960	

Victim(s)	Sex	Race	DOB	SSN
Rebecca Winkler	F	W	04/24/1955	

Comments
Clothes are from the suspect Louis Winkler

Submitted By :

Andrew Cooper

Received By :

Betty W. Butler

Betty W. Butler
Forensic Technician

P2W L06-4368

Container Inventory Report

Container Information

3/28/2006

Container L06-04368 C#B

Custody Of Forensic Scientist

Location Vello Paavel

Container Items

Lab Case	Dept Case #	Item #	Item Type	Description
L06-04368	06010298	4	handgun	Jennings Bryco 38 .380 handgun bearing serial #424075 with magazine and 13 rounds
L06-04368	06010298	3	handgun	Walther PPK/S 9mm handgun bearing serial #184550 with magazine and 7 rounds
L06-04368	06010298	5	miscellaneous	Spent projectile marked #8

Sub Containers

Lab Case	Dept Case #	Container Description	Package Type

3 Items / 0 Containers

WEAPON WORKSHEET

SLED LAB NO: L06-4368 AGENCY: Horry Co PD

DATE COMPLETED: 3-29-06 EXAMINER: Pacard

ITEM NO: 3
HOW PACKAGED: ℄ sealed CB 9mm box ℄ sealed CB box B

DATE OPENED: 3-28-06 BY: WP

MANUFACTURER: Cons Waltham Waffenfabrik
Ulm/Donau W. Germany

IMPORTER OR DISTRIBUTOR: Interarms, Alexandria, VA

MODEL: PPK/S

SERIAL NUMBER: 1845505

SERIAL NUMBER LOCATION(S): 1845505 on RS frame, behind trigger. 184550 on RS slide

CALIBER/GAUGE: 380 Auto (9mm Kurz)

WILL ALSO FIRE: —

BARREL LENGTH: ~3 3/8" OVERALL LENGTH: ~6 1/8"

NO. OF BARRELS: 1 MUZZLE TO TRIGGER LENGTH: —

CHOKE(S): —

PLAIN BBL RIB BBL OTHER: —

METAL FINISH: blued steel

STOCK OR GRIPS: wood - Silc

SIGHTS: BEAD (OPEN) (FIXED) ADJ. APER SCOPE

OTHER: —

OVERALL CONDITION: good - surface rust + light spotty pitting

ACCESSORIES: —

BORE CONDITION: dust, lint, oil

CYLINDER CONDITION: NA

(VIEWED FROM REAR) CYLINDER ROTATION CW → NA ← CCW

WHEN RECEIVED WEAPON WAS: LOADED (UNLOADED)

TYPE MAGAZINE: det. box

(MAG) OR CYL CAPACITY: 7

MAX CAPACITY OF WEAPON: 8

magazine not in well

(MAG) OR CYL CONTENTS: 7 cartridges

ADDITIONAL AMMUNITION RECEIVED WITH WEAPON: NONE

TYPE ACTION: SA/DA semi auto pistol

TRIGGER PULL WEIGHT: NUMBER OF TESTS:

SINGLE ACTION 5 POUNDS 5

DOUBLE ACTION 16 POUNDS 5

SAFETIES AND POSITIONS AS RECEIVED: hammer down, slide mt. hammer down safety "ON"

HAMMER PUSH OFF? YES (NO) APPROX. WEIGHT: NA

SAFETY DEFECTS: NONE: X

MECHANICAL DEFECTS: NONE: X

NUMBER OF LANDS AND GROOVES: 6 TYPE: CONV.

DIRECTION OF TWIST: (RIGHT) LEFT

LOCATION/EXAMINER'S MARKS: L06-4368 I3 WP
barrel, slide, mag well, mag

DID WEAPON FUNCTION AND FIRE DURING TEST FIRING?

(YES) NO IF NO, EXPLAIN

WEAPON WORKSHEET (CON'T)

SLED LAB NO: L06-4368 EXAMINER: Powell

ITEM NO. (CON'T) 3 DATE SEALED: 3-25-06 BY: WP

TOTAL NUMBER OF TEST FIRINGS: 4 TEST AMMUNITION USED: Remington - UMC 380 Auto

TESTS COMPARED? yes

WAS AMMO RECEIVED WITH WEAPON USED FOR TEST FIRING? NO X YES _____ ITEM NO. NA

HOW MANY/WHAT TYPE? NA

TRACE EVIDENCE NOTED? NO X YES _____ COLLECTED? NO NA YES _____ DESCRIBE: NA

WAS WEAPON PATTERNED? NO X YES _____ AMMUNITION USED: NA

OTHER NOTES: Magazine - reblued?

SKETCH:

LAB FORM: 034
MARCH 1994

AMMUNITION/CARTRIDGE WORKSHEET

SLED LAB NO: L06-4368 AGENCY: Horry Co PD

DATE COMPLETED: 3-29-06 EXAMINER: Powell

ITEM NO: 3 Seven unfired cartridges

SOURCE: From magazine with Item 3 pistol

HOW PACKAGED: 1 sealed CB box w/I3 pistol 1 sealed CB box "B"

DATE OPENED: 3-28-06 BY: WP

CALIBER: 380 Auto

BULLET WGT/TYPE: nom. 95 gr FMJ RN copper/lead

(UNFIRED) FIRED MISFIRED

CASE CONSTRUCTION: brass; nickel primer

BRAND: Remington, umc

CASE MARKINGS: see below

FIRING PIN: - EXTRACTOR -

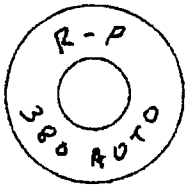
EJECTOR: - BREECHFACE -

CHAMBER: -

EXAMINER'S MARKINGS/LOCATION: L06-4368 I3 WP on all

CONDITION: dull color

HEADSTAMP:



7 cartridges

RESULTS: Proper caliber for use in 380 Auto caliber firearms.

"MICRO" VERIFIED: YES (NO) BY:

PHOTO: (YES) NO

DATE SEALED: 3-29-06

Lab Form: 035
March 1994

PAGE 6 WP

WEAPON WORKSHEET

SLED LAB NO: L06-4368 AGENCY: Horry Co PD

DATE COMPLETED: 3-29-06 EXAMINER: Paavel

ITEM NO: 4

HOW PACKAGED: 1 sealed CB gun box & sealed CB box "B"

DATE OPENED: 3-28-06 BY: WP

MANUFACTURER: Jennings - Bryco

Bryco Arms Irvine, CA USA

IMPORTER OR DISTRIBUTOR: —

MODEL: Bryco 38

SERIAL NUMBER: 424075

SERIAL NUMBER LOCATION(S): RS frame Above trigger

CALIBER/GAUGE: 380 Auto

WILL ALSO FIRE: —

BARREL LENGTH: ~ 2 13/16" OVERALL LENGTH: ~ 5 1/4"

NO. OF BARRELS: 1 MUZZLE TO TRIGGER LENGTH: —

CHOKE(S): —

PLAIN BBL RIB BBL OTHER:

METAL FINISH: chrome

STOCK OR GRIPS: black plastic

SIGHTS: BEAD (OPEN) (FIXED) ADJ. APER SCOPE

OTHER:

OVERALL CONDITION: G-VG

ACCESSORIES: —

BORE CONDITION: fouled, dirt? at muzzle

CYLINDER CONDITION: NA

(VIEWED FROM REAR) CYLINDER ROTATION CW → NA ← CCW

WHEN RECEIVED WEAPON WAS: LOADED (UNLOADED)

TYPE MAGAZINE: det. box

(MAG) OR CYL CAPACITY: 6

MAX CAPACITY OF WEAPON: 7

magazine not in well

(MAG) OR CYL CONTENTS: 5 cartridges

ADDITIONAL AMMUNITION RECEIVED WITH WEAPON: 18 cartridges in env.

TYPE ACTION: SA semi auto pistol

TRIGGER PULL WEIGHT: NUMBER OF TESTS:

SINGLE ACTION 9 1/2 POUNDS 5

DOUBLE ACTION — POUNDS —

SAFETIES AND POSITIONS AS RECEIVED: thumb safety off as received - works

HAMMER PUSH OFF? YES NO NA APPROX. WEIGHT: —

SAFETY DEFECTS: NONE: x

MECHANICAL DEFECTS: NONE: x

NUMBER OF LANDS AND GROOVES: 6 TYPE: R CONV

DIRECTION OF TWIST: (RIGHT) LEFT

LOCATION/EXAMINER'S MARKS: L06-4368 I4 WP barrel, slide, mag well, mag

DID WEAPON FUNCTION AND FIRE DURING TEST FIRING?

(YES) NO IF NO, EXPLAIN

LAB FORM: 034
MARCH 1994

WEAPON WORKSHEET (CON'T)

SLED LAB NO: L06-4368 EXAMINER: Powell

ITEM NO. (CON'T) 4 DATE SEALED: 3-29-06 BY: CD

TOTAL NUMBER OF TEST FIRINGS: 4 TEST AMMUNITION USED: Remington - Ucmc 380 Auto

TESTS COMPARED? yes

WAS AMMO RECEIVED WITH WEAPON USED FOR TEST FIRING? NO X YES ____ ITEM NO. NA

HOW MANY/WHAT TYPE? NA

TRACE EVIDENCE NOTED? NO X YES ____ COLLECTED? NO ____ YES NA DESCRIBE: NA

WAS WEAPON PATTERNED? NO X YES ____ AMMUNITION USED: —

OTHER NOTES: —

SKETCH:

AMMUNITION/CARTRIDGE WORKSHEET

SLED LAB NO: L06-4368 AGENCY: Horry Co PD

DATE COMPLETED: 3-29-06 EXAMINER: Powell

ITEM NO: 4 23 cartridges

SOURCE: 5 in magazine w/ I4 pistol; 18 < small sealed knapp env < sealed box w/ I4 pistol + magazine < sealed CB box B

HOW PACKAGED: see above

DATE OPENED: 3-28-06 BY: WP

CALIBER: 380 Auto

BULLET WGT/TYPE: Nom. 95 grain FMJ RN copper-lead

(UNFIRED) FIRED MISFIRED

CASE CONSTRUCTION: brass, nickel primers

BRAND: Remington, ume

CASE MARKINGS: See below

FIRING PIN: — EXTRACTOR —

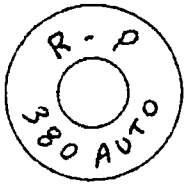
EJECTOR: — BREECHFACE —

CHAMBER: —

EXAMINER'S MARKINGS/LOCATION: L06-4368 I4 WP

CONDITION: fairly shiny (most); rest somewhat dull color

HEADSTAMP:



23 cartridges

RESULTS: Proper caliber for use in 380 Auto caliber firearms.

"MICRO" VERIFIED: YES (NO) BY:

PHOTO: (YES) NO

DATE SEALED: 3-29-06

Lab Form: 035
March 1994

PAGE 9 WP

BULLET/PROJECTILE WORKSHEET

SLED LAB NO: L06-4368 AGENCY: Horry Co. PD

DATE COMPLETED: 3-29-06 EXAMINER: Powell

ITEM NO: 5

SOURCE: ? "#8"

HOW PACKAGED: < sealed Kraft (CB/pasteboard) box < sealed CB box "B"

DATE OPENED: 3-28-06 BY: WP

CALIBER: mcw 380 Auto diameter - damaged - .33" x .37"

OF LANDS & GROOVES: 6

DIRECTION OF TWIST: Rt RIFLING TYPE: conv.

LAND IMPRESSION WIDTH: cons. w/ Item 4 tests GROOVE IMPRESSION WIDTH: cons. w/ Item 4 tests

MAKE: R-P ?

TYPE: bullet - FMJ RN copper-clad; open, flat base, no cannelure

WEIGHT (IN GRAINS): 95.4

EXAMINER'S MARKINGS/LOCATION: L06-4368 I5 WP ogive

DAMAGE/TRACE: nose, ogive damaged. No obvious blood or tissue. Flattened along its long axis also.

SKETCH:

RESULTS: Item 5 was fired by the Item 4 Bryco pistol based on matching ind. identifying characteristics found in the L+C markings.

"MICRO" VERIFIED: (YES) NO BY: [illegible] Date: 3/29/06

PHOTO: (YES) NO GRC: YES (NO)

DATE SEALED: 3-29-06

Lab Form: 036
March 1994

4783

SLED Firearms Departm t
NIBIN (IBIS) Specimen Input Form

SLED Lab No: L06-4368 Examiner: Powell

Please submit any evidence with a copy of the SLED Laboratory Forensic Services Request Form (LAB-003) and the appropriate SLED Laboratory Evidence Inventory Sheet (LAB-004). Also, if the case jacket contains an incident report, please send a copy of that document as well. These documents contain information that must be entered into the NIBIN system.

Evidence Information

Shaded areas are for IBIS use only

Firearms (IBIS-Candidate Calibers Only)

Item Number	Make	Model	Caliber/Gauge	Entered by:	Date	IBIS Exhibits
3	Walther	PPK/S	380 Auto	LCR	3-30-06	TF-3B, TF-3C
4	Jennings-Bryco	Bryco 38	380 Auto	LCR	3-30-06	TF-4B, TF-4C

Bullets or Bullet Fragments (Open) To Be Entered Into IBIS

Item Number	Caliber	# of L/G	Twist	IBIS Exhibit Number	Entered by:	Date

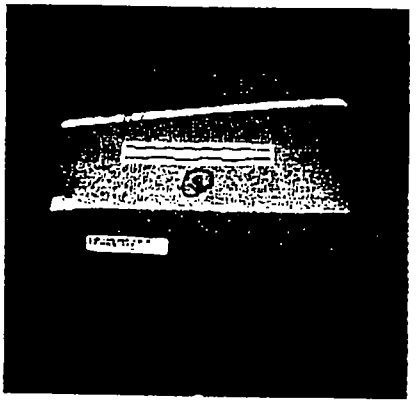
Cartridge Cases (Open) To Be Entered Into IBIS

Item Number	Caliber	IBIS Exhibit Number	Entered by:	Date

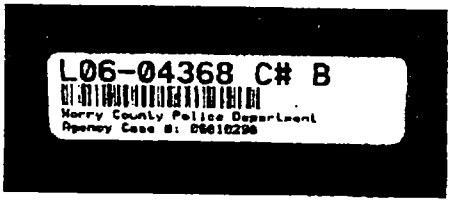
☐ Return to examiner ☐ Return to IBISLOCK ☐ Return to FIRELOCK

Notes or comments from assigned examiner: _____

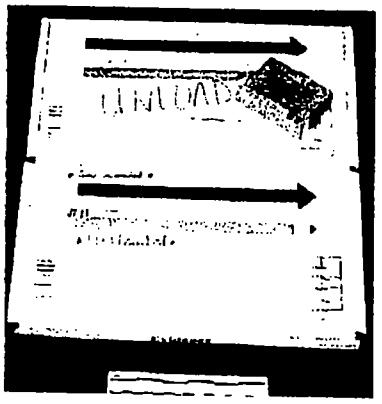
Correlations Reviewed by: _____ Date: _____



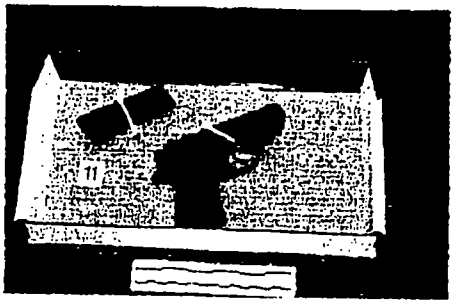
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L0604368-0002.JPG



