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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SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.0.1.1/1
SUBJECT: Introduction Technical Procedures Manual	VERSION: 7.071404

INTRODUCTION:
This manual outlines general protocols used in the examination of firearm and toolmark related evidence and compliments Chapter 8 of the Forensic Laboratory Policy and Procedures Manual.

The procedures addressed in this manual serve only as guidelines. Examiners are allowed flexibility in the examination of evidence as dictated by the circumstances of the incident/investigation. (Policy 8.10.1) The following general applications should be adhered to for all types of examinations unless safety considerations render them impractical.

Evidence will first be examined visually and/or microscopically for the presence of trace material. When trace material is encountered, determine the probative value and proceed accordingly.

- Unless specifically requested, the collection of biological material from fired ammunition components recovered from a known source is not necessary (i.e. blood/tissue off of a bullet removed from a victim at autopsy).
- Unless specifically requested, the collection of some other trace materials from fired ammunition components recovered from a known source is not necessary (i.e. drywall, wood fibers, paint, etc... found on a fired bullet recovered from a wall; glass found on a bullet fired through a window; etc...).
- Unless specifically requested, fired ammunition components that exhibit no obvious trace material need not be swabbed in all cases and the examiner may proceed with decontamination processes.

If there is a question regarding trace material or if unusual material is discovered during examination, consult with the contributor and/or collect the material. In all cases, evidence shall be handled so as to prevent any loss, cross-transfer, contamination, or other deleterious change.

PROTOCOL APPROVAL

Department Head: Robert Darnell Jr. Date: 7-23-04

Coord. or Asst. Coord.: Earl Wells Date: 7-26-04

PETITIONER'S EXHIBIT 5
6/18/17 BB

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.0.0.1/2
SUBJECT: Table of Contents	VERSION: 9.080905

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DEPT: Firearms	SECTION: 7.0.0.2/2
SUBJECT: Table of Contents	VERSION: 9.080905

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PROTOCOL APPROVAL

Department Head: Date: 8-9-05

Coord. or Asst. Coord.: Date: 8-10-05

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FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.6.13.1/3
SUBJECT: Appendix M: Abbreviations	VERSION: 1.071404

Mconw/	Most consistent with
Conw/	Consistent with
F/A	Firearm
Cart or CTG	Cartridge
Cart case	Cartridge case
MOV	Marks of value
LMOV	Limited marks of value
ELMOV	Extremely limited marks of value
NMOV	No marks of value
OPC	Observable physical characteristics
FP	Firing pin
BFM	Breech face marks
LI or LIMP	Land impression width
GI or GIMP	Groove impression width
MAG	Magazine
CHAR	Characteristics
RT	Right
UNS	Unsealed
ETS	Evidence tape sealed

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DEPT: Firearms	SECTION: 7.6.13.2/3
SUBJECT: Appendix M: Abbreviations	VERSION: 1.071404

SELF SEAL	Self Sealing
UF	Unfired
RECD	Received
H/S	Heat-sealed
ENV	Envelope
DBL	Double
COL	Column
DET	Detachable
9MML	9mm Luger
MCW	Most consistent with
CW	Consistent with
CB BOX	Cardboard box
SA	Single action
DA	Double Action
DAO	Double Action Only
RH	Right Hand Side
LH	Left Hand Side
HSP	Heat Sealed Pouch

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DEPT: Firearms	SECTION: 7.6.13.3/3
SUBJECT: Appendix M: Abbreviations	VERSION: 1.071404

CC	Cartridge Case
BBL	Barrel
HEMI	Hemispherical
PARA	Parallel
EA	Each
PAR	Peer/Administrative Review
Ind. Ident. Charac.	Individual Identifying Characteristics
Lt.	Left

PROTOCOL APPROVAL

Department Head: Date: 7-23-04

Coord. or Asst. Coord.: Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.6.12.1/2
SUBJECT: Appendix L Cleaning fired bullets using the Ultrasonic Cleaner	VERSION: 1.050504

PRINCIPLE:

Some fired bullets received for examination are encrusted with dried material(s) which can sometimes be removed by use of an ultrasonic cleaner. This should be the last process attempted to effect an examination.

SPECIAL HANDLING, HEALTH, and SAFETY PRECAUTIONS:

None other than those set forth in the instrument instruction manual. A bullet should not be left unattended in the ultrasonic bath. Surface damage can occur.

SPECIMEN(S) REQUIRED:

A fired bullet(s) with dried tissue, body fluids, blood, etc... on it which could not be removed by soaking, gentle swabbing, and/or gentle brushing with a soft bristle brush.

SUPPLIES REQUIRED:

Water (2 – 3 quarts)
Dishwashing Liquid (grease cutting type)
Saline Solution

APPARATUS REQUIRED:

Ultrasonic Cleaner
Wire Hanger (approx. 2 feet total length)
Small glass beaker (80-ml. size)

CALIBRATION REQUIRED:

None

PROCEDURE:

1. This method is most effective in removing body tissue that has been left on a bullet for an extended period of time and does not respond to conventional methods of removal.

2. Attempt to clean encrusted material by other means prior to using the ultrasonic cleaner (i.e. soaking in saline solution, swabbing with cotton tipped swabs, gently brushing with a nylon soft-bristled brush).

3. If striated markings are still obscured by material after other methods have been used, the ultrasonic cleaner may be considered as the last alternative for cleaning.

4. Fill the tank in the ultrasonic cleaner with approximately 1 – 1½ quarts of water.

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DEPT: Firearms	SECTION: 7.6.12.2/2
SUBJECT: Appendix L Cleaning fired bullets using the Ultrasonic Cleaner	VERSION: 1.050504

5. Combine 20-ml. water, 20-ml. Saline solution, and 20-ml. dishwashing liquid in the 80-ml. beaker. Stir these ingredients together and place bullet into the beaker.

6. Wrap wire around the top of the beaker and suspend it with the solution and bullet in it in the ultrasonic cleaner tank but not in contact with the bottom of the tank.

7. Set the timer on the cleaner for 5 minutes. (DO NOT LEAVE A BULLET IN THE CLEANER FOR MORE THAN TEN MINUTES WITHOUT CHECKING IT. SURFACE DAMAGE COULD OCCUR.)

8. Use caution when cleaning lead bullets and especially with copper-plated (lubaloy) lead bullets. The copper coating (wash) is fragile and could be damaged by letting the specimen stay in the bath for extended periods. (A good rule of thumb is to check every 5 minutes to see if the encrusted material is loosening and can be removed by other means.

9. Continue step 7 until material can be removed or it is determined that it will not come off.

10. Cut ultrasonic cleaner off, unplug it, remove suspended beaker, remove bullet, clean it, and repackage properly.

11. If no more bullets are to be cleaned, drain the ultrasonic cleaner tank. Empty the beaker, wash and dry it, and store properly.

PROTOCOL APPROVAL

Department Head: _____ Date: 5-6-04

Coord. or Asst. Coord.: _____ Date: 5-6-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.6.11.1/3
SUBJECT: Appendix K Report Writing	VERSION: 2.071404

PRINCIPLE:

Reports are generated as a result of many of the analyses performed by SLED Firearms Department personnel. Following are general guidelines to ensure that certain criteria are in all reports.

SPECIAL HANDLING, HEALTH, and SAFETY PRECAUTIONS:

None other than those identified in other areas of this manual.

SPECIMEN(S) REQUIRED:

Completed Firearms Department case file.

SUPPLIES REQUIRED:

Formal SLED Laboratory report stationary.

APPARATUS REQUIRED:

Word Processor or Typewriter
Printer

CALIBRATION REQUIRED:

None

PROCEDURE:

1. Examine the case file to ensure that it has been reviewed and that the reviewer has initialed and dated the blue sheet and on the outside of the case file envelope.
2. Review the take-in document requests and be sure all applicable requests have been addressed.
3. See Laboratory Manual Section 8 for contents of reports and format.
4. Phraseology used in the "Results of Examinations" section should be clear and in keeping with language generally accepted in the field of Firearm and Toolmark Identification.
5. Some latitude is allowed examiners to explain unique circumstances encountered in individual cases.
6. Reports will usually address items in numerical order from lowest to highest specimen number, both in the "Specimens Received" or "Items of Evidence" section and in the "Results of Examination" section.
7. Where several items examined have similar results, these items may be combined in a results statement. (i.e. Items 2, 3, 4, and 5 were all fired by Item 1.)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.6.11.2/3
SUBJECT: Appendix K Report Writing	VERSION: 2.071404

8. The four commonly encountered results in Firearms and Toolmark reports are:
   a. **Positive** - Individual-identifying characteristics were found between evidence and tests, i.e., "Item ___ was fired/cut by Item __."
   b. **Negative** - Sufficient class and or individual differences were found to conclude evidence and tests were not associated, i.e., "Item __ was not fired/cut by Item __."
   c. **Inconclusive** - Cannot identify or eliminate evidence and tests due to damage, inconsistencies, etc…
   d. **Unsuitable** - Insufficient or no markings present on item(s) for comparison with tests.
9. Examinations are also conducted to determine weapon caliber, brand, and type when one or more fired bullets are submitted without a gun for comparison. These are referred to as GRC (General Rifling Characteristics) reports and are formatted much like other firearms related reports. The phrase "Based on the general rifling characteristics observed on Item(s) ___, a list of makes or origins of guns which could have fired Item(s) ___ includes, but is not limited to, the following:" Similar terms/language may be substituted for this phrase, followed by a list of weapon possibilities provided in a database form by the F.B.I. for law enforcement use. This information is in the "Results of Examination" section of the report followed by a statement telling the contributor whether or not the evidence may by suitable for identification with a specific firearm.
10. Examinations are also conducted by Firearms Department personnel on evidence where fractures have occurred (i.e. broken tool tip found at the crime scene and tool in subject's custody). Visual and microscopic comparisons are done. The language in the "Results" portion of the report can reflect any of the results found in other types of examinations done by Firearms examiners, (i.e. positive, negative, inconclusive, or unsuitable – see number 8 above.)
11. If trace evidence is removed from an item submitted for firearms or toolmark examination, this will be noted in the "Results" portion of the report in language such as, "Hair-like material was removed from Item 2 prior to examination. This material was packaged for return with the evidence and was not examined or analyzed. Please resubmit this trace material if additional tests are needed." Similar language may be substituted depending on the case. Please note that this refers to apparently non-probative trace materials where there was no request for a trace comparison made.

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DEPT: Firearms	SECTION: 7.6.11.3/3
SUBJECT: Appendix K Report Writing	VERSION: 2.071404

12. The final paragraph of most reports dealing with firearms advises the contributor that tests from the submitted gun(s) have been entered into the SLED IBIS (Integrated Ballistic Identification System) and they will be notified if any "hits" occur. This section also requests that the evidence be maintained by the submitter for two years should any IBIS activity indicate that additional microscopic comparisons are required.
13. Reports dealing with toolmark examinations will generally follow the same format as those involving firearms. Some additional explanation may be required depending on the individual case.

PROTOCOL APPROVAL

Department Head: _____ Date: 7-23-04

Coord. or Asst. Coord.: _____ Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.6.10.1/2
SUBJECT: Appendix J: IBIS Entry (Correlation) Operations	VERSION: 1.051704

PRINCIPLE:

The automated correlation of digitally acquired images of fired evidence bullets, fired evidence cartridge cases, and selected test fires from evidence firearms is accomplished to search for possible links between previously unrelated cases. These correlations are scored by the IBIS Matchpoint hardware/software and are reviewed regularly to search for possible high confidence correlations or "hits".

APPARATUS REQUIRED:

IBIS Matchpoint, or other appropriate IBIS correlation hardware.

PROCEDURE:

1. A trained firearms examiner should examine the correlation scores of each acquired specimen (evidence or test-fire) in order to determine if there is a possible high confidence correlation. These specimens will not only include those entered at SLED, but also those entered at any of the connected Remote Data Acquisition Stations (DASR) sites and Rapid Brass Identification (RBI) sites.
2. The firearms examiner, after reviewing the correlation scores, should view the images of at least the top ten scoring correlations to visually verify the correlations.
3. If a high confidence correlation is noted, the following procedure should be followed:
   - The best matching correlation image comparison should be printed. This should be stored in a hard-copy file.
   - A short form copy of the correlation results should be printed. This should be stored in a hard-copy file.
   - If the correlated evidence bullets, cartridge cases, and/or firearm are still present at SLED, they should be retrieved and compared microscopically to confirm or deny the identification.

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FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.6.10.2/2
SUBJECT: Appendix J: IBIS Entry (Correlation) Operations	VERSION: 1.051704

- If the correlated evidence bullets, cartridge cases, and/or firearm are *not* present at SLED and have been returned to the submitting agency, the agency's representative should be contacted and the evidence returned to SLED as soon as possible so that microscopic comparisons can be accomplished. In the case of a firearm, SLED-stored test-fires on file may be used in lieu of a resubmission. If, however, a positive identification is made or stored test-fires are inadequate to render a conclusion, the firearm should be submitted for further examination and test-firing.
- If a positive "hit" is made, a written report reflecting all of the pertinent information will be sent to the submitting agency from the IBIS examiner and/or the assigned firearms examiner. (A positive "hit" is a high confidence correlation that has been confirmed as a positive match through microscopic examination and comparison by a qualified Firearms Examiner)
- If a positive "hit" is made, a report reflecting all of the pertinent information should be sent to the appropriate personnel at the BATF NIBIN Section and/or FTI (if appropriate).

DOCUMENTATION:
Properly completed IBIS Entry Log and/or High Confidence (Hit) Log Forms.

PROTOCOL APPROVAL

Department Head: _____ Date: 5-17-04

Coord. or Asst. Coord.: Earl Wells Date: 5-24-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.6.9.1/5
SUBJECT: Appendix I: IBIS Entry (Acquisition) Operations	VERSION: 2.080905

PRINCIPLE:

The Integrated Ballistics Identification System (IBIS) enables an operator to acquire digital images of individually marked areas on fired cartridge cases and bullets. These images are converted into digital "signatures" and are compared, through an automated process, with other stored images to determine if *possible* links exist between previously unrelated cases or incidents.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

The evidence firearm will be handled, documented, and, if necessary, prepared for test firing according to the standard firearms examination protocol. Please refer to that protocol for safety, trace evidence, documentation, and other issues not specific to IBIS operations.

SPECIMEN REQUIRED:

A submitted evidence firearm (and/or associated test fired bullet and/or cartridge case), fired evidence bullet, or fired evidence cartridge case.

SUPPLIES REQUIRED:

Acetone
Sticky wax
Cotton swabs
Latex gloves or other non-porous gloves
Test containers (envelopes)
Evidence tape
Writing utensils
Permanent marking pens
Evidence packaging labels
Reference ammunition

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FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.6.9.2/5
SUBJECT: Appendix I: IBIS Entry (Acquisition) Operations	VERSION: 2.080905

SUPPLIES (Optional):

Hot glue sticks
Compressed air (disposable)
Lubricating and cleaning solvents
Patches and brushes

APPARATUS REQUIRED:

IBIS Data Acquisition Station Remote (DASR) unit
Stereoscope
Bullet recovery tank / trap
Assorted armorer and general tools

APPARATUS (Optional):

Digital camera
Polaroid camera
Digital Imaging Software
Engraver
Hot Glue Gun
Cleaning rods and attachments

CALIBRATION REQUIREMENTS:

The only instrument involved in IBIS entry that involves calibration is the DASR microscope. During each log-in sequence, the computer that controls the microscope performs a series of self-calibration checks. Should a calibration error be detected by the computer system, the calibration process stops automatically, and the station is disabled. Corrective measures would then be taken under direct consultation with Forensic Technology, Inc., with whom there is a service agreement. However, calibration should be verified by the operator during the weekly tape change and should be documented on the NIBIN (IBIS) Data Backup/Calibration Log.

PROCEDURE:

1. Transfer the appropriate evidence to the custody of the IBIS operator, using the LIMS system to document the transfer. (Evidence may be transferred either directly from the log-in evidence technician, the submitter, the assigned firearms examiner (if appropriate), or from the IBISLOCK bin).

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.6.9.3/5
SUBJECT: Appendix I: IBIS Entry (Acquisition) Operations	VERSION: 2.080905

2. Ensure that any submitted firearm is chambered in a caliber that qualifies it for IBIS entry. These calibers are as follows:

223 Remington	38 Special
25 Auto	357 Magnum
30 Carbine	357 SIG
7.62x39mm (Soviet)	40 S&W
32 Auto	10mm Auto
32 H&R Magnum	41 Magnum
380 Auto	44 Special
9mm Makarov	44 Magnum
9mm Luger	45 Auto

a. High Power Rifles: Fired cartridge cases only due to problems obtaining suitable test bullets.
b. Revolvers: Fired bullets only.
c. Jacketed bullets only due to suitability issues with plain lead bullets.
d. .22 rimfire bullets, .22 rimfire cartridge cases, and shotgun-related evidence are not currently entered.

Any of the above listed specimens that are not normally entered or other calibers may be entered under special or unusual circumstances

3. Ensure (if possible) that any submitted fired cartridge case or bullet also falls within the accepted caliber list above.
4. Ensure the presence of an IBIS Firearm Submission Form, IBIS Specimen Input Form, or an NIBIN Test Fire Submission Form. Ensure that the form has been adequately completed.

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FORENSIC SERVICES LABORATORY
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DEPT: Firearms	SECTION: 7.6.9.4/5
SUBJECT: Appendix I: IBIS Entry (Acquisition) Operations	VERSION: 2.080905

5. Examine test-fired components under magnification (comparison microscope, stereoscope, magnifying glass, and/or loupe) to determine which sample or samples is/are most appropriate for IBIS entry. Only those specimens that are suitable for identification will be entered into the database. In the case of *evidence* items (bullets and/or cartridge cases) submitted for entry by SLED firearms examiners, this should have been done by the assigned examiner and indicated on the IBIS Specimen Input Form. Test fires should be marked using standard firearms evidence marking procedures. The exhibit numbers assigned to fired evidence bullets and cartridge cases will contain the SLED item number. Test-fires submitted by other agencies will not be marked.
6. Enter the specimen into the IBIS system using procedures described in the FTI IBIS Student Book.
7. Upon completion of the acquisitions, enter the appropriate information in the IBIS Entry Log, and complete the appropriate areas on the IBIS Firearm Submission Form, IBIS Specimen Input Form, or the IBIS/NIBIN Test Fire Submission Form, as well as the Test Fire Envelope form and stamp "IBIS" on the case jacket.
8. Reseal and initial the evidence containers, where appropriate. Place the approved high-visibility label on the package to alert the submitter and/or assigned SLED firearms examiner to the fact that the evidence in that package has been entered into IBIS.
9. Test fires generated by SLED are not considered to be evidence. However, these IBIS test-fires should be kept secure and filed in the IBIS Test Fire file cabinet. Test-fires submitted by other agencies are evidence and will be returned to the submitting agency for storage after IBIS entry is complete.
10. Transfer all evidence items to Firelock, and place these items in either the outgoing box to be returned to the submitting agency, or in the incoming evidence box of the appropriate assigned firearms examiner, or transfer the evidence directly (hand to hand) to the appropriate examiner.

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DEPT: Firearms	SECTION: 7.6.9.5/5
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11. In IBIS only cases, a copy of the IBIS/NIBIN Firearm Submission Form or the NIBIN Test Fire Submission Form will be returned with the evidence to the submitting agency. This form notifies the agency that the item has/has not been entered into the IBIS database.
12. In other cases, where evidence is entered into IBIS after a standard firearms examination, mention of that fact should be made by the assigned firearms examiner in his/her report.
13. Should positive high confidence correlations ("hits") be made in the future, reports reflecting those results will be forwarded to the submitting agency at that time.
14. Submitting agencies should be notified that they should retain all evidence that has been entered into IBIS for a period of not less than two years in order to keep it available in case it is needed due to future IBIS activity.

DOCUMENTATION:
If evidence or test-fires from evidence:

Completed IBIS Specimen Input Form and/or Test-Fire Envelope form; and/or completed IBIS/NIBIN Firearm Submission Form, and IBIS Entry Log Form, and "IBIS" stamp on the outside of the case jacket.

If submitted test-fires only:

Completed NIBIN Test Fire Submission Form and IBIS Entry Log Form.

PROTOCOL APPROVAL

Department Head: Mark B. Darnell Jr. Date: 8-9-05

Coord. or Asst. Coord.: Earl T. Wells Date: 8-10-05

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.6.8.1/4
SUBJECT: Appendix H: Instrument Calibration Instructions	VERSION: 2.071404

PRINCIPLE:
Equipment issued to and used by each examiner needs to be checked monthly to assure that the readings/results indicated are accurate and reliable.

SPECIAL HANDLING, HEALTH, AND SAFETY PRECAUTIONS:
1. Wear appropriate eye protection when calibrating the spring scale trigger pull device.
2. Use caution when utilizing the NRA trigger pull weight sets. The individual weight discs could dislodge and fall on feet/toes.

SPECIMEN REQUIRED:
1. Microscope
2. Scale
3. Caliper
4. Micrometer
5. Springscale

SUPPLIES REQUIRED:
1. Appropriate eye protection
2. Above listed specimens (equipment)
3. Mitutoyo 1" standard bar (or equivalent)
4. Reichart K2739 grid slides (or equivalent)
5. NRA Standard Trigger Pull weight set
6. Manufacturer's Instruction manuals
7. Cleaning Supplies

APPARATUS REQUIRED:
1. Above referenced equipment

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DEPT: Firearms	SECTION: 7.6.8.2/4
SUBJECT: Appendix H: Instrument Calibration Instructions	VERSION: 2.071404

CALIBRATION REQUIREMENTS:

1. The microscope must provide equal magnification on each stage in order for the examiner to accurately evaluate specimens being observed.
2. The electronic scale must provide accurate weights in order for the examiner to correctly determine caliber, weight, etc. of specimens being examined.
3. The caliper must provide accurate measurements in order for the examiner to determine diameters, lengths, and other dimensions of specimens being examined.
4. The micrometer must provide accurate measurements in order for the examiner to determine land and groove dimensions and other measurements required.
5. The Springscale must provide accurate weights in order for the examiner to determine trigger pull values.

PROCEDURE

1. Microscope

a. Adjust both lens settings on the microscope to 10X (lowest magnification)
b. Place one of he K2739 grid slides on each document plate stage.
c. Focus
d. Use the lateral adjustments to overlap the images
e. If the grids perfectly overlap without any shadow images, the microscope is properly calibrated.
f. If any misalignment is noted, check to be sure both lens are at the same magnification. If misalignment is still noted, the microscope is out of calibration and cannot be used until repaired.
g. Notify the Department Supervisor of the problem. A manufacturer's technician will be notified to service the microscope.
h. Repeat steps a through f for each power on your microscope.

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PROTOCOL

DEPT: Firearms	SECTION: 7.6.8.3/4
SUBJECT: Appendix H: Instrument Calibration Instructions	VERSION: 2.071404

2. Scale:

a. The electronic scales are certified/calibrated semiannually by DHEC.

b. If a discrepancy is noticed by the examiner during daily activities (i.e. instrument has jumped to grams instead of grains due to a power surge, etc.), press and hold the "TARE"/"ZERO" button on the face of the scale until the desired display is accomplished.

c. There are certified weights available within the Firearms Department to check readouts between DHEC visits.

d. To determine accuracy, place one or more of the above mentioned certified weights in the pan after taring/zeroing to "0.0" grains.

e. If the scale correctly displays the weight of the known weight(s) / standard(s) in the pan, the scale is in adjustment.

f. If discrepancy is noted, notify the Department Supervisor. The scale will be taken out of service until repaired or replaced.

3. Calipers/Micrometers:

a. Open instrument to read slightly over 1". Jaws/anvil faces must be clean.

b. Insert MITUTOYO 1" Standard bar into jaws.

c. Slowly tighten instrument until snug.

d. If the dial or display reads 1", instrument is properly calibrated.

e. If a discrepancy is noted, consult instruction manual provided with instrument.

f. If you still cannot get correct reading, notify Department Supervisor of problem and repair/replace instrument.

4. Springscale

a. Set springscale at "Zero" on scale.

b. Using the NRA 1 lb. Trigger weight, hook the springscale onto the 1 lb. Weight.

c. If springscale does not read "1 lb.", release the 1 lb. weight, reset springscale readout to zero, and adjust the thumb-screw at the top of the springscale in or out until agreement is reached between the 1 lb. known weight and the readout on the scale.

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DEPT: Firearms	SECTION: 7.6.8.4/4
SUBJECT: Appendix H: Instrument Calibration Instructions	VERSION: 2.071404

d. Release 1 lb. weight, reset springscale to zero, and check again. If still in agreement, the springscale is properly calibrated.

e. If agreement cannot be accomplished, notify Department Supervisor and repair/replace instrument.

5. If an examiner notices an obvious problem with any of the equipment listed above, initiate calibration procedures to determine the cause of the problem. If a solution cannot be reached, notify the Department Supervisor or his designee, and begin repair/replacement process.

PROTOCOL APPROVAL

Department Head: Robert Barnwell Jr. Date: 7-23-04

Coord. or Asst. Coord.: Earl Wells Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
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DEPT: Firearms	SECTION: 7.6.7.1/3
SUBJECT: Appendix G: Bullet Caliber Determination by X-Ray	VERSION: 7.071404

SUBJECT:
Firearms Examination: Use of standard radiographs (X-Rays) to determine bullet caliber.

PRINCIPLE:
By extension of the radiographic principle that objects of like size when X-rayed on the same plane will produce images of the same size and by using techniques described in several articles from the AFTE Journal and the protocol from the SLED Photography Department Manual Section 11.0.23.1/2 (copies of two of these articles and photography protocol 11.0.23.1/2 are provided as Appendices to this Protocol); bullet caliber can be accurately determined by comparing an X-Ray of a bullet/projectile in a body with an X-Ray of bullets of known caliber imbedded in plastic and attached to a pelvimeter. A tomographic phantom (step scale) is used to assure that all images are X-rayed on the same plane.

SPECIAL HANDLING PRECAUTIONS:
As radiographs supplied for this type of examination are often supplied by hospitals, radiologists, or other medical personnel on a temporary basis, all possible care should be taken to avoid damaging the radiograph through careless handling or marking.

SPECIMENS REQUIRED:
1. Full size radiograph(s) of a suspect bullet in body taken by properly trained SLED personnel or under direct supervision of SLED personnel.
2. Full size radiograph of bullets of known caliber set in plastic taken by properly trained SLED personnel or under direct supervision of SLED personnel.

SUPPLIES REQUIRED:
Large envelopes/folders for X-Ray storage.

APPARATUS REQUIRED:
1. Back-lighted viewer, viewing table, or other suitable illumination source.
2. Dial calipers.
3. Ruler
4. Fingerprint magnifier or comparable magnifier.

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DEPT: Firearms	SECTION: 7.6.7.2/3
SUBJECT: Appendix G: Bullet Caliber Determination by X-Ray	VERSION: 7.071404

CALIBRATION REQUIREMENTS:

Dial caliper should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.

Tomographic phantom is permanently set in increments of one centimeter.

Pelvimeter is adjusted on an as needed basis in each case based on the measurements made using the tomographic phantom.

The bullet standards are permanently set and no adjustments/calibrations are required.

PROCEDURES:

1. Using a back-lighted viewer, table, or by other suitable illumination, examine the original radiograph(s) for the presence and position of any suspected projectiles/bullets.
2. Make note of any distortion or damage noted to the suspect projectile(s).
3. Examine the radiograph of the bullets of known caliber set in plastic and attached to the pelvimeter.
4. Overlay the radiograph of the suspect bullet on the radiograph of the known caliber bullets in plastic being careful that the axial alignment of both specimens is approximately the same.
5. Use dial caliper to measure across base of suspect bullet on x-ray. Compare this measurement to x-ray of bullets of known caliber set in plastic.
6. Read caliber of bullet(s) as depicted in radiograph of bullets of known caliber set in plastic that most closely resembles suspect bullet.

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DEPT: Firearms	SECTION: 7.6.7.3/3
SUBJECT: Appendix G: Bullet Caliber Determination by X-Ray	VERSION: 7.071404

DOCUMENTATION:

Complete Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, contact sheets of radiographs, copies of any tables, charts, or other literary extracts should be filed.

PROTOCOL APPROVAL

Department Head: _____ Date: 7-23-04

Coord. or Asst. Coord.: _____ Date: 7-26-04

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DEPT: Firearms	SECTION: 7.6.6.1/3
SUBJECT: Appendix F: Projectile Size by X-Ray	VERSION: 6.101403

SUBJECT:
Firearm Examinations: Use of Standard, Non-Scaled Radiographs (X-Rays) to exclude the Presence of Certain Size Projectiles.

PRINCIPLE:
By extension of the basic radiographic principle that images on a radiograph are either actual size or larger than actual size, it can be surmised that such images cannot be smaller than (reduced) the actual size of the object in question. If an image of a projectile or projectiles is measured and the maximum diameter of the image is determined, then the size of the projectile must be equal to or than that measurement. Due to this fact, and the fact that an exact caliber determination is not being pursued, a scale or tomographic phantom is not required.

SPECIAL HANDLING PRECAUTIONS:
As radiographs supplied for this type of examination are often supplied by hospitals, radiologists, or other medical personnel on a temporary basis, all possible care should be taken to avoid damaging the radiograph through careless handling or marking.

SPECIMEN REQUIRED:
Full sized radiographs of the projectile or projectiles, preferably taken from two or more angles.

SUPPLIES REQUIRED:
Photographic paper
Large evidence or document folders or envelopes

APPARATUS REQUIRED:
Back-lighted viewer, viewing table, or other suitable illumination
Dial calipers
Fingerprint magnifier or comparable magnifier
Ruler
Reference ammunition standards

CALIBRATION REQUIREMENT:
Dial caliper should be calibrated monthly using the Mitutoyo one inch "standard bar" (cat # 167-141) provided with the instrument or a similar approved standard.

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DEPT: Firearms	SECTION: 7.6.6.2/3
SUBJECT: Appendix F: Projectile Size by X-Ray	VERSION: 6.101403

PROCEDURE:

1. Using a back-lighted viewer, table, or other suitable illumination, examine the original radiograph to determine the presence and position of any suspected projectiles.
2. It is advisable to obtain contact prints of the appropriate radiographs. This serves to provide a "one-to-one" ratio permanent print that can be readily viewed and measured. This print can be retained by the Firearms Department after the original is returned (if such return is required). This contact print should be generated by the Photography Department of this laboratory or by the examiner under the supervision of the Photography Department.
3. Using the fingerprint magnifier (or other comparable magnifying device) and the dial calipers, measure the image(s) of the projectile or projectiles in question. Any damage or distortion that is apparent should be taken into consideration. If damage or distortion is extreme, further examination may not be possible. These measurements and other notes regarding this specimen should be recorded in your laboratory notes.
4. Compare the measurement of each projectile with other images of that same projectile that were taken from other angles to determine the correct diameter.
5. Compare that measurement with measurements of laboratory ammunition standards or approved documented information on projectile diameters (such as Tables 1 and 2 in the "G2" section of the AFTE Glossary, Third Edition). Any standard projectile diameter that is <u>larger</u> than the image measurement can be excluded as a possibility. (An example of this would be an image diameter of .15 inches and is relatively undistorted (spherical) would be most consistent with #2 birdshot or smaller. Buckshot could be excluded)

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DEPT: Firearms	SECTION: 7.6.6.3/3
SUBJECT: Appendix F: Projectile Size by X-Ray	VERSION: 6.101403

DOCUMENTATION:
Complete Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, contact sheets of radiographs, copies of any tables, charts, or other literary extracts should be filed.

PROTOCOL APPROVAL

Department Head: _____ Date: _____

Coord. or Asst. Coord.: _____ Date: _____

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DEPT: Firearms	SECTION: 7.6.5.1/1
SUBJECT: Appendix E: Calibration Memo	VERSION: 6.101403

Firearms Department calibration/correction records for all required instruments were reviewed and it was decided that monthly instead of weekly calibration was more practical and less burdensome on personnel.

The following memo was issued to address this issue.

PROTOCOL APPROVAL

Department Head: _____ Date: _____

Coord. or Asst. Coord.: _____ Date: _____

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DEPT: Firearms	SECTION: 7.6.4.1/2
SUBJECT: Appendix D: Air Gap Method	VERSION: 6.101403

The Air Gap Method of measuring land and groove impressions on a fired bullet:

1. Affix evidence bullet to left stage of comparison microscope using a standard bullet chuck.
2. Mount a document plate on right stage of microscope.
3. Attach a 0 to 1 inch micrometer to document plate on right stage using clay or magnets with the thimble of the micrometer toward the operator (6 o'clock position) and the measuring graduations facing up.
4. Verify the zero of the micrometer. If out of adjustment, adjust the barrel of the micrometer to read zero with the anvil and spindle touching.
5. Be sure magnification is the same for both microscope lenses (20X is a good starting point).
6. Bring evidence bullet into focus.
7. Adjust right stage so that the anvil and spindle of the micrometer are sharply focused (usually requires a gross upward adjustment using lever-lock device).
8. To measure land impressions (recessed areas on bullet surfaces), align the upper margin of land impression with the anvil end of micrometer.
9. Move bullet right so that the full width of the land impression is visible and bisected by the dividing line.
10. Move the micrometer left so that the anvil is also bisected by the dividing line.
11. Check alignment of upper margin of impression and anvil end of micrometer again - be sure the face or inside edge of the micrometer end is as closely aligned as possible with the upper inside margin of the land impression.
12. Begin with the spindle of the micrometer nearly touching the anvil (micrometer almost closed).
13. Rotate thimble counter-clockwise until the inside edge or face of the spindle is aligned with the lower margin of the land impression. If the thimble rotates too freely, slight pressure can be exerted on the locking nut to steady the micrometer's adjustment.
14. Read measurement using graduated scale on the micrometer barrel or digital display (to nearest .001 of an inch) and record results on worksheet (Lab Form: 037).
15. Repeat process for each visible land impression.

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DEPT: Firearms	SECTION: 7.6.4.2/2
SUBJECT: Appendix D: Air Gap Method	VERSION: 6.101403

16. Go back to Step 7 except you will be measuring groove impression width (raised areas on bullet surface).
17. Complete Steps 7 through 14 for each groove impression visible.
18. Record measurements on the appropriate worksheet (Lab Form: 037). After measuring all visible land and groove impressions on the bullet surface, record the lowest and highest land impression measurements with a hyphen in between (i.e. .075-.077). Then record the groove impression measurements in the same fashion (i.e. .100-.103).

Record the measurements of land and groove impressions in the form of a fraction as depicted below with land impression widths as the upper or numerator portion and the groove impression widths as the lower or denominator portion:

$$\text{i.e.} \quad \frac{.075 - .077}{.100 - .103}$$

You have now completed the Air Gap method of determining land and groove widths on a fired bullet. The results may now be used to help determine possible manufacturers of weapons, which may have fired the submitted evidence specimen.