L0604368-0003.JPG



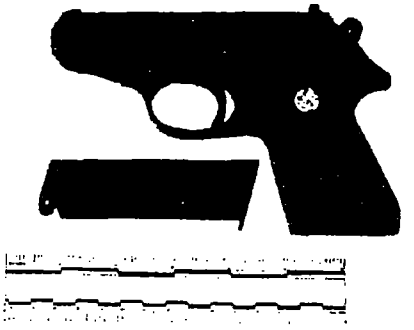
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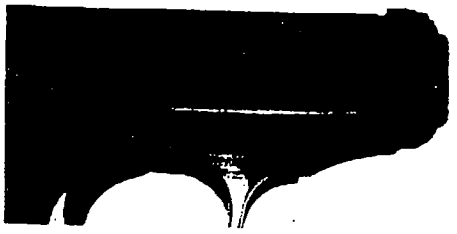
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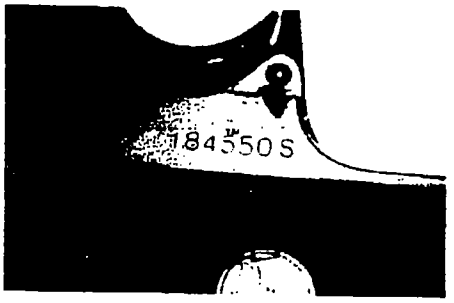


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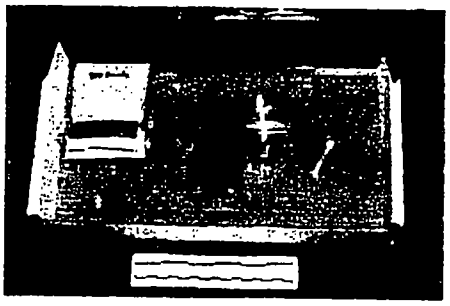


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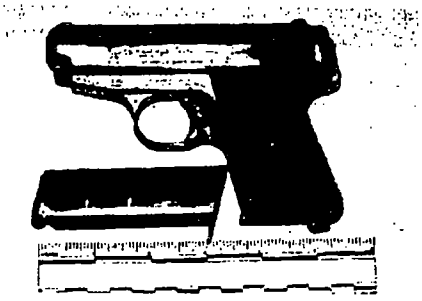


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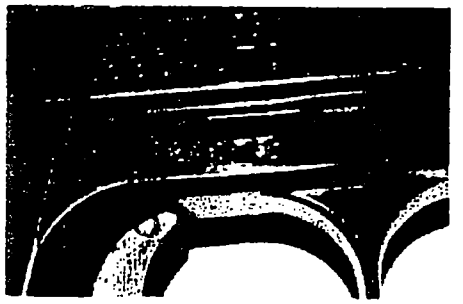
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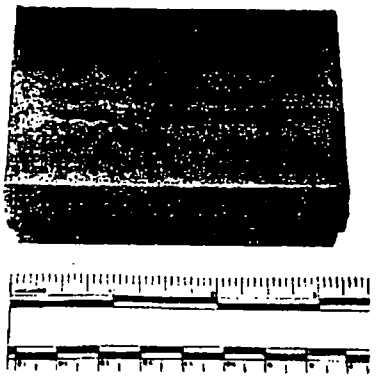


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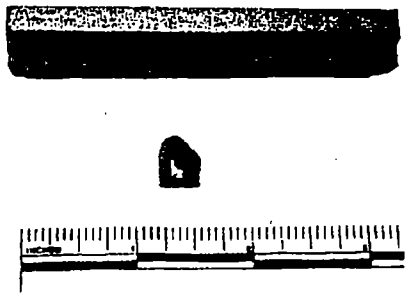


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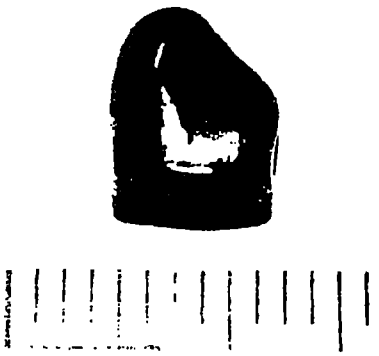
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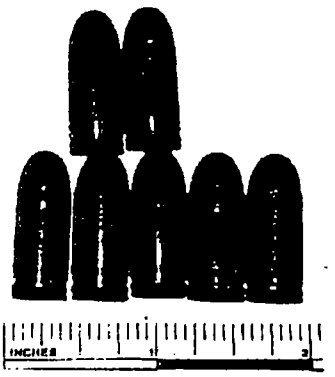


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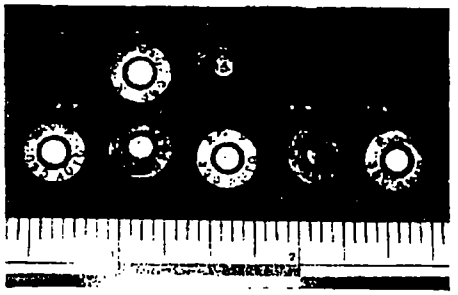
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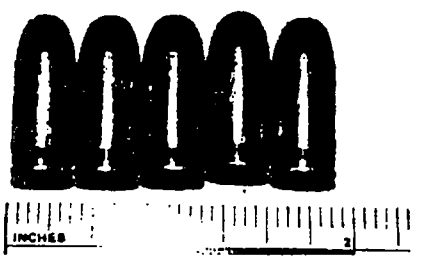
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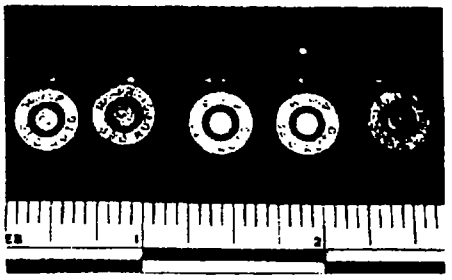
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MAG

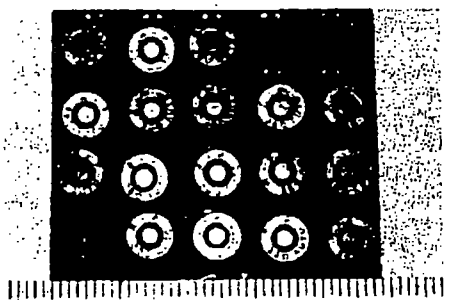


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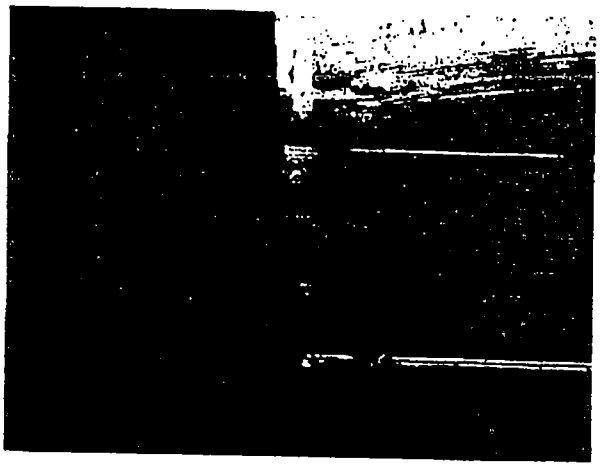
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L0604368-Item5vsTest4(25x).tif

p16 of

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

ROBERT M. STEWART
Chief

Inv. Toby Boyd
Horry County Police Department
2560 Main St, Suite 7
Conway, SC 29526

FIREARMS DEPARTMENT
March 29, 2006
SLED LAB: L06-04368
Your Case No: 06010298
Incident Date: 3/3/2006
[S] Louis Winkler
[V] Rebecca Winkler

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 3 One Walther Model PPK/S pistol, 380 Auto caliber, serial number 184550S, with magazine containing seven unfired 380 Auto caliber cartridges.
RESULTS:
Test fired and found to be in working order.

Item: 4 One Jennings-Bryco Model Bryco 38 pistol, 380 Auto caliber, serial number 424075, with magazine containing five unfired 380 Auto caliber cartridges, and 18 additional unfired 380 Auto caliber cartridges.
RESULTS:
Test fired and found to be in working order.

Item: 5 One fired bullet in container marked, in part, "#8".
RESULTS:
Item 5 was fired by the Item 4 Jennings-Bryco pistol.

Test specimens from Items 3 and 4 were submitted for entry into the Integrated Ballistics Identification System (IBIS). Should any "hits" be developed against these entries, you will be notified. Please retain these items for a minimum of two years in order to maintain their availability for any future comparisons.

Vello Paavel

Vello Paavel
Forensic Scientist

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

ROBERT M. STEWART
Chief

Inv. Toby Boyd
Horry County Police Department
2560 Main St, Suite 7
Conway, SC 29526

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March 29, 2006
SLED LAB: L06-04368
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[S] Louis Winkler
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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

Item 3: One (1) [illegible] rounds

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Anta Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	B	Forensic Technician	Betty W. Butler
3/24/06	9:39	B	Evidence Room (150)	Firearms evidence intake storage
3/28/06	11:30	B	Forensic Scientist	Vello Paavel
3/31/06	8:35	B	Forensic Scientist	Emily B. Reinhart, Lieutenant
3/31/06	9:07	B	Evidence Room (150)	Bin 75 Shelf D
5/15/06	10:50	B	Evidence Disposition	Returned to Agency in person

Anta Cooper

Andrew Cooper - Horry County PD

Item 4: One [illegible] rounds

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Anta Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	B	Forensic Technician	Betty W. Butler

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/24/06	9:39	B	Evidence Room (150)	Firearms evidence intake storage
3/28/06	11:30	B	Forensic Scientist	Vello Paavel
3/31/06	8:35	B	Forensic Scientist	Emily B. Reinhart, Lieutenant
3/31/06	9:07	B	Evidence Room (150)	Bin 75 Shelf D
5/15/06	10:50	B	Evidence Disposition	Returned to Agency in person

Andrew Cooper - Horry County PD

Item 5: Offense: Aggravated Assault

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department
6/22/07	8:49	Det. Robert Deal of the Horry County Police Department

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	B	Forensic Technician	Betty W. Butler
3/24/06	9:39	B	Evidence Room (150)	Firearms evidence intake storage
3/28/06	11:30	B	Forensic Scientist	Vello Paavel
3/31/06	8:35	B	Forensic Scientist	Emily B. Reinhart, Lieutenant
3/31/06	9:07	B	Evidence Room (150)	Bin 75 Shelf D

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

5/15/06	10:50	B	Evidence Disposition	Returned to Agency in person Andrew Cooper - Horry County PD	Andrew Cooper
6/22/07	8:49		Forensic Technician	Amy Stephens	
6/22/07	8:52		Evidence Room (150)	DNA evidence intake storage	
6/26/07	9:15		Forensic Technician	Selena Kinard	
6/26/07	9:18		Forensic Technician	Sheree J. Brown	
6/26/07	13:09		DNA Department	DNA Refrigerator fourth floor (Room 445)	
9/29/07	9:52		Forensic Scientist	Manuel J. Ortuno	
11/26/07	11:05		Forensic Technician	Selena Kinard	
11/26/07	12:14		Temporary Evidence Room (156)	Bin 25 Shelf G	
12/20/07	9:44		Forensic Technician	Selena Kinard	
12/20/07	9:45		Evidence Disposition	Returned to Agency in person Robert Deal-Horry PD	Robert Deal #42

SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

L06-04368

Subm 1 Received (03/24/2006)
Horry County Police Department
Agency Case #: 06010298

: LAB-000
#BER 1993
ns Editions
Be Used

Toby Boyd — Det.
Name of Investigating Officer — Rank

Horry County PD — 843-915-8030
Department — Telephone Number

1560 N. Main St. Suite 7
Street Address or Post Office Box

Conway — SC — 29526
City — State — Zip Code

CC: CSI Andy Cooper

Sled Lab No.
Contributing Agency ORI SC 260400
Contributing Agency Case No 06010298
County Horry
Incident Date 03/06/06
Related Lab No. L06-1396

Subject # 1 — Victim# —
Winkler — Louis — Michael "Mick"
Last Name — First Name — Middle Name
Sex: M ✓ F —
SID/FBI
DL/SS NO:
Race: Cau ✓ Blk — Other —
DOB: [redacted]60

Subject # — Victim# 1
Winkler — Rebecca
Last Name — First Name — Middle Name
Sex: M — F ✓
SID/FBI
DL/SS NO:
Race: Cau ✓ Blk — Other —
DOB: [redacted]56

Subject # — Victim# —
Last Name — First Name — Middle Name
Sex: M — F —
SID/FBI
DL/SS NO:
Race: Cau — Blk — Other —
DOB:

Subject # — Victim # —
Last Name — First Name — Middle Name
Sex: M — F —
SID/FBI
DL/SS NO:
Race: Cau — Blk — Other —
DOB:

*Could any subjects or victims have the following: *(circle)* AIDS VD Hepatitis Tetanus TB Lice

Comments:

COMPLETE THIS SECTION ON ALL CASES: *(Circle Appropriately)*

(Homicide) Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: (Yes) No

(A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution

(K) Heart Related (L) Disease (M) Other

Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating

TYPE OF CASE: *(IF NOT DEATH)* (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other

FOR TOXICOLOGY CASES: *(Circle Appropriately)*

DUI Felony DUI Was a Breath Test given? Yes No If Yes, Reading

Number of Specimens Enclosed: Blood ___ Urine ___ Ocular Fluid ___ Other

Examination Requested: Blood Alcohol Drug Screen CO Blood Type Other

Drugs Suspected: Yes No List Drugs

FOR SEROLOGY/ DNA/HAIR/FIBER CASES: *(Circle Appropriately)*

Was the subject(s) bleeding? Yes (No) Unknown Have any of the victims / subjects been transfused in the last 120 days? Yes No (Unknown)

Crime occurred: Suspect's residence (Victim's residence) Suspect's vehicle Victim's vehicle Other

Was a weapon involved? (Yes) No Unknown Type of weapon? Jennings 38 handgun

Have standards from all possible bleeders or body fluid donors been submitted? (Yes) No Unknown Comments:

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER.

Andrew Cooper
Print Name of Delivering Officer

Andrew Cooper
Signature of Delivering Officer

SLED LABORATORY EVIDENCE INVENTORY SHEET

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

FORM: LAB-004
NOVEMBER 1999
Previous Editions May Be Used

Lab Number L 0604368 Sheet Number 2 of 3
(Use more than one sheet if necessary.)

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAMINATIONS REQUESTED
A 1	Gun Shot Residue on [redacted]	process
2	Gun Shot Residue on Rebecca Winkler	process
B 3	Walther PPK/S 9mm Handgun Bearing Serial # 184550 w/mag. and 7 Rounds (Live)	Compare to projectile marked #B
4	Jennings Bryco 38 .380 Handgun Bearing Serial #424015 w/ mag. w/ 5 Rounds (Live), 18 Rounds (Live)	compare to projectile marked #B
5	Spent Projectile Marked #B	Compare to guns
C 6	1 pair Athletic Socks White	check for DNA
7	Leather Braided Belt w/Metal Buckle	check for DNA
8	Wrangler Blue Jeans Size 33x30	check for DNA
9	Cut Off Sweat Pants	check for DNA
10	Long Sleeve T-Shirt w/ Lizard Print	check for DNA
11	Short Sleeve T-Shirt w/ Dale Earnhardt	check for DNA
12	1 pair Adidas Sneakers Size 9.5	check for DNA
13	Izod Fleece Pull Over Shirt (suspect clothes)	check for DNA

EVIDENCE SUBMITTED IN SEALED CONTAINER IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY OF EVIDENCE CONDUCTED BY THE SLED EXAMINER WILL BE THE CORRECT INVENTORY.