PROTOCOL APPROVAL

Department Head:_____ Date:_____

Coord. or Asst. Coord.:_____ Date:_____

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DEPT: Firearms	SECTION: 7.6.3.1/4
SUBJECT: Appendix C: Restoration Reagents, Formulas and Uses	VERSION: 2.101403

The following is a list of reagent/etchant formulas, uses and the departmental menu numbers assigned that are used during the Serial Number/Data Restoration protocol (Section 7.3.1.1/6) of this manual. Preparation of these reagents is accomplished by the Drug Chemistry Department in small amounts for this department.

1. Reagent formulas are as follows:

MENU #	FORMULA	
1	90g $CuCl_2$	Cupric Chloride
	120ml HCl	Hydrochloric Acid
	100ml H_2O	Water
2	8g $CuCl_2$	Cupric Chloride
	16g $NiCl_2$	Nickel Chloride
	140ml HCl	Hydrochloric Acid
	50ml H_2O	Water
3	5g $CuCl_2$	Cupric Chloride
	40ml HCl	Hydrochloric Acid
	25ml	Ethyl Alcohol
	30ml H_2O	Water
4	5g $CuCl_2$	Cupric Chloride
	5g Nh_4Cl	Ammonium Chloride
	10ml HCl	Hydrochloric Acid
	10ml H_2O	Water
5	20g $K_2Cr_2O_7$	Potassium Dichromate
	50ml H_2O	Water
6	20g $K_2Cr_2O_7$	Potassium Dichromate
	10ml HNO_3	Sulfuric Acid
	90ml H_2O	Water

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DEPT: Firearms	SECTION: 7.6.3.2/4
SUBJECT: Appendix C: Restoration Reagents, Formulas and Uses	VERSION: 2.101403

MENU #	FORMULA	
7	20g $K_2Cr_2O_7$	Potassium Dichromate
	50ml HNO_3	Nitric Acid
	30ml H_2O	Water
8	1g $CuSO_4$	Cupric Sulfate
	15ml H_2SO_4	Sulfuric Acid
	1g	Gelatin
9	25g $CoCl_2$	Cobalt Chloride
	75ml HCl	Hydrochloric Acid
	75ml H_2O	Water
10	10 parts	Sodium Hydroxide
	90 parts H_2O	Water
11	HCl	Hydrochloric Acid (Concentrated)
12	30ml HCl	Hydrochloric Acid
	70ml H_2O	Water
13	15ml HCl	Hydrochloric Acid
	85ml H_2O	Water
14	10ml HCl	Hydrochloric Acid
	90ml H_2O	Water
15	HNO_3	Nitric Acid (Concentrated)
16	30ml HNO_3	Nitric Acid
	70ml H_2O	Water

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DEPT: Firearms	SECTION: 7.6.3.3/4
SUBJECT: Appendix C: Restoration Reagents, Formulas and Uses	VERSION: 2.101403

MENU #	FORMULA	
17	15ml HNO_3 85ml H_20	Nitric Acid Water
18	10ml HNO_3 90ml H_20	Nitric Acid Water
19	NH_50	Ammonium Hydroxide (concentrated)
20	25g FeCl3 25ml HCL 100ml H20	Ferric Chloride Hydrochloric Acid Water

2. Reagent recommended metal uses are as follows:

MENU #	METAL USES
1	Iron, Steel (particularly Rolled/Cast Steel) Aluminum, Aluminum Alloys Zinc, Zinc Alloys
2	Iron, Steel
3	Iron, Steel (particularly Cast Steel)
4	Iron, Steel (particularly Stainless/High Speed Steel) Aluminum, Aluminum Alloys Brass
5	Iron, Steel
6	Iron, Steel (particularly Cast Steel/Iron)
7	Brass, Copper

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DEPT: Firearms	SECTION: 7.6.3.4/4
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MENU #	METAL USES
8	General use, Electrolytic
9	General use, Electrolytic
10	Aluminum, Aluminum Alloys, Zinc, Zinc Alloys (Also an Electrolytic)
11	Iron, Steel, Zinc, Zinc Alloys
12	Iron, Steel, Zinc, Zinc Alloys
13	Iron, Steel, Zinc, Zinc Alloys
14	Iron, Steel, Zinc, Zinc Alloys
15	Iron, Steel, Brass, Lead, Silver (dilute)
16	Iron, Steel, Brass, Lead, Silver (dilute)
17	Iron, Steel, Brass, Lead, Silver (dilute)
18	Iron, Steel, Brass, Lead, Silver (dilute)
19	Brass, Copper
20	Aluminum

PROTOCOL APPROVAL

Department Head: _____ Date: _____

Coord. or Asst. Coord.: _____ Date: _____

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FORENSIC SERVICES LABORATORY
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DEPT: Firearms	SECTION: 7.6.2.1/7
SUBJECT: Appendix B: Bibliography	VERSION: 6.101403

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FORENSIC SERVICES LABORATORY
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FORENSIC SERVICES LABORATORY
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SUBJECT: Appendix B: Bibliography	VERSION: 6.101403

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SUBJECT: Appendix B: Bibliography	VERSION: 6.101403

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SUBJECT: Appendix B: Bibliography	VERSION: 6.101403

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NOTATIONS:

1. Numerous firearms, ammunition, and other police related advertisements, brochures, pamphlets, catalogues and bulletins, as well as training course literature and handouts, are used as reference material. However, these items are not individually listed due to the tremendous volume and numbers involved.

2. These listed references may be supplemented by other departmental or private reference libraries as deemed appropriate.

PROTOCOL APPROVAL

Department Head:_____ Date:_____

Coord. or Asst. Coord.:_____ Date:_____

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DEPT: Firearms	SECTION: 7.6.1.1/1
SUBJECT: Appendix A: Forms and Worksheets	VERSION: 6.101403

Forms and worksheets are used to document all appropriate information concerning the analysis of evidence in this department. Some of the sample forms/worksheets are specifically designed to serve as checklists and reminders for pertinent information. When evaluating casework, all relevant entries should be made as deemed appropriate by the examiner. The forms/worksheets do not dictate the sequence of events when conducting an analysis nor are they required to be used. If used, not all information on a worksheet needs to be completed. The approach employed by the examiner is dictated by the circumstances of the case coupled with accepted forensic firearms and toolmark examination practices.

Samples of departmental forms/worksheets are attached.

Computer work screens can be used in place of appropriate paper documentation.

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Department Head:_____ Date:_____

Coord. or Asst. Coord.:_____ Date:_____

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION
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DEPT: Firearms	SECTION: 7.5.1.1/3
SUBJECT: Destruction of Firearms, Ammunition, Edged and Impact Weapons	VERSION: 7.071404

PRINCIPLE:
The SLED Firearms Department accepts items seized by law enforcement and corrections personnel for destruction. These items sometimes include firearms, firearms related accessories, ammunition, ammunition components, knives, other edged weapons, and impact weapons. Generally, this evidence is examined, inventoried, partially or completely disassembled, packaged, and destroyed.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. In most cases firearms will be unloaded when received for destruction, however, all guns will be treated as loaded until physically examined and rendered safe.
2. When submitted, some firearms will be rusted to the extent that their loaded/unloaded status cannot be readily determined. These guns should be soaked in penetrating oil or other suitable media until they can be opened or any ammunition, which may be in the firearm, has been rendered inert.
3. Some firearms, knives, or other items may be contaminated with blood or other body fluids. Wear nonporous latex gloves, lab coat or apron, and proper eye protection until these items are decontaminated, if appropriate.
4. Many of the solvents/cleansing solutions (i.e. clorox, penetrating oils, safety solvent, etc...) are eye, skin, and/or respiratory irritants. Use appropriate safety equipment when handling. If splashed on skin or in eyes, immediately flush the affected area with water thoroughly. For details on an individual item, refer to Material Safety Data Sheets (MSDS). Use only in well ventilated areas.
5. Many of the solvents/cleansing solutions used are fire hazards. Do not use around open flame.

SPECIMENS REQUIRED:
A firearm or firearms, knives, other edged weapons, impact weapons, or other items submitted for destruction.

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SUBJECT: Destruction of Firearms, Ammunition, Edged and Impact Weapons	VERSION: 7.071404

SUPPLIES REQUIRED:
Cardboard boxes of various sizes
Packing tape
Cleansing/lubricating solutions
Latex Gloves
Sandpaper
Small Evidence boxes

APPARATUS REQUIRED:
Assorted armorer and general tools
Magnifier
Safety equipment (lab coat, apron, eye protection, latex gloves)
Cleaning rods
Tape measure

CALIBRATION REQUIREMENTS:
Non applicable

PROCEDURE:

1. Select the appropriate firearm's worksheet(s), (Lab Form 171 for firearms; knives, edged weapons, ammunition, or other items may be noted on take-in document or other laboratory worksheets).
2. The submitter should have an overall inventory list of all items being submitted. If possible, each item should be verified in the presence of the delivering officer as it is inspected by the examiner assigned to the case. (Reminder: Remember to treat all firearms as if they are loaded until you prove they are not). Firearms and related materials accepted for destruction in sealed containers are accepted under the "said to contain" concept as set forth in Chapter 8 of the Forensic Laboratory Policy and Procedures Manual.
3. Once the inventory is verified and all information is found to be correct or is corrected, the delivering representative may leave.
4. The assigned examiner or his designee may then begin to separate and evaluate the items submitted.
5. Non-firearms may be packaged directly for destruction (i.e. knives, razors, other edged or impact weapons, etc...) Unfired cartridges may be added to the ammunition reference supply. Cartridges deemed unsuitable or unsafe

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to fire may be stored and turned over to the SLED Arson Department for explosive destruction.

6. Firearms may be included in the SLED Firearms Department Reference Collection or disassembled so that the parts may be used to repair reference collection guns that are inoperable when submitted. The remaining portions of the disassembled firearms should be packaged in manageable-sized boxes (12"x12" is a good size) and each box numbered. The numbers begin with the current year and are followed by the number of that particular box i.e. 04-01, 04-02, etc...
7. All plastic or wooden stocks, forends, grips, etc... may be removed and sent out in the normal trash.
8. Barrels, actions, and other items too long for boxing, may be wrapped together in manageable sized bundles using packing tape, wire, etc... and prepared for transport.
9. When a sufficient quantity of guns and/or other items has been accumulated, a local steel mill may be contacted, and the guns delivered for melting. Those persons delivering items to the steel mill must remain until all items are destroyed.
10. If a steel mill for melting is unavailable, or in exigent circumstances, firearms and related materials may be destroyed by using an oxygen-acetylene torch to cut the frame(s), receiver(s), or central-most parts. The residue may thereafter be disposed of as scrap metal or ordinary trash.
11. After destruction is completed, return, and complete the proper paperwork documenting your actions. The list of guns destroyed (on Lab Form: 171 sheets) should be filed in the Firearms Department files under "Destroyed Weapons". Notes may also be added to the particular case files included in the destruct group, if appropriate.

PROTOCOL APPROVAL

Department Head: _____ Date: 7-23-04

Coord. or Asst. Coord.: _____ Date: 7-26-04

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PROTOCOL

DEPT: Firearms	SECTION: 7.4.1.1/7
SUBJECT: Serial Number/Data Restoration	VERSION: 7.071404

PRINCIPLE:

Serial numbers (or other identification data) are placed on an item by mechanical procedures that compress/fault the material surrounding visible data. Applying various etching solutions or other processes to obliterated data locations causes a differential reaction between the compressed/faulted area and the surrounding normal material. The contrast between the two areas reveals the number/data. It should be noted that if the aforementioned faulted/compressed area is totally removed or disturbed (i.e. peening, punching, grinding, etc.), no restoration will result.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if specimen is contaminated with body fluids until decontaminated.
2. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
3. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
4. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate safety equipment (i.e. gloves, safety glasses, laboratory coats or aprons, etc.) when using etching solutions.
6. Use etching solutions only under fume hood or in well ventilated outside area.

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7. **Many of the etching solutions can cause extremely serious physical damage if splashed in eyes or spilled on the skin. Immediately flush and/or wash contaminated area. All effected clothing should be removed. Medical attention may be immediately required. For details on an individual chemical in a solution refer to Material Safety Data Sheets (MSDS).**
8. Many of the etching solutions can cause extremely serious physical damage if the fumes are inhaled for prolonged periods or in concentration. Remove to fresh air immediately. Medical attention may be immediately required. For details on individual chemicals in a solution refer to Material Safety Data Sheets (MSDS).
   Use solutions, which contain strong acids or bases only in approved chemical fume hood or in a well-ventilated open area.
9. Always wear appropriate eye hazard safety equipment when accomplishing any task in the workshop or restoration room.
10. Wear appropriate ear hazard safety equipment if workshop machinery or hand tools are to be used during restoration processes.

SPECIMEN REQUIRED:

Any item with obliterated or altered serial number/ identification data.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants and cleaning solvents
Patches and brushes
Cotton swabs
Latex gloves
Sandpaper
Steel wool
Disposable pipettes
Pipette bulb
Etching reagents/solutions

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DEPT: Firearms	SECTION: 7.4.1.3/7
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APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Reference weapons standards
Dremel tool and polishing wheels
Fume hood
Moveable light source
Vise
Assorted general tools
Comparison microscope

CALIBRATION REQUIREMENTS: (See Appendix E)

1. The fume hood is inspected by the Department of Health and Environmental Control (DHEC) under service contract.
2. Air flow for the workshop and department is monitored and maintained by the building engineer.
3. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or by other acceptable methods.
4. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat #167-141) or a similar approved standard.
5. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat #167-141) or a similar approved standard.

PROCEDURE:

1. Select the appropriate departmental worksheet(s) to be completed on the submitted evidence. If the evidence also requires a firearm and/or toolmark examination, complete those appropriate actions first. Restoration procedures are destructive and can cause alterations to submitted evidence. (See Appendix A for samples of departmental worksheets).

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2. Physically check the submitted specimen for the presence of trace evidence. (See introductory statement).
3. Collect and record all appropriate descriptive data concerning specimen, if not already accomplished.
4. Examine the submitted item and determine if there are any hidden numbers that would eliminate the necessity to restore the serial number/identification data. For example, a firearm may have the serial number in other locations that may not have been obliterated. Record the hidden number/data, if present. If you are confident that the "hidden" number is the serial number, restoration efforts need not continue. If not, proceed with acid application to obliterated area.
5. If the obliterated area is a metal plate or thin metal, carefully examine the back side. Often the original number/data can be visibly read from the back side (or successfully restored from the back side).
6. Examine the obliterated area very carefully. This examination should be performed by examining the item under low magnification and by lighting the surface of the item from as many different angles as possible. It may become necessary to rotate either the light or the item to provide maximum lighting across the surface of the obliterated data. All markings noted at this stage should be recorded, indicating their relative position and size as well as their shape. Note also the method of obliteration if it can be determined.
7. Remove any grease, paint and dirt from the obliterated area using suitable solvents or cleaning solutions. Record any information that becomes visible.

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8. Thoroughly polish the obliterated surface beginning with medium grit sandpaper or medium grit abrasive wheel on dremel tool. Proceed very slowly at first, stopping often to examine the area for appearing characteristics. Often this step alone will make part or all of the data visible. Emery paper, polishing rouge or other fine abrasives should be used to polish the surface to as near a mirror finish as possible. A hand-held power Dremel tool is useful for polishing. Care must be taken not to overheat the specimen in the case of low-melting aluminum and zinc alloys. An occasional deep scratch or pit may be allowed to remain after polishing. Such is advisable in a case where polishing to complete removal would destroy an excessive amount of the deformed metal upon which restoration depends.
9. The preferred method in this department for metal objects is chemical etching due to the ease with which it can be employed and controlled. Unusual obliterated materials (i.e. wood, plastic) are also discussed below.
   a. Chemical etching: Applying a chemical etching solution to the metal surface causes the compressed/faulted area to react at a different rate than the nonfaulted area. The contrast between the compressed and normal area discloses the obliterated number/data.
   b. Unusual obliterated materials:
      1) Wood: When an indented marking is placed in wood and subsequently removed, often it can be restored through the use of steam. The wood will swell causing the marking to reappear. Also, if markings are burned into wood with no indenting, careful visual examination of the smooth surface often with oblique lighting may allow the marks to be discernable. Further, previously marked wood that has been exposed to oils, solvents, etc., may allow the outlines of the removed data to be visible as a result of penetration of these liquids.
      2) Plastic: Obliterated data previously impressed/stamped into plastic material may be restored merely by the heat generated during the polishing preparation phase or through the use of the heat from an incandescent light.
10. Choose the etching solution/reagent to be used based on the metal/alloy of the obliterated specimen. A list of available solutions/reagents, their menus and the recommended metal/alloy for which they should be used is at Appendix C.

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11. Apply the reagent/solution desired to the obliterated area using a moistened cotton swab or disposable pipette with bulb. **Never use a mouth pipette with etching solutions!** Lightly agitate area by moving the swab (generally back and forth) or utilizing the bulbed pipette suction action to move the solution. Any reagent used should be diluted to produce a minimal effect, if appropriate. If, after repeated attempts, the diluted solution fails to produce satisfactory results, then a more concentrated solution should be applied. The time required for restoration may be a few seconds or many hours, depending upon the chemical action on the specimen. Occasionally the solution/reagent may have to be removed, wiped off and reapplied. Improved clarity can be achieved by rinsing, drying and lightly rubbing or polishing, or by applying a light coat of oil to change the refractive nature of the area. Never contaminate etching reagents by reintroducing used swabs or used reagents into the container. Use new swabs or pipette tubes if fresh reagents are needed, as appropriate. The pipette bulb need not be changed.
12. Record all reappearing data immediately. The examiner should observe the restoration process very carefully, since numbers/data can reappear at any time and disappear very quickly by continued etching. As such, the examiner must be prepared to record reappearing numbers/data immediately. Oblique lighting will enhance viewing of restoration results. Magnification may also assist in viewing results. All obvious restored numbers/data should be noted and if unclear, ambiguous information reappears note the possibilities, if appropriate.
13. At the conclusion of testing, the treated specimen should be rinsed with plain water using a clean swab to remove the remaining acid, washed, dried and coated with a preservative oil or grease.
14. After completion of the restoration process, reported conclusions may consist of one of the following types:
    a. If totally restored, report all of the number/data.
    b. If partially restored, report partial, readable numbers/data. Possibilities may also be reported if ambiguous, unclear numbers/data reappear.
    c. If no number/data is restored, report this result.
15. Photograph the restored numbers/data, if appropriate.
16. If appropriate, it may be necessary to decontaminate specimens to eliminate or reduce the biohazard risk presented by the items examined. Decontamination can be accomplished through the use of bleach, alcohol, foamicides, X-rays or other acceptable techniques.

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17. All specimens examined or their containers should be marked with appropriate identification data (i. e initials, item number, case number) as dictated by the case. Additional evidence (i. e. hair, blood, fibers, paint, metals, etc.) removed from items should also be marked in an appropriate manner to include the item number from which obtained after proper collection. Identification marks will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

PROCEDURE:

1. Log In to SLIMS.
2. When the SLIMS Menu appears, simply use the scanner to read the bar code which will appear next to the prompt.

Example:

Menu

1 SLIMS	3 Change Password	5 Time & Date
2 Mail	4 List Users	6 Transfer Evidence
		7 Report Status

Type exit to logoff or ? for UNIX Help

Scan bar code with Code 38 scanner
ibp1:1:/home/ibp1
>E001411 (Serial Number appears here)
ksh: E001411: not found

DOCUMENTATION:

Completed departmental worksheets, copies of laboratory reports, photographs, charts, sketches, computer printouts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

PROTOCOL APPROVAL

Department Head: Jon B Barnett Jr. Date: 7-23-04

Coord. or Asst. Coord.: Earl Tebbe Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
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DEPT: Firearms	SECTION: 7.3.1.1/6
SUBJECT: Physical/Fracture Matches	VERSION: 7.071404

PRINCIPLE:

Physical/fracture match examinations are accomplished to determine if two or more items were ever a single unit.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if specimen is contaminated with body fluids until decontaminated.
2. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
3. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
4. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate ear and eye hazard safety equipment if shop machinery or hand tools are to be used during toolmark examination processes.

SPECIMEN REQUIRED:

Two or more evidence specimens.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants
Cleaning solutions/solvents.
Latex gloves
Cotton swabs
Brushes
Casting material

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SUBJECT: Physical/Fracture Matches	VERSION: 7.071404

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Comparison microscope
Assorted general tools

CALIBRATION REQUIREMENTS:(See Appendix E)

1. Air flow for the workshop and department is monitored and maintained by the building engineer.
2. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or by other acceptable methods.
3. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat #167-141) or a similar approved standard.
4. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.

PROCEDURE:

1. Select the appropriate departmental worksheet(s) to be completed on the submitted evidence. (See Appendix A for samples of departmental worksheets). Record all appropriate information.
2. Physically check the submitted item and/or marked surface for the presence of trace evidence. If trace material is noted on both fractured pieces, it may be appropriate to submit the evidence items for an elemental analysis prior to proceeding with the physical or fracture match.
3. Collect and record all appropriate descriptive, operability and/or item quality data.
4. Examine and compare the fractured/separated specimens. Because fracture/physical match cases vary extensively, specificity for any case is not practical. The following general suggestions will aid in determining the important parts that should be considered during the examination

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process and for inclusion in notes.

a. Visually inspect and manually align specimens.

b. Realign the fractured ends noting:
   1) the rigidity of the specimens (i.e. soft versus hard substances).
   2) fracture edge distortion.
   3) the uniqueness/individuality of the fractured area.

c. Surface marking/coatings:
   1) Fracture line passes through manufacturing or other identification data placed on specimens.
   2) Realignment of machine or polishing marks.
   3) Realignment and comparison of accidental striated or impression markings at the fracture line of the specimens.
   4) Realignment of a pattern, print design or color sequence at the fracture line.
   5) Realignment of surface coatings at the fracture line (i.e. paint, lacquer, etc.).

d. If appropriate, magnify the fractured area and its finite details noting the above.

e. Photograph the fractured item(s) if necessary to aid in the reconstruction/comparison process or to supplement notes.

f. Silicone rubber casts can be used for some fracture matches when the examiner wants to look at two positives, two negatives or the specimen is too large to be cut for comparison, as the case may be. This is helpful in certain cases because the three dimensional contour is difficult to see due to one side being the opposite of the other. Although not always necessary, the examiner should be aware of this material's capability. The casting process is basically accomplished in the following manner.
   1) If the surfaces are curved, small, or on an edge it may be necessary to make a "moat" of clay around it. This will keep the casting material in one particular area. Roll the clay out into a "snake" and simply make a dam all around the mark(s).

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2) Mix the casting material with a tongue depressor or other device until it is of even consistency.
3) Place a quantity, sufficient for the specimen, on a mixing media.
4) Add catalyst according to the directions provided with product. Mix thoroughly avoiding the inclusion of air bubbles.
5) Using the depressor dribble or spread enough of the casting material on/into the fractured area to cover completely. Allow to set (3 to 5 minutes or until firm to the touch).
6) Gently lift the cast off the mark(s).

g. Special considerations: In some instances an actual end to end comparison may not be possible where the entire area is missing or has been totally removed (i.e. sawing, etc.). Examination and comparison of the following areas can establish common origin:
1) Grain patterns in wood.
2) Reconstruction and/or measurement of surface patterns and separations through manufacturer letters, numerals or machine markings and their relationship to the actual cutting tool blade width.
3) Reconstruction and/or measurements of note surface patterns, separations through accidental markings and separations through letters, numerals and machine markings can establish common origin, particularly when compared to the actual width of a saw blade or other tool.

5. After accomplishing examination and comparison procedures one or more of the following conclusions may be reported.
a. If individual characteristics are in agreement an identification has been affected and a positive conclusion is provided that those two or more items were at one time a single or integral unit.
b. If the individual characteristics do not agree, an elimination results and a negative conclusion is rendered that those two or more items were not at one time a single or integral unit.
c. If these characteristics are not sufficient to either identify or eliminate specific items of evidence being of common origin, an inconclusive conclusion is provided.

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d. If the quality of the characteristics is determined to be insufficient or unsuitable for a conclusion to be rendered, this will be reported.

6. If alteration of an evidence specimen is necessary, such as cutting a large cumbersome item to facilitate stereoscopic or microscopic examination, it should be accomplished with great care so as not to cause damage to the questioned/suspect fracture area. Insure that the appropriate laboratory cut/separated areas are marked indicating such prior to removal. This information should be included in notes.

7. Occasionally fractured specimens contain some debris that may conceal their unique identifiable characteristics. In order to examine and compare these specimens properly, the debris will have to be removed. Using cleaning solutions and solvents, debris can be removed by a flushing operation, agitation with swabs or brushes and/or more severe processes. The chosen cleaning method should always start with the most gentle to the evidence and proceed to the more severe, if appropriate. The methods and solutions should always be evaluated prior to use to prevent damage or alteration to the unique characteristics of the evidence.

8. If appropriate, it may be necessary to decontaminate specimens to eliminate or reduce the biohazard risk presented by the items examined. Decontamination can be accomplished through the use of disinfectants or other acceptable techniques.

9. Fractured specimens, particularly the questioned ends, which are made of materials that may rust or corrode should be coated with a preservative oil or grease after the conclusion of the examination process. Note any application of oil, grease, etc.. on worksheet and why it was applied.

10. All specimens examined or their containers should be marked with appropriate identification data (i.e. initials, item number, case number) as dictated by the case. Additional evidence (i.e. hair, blood, fibers, paint, metals, etc.) removed from items should also be marked in an appropriate manner to include the item number from which obtained after proper collection. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

11. Verification of results of comparisons by another qualified examiner is a sound quality control mechanism and should be accomplished whenever microscopic comparisons are made. Verification is required when a

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positive, negative or inconclusive result is effected. If no second examiner is available, results or a report cannot be issued until verification is completed.

DOCUMENTATION:

Completed departmental worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, sketches, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.2.3.1/3
SUBJECT: Toolmark Examination: Comparison Procedures	VERSION: 8.071404

PRINCIPLE:

Comparison of test toolmarks with submitted evidence is accomplished to identify or eliminate a specific known tool's connection/involvement in an incident.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if items examined are contaminated with body fluids until decontaminated.
2. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details for an individual item refer to Material Data Safety Sheets (MSDS).
3. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
4. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
5. Some toolmark specimens may be very sharp or jagged. Extreme care should be taken when handling to prevent injury to the examiner.

SPECIMEN REQUIRED:

Test and evidence toolmarks.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Cleaning solvents
Cotton swabs
Cleaning brushes

APPARATUS REQUIRED:

Engraver
Stereoscope
Comparison microscope

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CALIBRATION REQUIREMENTS: (See Appendix E)

1. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or other acceptable methods.
2. No further calibration requirements exist other than routine maintenance of laboratory equipment.

PROCEDURE:

Procedures for the comparison of submitted evidence with laboratory tests is basically the same for both firearms and toolmark cases. The examiner should follow the same basic techniques as dictated by sound forensic procedures outlined in established literature and reference material to facilitate the comparison. The following steps are a basic summation of important points:

1. Adopt a consistent procedure for the handling and documenting of comparison activities.
2. All evidence and test specimens should be marked before microscopic comparison is begun unless marking is impractical or destructive.
3. As a matter of convention, mount the evidence item on the left stage and test specimen on the right stage of the microscope, unless intercomparing evidence items or test specimens.
4. Illuminate the evidence and/or test specimens using oblique lighting techniques to highlight individual characteristics during comparison. Adjust as appropriate.
5. Intercompare test toolmarks to ensure reproducibility of class and individual identifiable characteristics prior to comparing with evidence markings. If it is determined that tests are not sufficient, repeat testing procedures described in previous Test Toolmarks procedure (Section 7.2.2.1/4).
6. Compare evidence with tests to determine if class characteristics are in agreement. If not, an elimination results and a negative conclusion is rendered for that item of evidence. If the class characteristics are in agreement, proceed to paragraph 7, below.

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7. Compare individual characteristics on evidence with tests.
   a. If significant individual characteristics are in agreement an identification has been effected and a positive conclusion is provided for that item of evidence.
   b. If the individual characteristics do not agree, an elimination results and a negative conclusion is rendered for that item of evidence.
   c. If these characteristics are not sufficient to either identify or eliminate a specific item of evidence, an inconclusive conclusion is provided.
   d. If the quality of the characteristics is determined to be insufficient or unsuitable for a conclusion to be rendered, this will be reported.
8. Phase mark evidence and test specimens, if appropriate.
9. Positive comparisons should be photographed to support laboratory notes, if determined appropriate by the examiner. Photographs are supplemental to notes and are not intended for court purposes or to represent the total comparison effort.
10. Verification of results of comparisons by another qualified examiner is a recommended sound quality control mechanism and should be accomplished whenever microscopic comparisons are made. Verification is required when a positive, negative, or inconclusive result is effected. If no second examiner is available, results or a report cannot be issued until verification is completed.
11. Record appropriate actions and conclusions on departmental worksheets or computer work screens.

DOCUMENTATION:

Completed department worksheets or computer work screens, copies of laboratory reports, photographs, charts, sketches, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.2.2.1/5
SUBJECT: Toolmark Examination: Test Toolmarks	VERSION: 7.071404

PROCEDURE:

Test tool markings are produced to provide known marking standards of a specific submitted tool for comparison with suspect markings.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if specimen is contaminated with body fluids until decontaminated.
2. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
3. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
4. Many of the solvents/cleansing solutions (i.e.; acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
5. Wear appropriate ear and eye hazard safety equipment along with leather gloves if appropriate, if work shop machinery or hand tools are to be used during Toolmark Examination processes.
6. Airborne lead fumes resulting from the use of the lead melting pot are a health hazard. Lead melting should only be accomplished in a properly ventilated area.
7. Melting pots (lead, wax, etc.) are severe burn hazards. Wear appropriate safety equipment when using.
8. Keep liquids away from operating melting pots. Introduction of liquids can cause a violent expulsion of the molten substance.
9. Be sure to wash hands thoroughly after handling test media.

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SUBJECT: Toolmark Examination: Test Toolmarks	VERSION: 7.071404

SPECIMEN REQUIRED:

An item or instrument that could possibly be used as a tool.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants
Cleaning solutions/solvents
Brushes
Cotton swabs
Latex gloves
Casting material
Leather gloves

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Bench vise
Assorted general tools
Comparison microscope

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Air flow for the workshop and department is monitored and maintained by the building engineer.
2. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or by other acceptable methods.
3. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
4. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.

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PROCEDURE:

1. Accomplish all actions outlined in Suspect Tools and Toolmarks (Section 7.2.1.1/4) prior to actions outlined herein, if appropriate. Collected data is utilized in accomplishing the below listed processes.
2. In order to compare a questioned tool mark with a suspected tool, test marks must be made with the suspect tool. The basic objective is to attempt to duplicate the manner in which the suspect tool was used to produce the evidence mark.
3. Select the appropriate test material.
   a. Generally speaking, always begin with a test material/substance that is softer than that contained in the suspect tool. Using a hard or harder material runs the risk of losing or altering the characteristics of the acting edge or surface of the tool. One should only use a like material when use of all other softer materials has been exhausted and futile.
   b. The department should maintain a supply of test lead, as well as any other material that the examiner may deem necessary for the various types of cases received. This might include lead wire, lead tape, wire solder, clay, wax, plastic, wood, various types of electrical wire, plastic tubing, copper, aluminum and rubber. Special or uniquely shaped test material may have to be obtained or produced in the department.
4. Index all appropriate tool working surfaces in order to later differentiate the areas of the tool working area that produced a mark. The use of numerals or letters is appropriate for this purpose.
5. Produce the test (known) toolmark. The actual production of a test marking is always dictated by the examination of submitted tools and toolmarks. The following are suggested commonly used procedures and do not intend to cover all potentialities associated with this type of case.
   a. Single-edge tools (i.e. jimmy-type tools, prying-type tools, etc.):
      1) Test marks should be made in both a push and pull direction, unless exact direction can be determined from the evidence. Begin with the tool at a low angle and as it is being drawn or pushed across the test material, raise the tool until it is perpendicular to the material. Repeat for each side and for each direction.

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b. Opposed jaw tools (i.e. pliers, bolt cutters, pipe wrenches, etc.):
   1) Index mark each jaw of the tool. Because these tools have a very limited number of ways that they can be applied, one only needs to make sure the entire working surface from side to side or front to back is obtained. Open the jaws or working surfaces of the tool so that they test material will be contacted by all surfaces. Introduce test pieces and close jaws to complete the cut or rotate or wrench so that all "teeth" leave a mark in the test material. Repeat if necessary. Both flat and round test materials can be used in making these types of tests.

c. Striking tools (i.e. hammer-type tools; etc.)
   1) An impression-type striking mark is made as dictated by the tool configuration but may necessitate making tests with both right and left hand. Tests for striated marks made by striking is done in the manner which the evidence indicates, same as for all tools.

6. Ensure that test marks are properly index marked with the tool surfaces prior to or immediately after the actual production of the tests.
7. Document how the test mark was produced, if appropriate (i.e. pressures, angles, direction of travel, sequence, etc.)
8. Examine the test tool markings to ensure that all striated and/or impression markings are appropriately represented. Should tests prove to be unsuitable representations, repeat steps 5 and 6 above.
9. If casts of questioned toolmarks are submitted or used for comparison, casts of laboratory tests will also need to be made in order to obtain proper tests for subsequent comparison. Follow the steps outlined in Suspect Tools and Toolmarks Protocol (Section 7.2.1.1.4).
10. Should a tool be submitted that is nonfunctional, such as a pair of bolt cutters with a blade broken away and missing, steps should be accomplished to obtain tests from the remaining tool working surface. Returning the instrument to an operational condition and/or alternate methods for obtaining tests are options to be considered for this purpose. Worksheets will be annotated in detail as to the tool's original condition and/or the steps necessary to obtain suitable tests. Tools restored to an

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operational condition should be returned as closely as possible to their original condition after testing, if appropriate.

11. Surfaces that may rust or corrode should be coated with a preservative oil or grease after the conclusion of testing.
12. All test toolmarks will be properly marked and their containers marked with at least the examiner's initials, the item number tested, that the contents are tests and the laboratory case number. Markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.
13. Test toolmarks may be retained in the laboratory for future reference, particularly if a positive identification results. Should tests be unsuitable for retention, they can be melted for future toolmark examinations. However, if submitted evidence is used for tests, it will ordinarily be returned to the contributor.
14. Record all pertinent information and actions.