Andrew Cooper
Delivered By (Print)

Andrew Cooper
Delivered By (Sign)

3-24-06
Date

Item #	Received By	Date	Item #	Received By	Date

SLED LABORATORY EVIDENCE INVENTORY SHEET

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

FORM: LAB-004
NOVEMBER 1993
Previous Editions May Be Used

Lab Number L 0604368 Sheet Number 3 of 3
(Use more than one sheet if necessary.)

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAMINATIONS REQUESTED
D 14	Nail Cuttings From Rebecca Winkler	check for DNA
15	Victim Blood Standard R. Winkler	check for DNA
16	Blood Swab Marked #17	compare to Vic. Standard/Compare to database

EVIDENCE SUBMITTED IN SEALED CONTAINER IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY OF EVIDENCE CONDUCTED BY THE SLED EXAMINER WILL BE THE CORRECT INVENTORY.

Andrew Cooper
Delivered By (Print)

Andrew Cooper
Delivered By (Sign)

3-24-06
Date

Item #	Received By	Date	Item #	Received By	Date

GENCY I.D. CO 260400 **#1 INCIDENT REPORT** Pitts / Jones

CASE NUMBER: 060102978 | NCIC INQ. | NCIC ENTD.

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Death Investigation 902 (Fatal)	☑ YES ☐ NO	☑ YES ☐ NO			☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.	☐ YES ☐ NO	☐ YES ☐ NO			
3.	☐ YES ☐ NO	☐ YES ☐ NO			

INCI [redacted] LR SC 29566 WEAPON TYPE: GUN

INCIDENT DATE: 3/6/06 | 24 HR CLOCK: 1730 | TO | DATE | 24 HR CLOCK | DISP. DATE: 3/6/06 | DISP. TIME: 1744 | TIME ARRIVED: 1749 | DEPART TIME: 2000 | LOCATION NO.: 1

EVENT

COMPLAINANT (G[redacted] – J[redacted]) | RELATIONSHIP TO SUBJECT #1 #2 #3 | RESIDENT: (S) O U | RACE: W | SEX: M | AGE | ETH.: N | DAY TIME PHONE H B | EVENING PHONE H B

ADDRESS [redacted] | CITY: LR | STATE: SC | ZIP CODE: 29566 | LOCATION NO.: 1

VICTIM NO. 1

VICTIM'S NAME (LAST, FIRST, MIDDLE): Winkler - Rebecca | RELATIONSHIP TO SUBJECT #1: EX #2 #3 | RESIDENT: (S) O U | RACE: W | SEX: F | AGE: 50 | ETH.: N | DAY TIME PHONE H B | EVENING PHONE H B

HEIGHT | WEIGHT | HAIR: Brn | EYES | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS [redacted] | CITY: LR | STATE: SC | ZIP CODE: 29566 | LOCATION NO.: 1

VISIBLE INJURY (VICT 1) ☑ YES ☐ NO ☐ EXPLAIN: Gunshot wound ⓛ Face | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO

VICTIM (NO 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ | DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:

TWO-MAN VEH: ☐ ONE-MAN VEH: ☐ DETECTIVE/SPL ASMT ☐ OTHER ☐ | ALONE ☐ ASSISTED ☐ | J—This Jurisdiction. S—State. O—Out of State. U—Unknown

SUBJECT NO. 1

☑ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME: (LAST, FIRST, MIDDLE): Winkler – Louis | RACE: W | SEX: M | AGE: 45 | ETH.: N | DATE OF BIRTH | HEIGHT | WEIGHT | HAIR | EYES

FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS: 2409 Bitterspar Rd | CITY: LR | STATE: SC | ZIP CODE: 29566 | LOCATION NO.: 1

SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☐ UNK ☑ | DRUGS: ☐ YES ☐ NO ☐ UNK ☑ TYPE: | ARRESTED NEAR OFFENSE SCENE: ☐ YES ☐ NO ☑ | TOTAL # ARRESTED: 0 | DATE/TIME OF OFFENSE: 3/6/06 1730 | DATE/TIME OF ARREST

NARRATIVE

On 3/6/06 units of the Horry County Police were dispatched to [redacted] in the Little River Section of Horry County in Reference to a Shooting, PFC. T. Knoch was the first unit to arrive on Scene followed By PFC. M. Bordner. I, Cpl. R.C. Stephens, was the third unit on Scene Upon My arrival to the Scene I noticed a Baseball Cap dark in color, laying in the hallway outside of the apartment. I further noticed wood pieces laying on the floor inside of the front door to the apartment. It appeared to me as the door had been kicked in as the door frame was Busted and the door appeared to be disfigured around the handle and lock area. Upon My entry into unit J, PFC. Knoch had the victims Son secured in

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

PROPERTY EST.

TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						

ADMINISTRATIVE

SUSPECT IDENTIFIED ☐ YES ☐ NO | SUBJECT LOCATED ☐ YES ☐ NO | ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINED COOPERATION 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
R.C. STEPHENS	3/6/06	421		3-6-06	355

FOLLOW-UP OFFICER

AGENCY I.D.
SCO 260400

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER 06-10298 10298

NCIC INQ. ENTD.

☐ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY
PAGE ____ of ____ PAGES

VICT./SUBJ. I.D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐ Witness

NAME (LAST, FIRST, MIDDLE): [redacted] - J[redacted]
VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3
RESIDENT: JSOU | RACE: W | SEX: M | AGE | D.O.B. | ETH: N
HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
ADDRESS: [redacted] CITY: LR STATE: SC ZIP CODE: 29566 LOCATION NO.: 1 DAY PHONE H B EVENING PHONE H B
☐ VICTIM NO. ____ : VISIBLE INJURY: ☐ NO ☐ YES EXPLAIN: | COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES | VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK. | ☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASHT. ☐ ONE-MAN VEHICLE ☐ OTHER | ☐ ALONE ☐ ASSISTED
☐ SUBJECT NO. ____ : USING ALCOHOL ☐ NO ☐ YES : USING DRUGS: ☐ NO ☐ YES ⇒ TYPE: ☐ UNK.

VICT./SUBJ. I.D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐ ____

NAME (LAST, FIRST, MIDDLE): VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3 | RESIDENT: JSOU | RACE | SEX | AGE | D.O.B. | ETH
HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
ADDRESS | CITY | STATE | ZIP CODE | LOCATION NO. | DAY PHONE H B | EVENING PHONE H B
☐ VICTIM NO. ____ : VISIBLE INJURY: ☐ NO ☐ YES EXPLAIN: | COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES | VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK. | ☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASHT. ☐ ONE-MAN VEHICLE ☐ OTHER | ☐ ALONE ☐ ASSISTED
☐ SUBJECT NO. ____ : USING ALCOHOL ☐ NO ☐ YES : USING DRUGS: ☐ NO ☐ YES ⇒ TYPE: ☐ UNK.

NARRATIVE

What appeared to be his bed Room. I immediately made Contact w/ the victim who was laying face down on the floor in front of the Couch. Her face was on its Right side and I could observe a quantity of Blood in that area on the floor. I also observed what appeared to be a gunshot wound, entry or exit I am not sure, to the Left side of the victims face. I felt her wrist for a pulse and was unable to locate one. EMS Responded and a paramedic checked for a pulse and did not find one. EMS Rolled the victim over to be better able to check for life signs. A Heart Monitor was Attached and Revealed no

JURISDICTION OF T-SET LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

VEH./GUN/ETC. 1

STATUS: ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM
TYPE: ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS, STOCKS ☐ ARTICLE

VIN AND/OR LICENSE NO. | BOAT H.I.N. NO. AND/OR REG. NO.
SERIAL AND/OR OWNER APPLIED NO. | STATE
YEAR OF REGISTRATION | YEAR OF EXPIRATION | YEAR | MAKE | TYPE
MODEL | STYLE | COLOR | BRAND NAME | CALIBER
NIC NO. | DENOMINATION | ISSUER | SECURITIES DATE
MISCELLANEOUS

PROPERTY EST.

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☑ YES ☐ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☑ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTO

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
RC STEPHENS	3/6/06	421	[signature]	3-6-06	355

FOLLOW-UP INVESTIGATION ☐ YES NO ☐ OFFICER

GENCY I.D.
CO 200400

SUPPLEMENTARY REPORT

CASE NUMBER: 06/02978

NCIC: IND. | ENTD.

☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL ☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENSES ☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY PAGE ____ of ____ PAGES

NARRATIVE

Heart Rythm. At this time the scene was secured and the Son was escorted out of the Scene. PFC. BORDNER Maintained the Crime Scene Log. I Also Noticed that two BAR Chairs were over-turned and there was A pair of glasses on the BACK of the Couch. While enRoute, Units were Advised that the victims estranged / ex husband was the one who did this. Sgt. R. Kegler was on scene during this time As well. Lt. M Jones was Notified and Det. A. Pitts Responded AND Assumed the Investigation. Crime Scene was Also Notified to Respond. While PFC. Knoch was interviewing the Son, Knoch Asked if there were any other weapons in the house the Son pointed out to PFC. Knoch that there was one under his Pillow. This was left intact For the investigations Division. R/O HAS NO further information AT this time. There was a Semi. Auto pistol under the Pillow.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO | SUBJECT LOCATED ☐ YES ☒ NO | ☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE-NO CUSTOD

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
RC STEPHENS	3/4/06	421		3-6-06	355

FOLLOW-UP INVESTIGATION ☐ YES ☐ NO — OFFICER

SOUTH CAROLINA LAW ENFORCEMENT DIVISION 4802

Case L06-04368 Correspondence

Horry County Police Department Case #06010298

Date :05/22/2007 Hours: Analyst :Vello Paavel Type :Case Event

Chain of custody request via Tammy. Checked...OK. VP

Date :07/05/2007 Hours: Analyst :Vello Paavel Type :Case Event

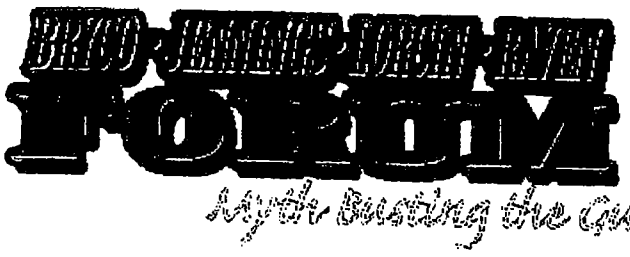
Met with Greg Hembree and Fran Humphries at SLED. DP case. Court week of July 16. VP

Date :07/12/2007 Hours: Analyst :Vello Paavel Type :Phone Log

Ralph Wilson called and asked about residue in bores of pistols. Also asked about DNA on bullet. Told him bullet was in DNA refrigerator. VP

Date :01/28/2008 Hours: Analyst :Vello Paavel Type :Phone Log

Greg Hembree called on 012508 and we briefly discussed case and projected testimony date. Likely to need me Friday, 020108 or Saturday. VP





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Bryco M59, 9 mm

Make: Bryco Arms

Made: Carson City, Nevada, USA, and Costa Mesa, California, USA

Models: Model 38, Model 380 ACP

Caliber: 9 mm

Capacity: 6 Rounds

History of Bryco Arms

Bryco Arms and Jennings Firearms Bryco Arms was one of the so called " Ring of Fire" manufacturers of Saturday night special firearms that operated in and around Los Angeles, California. It produced firearms variously branded as Jennings Firearms at its Irvine, California facility, as well as under the brand name of Bryco Arms at its former Carson City, Nevada facility, and at its Costa Mesa, California facility.

Bryco Arms went into bankruptcy in 2003 as a result of losing a lawsuit filed in Oakland, California which resulted in a jury award of a record $24 million judgment against it. The lawsuit stemmed from an injury to a 12-year old who was attempting to unload the 380 ACP version of the Bryco Arms Model 38 and pulled the trigger with a round still in the gun. An ensuing accidental discharge resulted in paralyzing a young boy named B[redacted] M[redacted] The jury ruled that the pistol had a design flaw, in









that it had to have the trigger pulled to de-cock the striker, after unloading the semi-automatic pistol.

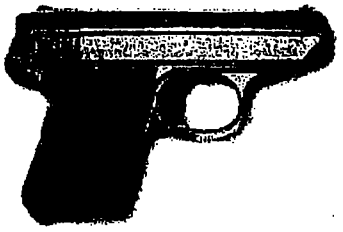
Many if not most semi-automatic pistols with external hammers utilize a similar design, which has found widespread use since early Colt Firearms first used this method around 1905. Notable among pistols which require hammer decocking is the standard US Military issue pistol for over 70 years, the Colt M1911.

Jimenez Arms Bryco's former foreman, Paul Jimenez, bought the bankrupt Bryco Arms for $510,000 in August 2004, and renamed the company Jimenez Arms. The former Model 380 (the 380 ACP version of the Model 38) was renamed the JA-380, and production of the same semi-automatic pistol design was resumed.

In an ironic twist, the victim of the accidentalshooting, B[redacted] M[redacted], was a runner-up bidder for taking control of the Bryco Arms company, bidding $505,000. If he had the high bid, his plan was to melt all stockpiles of guns and gun parts at the company to make a sculpture, and to close the company, firing all of the employees.

Bryco was purchased by Paul Jimenez and resumed operation in Costa Mesa, California under the new name of Jimenez Arms. Jimenez Arms resumed manufacturing former Jennings Firearms and Bryco Arms models, after only changing the name and model numbers on the slides of the models. This transition was easily accomplished, simply making minor changes in the engineering drawings for the next set of slides when it came time to order more. The JA-NINE, the former Bryco Arms Model 380 (renamed the JA-380), the







former Jennings J-22 (renamed the JA-22 LR), and the Jennings J-25 (renamed the JA-25 Auto)

Allegedly, the JA-NINE 9mm handgun was prone to catastrophic failure under normal firing conditions. **(If you have any proof of a catastrophic failure please email this website.As far as the owner of this site has been able to research none have been presented to a court of law).**

Lawsuits were brought forth in 2004 by the same groups that had forced Bryco Arms into bankruptcy earlier, claiming that Jimenez Arms was again selling an unsafe, inferior firearm to the public, much as had been claimed for the Bryco Arms Model 380.(**Claimed but never proven in a court of law!)** As a result of the negative publicity, ongoing lawsuits, and **especially the fact the gun's magazine held 12 rounds (which was over the 10 round limit of the Federally-sunsetted Assault Weapons Ban which was still mandated in California), (The real reason)** the California Department of Justice ordered Jimenez Arms to cease manufacturing JA-NINE pistols for sale in California on January 13, 2005, only 5 months after Jimenez Arms had been re-incarnated from Bryco Arms. Jimenez Arms was forced into bankruptcy in January 2005 much as Bryco Arms had been earlier.

Jimenez Arms no longer produces the JA-NINE for sale in California, but has continued to produce and sell the JA-NINE, JA-380, and other product offerings to dealers physically located outside of California. Newly-manufactured JA-NINE pistols are currently available for sale to end customers throughout most of the US

through Internet gun auction sites for $150-$170, and wholesale quantities are available for even less each from distributor Shining Star Investments, LLC. This inexpensive gun is the top line model sold by Jimenez Arms. Popularity, usage, and limitations The company's guns are extremely popular with pawnshops, often being the lowest-priced new handguns available. Critics, on the other hand, claim they are simply more Saturday night specials. **Durability is perhaps not as good as more expensive guns, and there are also problems occasionally with the guns. However, each gun is sold with a lifetime warranty to original purchasers, such that problems, if they arise, can usually be resolved.**

The end result is that the low-cost guns are extremely popular for many, especially those in the inner cities, who often cannot afford more expensive guns for self-protection. They have been sold in quantities of many tens of millions per decade ever since 1978. Their popularity notwithstanding, they are often the hated target of those who favor gun control in the gun politics debate, primarily for being representative of the worst handguns sold, being affordable even to the poor. **A good reason to buy one if for no other.**

Current status Recent attempts by the company's former owners to re-establish the company in Nevada have thus far proven unsuccessful. JA officials believe the California rulings regarding the safety of the JA-NINE firearm to be false, claiming that private individuals with a vested interest **(Read B[redacted] M[redacted] lawyer.)** in a particular outcome had funded the testing, repeating the tests with numerous guns until finally finding several that failed to

operate as intended, and then submitting these few guns with problems for California safety-testing. **If this claim is true, it makes the gun safety tests unrepresentative at best, and malicious at worst, in the anti-gun business climate that exists in California.**



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Jennings Pistols



Raven Pistols



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Myth Busting the Gun-Snobs' B.S.

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Jennings model 48

Jennings Firearms

Jennings Firearms was started in 1978 by Bruce Jennings as an earlier incarnation of what became Bryco Arms, but which also remained a recognizable brand name for Bryco Arms for many years even while Bryco Arms used its own brand name for firearms.



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Home



Bryco Pistols



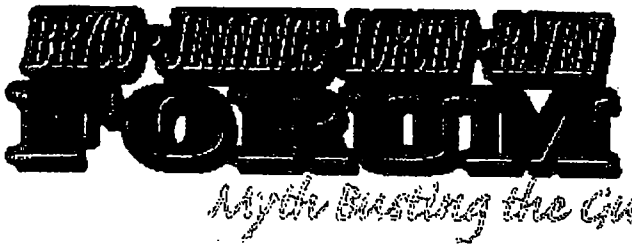
Raven Pistols



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Raven25

Make: Raven Arms

Made: Industry, California, USA

Models: MP-25, P-25

Caliber: .25 Automatic

Capacity: 6 Rounds

Hammer: Slideback Type: Semi-automatic, blowback action

History of Raven Arms

Raven Arms was founded by George Jennings. It was founded, ironically, because of restrictions imposed on firearms importers as a result of the 1968 Federal gun-control Act.

The Gun control act of 1968 was enacted on the heels of the assassinations of Sen. Robert F. Kennedy and Martin Luther King Jr. The 1968 Gun Control Act effectively banned imports of small, inexpensive handguns by requiring foreign-made handguns sold in the United States to meet strict standards on size, weight, materials and safety features.The 1968 Gun Control Act was supported by America's old school manufacturers (Colt, S&W, etc.) in an effort to stifle competition.

Those standards created by the 1968 Gun Control Act weren't applied to guns manufactured within the United States,



effectively insulating domestically produced guns from foreign competition.

A friend who owned a small gun and pawn shop complained to George Jennings, "I can't buy these guns any more, and I used to sell 500 of them a month." At the time, the senior Jennings was running a machine shop that made parts for Southern California aerospace companies.

Raven Arms was born, as a result of a product vacuum artificially created by the 1968 Gun Control Act. Raven pistols are .25-caliber guns. The company sold about 2 million guns over a 20 year production run.

For More information, visit: Raven Arms P25 Pistol

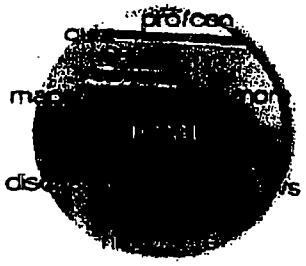


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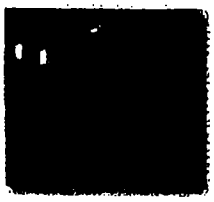
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HOT GUNS

interview | bruce jennings



Founder of B.L. Jennings Firearms, and Bryco Arms, manufacturers and wholesalers of inexpensive firearms located in southern California.



Q: How did you get started in this business?

Jennings: During the '60s my dad was quite successful in manufacturing those aerospace components as a job shop. But, political uncertainties in California moved the aerospace industry to Texas and left him without a product line. So, he searched the market and decided that he wanted to be a firearms manufacturer.

"I think our main contribution has been we have supplied millions of firearms legitimately to the vast population of the lower income groups....we've filled the void that the other American manufacturers had failed to do so for many years"

....at that time there was a void that was created by the legislation of 1968 that banned the import of small handguns. And my father recognized that, and decided that he should start producing a similar type of product because there was an available type of market for him. And he became involved in designing and manufacturing and used a facility that he owned from the aerospace industry to leap into this industry. And he did very well.

Over [the] course of twenty-five years he built approximately 3 million of one particular handgun. And that handgun was the Raven .25 caliber pistol. And very few handguns that have ever reached one million in production. Especially one model without changes.

Q: Why don't we know him (your father)?

Jennings: Well, our family was very quiet. We've been very quiet all of our lives. And we don't want recognition. We just want to be in business and, you know, manufacture, sell guns, and make a living like anybody else. Our dream was, you know, to be successful in business which we've been. And we didn't want to be political....

Q: Why do you want to be so private?

Jennings:...We're just ordinary people living ordinary lives... We're just minding our own business, and concentrating on manufacturing sales of firearms. It's a legitimate business. It's an interesting business, and we enjoy it. Each of my family members either participate in their own business or participate in businesses that I'm associated with.

It's been handed down-- this is the third generation, I'm the second generation, my children are the third generation, and my children and my ex-wife Janice Jennings own the Bryco Arms Facility. And they have manufactured about two million handguns since 1988. And they are very successful in what they do. My purpose of involvement is I purchase these firearms and distribute them throughout the United States, and I also export firearms....Our main stay is selling within the United States...European and South American markets are opening up quite rapidly at this point. I have reason to believe that our sales will probably be 50% export within the next year and a half.

Q: What has your family's contribution been to the gun industry?

Jennings: I think our main contribution has been that we have supplied millions of firearms legitimately to the vast population of the lower income groups. And by supplying these firearms at affordable prices, we've filled the void that the other American manufacturers had failed to do so for many years.

Q: How many guns has your family sold...

Jennings: Oh, I would take a guess of upwards of ten million.

Q: So, the gun industry has been very good to you?

Jennings: It's been excellent to me. Right now it's not excellent but in the past it had been. Experiencing the results of the gun legislation that was passed three years ago. The assault weapons ban, which has tremendously modified the licensing scheme that was established in 1968. It made it more difficult to get licenses for dealers. It put fear into the public that was purchasing the firearms. It made confusion between police departments and federal agencies on what the

regulations really said.

The laws were poorly written and subject to interpretation. And as a result, many people that wished to buy firearms decided that it was not in their best interest. The laws intimidated many purchasers. They felt that it was just another way of the government interfering in their private lives and as a result of that they elected to not purchase firearms.

The less expensive firearms companies suffered the most. The more expensive companies did better. Many cities and states put taxes on the transaction. Sometimes you would buy a gun for seventy or eighty dollars and your tax would be fifty additional dollars. And the tax was designed to create background checks and arrest records for the potential purchasers. We have reason to believe that none of that money was ever used to do background checks. The law did not provide for a background check, it provided for the ability to do the background check. So many cities decided it was a nice way to create tax revenues. And as a result people weren't interested in paying a fifty dollar tax on an eighty dollar gun. But if they were buying a five hundred dollar gun, and it had a fifty dollar tax, it seemed a little more fair.

Q: One thing that's interesting is that your family is so completely associated with [this industry]...you founded.. you developed...you really largely control this industry. You own many of the companies that produce the affordable handguns...Why is it that your family controls it so much?

Jennings: Well, we have very small margins. What we do is we've made our livings by volume not by margins. Margins have been good in the early '80s. They were good in the late '80s, but in the mid '90s they are nearly nonexistent. The concept of making three or four dollars a gun in profit that you can keep is the goal of some of our competitors. We can't function on three or four dollars a gun. We need to make you know, maybe twenty-five or thirty dollars so that we can support the gun throughout its life expectancy, which is a very long time. Life expectancy of a firearm can be hundreds of years. Where it's not, it's not a consumable; it just goes away six months after you purchase it.

Q: When you mean support it, you mean pay for litigation that comes from it?

Jennings: Well, I mean support it by replacement parts, warranty repairs, and litigation. One of the biggest problems of the firearms industry circles around product liability insurance.

Q Is the litigation connected to gun manufacturing just the cost of doing business?

Jennings: Yes, it's a very large cost of doing business. That cost is an unforseen number because of the number of years that you need to support the insurance for that product. Even though you may have sold the gun last year or two years ago, you may be facing litigation and product support fifteen or twenty years into the future. And even if the company is no longer building firearms in quantities, let's say it's, downsized to where we're at today, we still have to have enough capital available to support the product liability, litigation and claims.

Q: Talk about some of your guns.

Jennings: Well, this is a J-22 pistol. This is a little .22 pocket pistol. It's very small and it's the same category that the Raven pistol was. This was the pistol that I designed myself when I left Raven. And what this is, it's a reproduction of technology that has existed throughout the century. But it was redeveloped into modern manufacturing. This pistol, we've probably built about two million of these since, since it was originally designed and built. A little .22 pistol. Very similar in size and shape to what my father had done in his .25 caliber line. This is what started my company.

Q: It's interesting. You broke away from your dad's business, started up your own...company, competing with him.

Jennings: No. I'd never competed with him. My father was building his line of guns, and he was very well-established, and he had saturated what we'll call the .25 caliber market. And he had a price point that he was at. And that price point, his selling point, was... in the low thirty dollar range. When I came out with this gun, I did not compete with him. But I complemented his line, because this gun went on the

market at like forty-seven dollars, which is 35 percent higher than his. And it was in a different caliber. So when I introduced this gun, his sales did not waver. They did not fall. They did not change. But what it was my product that I was proud to introduce. And he and I ran parallel companies. And we remained friends and happy with each other. This gun [is] just fractionally larger than the little .22...This is a .380 caliber pistol. And it's basically the same design, only it's been beefed up, it's been strengthened. And it also became extremely popular. This is one of our better products. People like it for self-protection, because it's large caliber. But it's also fun to shoot, you know? It has quite a whop, makes a lot of noise, and it's fun.

And again, the reason this gun is popular is because it's priced for the working class citizen. It's priced affordably so people could afford to buy the gun and the ammunition without spending over two or three days wages. Many guns of this caliber cost a week's wages. It costs, you know, three hundred dollars. This gun here would retail today at about maybe a hundred and twenty-five, a hundred and thirty dollars. An excellent value.

Q: Your guns sell for a lot less than a Colt or a Smith & Wesson. How are you able to do it so cheaply?

Jennings: Well, Colt and Smith & Wesson has an older philosophy than ours. And theirs is to manufacture the gun and then finish it independently one by one using filing and fitting. When we design a part, we design it so that the part is universal between all of the firearms that are identical to it. So if we make 500 firing pins, it will fit in 500 guns, and they're totally interchangeable between each other.

Now, Smith [& Wesson] may not have that luxury because they're using machining centers, they're using heavy castings. They're doing a different process. They're using a lot of steel, they're now converting a lot of plastic, because technology is overcoming their processes. Our processes are now going towards the Smith & Wesson, towards Smith & Wesson's design. And someplace we're going to meet in the middle. They're coming down to our price ranges, and we're going up to their price ranges.

Q: Doesn't that cost you an enormous amount of

money?

Jennings: It costs a lot of money. It costs a lot of research. But if you could amortize that money over the vast volumes of firearms that we've produced, it becomes cost-effective...This gun is still made out of zinc. But it's long, it's heavy, and it's a .22 caliber...this is a much more sophisticated gun with more features. The tooling for this, the modifications, is several hundred thousand dollars. But we've already paid that. And this gun exists.

So, if they change the laws to where this gun here would be illegal, we now have this one to replace it with. And this is a standard firearm for a sportshooter. It's a .22 caliber target pistol. They can't call this a "junk gun." They can't call it a "Saturday Night Special." They can't call it anything except a sporting pistol. It has no other purpose except for sportshooting.

And this puts our company in a different light. It puts us in the light of being in the family shooting arena. And we've created rifles. We have a youth rifle of .22 caliber. We have this .22 caliber sporting rifle. And we're gonna have a whole new generation that kids that remember Jennings as the first gun that they bought. The gun that they learned to shoot with. And the gun that they learned to shoot with may be the gun that they purchase as an adult, that they keep at their home.

Q: You seem to be on a crusade, almost.

Jennings: This is the gun that I'm hoping that the young people and the shooting enthusiasts will buy. Because it's a target gun, it's fun, it's inexpensive. This gun retails at a hundred and sixty-nine dollars. And that is a bargain in this firearms market. I expect that this gun will probably sell three or four thousand units a month. This one particular gun.

Now, many, many people will buy this gun, love it, and eventually they may say, "Well, I want a larger caliber gun." And then they will come in and they'll buy one of our larger guns. This gun here... is a nine millimeter gun. Now, it shares a lot of the other features. It's got the adjustable sights. It has a general look. But this particular gun is a nine millimeter version. And it's very powerful. It has a staggerbox

magazine with thirteen rounds. And this gun here is designed not for sportshooting as much, but for personal protection. It's a very powerful firearm.

Q: How much does it cost you to comply [with legislation] per gun?

Jennings:...We're complying with the requests of these anti-gun individuals early, so that we can alleviate their argument that our guns don't comply. So every firearm that we're building now is on the agenda to be converted to comply with any and all new legislation that is considered...It may only cost a dollar to comply, per gun. But the tooling is quite significant. Now, the tooling was designed to be universal between all the models of guns. For example, if we built the adjustable sight system, that cost us about $50,000. But now to put that on each of the guns, it may only be a few cents per gun. And we're real happy to introduce adjustable sights. If they're not a safety feature, as the government may represent, but it is a convenience item, and it is a sales tool. And people do enjoy adjustable sights.

Q: A lot of people see the proliferation of guns--legal and illegal. But it is the illegal, criminal guns that scares people the most. And then they see that you've created millions of guns and made them available to people very cheaply, inexpensively...And they think that you have somehow contributed to the problem.

Jennings: Oh, I don't think we've contributed to any problems. Like any company in the United States, we have the right to produce firearms to people that can legitimately buy them. And we've been doing this for twenty-five, thirty years. It's an important aspect of our country that everybody gets to buy products, not just the privileged people. And our products have always been priced and produced in quantities so that everybody can afford to own our products. The concept that our guns would be used more in crime is incorrect. Our products are used the same as anybody else's products.

Q: So, you say that there's no difference between the likelihood that one of your guns would end up in a crime and a Smith and Wesson would end up in a crime. That it's just "a gun's a gun" in terms of its likelihood to be used in a crime.

Jennings: Well, actually, I believe that maybe some of the other companies may have higher rates than we do. Our guns have traditionally been light, small caliber guns, and they're not really the type of gun that one would use to intimidate or scare a victim. But a large gun, a very large gun would perform that task better. And therefore the criminal element has chosen large frame guns for that purpose. More so than our small products.

Q: What about [Lorcin], which is one of the few companies that isn't somehow connected to your family.

Jennings:...Well, when Lorcin came into business, he did the appropriate things. He manufactured a gun, he sold it, and he did not violate any of laws that we were aware of. So, unfortunately we ended up with a very aggressive competitor. And his actions have always been legitimate, however very harsh at times. And he has kept the market, and inexpensive handguns, artificially low for at least three or four years.

Q: What do you mean artificially low?

Jennings: I mean that there is a level of profitability that needs to be sustained over the long-term in order for an industry to be healthy. This industry has become unhealthy over the last three or four years because of competition keeping the prices very, very low in the inexpensive handgun market. And, most of these activities were created by the Lorcin company; their company logo is "The world's most affordable guns." And he stands by that strongly and as a result of that the industry has not been able to go forward and maintain profitability.