DOCUMENTATION:

Completed departmental worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, sketches, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.2.1.1/6
SUBJECT: Toolmark Examination: Suspect Tools and Toolmarks	VERSION: 7.071404

PROCEDURE:

Examinations of suspect tools and toolmarks are conducted to collect and provide identification data concerning the items. Through physical and microscopic techniques in preparation for comparison procedures, conclusions ranging from mere item identification to suitability for comparison to a specific tool and probable tool types that may have produced suspect markings are provided.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if specimen is contaminated with body fluids until decontaminated.
2. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
3. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
4. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate ear and eye hazard safety equipment if shop machinery or hand tools are to be used during Toolmark Examination processes.
6. Melting pots (lead, wax, etc.) are severe burn hazards. Wear appropriate safety equipment when using.
7. Keep liquids away from operating melting pots. Introduction of liquids can cause a violent expulsion of the molten substance.
8. Some toolmark evidence specimens may be very sharp or jagged. Extreme care should be taken when handling to prevent injury to the examiner.

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SPECIMEN REQUIRED:

An item or instrument that could possibly be used as a tool and/or a specimen containing a possible tool marked area.

SUPPLIES REQUIRED:

Evidence container
Evidence Tape
Lubricants
Cleaning solutions/solvents
Brushes
Cotton swabs
Latex gloves
Test material/media
Casting material
Modeling clay

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Vise
Assorted general tools
Comparison microscope

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Air flow for the workshop and department is monitored and maintained by the building engineer.
2. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or other acceptable methods.
3. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or similar approved standard.
4. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.

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DEPT: Firearms	SECTION: 7.2.1.3/6
SUBJECT: Toolmark Examination: Suspect Tools and Toolmarks	VERSION: 7.071404

PROCEDURE:

1. Select the appropriate departmental worksheet to be completed on the submitted evidence. (See Appendix A for samples of departmental worksheets).
2. Physically check the submitted tool and/or marked surface for the presence of trace evidence. (See introductory statment). If traces of paint, metal, etc. are noted on the tool, it may be appropriate to submit the tool and the surface or object it is alleged to have contacted to the Trace Department for possible elemental analysis.
3. Collect and record all appropriate descriptive, operability and/or item quality data. Because toolmark cases vary extensively, specificity for any case is not practical. Although general in nature, the following suggestions will aid in determining pertinent information that should be considered for inclusion in notes. Notes can be supplemented with sketches and photographs, if appropriate.
   a. Describe the suspect tool and/or specimen containing toolmarks. Tools should be measured to obtain actual lengths and sizes.
   b. Describe the class characteristics of the tool and/or tool marked specimen, if appropriate.
   c. Note the correspondence of class characteristics between the suspect tool and toolmark.
   d. Note any limitations in the case under consideration which could be used to potentially eliminate the tool, such as:
      1) Physical limitations of the crime scene.
      2) Orientation of the tool with the tool marked area.
      3) Clear lack of use of the tool.
   e. The degree of individuality of the working surface of the tool through determinations of manufacturing processes and/or presence of wear or recent damage.
   f. Marks left by the manufacturing process may be found on many types of evidence. The examiner should be aware of these marks and:
      1) The need to differentiate these marks from evidence marks produced at a later time;
      2) The potential use of the marks to associate separate items; and

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3) The need to carefully evaluate the significance of associations based on comparison of these marks due to the possibility that these marks may persist over a large number of items - class versus individual characteristics.

4. Casting: If an item is too large for easy manipulation and/or inappropriate to cut to facilitate examination, a cast can be made of the toolmark(s) on such an item using suitable casting media. It should be noted that it will also be necessary to cast the test marks so the comparison being made will be with positive impressions. The casting procedure basically is accomplished in the following manner:
   a. If the surfaces are curved, small, or on an edge it may be necessary to make a "moat" of clay around it. This will keep the casting media in one particular area. Roll the clay out into a "snake" and simply make a dam all around the mark(s).
   b. When casts are to be made of a toolmark, whether evidence or test, pertinent information such as specimen number, case number, and examiner's initials should be included on the cast. Generally, the silicone-type casting media is difficult to write on with pen or marker, so information may be scribed into the surface to be cast so that it may be included as part of the specimen when the cast is removed. Care should be taken not to scribe into the toolmark itself.
   c. Mix the casting media per manufacturer's instructions with a tongue depressor or other device until it is of even consistency.
   d. Place a quantity, sufficient for the questioned mark(s), on a mixing surface.
   e. Add catalyst according to the directions provided with product. Mix thoroughly avoiding the inclusion of air bubbles.
   f. Using the depressor, dribble or spread enough of the silicone rubber on/into the mark(s) to cover completely. Allow to set (3 to 5 minutes or until firm to the touch).
   g. Gently lift the cast off the mark(s).

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5. If alteration of an evidence specimen is necessary, such as cutting a large cumbersome item to facilitate stereoscopic or microscopic examination, it should be accomplished with great care so as not to cause damage to the questioned/suspect fracture area. Insure that the appropriate laboratory cut/separated areas are marked indicating such prior to removal. This information should be included in notes. Photos may be taken of evidence prior to cutting.
6. Although not initially recommended, it may be necessary to remove some debris or clean a tool or toolmark to accommodate examination. Using cleaning solutions and solvents, cleaning should be done first with a flushing operation, proceed to agitation with swabs or brushes and end with more severe processes if required. **NOTE:** The above should not be accomplished until it is determined through comparison examinations to be absolutely necessary. Tool and toolmark characteristic changes could occur if cleaning is attempted prematurely.
7. If appropriate, it may be necessary to decontaminate specimens to eliminate or reduce the biohazard risk presented by the items examined. Decontamination can be accomplished through the use of bleach, alcohol, foamicides or other acceptable techniques.
8. Tool surfaces and toolmarks which are on materials that may rust or corrode should be coated with a preservative oil or grease after the conclusion of testing.
9. All tools and tool marked surfaces examined or their containers should be marked with appropriate identification data (i.e. initials, item number, case number) as dictated by the case. Additional evidence (i.e. hair, blood, fibers, paint, metals, etc.) removed from items should also be marked in an appropriate manner to include the item number from which obtained after proper collection. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

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SUBJECT: Toolmark Examination: Suspect Tools and Toolmarks	VERSION: 7.071404

DOCUMENTATION:

Completed departmental worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, sketches, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.1.10.1/3
SUBJECT: Firearms Examination: Biohazardous Evidence contaminated with blood, tissue, or body fluid	VERSION: 2.071404

PRINCIPLE:

Items received for examination by SLED Firearms Department personnel are frequently contaminated with various body fluids or tissue and must be decontaminated prior to further handling.

SPECIAL HANDLING; HEALTH AND SAFETY PRECAUTIONS:

1. Wear appropriate eye protection, latex gloves, and apron or lab coat.
2. Follow procedures outlined in other areas of this manual for handling trace evidence materials, if appropriate.
3. Also refer to precautions in Section 7.1.7.1/6 for handling various chemicals and protective equipment required.
4. Clean examination area with Foam-o-cide, Clorox solution, or other suitable disinfectant after examination is complete.

SPECIMEN(S) REQUIRED:

A gun, tool, fired bullet, fired cartridge case, fired shotgun shell casing, fired shotgun wad component(s), and/or fired shot pellets or slug contaminated with blood, body fluids, or tissue.

SUPPLIES REQUIRED:

Plastic or glass containers
Evidence markers
Foam-o-cide or other aerosol disinfectant
Clorox solution (10% in water prepared as needed)
Isopropanol
Latex gloves
Appropriate eye protection
Apron or lab coat
Cotton tipped swabs

APPARATUS REQUIRED:

Comparison microscope
Stereoscope
Magnifier

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DEPT: Firearms	SECTION: 7.1.10.2/3
SUBJECT: Firearms Examination: Biohazardous Evidence contaminated with blood, tissue, or body fluid	VERSION: 2.071404

PROCEDURE:

1. Wear appropriate eye protection, latex gloves, and apron or lab coat.
2. If the trace evidence does not need to be removed for analysis, apply Foam-o-cide aerosol, Clorox solution and/or isoproponol to decontaminate the item. Foam-o-cide aerosol is preferable for guns, tools, and other large items. Soaking in Clorox solution (10% in water) or isoproponol is recommended for smaller items such as bullets or wadding.
3. Allow items to soak for approximately 15 minutes.
   a. Bullets or pellets should not soak in Clorox solution over 15 minutes. Etching of the bearing surface or other damage could occur if allowed to soak too long.
   b. Guns, tools, and larger items may be sprayed with Foam-o-cide or wiped with Clorox solution depending on the degree of contamination.
4. Remove item(s) from solution, rinse with water, wipe dry or use compressed air to remove remaining water.
5. Firearms or tools should be lightly oiled after examination is complete to prevent rusting or corrosion.
6. If items are saturated with blood, it is recommended that they be examined and decontaminated in the dirty workroom sink area in Firearms or under one of the biohazard hoods in another laboratory department (after prior approval by that department's representative).
7. Air dried, bloody clothing should be examined under a biohood in the Trace processing area, if possible. (The paper in this area should be removed and the area disinfected after the examination. Dispose of the paper and wipes as biohazardous materials.)

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SUBJECT: Firearms Examination: Biohazardous Evidence contaminated with blood, tissue, or body fluid	VERSION: 2.071404

DOCUMENTATION REQUIRED:

Completed Firearms worksheets.

REFERENCES:

See the Forensic Laboratory Policy and Procedures Manual.
See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.1.9.1/6
SUBJECT: Firearms Examination: Distance Determination	VERSION: 7.071404

PRINCIPLE:

Through the examination, duplication, and evaluation of shot (pellet) patterns on submitted evidence or on proper photographic representations, a conclusion concerning the approximate firearm muzzle to target distance involved in a shooting incident may be reached.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. When handling any firearm, always verify whether it is unloaded! Do not load the firearm until you are ready to test fire.
2. All firearms received will be checked prior to test firing to determine condition (broken/missing parts, functional safeties, etc.).
3. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if any evidence is contaminated with body fluids until decontaminated.
4. Wear appropriate ear and eye hazard safety equipment if cartridges are to be discharged during testing.
   (Ear plugs in addition to ear muffs are recommended).
5. Use appropriate remote firing devices if firearm is determined to be dangerous if fired manually.
6. The firing of some ammunition (reloaded, proof, exploding, tracer, incendiary, etc.) may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging any ammunition and/or alternate safe methods used.
7. Airborne lead residues resulting from the test firing of a firearm and ammunition is a health hazard. Test firing should only be conducted in a properly ventilated area.
8. When firing distance determination patterns, the shooter is in close proximity to the "sand trap" backstop in the SLED outdoor range or to a "berm" backstop at other ranges. Extreme caution should be exercised. Projectile bounce can occur off of the backstop and back toward the shooter or assistant. Approved safety glasses are required.

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SUBJECT: Firearms Examination: Distance Determination	VERSION: 7.071404

SPECIMEN REQUIRED:

A firearm or other mechanical device designed to fire ammunition that was used to produce the suspect pattern, submitted ammunition of the same brand, gauge/caliber, load, and type as used to produce the suspect pattern, and a suspect shot (pellet) pattern. This suspect pattern may be on an item of evidence, or accurate, scaled, photographic representations may be examined.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Tape, tacks
Cloth, blotter paper, or other suitable target media
Heavy duty clamps

APPARATUS REQUIRED:

Latex Gloves
Stereoscope
Reference weapon standards
Reference ammunition standards
Remote firing mechanisms
Assorted armorer and general tools
Measuring tape, ruler, or yard stick.

CALIBRATION REQUIREMENTS:

Air flow for the shooting room and range is monitored and maintained by the building engineer.

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SUBJECT: Firearms Examination: Distance Determination	VERSION: 7.071404

PROCEDURE:

1. A basic requirement for performing distance determination examinations should be that of duplicating the conditions in which the suspect pattern was produced as closely as possible. For best results, a copy of the autopsy report (if applicable), scale photos of the pattern(s), the exact ammunition used, and the exact firearm used are required. Any deviations from the use of the actual case firearm or ammunition when conducting distance determination tests should be avoided. Due to variables in ammunition such as age, storage conditions, type and amount of powder, differences in wads, etc., the SLED Firearms Department will not render a conclusion regarding distance determinations unless sufficient quantities of ammunition of the exact brand, gauge/caliber, type, etc. are provided by the submitter for testing. In the absence of the proper submitted ammunition, test patterns may be fired using similar ammunition, however, these patterns will be provided to the submitter for use by the attending pathologist and/or physician.
2. Distance determination testing by this department involves the analysis of shot (pellet) patterns. The analysis of gunpowder patterns will be conducted by the SLED Trace Department.
3. The following steps should be followed, as appropriate:
   a. Procedures for all other submitted evidence (i.e. firearm, projectiles, wadding, cartridge/shotshell cases, etc.) outlined in Sections 7.1.1 through 7.1.8 should be completed prior to distance testing.
   b. Select the appropriate departmental worksheet(s) to be completed on the suspect shot pattern (See Appendix A for samples of Firearms Department worksheets).
   c. If necessary, examine specimen for the presence of trace evidence. (See introductory statement). In many cases the specimen will have been examined by the Trace or Evidence Processing Department, and trace evidence may have been collected. Try to determine whether a visible gunpowder pattern is present. If so, contact the Trace Department to determine whether analysis of the gunpowder pattern is required.

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d. Describe the specimen, recording appropriate data on worksheet.

e. Determine whether a distinct, measurable, shot (pellet) pattern is present and measure its dimensions. Care should be exercised when accomplishing this task due to various pitfalls and anomalies that can occur, such as:
   1) Elongated patterns caused by angled discharges.
   2) Disturbed patterns caused by intervening objects.
   3) Partial patterns.
   4) Poor quality or non-scaled photographs of a pattern.

f. Reconstruction of the pattern may have to be accomplished using more than one evidence article or two areas of the same article.

g. Patterns may be examined both physically and microscopically, if appropriate.

h. Photograph pattern, if appropriate or necessary, with a scale included.

i. Using the submitted evidence weapon and submitted ammunition of the same gauge/caliber, brand, load, and type as used to produce the suspect pattern, test patterns may be made in the following manner:
   1) Attach a piece of suitable target media to the target holding device.
   2) Shoot test shots at various distances into the test material using a separate piece of target media for each shot (marking each with the appropriate distance). Testing should be continued until a range is established that is obviously smaller and larger than the pattern noted on the evidence. Continue test firing until this range is obtained. Once the estimated distance is determined, several additional shots may be fired to verify consistency of the test patterns at each range.

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j. The following are conclusions that may be reported concerning shot (pellet) pattern distance determination:

1) If a distinct, measurable, shot (pellet) pattern is present on the evidence item, or in photographic representations, the examiner may report that the suspect firearm was capable of producing a test pattern of the same approximate size as the suspect pattern at a range of X to Y (feet, yards), using the ammunition submitted.

2) If a distinct, measurable, shot (pellet) pattern is not present, this will be reported and a distance determination can not be provided.

3) If a distance determination examination could not be performed due to the lack of the correct suspect firearm, the inability to determine the gauge/caliber, brand, load, and type of ammunition used to produce the suspect pattern, the lack of submitted ammunition, or any other contributing factors, this should be reported.

4) If test patterns are fired for evaluation by a forensic pathologist or other non-SLED personnel using laboratory ammunition, this should be reported and clearly marked on the test patterns that non-submitted ammunition was used to produce these patterns. The report should indicate that differences in ammunition can have varying effects on shot (pellet) patterns.

k. All evidence articles and test patterns should be marked with appropriate identification data (i.e. initials, item number, case number, distance) as dictated by the case. Additional evidence (i.e. hair, fibers, blood, etc.) removed from evidence specimens should also be marked in an appropriate manner after proper collection. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

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DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables, literature extracts and test patterns (if not forwarded) should be filed.

REFERENCES:

See bibliography at Appendix B.

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Department Head: _____ Date: 7-23-04

Coord. or Asst. Coord.: _____ Date: 7-26-04

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DEPT: Firearms	SECTION: 7.1.8.1/4
SUBJECT: Firearms Examination: Comparison Procedures	VERSION: 8.071404

PRINCIPLE:

The comparison of test specimens with evidence specimens is conducted to potentially identify or eliminate a specific weapon's involvement in an incident. Evidence specimens may also be compared with other like evidence specimens to determine a common origin.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details for an individual item refer to Material Data Safety Sheets (MSDS).
2. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
3. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
4. Be sure to wash thoroughly after handling firearms, ammunition or ammunition components.

SPECIMEN REQUIRED:

Test and/or evidence specimens (bullets, cartridge cases, etc).

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Cleaning solvents
Cotton swabs
Cleaning brushes

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APPARATUS REQUIRED:

Engraver
Stereoscope
Comparison microscope

CALIBRATION REQUIREMENTS: (See Appendix E)

1. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or by other acceptable methods.
2. No further calibration requirements exist other than routine maintenance of laboratory equipment.

PROCEDURE:

Procedures for the comparison of evidence specimens with test specimens or with other like evidence specimens are essentially the same for both firearm and toolmark cases. The examiner should follow the same basic techniques as dictated by sound forensic procedures outlined in established literature, reference material, and training in order to facilitate the comparison. The following steps are a basic summation of important points:

1. Adopt a consistent procedure for the handling and documenting of comparison activities.
2. All evidence and test specimens should be marked before microscopic comparison is begun unless marking is impractical or destructive.
3. As a matter of convention, mount the evidence specimen on the left stage and test specimen on the right stage of the microscope, unless inter-comparing evidence items or test specimens.
4. Illuminate the specimens using oblique lighting techniques to highlight individual characteristics during comparison. Adjust as appropriate.
5. Inter-compare test specimens to determine behavioral characteristics, individual characteristics, and the consistency of the markings on the specimens. If in the opinion of the examiner, additional test specimens are needed, obtain these specimens using the appropriate procedures.

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6. Compare the specimens to determine if class characteristics are in agreement. If not, an elimination may result. Minor differences in land and groove widths do not by themselves constitute an elimination based on class characteristics. If the class characteristics are in agreement, proceed to paragraph 7, below.

7. Compare the individual characteristics on the specimens.

a. If significant agreement is found in the individual characteristics, an identification has been effected and a positive conclusion may be reported for those specimens.

b. If significant agreement is not found in the individual characteristics, an elimination may have been effected, and a negative conclusion may be reported for those specimens.

c. If the individual characteristics are not sufficient to either identify or eliminate a specimen, an inconclusive result may be reported.

d. If the quality of the characteristics is determined to be unsuitable for identification purposes, this may be reported.

8. Phase-mark specimens, if appropriate.

9. Representative positive comparisons may be photographed to support laboratory notes. Photographs are supplemental to written notes and are not intended for court display purposes or to represent the total comparison effort.

10. The results of microscopic comparisons must be verified by another qualified examiner, before results or a report can be issued.

11. Occasionally tests, particularly bullets, will contain some debris (i.e. sealant, carbonaceous matter, etc.) as a result of firing that will conceal identifiable characteristics. The careful use of cotton swabs, fine nylon brushes, or animal hair brushes saturated with acetone, propanol, or mild cleansing agents normally will remove this material sufficiently to facilitate microscopic comparisons.

12. Record appropriate actions and conclusions on departmental worksheets.

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DEPT: Firearms	SECTION: 7.1.8.4/4
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DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

PROTOCOL APPROVAL

Department Head: _____ Date: 7-23-04

Coord. or Asst. Coord.: _____ Date: 7-26-04

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DEPT: Firearms	SECTION: 7.1.7.1/7
SUBJECT: Firearms Examination: Test Firing & Component Recovery	VERSION: 8.071404

PRINCIPLE:

The test firing of weapons, cartridges and/or shotshells and subsequent recovery of fired components is accomplished to determine the functioning capabilities of weapons and cartridges, as well as provide known fired cartridge and shotshell component standards to compare to submitted evidence and to duplicate pertinent conditions of a shooting incident in a controlled environment.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Check weapon to verify whether it is or is not loaded. Unload prior to testing.
2. All weapons received will be checked prior to test firing to determine condition.
3. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if firearm is contaminated with body fluids until decontaminated.
4. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details for an individual item refer to Material Data Safety Sheets (MSDS).
5. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
6. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
7. Wear appropriate safety equipment if primed cases or cartridges are to be discharged during testing. A lab coat or apron, approved safety glasses, and hearing protectors are required.
8. Use appropriate remote firing devices if weapon is determined to be dangerous if fired manually.

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9. Disassembly and/or the firing of some cartridges or shotshells (i.e. reloaded, proof, exploding, tracer, incendiary or other unique ammunition may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging any ammunition and/or alternate safe methods used.
10. Gunpowder burns violently when ignited. Do not disassemble ammunition or conduct reloading operations around an open flame.
11. Cartridge and shotshell primers can detonate/discharge if exposed to heat or flame, if crushed, and if impacted improperly. When reloading do not expose primers to heat or flame and handle carefully to prevent crushing or improper impacts. Safety glasses should be worn during all reloading procedures.
12. Airborne lead residues resulting from the test firing of a weapon and ammunition are a health hazard. Test firing should only be accomplished in a properly ventilated area.
13. Be sure to thoroughly wash hands after test firing, handling firearms, ammunition, or ammunition components.

SPECIMEN REQUIRED:

A weapon or other mechanical device designed to fire ammunition and test cartridges or shotshells (submitted evidence or from ammunition standards).

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Lubricants and cleaning solvents
Patches and brushes
Cotton swabs
Latex gloves

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers

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APPARATUS REQUIRED:

Stereoscope
Reference weapons standards
Reference ammunition standards
Reloading equipment
Grain scale
Bullet recovery trap/tank
Cleaning rods
Assorted armorer and general tools
Remote firing mechanisms
Comparison microscope
Approved respirator

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Electronic balances are maintained on the Department of Health and Environment Control (DHEC) service contract.
2. Electronic balances may also be calibrated/checked for accuracy monthly using known weights.
3. Air flow for the shooting room and range is monitored and maintained by building engineer.
4. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or by other acceptable methods.
5. Dial caliper should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
6. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.

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DEPT: Firearms	SECTION: 7.1.7.4/7
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PROCEDURE:

1. General:
   a. If a weapon worksheet has not been completed by this point, the condition of the bore, cylinder or chamber(s), (i.e. fouled, clean, flared, etc.) should be noted before test firing. The bore must be free of obstructions prior to any test firing.
   b. Select correct ammunition for test.
   c. The "IN USE" light should be turned on or a warning issued to personnel in the vicinity before test firing.
   d. Cartridges should be properly phased/indexed prior to test firing and this information annotated in the notes, if necessary.
   e. Test fired components (both bullets and cartridge cases) may be marked to record the sequence of firing, if necessary. Notes may be made as to which chamber the cartridge was fired in as well as the action mode used for each test, if appropriate.
   f. A minimum of two test cartridges should be fired to obtain suitable test components for comparison.
   g. Weapons will only be loaded in the firing room and not until the examiner is ready to test fire.
   h. Once loaded the weapon will always be pointed in a safe direction at all times.
   i. Appropriate safety equipment must always be worn during test firing. A lab coat or apron, approved safety glasses, and muff-type hearing protectors are required. In addition, ear plugs are recommended.
   j. A face shield or gloves may be worn while firing for added protection as deemed appropriate by the examiner.
   k. Unsafe weapons may be placed in a shooting vise or remote firing fixture.
   l. If a "misfire" occurs, the muzzle will remain pointed into the shooting tank for a minimum of 30 seconds before further action is taken.
   m. The exhaust system should be turned on before and should remain on for at least 30 seconds after firing to clear the air of pollutants.
   n. The firing area should be cleaned of all materials at the completion of the test firing exercise.
   b. The circulating pump should be turned on prior to firing.
   c. All lids should be in the closed position prior to firing.

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2. Water recovery:
   a. Inspect tank for proper water level (Surface of water should be approx. 3 to 4 feet from top of tank).
   d. Fire the weapon into the tank, muzzle pointing downward if using the vertical tank.
   e. Turn off the circulating pump prior to retrieval.
   f. Bullet specimens should be retrieved using the cup.
   g. Retrieve all cartridge cases.
3. Cotton recovery box:
   a. Dampened cotton can be placed in front of the cotton waste material inside the box.
   b. Sections within the box may be divided using undamaged sheets of paper.
   c. The lids on the box will be closed and secured prior to firing.
   d. Fire the weapon into the box through the open end.
   e. Inspect box to insure no smoldering fires were started in the box.
   f. After firing, locate projectiles in box and remove all cotton or other debris from projectiles.
   g. Repack box and replace all damaged paper separations.
   h. Retrieve all cartridge cases.
4. Shotguns: The majority of the procedures outlined above will apply, however, the indoor firing range will usually be used rather than the recovery box or water tank.
5. Unusual circumstances:
   a. Occasionally, it may be necessary to duplicate reloaded evidence cartridges to obtain sufficient ammunition for testing, particularly if insufficient evidence ammunition is submitted that could be used for this purpose.
      1) Disassemble an evidence cartridge and determine what components are present.
      2) Select appropriate components from laboratory standards.
      3) Duplicate cartridge using laboratory reloading equipment.
      4) Annotate appropriate worksheet that ammunition was duplicated. Write on worksheet the kind and quantity of propellant powder, primer, wadding and projectile(s) used.
      5) Follow procedures outlined above for test firing.

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b. Some large caliber handguns and rifles may have to have their powder charge reduced or changed to prevent the bullet from traveling the entire length of the cotton box or fragmenting in the water.
   1) Pull projectile from casing and weigh.
   2) Remove powder properly and weigh.
   3) Determine powder charge from reloading manual. Take into consideration cartridge/bullet type, weights and powder used.
   4) Weigh out the prescribed quantity of powder to reduce velocity using scales.
      WARNING: Reducing the powder charge in cartridges loaded with slow burning powder can result in cartridge case detonation. If it is necessary to reduce the velocity of a cartridge loaded with a slow burning propellant, discard all the powder and reload the cartridge with a suitable fast burning one. Consult appropriate reloading data for powder selection and charge weights.
   5) Using powder funnel, transfer powder from scales into cartridge case.
   6) Fill remaining case volume with small amount of filler to occupy airspace, if necessary.
   7) Reseat projectile in casing by tapping gently with rubber-end hammer or by using the reloading press. Take care not to deform mouth of casing or bullet. Compare overall length with factory round for proper seating depth and overall case length.
   8) Annotate appropriate worksheet that test ammunition was a reduced load and add any necessary supporting information, such as the loading data.
   9) Follow procedures outlined above for test firing.

6. All test bullets, cartridge cases and/or cartridges will be properly marked and their containers marked with at least the examiner's initials, the item number tested, that the contents are tests and the laboratory case number.

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7. Markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.
8. Test components may be retained in the laboratory for future reference. However, when evidence ammunition is used for testing, the recovered components will be returned to the contributor if possible.
9. Test specimens produced within the lab using standard ammunition are not considered to be evidence and do not have to be treated as such.
   NOTE: When test firing a weapon which is not in good condition, not firing its intended ammunition, or for any other reason out of the ordinary, a second examiner or student should be available to assist, if possible.
10. Candidate firearms that are in IBIS calibers should be test fired using IBIS test ammunition located in the reference ammunition storage room. See Appendix I (7.6.9 1/5) for complete instructions.

DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

PROTOCOL APPROVAL

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Coord. or Asst. Coord.: Date: 7-26-04

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DEPT: Firearms	SECTION: 7.1.6.1/5
SUBJECT: Firearms Examination: Casings, Projectiles, Wadding & Shotshells	VERSION: 8.071404

PRINCIPLE:

Examinations of shotshell casings, projectiles (pellets and slugs), wadding and shotshells are conducted to provide identification data concerning the items, resulting in a myriad of possible conclusions being rendered. Through physical and microscopic examination techniques, conclusions ranging from mere item identification to suitability for comparison to a specific weapon and probable weapons from which fired are provided.

SPECIAL HANDLING, HEALTH & SAFETY REQUIREMENTS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e.; laboratory coat or apron, safety glasses, etc.) if any evidence is contaminated with body fluids until decontaminated.
2. Wear appropriate safety equipment if shotshells or components are to be fired. A lab coat or apron, approved safety glasses, and hearing protectors are required.
3. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
4. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
5. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
6. Gunpowder burns violently when ignited. **Do not disassemble any cartridges around an open flame.**
7. Disassembly and/or the firing of some shotshells (i.e. reloaded, proof, exploding, tracer, incendiary or other unique shotshells) may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging shotshells and/or alternate safe methods used.
8. Airborne lead residues resulting from the test firing of a weapon and ammunition are a health hazard. Test firing should only be accomplished in a properly ventilated area.
9. Be sure to wash hands thoroughly after test firing, handling firearms, ammunition or ammunition components.

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SPECIMEN REQUIRED:

A shotshell or any shotshell component.

SUPPLIES REQUIRED:

Evidence containers
Evidence Tape
Reference ammunition
Latex gloves
Cleaning solutions/solvents
Brushes

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Circulating cleaning tank
Ammunition standards
Reloading equipment
Grain scale
Assorted armorer and general tools
Comparison microscope

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Electronic balances are maintained on the Department of Health and Environmental Control (DHEC) service contract.
2. Electronic balances may also be calibrated/checked for accuracy monthly using known weights.
3. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards or by other acceptable methods.
4. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or similar approved standard.
5. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat #167-141) or a similar approved standard.

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DEPT: Firearms	SECTION: 7.1.6.3/5
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PROCEDURE:

1. Select the appropriate projectile (slug, pellets, wadding) and/or shotshell worksheet to be completed on submitted evidence. The worksheet(s) are self explanatory and serve as guides/reminders of information desired. (See Appendix A for samples of the Firearms Department Worksheets).
2. Collect all appropriate data desired on the worksheet(s). Data such as weight, type, diameter, gauge, manufacturer, breechface marks, location and presence of extractor and ejector marks, firing pin shape, etc., are examples of information desired. Any markings present on the submitted evidence caused as a result of firing by or cycling through a weapon may be annotated as to whether suitable for microscope comparison purposes.
3. It should be noted that when determining fired shotgun slug land and groove widths (if fired from a rifled shotgun barrel) precise measurements are important when utilized in determining possible weapons from which fired. The air gap technique should be utilized to obtain these figures (See Appendix D).
4. When examining shotshells, particular care should be exercised when determining if the shotshell is "factory" produced or a reload, modified or specialty cartridge (i.e. proof, exploding, tracer, incendiary, etc.). Ammunition of this type may dictate alternate methods of examination due to their nature and associated hazards.
5. Pellets, slugs and wadding may appear to be clean when received, however, if they have passed through a body or their exact history is not known, the bullets, pellets, slugs, and wadding and their containers should be soaked and/or cleaned in bleach (Clorox) and water solution (1:10) or other decontaminating solution to eliminate or significantly reduce biological hazards transmitted by body fluids. Rinse after decontaminating actions are complete.

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SUBJECT: Firearms Examination: Casings, Projectiles, Wadding & Shotshells	VERSION: 8.071404

6. Many times projectiles (slugs, pellets, wadding) or shotshell casings submitted as evidence contain some debris that may conceal its identifiable characteristics. In order to examine this evidence properly, the debris must be removed. The debris may be in the form of blood, tissue, plaster, sand, fibers, paint, etc. The following is designed to aid the examiner in removing this debris.
   a. Accomplish steps outlined in paragraph 2 and 6 first.
   b. Attempt to remove any remaining material with water, saline, methanol, acetone or other cleansing agent in squeeze bottle and rinse.
   c. Should flushing not produce the desired results, swabs and fine brushes can be used with the above solutions to assist in loosening the debris. Care should be exercised to prevent damage to the evidence.
   d. If necessary, extended soaking (hours or overnight) may loosen difficult debris. Saline or water are recommended for extended periods. Bleach should never be used for extended periods because damage can result. Rinse when completed.
7. Collected data and the items are then generally compared with laboratory known standard ammunition and components or reference material to determine the following:
   a. The type(s) of weapon(s) for which designed.
   b. The possibility of discharge by a submitted weapon if not specifically designed for use in those submitted weapons.
   c. Determination of number of weapons possibly involved.
   d. Generation of a possible weapon(s) list, if the weapon is not submitted and identified as involved in the incident. (Lists of this nature should be reported with appropriate statements reflecting limitations of the reported data.)
   e. Suitability for subsequent microscopic comparison to a specific weapon.
   f. The possibility of comparison of other markings present on bullets, cartridge cases and/or cartridges not associated with firing (i.e. handling, reloading, manufacturing, etc.).

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8. All projectiles (pellets/slugs), wadding, shotshell casings and shotshells or their containers should be marked with appropriate identification data (i.e. initials, item number, case number) as dictated by the case. Additional evidence (i.e. hair, blood, fibers, etc.) removed from items should also be marked in an appropriate manner after proper collection. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

PROTOCOL APPROVAL

Department Head: Date: 7-23-04

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DEPT: Firearms	SECTION: 7.1.5.1/5
SUBJECT: Firearms Examination: Bullets, Cartridge Cases & Cartridge	VERSION: 7.071404

PRINCIPLE:

Examinations of bullets, cartridge cases and/or cartridges are conducted to provide identification data concerning the items, resulting in a myriad of possible conclusions being rendered. Through physical and microscopic examination techniques, conclusions ranging from mere item identification to suitability for comparison to a specific weapon and probable weapons from which fired are provided.

SPECIAL HANDLING, HEALTH & SAFETY REQUIREMENTS:

1. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if any evidence is contaminated with body fluids until decontaminated.
2. Wear appropriate safety equipment if cartridges or components are to be fired. A lab coat or apron, approved safety glasses, and earplugs as well as muff-type hearing protectors are required.
3. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
4. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
5. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in well ventilated areas.
6. Gunpowder burns violently when ignited. Do not disassemble any cartridges around an open flame.
7. Disassembly and/or the firing of some cartridges (i.e. reloaded, proof, exploding, tracer, incendiary or other unique cartridges) may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging cartridges and/or alternate safe methods used.
8. Airborne lead residues resulting from the test firing of a weapon and ammunition are a health hazard. Test firing should only be accomplished in a properly ventilated area.
9. Be sure to wash hands thoroughly after test firing, handling firearms, ammunition, or ammunition components.

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DEPT: Firearms	SECTION: 7.1.5.2/5
SUBJECT: Firearms Examination: Bullets, Cartridge Cases & Cartridge	VERSION: 7.071404

SPECIMEN REQUIRED:

A cartridge or any cartridge component.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Latex gloves
Cleaning solutions/solvents
Brushes
Cotton swabs

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Circulating cleaning tank
Ammunition standards
Reloading equipment
Grain scale
Assorted armorer and general tools
Comparison microscope
Safety equipment (as dictated by case)

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Electronic balances are maintained on the Department of Health and Environmental Control (DHEC) service contract.
2. Electronic balances may also be calibrated/checked for accuracy monthly using known weights.
3. The comparison microscopes should be calibrated monthly using Reichert K2739 calibration standards.
4. Dial calipers should be calibrated monthly using the Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
5. Micrometer should be calibrated monthly using the Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.

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DEPT: Firearms	SECTION: 7.1.5.3/5
SUBJECT: Firearms Examination: Bullets, Cartridge Cases & Cartridge	VERSION: 7.071404

PROCEDURE:

1. Select the appropriate bullet, cartridge case and/or cartridge worksheet to be completed on submitted evidence. The worksheet(s) are self-explanatory and serve as guides/reminders of information desired. (See Appendix A for samples of the Firearms Department Worksheets).
2. Physically check bullets, cartridge cases and/or cartridges for the presence of trace evidence. (See introductory statement).
3. Collect all appropriate data desired on the worksheet(s). Data such as bullet weight, type, diameter, land and groove impression widths, number of lands and grooves, manufacturer, breechface marks, location and presence of extractor and ejector marks, firing pin shape, etc., are examples of information desired. The data recorded is dictated by the circumstances of the submitted case and all data requested does not necessarily need to be recorded. Any markings present on the submitted evidence caused as a result of firing by or cycling through a weapon should be annotated as to whether suitable for microscope comparison purposes.
4. It should be noted that when determining fired bullet land and groove widths, precise measurements are important when utilized in determining possible weapons from which fired. The air gap technique should be utilized to obtain these figures. (See Appendix D).
5. When examining cartridges, particular care should be exercised when determining if the cartridge is "factory" produced or a reload, modified or specialty cartridge (i.e. proof, exploding, tracer, incendiary, etc.). Ammunition of this type may dictate alternate methods of examination due to their nature and associated hazards.
6. Bullets may appear to be clean when received, however, if they have passed through a body or their exact history is not known, the bullets and their containers should be soaked and/or cleaned in bleach (clorox) and water solution (1:10) or other decontaminating solution for a minimum of 10 minutes to eliminate or significantly reduce biological hazards transmitted by body fluids. Rinse thoroughly after decontaminating actions are complete.
   a. **Bleach should not be used as a decontaminating agent for aluminum items, such as Winchester Silver-Tip projectiles or copper-washed projectiles as surface destruction can occur.**

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7. Many times projectiles or cartridge cases submitted as evidence contain some debris that may conceal its identifiable characteristics. In order to examine this evidence properly, the debris must be removed. The debris may be in the form of blood, tissue, plaster, sand, fibers, paint, etc. The following is designed to aid the examiner in removing this debris.
   a. Accomplish steps outlined in paragraph 2 and 6 first.
   b. Attempt to remove any remaining material with water, saline, methanol, acetone or other cleansing agent in squeeze bottle and rinse.
   c. Should flushing not produce the desired results, swabs and fine plastic fiber or hair bristle brushes can be used with the above solutions to assist in loosening the debris. Care should be exercised to prevent damage to the evidence. **AT NO TIME SHOULD ANY STIFF BRISTLE BRUSH BE USED DUE TO THE PROBABILITY OF DAMAGE TO THE BULLET SURFACE.**
   d. If necessary, extended soaking (hours or overnight) may loosen difficult debris. Saline or water are recommended for extended periods. **Bleach should never be used for extended periods because damage can result. Rinse when completed.**
   e. The ultrasonic cleaner may be used as a last step to remove debris. (See ultrasonic Appendix L.)
8. Collected data and the items are then generally compared with laboratory known standard ammunition components or reference material to determine the following:
   a. The type(s) of weapon(s) for which designed.
   b. The possibility of discharge by a submitted weapon if not specifically designed for use in those submitted weapons.
   c. Determination of number of weapons possibly involved.
   d. Generation of a possible weapon list, if weapon is not submitted and identified as involved in the incident. (Lists of this nature should be reported with appropriate statements reflecting limitations of the reported data.)
   e. Suitability for subsequent microscopic comparison to a specific weapon.
   f. The possibility of comparison of other markings present on bullets, cartridge cases and/or cartridges not associated with firing (i.e. reloading, manufacturing, etc).

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9. All bullets, cartridges, and cartridge cases or their containers should be marked with appropriate identification data (i.e. initials, item number, case number) as dictated by the case. Additional evidence (i.e. hair, blood, fibers, etc.) removed from items by Trace and/or Firearms personnel should also be marked in an appropriate manner after proper collection. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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PROTOCOL

DEPT: Firearms	SECTION: 7.1.4.1/5
SUBJECT: Firearms Examination: Corroded Weapon	VERSION: 7.071404

PRINCIPLE:

The examination of corroded weapons employs additional steps beyond those required for a Weapon Operation examination outlined previously. Weapons of this type need to be restored to a functional condition to aid in subsequent identifications. Meticulous and immediate action and/or guidance by this department will lessen or stop damage to the firearm, its operating condition, and its individual comparison characteristics.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Check weapon to verify whether it is or is not loaded. Unload prior to testing.
2. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if firearm is contaminated with body fluids until decontaminated.
3. Many of the solvents/cleansing solutions (i.e. clorox, acetone, methanol, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush affected area with water thoroughly. For details for an individual item refer to Material Data Safety Sheets (MSDS).
4. Many of the solvents/cleansing solutions (i.e. acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
5. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in properly ventilated areas.
6. Wear appropriate safety equipment if primed cases or cartridges are to be discharged during operability examinations. A lab coat or apron, approved safety glasses, and hearing protectors are required.
7. Wear appropriate ear and eye hazard safety equipment if workshop machinery is to be used during restoration process.
8. All weapons received will be checked prior to test firing to determine condition.
9. Use appropriate remote firing devices if weapon is determined to be dangerous if fired manually.
10. Airborne lead residues resulting from the test firing of a weapon and ammunition are a health hazard. Test firing should only be accomplished in a properly ventilated area.
11. Be sure and wash hands thoroughly after test firing, handling firearms, ammunition, or ammunition components.

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DEPT: Firearms	SECTION: 7.1.4.2/5
SUBJECT: Firearms Examination: Corroded Weapon	VERSION: 7.071404

SPECIMEN REQUIRED:

A weapon or other mechanical device designed to fire a cartridge or shotshell.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Lubricants and cleaning solvents
Patches and brushes
Cotton swabs
Steel wool
Sandpaper
Latex gloves

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Reference weapon standards
Bullet recovery trap/tank
Cleaning rods
Assorted armorer and general tools
Remote firing mechanisms
Safety equipment (as dictated by case)

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or similar approved standard.
2. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
3. Springscale utilized to determine trigger pull weight should be calibrated monthly using the "NRA" trigger pull weight set provided to each examiner.

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DEPT: Firearms	SECTION: 7.1.4.3/5
SUBJECT: Firearms Examination: Corroded Weapon	VERSION: 7.071404

PROCEDURE:

1. Corroded weapon examinations and restorations are accomplished in conjunction with the Weapon Operation protocol. The requirements of that protocol should be accomplished in conjunction with these requirements.
2. Physically check the weapon(s) for the presence of trace evidence. (See introductory statement).
3. Determine if the weapon is unloaded. If it is known to be loaded or this condition cannot be determined, assume it is loaded and proceed with extreme care, making sure the weapon is not subjected to rough handling and that the muzzle is always pointed in a safe direction. The firearm should then be examined to determine if loaded. Unload the weapon if possible. If it cannot be immediately unloaded, soak the weapon in oil or other penetrating solution and check periodically until it can be unloaded. Remove weapon to bullet recovery area or outside range until weapon is rendered safe to the examiner's satisfaction. (Soaking procedures need not be done in the above mentioned areas provided proper safety precautions are observed.)
4. Determine the feasibility of restoring to operating order and/or the condition of the barrel and breech. Severe damage in these areas eliminates the need for extensive restoration attempts and only minimal information need be obtained due to the possible elimination of individual characteristics. Unfortunately, this cannot always be determined immediately and some restoration should be attempted until the true condition is known.
5. Swab the bore, breech face, slide (if pertinent), cylinder (if pertinent), by using solvent-soaked and dry patches until clean or as clean as possible. Take care not to damage sensitive areas, such as breech face, firing pin, bore, extractor, ejector, etc. Other parts need only be cleaned enough to function. After clearing and cleaning the weapon, begin to fill out the weapon work sheet as required. If rust covers wording, model numbers or serial numbers, use fine sandpaper, steel wool, or wire wheel or grinder to remove, if appropriate. Do not attempt to restore serial numbers until weapon has been test fired.

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DEPT: Firearms	SECTION: 7.1.4.4/5
SUBJECT: Firearms Examination: Corroded Weapon	VERSION: 7.071404

6. Depending on the corroded condition of the weapon, more substantial procedures may have to be employed using bristle and wire brushes. Caution should be exercised to preserve the bore of the weapon and to proceed in a deliberate manner. Many times disassembly and reassembly using some laboratory standard weapons' parts may also be required to insure that the weapon can be safely test fired.
7. Do not test fire any weapon by hand unless determined safe to do so. Careful examination of weapons affected by rust or other forms of corrosion should be accomplished to determine if safe. If the weapon cannot be fired safely by hand or if this point is questionable, remote-firing devices should be utilized. Chances of a problem occurring with weapons exhibiting corrosion increases and additional caution must be observed. Critical evaluation and examination of chamber walls, cylinder, barrel, forcing cones, etc. needs to be accomplished to determine if the weapon is safe to fire manually. **NOTE:** As a safety precaution a second person should either be present or available if test firing of a weapon in poor condition is to be accomplished.
8. If notified in advance, the examiner should provide guidance to a submitting agency as to proper handling of the weapon to stop or minimize any further damage as a result of corrosive action. For example, if a weapon is found in water it should be left in water and submitted in that manner as soon as possible.
9. It should be noted that some weapons will be corroded beyond restoration to a functional state and any analysis, aside from possibly identifying very basic information about the firearm, is futile.
10. All weapon(s) examined and their containers should be marked with appropriate identification data (i.e. initials, item number, case number) as dictated by the case. Additional evidence (i.e. hair, blood, fibers, etc.) removed from items by Trace and/or Firearms personnel should be marked in an appropriate manner after proper collection. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to be changed.

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DEPT: Firearms	SECTION: 7.1.4.5/5
SUBJECT: Firearms Examination: Corroded Weapon	VERSION: 7.071404

11. All appropriate actions should be recorded on the Weapons Worksheet. (Lab Form # 034).

DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.1.3.1/3
SUBJECT: Firearms Examination: Trigger Pull	VERSION: 7.071404

PRINCIPLE:

A trigger pull test is conducted to determine the amount of force/pressure in pounds necessary to disengage a trigger or sear from the firing mechanism of a firearm allowing it to discharge. Using trigger weights or other measuring devices, the amount (or range) of pressure is determined for each mode of firing or for each trigger present. Although this specific test supports the overall weapon operability determination, it is critical enough to be individually addressed.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Check weapon to verify whether it is or is not loaded. Unload prior to testing.
2. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e. laboratory coat or apron, safety glasses, etc.) if firearm is contaminated with body fluids until decontaminated.
3. Be sure and wash hands thoroughly after handling firearms, ammunition or ammunition components.

SPECIMEN REQUIRED:

A weapon or other mechanical device designed to fire a cartridge or shotshell.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Cleaning lubricants and solvents
Patches and brushes
Cotton swabs
Steel wool
Sandpaper
Latex gloves

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
2. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
3. Spring scale utilized to determine trigger pull weight should be calibrated monthly using the NRA weight set provided to each examiner.

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DEPT: Firearms	SECTION: 7.1.3.2/3
SUBJECT: Firearms Examination: Trigger Pull	VERSION: 7.071404

PROCEDURE:

1. As a general rule trigger pull testing is conducted after all other testing/examination of a weapon has been accomplished (to include test firing). This action will avoid difficulties that could result from altering firing pin individual characteristics or otherwise damaging the firing mechanism of a weapon caused by "dry firing".
2. Verify that the weapon is unloaded.
3. Free/Dead Trigger Weight Assembly:
   a. Cycle the weapon several times.
   b. Cock weapon. (hammer cocked in single-action mode). Locking is not necessary if a double action feature is being tested.
   c. Hold weapon with muzzle pointed upward.
   d. Rest trigger weight hook or springscale hook on trigger making sure it is not touching any other part of the weapon. Trigger weight device hook should be positioned in the middle of the trigger bow or where finger normally engages trigger so that it discharges with minimal effort.
   e. Gradually apply pressure to trigger.
   f. If the weapon fails to fire after the weight assembly is lifted from the surface on which it rests, decock and recock the weapon and repeat the process after adding another weight increment. When using the springscale device, read indicator when weapon fires, and record results. Repeat for each chamber in a revolver's cylinder or a minimum of four times for other types of actions.
   g. The trigger pull is determined by observing the weight end of the assembly and is achieved as the weights totally and barely clear the surface on which they rest causing the weapon to fire.
   h. Should the weapon discharge and the weights not raise from the surface on which they rest, remove weight from the assembly and repeat the process until the actions outlined in paragraph 4g, above, are accomplished.
   i. Using this type of weight assembly, the trigger pull can be determined by slightly altering the above procedure. Merely support the cocked weapon in a vertical position and gradually add weight to the free-floating assembly until the weapon fires.

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j. Once the proper weight is obtained, check several times and record range or actual trigger pull.

k. Bracketing the weight is appropriate if the actual weight falls between increments or if the trigger pull is variable. In these circumstances, the range of variation or "bracket" will be recorded.

l. Trigger pull should be determined for each cylinder chamber on revolvers and for each barrel on multiple barrel weapons.

m. Record determined weights and actions on the Weapon Worksheet. (Lab Form # 034)

4. The trigger pull for nonfunctional weapons may not need to be determined if a weapon is returned to a functional condition in the Firearms Department, depending on what parts were substituted.

DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.1.2.1/8
SUBJECT: Firearms Examination: Weapon Operation	VERSION: 7.071404

PRINCIPLE:

Weapon operation consists of the examination of the functioning capabilities, or lack thereof, of a particular firearm. The fact that a weapon functions as designed or that it is inherently dangerous, as a result of a design feature or mechanical defect, is of particular importance. These facts could substantiate or refute the circumstances relating to firearms related incidents as well as alerting the examiner regarding problems prior to test firing. This procedure is accomplished generally through physical examination of the weapon and recording observations on the firearm worksheet(s).

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Check weapon to verify whether it is or is not loaded. If loaded, unload prior to testing.
2. All weapons received will be checked prior to test firing to determine condition.
3. Wear nonporous latex gloves and other appropriate biohazard safety equipment (i.e., laboratory coat or apron, safety glasses, etc.) if firearm is contaminated with body fluids until decontaminated.
4. Many of the solvents/cleansing solutions (i.e.; clorox, acetone, methanol, etc.) are both eye and skin irritants. When handling use appropriate safety equipment. If they are spilled on the skin or splashed in the eyes, immediately flush effected area with water thoroughly. For details on an individual item refer to Material Data Safety Sheets (MSDS).
5. Many of the solvents/cleansing solutions (i.e.; acetone, methanol, safety solvent, etc.) used are fire hazards. Do not use around open flames.
6. Many of the solvents/cleansing solutions used are respiratory irritants and can cause nausea. Use only in properly ventilated areas.
7. Wear appropriate safety equipment if primed cases or cartridges are to be discharged during operability examinations. A lab coat or apron, approved safety glasses and hearing protectors are required.

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8. Use appropriate remote firing devices if weapon is determined to be dangerous if fired manually.
9. Airborne lead residues resulting from the test firing of a weapon and ammunition are a health hazard. Test firing should only be accomplished in a properly ventilated facility.
10. Be sure to thoroughly wash hands after test firing, handling weapons, ammunition, or ammunition components.

SPECIMEN REQUIRED:

A weapon or other mechanical device designed to fire a cartridge.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Latex gloves
Cleaning lubricants and solvents
Patches and brushes
Cotton swabs
Steel wool
Sandpaper

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Stereoscope
Reference weapon standards
Bullet recovery trap/tank
Cleaning rods
Circulating cleaning tank
Remote firing devices
Assorted armorer and general tools
Safety equipment (as dictated by case)
Trigger pull weight devices

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DEPT: Firearms	SECTION: 7.1.2.3/8
SUBJECT: Firearms Examination: Weapon Operation	VERSION: 7.071404

CALIBRATION REQUIREMENTS: (See Appendix E)

1. Dial calipers should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar approved standard.
2. Micrometer should be calibrated monthly using a Mitutoyo one inch "standard bar" (cat # 167-141) or a similar standard.
3. Springscale utilized to determine trigger pull weight should be calibrated monthly using the "NRA" trigger pull weight set provided to each examiner.

PROCEDURE:

1. Select appropriate firearm worksheet(s) to be completed on submitted evidence. The worksheet(s) are self-explanatory and serve as guides/reminders of information desired. (See Appendix A for samples of Firearms Department worksheets.)
2. Verify whether the weapon is or is not loaded. Treat accordingly.
3. Physically check weapon for the presence of trace evidence. (See introductory statment).
4. Collect all appropriate data desired on the firearm worksheet(s), whether descriptive or operability in nature. The following areas are specifically provided to aid in the process, and add particular items that should be noted.
   a. Revolvers or manually loaded firearms.
      1) Physical checks:
         a) Weapon loaded, unloaded or partially loaded.
         b) Weapon cocked, uncocked or partially cocked when received.
         c) Position of safety device(s).
         d) Note obvious abnormalities.
         e) Alterations and/or adaptations.
         f) Cylinder alignment.
         g) Barrel loose, fouled, obstructed, etc.
         h) Firing pin, firing pin bushing/hole condition.
         i) Sights.
         j) Smoke rings (cylinder).
         k) Parts missing, broken, loose, etc.

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2) Action (exterior):
   a) Cylinder rotation (securely locks).
   b) Relationship of parts.
   c) Trigger (not returning, sticks).
   d) Alignment of cylinder and barrel.
   e) Cylinder and/or barrel bulges.
   f) Weapon binds.
   g) Weapon skips chambers.
   h) Trigger pull.
3) Safeties:
   a) Note position of manual safety device(s) when received.
   b) 1/4, 1/2, full cock seating check (any false seating) and 1/4, 1/2 cock override.
   c) Transfer bar - properly functioning.
   d) Hammer block - does not intercept hammer.
   e) Rebounding hammer - can fire if firing pin rides on live primer.
   f) Hammer push-off from full cock.
   g) Drop hammer several times to check above safeties, if appropriate. Rimfire weapons should not be repeatedly tested in this manner unless done with a primed or fired cartridge case in the chamber(s). Repeatedly "dry firing" can cause alteration of firing pin characteristics.
4) Test cycling with primed cartridge case or cartridge for proper FP impression, if necessary.
5) Check for any inherent quirks known about the particular firearm.
6) Test fire firearm. Note any single and double action misfires. Select type of ammunition submitted and duplicate, if appropriate.
7) Conduct any special situational tests dictated by case.

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8) Action (Internal):

NOTE: Disassembly of a submitted firearm is not generally recommended unless there is a particular question to be addressed in a particular case. The following steps are provided as guidelines in the event that such a question arises.

a) Remove side plate or partially disassemble to examine if dictated by the case.
b) Hammer notches (worn, burrs, dirt).
c) Sear (worn, broken, burrs, etc.).
d) Internal safeties and relationship of all parts.
e) Springs (altered, broken, weak).
f) Signs of any tampering, alteration or faulty assembly

b. Semiautomatic, automatic, bolt action firearms:

1) Physical checks:
a) Weapon chamber and/or magazine loaded, unloaded or partially loaded.
b) Weapon in battery and prepared to fire.
c) Position of safety device(s).
d) Note obvious abnormalities.
e) Alterations and adaptations.
f) Barrel loose, etc.
g) Parts missing, broken, loose, etc.
h) Firing pin broken/functional.
i) Receiver/frame condition.
j) Sights.

2) Action (Exterior):
a) Working relationship of parts.
b) Is assembly correct?
c) Check for fit (loose or tight)
d) Does action lock/unlock normally?
e) Trigger pull within tolerances.

3) Safeties:
a) Note position of manual safety device(s) when received.

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b) 1/4, 1/2, full seating check (any false seating positions) and 1/4, 1/2 cock override.
c) Grip, magazine, disconnector function check.
d) Thumb - note positions when firearm will fire.
e) Rebounding hammer or rebounding firing pin - will firing pin ride on primers?
f) Does slide or bolt have to be completely closed to fire?
g) Can safeties be bypassed?
h) Hammer push-off from full cock.
i) Hammer/striker release when slide/bolt closed or opened.
j) Drop hammer several times to check above safeties, if appropriate. Rimfire weapons should not be repeatedly tested in this manner unless done with a primed or fired cartridge case in the chamber(s). Repeatedly "dry firing" a rimfire weapon can cause alteration of firing pin characteristics.

4) Test cycling with primed cartridge case or cartridges, if appropriate.
   a) Note feeding (magazine, carrier or lifter, loading ramp, magazine lips, springs).
   b) Will cartridge fire on closing of bolt/slide?
   c) Extractor, ejector, and firing pin marks on cartridge or cartridge cases normal.
   d) Unusual marks exhibited on cartridges from action.
5) Check for any inherent quirks known about the particular firearm.
6) Test fire firearm. Note operation, any misfires, etc.
   a) Select type of ammunition submitted and duplicate, if appropriate.
   b) Proper ammunition for firearm.
   c) Ammunition submitted with firearm may be used for test firing if like ammunition is not available

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DEPT: Firearms	SECTION: 7.1.2.7/8
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from the test ammunition selection or commercially, such use must be noted on the worksheet.

NOTE: When using submitted ammunition, examine it prior to test firing for the presence of handling marks. Note and/or mark such markings so that they will not interfere with subsequent comparisons.

7) Conduct any special situational tests dictated by case (i.e.; drop tests, unwanted discharges due to parts interrelationship, etc.)

8) Action (Internal) sufficiently disassemble to examine the following, if dictated by case: (See Note: 7.1.2.4/8)
   a) Hammer notches - worn, burrs, dirt, etc.
   b) Sear - worn, broken, burrs, etc.
   c) Internal safeties and relationships of all parts.
   d) Springs - weak, broken, altered.
   e) Signs of any tampering or faulty assembly.

c. Special considerations: Altered weapon
   1) A knowledge of firearm design, construction and functioning is important in the examination of altered weapons.
   2) Changes, alterations, or defects should be documented. If any disassembly is required photographs may be taken, if appropriate.

5. Should it be determined that a submitted weapon is nonfunctional as received, it may be returned to an operational condition if dictated by the circumstances of the case. Laboratory standard weapons and spare parts can be used for this purpose and worksheets should be annotated in detail as to the weapon's original condition and the steps necessary to render the weapon functional. Once testing is completed, the submitted weapon should be returned as closely as possible to its original condition, if appropriate.

6. All weapon(s) examined or their containers should be marked with appropriate identification data (i.e.; initials, item number, case number) as dictated by the case. Any additional evidence (i.e.; hair, blood, fibers,

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etc.) removed from items should also be marked in an appropriate manner to include the item number from which obtained after proper collection by Trace and/or Firearms personnel. Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative value to change.

7. If appropriate, it may be necessary to decontaminate weapons to eliminate or reduce the biohazard risk presented by the weapon(s) examined. Decontamination can be accomplished through the use of bleach, alcohol, foamicides or other acceptable techniques.

DOCUMENTATION:

Completed Firearms Department worksheets and/or computer work screens, copies of laboratory reports, photographs, charts, tables and literature extracts should be filed in the case jacket.

REFERENCES:

See bibliography at Appendix B.

PROTOCOL APPROVAL

Department Head: [signature] Date: 7-23-04

Coord. or Asst. Coord.: [signature] Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL

DEPT: Firearms	SECTION: 7.1.1.1/2
SUBJECT: Firearms Examination: Weapon Safety	VERSION: 7.071404

WEAPON SAFETY:

The Firearms Department is one of the few Departments within SLED where one moment of carelessness can cause immediate death to you or someone near you. Safety must be uppermost in your mind at all times. Firearms evidence in the laboratory is not dangerous if handled correctly and treated with respect. Occasionally loaded weapons are received in evidence for a particular examination. These, of course, need special handling, and will be discussed later. **All firearms should be treated as though they are loaded until the examiner proves they are not!** This rule cannot be over-stressed and must be followed at all times whether it's in the evidence room, Firearms Department, range or court. Safe gun handling here corresponds exactly with safe gun handling in general. Keep the muzzle in a safe direction at all times! Because some firearms contain unfired ammunition, this is extremely important. The only way to prevent accidents is to practice safety at all times. Areas of special note include the following:

a. **EVIDENCE RECEIVING:** All weapons should be checked for loaded/unloaded condition, unless specified otherwise (i.e., latent fingerprints or known to be loaded for examination purposes). Revolvers can generally be examined at a glance. Auto loading weapons should have the magazine removed, then the slide opened to examine the chamber. If the weapon is packaged, insure the muzzle is pointed in a safe direction and handle accordingly.

b. **EVIDENCE VAULTS:** Any firearms evidence placed into an evidence room prior to working the case must be positioned so it cannot fall or be knocked over accidentally. Loaded firearms must be clearly marked and their muzzle pointed in a safe direction. It is suggested that if the firearm may be unloaded and its contents documented, it is in the best interest of safety to do so if it is to be stored for any period of time.

c. **FIREARM EXAMINER:** In addition to checking the firearm's loaded or unloaded condition and keeping the muzzle in a safe direction, insure that the bore is clear. Know the weapon's caliber and use the proper ammunition. Any cartridges used for chambering should be deactivated or "simulated" ammunition if possible and/or available. If only unfired ammunition is available, chamber the cartridges only in the range area or recovery room with muzzle pointed in a safe direction. **Any** examination, test, or procedure which requires the introduction or removal of unfired or

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suspected unfired ammunition from a firearm should be accomplished while the muzzle of that firearm is pointed or inserted into a bullet recovery tank unless the circumstances of the case dictate otherwise.

Loaded weapons need special handling and respect. The examiner's safety, that of his fellow examiners, and that of the other people working in the laboratory is at stake. Be alert and cautious during the examination, work carefully, and take adequate time to do it right. No weapon should be returned to an agency in a loaded condition. When the examination is completed and the evidence is placed in the evidence room for return, **it will not be loaded**.

Good habits are no accident. Positive action is to practice safety at all times. Then there won't be any accidents.

Firearms examiners will be available to inspect firearms, to determine if they are unloaded, for all sections within the laboratory.

No person will be permitted to test fire any weapon until they have received instructions on proper handling procedures by a member of the Firearms Department.

PROTOCOL APPROVAL

Department Head: Hal B Daniel Jr. Date: 7-23-04

Coord. or Asst. Coord.: Earl Wells Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.0.1.1/1
SUBJECT: Introduction Technical Procedures Manual	VERSION: 7.071404

INTRODUCTION:

This manual outlines general protocols used in the examination of firearm and toolmark related evidence and compliments Chapter 8 of the Forensic Laboratory Policy and Procedures Manual.

The procedures addressed in this manual serve only as guidelines. Examiners are allowed flexibility in the examination of evidence as dictated by the circumstances of the incident/investigation. (Policy 8.10.1) The following general applications should be adhered to for all types of examinations unless safety considerations render them impractical.

Evidence will first be examined visually and/or microscopically for the presence of trace material. When trace material is encountered, determine the probative value and proceed accordingly.

- Unless specifically requested, the collection of biological material from fired ammunition components recovered from a known source is not necessary (i.e. blood/tissue off of a bullet removed from a victim at autopsy).
- Unless specifically requested, the collection of some other trace materials from fired ammunition components recovered from a known source is not necessary (i.e. drywall, wood fibers, paint, etc... found on a fired bullet recovered from a wall; glass found on a bullet fired through a window; etc...).
- Unless specifically requested, fired ammunition components that exhibit no obvious trace material need not be swabbed in all cases and the examiner may proceed with decontamination processes.

If there is a question regarding trace material or if unusual material is discovered during examination, consult with the contributor and/or collect the material. In all cases, evidence shall be handled so as to prevent any loss, cross-transfer, contamination, or other deleterious change.

PROTOCOL APPROVAL

Department Head: Date: 7-23-04

Coord. or Asst. Coord.: Date: 7-26-04

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.1.1/1
SUBJECT: Introduction: Technical Procedures Manual	VERSION: 9.051810

INTRODUCTION:

This manual outlines general protocols used in the examination of firearm and toolmark related evidence and compliments the Forensic Services Laboratory Policy and Procedures Manual(s).

The procedures addressed in this manual serve only as guidelines. Examiners are allowed flexibility in the examination of evidence as dictated by the circumstances of the incident/investigation (Policy 8.10.1). The following general applications should be adhered to for all types of examinations unless safety considerations render them impractical.

Evidence will first be examined visually and/or microscopically for the presence of serological and/or trace material. When serological and/or trace material is encountered, determine the probative value and proceed accordingly.

- Unless specifically requested, the collection of biological material from fired ammunition components recovered from a known source is not necessary (i.e. blood or tissue from a bullet removed from a victim at autopsy).
- Unless specifically requested, the collection of some other trace materials from fired ammunition components recovered from a known source is not necessary (i.e. drywall, wood fibers, paint, etc. found on a fired bullet recovered from a wall; glass found on a bullet fired through a window; etc.).
- Unless specifically requested, fired ammunition components that exhibit no obvious serological and/or trace material need not be swabbed in all cases and the examiner may proceed with decontamination processes.

If there is a question regarding serological and/or trace material, or if unusual material is discovered during examination, consult with the contributor and/or collect the material. In all cases, evidence shall be handled so as to prevent any loss, cross-transfer, contamination, or other deleterious change.

APPROVAL	
Department Supervisor: Tracy L. Thrower	Date: 7-29-2010
Laboratory Director: C. Todd Hughey	Date: 7-29-10

PETITIONER'S EXHIBIT 6
6/18/12
BB TDH

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FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.0.1/2
SUBJECT: Table of Contents	VERSION: 11.051810

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L - Use of the Ultrasonic Cleaner	3.051810	7.1.29
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APPROVAL

Department Supervisor: Tracy D. Thrower Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.30.1/4
SUBJECT: Appendix M: Abbreviations	VERSION: 3.051810

B	Bullet
BBL	Barrel
B/C	Because
BF	Breech face
BFPowder	Black fingerprint powder
BFM	Breech face marks
Cal	Caliber
Cart or CTG	Cartridge
Cart case, CC	Cartridge case
CB BOX	Cardboard box
CCW	Counter clockwise
Char	Characteristics
COL	Column
Comp	Compared, Comparison
Conv	Conventional
Cons	Consistent
Conw/, CW	Consistent with
CW	Clockwise
Cyl	Cylinder
DA	Double Action
DAO	Double Action Only
DBL	Double
DET	Detachable
DSSF	Double stack (dual column) single position feed
DSDF	Double stack (dual column) dual position feed
EA	Each
Ejt	Ejector
ELMOV	Extremely limited marks of value

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ENV	Envelope
ETS	Evidence tape sealed
Ext	Extractor
F/A, FA	Firearm
FP	Firing pin, finger print
FPPowder	Finger print powder
FPI	Firing pin impression
FPM	Firing pin marks
Ga	Gauge
GEA	Groove engraved area
GI or GIMP	Groove impression
GN	Grain
GRC	General rifling characteristics
HEMI, H	Hemispherical
H/G	Handgun
H/S, hs	Heat-sealed, headstamp
HSP	Heat sealed pouch
IIC, Ind. Ident. Char.	Individual Identifying Characteristics
Irreg	Irregular
LEA	Land engraved area
L&Gs	Lands and grooves
L/G	Long gun
LI or LIMP	Land impression
LH, L	Left Hand, left
L/LR	Long/Long Rifle
LS	Left side
MOV	Marks of value
LMOV	Limited marks of value

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Mag	Magazine, Magnum
Mconw/, MCW	Most consistent with
Mkd	Marked
NMOV	No marks of value
NSN	No serial number
Oblit	Obliterated
OPC	Observable physical characteristics
Para, P	Parallel, Parabellum
PB	Paper bag
Pkg	Package
Poly	Polygonal
RECD	Received
Recvr	Receiver
Resp	Respectively
Rect	Rectangular
RF	Rimfire
RH	Right Hand, right
RS	Right side
RT, R	Right
RWOE	Return without exam
SA	Single action
SAAMI	Sporting Arms and Ammunition Manufacturer's Institute, Inc.
SSP	Self sealed pouch
SS	Stainless steel
SSSF	Single stack (single column) single position feed
Spec	Specifications
S#:, SN	Serial number
T	Test

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DEPT: Firearms	SECTION: 7.1.30.4/4
SUBJECT: Appendix M: Abbreviations	VERSION: 3.051810

TF	Test fire
TG	Trigger guard
T/M, TM	Toolmark
UATD	Unable to determine
UF, UNF	Unfired
Unk	Unknown
UNS	Unsealed
W/	With
W/O, W/Out	Without
Wgt	Weight
9MML	9mm Luger
9MM Mak	9mm Makarov

These abbreviations are to be used on the worksheets for note taking. Due to multiple meanings, consideration should be given to context. Abbreviations of a technical nature should not be used in formal reports. Additional abbreviations that may be of a technical nature but are common to the firearms field may be found in the abbreviation section of the AFTE Glossary, SAAMI website, and the NRA Sourcebook.

APPROVAL

Department Supervisor: Tracy W. Shaw Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
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DEPT: Firearms	SECTION: 7.1.29.1/2
SUBJECT: Appendix L: Use of the Ultrasonic Cleaner	VERSION: 3.051810

PRINCIPLE:

Some fired specimens received for examination are encrusted with debris which resists removal by ordinary means. Such debris can sometimes be removed by the use of an ultrasonic cleaner. Normally, this should be one of the last processes used to clean a specimen.

SPECIAL HANDLING, HEALTH, AND SAFETY PRECAUTIONS:

Follow the procedures set forth in the instrument's instruction manual. Be aware of the inherent dangers of using water in and around an electrical device.

SPECIMEN(S) REQUIRED:

A fired specimen with material adhering to it, which could not be removed by soaking, gentle swabbing, and/or gentle brushing with a soft bristle brush.

SUPPLIES REQUIRED:

Water
Dishwashing Liquid (grease cutting type)

APPARATUS REQUIRED:

Ultrasonic Cleaner
Flexible Wire
Small glass beaker

CALIBRATION REQUIRED:

None

PROCEDURE:

1. This method can be effective in removing body tissue that has adhered to a specimen for an extended period of time and which does not respond to conventional methods of removal.
2. Attempt to clean the encrusted material by other means prior to using the ultrasonic cleaner (soaking in saline solution, swabbing with cotton tipped swabs, gently brushing with a nylon soft-bristled brush, etc.).
3. The ultrasonic cleaner may be considered one of the last alternatives for cleaning a specimen. Fill the tank of the ultrasonic cleaner with water, leaving approximately 1 ½ inches of space at the top of the tank.
4. Fabricate a wire holder to support the beaker in the tank of the ultrasonic cleaner.