Q: I guess there's a general impression out there that some people feel that you're about volume, making as many guns as possible, making them as cheaply as possible. And you are less concerned about the gun once it leaves the site.

Jennings: Well, we've been at this so long that we're real concerned about the gun leaving the factory. When the gun leaves the factory it has to be right, it has to be correct, and it has to be appropriate for its usage. If it is not, our long-term success is very short-lived. The people that come into the industry and produce junk will be out of business in four to five

years from the time they start. That's how long litigation takes.

Now, we've been doing this for many, many years. We're still in business because we're responsible. We're taking care of our customers. We're building the appropriate products, and they are safe and reliable. So, we're not having those types of problems.

Q: There is this general impression out there that the guns that you produce, are more likely to show up in crime than other higher end guns, more expensive guns. Why do you think that impression is out there?

Jennings: Well, the impression [that] is out there is wrong. The impression is created by misinformation that has been circulated. That misinformation started probably about six or seven years ago and that misinformation has been repeated, and repeated, and repeated. Once the misinformation was created, we've been unable to stop the proliferation of that misinformation from continuing. Still to this date, they're quoting ten year old statistics and most people believe that these statistics are current and up to date.

Q: The Bureau of Alcohol, Tobacco, and Firearms says that the guns from Southern California -- from the less expensive handgun manufacturers-- are between three and four times more likely to show up in a crime, or more likely to be traced than a more expensive gun? Isn't that proof that your guns somehow are more associated with crime?

Jennings: Well, you know, we had heard this and about three months ago took some actions to run an investigation ourselves. And what we did was we purchased from the Bureau of Alcohol, Tobacco and Firearms a complete unadulterated computer list of every trace that they had ever produced up until the end of 1996. It was a vast file and it was on an old style computer tape disk. They were fourteen inch diameter reels with magnetic tape on it that runs on a mainframe computer.

We took those disks and we sent them to [an] outside service company and we had those transposed into modern legible CD disks that work in PC computers. And we hired a company to take and review those

statistics. And the statistics that that company has supplied us do not support nor do they match up with the official statement that ATF has been making.

We are very suspect of the information ATF has been supplying, and the records that we have created from their database clearly do not support their theory that our guns are used more in crime.

Q: What have you done about it?

Jennings: Well, at this point we've taken all other data from their computers and we have analyzed it and...we have processed it in our computers and we've asked it precise questions.

And the questions that we have asked it are questions that the media has always purported. "How many times are your guns used in crimes versus the old line American Companies?"

And this computer data has been very clear and very precise. It appears to be approximately equal.

And if that data is correct as we reviewed it, I think that ATF has been providing a disservice to the media in providing erroneous information based upon political activity.

Q: What would happen to your business if the current Saturday Night Special legislation that Barbara Boxer is sponsoring was enacted?

Jennings: Part of me would say that it would increase my business quite handsomely because the competitors would go away, the prices would stabilize. We have taken measures at the Bryco factory to create the engineering and the tooling to create the products that would then become legal.

The difference between our current products and our new products are small and subtle yet very effective in complying with the new laws as she's purported them.

Q: A lot of people are read this legislation and it sounds like they are just trying to help you make your guns safer. What's wrong with that?

Jennings: Oh, there is nothing wrong with anybody asking us to make our guns safer. The problem is that

the legislation that is being proposed has nothing to do with safety. It only has to do with size, weight, and cost. If a gun is larger or if it weighs more, those are not safety issues. And if it costs more that is not a safety issue.

An adjustable site has nothing to do with the safety of a gun. The addition of a target trigger has nothing to do with the safety of a gun. The materials of the frame or the melting point of the frame have nothing to do with the safety of it. Safety is inherent in the design of the firearm. It is inherent in the care of manufacturing.

The first and most important thing about safety is having manual safety. Having drop test safeties. So, that if you drop the gun it may or may not go off. Making sure that all your characteristics of the firearm are safe by nature and by having a legislative group say, "Well we don't think your gun is safe because it's not six inches long," or "We don't think it is safe because it is not heavy enough." Or having them say that "We don't think it is safe because it doesn't cost enough." These are absolutely wrong.

In fact, we would even propose to Congress legislation that would have to do with true safety measures.....the kind that will keep accidental shootings from happening or injuries that are caused from defective merchandise... I stand by the fact that we've been in business for three years. We're doing a proper job. Our guns are safe.

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fire - Vello

Please complete the following for the chain of custody on L06-4368:

- Look at your portion of this chain. After you have ensured your portion is correct, *please send me an email* to confirm that it's ok for me to send out this Chain of Custody. **Please do not return the attached paperwork to me.**

- IF THERE IS MORE THAN ONE NAME AT THE TOP OF THE IS PAGE, PLEASE FORWARD THIS PACKET TO THE NEXT PERSON WHEN YOU HAVE COMPLETED YOUR PORTION!!!!!

- **THIS REQUEST IS DUE NO LATER THAN TUESDAY, MAY 29, 2007!!!**

Thanks,

Tammy

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

Item 1: One (1) sealed envelope containing Gun shot residue described as Jonathan Grainger

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	A	Forensic Technician	Betty W. Butler
3/24/06	9:39	A	Evidence Room (150)	Trace evidence intake storage
3/29/06	13:33	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John R Caulder

John Caulder-Horry Police Dept

Item 1.1: One (1) sealed item containing Right palm

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 1 2: One(1) sealed item containing Right back

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 1 3: One(1) sealed item containing Left palm

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 1: 4- One(1) sealed item containing Left back

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 2: One(1) sealed envelope containing Gun shot residue described as Rebecca Winkler

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/24/06	9:33	A	Forensic Technician	Betty W. Butler
3/24/06	9:39	A	Evidence Room (150)	Trace evidence intake storage
3/29/06	13:33	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 2: 1= One(1) sealed item containing Right palm

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

Item 2-2: One(1) sealed item containing Right back

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 2-3: One(1) sealed item containing Left palm

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

Item 2: One(1) sealed item containing Left back

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
4/25/06	15:26	A	Forensic Technician	Christine Barrickman
5/19/06	12:16	A	Forensic Scientist	John G. D. Roberts
7/10/06	14:55	A	Forensic Technician	Amy Stephens
7/10/06	16:02	A	Evidence Room (150)	Bin 11 Shelf C
7/28/06	9:43	A	Evidence Disposition	Returned to Agency in person

John Caulder-Horry Police Dept

Item 3: One(1) sealed box containing Handgun described as Walther PPK/S 9mm handgun bearing serial #184540 with magazine and 7 rounds

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	B	Forensic Technician	Betty W. Butler
3/24/06	9:39	B	Evidence Room (150)	Firearms evidence intake storage
3/28/06	11:30	B	Forensic Scientist	Vello Paavel
3/31/06	8:35	B	Forensic Scientist	Emily B. Reinhart, Lieutenant

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/31/06	9:07	B	Evidence Room (150)	Bin 75 Shelf D
5/15/06	10:50	B	Evidence Disposition	Returned to Agency in person

Andrew Cooper - Horry County PD

Item 4: One(1) sealed box containing Handgun described as Jennings Bryco 38 .380 handgun bearing serial #424075 with magazine and 15 rounds

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	B	Forensic Technician	Betty W. Butler
3/24/06	9:39	B	Evidence Room (150)	Firearms evidence intake storage
3/28/06	11:30	B	Forensic Scientist	Vello Paavel
3/31/06	8:35	B	Forensic Scientist	Emily B. Reinhart, Lieutenant
3/31/06	9:07	B	Evidence Room (150)	Bin 75 Shelf D
5/15/06	10:50	B	Evidence Disposition	Returned to Agency in person

Andrew Cooper - Horry County PD

Item 5: One(1) sealed box containing Miscellaneous described as Spent projectile marked #3

Submissions

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Anta Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	B	Forensic Technician	Betty W. Butler
3/24/06	9:39	B	Evidence Room (150)	Firearms evidence intake storage
3/28/06	11:30	B	Forensic Scientist	Vello Paavel
3/31/06	8:35	B	Forensic Scientist	Emily B. Reinhart, Lieutenant
3/31/06	9:07	B	Evidence Room (150)	Bin 75 Shelf D
5/15/06	10:50	B	Evidence Disposition	Returned to Agency in person

Anta Cooper

Andrew Cooper - Horry County PD

Item 6: One (1) sealed box containing Clothing described as One pair of white Adidas socks

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Anta Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 7: One(1) sealed box containing Clothing described as Leather braided belt with metal buckle

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage
3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 8: One(1) sealed box containing Clothing described as Wrangler blue jeans

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 9: One (1) sealed box containing Clothing described as One (1) sweat pants

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage
3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 10: One (1) sealed box containing Clothing described as Long sleeve T-shirt with Izzod print

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 11: One(1) sealed box containing Clothing described as Short sleeve T-shirt with Dale Earnhardt

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage
3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 12: One(1) sealed box containing Shoes described as One pair of Adidas sneakers

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 13: One(1) sealed box containing Clothing described as 120d Fleece pull over shirt

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	C	Forensic Technician	Betty W. Butler
3/24/06	9:40	C	Evidence Room (150)	Proc evidence intake storage
3/29/06	16:29	C	Forensic Technician	Patti B. Ruff
3/30/06	14:54	C	Evidence Processing	Large Refrigerator

Item 14: One(1) sealed heat sealed pouch containing Fingernail clippings described as Nail cuttings from Rebecca Winkler

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Andrew Cooper

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	D	Forensic Technician	Betty W. Butler
3/24/06	9:39	D	Evidence Room (150)	DNA evidence intake storage

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

3/24/06	14:19	D	Forensic Technician	C. Brooke Reed
3/30/06	15:27	D	DNA Department	DNA Refrigerator fourth floor (Room 445)
4/10/06	14:26	D	Forensic Scientist	Kimberly A. Hahn
8/21/06	9:29	D	Forensic Technician	Amy Stephens
8/21/06	16:50	D	Evidence Room (150)	Evidence For Return File Cabinet
10/19/06	15:07	D	Evidence Disposition	Returned to Agency in person

Robert Deal-Horry County PD
by kmw

Item 15: One(1) sealed heat sealed pouch containing Blood standard described as Rebecca Winkler

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	D	Forensic Technician	Betty W. Butler
3/24/06	9:39	D	Evidence Room (150)	DNA evidence intake storage
3/24/06	14:19	D	Forensic Technician	C. Brooke Reed
3/30/06	15:27	D	DNA Department	DNA Refrigerator fourth floor (Room 445)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

4/10/06	14:26	D	Forensic Scientist	Kimberly A. Hahn
8/21/06	9:29	D	Forensic Technician	Amy Stephens
8/21/06	16:50	D	Evidence Room (150)	Evidence For Return File Cabinet
10/19/06	15:07	D	Evidence Disposition	Returned to Agency in person

Robert Deal-Horry County PD
by kmw

Item 16: One (1) sealed heat sealed pouch containing Swab(s) described as Swab marked #17

Submissions

Date	Time	Submitted by
3/24/06	9:33	Andrew Cooper of the Horry County Police Department

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
3/24/06	9:33	D	Forensic Technician	Betty W. Butler
3/24/06	9:39	D	Evidence Room (150)	DNA evidence intake storage
3/24/06	14:19	D	Forensic Technician	C. Brooke Reed
3/30/06	15:27	D	DNA Department	DNA Refrigerator fourth floor (Room 445)
4/10/06	14:26	D	Forensic Scientist	Kimberly A. Hahn
8/21/06	9:29	D	Forensic Technician	Amy Stephens
8/21/06	16:50	D	Evidence Room (150)	Evidence For Return File Cabinet

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L06-04368

10/19/06	15:07	D	Evidence Disposition Returned to Agency in person	

Robert Deal-Horry County PD
by kmw

018

4838

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY: HORRY
STATE OF SOUTH CAROLINA VS. LOUIS M WINKLER	CASE NO.: 80744 001 SUBPOENA FOR: [X] PERSON [ ] DOCUMENT(S) OR OBJECT(S)

TO: VELLO PAAVEL
SLED (L06-04368)
P. O. BOX 21398
COLUMBIA, SC 000029221

[X] YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.

PLACE	COURTROOM	DATE & TIME
JUDICIAL BUILDING 1301 2ND AVENUE CONWAY, SC 29526	JURY ROOM 1	1/28/2008 THRU 2/08/2008 08 : 30 AM

1-28-08

[ ] YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

LIST DOCUMENT(S) OR OBJECT(S)

WARRANTS I746890 I746891 I746892 I252573 J315089

DO NOT BRING CELL PHONES, PAGERS, OR WEAPONS OF ANY TYPE (i.e. KNIVES) TO COURT.

PLEASE CONTACT PEGGY AT (843)915-8607 IMMEDIATELY UPON RECEIPT OF THIS SUBPOENA. THIS MAY AVOID YOU HAVING TO SIT IN COURT UNNECESSARILY.

DP case

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT: Melanie Huggins

(BY) DEPUTY CLERK

DATE: 11/07/2007

THIS SUBPOENA IS ISSUED UPON APPLICTION OF THE:

[X] SOLICITOR [ ] DEFENDANT

ATTORNEY'S NAME & ADDRESS
FRAN HUMPHRIES
PHONE: 843-915-8607
OR 843-915-5460

12-10-07 rec'd. called Peggy - DP case. WP

ORIGINAL

380 Automatic (9mm Kurz/9x17mm/380 ACP)

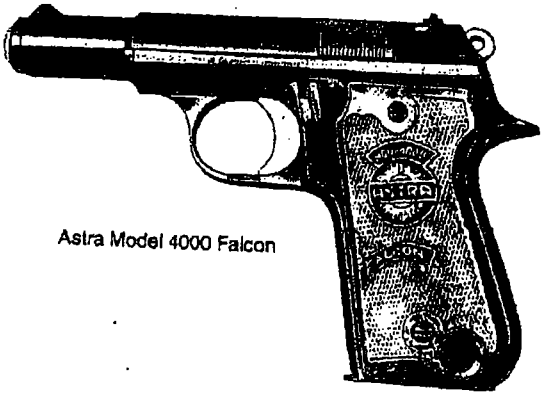


Historical Notes This cartridge was designed by John Browning and introduced in Europe by FN of Belgium in 1912 as the 9mm Browning Short, and was added to the Colt Pocket Automatic line in 1908. Several governments have adopted it as the official military pistol cartridge. These include Czechoslovakia, Italy and Sweden. It is also much used by European police. Colt, High Standard, Remington and Savage have made pistols in this chambering in the United States. In Europe, Browning, Beretta, Bayard, CZ, Frommer, Astra, Star, Llama, Walther and others made or make 380 Automatic-chambered pistols. This cartridge is also called 9x17mm.