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DEPT: Firearms	SECTION: 7.1.29.2/2
SUBJECT: Appendix L: Use of the Ultrasonic Cleaner	VERSION: 3.051810

5. Mix some water and detergent in the beaker, so it will cover the specimen to be cleaned. Place the bullet in the beaker and suspend the assembly in the water in the ultrasonic cleaner's tank.
6. Set the timer on the cleaner for five minutes. Examine the specimen after the five minute period and repeat as needed. Do not try to clean the specimen for an extended period, as surface damage may occur.
7. Use caution when cleaning lead bullets and those with thin copper plating or a copper wash. The copper coating can be fragile and could be damaged by letting the specimen stay in the tank for extended periods.
8. Continue step 6 until the material can be removed or it is determined that it can't be removed without damaging the specimen.
9. When finished, unplug the ultrasonic cleaner's power cord and remove the suspended beaker assembly and specimen. You should drain, clean and dry the tank. The beaker should be emptied and cleaned. Store the apparatus in the appropriate location.

DOCUMENTATION:

Record the actions taken on the appropriate worksheets.

APPROVAL

Department Supervisor: Tracy J. Thrower Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.28.1/3
SUBJECT: Appendix K: Report Writing	VERSION: 4.051810

PRINCIPLE:

Reports are generated as a result of the examinations conducted by SLED Firearm Department personnel. The following are some general guidelines to ensure that certain criteria are met in all reports.

SPECIAL HANDLING, HEALTH, AND SAFETY PRECAUTIONS:

None

SPECIMEN(S) REQUIRED:

A Firearm Department case file.

SUPPLIES REQUIRED:

Copy paper
Ink cartridges

APPARATUS REQUIRED:

LIMS with word processing capability
Printer

CALIBRATION REQUIRED:

None

PROCEDURE:

1. Examine the case file for the presence of appropriate documentation.
2. With our current LIMS, the reports are created with the word processing program incorporated into that system. Technical and administrative reviews of the case file and report are indicated in our current LIMS.
3. Phraseology used in reports should be clear, concise, correct, and in compliance with language generally accepted in the field of Firearm and Toolmark Identification.
4. Examiners are allowed some latitude to explain unique circumstances encountered in some cases.
5. Generally, the specimens examined will be listed in numerical specimen order, from the lowest number to the highest. The description of the specimen is drawn from the information in the LIMS, and should be corrected in the report, if necessary.
6. Generally, the results of examinations are placed after the specimen is listed in the report. Results can be grouped, if appropriate.

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PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.28.2/3
SUBJECT: Appendix K: Report Writing	VERSION: 4.051810

7. There are some commonly encountered results in Firearm and Toolmark reports. These will vary in language somewhat depending on examinations conducted, the examiner's style, and the circumstances of the case. Examples of some of the language used for these conclusions follow:

    a. **Identification** - "Item 1 was fired by Item 2." or "Individual identifying characteristics were found and it was concluded that Item 1 was fired by Item 2." or "The toolmarks found on Item 1 were made by the Item 2 tool."

    b. **Elimination** - "Item 1 was not fired by Item 2." or "Differences in class and/or individual identifying characteristics were sufficient to conclude that Item 1 was not fired by Item 2." or "The toolmarks found on Item 1 were not made by the Item 2 tool."

    c. **Inconclusive** - "The result of the comparison of Item 1 and Item 2 was inconclusive due to damage, etc." or "Item 1 was compared to Item 2 with inconclusive results."

    d. **Unsuitable for Identification** – "Item 1 was unsuitable for identification with a specific firearm due to damage." In some instances an examiner may provide additional information. For example, "Although Item 1 was unsuitable for identification with a specific firearm; it was not fired by Item 2 due to differences in class characteristics."

8. For GRC (General Rifling Characteristics) reports, the following or similar language can be used. "Based on its general rifling characteristics, makes, models, origins, and/or calibers of firearms that may have fired Item 1 include, but may not be limited to, the following...". This type of report may also include information regarding the suitability for identification. For example, "Item 1 may be suitable for identification with a specific firearm."

9. For fracture comparisons reports, the following or similar language can be used. "Item 1 was part of Item 2 at some previous time." or "Individual identifying characteristics were found in the fractured areas of Item 1 and Item 2 and it was concluded that Item 1 and Item 2 were joined at some previous time."

10. If serological and/or trace evidence is removed from a specimen during examination, a sub-item will be created and reported in the LIMS. This material can either be returned to the submitting agency or submitted to the appropriate laboratory department for further analysis. An example of reporting language is as follows, **"Potential (biological and/or trace) material was collected from and stored with Item 1. This item (Item 1.1) has been returned with Item 1 and can be re-submitted for further analysis. "** or **"Potential (biological and/or**

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PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.28.3/3
SUBJECT: Appendix K: Report Writing	VERSION: 4.051810

trace) material was collected from Item 1. This item (Item 1.1) has been submitted to the DNA Casework and/or Trace Evidence Department for further analysis."

11. A paragraph of many firearm reports indicates the actions regarding the IBIS database. For example, "Item 1 was entered into the Integrated Ballistics Identification System (IBIS). Should any hits be made against this entry, you will be notified. Please retain this specimen for a minimum of two years in order to maintain its availability for any future comparisons related to IBIS activity."
12. Examiners should strive to use consistent language from report to report and among the various examiners. Some variations are expected and can be tolerated, as long as the result reported is clear, concise, and correct.

DOCUMENTATION:

A completed report and case file.

APPROVAL

Department Supervisor: Tracy L Hunter Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.27.1/2
SUBJECT: Appendix J: IBIS Entry (Correlation) Operations	VERSION: 3.051810

PRINCIPLE:

The automated correlation of digitally acquired images of fired evidence bullets, fired evidence cartridge cases, and selected test fires from evidence firearms is conducted to search for possible links between previously unrelated cases. These correlations are scored by the IBIS hardware/software and are reviewed regularly to search for *possible* high confidence correlations or "hits".

APPARATUS REQUIRED:

IBIS

PROCEDURE:

1. A trained IBIS operator should examine the correlation scores of each acquired specimen (evidence or test fire) in order to determine if there is a possible high confidence correlation. These specimens will not only include those entered at SLED, but also those entered at any of the connected IBIS entry sites.
2. The IBIS operator, after reviewing the correlation scores, should review the images of at least the top twenty (20) scoring correlations. If an IBIS Technician notes agreement between images, a firearm examiner will be notified to review the images.
3. If a high confidence correlation is noted, the following procedure should be followed:
    a. The best matching correlation image comparison should be printed. This should be stored in a hard copy file.
    b. A short form copy of the correlation results should be printed. This should be stored in a hard copy file.
    c. If the correlated evidence bullets, cartridge cases, and/or firearm are still present at SLED, they should be retrieved and compared microscopically to confirm or deny the identification.
    d. If the correlated evidence bullets, cartridge cases, and/or firearm are *not* present at SLED and have been returned to the submitting agency, the agency's representative should be contacted and the evidence returned to SLED as soon as practical so that microscopic comparisons can be accomplished. In the case of a firearm, SLED stored test fires on file may be used in lieu of a resubmission. If, however, a positive identification is made or stored test fires are inadequate to render a conclusion, the firearm should be submitted for further examination and test firing.

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DEPT: Firearms	SECTION: 7.1.27.2/2
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e. If a positive "hit" is made, a written report reflecting all of the pertinent information will be sent to the submitting agency from the IBIS operator and/or the assigned firearm examiner. (A positive "hit" is a high confidence correlation that has been confirmed as a positive match through microscopic examination and comparison by a qualified firearm examiner.)

f. If a positive "hit" is made, a report reflecting all of the pertinent information should be sent to the appropriate personnel at the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) NIBIN Section and/or FTI (if appropriate).

DOCUMENTATION:

Properly completed IBIS Entry Log and/or High Confidence (Hit) Log Forms are maintained in the IBIS room.

APPROVAL

Department Supervisor: [signature] Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.26.1/4
SUBJECT: Appendix I: IBIS Entry (Acquisition) Operations	VERSION: 4.051810

PRINCIPLE:

The Integrated Ballistics Identification System (IBIS) enables an operator to acquire digital images of individually marked areas on fired cartridge cases and bullets. These images are converted into digital "signatures" and are compared, through an automated process, with other stored images to determine if *possible* links exist between previously unrelated cases or incidents.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

The evidence firearm will be handled, documented, and, if necessary, prepared for test firing according to the standard firearms examination protocol. Please refer to that protocol for safety, trace and/or serological evidence, documentation, and other issues not specific to IBIS operations.

SPECIMEN REQUIRED:

A firearm (and/or associated test fired bullet and/or cartridge case), fired bullet, or fired cartridge case.

SUPPLIES REQUIRED:

Acetone
Sticky wax
Cotton swabs
Nonporous gloves
Test containers (envelopes)
Evidence tape
Writing utensils
Permanent marking pens
Evidence packaging labels
Reference ammunition

SUPPLIES (Optional):

Hot glue sticks
Compressed air (disposable)
Lubricants and cleaning products
Patches and brushes

APPARATUS REQUIRED:

IBIS
Stereoscope

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PROTOCOL MANUAL

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Bullet recovery tank
Assorted armorer and general tools

APPARATUS (Optional):

Digital camera
Engraver
Hot glue gun
Cleaning rods and attachments

CALIBRATION REQUIREMENTS:

The only instrument involved in IBIS entry that involves calibration is the microscope. During each log-in sequence, the computer that controls the microscope performs a series of self-calibration actions and checks. Should a calibration error be detected by the computer system, the calibration process stops automatically, and the station is disabled. Corrective measures would then be taken under direct consultation with Forensic Technology, Inc. (FTI), with whom there is a service agreement. However, calibration should be verified by the operator during the weekly tape change and should be documented on the National Integrated Ballistics Identification Network (NIBIN) IBIS Data Backup-Calibration log.

PROCEDURE:

1. Transfer the appropriate evidence specimen(s) to the custody of the IBIS operator, using the LIMS to document the transfer.
2. Ensure that the evidence or test specimen(s) qualifies for IBIS entry based on caliber. The appropriate calibers follow:

223 Remington	38 Special
25 Auto	357 Magnum
30 Carbine	357 SIG
7.62x39mm Soviet	40 S&W
32 Auto	10mm Auto
32 H&R Magnum	41 Magnum
380 Auto	44 Special
9mm Makarov	44 Magnum
9mm Luger	45 Auto

   a. Center-fire Rifles: Only fired cartridge cases are entered due to the problems associated with obtaining suitable test bullets.
   b. Revolvers: Only fired jacketed bullets are entered.

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c. In general, only jacketed bullets are entered due to the problems associated with lead bullets.

d. Specimens from rimfire calibers and shotguns are not currently entered into the SLED IBIS database.

e. Only specimens of sufficient quality will be entered.

f. These parameters may be changed or bypassed under special or unusual circumstances.

3. Verify the presence of an appropriate worksheet or form and that it has been adequately completed.

4. Examine test fired components under magnification (comparison microscope, stereoscope, magnifying glass, etc.) to determine which specimen is most appropriate for IBIS entry. Only those specimens that are suitable for identification will be entered into the database. In the case of *evidence* specimens submitted to be entered from SLED firearm examiners, suitability for identification should have been determined by the assigned examiner and indicated on the input form. Assign an IBIS exhibit number to the specimen (evidence or test) and mark it with the exhibit number, using standard firearms evidence marking procedures.

5. Enter the specimen into the IBIS using procedures described in the FTI IBIS Student Book.

6. Upon completion of the acquisitions, enter the appropriate information in the IBIS Entry Log and complete the appropriate areas on the worksheets, forms, test fire envelope, and stamp or write "IBIS" on the case file envelope.

7. Reseal and initial the evidence containers, where appropriate. Place the approved high-visibility label on the package to alert the submitter and/or assigned SLED firearm examiner to the fact that the evidence in that package has been entered into IBIS.

8. Test specimens created in the laboratory (using laboratory ammunition) may be retained in the laboratory for future reference. These will not be treated as reference materials, not evidence, if they are retained in the laboratory after IBIS entry is complete.

9. Test specimens created in the laboratory (using laboratory ammunition) but returned to the submitting agency with the firearm in which they were fired will be treated as evidence. These test specimens should be created as a sub-item of that firearm in the LIMS and will be returned to the submitting agency for storage after IBIS entry is complete.

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10. Test specimens created and submitted by other agencies are considered evidence and will be returned to the submitting agency for storage after IBIS entry is complete.
11. After the entry process is completed, the specimens can be transferred to the assigned examiner or to the main evidence storage area for return to the submitting agency.
12. A formal report normally is generated indicating whether IBIS entry was accomplished. This report will be provided to the submitting agency.
13. In situations where evidence is entered into the IBIS after a standard firearm examination, this should be reported by the assigned firearm examiner in their report.
14. Should an IBIS correlation lead to an identification between two specimens, reports reflecting those results will be forwarded to the submitting agencies.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

APPROVAL

Department Supervisor: Troy J. Brown Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.25.1/4
SUBJECT: Appendix H: Instrument Calibration	VERSION: 3.021108

PRINCIPLE:

Unless indicated otherwise, the instruments used by each examiner must be checked to assure that the measurements and results are accurate and reliable. Typically, the comparison microscope, electronic balances, micrometers, and calipers must be checked monthly. Instruments can be inspected more often, if desired, or if an instrument is damaged or suspected of giving inaccurate readings. The results of such inspections must be recorded on the appropriate form, which will be retained by the examiner whose instruments are being inspected.

SPECIAL HANDLING, HEALTH, AND SAFETY PRECAUTIONS:

Wear appropriate eye protection if cleaning supplies and solvents are used.

SPECIMEN REQUIRED:

Comparison microscope, electronic balance, caliper, micrometer

SUPPLIES REQUIRED:

Cleaning supplies and solvents

APPARATUS REQUIRED:

Approved distance and weight standards
Measuring grid slides
Magnifier or stereoscope

CALIBRATION REQUIREMENTS:

1. The comparison microscope must provide equal magnification on each stage in order for the examiner to accurately evaluate specimens being observed.
2. The electronic balance must provide accurate weights (in grains) in order for the examiner to correctly determine the weight of specimens being examined.
3. The caliper must provide accurate measurements in order for the examiner to determine diameters, lengths, and other dimensions of specimens being examined.
4. The micrometer must provide accurate measurements in order for the examiner to determine land and groove dimensions and to make other measurements.

PROCEDURE

1. **Comparison Microscope**
   a. Adjust the lenses on the microscope to their lowest magnification. If using the Leica FS C microscope, follow the operator's manual for turning on the

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microscope. Make sure that the "Magnification Calibration" adjustment control LED is "green".

b. Place one of the measurement grid slides on each stage. A document plate may be useful for this. You may have to use a small test specimen box to bring the slides high enough to be in focus. You must try to keep the slides parallel with the document plate or support.

c. Focus on the grids on the slides.

d. Use the adjustments to overlap the images

e. If the grids overlap properly and the spacing of the grids is consistent, the lenses are in calibration.

f. If any misalignment is noted, check that both lenses are at the same magnification. If misalignment is still noted, make sure that the grid slides are parallel to each other and try to overlap the grids. If this fails, the microscope may be out of alignment and should not be used.

g. Notify the Department supervisor of the problem. The supervisor or designee will also check the calibration of the microscope.

h. If the problem can't be resolved, a service technician should be notified and the instrument will be taken out of service.

i. Repeat for each lens on the microscope.

j. Record the results on the equipment inspection-calibration log sheet.

2. Balance:

a. In addition to monthly inspection by the assigned examiners, the electronic balances are inspected twice a year by DHEC personnel. Documentation is maintained by the Quality Assurance Department and the Departmental Supervisor.

b. If a power failure occurs, the balances should be checked by the examiner.

c. Examiners should use the standard weight set available within the Firearms Department to check their balances. The N.I.S.T. traceable standard weight set will be recertified every three years by a contracted vendor.

d. To check the balances, follow the manufacturer's instructions for "warming up" the balance. Then choose the proper unit of weight (grains) on the balance. Tare the balance to zero and then weigh a series of the standard weights, noting any discrepancies between the weight of the standard and

its displayed weight. Make sure that the balance has been "tared" to zero, before weighing the standards.

e. If the balance correctly displays the weight of the standards, the balance is in adjustment.

f. If a discrepancy is noted, check the standard weight for damage and cleanliness. Reweigh the standard. Weigh another weight standard to sec if it is also being weighed incorrectly. Check the manufacturer's instructions for possible assistance. If the problem persists, the balance should not be used.

g. Notify the Department supervisor of the problem. The supervisor or designee will also check the balance in question. If the problem can't be resolved, a service technician should be notified and the instrument will be taken out of service.

h. Record the results on the equipment inspection-calibration log sheet.

3. Calipers and Micrometers (Electronic or non-electronic):

a. Following the manufacturer's instructions, turn on the electronic caliper or micrometer, if applicable. Open the measuring jaws or faces of the instrument and check the measuring areas for damage and/or debris. Zero the instrument per manufacturer's instructions.

b. Insert a standard between the jaws or measuring faces. The N.I.S.T. traceable one (1) inch standard will be recertified every three years by a contracted vendor.

c. Slowly close the jaws or measuring faces until snug. Make sure that you don't use too much force in closing the jaws or measuring faces.

d. If the measurement indicated by the instrument corresponds with the known measurement, the instrument is properly adjusted.

e. If a discrepancy is noted, check and clean the standard and measuring areas. If the discrepancy persists, consult the instruction manual for assistance. If the problem can't be resolved, the instrument should not be used.

f. Notify the Department Supervisor of the problem. The supervisor or designee will also check the instrument in question. If the problem can't be resolved, the instrument will be repaired or replaced.

g. Record the results on the equipment inspection-calibration log sheet.

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If an examiner notices an obvious problem with any of the equipment listed above, initiate the inspection or calibration procedures to determine the cause of the problem. If a solution cannot be reached, notify the Department Supervisor or his designee, and begin the repair or replacement process.

APPROVAL

Department Supervisor: [signature] Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.23.1/3
SUBJECT: Appendix F: Verification	VERSION: 1.051810

PRINCIPLE:

This section outlines the procedure for the verification of the results of microscopic comparisons and other examinations.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Many of the solvents/cleaning products (i.e. Clorox, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
2. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
3. Many of the solvents/cleaning products used are respiratory irritants (i.e. Clorox, acetone, isopropyl alcohol, aerosol, sprays, etc.) and can cause nausea. Use only in well ventilated areas.
4. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.
5. Use etching reagents only under the fume hood or in a well ventilated area.
6. Many of the etching reagents can cause serious physical damage if splashed in the eyes or spilled on the skin. Immediately flush and/or wash contaminated areas with water. All effected clothing should be removed. Medical attention may be immediately required. For details on an individual chemical in a solution refer to the Material Safety Data Sheets (MSDS).
7. Many of the etching reagents can cause serious physical damage if the fumes are inhaled for prolonged periods or in concentration. If overexposure occurs, move to a fresh air source immediately. Medical attention may also be required. For details on individual chemicals in a solution refer to the Material Safety Data Sheets (MSDS). Reagents, which contain strong acids or bases, must be used in an approved chemical fume hood or in a well ventilated area.

SPECIMEN REQUIRED:

Test specimens and/or evidence specimens (bullets, cartridge cases, item(s) bearing toolmarks, fractured items, item(s) with obliterated serial number or data, etc.)

SUPPLIES REQUIRED:

Cleaning products
Cotton Swabs

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Cleaning brushes

APPARATUS REQUIRED:

Stereoscope
Comparison microscope
Magnifiers
Small pliers

CALIBRATION REQUIREMENTS:

The comparison microscopes should be calibrated monthly. (See Appendix H)

PROCEDURE:

1. The results of microscopic comparisons, serial number restoration, physical comparison, etc. will be verified by a second qualified examiner.
2. Only examiners who are currently proficient in the areas of firearm and toolmark identification may perform verifications.
3. The verifier must visually examine and/or compare the physical evidence in the case and form an independent conclusion based on this analysis.
4. Prior to verification by a second qualified examiner (verifier), the assigned examiner must have a written conclusion on his/her worksheet.
5. The verification documentation is in addition to, and cannot be used in lieu of, the examination notes required for documentation of the identification.
6. The verifier will ensure that the specimens being verified are in fact the appropriate specimens represented in the documentation on the worksheet(s). The verification of results will be conducted prior to technical and/or administrative review and prior to the release of information to any agency. Normally the verifying examiner will conduct the technical and administrative reviews; however, another qualified firearms examiner may conduct the technical and administrative reviews.
7. Upon completion of the verification, the verifier will document the verification by placing their initials and the date in the designated area on the worksheet(s).
8. If an unresolved difference of opinion arises between the assigned examiner and the verifier, the department supervisor will be notified. The department supervisor will attempt to determine the nature of the verification issue through discussion with the involved parties and examination of the specimens if required. If the department supervisor is proficient in the examination area, he/she may examine

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the specimens or have an experienced member of the department perform the examination.

9. Inasmuch as verification is the independent opinion of a second qualified examiner, the examiner verifying a conclusion is as responsible for the accuracy of the conclusion as the assigned examiner. The signature or initials of the verifier demonstrates agreement with the conclusion.

APPROVAL

Department Supervisor: Vella Powell Date: 5-21-10

Laboratory Director: C. Todd Hughey Date: 6-1-10

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DEPT: Firearms	SECTION: 7.1.22.1/3
SUBJECT: Appendix: E Barrel and Overall Length Measurement	VERSION: 1.051810

PRINCIPLE:

This protocol describes the use of the Precision Forensic Technology Overall/Barrel Length Measurement Device.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. **Check firearm to verify whether it is loaded. Unload prior to testing.**
2. Wear nonporous latex gloves and other appropriate personal protection equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated or suspected to be contaminated with body fluids.
3. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.
4. Be aware of possible pinching or crushing injuries that may occur when handling firearms and the measuring device. Please handle appropriately.

SPECIMEN REQUIRED:

A firearm or other mechanical device designed to fire a cartridge or shotshell.

SUPPLIES REQUIRED:

Lubricants and cleaning products
Latex gloves
Work gloves

APPARATUS REQUIRED:

Precision Forensic Technology Overall/Barrel Length Measuring Device with a removable 36" NIST Traceable Ruler

CALIBRATION REQUIREMENTS:

The calibration of the ruler should be verified every three years by an external vendor.

PROCEDURE:

1. The Precision Forensic Technology Overall/Barrel Length Measurement Device should be used on firearms whose barrel length and/or overall length are close to the current minimum state and federal legal lengths of 16 inches (rifle barrel); 18 inches (shotgun barrel); and 26 inches (overall length for rifle or shotgun). If during the course of an examination, the barrel and/or overall lengths are found to be within +/- ½ inch of these lengths, using a ruler or tape measure, the Precision Forensic Technology Overall/Barrel Length Measurement Device should be used for the measurements.

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2. All other firearm examinations should be completed prior to using this device.
3. Before use, verify that the ruler is set to "zero" at the stationary jaw. If the ruler is not properly aligned with the stationary jaw, contact the team leader and/or departmental supervisor for assistance.
4. Overall Length Measurement
    a. Open the moveable jaw of the measurement device fully.
    b. Place the firearm in the device with one end set firmly against the stationary jaw and the long axis of the firearm barrel parallel with the axis of the ruler.
    c. Close the moveable jaw until it is set against the opposite end of the firearm. Please note that the moveable jaw can be forced out of its correct position if too much force is applied; therefore, apply just enough force so that the moveable jaw is in contact with the firearm.
    d. The distance between the inside edges of the two jaws is the overall length of the firearm. Observe the measurement on the ruler and document it on the worksheet.
5. Barrel Length Measurement
    a. Make sure that the firing mechanism of the firearm being measured is cocked to ensure that the firing pin is not protruding from the breechface. The bolt should be in its closed position ("in battery").
    b. Open the moveable jaw of the measurement device fully.
    c. Select the appropriate soft metal dowel rod and its associated collet. The rod that is as close to bore diameter as possible, yet small enough in diameter to fit easily down the bore, should be used. Move the collet to one end of the rod prior to insertion of the rod into the bore.
    d. Carefully insert the dowel rod into the bore (from the muzzle end) and seat it firmly against the face of the closed breech. Be careful to minimize contact between the dowel rod and the inside of the bore. Ensure that the dowel rod is parallel with the axis of the bore.
    e. Slide the collet down the dowel until it contacts the muzzle, then tighten the thumb screw.
    f. Remove the dowel rod from the barrel.

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g. Place the dowel rod on the measurement device. The end of the rod that was in contact with the breech of the firearm being measured must be placed against the stationary jaw (the "zero" end of the ruler) and with the long axis of the dowel rod parallel to the axis of the ruler. Please note the presence of the clearance slot for the end of the ruler milled into the stationary jaw. Care must be taken to ensure that the smaller diameter dowel rods do not enter this slot, resulting in an incorrect measurement.

h. The distance between the end of the dowel rod (stationary jaw) and the inside edge of the collet is the barrel length. Observe the measurement on the ruler and document it on the worksheet.

i. If for some reason, a barrel without a receiver must be measured, care must be taken to ensure the likely location of the breech. It may be advantageous to install the barrel on an appropriate receiver to determine the barrel length.

DOCUMENTATION:

Completed worksheets should be placed in the case file.

REFERENCES:

http://precisionforensictesting.com/

APPROVAL

Department Supervisor: Vella Powell Date: 5-21-10

Laboratory Director: C. Todd Hughey Date: 6-1-10

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DEPT: Firearms	SECTION: 7.1.21.1/2
SUBJECT: Appendix D: Air Gap Method	VERSION: 8.051810

The Air Gap Method is used to measure land and groove impression dimensions on a fired projectile. It can also be used to measure small distances where direct measurement may not be practical. In essence, you are comparing an unknown distance to a known distance formed by the gap between the faces or jaws of a measuring instrument, by using a comparison microscope. The following steps outline the process:

1. Affix a projectile to the left stage of the comparison microscope using a bullet manipulator and wax.
2. If necessary, mount a document plate on right stage of the comparison microscope. Depending on the manner used to support the micrometer, this may not be necessary.
3. Verify the zero of the one-inch micrometer.
4. Attach a one-inch micrometer to the right stage using a micrometer support, clay, or some other method which does not damage the micrometer. Normally, the thimble of the micrometer should face toward the operator and the graduations or screen faces up.
5. Set the magnification of both sets of objective lenses to the same power. A low power (10x-20x) is a good starting point.
6. Bring the bullet into focus.
7. Bring the anvil and spindle of the micrometer into focus.
8. To measure land impression dimensions, align the upper margin of a land impression with the anvil end of micrometer and the lower margin of the same impression with the spindle part of the micrometer. You will have to adjust the gap between the micrometer jaw faces to correspond with the land impression width.
9. Make sure that the full width of the land impression is visible and bisected by the dividing line.
10. Check alignment of the margins and the micrometer.
11. Read the measurement using the graduated scale on the micrometer barrel or digital display (normally to 0.001 inch) and record results on the worksheet.
12. Repeat the process for each visible land impression.
13. Repeat the process measuring the groove impression dimensions.

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14. Examiners may record the dimension for each land and groove impression measured or record the range of measurements for the lands and the grooves on the appropriate worksheet.

The data gathered may now be used to help determine possible manufacturers of firearms, which may have fired the specimen, based on its general rifling characteristics (GRC). The FBI GRC database or the Rifling Search database provided by Scott Doyle may be used for GRC examinations.

APPROVAL

Department Supervisor: _____ Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.20.1/4
SUBJECT: Appendix C: Restoration Reagents, Formulas, and Uses	VERSION: 4.051810

The following is a list of reagents, their formulas, uses and the departmental menu numbers assigned that are used during the Serial Number Restoration protocol of this manual. These reagents are normally prepared annually by the Drug Analysis Department in small amounts for this department. The name or initials of the analyst preparing the chemicals, along with the date prepared, must be placed on the reagents' containers. The reliability of the reagents can be checked during an examination by observing the reaction of the appropriate reagent on an area near the obliterated serial number or data.

1. Formulas and menus:

MENU #	FORMULA		NAME
1	90g $CuCl_2$	Cupric Chloride	FRY'S REAGENT
	120ml HCl	Hydrochloric Acid	
	100ml H_2O	Water	
2	8g $CuCl_2$	Cupric Chloride	
	16g $NiCl_2$	Nickel Chloride	
	140ml HCl	Hydrochloric Acid	
	50ml H_2O	Water	
3	2.5g $CuCl_2$	Cupric Chloride	TURNER'S REAGENT
	40ml HCl	Hydrochloric Acid	
	25ml	Ethyl Alcohol	
	30ml H_2O	Water	
4	5g $CuCl_2$	Cupric Chloride	
	5g Nh_4Cl	Ammonium Chloride	
	10ml HCl	Hydrochloric Acid	
	10ml H_2O	Water	
5	20g $K_2Cr_2O_7$	Potassium Dichromate	
	50ml H_2O	Water	
6	20g $K_2Cr_2O_7$	Potassium Dichromate	
	10ml HNO_3	Sulfuric Acid	
	90ml H_2O	Water	
7	20g $K_2Cr_2O_7$	Potassium Dichromate	
	50ml HNO_3	Nitric Acid	
	30ml H_2O	Water	
8	1g $CuSO_4$	Cupric Sulfate	
	15ml H_2SO_4	Sulfuric Acid	
	1g	Gelatin	

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MENU #	FORMULA		
9	25g $CoCl_2$ 75ml HCl 75ml H_2O	Cobalt Chloride Hydrochloric Acid Water	
10	10 parts 90 parts H_2O	Sodium Hydroxide Water	
11	HCl	Hydrochloric Acid (Concentrated)	HYDROCHLORIC ACID Concentrated
12	30ml HCl 70ml H_2O	Hydrochloric Acid Water	HYDROCHLORIC ACID 30%
13	15ml HCl 85ml H_2O	Hydrochloric Acid Water	HYDROCHLORIC ACID 15%
14	10ml HCl 90ml H_2O	Hydrochloric Acid Water	HYDROCHLORIC ACID 10%
15	HNO_3	Nitric Acid (Concentrated)	NITRIC ACID Concentrated
16	30ml HNO_3 70ml H_2O	Nitric Acid Water	NITRIC ACID 30%
17	15ml HNO_3 85ml H_2O	Nitric Acid Water	NITRIC ACID 15%
18	10ml HNO_3 90ml H_2O	Nitric Acid Water	NITRIC ACID 10%
19	NH_5O	Ammonium Hydroxide (concentrated)	
20	25g FeCl3 25ml HCL 100ml H20	Ferric Chloride Hydrochloric Acid Water	ACIDIC FERRIC CHLORIDE
21	25g FeCl3 100ml H20	Ferric Chloride Water	FERRIC CHLORIDE
22	5g CuCl2 50ml HCL 50ml H20	Cupric Chloride Hydrochloric Acid Water	DAVIS REAGENT

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2. Recommended uses:

MENU #	METAL USES
1	Iron, Steel (particularly Rolled/Cast Steel) Aluminum, Aluminum Alloys Zinc, Zinc Alloys
2	Iron, Steel
3	Iron, Steel (particularly Cast Steel)
4	Iron, Steel (particularly Stainless/High Speed Steel) Aluminum, Aluminum Alloys Brass
5	Iron, Steel
6	Iron, Steel (particularly Cast Steel/Iron)
7	Brass, Copper
8	General use, Electrolytic
9	General use, Electrolytic
10	Aluminum, Aluminum Alloys, Zinc, Zinc Alloys (Also an Electrolytic)
11	Iron, Steel, Zinc, Zinc Alloys
12	Iron, Steel, Zinc, Zinc Alloys
13	Iron, Steel, Zinc, Zinc Alloys
14	Iron, Steel, Zinc, Zinc Alloys
15	Iron, Steel, Brass, Lead, Silver (dilute)
16	Iron, Steel, Brass, Lead, Silver (dilute)
17	Iron, Steel, Brass, Lead, Silver (dilute)
18	Iron, Steel, Brass, Lead, Silver (dilute)
19	Brass, Copper
20	Aluminum

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DEPT: Firearms	SECTION: 7.1.20.4/4
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APPROVAL

Department Supervisor: [signature] Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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SUBJECT: Appendix B: Bibliography	VERSION: 8.051810

F.T.	#	Title	Author(s)/Editor(s)
1	A	AFTE Glossary-3rd Edition	AFTE
1	B	AFTE Glossary-3rd Edition	AFTE
1		AFTE Glossary-1st Edition	AFTE
2		Forensic Firearms Evidence - Elements of Shooting Incident Investigation	Haag (tape and book)
3		German Pistols and Revolvers, 1871-1945	Ian V Hogg
4		Fingernail Striae Symposium	AFTE
5		The Identification and Registration of Firearms	Krcma
6		Autopsy Pathology Procedure and Protocol	Weber, Fazzini, Reagan
7		The Identification of Firearms	Gunter and Gunter
8		A Handbook on the Primary Identification of Revolvers and Semiautomatic Pistols	John T. Millard
9		Ballistic Science for the Law Enforcement Officer	Charles Wilber
10		Police Medical Dictionary	J. E. Schmidt
11		Autopsy Pathology	Rezek and Millard
12	A	Gunshot Wounds - 2nd Edition	Di Maio
12		Gunshot Wounds - 1st Edition	Di Maio
13	A	Handbook of Firearms and Ballistics	Heard
13	B	Shooting Incident Reconstruction	Haag
13	C	Practical Analysis and Reconstruction of Shooting Incidents	Hueske
13	D	Terminal Ballistics: A Text & Atlas of Gunshot Wounds	Dodd
13	E	Human Factors Issues in Handgun Safety and Forensics	Hendrick
13	F	Stopping Power: A Practical Analysis of the Latest Handgun Ammunition	Marshall & Sanow
13	G	Ballistics: Theory & Design of Guns & Ammunition	Carlucci
13		Firearms Investigation, Identification, and Evidence	Hatcher, Jury, Weller
14		Small Arms of the World	Ezell
15	A	9mm and 45 Caliber Pistol Test Results	NIJ
15		38 and 357 Caliber Revolver Test Results	NIJ
16	A	The Book of Rifles	Smith and Smith
16	B	The Book of Rifles	Smith and Smith
16		Tool Marks, Firearms, and the Striagraph	John Davis
17		Gunsmithing	Dunlap
18		Small Arms Design and Ballistics	Whelen
19		The Practical Book of Guns	Warner
20		Ballistic Materials and Penetration Mechanics	R. C. Laible
21		Guns of the World	Peterson
22		The Remington Historical Treasury of American Guns	Peterson
23		The Identification of Firearms and Forensic Ballistics	Burrard
24		German Infantry Weapons of World War 2	A. J. Barker

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25		Textbook-Pistols and Revolvers	Hatcher
26		Antique Guns	Hank Bowman
27		American Pistol and Revolver Design and Performance	L. R. Wallack
28		Colt Firearms	James E. Serven
29		The Police Shotgun Manual	Roger Robinson
30		American Shotgun Design and Performance	L. R. Wallack
31		Mauser Rifles and Pistols	Smith
32		American Rifle Design and Performance	L. R. Wallack
33	A	Cartridges of the World-3rd Edition	Frank C. Barnes
33	B	Cartridges of the World-6th Edition	Frank C. Barnes
33	C	Cartridges of the World 11th Ed.	Barnes
33	D	Ammo & Ballistics 3rd ed.	Forker
33		Cartridges of the World	Frank C. Barnes
34		Textbook of Firearms Investigation, Identification and Evidence	J. S. Hatcher
35		Centerfire Metric Pistol and Revolver Cartridges	White and Munhall
36		American Ammunition and Ballistics	Matunas
37		Modern American Rifles	Gould
38		Early Made Japanese Military Small Arms Ammunition	Teruaki Isomura
39		Single Shot Rifles and Actions	Frank deHaas
40		Handguns of the World	Edward C. Ezell
41		The Identification of Handguns Procured for the German Army in World War 2 by their Waffenamt Acceptance Stamps	Donald J. Verbeke
42		Pistols	W. H. B. Smith
43		Brassey's Infantry Weapons of the World	Brassey
44		Forensic Biology for the Law Enforcement Officer	Charles G. Wilber, PhD
45		Firearms Identification-Vol I	Mathews
46	A	Firearms Identification-Vol III	Mathews
46		Firearms Identification-Vol II	Mathews
47		US Cartridges and Their Handguns	Charles R. Suydam
48		United States Martial Pistols and Revolvers	Gluckman
49		The Search for an Effective Police Handgun	Bristow
50		Modern American Pistols and Revolvers	Gould
51		The NRA Book of Small Arms-Pistols and Revolvers Volume 1	W. H. B. Smith
52		The NRA Book of Small Arms-Rifles Volume 2	W. H. B. Smith
53		Handgun Safety Evaluation Volume 1	H. P. White Laboratory
54		Handgun Safety Evaluation Volume 2	H. P. White Laboratory
55		Handgun Safety Evaluation Volume 3	H. P. White Laboratory
56		Gun Traders Guide	Paul Wahl
57		Flayderman's Guide to Antique American Firearms and Their Values; 5th Edition	Flayderman

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58		Black Powder Guide	George C. Nonte, Jr.
59		Black Powder Handbook	Lyman
60		Ordnance Went up Front	Roy F. Dunlap
61		The Gun Digest Book of Firearms Assembly/Disassembly; Part 1: Automatic Pistols (Revised Edition)	J. B. Wood
62		The Gun Digest Book of Firearms Assembly/Disassembly; Part 2: Revolvers (Revised Edition)	J. B. Wood
63		The Gun Digest Book of Exploded Handgun Drawings	Harold A. Murtz
64		The Gun Digest Book of Exploded Long Gun Drawings	Harold A. Murtz
65		Bolt Action Rifles (Revised Edition)	Frank deHaas
66		The Gun Digest Book of Firearms Assembly/Disassembly; Part 3: Rimfire	J. B. Wood
67		The Gun Digest Book of Firearms Assembly/Disassembly; Part 4: Centerfire Rifles (Revised Edition)	J. B. Wood
68		The Gun Digest Book of Firearms Assembly/Disassembly; Part 5: Shotguns (Revised Edition)	J. B. Wood
69		The Gun Digest Book of 9mm Handguns	Grennell and Clapp
70		The Gun Digest Book of Firearms Assembly/Disassembly; Part 6: Law Enforcement Weapons	J. B. Wood
71		The Gun Digest Book of Exploded Firearms Drawings: 2nd Edition	Harold A. Murtz
72		The Law Enforcement Book of Weapons, Ammunition and Training Procedures	Mason Williams
73		Notes on Ordnance of the American Civil War	Harold L. Peterson
74		Notes on Ammunition of the American Civil War	Colonel Berkeley R. Lewis
75		United States Martial Pistols and Revolvers	Gluckman
76		Law Enforcement Bible	Robert A. Scanlon
77		Handgun Digest	Grennell and Williams
78		Gun Parts and Accessories	Numrich Arms Corporation
79		Department of the Army Field Manual: Rifle, 5.56-MM, XM16E1	Department of the Army
80		M16A1 Rifle and Rifle Marksmanship - 1974	Department of the Army
81		Department of the Army Field Manual: 7.62MM, M14 and M14E2	Department of the Army
82		Department of the Army Technical Manual: Rifle, 7.62-MM, M14A1, W/E; Bipod, Rifle, M2	Department of the Army
83		Department of the Army Technical Manual: Operations and Organizational Maintenance Manual Including Repair Parts and Special Tools Lists; Rifle, Caliber .30, M1903A4 (Snipers) W/E	Department of the Army
84		M14 and M14A1 Rifles and Rifle Marksmanship	Department of the Army

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85		Suicide Specials	Donald Webster
86		Machining Fundamentals	John R. Walker
87		Forensic Sciences Volume 1	Edited by Cyril H. Wecht
88		Forensic Sciences Volume 2	Edited by Cyril H. Wecht
89		Forensic Sciences Volume 3	Edited by Cyril H. Wecht
90		Evidence Law for the Police	Inbau, Aspen, Carrington
91		A Practical Guide to the Basics of Physical Evidence	Claude W. Cook
92		Essentials of Forensic Anthropology	T. D. Stewart, M.D.
93		Techniques for the Crime Investigator	William Dienstein
94		The Methods of Attacking Scientific Evidence	Edward J. Imwinkelried
95		Ammunition for the Law Enforcements: Part 1, Methodology For Evaluating Relative Stopping Power and Results	William J. Bruchey, Jr.
96		Basic Automotive Measuring Tools and How to Use Them	Petersen
97		Hornady Reloading Manual-Volume 1: Reloading Data	Hornady
98		Hornady Reloading Manual-Volume 2: Tables and Charts	Hornady
99		The Hunter's Bible	W.K. Merrill
100		Textbook of Automatic Pistols	R.K. Wilson
101		Big Game Hunting and Marksmanship	Kenneth Fuller Lee
102		Evidence for the Law Enforcement Officer	Gilbert B. Stuckey
103		Air Gap-GRC	Welch and Wilhelm
104		BRL Report-Bullets and Tissue Simulants	Bruchey, et al
105		Hodgdon Data Manual No. 26	Hodgdon
106		Nosler Reloading Manual No. 3	Nosler
107		Identification of Firearms	Gunther and Gunther
108		The Bullet's Flight: The Ballistics of Small Arms	Franklin W. Mann
109		Sierra Handgun Reloading Manual-3rd Edition	Sierra
110		Sierra Rifle Reloading Manual-3rd Edition	Sierra
111		Speer Reloading Manual-#8	Speer
112		Accurate Smokeless Powders Loading Guide No. 1	Accurate Arms Company
113		Fast and Fancy Revolver Shooting and Police Training	Ed McGivern
114		A Basic Manual of Military Small Arms	W. H. B. Smith
115		Highpower Rifle Reloading (video)	Tubb
116		Centerfire American and British Pistol and Revolver Cartridges	White and Munhall
117		Speer Reloading Manual-#12	Speer
118		Revolver and Semiautomatic Pistol, Rifling Class Characteristics	Chicago Police Department
119		Cartridges	Herschel C. Logan
120		The Treasury of the Gun	Harold L. Peterson
121		Firearms Assembly 4	NRA

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122	A	Gun Parts-Edition 22	Gun Parts Corporation
122		Gun Parts-Edition 17	Gun Parts Corporation
123		Shooter's Bible Treasury	Stoeger
124		Shooter's Bible No. 47	Stoeger
125		Shooter's Bible No. 49	Stoeger
126		Shooter's Bible No. 53	Stoeger
127		Shooter's Bible No. 57, 1966	Stoeger
128		Shooter's Bible No. 58, 1967	Stoeger
129		Shooter's Bible No. 60, 1969	Stoeger
130		Shooter's Bible No. 61, 1970	Stoeger
131		Shooter's Bible No. 61, 1970	Stoeger
132		Shooter's Bible No. 62, 1971	Stoeger
133		Shooter's Bible No. 63, 1972	Stoeger
134		Shooter's Bible No. 64, 1973	Stoeger
135		Shooter's Bible No. 65, 1974	Stoeger
136		Shooter's Bible No. 66, 1975	Stoeger
137		Shooter's Bible No. 67, 1976	Stoeger
138		Shooter's Bible No. 69, 1978	Stoeger
139		Shooter's Bible No. 70, 1979	Stoeger
140		Shooter's Bible No. 71, 1980	Stoeger
141		Shooter's Bible No. 72, 1981	Stoeger
142		Shooter's Bible No. 73, 1982	Stoeger
143		Shooter's Bible No. 76, 1985	Stoeger
144		Shooter's Bible No. 84, 1993	Stoeger
145		Shooter's Bible No. 92, 2001	Stoeger
146		Gun Annual 1953	
147		Guns and Ammo 1970 Annual	Petersen
148		Guns and Ammo 1975 Annual	Petersen
149		Guns and Ammo 1978 Annual	Petersen
150		Law Enforcement Handgun Digest	Dean A. Grennell
151		Gun Digest Treasury	Amber
152		Gun Digest 11th, 1957	Amber
153		Gun Digest 13th, 1959	Amber
154		Gun Digest 16th, 1962	Amber
155	A	Gun Digest 23rd, 1969	Amber
155		Gun Digest 18th, 1964	Amber
156		Gun Digest 24th, 1970	Amber
157		Gun Digest 29th, 1975	Amber
158		Gun Digest 36th, 1982	Amber
159		Gun Digest 39th, 1985	Amber
160		Gun Digest 47th, 1993	Amber

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161		Guns Illustrated 1971	Amber
162		Guns Illustrated 1975, 7th Edition	Amber
163		Guns Illustrated 1980, 12th Edition	Amber
164		The Ballistic Center, Inc. catalog	Amber
165		Handloaders Digest-6th Edition	Amber
166		Handloaders Digest-7th Edition	Amber
167		US Silencer Patents Volume 1 and Volume 2	Donald G. Thomas
168		Jane's Infantry Weapons, 1975	
169		Jane's Infantry Weapons, 1978	
170		Jane's Ammunition Handbook, 2000-2001	
171	A	Firearms Encyclopedia	Nonte
171		Jane's Infantry Weapons, 2001-2002	
172		Flight Characteristics and Stain Patterns of Human Blood	Herbert L. MacDonell
173		Department of the Army Field Manual: Explosive Ordnance Reconnaissance	Department of the Army
174		Technical Manual: Operator's Manual for Rifle, 7.62-MM, M14 W/E; Rifle, 7.62-MM, M14A1, W/E; Bipod, Rifle, M2	Department of the Army
175		Submachineguns Caliber .45 M3 and M3A1	Department of the Army
176		Browning Automatic Rifle Cal. .30, M1918A2	Department of the Army
177		3.5-Inch Rocket Launcher	Department of the Army
178		Operator and Organizational Maintenance Manual: Pistol, Caliber .45, Automatic, M1911A1, With Holster, Hip and Pistol, Caliber .45, Automatic, M1911A1, With Holster, Shoulder	Department of the Army
179		Organizational, Direct Support, General Support, and Depot Maintenance Manual Including Repair Parts and Special Tools Lists	Department of the Army
180		Operator and Organizational Maintenance Manual, 40-MM Grenade Launcher M79	Department of the Army
181		Operation and Organizational Maintenance, Cal. .50 Spotting Rifle M8C 106-MM Rifles M40A1 and M40A1C; 106-MM Rifle Mounts T173 and M79; and Tripod T26	Department of the Army
182		Courtroom Survival	Rutledge
183		19th Century Firearms (military)	Major F Myatt
184		The Mosin-Nagant Rifle	Terence W. Lapin
185		Wildcat Cartridges	Wolfe Publishing Company
186		The Winchester Book	George Madis
187		Marlin Firearms	William S. Brophy
188		Ken Waters' Pet Loads	Ken Waters
189		The US M1911/M1911A1 Pistols and Commercial M1911 Type Pistols - A Shop Manual	Jerry Kuhnhausen
190		The Mauser Bolt Actions, M91 through M98 - A Shop Manual	Jerry Kuhnhausen

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191		The S & W Revolver - A Shop Manual	Jerry Kuhnhausen
192		The Colt Single Action Revolvers - A Shop Manual	Jerry Kuhnhausen
193		The Colt 45 Automatic - A Shop Manual	Jerry Kuhnhausen
194		The Ruger Single Action Revolver - A Shop Manual Volumes 1 and 2	Jerry Kuhnhausen
195		The Ruger Double Action Revolvers - A Shop Manual Volume 1	Jerry Kuhnhausen
196	A	Colt D/A Revolvers 1	Kuhnhausen
196	B	Colt D/A Revolvers 2	Kuhnhausen
196	C	AR-15 Complete Owners Guide	Kueleck & Duff
196	D	AR-15 Complete Assembly Guide	Kueleck & McKee
196	E	Gun Digest Book of the AR-15 Volume 2	Sweeney
197		The Remington M870 and M1100/M11-87	Jerry Kuhnhausen
198		Handbook for Shooters and Reloaders Volume 1	P. O. Ackley
199		Handbook for Shooters and Reloaders Volume 2	P. O. Ackley
200		The Gunsmith Machinist	Steve Acker
201		The Remington 700, 25 Years 1962-1987	John F. Lacy
202		The Gun Digest Book of Firearms Assembly/Disassembly; Part 1: Automatic Pistols - 2nd Edition	J. B. Wood
203		The Gun Digest Book of Firearms Assembly/Disassembly; Part 2: Revolvers - 2nd Edition	J. B. Wood
204		The Gun Digest Book of Firearms Assembly/Disassembly; Part 3: Rimfire Rifles - Revised Edition	J. B. Wood
205		The Gun Digest Book of Firearms Assembly/Disassembly; Part 4: Centerfire Rifles - 2nd Edition	J. B. Wood
206		The Gun Digest Book of Firearms Assembly/Disassembly; Part 5: Shotguns - 2nd Edition	J. B. Wood
207		Bolt Action Rifles - 4th Edition	Haas and Zwoll
208		Gunsmithing: Shotguns	Patrick Sweeney
209		Hatcher's Notebook	Julian S. Hatcher
210		Machine Tool Technology Basics	Krar, Gill, Smid, Wanner
211		Rifle Accuracy Facts	Harold R. Vaughn
212		Ellett Brothers-catalog 51B, 1999-2000	
213		Ellett Brothers-catalog 53B, 2001-2002	
214		9mm Parabellum Headstamp and Case Type Guide Volume 1, A-F	
215		9mm Parabellum Headstamp and Case Type Guide Volume 2, G-N	
216		Rimfire Headstamp Guide, Part 1 thru Part 8	George G. Kass
217		Serial Numbers-Boat and Motor	SC Wildlife
218		Serial Number Restoration (binder)	NASA (Treptow), Colorado, et al
219		Revolvers and Pistols (binder)	

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220		Personal Defense Weapons (binder)	
221		Ken Waters' Pet Loads, Supplement #1	Waters
222		Encyclopedia of Modern Firearms, Parts and Assembly Volume 1	Editor F. R. Brownell
223		Lee Roy Wisner's Handbook of Hard-to-find Gun Parts Drawings	Lee Roy Wisner
224		AA Arms, Inc. - Burris catalogs (binder)	
225		Charter Arms - Heckler and Koch catalogs (binder)	
226		Hornady - Mossberg catalogs (binder)	
227		Ox-Yoke - Remington catalogs (binder)	
228		Ruger - Sigarms catalogs (binder)	
229		Smith and Wesson - Williams catalogs (binder)	
230		Winchester - Zero-One catalogs (binder)	
231		Savage Arms - Rifles, Shotguns, Accessories (binder)	
232		The Complete Handgun-1300 to Present	Ian Hogg
233		Heckler & Koch and other catalogs (binder)	H & K, others
233		Firearms Disassembly with Exploded Views	Karns & Traister
234		Gun Digest Book of Exploded Gun Drawings	Murtz
235		Gunsmithing Pistols and Revolvers	Sweeney
236		Gunsmithing Rifles	Sweeney
237		NRA Guide to Pistols and Revolvers-Assembly Manual	Roberts & Andrews
238		NRA Guide to Rifles and Shotguns-Assembly Manual	Roberts & Andrews
239		2008 Standard Catalog of Firearms	Schideler
240		Blue Book of Gun Values 28th Ed.	Fjestad
241		Rifles of the World	Walter
242		Standard Catalog of Military Firearms 2008	Peterson
243		Standard Catalog of Colt Firearms	Sapp
244		Standard Catalog of Remington Firearms	Schideler
245		Standard Catalog of Winchester Firearms	Cornell
246		Standard Catalog of S&W Firearms 3rd Edition	Supica
247		NRA Firearms Sourcebook	Bussard & Wormley
248		NRA Guide to Reloading	NRA Training Division
249		Firearms, The Law, and Forensic Ballistics 2nd Edition	Warlow

NOTATIONS:

1. Numerous firearm, ammunition, and other police-related advertisements, AFTE journals, brochures, pamphlets, catalogues and bulletins, as well as training course literature, and on-line sources are used as reference material. However, these

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items are not individually listed due to the tremendous volume and numbers involved.

2. These listed references may be supplemented by other departmental or private reference libraries as deemed appropriate.

APPROVAL

Department Supervisor: Troy J. Thomas Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.18.1/1
SUBJECT: Appendix A: Forms and Worksheets	VERSION: 8.051810

Worksheets and other forms are used to document appropriate information concerning the analysis of evidence, calibration of equipment, inventories, etc. in this department. Some worksheets are specifically designed to serve as checklists and reminders of pertinent information desired. All relevant entries should be made as deemed appropriate by the examiner. The documentation employed by the examiner may be dictated by circumstances of the case coupled with accepted laboratory examination practices.

Copies of approved departmental worksheets and other forms are maintained by the Quality Assurance Department and are stored on the Firearms network location.

APPROVAL

Department Supervisor: Tracy L. Thrower Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.17.1/3
SUBJECT: Destruction of Firearms, Ammunition, and Related Items	VERSION: 9.051810

PRINCIPLE:

The SLED Firearms Department accepts items for destruction from law enforcement agencies, correctional facilities, and on rare occasions, private citizens. These items may include firearms, firearms related accessories, ammunition, ammunition components, knives, edged weapons, and other metallic items. Generally, these items are examined, inventoried, evaluated for retention in the Firearm Reference Collection, prepared for destruction, and in many cases destroyed.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. In most cases, firearms will be unloaded when received for destruction; however, **verify that all firearms are unloaded.**
2. When submitted, some firearms will be rusted to the extent that their loaded status cannot be readily determined. Efforts must be made to safely determine whether such a firearm is loaded or unloaded. Generally, the procedure for a corroded or rusted firearm should be followed.
3. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
4. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
5. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
6. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
7. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.

SPECIMENS REQUIRED:

Firearms, knives, ammunition, etc. for destruction.

SUPPLIES REQUIRED:

Cardboard boxes of various sizes
Packing tape

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Lubricants and cleaning products
Nonporous gloves
Sandpaper

APPARATUS REQUIRED:

Assorted armorer and general tools
Magnifier
Safety equipment (lab coat, apron, eye protection)
Cleaning rods
Tape measure

CALIBRATION REQUIREMENTS:

None

PROCEDURE:

1. **Verify that the firearms are unloaded!**
2. Select the appropriate worksheet.
3. The submitter should have an overall inventory list of all items being submitted. If possible, each item should be verified in the presence of the delivering officer as it is inspected by the examiner assigned to the case. Firearms and related materials accepted for destruction in sealed containers are accepted under the "said to contain" concept as set forth in of the SLED Forensic Services Laboratory Policy and Procedures Manual(s).
4. Physically check the firearm for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated, or suspected to be contaminated with body fluids.
5. Once the inventory is verified and all information is found to be correct or is corrected, the delivering representative may leave.
6. The assigned examiner or their designee may then begin to separate and evaluate the items submitted.
7. Non-firearms may be packaged directly for destruction (knives, razors, etc.). Ammunition for destruction will not be placed in the boxes with firearms for destruction. Some unfired ammunition may be added to the ammunition reference supply; however, their boxes or containers should be marked to indicate they are from a destruction case. Ammunition to be destroyed can be destroyed by firing or turned over to the appropriate regional SLED agent for destruction.

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DEPT: Firearms	SECTION: 7.1.17.3/3
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8. Firearms may be included in the SLED Firearms Department Reference Collection or disassembled so that the parts may be used to repair reference collection firearms that were inoperable when submitted. The remaining portions of the disassembled firearms for destruction should be packaged in reasonably-sized boxes (10"x10"x10") and each box numbered. The numbers begin with the current year and are followed by the number of that particular box, for example 07-01, 07-02, etc. Make sure that the inventory worksheet is filled out for each box. The appropriate evidence transfers in the LIMS must be performed also.
9. All plastic or wooden stocks, forends, grips, etc. may be removed and sent out in the normal trash.
10. Barrels, actions, and other items too long for boxes, may be wrapped together in manageable sized bundles using packing tape, wire, etc.
11. When a sufficient quantity of firearms and/or other metal items has accumulated, a local steel mill may be contacted, and the items delivered for destruction by melting. Those persons (at least two) delivering the items to the steel mill must remain on-site and try to keep visual contact with the items, if possible, until they are destroyed. If possible, a Class 1 agent should accompany all firearms being transported for destruction.
12. In extreme exigent circumstances, firearms and related materials may be destroyed by using an oxygen-acetylene torch to cut the frame or receiver. The residue may thereafter be disposed of as scrap metal. Due to the cost, danger, and lack of equipment and space, this method should be avoided.
13. After destruction is completed, the proper paperwork documenting the actions should be completed. A list of the firearms destroyed and a memo indicating that the items were destroyed on a particular date and location should be generated and filed in the Firearms Department. The names of the SLED personnel witnessing the destruction and their initials or signatures should be placed in the memo.

DOCUMENTATION:

Completed worksheets, inventories, etc. should be placed in the case file.

APPROVAL

Department Supervisor: Tracy D. Johnson Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.16.1/6
SUBJECT: Serial Number and Data Restoration	VERSION: 9.051810

PRINCIPLE:

Many serial numbers (or other identification data) are placed on an item by mechanical processes that compress the material surrounding the visible data. By using various etching reagents, a differential reaction between the compressed material and the surrounding material can occur. The contrast between the two areas can reveal the obliterated number or data. The success of this process is controlled by the degree and type of obliteration.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous latex gloves and other appropriate personal protection equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated, or suspected to be contaminated with body fluids.
2. Many of the solvents/cleaning products (i.e. Clorox, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
3. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
4. Many of the solvents/cleaning products used are respiratory irritants (i.e. Clorox, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate safety equipment (gloves, safety glasses, laboratory coats or aprons, etc.) when using etching reagents.
6. Use etching reagents only under the fume hood or in a well ventilated area.
7. **Many of the etching reagents can cause serious physical damage if splashed in the eyes or spilled on the skin. Immediately flush and/or wash contaminated areas with water. All effected clothing should be removed. Medical attention may be immediately required. For details on an individual chemical in a solution refer to the Material Safety Data Sheets (MSDS).**
8. **Many of the etching reagents can cause serious physical damage if the fumes are inhaled for prolonged periods or in concentration. If overexposure occurs, move to a fresh air source immediately. Medical attention may also be required. For details on individual chemicals in a**

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solution refer to the Material Safety Data Sheets (MSDS). Reagents, which contain strong acids or bases, must be used in an approved chemical fume hood or in a well ventilated area.

9. Always wear appropriate eye hazard safety equipment when working in the workshop or restoration room.
10. Wear appropriate hearing hazard safety equipment if workshop machinery or hand tools are to be used during restoration processes.
11. Be aware of the hazards involved with the use of hand and power tools.

SPECIMEN REQUIRED:

A firearm or related item with altered and/or obliterated serial number or data.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants and cleaning products
Patches and brushes
Cotton swabs
Latex gloves
Sandpaper
Steel wool
Disposable pipettes
Pipette bulb
Etching reagents/solutions

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Reference firearms
Dremel (or similar) rotary tool and polishing wheels
Fume hood
Moveable light source
Vise
Assorted general tools
Comparison microscope

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CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. **Verify that the firearm is unloaded.** Select the appropriate worksheet. If the specimen also requires a firearm and/or toolmark examination, complete those actions first. Restoration procedures are destructive and can cause alterations to the specimen.
2. Physically check the firearm for the presence of serological and/or trace evidence. (See introductory statement). If appropriate, it may be necessary to decontaminate specimens to eliminate or reduce the biohazard risk presented by the items examined.
3. Collect and record appropriate data on the worksheet, if not already done.
4. Examine the specimen and determine if there are any hidden numbers. For example, a firearm may have the serial number in other locations that may not have been obliterated. Record the hidden number or data, if present. If a hidden number or data is found, the chemical restoration process should still be conducted.
5. If the obliterated area is a thin metal plate or made of thin metal, carefully examine the back side. The original number or data may be seen on the back side (or successfully restored from the back side).
6. Examine the obliterated area very carefully. This examination should be performed under low magnification and by lighting the surface from different angles. It may be necessary to rotate either the light or the specimen to provide maximum lighting across the surface of the obliterated data. All markings noted at this stage should be recorded, indicating their relative position and size as well as their shape. Note also the method of obliteration, if it can be determined.
7. Remove any grease, paint and dirt from the obliterated area using suitable solvents, cleaning products, swabs, and soft brushes. Record any information that becomes visible.
8. Thoroughly polish the obliterated surface beginning with medium grit sandpaper or a medium grit abrasive wheel on a rotary tool. Proceed very slowly at first, stopping often to examine the area for visible data Often this step alone will make part or all of the data visible. Emery paper, polishing

rouge or other fine abrasives should be used to polish the surface to as near a mirror finish as possible. A hand-held rotary tool is useful for polishing. Care must be taken not to overheat the specimen. An occasional deep scratch or pit may be allowed to remain after polishing. This is advisable in cases where polishing to completely remove a defect would remove an excessive amount of metal upon which restoration depends.

9. The method used in this department for metal objects is chemical etching due to the ease with which it can be employed and controlled. Unusual obliterated materials and items (wood, plastic, bar-coded numbers) are also discussed below.

    a. Chemical etching: Applying a chemical etching reagent to the metal surface causes the compressed or faulted area to react at a different rate than the non-compressed area. The contrast between the compressed and normal areas allows the obliterated number or data to be seen.

    b. Unusual obliterated materials and items:

        i. Wood: When an indented marking is placed in wood and subsequently removed, it may be restored through the use of steam. The wood will swell causing the marking to reappear. Also, if markings are burned into wood with no indenting, careful visual examination of the smooth surface often with oblique lighting may allow the marks to be discernable. Further, previously marked wood that has been exposed to oils, solvents, etc., may allow the outlines of the removed data to be visible as a result of penetration of these liquids.

        ii. Plastic: Obliterated data previously impressed or stamped into plastic material may be restored by the heat generated during the polishing preparation phase or through the use of the heat from an incandescent light. Rotary tools and wheels should be avoided with plastics.

        iii. Bar-coded serial numbers are encountered occasionally. Normally these will be found on a thin metal plate along with a serial number. Usually the serial number has been obliterated, but the bar-coded portion remains. In such cases, the barcode may be read by using a bar-code scanner (normally Code 39). SLED Information Technology (IT) personnel can provide a scanner and assistance in its use. In some cases, the bar-code

may have to be photographed and an enlargement made so the scanner can read the bar-code.

10. Choose the etching reagent to be used based on the composition of the obliterated specimen. A list of available etching reagents, their formulas, and the recommended metal or metal alloy for which they should be used is located in Appendix C. Before applying the reagent to the obliterated area, you must verify the reliability of the reagent and its appropriateness for the material to which it is to be applied. The reliability and appropriateness of the reagent can be tested by applying a small amount on an area located near the obliteration and then observing the reaction. (The reagent should not be applied directly to the obliterated area until it has been verified.) If you do not get the expected reaction (i.e. bubbling, discoloration, etc.) from the appropriate reagent and you believe that it may be contaminated or unreliable, you should notify the department supervisor and/or team leader. You can test the next, stronger reagent to see if it may be used instead. The results of the reagent verification must be documented on the worksheet.

11. Apply the reagent using a cotton-tipped swab or disposable pipette with bulb. **Never use a mouth pipette!** Lightly agitate the area by moving the swab and reagent or by using the pipette's suction action to move the reagent. Be careful not to rub the surface. The weakest etching reagents should be used first. If, after repeated attempts, the weaker reagent fails to produce satisfactory results, then a more concentrated reagent should be applied. The time required for restoration may be a few seconds or many hours, depending upon the chemical reaction on the specimen. Occasionally, the etching reagent may have to be removed, wiped off, and reapplied. Improved clarity may be achieved by rinsing, drying, lightly rubbing or polishing, or by applying a light coat of oil to change the refractive nature of the obliterated surface. Never contaminate etching reagents by reintroducing used swabs or contaminated pipettes into the reagent container. Use new swabs or pipettes for each application.

12. Record the restored data immediately. The examiner should observe the restoration process very carefully, since numbers or data can reappear at any time and disappear very quickly by continued etching. As such, the examiner must be prepared to record restored numbers or data immediately. Oblique lighting will enhance viewing of restoration results. Magnification may also assist in viewing results. All obvious restored numbers or data should be noted. If the data is unclear, note the possibilities. It is advisable to have

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another qualified examiner standing by to verify the results. Photography may help in recording the data also.

13. At the conclusion of the examination, the treated specimen should be rinsed with plain water to remove the remaining reagent(s). Be careful not to damage any data that may have become visible. A coat of oil will help to prevent rust on ferrous metal specimens.

14. The following conclusions are generally reported:

    a. If totally restored, report all of the serial number or data.

    b. If partially restored, report the partial legible numbers or data. Possibilities for numbers or data may also be reported if they are ambiguous or unclear.

    c. If no information is restored, this should be reported.

15. All specimens examined or their proximal containers should be marked with appropriate identification data (examiners initials, item number, and case number). Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative or intrinsic value to change.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Nelle Powell Date: 5-21-10

Laboratory Director: C. Todd Hughey Date: 6-1-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
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DEPT: Firearms	SECTION: 7.1.15.1/5
SUBJECT: Physical or Fracture Comparisons	VERSION: 9.051810

PRINCIPLE:

Physical or fracture examinations are conducted to determine if two or more items were formerly a single unit.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
3. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
4. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate ear and eye hazard safety equipment if shop machinery or hand tools are to be used during examination processes.

SPECIMEN REQUIRED:

Two or more fractured specimens.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants and cleaning products
Nonporous gloves
Cotton swabs
Brushes
Casting material

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera

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Stereoscope
Comparison microscope
Assorted general tools

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. Select the appropriate worksheet to be completed. The worksheets are a guide or reminder of the data that should be recorded.
2. Physically check the specimens for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the specimens are contaminated or suspected to be contaminated with body fluids.
3. If trace material is noted, it may be appropriate to submit the specimen(s) for analysis by the Trace Department prior to proceeding with the physical or fracture comparison.
4. Collect and record all appropriate data.
5. Examine and compare the fractured or separated specimens. Because fracture or physical comparison cases vary extensively, specificity for any case is not practical. The following general suggestions will aid in determining the important aspects that should be considered during the examination process and for inclusion in notes.
    a. Visually inspect and manually align specimens without having the specimens contact each other.
    b. Realign the fractured ends noting the following:
        i. The rigidity of the specimens (soft versus hard substances)
        ii. Fracture edge distortion
        iii. The uniqueness or individuality of the fractured area
    c. Surface marking and coatings:
        i. Fracture line passes through manufacturing or other identification data placed on specimens
        ii. Realignment of machine or polishing marks

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iii. Realignment and comparison of accidental striated or impression markings at the fracture line of the specimens

iv. Realignment of a pattern, print design or color sequence at the fracture line

v. Realignment of surface coatings at the fracture line (paint, lacquer, etc.)

d. If appropriate, magnify the fractured area and its details noting the above.

e. Photograph the fractured specimens, if necessary, to aid in the reconstruction or comparison process or to supplement notes.

f. Casting materials can be used for some fracture matches when the examiner wants to look at two positives, two negatives or the specimen is too large for comparison. Although not always necessary, the examiner should be aware of this material's capability.

g. Special considerations: In some instances, portions of the fractured or separated areas may be missing. Examination and comparison of the following areas can establish common origin:

i. Grain patterns in wood.

ii. Reconstruction and/or measurement of surface patterns and separations through manufacturer letters, numerals or machine markings and their relationship to the actual cutting tool blade width.

iii. Reconstruction and/or measurements of surface patterns, separations through accidental markings and separations through letters, numerals and machine markings can establish common origin, particularly when compared to the actual width of a saw blade or other tool.

6. After completing the examination and comparison procedures, one or more of the following conclusions may be reported.

a. If sufficient agreement in the individual characteristics is found, a positive conclusion is reported, indicating that those two or more items were a single or integral unit at some time.

b. If sufficient disagreement is found in the class and/or individual characteristics, a negative conclusion is reported, indicating that those two or more items were not a single or integral unit at some time.

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c. If the characteristics are not sufficient to either identify or eliminate specimens, an inconclusive conclusion is reported.

d. If the quality of the characteristics is determined to be insufficient or unsuitable for a conclusion to be rendered, this will be reported.

7. If alteration of an evidence specimen is necessary, such as cutting a large cumbersome item to facilitate stereoscopic or microscopic examination, it should be accomplished with great care so as not to cause damage to the suspect fracture area. Ensure that the appropriate laboratory cut or separated areas are marked indicating such. This information should be included on the worksheet.

8. Occasionally fractured specimens contain some debris that may conceal their unique identifiable characteristics. In order to examine and compare these specimens properly, the debris will have to be removed. Using cleaning solutions and solvents, debris can be removed by a flushing operation, agitation with swabs or brushes and/or more severe processes. The chosen cleaning method should always start with the most gentle to the evidence and proceed to the more severe, if appropriate. The methods and solutions should always be evaluated prior to use to prevent damage or alteration to the unique characteristics of the evidence.

9. If appropriate, it may be necessary to decontaminate specimens to eliminate or reduce the biohazard risk presented by the items examined.

10. Fractured specimens, which are made of materials that may rust or corrode, should be coated with a preservative oil or grease after the conclusion of the examination. Note any such application on the worksheet.