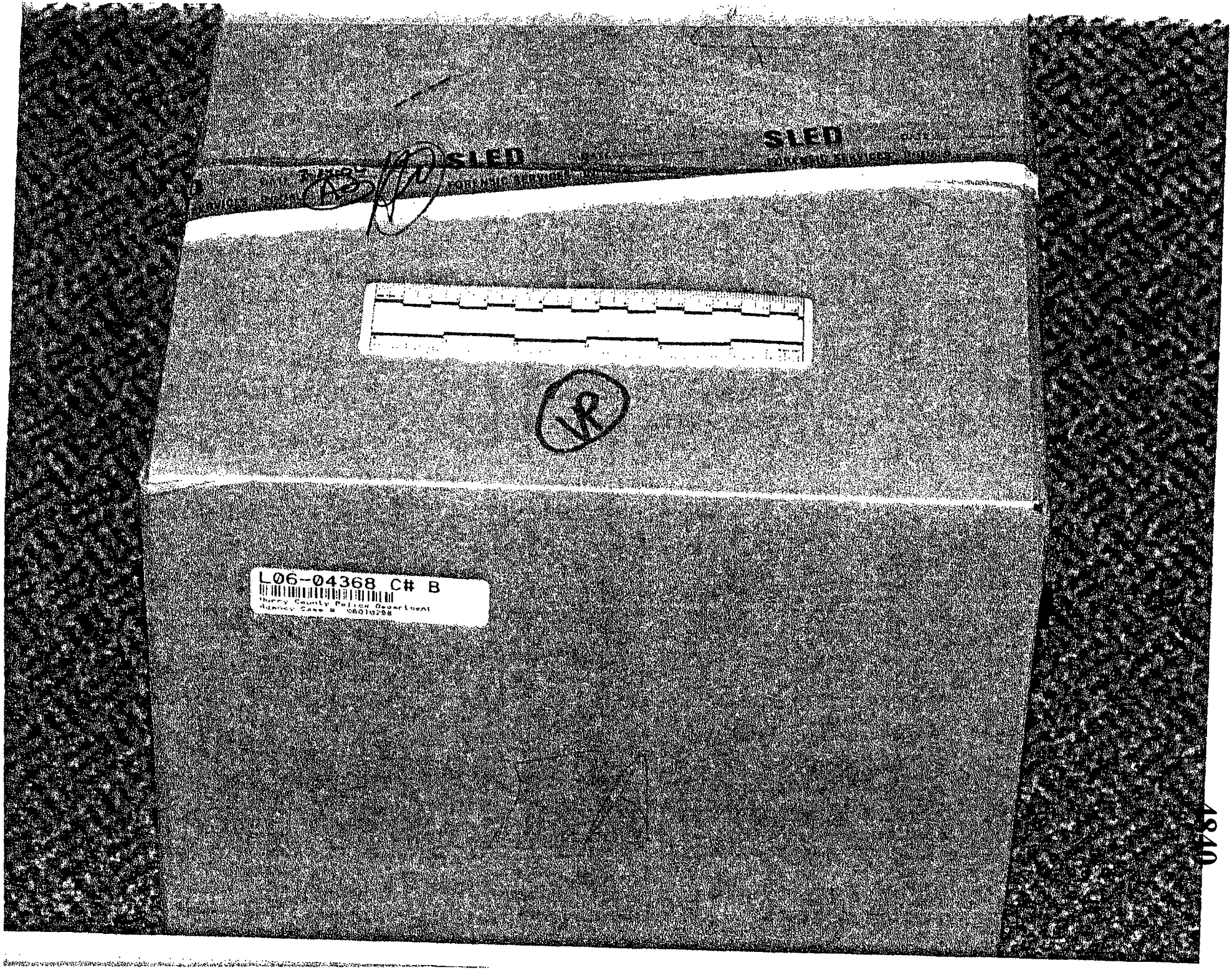
General Comments This is another cartridge that has been very popular because of the light, handy pistols that are chambered for it. The 380 Auto has more stopping power and is a far better cartridge for almost any purpose than the 32 Auto. It is about the minimum pistol cartridge considered adequate for police or military use. For self-defense it is not as powerful as the 9mm Luger, 38 Auto and a few others, but this is offset to a certain extent by the reduced size and weight of the arms it is used in. For hunting or field use, it will do a good job on rabbits, birds or other small game. It offers high velocity, as compared to most light handguns, which is an advantage for field use. With cast or swaged half-jacketed bullets of hunting type, it will do a good job on small game, but not many shooters want to bother handloading it.

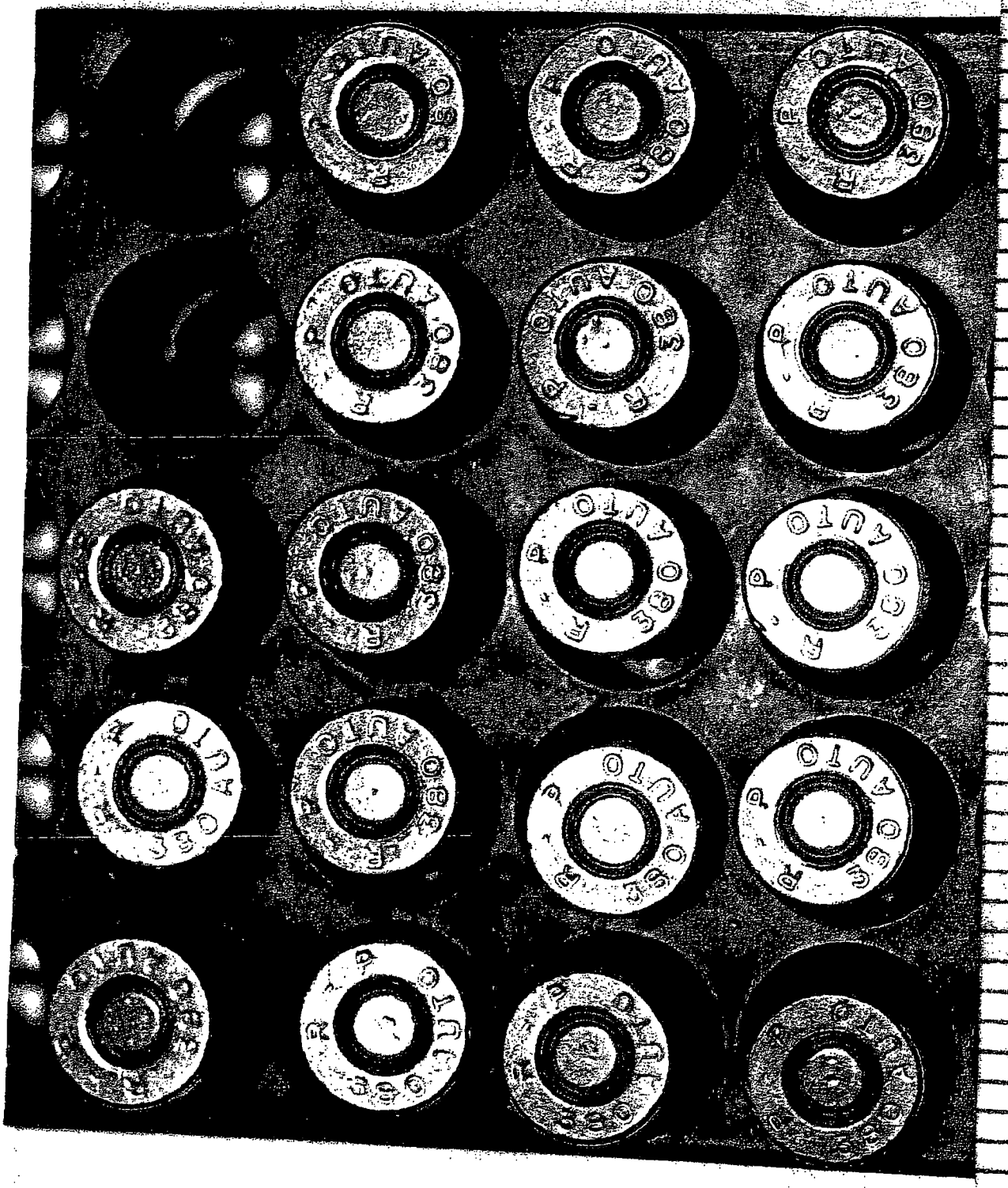
380 Automatic (9mm Kurz/9x17mm/380 ACP) Loading Data and Factory Ballistics

Bullet (grains/type)	Powder	Grains	Velocity	Energy	Source/Comments
90 JHP	Bullseye	3.0	900	162	Sierra, Hornady, Speer
95 FMJ	Bullseye	3.2	900	171	Speer, Sierra
95 FMJ	Unique	3.7	900	171	Speer, Sierra
85 JHP	FL		1000	189	Factory load
88 JHP	FL		990	191	Factory load
90 JHP	FL		1000	200	Factory load
95 FMJ	FL		955	192	Factory load