11. All specimens examined or their proximal containers should be marked with appropriate identification data (examiner's initials, item number, and case number). Identification markings will never be placed on an evidence specimen in such a manner that will cause its individual probative or intrinsic value to change.

12. Verification of results of comparisons by another qualified examiner is a sound quality control mechanism and must be conducted whenever microscopic comparisons are made. Verification is required when a positive, negative, inconclusive, or unsuitable result is rendered. Verbal results or a report cannot be issued until verification is completed.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

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REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thrasher Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.14.1/3
SUBJECT: Toolmark Examination: Comparison Procedures	VERSION: 10.051810

PRINCIPLE:

The comparison of test specimens with evidence specimens is conducted to potentially identify or eliminate a specific tool's involvement in an incident. Evidence specimens may also be compared with other like evidence specimens to determine a common origin.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
3. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
4. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
5. Some toolmark specimens may be very sharp or jagged. Be aware of the crushing, pinching, and other types of injuries that may occur when handling tools. Extreme care should be taken when handling tools to prevent injury to the examiner.
6. Due to lead hazards, wash hands thoroughly after handling lead testing materials and tools that have been exposed to lead.

SPECIMEN REQUIRED:

Specimens bearing toolmarks

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Cleaning products
Cotton swabs
Cleaning brushes

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APPARATUS REQUIRED:

Engraver
Stereoscope
Comparison microscope

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

The procedures for the microscopic comparison of specimens are generally the same for firearm and toolmark cases. The examiner should follow the same basic techniques as dictated by sound forensic procedures outlined in established literature and reference material to facilitate the comparison. The following steps are a basic summation of important points:

1. Adopt a consistent procedure for handling and documenting comparison activities.
2. All evidence and test specimens should be marked, if possible, before microscopic comparison.
3. As a matter of convention, mount the evidence item on the left stage and test specimen on the right stage of the comparison microscope, unless inter-comparing evidence items or test specimens. Some examination may be conducted by using a stereo-microscope, which normally does not have multiple stages.
4. Illuminate the specimens using oblique lighting techniques to highlight the markings. Adjust the lighting appropriately.
5. Inter-compare test toolmarks to ensure consistency of the toolmarks.
6. Compare evidence with tests to determine if class characteristics are in agreement. If sufficient disagreement is found, a common origin is eliminated and a negative conclusion is reported. If the class characteristics are in agreement, proceed to paragraph 7, below.
7. Compare individual characteristics on evidence with tests.
    a. If sufficient agreement is found in the individual characteristics, an identification has been effected and a positive conclusion may be reported for those specimens. Be aware of the potential issues with sub-class characteristics.
    b. If sufficient agreement is not found in the individual characteristics, an elimination may have been effected, and a negative conclusion may be

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reported for those specimens. Be aware of potential problems associated with eliminations based on individual characteristics.

c. If the characteristics are not sufficient to either identify or eliminate a specimen, an inconclusive result may be reported.

d. If the quality of the characteristics is determined to be insufficient or unsuitable for a conclusion to be rendered, this will be reported.

8. Phase mark evidence and test specimens, if appropriate.

9. Identifications should be photographed to support laboratory notes. Photographs are supplemental to notes and are not intended for court purposes or to represent the total comparison effort. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence.

10. Verification of results of all comparisons by another qualified examiner is a sound quality control mechanism and must be conducted whenever microscopic comparisons are made. Verification is required when a positive, negative, inconclusive, or unsuitable result is rendered. Results cannot be reported and a report cannot be issued until verification is completed.

11. Record appropriate actions and conclusions on the worksheets.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: [signature] Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.13.1/4
SUBJECT: Toolmark Examination: Test Toolmarks	VERSION: 9.051810

PROCEDURE:

Test toolmarks are produced to provide known standards from a tool for comparison with suspect toolmarks.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
3. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
4. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate eye and hearing protection along with leather gloves, if appropriate, if shop machinery or hand tools are to be used during examinations. If you are not familiar with a particular tool and its use, read the instruction manual or consult an examiner with experience in the use of that tool.
6. Airborne lead fumes resulting from the use of the lead melting pot are a health hazard. Lead melting should only be accomplished in a properly ventilated area.
7. Melting pots (lead, wax, etc.) are severe burn hazards. Wear appropriate safety equipment when using.
8. Keep liquids away from operating melting pots. Introduction of liquids can cause a violent expulsion of the molten substance.
9. Be aware of the crushing, pinching, and other types of injuries that may occur when handling tools.
10. Due to lead hazards, wash hands thoroughly after handling test media and tools.

SPECIMEN REQUIRED:

A tool

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SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants and cleaning products
Brushes
Cotton swabs
Nonporous gloves
Casting material
Leather gloves
Test media (lead, copper, wax, etc)

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Bench vise
Assorted general tools
Comparison microscope

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. Normally you should have examined and documented any suspect toolmarks before making tests. This will give you some insight as to the type of tests needed.
2. For comparison purposes, test toolmarks must be made with a suspect tool.
3. Select the appropriate test material.
    a. Generally speaking, begin with a test material that is softer than the suspect tools working surfaces. Using test material that is harder than the tool may cause alterations to the characteristics of the working surfaces of the tool. Test materials harder than the tool should only be used as a last resort.
    b. Test material normally used include lead wire, sheet lead, wire solder, clay, wax, plastic, wood, various types of electrical wire, plastic tubing, copper, aluminum, and rubber. Special or uniquely shaped test material may have to be obtained or produced as dictated by the case.

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4. Index all appropriate working surfaces on the suspect tool in order to differentiate the areas that produce the test toolmarks. Typically, numerals or letters are used for this purpose. For example, an examiner may mark the jaws of a set of bolt cutters with "A", "B", "C", and "D" to indicate which jaw and working surface made the test toolmark.
5. Produce the test toolmarks. The production of test toolmarks is dictated by the type of tool used. Following are some suggested guidelines:
    a. Prying-type tools (i.e. screwdrivers, pry-bars, etc.)
        i. Place index marks on each side of the blade of the tool. Test toolmarks should be made in both a push and pull direction, unless the exact direction can be determined from examination of the evidence. Tests should be made with the tool at various angles to the test material, generally from a low angle to perpendicular. Multiple tests should be made.
    b. Opposed jaw tools (i.e. pliers, bolt cutters, pipe wrenches, etc.)
        i. Place the index marks on each jaw of the tool. Because these tools generally have a limited number of ways that they can be applied, one only needs to make sure the entire working surface from side to side or front to back is obtained. Open the jaws or working surfaces of the tool so that the test material will be contacted by all surfaces. Introduce the test material and close the jaws to make the cut or rotate the wrench so that the "teeth" leave a mark in the test material. Multiple tests should be made. Both flat and round test materials can be used in making these types of tests.
    c. Striking tools (i.e. hammers, etc.)
        i. Index marks can be placed on the tool, if needed. Test toolmarks can be made by striking the test material with the tool. Depending on the nature of the evidence toolmarks, you may have to create impressed and striated tests. Multiple tests should be made.
6. Ensure that the tests are properly index marked with the corresponding index marks from the tool.
7. You should document how the tests were produced (pressures, angles, direction of travel, sequence, etc.)
8. Examine the tests to ensure that the toolmarks are suitably represented.

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9. If casts of questioned toolmarks are submitted or used for comparison, casts of laboratory tests will also need to be made in order to obtain proper tests for subsequent comparison. Follow the steps outlined in the section on Suspect Tools and Toolmarks.
10. Should a tool be submitted that is nonfunctional, such as a pair of bolt cutters with a broken and/or missing jaw, you should try to obtain tests from the remaining working surfaces. Returning the instrument to an operational condition and/or alternate methods for obtaining tests are options to be considered for this purpose. Document your actions on the worksheets and/or with photography. Tools restored to a functional condition by the use of laboratory-supplied parts should be returned as closely as possible to their original condition after testing is completed.
11. Surfaces that may rust or corrode should be coated with preservative oil or grease after the conclusion of testing.
12. All test toolmarks will be properly marked and their proximal containers marked with the examiner's initials, the item number tested, the laboratory case number, and that the contents are "tests". Markings will never be placed on an evidence specimen in such a manner that will cause its probative and/or intrinsic value to change.
13. Test toolmarks should be retained in the laboratory for future reference; however, if submitted evidence is used for tests, it should be returned to the contributor.
14. Record all pertinent information and actions on appropriate worksheets.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thomas Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.12.1/5
SUBJECT: Toolmark Examination: Suspect Tools and Toolmarks	VERSION: 9.051810

PROCEDURE:

Examinations of suspect tools and toolmarks are conducted to collect and provide identification data concerning the items. Through physical and microscopic techniques, mere item identification, suitability for comparison to a specific tool, or identification with a specific tool may be provided.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
3. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
4. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol, sprays, etc.) and can cause nausea. Use only in well ventilated areas.
5. Wear appropriate eye and hearing protection along with leather gloves, if appropriate, if shop machinery or hand tools are to be used. If you are not familiar with a particular tool and its use, read the instruction manual or consult an examiner with experience in the use of that tool.
6. Airborne lead fumes resulting from the use of the lead melting pot are a health hazard. Lead melting should only be accomplished in a properly ventilated area.
7. Melting pots (lead, wax, etc.) are severe burn hazards. Wear appropriate safety equipment when using.
8. Keep liquids away from operating melting pots. Introduction of liquids can cause a violent expulsion of the molten substance.
9. Some toolmark evidence specimens may be very sharp or jagged. Extreme care should be taken when handling to prevent injury to the examiner. Be aware of cutting, pinching, and crushing hazards when working with tools.

SPECIMEN REQUIRED:

A tool and/or a specimen containing a possible tool marked area.

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SUBJECT: Toolmark Examination: Suspect Tools and Toolmarks	VERSION: 9.051810

SUPPLIES REQUIRED:

Evidence container
Evidence tape
Lubricants and cleaning products
Brushes
Cotton swabs
Nonporous gloves
Test material/media
Casting material
Modeling clay

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Vise
Assorted general tools
Comparison microscope

CALIBRATION REQUIREMENTS:

Air flow for the department is maintained by the building engineer.

PROCEDURE:

1. Select the appropriate worksheet to be completed. The worksheets are a guide or reminder of the data that should be recorded.
2. Physically check the tool and/or toolmarked surface for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the specimen is contaminated, or suspected to be contaminated with body fluids. If traces of paint, metal, etc. are noted on the tool, it may be appropriate to submit the tool and the toolmarked item to the Trace Department for analysis before the toolmark examination proceeds.
3. Record the appropriate data. Because toolmark cases vary extensively, specificity for any case is not practical. Although general in nature, the following suggestions will aid in determining pertinent information that should be considered for

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inclusion in notes. The notes can be supplemented with sketches and scaled photographs.

a. Describe the tool and/or specimen bearing toolmarks. Dimensions of the specimens should be determined and recorded.

b. Describe the class characteristics of the tool and/or toolmarked specimen, if appropriate.

c. Note the correspondence of class characteristics between the suspect tool and toolmark, if any.

d. Note any limitations in the case under consideration which could be used to potentially eliminate the tool, such as:

   i. Physical limitations of the crime scene

   ii. Orientation of the tool with the toolmarked area

   iii. Clear lack of use of the tool

e. The degree of individuality of the working surface of the tool through determinations of manufacturing processes and/or presence of wear or recent damage.

f. Toolmarks left by manufacturing processes may be found on many types of evidence. The examiner should be aware of these marks and:

   i. The need to differentiate these toolmarks from evidence toolmarks produced at a later time

   ii. The potential use of the toolmark to associate items

   iii. The need to carefully evaluate the significance of these toolmarks due to the possibility that these marks may persist over a large number of items (class versus sub-class versus individual characteristics)

4. Casting: If an item is too large for easy manipulation or it is inappropriate to damage the specimen to facilitate examination, a cast can be made of the toolmark(s) on such an item using suitable casting media. Please note that it will also be necessary to cast the test toolmarks to facilitate comparison. The casting procedure is performed in the following manner:

   a. Mix the casting media or prepare the tube and applicator per manufacturer's instructions.

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b. Using a tongue depressor, carefully apply the casting material onto the toolmark(s) to cover completely. If using casting material that uses a tube and applicator "gun", apply the material onto the toolmark(s) being careful not to damage the toolmarks. Spread the casting material with a tongue depressor and allow the casting material to harden.

c. Generally, the silicone-type casting media is difficult to write on with a pen or marker, so information may be scribed into the surface to be cast so that it may be included as part of the specimen when the cast is removed. Care should be taken not to scribe into the toolmark itself. Certain types of coated paper will adhere to some of the casting materials used. A piece of this paper can be pressed on the wet casting material and will provide an area to record data about the cast. The manufacturer's instructions may provide useful information regarding the use of such paper.

d. Gently lift the cast from the toolmark(s).

5. If alteration of an evidence specimen is necessary, such as cutting a large cumbersome item to facilitate stereoscopic or microscopic examination, it should be accomplished with great care so as not to cause damage to the suspect toolmarked area. Ensure that the areas altered by the examiner are clearly marked. This information should be included on the worksheet. Photographing the specimen before and after such will be helpful in documenting the actions taken.

6. In some cases it may be necessary to remove some debris or clean a tool or toolmark to accommodate examination. Cleaning may be conducted after any serological and/or trace evidence is collected. Using non-destructive cleaning solutions or solvents, cleaning should be done first with a flushing or rinsing operation. If necessary, proceed to the use of cotton swabs or brushes with the solvents, and end with more severe processes if required. **NOTE:** The above procedures should not be conducted until it is determined through microscopic examination to be absolutely necessary. Tool and toolmark characteristics can change if cleaning is attempted prematurely or too aggressively.

7. If appropriate, it may be necessary to decontaminate specimens to eliminate or reduce the biohazard risk presented by the items examined.

8. Tools and toolmarks on substrates that may rust should be coated with preservative oil or grease after the examination is completed. Remember that rust may form rapidly on ferrous metal items, especially if the item has been cleaned and de-greased.

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9. All tools and toolmarked items should be marked with appropriate identification data, (examiners initials, item number, and case number) in a place and manner as to not destroy its probative and/or intrinsic value.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Joseph T Thomas Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.11.1/3
SUBJECT: Firearms Examination: Bio-hazardous Evidence	VERSION: 4.051810

PRINCIPLE:

Items received for examination by Firearm's Department personnel are frequently contaminated with various body fluids or tissue and must be decontaminated prior to further handling.

SPECIAL HANDLING, HEALTH AND SAFETY PRECAUTIONS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
3. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
4. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
5. Areas used for the examination of specimens bearing bio-hazardous or suspected bio-hazardous materials should be thoroughly cleaned with 1:10 bleach and water solution (made fresh daily), disinfectants, isopropyl alcohol, or other suitable cleaner after the examination is complete.

SPECIMEN(S) REQUIRED:

Any specimen contaminated or suspected of being contaminated with blood, body fluids, or tissue.

SUPPLIES REQUIRED:

Plastic or glass containers
Evidence markers
Disinfectants
Bleach and water solution
Isopropyl alcohol
Nonporous gloves
Eye protection
Apron or lab coat
Cotton tipped swabs

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SUBJECT: Firearms Examination: Bio-hazardous Evidence	VERSION: 4.051810

APPARATUS REQUIRED:

Comparison microscope
Stereoscope
Magnifier

PROCEDURE:

1. Wear appropriate personal protective equipment.
2. If the serological/trace evidence does not need to be removed for analysis, apply the cleaning or disinfecting solutions to decontaminate the item. Aerosol type cleaning or disinfectants are more suitable for large items. Soaking in the bleach and water solution or in isopropyl alcohol is recommended for smaller items such as bullets, pellets, wads, etc.
3. Allow items to soak approximately 10 minutes.
    a. Bullets or pellets should not soak in the bleach and water solution over 10 minutes. Etching of the bearing surface or other damage could occur if allowed to soak too long. **Bullets with aluminum bullet jackets, lead bullets and/or cores, and copper-washed specimens can suffer damage from exposure to the bleach and water solution.**
    b. Firearms, tools, and larger items may be sprayed with an aerosol type product or wiped with the bleach and water solution depending on the degree of contamination. Hot soapy water can be used to help remove blood, tissue, etc.
4. Remove the item from solution, rinse with water, wipe dry or carefully use compressed air to remove remaining water. Be aware of the hazards involved when using compressed air. Any paper towels, swabs, wipes, or other disposable materials that may be contaminated, should be placed in the appropriate container for disposal.
5. Firearms or tools should be lightly oiled to prevent rusting or corrosion.
6. If items are saturated with blood, it is recommended that they be examined and decontaminated in the dirty workroom sink area in the Firearms Department, the large sink in Room 270, or under one of the biohazard hoods located in some of the other laboratory departments (after prior approval by a representative of that department).
7. Air-dried, bloody clothing should be examined in the Trace processing area, if possible. (The paper covering the tables in this area should be removed and the

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area disinfected after the examination. Dispose the paper and wipes in the appropriate container.

DOCUMENTATION REQUIRED:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: _____ Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.10.1/5
SUBJECT: Firearms Examination: Distance Determination	VERSION: 9.051810

PRINCIPLE:

Through the examination, duplication, and evaluation of shot (pellet) patterns on submitted evidence or on proper photographic representations, a conclusion concerning the approximate firearm muzzle-to-target distance involved in a shooting incident may be reached.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. **Check the firearm to verify whether it is or is not loaded. A firearm that is to be test fired should not be loaded until test firing is imminent.**
2. All firearms received will be checked for operational condition. Make sure that the bore(s) is not obstructed.
3. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
4. Wear appropriate eye and hearing protection.
5. Use appropriate remote firing devices if the firearm is determined to be dangerous if fired manually.
6. The firing of some ammunition (i.e. reloaded, proof, exploding, tracer, incendiary, etc.) may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging any ammunition and/or alternate safety methods used.
7. Airborne lead residues resulting from test firing is a health hazard. Test firing should only be conducted in a properly ventilated area.
8. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.
9. When firing test patterns, the shooter is in close proximity to the backstop in the range ("tunnel"). Extreme caution should be exercised. **Projectiles can bounce back or be projected back toward the shooter or other personnel in the area. Approved eye protection is required.**

SPECIMEN REQUIRED:

A firearm that was used to produce the suspect pattern and submitted ammunition of the same brand, gauge/caliber, loading, and type as used to produce the suspect pattern, and a suspect shot (pellet) pattern. This suspect pattern may be on an item of evidence, or accurate, scaled, photographic representations may be examined.

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SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Tape, tacks
Cloth, blotter paper, or other suitable target media
Heavy duty clamps

APPARATUS REQUIRED:

Nonporous gloves
Stereoscope
Camera
Reference firearm standards
Reference ammunition standards
Remote firing mechanisms
Assorted armorer and general tools
Measuring tape, ruler, or yard stick.

CALIBRATION REQUIREMENTS:

Air flow for the bullet recovery room and range is maintained by the building engineer.
Air flow in the bullet recovery tank is monitored by DHEC.

PROCEDURE:

1. A basic requirement for conducting distance determination examinations involves duplicating the conditions under which the suspect pattern was produced as closely as possible. For best results, a copy of the autopsy report (if applicable), the specimen bearing the suspect pattern or scale photos of the pattern, the exact ammunition used, and the firearm used are required. Any deviations from the use of the actual case firearm or ammunition when conducting distance determination tests should be avoided. Due to variables in ammunition such as age, storage conditions, type and amount of powder, differences in wads, etc., the SLED Firearms Department normally will not render a conclusion regarding distance determinations unless sufficient quantities of ammunition of the exact brand, gauge/caliber, type, etc. are provided by the submitter for testing (evidence ammunition recovered in relation to the suspect or crime scene). In the absence of the proper submitted ammunition, test patterns may be fired using similar ammunition; however, these patterns will be provided to the contributor for possible use by the attending pathologist and/or physician.
2. Distance determination testing by this department involves the analysis of shot (pellet) patterns.

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3. The following steps should be followed, as appropriate:
   a. Examinations for all other submitted evidence specimens should be completed prior to distance testing.
   b. Select an appropriate worksheet to be completed regarding the suspect shot pattern.
   c. Physically check the specimen for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the specimen is contaminated, or suspected to be contaminated with body fluids.
   d. In many cases the specimen will have been examined by the Trace or Evidence Processing Department, and trace evidence may have been collected. Try to determine whether a visible gunpowder pattern is present. If so, contact the Trace Department to determine whether analysis of the gunpowder pattern is required.
   e. Describe the specimen and pattern, recording appropriate data on the worksheet.
   f. Determine whether a distinct, measurable, shot (pellet) pattern is present and measure its dimensions. Care should be exercised when accomplishing this task due to various pitfalls and anomalies that can occur, such as:
      i. Elongated patterns caused by angled discharges
      ii. Disturbed patterns caused by intervening objects
      iii. Partial patterns
      iv. Poor quality or non-scaled photographs of a pattern
   g. Reconstruction of the pattern may have to be accomplished using more than one evidence article or two areas of the same article.
   h. Patterns may be examined both physically and microscopically, if appropriate.
   i. Photographing the pattern, with a scale included, is an excellent way to document the pattern. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence.

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j. Using the submitted evidence firearm and submitted ammunition of the same gauge/caliber, brand, loading, and type as used to produce the suspect pattern, test patterns may be made in the following manner:

   i. Attach a piece of suitable target media to the target holding device.

   ii. Shoot test shots at various distances into the test material using a separate piece of target media for each shot (marking each with the appropriate distance). Testing should be continued until two patterns are established: one that is obviously smaller and a second pattern that is obviously larger than the pattern noted on the evidence. Once the estimated distance is determined, several additional shots may be fired to verify consistency of the test patterns at each range.

k. The following are conclusions that may be reported concerning shot (pellet) pattern distance determination:

   i. If a distinct, measurable, shot (pellet) pattern is present on the evidence item, or in scale photographic representations, the examiner may report that the suspect firearm was capable of producing a test pattern of the same approximate size as the suspect pattern at a range of X to Y (feet, yards), using the ammunition submitted.

   ii. If a distinct, measurable, shot (pellet) pattern is not present, this will be reported and a distance determination cannot be provided.

   iii. If a distance determination examination could not be performed due to the lack of the correct suspect firearm, the inability to determine the gauge/caliber, brand, loading, and type of ammunition used to produce the suspect pattern, the lack of submitted ammunition, or any other contributing factors, this should be reported.

   iv. If test patterns are fired for evaluation by a forensic pathologist or other non-SLED personnel using laboratory ammunition, this should be reported and clearly marked on the test patterns that non-submitted ammunition was used to produce these patterns. The report should indicate that differences in ammunition can have varying effects on shot (pellet) patterns.

l. All evidence articles and test patterns should be marked with appropriate identification data (i.e. examiner's initials, item number, case number, distance). Identification markings will never be placed on an evidence

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specimen in such a manner that will cause its individual probative or intrinsic value to change.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy D. Thomas Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.9.1/3
SUBJECT: Firearms Examination: Comparison Procedures	VERSION: 10.051810

PRINCIPLE:

The comparison of test specimens with evidence specimens is conducted to potentially identify or eliminate a specific firearms involvement in an incident. Evidence specimens may also be compared with other like evidence specimens to determine a common origin.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
2. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
3. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol, sprays, etc.) and can cause nausea. Use only in well ventilated areas.
4. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.

SPECIMEN REQUIRED:

Test specimens and/or evidence specimens (bullets, cartridge cases, etc.)

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Cleaning products
Cotton swabs
Cleaning brushes

APPARATUS REQUIRED:

Engraver
Stereoscope
Comparison microscope
Small pliers
Magnifiers

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CALIBRATION REQUIREMENTS:

The comparison microscopes should be calibrated monthly. (See Appendix H)

PROCEDURE:

The procedures for the microscopic comparison of specimens are essentially the same for both firearm and toolmark cases. The examiner should follow the same basic techniques as dictated by sound forensic procedures outlined in established literature, reference material, and training in order to facilitate the comparison. The following steps are a basic summation of important points:

1. Adopt a consistent procedure for the handling and documenting of comparison activities.
2. All evidence and test specimens should be marked before microscopic comparison is begun unless marking is impractical or destructive.
3. As a matter of convention, mount the evidence specimen on the left stage and the test specimen on the right stage of the microscope, unless inter-comparing evidence items or test specimens.
4. Illuminate the specimens using oblique lighting techniques to highlight the markings. Adjust as appropriate.
5. Compare test specimens with each other to determine behavioral characteristics, individual characteristics, and the consistency of the markings on the specimens. If in the opinion of the examiner, additional test specimens are needed, obtain these specimens using the appropriate procedures.
6. Compare the evidence specimens to determine if class characteristics are in agreement. If sufficient disagreement is found, an elimination results. Minor differences in land and groove widths do not by themselves constitute an elimination based on class characteristics. If the class characteristics are in agreement, proceed to paragraph 7, below.
7. Compare the individual characteristics on the specimens.
    a. If sufficient agreement is found in the individual characteristics, an identification has been effected and a positive conclusion may be reported for those specimens. Be aware of the potential issues with sub-class characteristics.
    b. If sufficient agreement is not found in the individual characteristics, an elimination may have been effected, and a negative conclusion may be

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reported for those specimens. Be aware of potential problems associated with eliminations based on individual characteristics.

c. If the individual characteristics are not sufficient to either identify or eliminate a specimen, an inconclusive result may be reported. Inconclusive results generally occur due to damaged specimens, poorly marked specimens, or inconsistently marked specimens.

d. If the specimen is damaged and/or poorly marked, and lacks markings useable for identification purposes, it may be reported as being unsuitable for identification.

8. Phase-mark specimens, if appropriate.

9. Representative positive comparisons should be photographed to supplement notes, sketches, etc. Photographs are merely used for documentation and not for court display purposes or to represent the total comparison effort. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence.

10. The results of microscopic comparisons must be verified by another qualified firearms examiner, before results or a report can be issued.

11. Occasionally tests specimens will bear some debris (i.e. sealant, carbonaceous matter, etc.) that may conceal identifiable characteristics. The careful use of cotton swabs, fine nylon brushes, or animal hair brushes saturated with acetone, isopropyl alcohol, saline, water, or mild cleaning agents may remove this material sufficiently to facilitate microscopic comparisons.

12. Record your actions and conclusions on the appropriate worksheets.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Troy J. Brown Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.8.1/7
SUBJECT: Firearms Examination: Test Firing and Component Recovery	VERSION: 10.051810

PRINCIPLE:

Test firing and the subsequent recovery of fired components is conducted to determine functional capabilities, as well as provide known fired test specimens for comparison purposes. The duplication of pertinent conditions of a shooting incident in a controlled environment can also be attempted.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. **Check the firearm to verify whether it is loaded. A firearm that is to be test fired should not be loaded until test firing is imminent.**
2. All firearms received will be checked prior to test firing to determine their functional condition and for bore obstructions.
3. Physically check the firearm for the presence of serological and/or trace material. (See introductory statement). Wear nonporous latex gloves and other appropriate personal protection equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated, or suspected to be contaminated with body fluids.
4. Many of the solvents/cleaning products (i.e. Clorox, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
5. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
6. Many of the solvents/cleaning products used are respiratory irritants (i.e. Clorox, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
7. Wear appropriate safety equipment if primed cases or cartridges are to be discharged during testing. A lab coat or apron, approved safety glasses, and hearing protectors are required.
8. Use appropriate remote firing devices if a firearm is determined to be dangerous if fired manually.
9. Disassembly and/or the firing of some ammunition (i.e. reloaded, proof, exploding, tracer, incendiary or other unique cartridges) may prove hazardous if discharged in the normal manner. Exacting identification procedures and/or alternate safety methods must be employed prior to discharging and/or disassembling such cartridges.

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10. Gunpowder burns violently when ignited. Do not disassemble ammunition or conduct reloading operations around an open flame.
11. Primers can detonate if exposed to heat, flame, or shock. Do not expose primers to heat or flame and handle carefully to prevent crushing or improper impacts. Safety glasses should be worn.
12. Airborne lead residues resulting from test firing are a health hazard. Test firing should only be conducted in a properly ventilated area.
13. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.
14. The "two person rule" must be followed when the range ("tunnel") is used. Either two people must be present when firing in the tunnel or a second person must be notified that someone is firing in the tunnel alone. The second person should check on the welfare of the person using the tunnel, if they have been absent for an appreciable length of time. Personnel using the tunnel should also indicate such on the sign-out board in the Firearms Department. SLED personnel (other than Firearm and Trace Department personnel), who wish to use the tunnel, must sign-out the key in the Firearm's Department. The "two person rule" must be adhered to also. Personnel who are not familiar with the proper handling of firearms should not be allowed to use the tunnel alone.

SPECIMEN REQUIRED:

A firearm and ammunition

SUPPLIES REQUIRED:

Evidence containers and tape
Reference ammunition
Lubricants and cleaning products
Patches and brushes
Cotton swabs
Latex gloves

APPARATUS REQUIRED:

Engraver
Stereoscope
Reference firearm and ammunition standards
Reloading equipment
Bullet recovery tank
Cotton box
Cleaning equipment
Assorted armorer and general tools

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Remote firing mechanisms
Comparison microscope

CALIBRATION REQUIREMENTS:

Air flow for the bullet recovery room and range is maintained by the building engineer. Air flow for the bullet recovery tank is monitored by DHEC.

PROCEDURE:

1. **General:**

   a. A firearm worksheet should have the condition of the bore, condition of the chamber(s), safety positions, etc. documented by this point. The bore(s) must be free of obstructions prior to any test firing.

   b. Select correct ammunition for test firing.

   c. Firearms should be loaded only in the bullet recovery room and not until the examiner is ready to test fire.

   d. Observe all firearm safety rules at all times.

   e. Appropriate safety equipment must always be worn during test firing. A lab coat or apron, approved safety glasses, and muff-type hearing protectors are required. In addition, ear plugs are recommended. Be aware of the injury potential from residues emitted from the barrel-cylinder gap of revolvers. A face shield or gloves may be worn while firing for added protection. When using the firing range or "tunnel", be aware of the potential for projectiles to be projected back toward the shooter. All personnel in the "tunnel" must wear appropriate personal protection equipment during test firing. Be aware of the hazards caused by airborne and particulate lead.

   f. Unsafe firearms may be placed in a shooting vise or remote firing fixture.

   g. A minimum of two test cartridges should be fired to obtain test specimens.

   h. If a "misfire" occurs, the muzzle should remain pointed into the recovery tank for a minimum of 30 seconds before further action is taken. The firearm should then be carefully unloaded. Be aware of hang-fires or delayed firing.

   i. The exhaust system should be turned on before and should remain on for at least 30 seconds after firing to clear the air of residues.

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2. Bullet Recovery Tank:

a. Inspect the water level in the bullet recovery tank. The surface of the water should be approximately 3 to 4 feet from the top of tank. Turn on the circulating pump for the water. The switch is located near the door to the recovery room.

b. Close the lid on the recovery tank and close the door to the recovery room. Make sure that the exhaust system is functioning and your personal protection equipment is in place.

c. Place the muzzle of the loaded firearm into the opening in the lid of the recovery tank. Depending on the barrel length, the entire barrel may be in the opening of the tank. Position the firearm so that ejected cartridge cases can be trapped by the bag used for that purpose. Try to keep the barrel of the firearm parallel with the long axis of the tank. Discharge the firearm into the tank. Be aware of the possibility of water being projected into the bore of certain firearms. You may have to shake the water out of the bore after each shot.

d. After test firing is complete, secure the firearm, turn off the circulating pump, and carefully open the lid to the tank.

e. The fired projectile specimens can be retrieved using the cup and chain attached to the tank.

f. Retrieve all the fired cartridge cases. If a test cartridge case specimen is not recovered, a note should be placed near the recovery tank indicating such.

g. The exhaust system may be turned off and the area cleared of items that may have been used during testing.

3. Cotton Recovery Box:

a. Open the top lids to the box and verify the presence of cotton and the paper spacers.

b. The cotton in the box should be divided using undamaged sheets of paper.

c. The top lids on the box will be closed and secured prior to firing. Position the cotton box so the mouth is accessible and the long axis of the box is aligned with the "tunnel" and the sand-filled backstop. Make sure that the exhaust system is functioning. The switches are located near the entrance to the "tunnel" (range).

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d. Make sure that the lid to the mouth of the box is open. Point the firearm toward the mouth of the cotton box, making sure that the centerline of the bore is parallel to the long axis of the box. Do not place the muzzle of the firearm into the mouth of the box! Discharge the firearm into the box. Normally, one shot will be fired at a time.

e. Inspect the cotton near the mouth of the box to insure no smoldering fires were started in the box.

f. After firing, locate the projectile in the box by looking for holes in the paper spacers. This will indicate the approximate location of the projectile. Follow the projectile path with your hand to locate the projectile. Remove all cotton or other debris from the projectile.

g. Repack the box and replace all damaged paper spacers.

h. Repeat as needed.

i. Recover the fired cartridge cases.

j. Clear the area of items used during test firing.

k. Reposition the cotton box in the tunnel and turn off the exhaust system when exiting.

4. **Usage:** The use of the bullet recovery tank and cotton box applies primarily to handguns and rifles. When test firing shotguns, the firing range or "tunnel" will normally be used. In such instances, the shotgun will be fired into the sand-filled backstop. **Be aware of the possibility of projectiles bouncing back toward the shooter, especially when using birdshot.**

5. **Unusual circumstances:**

a. Some large caliber handguns and rifles may have to have their powder charge reduced or changed to prevent the bullet from traveling the entire length of the cotton box or fragmenting in the water. The following procedures should be followed:

i. Pull the projectile from the cartridge using a bullet puller.

ii. Collect and weigh the gunpowder.

iii. Remove no more than 20% of the powder charge and place the remainder back into the cartridge case. **WARNING:** Reducing the powder charge in cartridges loaded with slow burning powder can result in cartridge case detonation. If it is necessary to reduce the velocity of a cartridge loaded with a slow burning

propellant, discard all the powder and reload the cartridge with a suitable powder with a faster burning rate.

iv. **Make sure that you consult reliable loading manuals when replacing powders.**

v. Reseat the projectile in the casing by tapping gently with a hammer or by using the reloading press. Compare the overall length with a factory round for proper seating depth.

vi. Record your actions on the worksheet.

vii. Follow the procedures outlined for test firing and component recovery.

viii. Be aware of the potential identification problems when using down-loaded ammunition. In some cases, bullets and cartridge cases from down-loaded ammunition will not be as well marked as "full power" ammunition.

6. All test specimens should be marked with examiner's initials, "Test" or "T", the item number followed by a letter to individualize each test specimen (Ex: "7A", "7B", "7C", etc.), and the case number, if room allows. The case number may be omitted, if there is insufficient space. The proximal container should be marked with the case number, item number, examiners initials, make, model, serial number, caliber, and "Test".