Astra Model 4000 Falcon

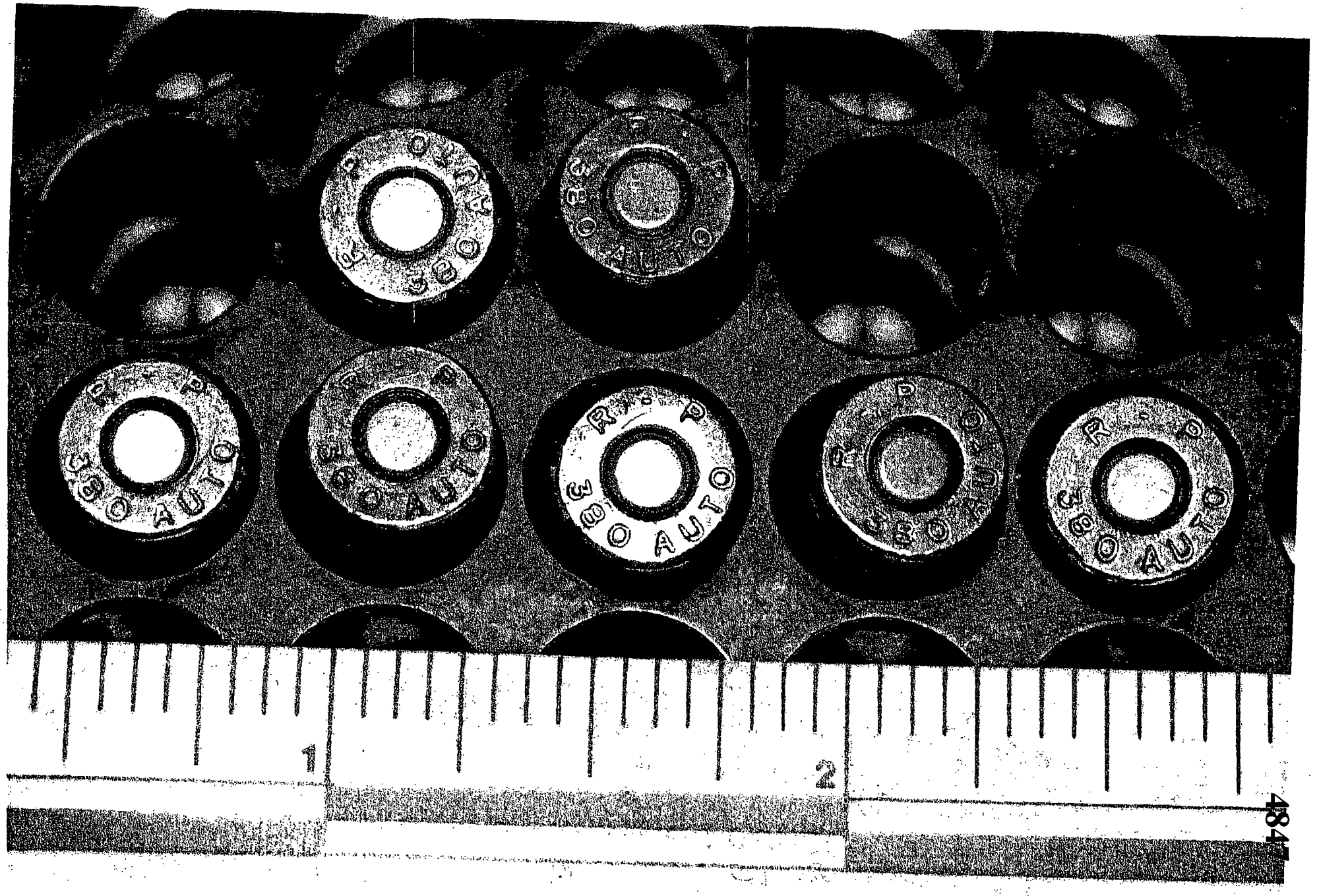

SLED
L06-04368 C# B



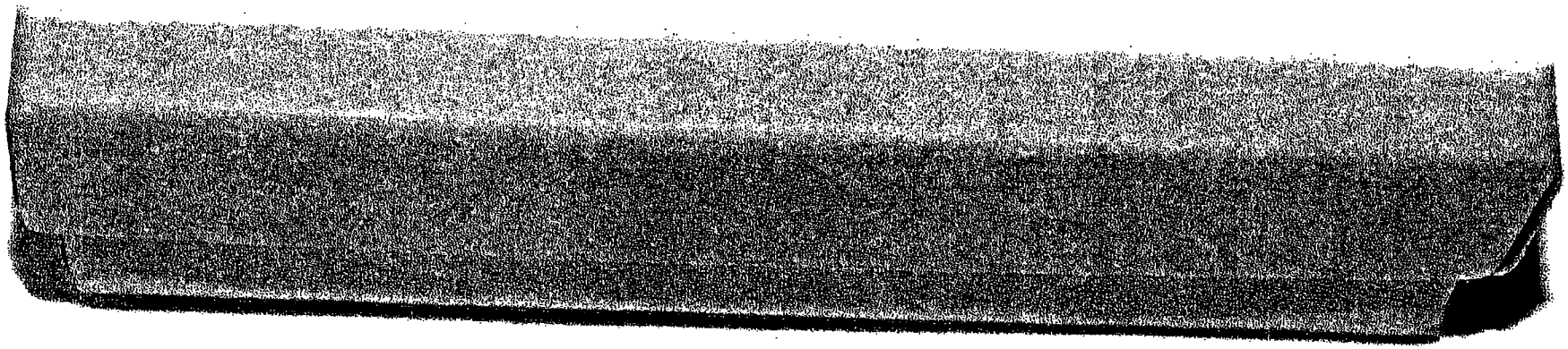

INCHES
1
2
3

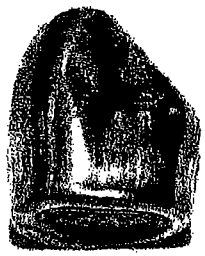
1
2
4845

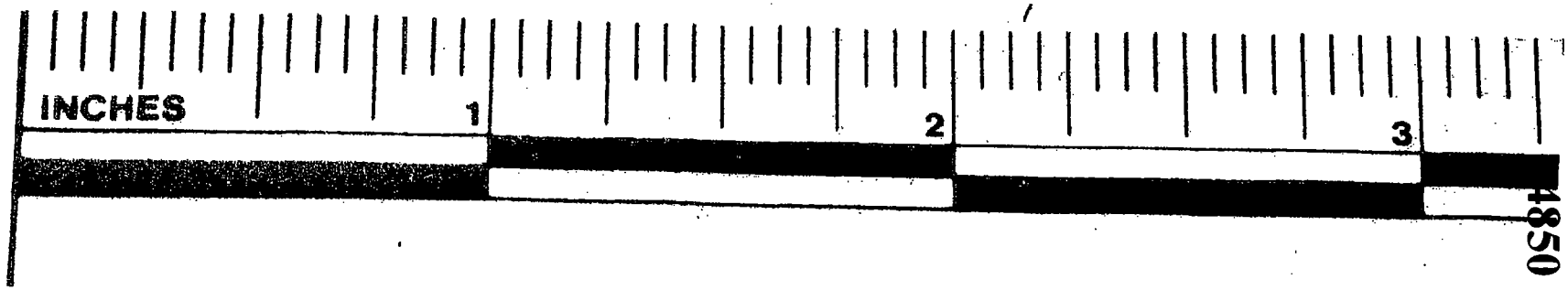
4846


R-P
380 AUTO
1
2

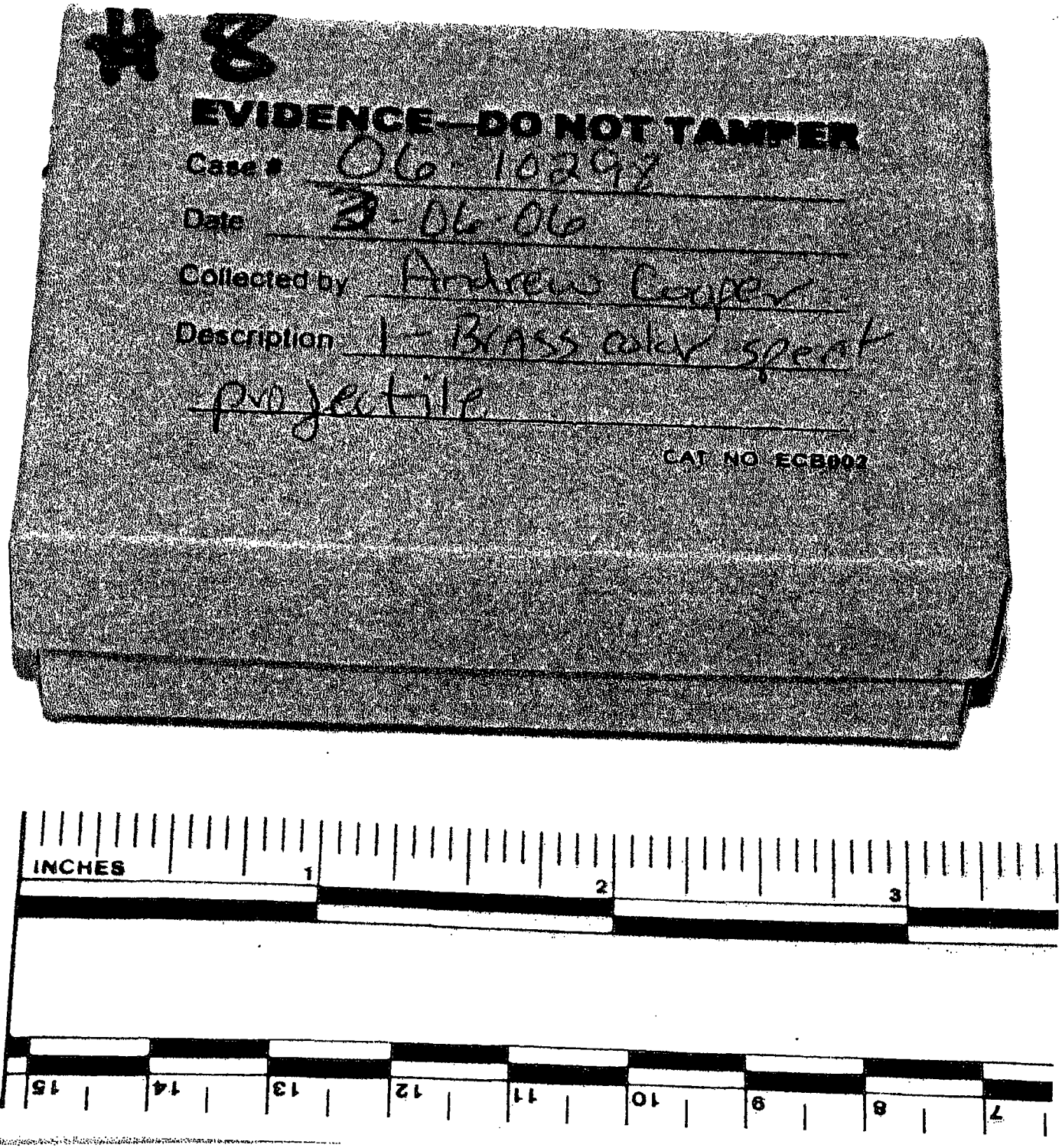

INCHES
1
2

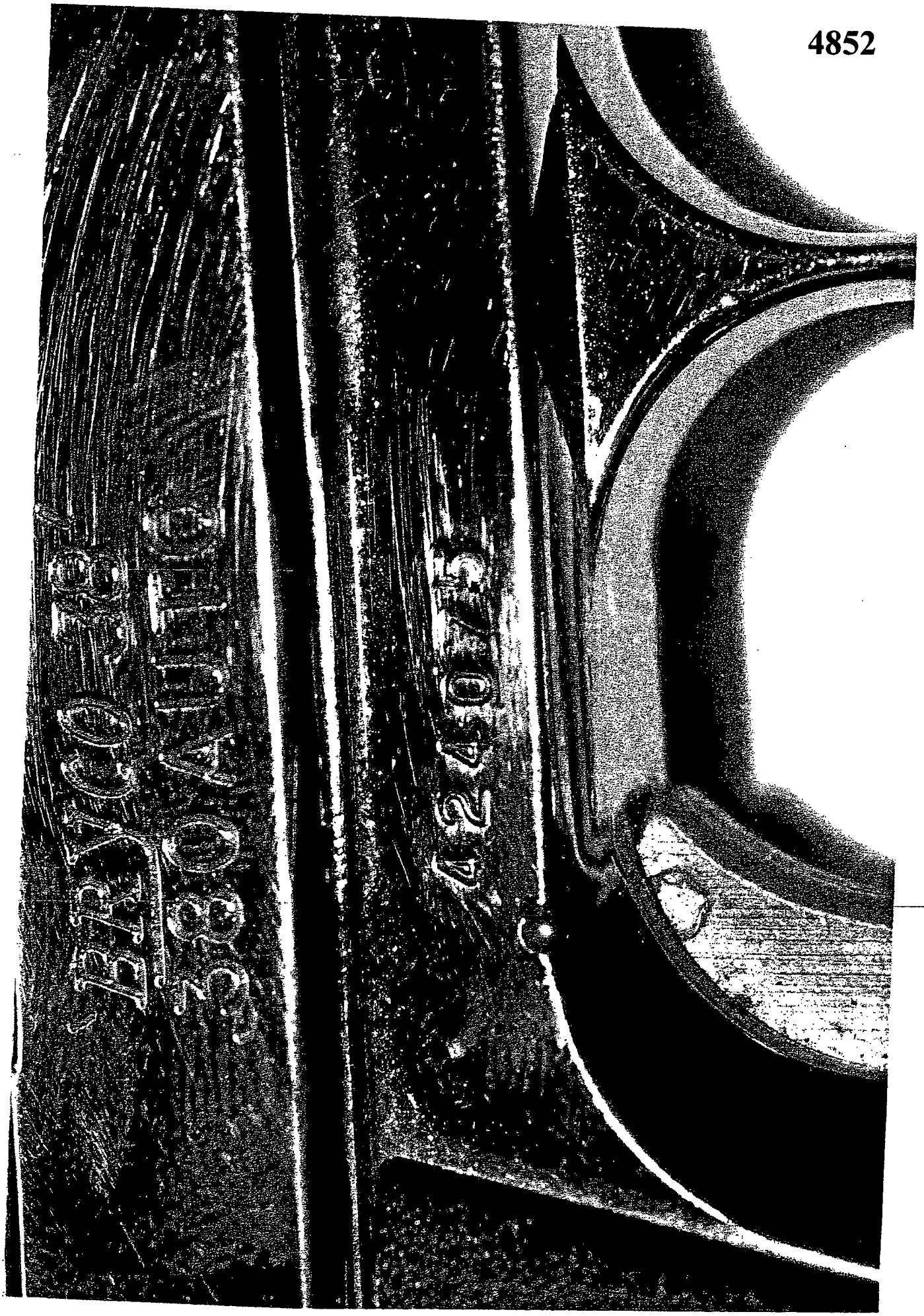


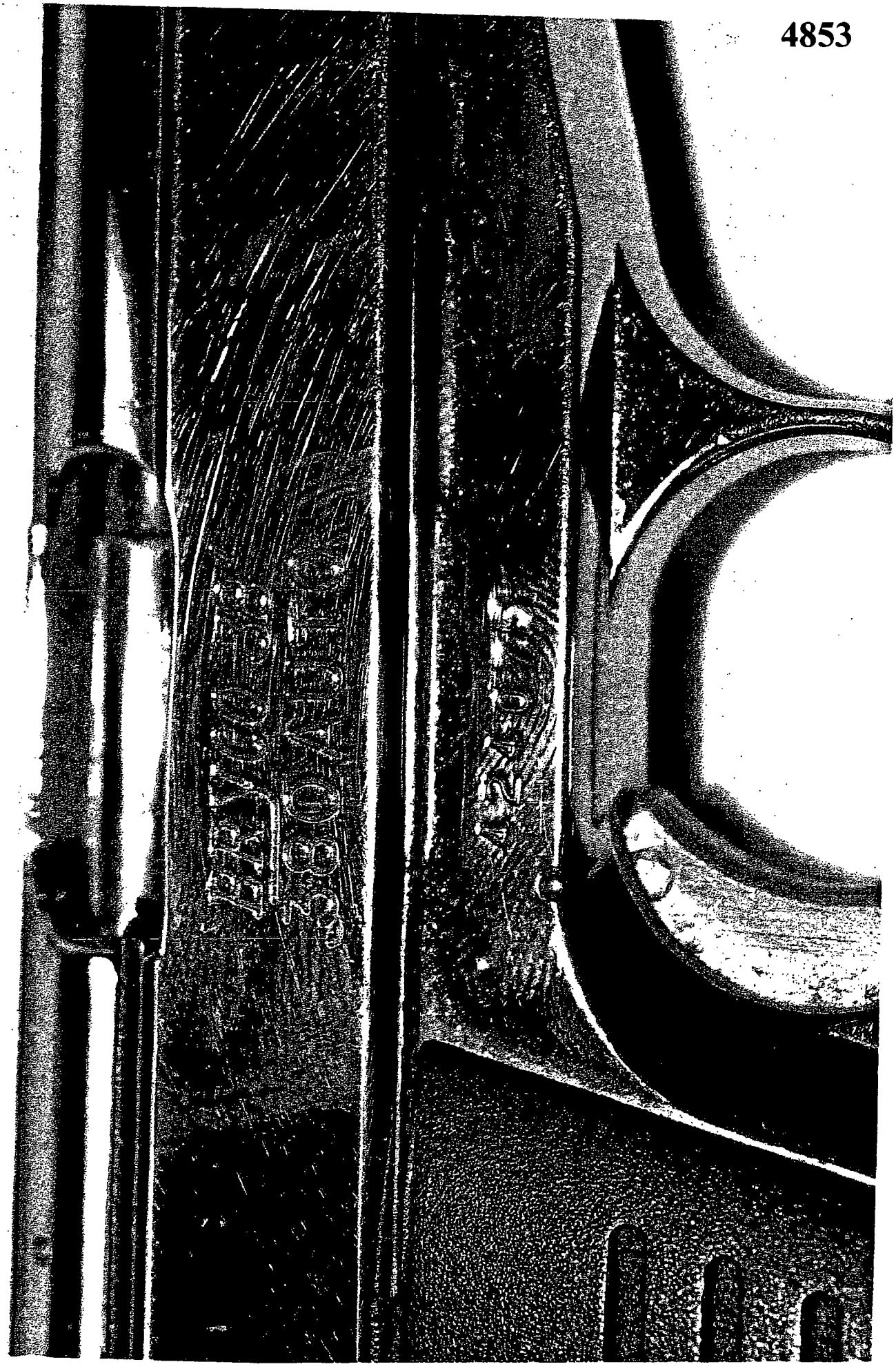




4850


#8
EVIDENCE—DO NOT TAMPER
Case # 06-10292
Date 3-06-06
Collected by Andrew Leeper
Description 1- Brass color spent projectile
CAT NO ECB802
INCHES
1
2
3
15
14
13
12
11
10
9
8
7





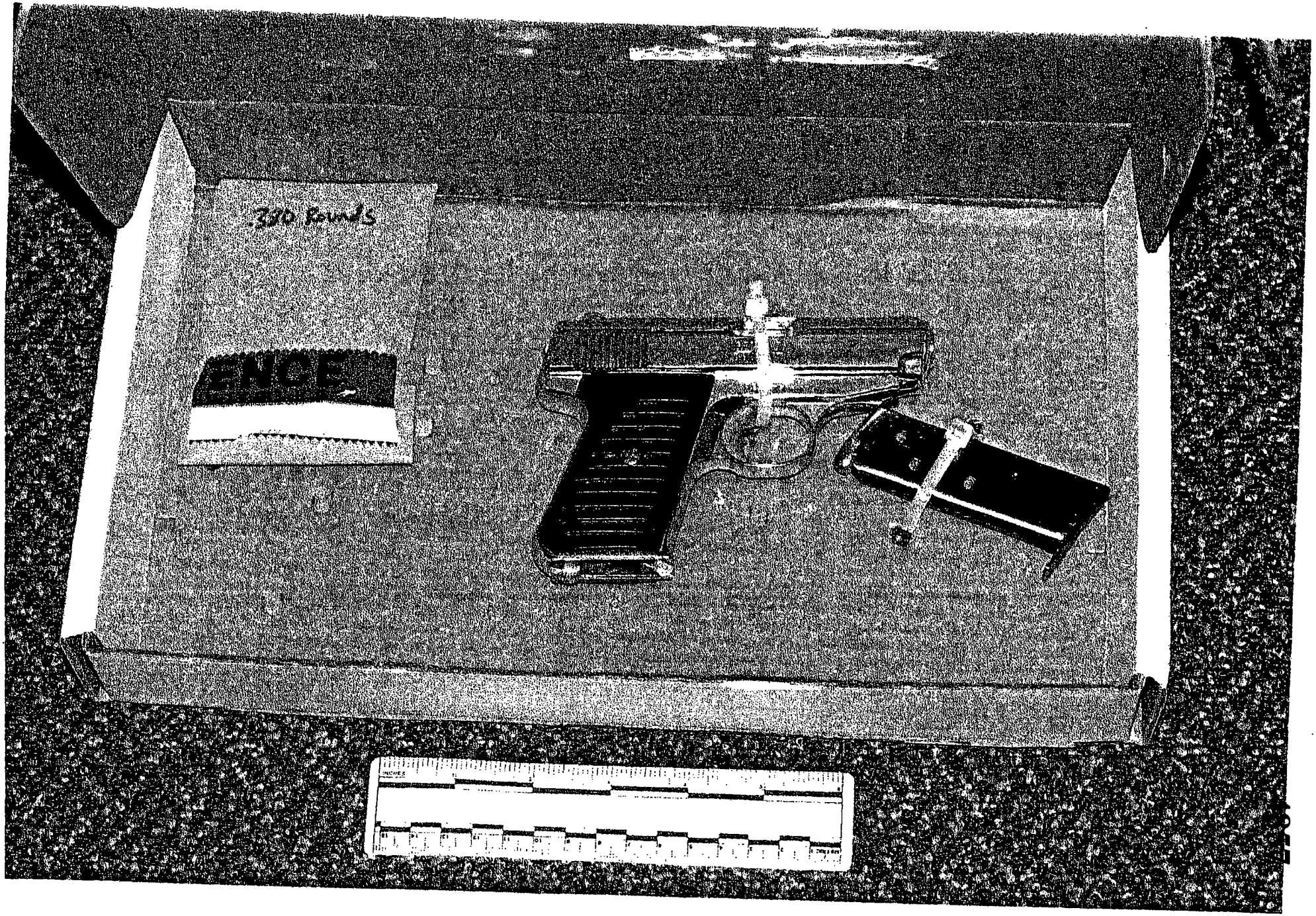

IRVINE, CO. U.S.A.

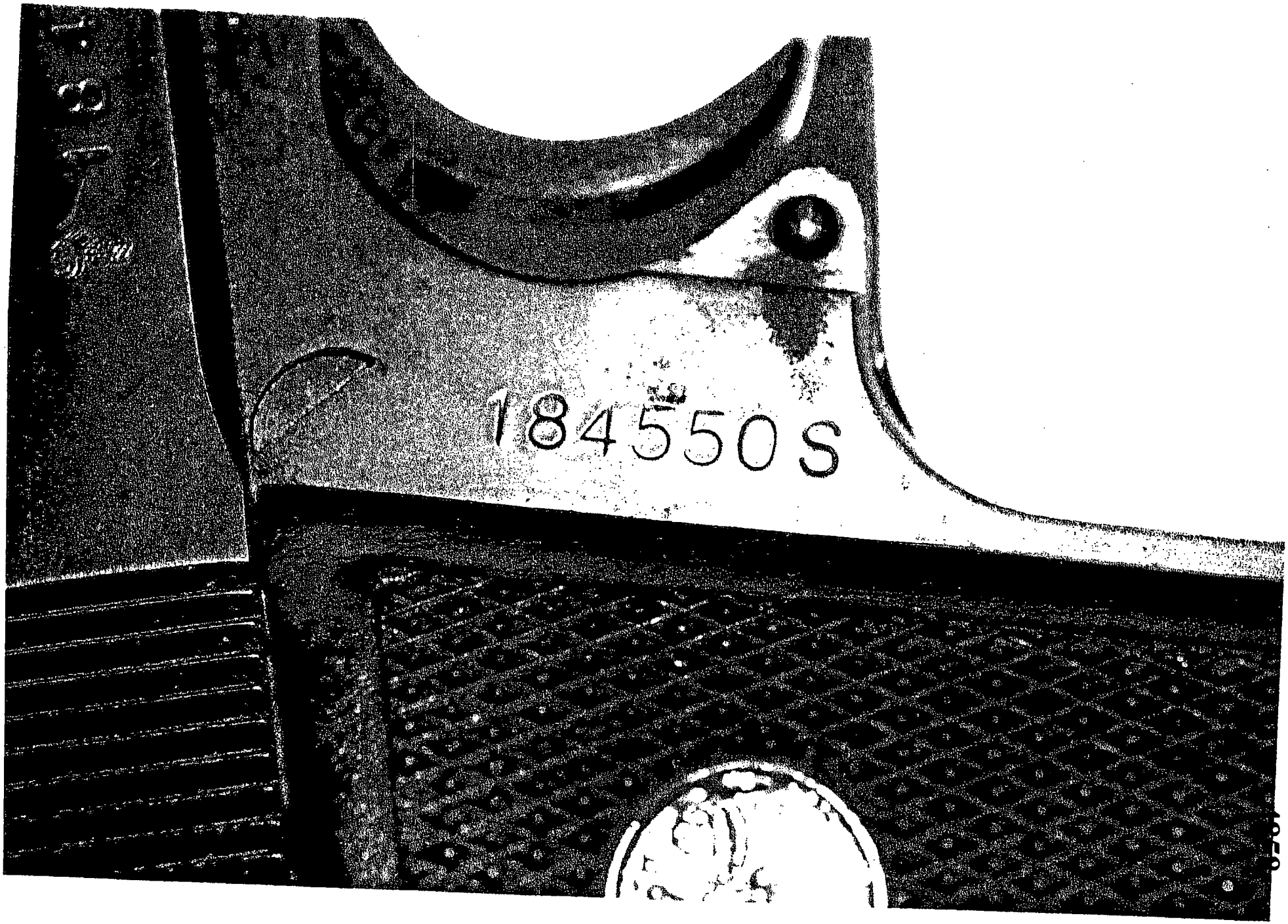

Generation Firearms
BY BRYCO ARMS IRVINE, CA. U.S.A.
INCHES
1
2
3
4
5
6

4855



4856


.380 Rounds


184550S

18455

4860



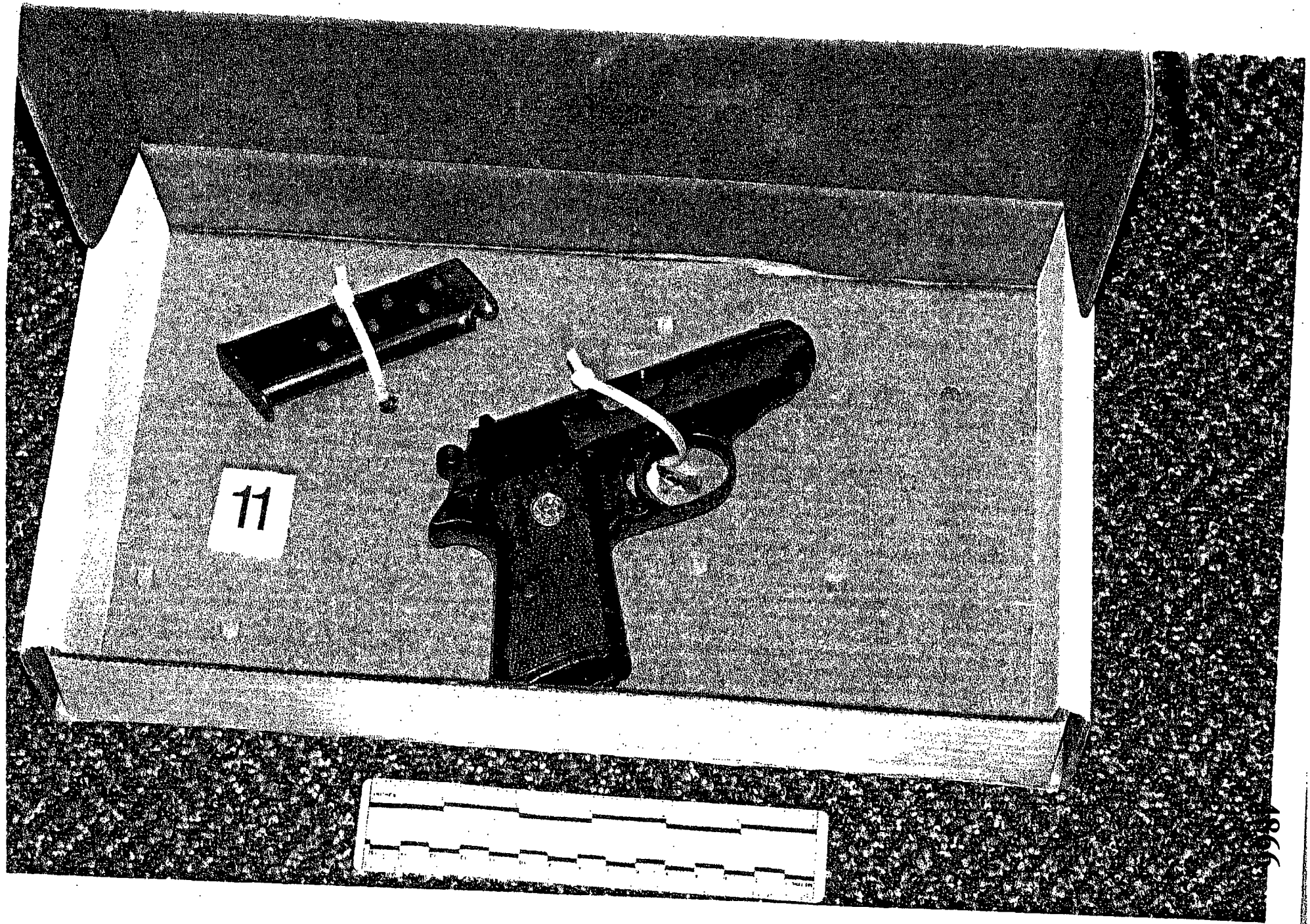
1964

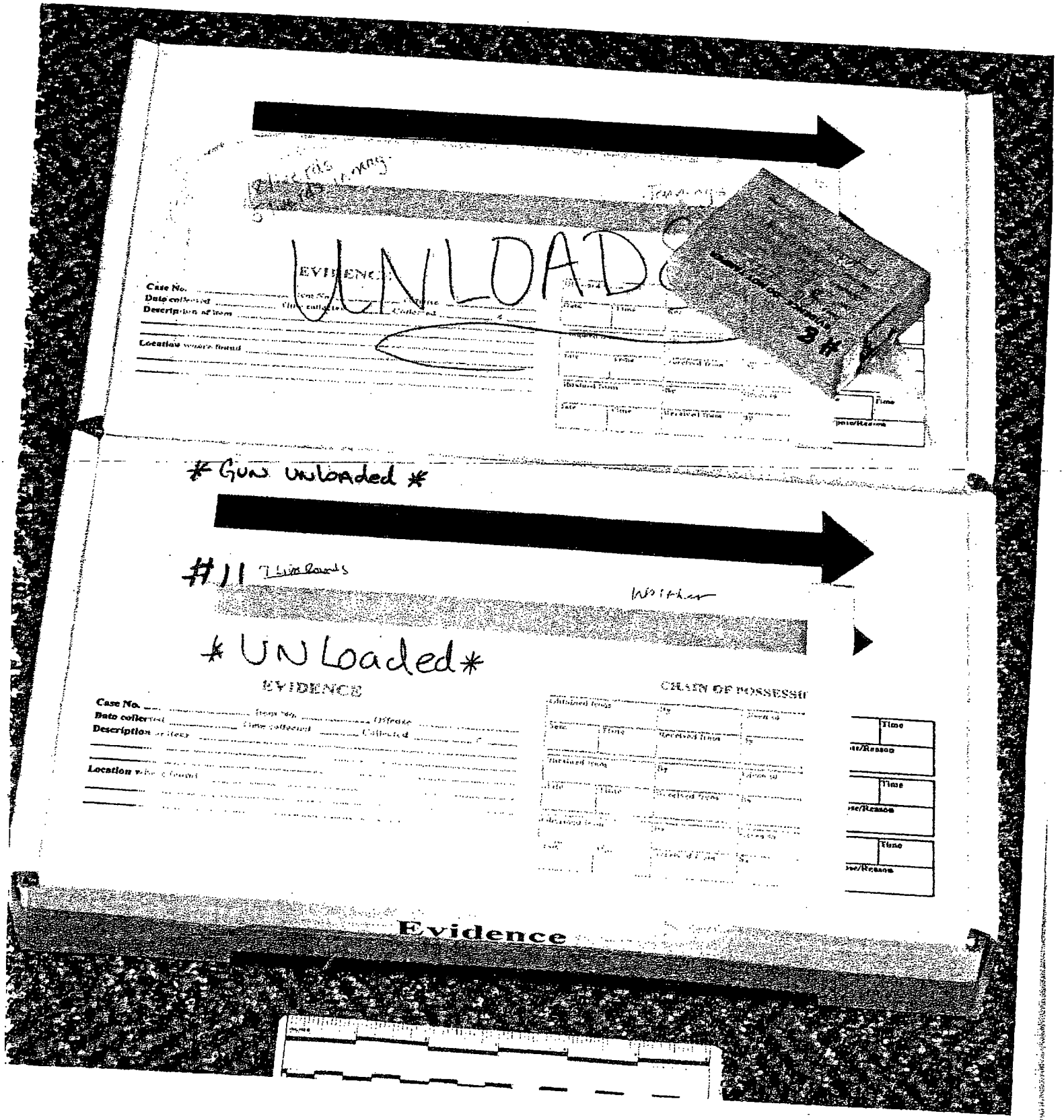

Made in W Germany

WALKER

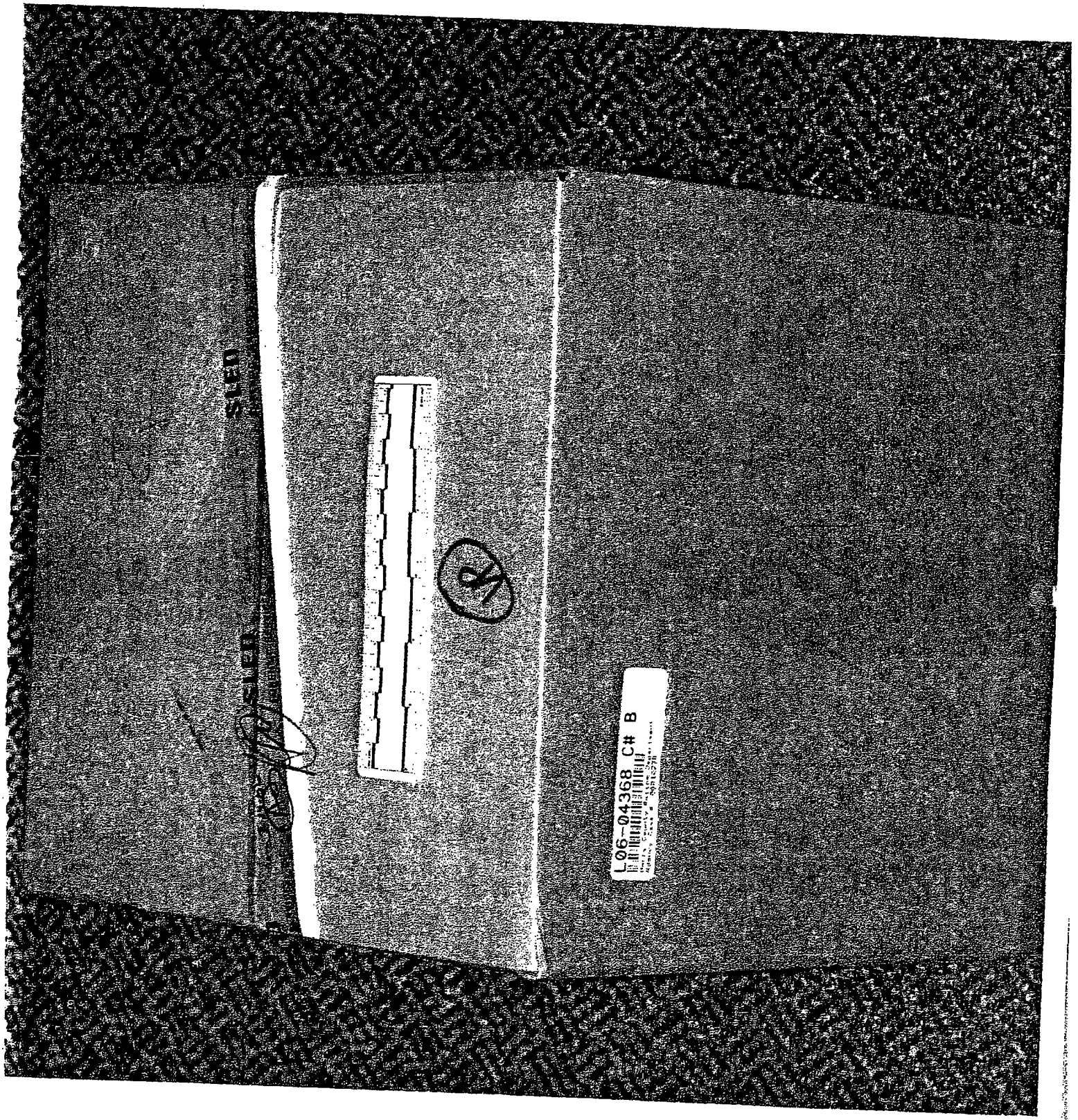

INCHES
METRIC

INCHES
1
2
3
4
5
6
METRIC 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15


11


UNLOADED
EVIDENCE
Case No.
Date collected
Description of item
Location where found
* Gun Unloaded *
#11 7 live rounds
* UNLoaded *
EVIDENCE
CHAIN OF POSSESSION
Case No.
Date collected
Description
Location
Time
Evidence


L06-04368 C# B
Horry County Police Department
Agency Case #: 06010298


SLED
L06-04368 C# B