7. Markings will never be placed on a specimen in such a manner that will cause its individual probative value to change.

8. Test specimens may be retained in the laboratory for future reference. They will not be treated as evidence if laboratory ammunition is used to create the test specimens. If submitted ammunition is used for test firing, the recovered components are evidence and should be returned to the contributor if possible.

9. Firearms that are chambered in IBIS calibers should also be test fired using IBIS test ammunition. These IBIS test specimens will be submitted for IBIS entry.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

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DEPT: Firearms	SECTION: 7.1.8.7/7
SUBJECT: Firearms Examination: Test Firing and Component Recovery	VERSION: 10.051810

APPROVAL

Department Supervisor: Vello Paavel Date: 5-21-10

Laboratory Director: C. Todd Hughey Date: 6-1-10

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DEPT: Firearms	SECTION: 7.1.7.1/4
SUBJECT: Firearms Examination: Shotshells, Projectiles, and Wads	VERSION: 10.051810

PRINCIPLE:

Examinations of fired and unfired shotshells, projectiles (pellets and slugs), and wads are conducted to provide identification data. Through physical and microscopic examination techniques, mere item identification, suitability for identification with a specific firearm, and probable firearms from which a specimen was fired can be provided.

SPECIAL HANDLING, HEALTH & SAFETY REQUIREMENTS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Wear appropriate safety equipment if shotshells or primers are to be fired. A lab coat or apron, approved safety glasses, and approved hearing protection are required.
3. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
4. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
5. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
6. Gunpowder burns violently when ignited. Do not disassemble any cartridges or shotshells around an open flame.
7. Disassembly and/or the firing of some ammunition (i.e. reloaded, proof, exploding, tracer, incendiary or other unique cartridges) may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging cartridges and/or alternate safety methods used.
8. Airborne lead residues resulting from test firing are a health hazard. Test firing should only be conducted in a properly ventilated area.
9. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.

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SPECIMEN REQUIRED:

A shotshell or any shotshell component.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Nonporous gloves
Cleaning products
Brushes

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Ammunition standards
Reloading equipment
Electronic balance
Assorted armorer and general tools
Comparison microscope

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. Select the appropriate worksheet(s) to be completed. The worksheet(s) are self explanatory and serve as guides or reminders of information desired.
2. Physically check specimens for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the specimen is contaminated, or suspected to be contaminated with body fluids.
3. Photography may also be used to aid in documentation. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence. Data such as weight, type, diameter, gauge, manufacturer, breechface marks, location and presence of extractor and ejector marks, firing pin shape, etc., are examples of information desired. Any markings present on the submitted evidence caused by

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firing or cycling through a firearm should be evaluated as to the suitability for microscopic identification purposes.

4. The air gap technique should be used to measure the dimensions of any land and grooves impressions found on a projectile. (See Appendix D).

5. When examining shotshells, particular care should be exercised when determining if the shotshell is "factory" produced or a reload, modified, or specialty cartridge (i.e. proof, exploding, tracer, incendiary, etc.). Ammunition of this type may dictate alternate methods of examination due to their nature and associated hazards.

6. Pellets, slugs and wads may appear to be clean when received; however, if they have passed through a body or their exact history is not known, the specimens should be soaked and/or cleaned in a 1:10 bleach and water solution (made fresh daily) for a minimum of 10 minutes to eliminate or significantly reduce biological hazards from body fluids. Isopropyl alcohol can also be used. Rinse thoroughly after decontaminating actions are complete.

    a. **Bleach should not be used as a decontaminating agent for aluminum items or copper-washed projectiles as surface destruction can occur.**

    b. **Bleach should also not be used on lead projectiles as surface destruction or discoloration can occur.**

7. Sometimes debris conceals the identifiable characteristics on the specimens. In order to examine this evidence properly, the debris must be removed. The debris may be in the form of blood, tissue, plaster, sand, fibers, paint, etc. The following is designed to aid the examiner in removing this debris.

    a. Follow the steps outlined in paragraphs 2 and 6 first.

    b. Attempt to remove any remaining material with water, saline, alcohol, acetone or other cleansing agent by rinsing.

    c. Should rinsing not produce the desired results, cotton swabs and fine brushes can be used with the above solutions to assist in loosening the debris. Care should be exercised to prevent damage to the evidence.

    d. If necessary, extended soaking (hours or overnight) may loosen difficult debris. Saline or water is recommended for extended periods. Bleach should never be used for extended periods because damage can result. Rinse when completed.

8. The recorded data and/or the specimen are then generally compared with standard ammunition components or with reference material. Microscopic examination and

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comparison may be conducted also. The following information can be determined by these examinations:

a. The type(s) of firearm(s) for which designed.

b. The possibility of discharge by a submitted firearm if not specifically designed for use in the submitted firearm(s).

c. Determination of the number of firearms possibly involved.

d. Generation of a list of firearms that may have fired a specimen, if a firearm is not submitted and/or identified with that specimen.

e. Suitability for subsequent microscopic identification with a specific firearm.

f. The possibility of comparison of other markings present that are not associated with firing (i.e. handling, reloading, manufacturing, etc.).

9. All specimens examined should be marked with appropriate identification data (i.e. examiner's initials, item number, case number), if possible, in a place and manner as to not destroy its probative value. A large quantity of unfired ammunition, which does not require microscopic examination, does not require individual marking. The proximal container can be marked and sealed.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thrower Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.6.1/5
SUBJECT: Firearms Examination: Bullets, Cartridge Cases, and Cartridges	VERSION: 9.051810

PRINCIPLE:

Examinations of bullets, cartridge cases, and cartridges are conducted to provide data for identification purposes. Through physical and microscopic examination techniques, mere item identification, suitability for identification with a specific firearm, and probable firearms that may have fired a specimen can be provided.

SPECIAL HANDLING, HEALTH & SAFETY REQUIREMENTS:

1. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if any specimen is contaminated or suspected to be contaminated with body fluids.
2. Wear appropriate safety equipment if cartridges or components are to be fired. A lab coat or apron, approved safety glasses, and approved hearing protection are required.
3. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
4. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
5. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol, sprays, etc.) and can cause nausea. Use only in well ventilated areas.
6. Gunpowder burns violently when ignited. Do not disassemble any cartridges around an open flame.
7. Disassembly and/or the firing of some ammunition (i.e. reloaded, proof, exploding, tracer, incendiary or other unique cartridges) may prove hazardous if discharged in the normal manner. Exacting identification procedures must be employed prior to discharging cartridges and/or alternate safety methods used.
8. Airborne lead residues resulting from test firing are a health hazard. Test firing should only be accomplished in a properly ventilated area.
9. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.

SPECIMEN REQUIRED:

A bullet, cartridge case, or cartridge.

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SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Nonporous gloves
Cleaning products
Cleaning solutions/solvents
Brushes
Cotton swabs

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Ammunition standards
Reloading equipment
Electronic balance (capable of weighing in grains)
Assorted armorer and general tools
Comparison microscope
Safety equipment (as dictated by case)

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. Select the appropriate worksheet(s) to be completed. The worksheet(s) are self-explanatory and serve as guides or reminders of information desired.
2. Physically check the bullets, cartridge cases and/or cartridges for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the specimen is contaminated, or suspected to be contaminated with body fluids.
3. Record the appropriate data on the worksheet(s). Data such as bullet weight (in grains, with 7000 grains per pound), type, diameter, land and groove impression widths, number of lands and grooves, manufacturer, breechface marks, location and presence of extractor and ejector marks, firing pin shape, etc., are examples of

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information desired. Photography may also be used to aid in documentation. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence. Any markings present on the specimens caused as a result of firing by or cycling through a firearm should be evaluated as to whether the markings are suitable for microscopic identification purposes.

4. The air gap technique should be utilized to obtain measurements of land and groove impressions. (See Appendix D)

5. When examining cartridges, particular care should be exercised to determine if they are "factory" produced or a reload, modified, or specialty cartridge (i.e. proof, exploding, tracer, incendiary, etc.). Ammunition of this type may require additional safety precautions due to their nature and associated hazards.

6. Bullets may appear to be clean when received; however, if they have passed through a body or their exact history is not known, the bullets should be soaked and/or cleaned in a 1:10 bleach and water solution (made fresh daily) for a minimum of 10 minutes to eliminate or significantly reduce biological hazards from body fluids. Isopropyl alcohol can also be used. Rinse thoroughly after decontaminating actions are complete.

    a. **Bleach should not be used as a decontaminating agent for aluminum items, such as Winchester Silver-Tip projectiles or copper-washed projectiles as surface destruction can occur.**

    b. **Bleach should also not be used on lead bullets as surface destruction or discoloration can occur.**

7. Sometimes debris conceals the identifiable characteristics on bullets and cartridge cases. In order to examine this evidence properly, the debris must be removed. The debris may be in the form of blood, tissue, plaster, sand, fibers, paint, etc. The following is designed to aid the examiner in removing this debris.

    a. Follow the steps outlined in paragraphs 2 and 6 first.

    b. Attempt to remove any remaining material with water, saline, isopropyl alcohol, acetone or other cleaning agent by rinsing.

    c. Should rinsing not produce the desired results, cotton swabs and fine plastic fiber or hair bristle brushes can be used with the above solutions to assist in loosening the debris. Please note that cotton swabs can damage the individual markings on a specimen. Care should be exercised to prevent damage to the evidence. **AT NO TIME SHOULD ANY STIFF**

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BRISTLE BRUSH BE USED DUE TO THE POSSIBILITY OF DAMAGE TO THE SPECIMEN.

d. If necessary, extended soaking (hours or overnight) may loosen difficult debris. Saline or water is recommended for extended periods. **Bleach should never be used for extended periods because damage can result. Rinse when completed.** The condition of the specimen and the markings should be evaluated as the cleaning progresses.

e. The ultrasonic cleaner and/or other potentially destructive methods may be used as a last step to remove debris. (See Appendix L.)

8. The recorded data and/or the specimen are then generally compared with standard ammunition components or with reference material. Microscopic examination and comparison may be conducted also. The following information can be determined by these examinations:

   a. The type(s) of firearm(s) for which designed

   b. The possibility of discharge by a submitted firearm(s) if not specifically designed for use in that submitted firearm(s)

   c. Determination of the number of firearms possibly involved

   d. Generation of a list of firearms that may have fired a specimen, if a firearm is not submitted and/or identified with that specimen

   e. Suitability for subsequent microscopic identification with a specific firearm and suitability for entry into the IBIS database

   f. The possibility of comparison of other markings present on bullets, cartridge cases and/or cartridges not associated with firing (i.e. reloading, manufacturing, etc)

9. All specimens examined should be marked with appropriate identification data (i.e. examiner's initials, item number, case number), if possible, in a place and manner as to not destroy its probative value. A large quantity of unfired ammunition, which does not require microscopic examination, does not require individual marking. The proximal container can be marked and sealed.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

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REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thrower Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.5.1/4
SUBJECT: Firearms Examination: Corroded Firearms	VERSION: 9.051810

PRINCIPLE:

The examination of corroded firearms employs additional steps beyond those required for a firearm operation examination outlined previously. Firearms of this type may need to be restored to a functional condition to aid in subsequent identifications. Meticulous and immediate action and/or guidance by this department may lessen or stop the damage to the firearm, its operating condition, and its individual comparison characteristics.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. **Check the firearm to verify whether it is loaded. Unload prior to testing.**
2. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated or suspected to be contaminated with body fluids.
3. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
4. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
5. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) and can cause nausea. Use only in well ventilated areas.
6. Wear appropriate safety equipment if primed cases or cartridges are to be discharged during operability examinations. A lab coat or apron, approved safety glasses, and approved hearing protection are required.
7. Wear appropriate ear and eye hazard safety equipment if workshop machinery is to be used during the restoration process. A lab coat or apron, approved safety glasses, and approved hearing protection are required.
8. All firearms received will be checked prior to test firing to determine their functional condition.
9. Use appropriate remote firing devices if a firearm is determined to be dangerous, if fired manually.
10. Airborne lead residues resulting from test firing are a health hazard. Test firing should only be accomplished in a well ventilated area.

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11. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.

SPECIMEN REQUIRED:

A firearm or other mechanical device designed to fire a cartridge or shotshell.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Lubricants and cleaning products
Patches and brushes
Cotton swabs
Steel wool
Sandpaper
Nonporous gloves

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Reference firearm standards
Bullet recovery tank
Cleaning rods
Assorted armorer and general tools
Remote firing mechanisms
Safety equipment (as dictated by case)

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. The examination of a corroded or badly rusted firearm generally follows the procedures in the firearm operation section.
2. Physically check the firearm for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated, or suspected to be contaminated with body fluids.

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3. **Determine if the firearm is unloaded.** If it is known to be loaded or this condition cannot be determined, assume it is loaded and proceed with extreme care, making sure the firearm is not subjected to rough handling and that the muzzle is always pointed in a safe direction. Unload the firearm if possible. If it cannot be immediately unloaded due to rust, corrosion, etc., soak the firearm in penetrating oil and check periodically until it can be unloaded. The firearm should be positioned and stored in a safe manner and area. A sign or label indicating "Loaded Firearm" and the examiner's name should be placed on or near the firearm.
4. Evaluate the feasibility of restoring the firearm to operating order. Also evaluate the condition of the barrel and breech. Severe damage in these areas may eliminate the need for extensive restoration attempts. The examiner may only be able to obtain minimal information due to damage.
5. Clean the firearm by using solvent-soaked and dry patches until the firearm is as clean as practical. Take care not to damage sensitive areas, such as the breech face, firing pin, bore, extractor, ejector, etc. Other parts need only be cleaned enough to function. Document your actions on the appropriate worksheet. Photographing the firearm before and after the examination may be helpful. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence. Use fine sandpaper, steel wool, or a wire brush to carefully remove rust and corrosion from the make, model, and serial number areas, if needed. If appropriate, do not attempt to restore the serial numbers until after the firearm has been test fired.
6. Depending on the condition of the firearm, the use of laboratory firearm parts may also be required to ensure that the firearm can be safely test fired.
7. Do not test fire any firearm by hand unless it is determined safe to do so. If the firearm cannot be fired safely by hand or if this point is questionable, remote-firing devices should be utilized. **NOTE:** As a safety precaution a second person should either be present or available if a firearm in poor condition is to be test fired.
8. If asked, the examiner should provide guidance to a submitting agency as to the proper handling of the firearm to minimize any further damage as a result of rust or corrosive action. For example, if a firearm is found in water, it should be left in water and submitted in that manner as soon as possible. In some circumstances, it may be beneficial to have the submitting agency apply penetrating or lubricating oil on a firearm.

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9. It should be noted that some firearms will be damaged beyond restoration to a functional state and any examination, aside from possibly identifying very basic information about the firearm, is futile.
10. All firearms examined should be marked with appropriate identification data (i.e. examiner's initials, item number, case number) in a place and manner as to not destroy its probative and/or intrinsic value.
11. Record your actions on the appropriate worksheet.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thomas Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

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DEPT: Firearms	SECTION: 7.1.4.1/3
SUBJECT: Firearms Examination: Trigger Pull Weight	VERSION: 9.051810

PRINCIPLE:

A trigger pull weight test is conducted to determine the amount of weight (in pounds) necessary to disengage a trigger or sear from the firing mechanism of a firearm allowing it to discharge. Using trigger weights, the amount (or range) of weight is determined for each mode of firing or for each trigger present. Although this specific test supports the overall firearm operability determination, it is important enough to be individually addressed.

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. **Check the firearm to verify whether it is loaded. Unload prior to testing.**
2. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated or suspected to be contaminated with body fluids.
3. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.
4. Be aware of possible pinching or crushing injuries that may occur when handling firearms and trigger weights. Please handle appropriately.
5. Wear appropriate safety equipment during testing. A lab coat or apron and approved safety glasses are required.

SPECIMEN REQUIRED:

A firearm or other mechanical device designed to fire a cartridge or shotshell.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Lubricants and cleaning products
Patches and brushes
Cotton swabs
Steel wool
Sandpaper
Nonporous gloves

APPARTUS REQUIRED:

NRA (National Rifle Association) type trigger weights

CALIBRATION REQUIREMENTS:

None

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.4.2/3
SUBJECT: Firearms Examination: Trigger Pull Weight	VERSION: 9.051810

PROCEDURE:

1. **Verify that the firearm is unloaded.**
2. As a general rule, trigger pull weight testing is conducted after all other examination of a firearm has been completed (to include test firing). This action will avoid difficulties that could result from altering the individual characteristics of a firing pin or otherwise damaging the firing mechanism of a firearm caused by "dry firing".
3. NRA-type Trigger Weight Assembly:
   a. Cycle the firearm's mechanism several times.
   b. Cock the firing mechanism.
   c. In most cases, hold the firearm with muzzle pointed upward and the long axis of the barrel perpendicular to the surface on which the weight assembly rests. However, in some instances (ex: pivoting trigger), it may be necessary to hold the firearm with the barrel at a slight angle off of the aforementioned vertical axis in order to achieve a realistic trigger pull. If this alternate angle is used, indicate this on the worksheet.
   d. Rest the trigger weight hook on the trigger, making sure it is not touching any other part of the firearm. The trigger weight hook should be positioned in the middle of the trigger bow or where a finger normally engages the trigger, if possible.
   e. Slowly and smoothly lift the firearm and weight assembly.
   f. If the firearm fails to "fire" after the weight assembly is barely but completely lifted from the surface on which it rests, reset the firing mechanism and repeat the process after adding another weight increment. Make sure that all of the safeties are disengaged when conducting the test.
   g. Should the firearm "fire" and the weight assembly is not lifted from the surface on which it rests, remove weight from the assembly and repeat the process.
   h. The trigger pull weight is found when the weight or range of weights required to disengage the firing mechanism and allow the firearm to "fire" is found. In essence, the firing mechanism is capable of lifting a certain weight or range of weight prior to releasing the firing mechanism.

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DEPT: Firearms	SECTION: 7.1.4.3/3
SUBJECT: Firearms Examination: Trigger Pull Weight	VERSION: 9.051810

i. When the trigger pull weight is found, it should be checked a minimum of three times per trigger or at least once per chamber in a revolver. If applicable, determine the weight for all modes of firing.

j. Record the weight(s) on the appropriate worksheet.

4. The trigger pull weight for nonfunctional firearms may not need to be determined if a firearm has been returned to a functional condition in the Firearms Department, depending on the actions taken to restore the firearm to a functional condition.

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thomas Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.3.1/8
SUBJECT: Firearms Examination: Firearm Operation	VERSION: 9.051810

PRINCIPLE:

Firearm operation consists of the examination of the functional capabilities, or lack thereof, of a particular firearm. The fact that a firearm functions as designed or that it is inherently dangerous, as a result of a design feature or mechanical defect, may be of particular importance. These facts could substantiate or refute the circumstances relating to firearms related incidents as well as alerting the examiner regarding problems prior to test firing. This procedure is accomplished generally through physical examination of the firearm and recording observations on the firearm worksheet(s).

SPECIAL HANDLING, HEALTH & SAFETY PRECAUTIONS:

1. **Check the firearm to verify whether it is loaded. Unload prior to testing.**
2. All firearms received will be checked prior to test firing to determine functional condition.
3. Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated or suspected to be contaminated with body fluids.
4. Many of the solvents/cleaning products (i.e. Bleach, acetone, isopropyl alcohol, aerosol sprays, etc.) used are both eye and skin irritants. If they are spilled on the skin or splashed in the eyes, immediately flush the affected area with water thoroughly. For details for an individual item, refer to the Material Safety Data Sheets (MSDS).
5. Many of the solvents/cleaning products (i.e. acetone, isopropyl alcohol, aerosol sprays, etc.) used are fire hazards. Do not use these around open flames.
6. Many of the solvents/cleaning products used are respiratory irritants (i.e. Bleach, acetone, isopropyl alcohol, aerosol, sprays, etc.) and can cause nausea. Use only in well ventilated areas.
7. Wear appropriate safety equipment during any test firing. A lab coat or apron, approved safety glasses and hearing protection are required.
8. Use appropriate remote firing devices if the firearm is determined to be dangerous if fired manually.
9. Airborne lead residues resulting from test firing are a health hazard. Test firing should only be conducted in a properly ventilated facility.
10. Due to lead hazards, wash hands thoroughly after handling firearms and ammunition components.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
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DEPT: Firearms	SECTION: 7.1.3.2/8
SUBJECT: Firearms Examination: Firearm Operation	VERSION: 9.051810

SPECIMEN REQUIRED:

A firearm or other mechanical device designed to fire a cartridge or shotshell.

SUPPLIES REQUIRED:

Evidence containers
Evidence tape
Reference ammunition
Nonporous gloves
Lubricants and cleaning products
Patches and brushes
Cotton swabs
Steel wool
Sandpaper

APPARATUS REQUIRED:

Engraver
Micrometer
Calipers
Camera
Stereoscope
Reference firearm standards
Bullet recovery trap/tank
Cleaning rods
Remote firing devices
Assorted armorer and general tools
Safety equipment (as dictated by case)
Trigger pull weight devices

CALIBRATION REQUIREMENTS:

See Appendix H

PROCEDURE:

1. **Check the firearm to verify whether it is loaded. Unload prior to testing.**
2. Select the appropriate firearm worksheet(s) to be completed. The worksheet(s) are self-explanatory and serve as guides/reminders of information desired.
3. Physically check the firearm for the presence of serological and/or trace material. (See introductory statement). Wear nonporous gloves and other appropriate personal protective equipment (laboratory coat or apron, safety glasses, etc.) if the firearm is contaminated, or suspected to be contaminated with body fluids.

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DEPT: Firearms	SECTION: 7.1.3.3/8
SUBJECT: Firearms Examination: Firearm Operation	VERSION: 9.051810

4. Collect all appropriate data desired on the firearm worksheet(s). Photography may also be used to aid in documentation. The use of digital imaging must conform to Chapter 8.8.5 Digital Photographic Imaging of Evidence. The following areas are specifically provided to aid in the process.
    a. Revolvers or manually loaded firearms.
        i. Physical checks:
            1. Firearm loaded, unloaded or partially loaded
            2. Firing mechanism cocked, uncocked, or partially cocked when received
            3. Position of safety device(s)
            4. Note obvious abnormalities
            5. Alterations and/or adaptations
            6. Cylinder alignment
            7. Barrel loose, fouled, obstructed, etc.
            8. Firing pin, firing pin bushing/hole condition
            9. Sights
            10. Smoke rings (cylinder)
            11. Parts missing, broken, loose, etc.
        ii. Action (exterior):
            1. Cylinder rotation (securely locks)
            2. Relationship of parts
            3. Trigger (not returning, sticks)
            4. Alignment of cylinder and barrel
            5. Cylinder and/or barrel bulges
            6. Firearm binds
            7. Firearm skips chambers
            8. Trigger pull weight
        iii. Safeties:
            1. Note position of manual safety device(s) when received

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SUBJECT: Firearms Examination: Firearm Operation	VERSION: 9.051810

2. 1/4, 1/2, full cock seating check (any false seating) and 1/4, 1/2 cock override
3. Transfer bar - properly functioning
4. Hammer block - does not intercept hammer
5. Rebounding hammer - can fire if firing pin rides on live primer
6. Hammer push-off from full cock
7. Drop hammer several times to check above safeties, if appropriate. Rimfire firearms should not be repeatedly tested in this manner unless done with a primed or fired cartridge case in the chamber(s). Repeatedly "dry firing" can cause alteration of firing pin characteristics.

iv. Test cycling with primed cartridge cases or cartridges for proper firing pin impression, if necessary.

v. Check for any inherent quirks known about the particular firearm.

vi. Test fire the firearm. Note any operational issues and misfires. Select type of test ammunition based on ammunition used in case and duplicate, if available. Ammunition submitted with a firearm may be used for test firing if like ammunition is not available. NOTE: When using submitted ammunition, examine it prior to test firing for the presence of handling marks. Note and/or mark such markings so that they will not interfere with subsequent comparisons.

vii. Conduct any special situational tests dictated by the circumstances of the case.

viii. Action (Internal):

NOTE: Disassembly of a submitted firearm is not generally recommended unless there is a particular question to be addressed. The firearm should be only disassembled as far as needed to answer the question. The following steps are provided as guidelines in the event that such a question arises.

1. Remove side plate or partially disassemble to examine
2. Hammer notches (worn, burrs, dirt)
3. Sear (worn, broken, burrs, etc.)
4. Internal safeties and relationship of all parts

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5. Springs (altered, broken, weak)
6. Signs of any tampering, alteration, or faulty assembly

b. Semiautomatic, automatic, bolt action firearms:

i. Physical checks:

1. Firearm chamber and/or magazine loaded, unloaded, or partially loaded
2. Firearm in battery and prepared to fire
3. Position of safety device(s)
4. Note obvious abnormalities
5. Alterations and/or adaptations
6. Barrel loose, etc.
7. Parts missing, broken, loose, etc.
8. Firing pin broken/functional
9. Receiver/frame condition
10. Sights

ii. Action (Exterior):

1. Working relationship of parts
2. Is assembly correct?
3. Check for fit (loose or tight)
4. Does action lock/unlock normally?
5. Trigger pull weight

iii. Safeties:

1. Note position of manual safety device(s) when received
2. 1/4, 1/2, full seating check (any false seating positions) and 1/4, 1/2 cock override
3. Grip, magazine, disconnector function check
4. Thumb - note positions when firearm will fire

5. Rebounding hammer or rebounding firing pin - will firing pin ride on primers?
6. Does slide or bolt have to be completely closed to fire?
7. Can safeties be bypassed?
8. Hammer push-off from full cock
9. Hammer/striker release when slide/bolt closed or opened
10. Dry fire several times to check above safeties, if appropriate. Rimfire firearms should not be repeatedly tested in this manner unless done with a primed or fired cartridge case in the chamber(s). Repeatedly "dry firing" a rimfire firearm can cause alteration of firing pin characteristics.

iv. Test cycling with primed cartridge cases or cartridges, if appropriate.

1. Note feeding (magazine, carrier or lifter, loading ramp, magazine lips, springs)
2. Will cartridge fire on closing of bolt/slide?
3. Extractor, ejector, and firing pin marks on cartridge or cartridge cases normal
4. Unusual marks exhibited on cartridges from action

v. Check for any inherent quirks known about the particular firearm.

vi. Test fire the firearm. Note any operational issues and misfires.

1. Select type of test ammunition based on ammunition used in the case and duplicate, if available.
2. Ammunition submitted with the firearm may be used for test firing if like ammunition is not available.

   NOTE: When using submitted ammunition, examine it prior to test firing for the presence of handling marks. Note and/or mark such markings so that they will not interfere with subsequent comparisons.

vii. Conduct any special situational tests dictated by the circumstances of the case.

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DEPT: Firearms	SECTION: 7.1.3.7/8
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viii. Action (Internal):

NOTE: Disassembly of a submitted firearm is not generally recommended unless there is a particular question to be addressed. The firearm should be only disassembled as far as needed to answer the question. The following steps are provided as guidelines in the event that such a question arises.

1. Hammer notches - worn, burrs, dirt, etc.
2. Sear - worn, broken, burrs, etc.
3. Internal safeties and relationships of all parts
4. Springs - weak, broken, altered
5. Signs of any tampering or faulty assembly

c. Special considerations: Altered firearm

i. Knowledge of firearm design, construction, and functioning is important in the examination of altered firearms.

ii. Changes, alterations, or defects should be documented. If any disassembly is required photographs may be taken, if appropriate.

5. Should it be determined that a submitted firearm is nonfunctional as received, it may be returned to an operational condition if dictated by the circumstances of the case. Laboratory standard firearms and spare parts can be used for this purpose. Worksheets should be annotated in detail as to the firearm's original condition and the steps necessary to render the firearm functional. Once testing is completed, the submitted firearm should be returned as closely as possible to its condition as received.

6. All firearms examined should be marked with appropriate identification data (i.e. examiner's initials, item number, case number) in a place and manner as not to destroy its probative and/or intrinsic value.

7. If appropriate, it may be necessary to decontaminate firearms to eliminate or reduce the biohazard risks. (Reference chapter 7.1.11)

DOCUMENTATION:

Completed worksheets, copies of laboratory reports, photographs, charts, tables, literature extracts, etc. should be placed in the case file.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.3.8/8
SUBJECT: Firearms Examination: Firearm Operation	VERSION: 9.051810

REFERENCES:

See bibliography at Appendix B.

APPROVAL

Department Supervisor: Tracy J. Thigpen Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.2.1/2
SUBJECT: Firearms Examination: Firearms Safety	VERSION: 9.051810

FIREARM SAFETY:

All firearms should be treated as though they are loaded until the examiner proves they are not. Safety must be foremost in your mind at all times. Firearms evidence in the laboratory is not dangerous if handled correctly and treated with respect. Occasionally, loaded firearms are received as evidence for a particular examination. Loaded firearms need special handling and respect. The examiner's safety, that of fellow examiners, and that of the other people working in the laboratory is at stake. **Keep the muzzle pointed in a safe direction at all times!** This rule cannot be over-stressed and must be followed at all times whether it is in the evidence room, Firearms Department, range, or court. Areas of special note include the following:

1. **EVIDENCE RECEIVING:** All firearms should be checked for loaded or unloaded condition, unless specified otherwise (i.e., latent fingerprints or known to be loaded for examination purposes). Revolvers can generally be examined at a glance. Auto loading firearms should have the magazine removed, then the slide opened to examine the chamber. If the firearm is in a container, ensure the muzzle is pointed in a safe direction and handle accordingly.

2. **EVIDENCE VAULTS:** Any firearms evidence placed into an evidence room should be stored carefully. Loaded firearms must be clearly marked and their muzzle pointed in a safe direction. It is suggested that if the firearm may be unloaded and its contents documented, it is in the best interest of safety to do so if it is to be stored for any period of time.

3. **FIREARM EXAMINER:** In addition to checking the firearms loaded or unloaded condition and keeping the muzzle pointed in a safe direction, ensure that the bore is clear. Know the firearm's caliber and use the proper ammunition. Any cartridges used for chambering should be deactivated or "dummy" ammunition if possible and/or available. If only unfired ammunition is available, chamber the cartridges only in the range area or recovery room with the muzzle pointed in a safe direction. **Any** examination, test, or procedure which requires the introduction or removal of unfired or suspected unfired ammunition from a firearm should be conducted while the muzzle of that firearm is pointed in a safe direction, such as the bullet recovery tank, range backstop, etc.

Be alert and cautious during the examination, work carefully, and take adequate time to do it right. No firearm should be returned to an agency in a loaded condition. When the examination is completed and a firearm is placed in the evidence room for return, **it will not be loaded**.

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PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.2.2/2
SUBJECT: Firearms Examination: Firearms Safety	VERSION: 9.051810

Firearms examiners will be available to inspect firearms, to determine if they are unloaded, for all sections within the laboratory. Checking the loaded or unloaded status of a firearm must take place in a safe area.

No person will be permitted to fire any firearm in the bullet recovery room or use the range ("tunnel"), until they have received instructions on the proper procedures by a qualified member of the Firearms Department.

The "two person rule" must be followed when the range ("tunnel") is used. Either two people must be present when firing in the tunnel or a second person must be notified that someone is firing in the tunnel alone. The second person should check on the welfare of the person using the tunnel, if they have been absent for an appreciable length of time. Personnel using the tunnel should also indicate such on the sign-out board in the Firearms Department. SLED personnel (other than Firearm and Trace Department personnel), who wish to use the tunnel, must sign-out the key in the Firearm's Department. The "two person rule" must be adhered to also. Personnel who are not familiar with the proper handling of firearms should not be allowed to use the tunnel alone.

APPROVAL

Department Supervisor: Tracy J. Thrasher Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY
PROTOCOL MANUAL

DEPT: Firearms	SECTION: 7.1.1.1/1
SUBJECT: Introduction: Technical Procedures Manual	VERSION: 9.051810

INTRODUCTION:

This manual outlines general protocols used in the examination of firearm and toolmark related evidence and compliments the Forensic Services Laboratory Policy and Procedures Manual(s).

The procedures addressed in this manual serve only as guidelines. Examiners are allowed flexibility in the examination of evidence as dictated by the circumstances of the incident/investigation (Policy 8.10.1). The following general applications should be adhered to for all types of examinations unless safety considerations render them impractical.

Evidence will first be examined visually and/or microscopically for the presence of serological and/or trace material. When serological and/or trace material is encountered, determine the probative value and proceed accordingly.

- Unless specifically requested, the collection of biological material from fired ammunition components recovered from a known source is not necessary (i.e. blood or tissue from a bullet removed from a victim at autopsy).
- Unless specifically requested, the collection of some other trace materials from fired ammunition components recovered from a known source is not necessary (i.e. drywall, wood fibers, paint, etc. found on a fired bullet recovered from a wall; glass found on a bullet fired through a window; etc.).
- Unless specifically requested, fired ammunition components that exhibit no obvious serological and/or trace material need not be swabbed in all cases and the examiner may proceed with decontamination processes.

If there is a question regarding serological and/or trace material, or if unusual material is discovered during examination, consult with the contributor and/or collect the material. In all cases, evidence shall be handled so as to prevent any loss, cross-transfer, contamination, or other deleterious change.

APPROVAL

Department Supervisor: Tracy L. Thurmond Date: 7-29-2010

Laboratory Director: C. Todd Hughey Date: 7-29-10

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF LEXINGTON)

Carolyn Graham, who appeared personally before me, affirms and states the following:

1. I was hired as the mitigation specialist on Mick Winkler's case. Ralph Wilson contacted me and asked that I get involved. Paige Tarr had previously been on the case, but she had barely done any work. We did not have a lot of time left before trial. We had to do the best with the time we had. I also worked with Dorian Hall, who was hired to do investigation in Ohio. There was not enough time for one person to do the entire investigation alone. Dorian and I were responsible for working with TeAnne Oehler.

2. Mick's case presented some challenges for me. Paul Rathbun was the other attorney on the case. I had very limited contact with him. He and Mick did not get along.

3. Communication on the team was also difficult. We mostly communicated via e-mail, but all e-mails had to go through Danielle, Ralph Wilson's paralegal. It was as if she was running the show. This was an odd procedure and it slowed down our communication. I did not spend much time talking with either of the attorneys about exactly what they were hoping to present. I have conducted many mitigation investigations, but it is my expectation and preference to work with the team to develop penalty phase themes that are coherent and consistent with the guilt phase presentation. That did not happen in Mick's case. Trial counsel got me appointed, and left it up to me to develop the mitigation presentation. I did not receive guidance about what the theory of the penalty phase would be or about how that theory might fit into the guilt phase presentation.

CG

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4. Mick's relationship with trial counsel was very strained. Mick did not trust that they were doing a good job on his case. His conversations with trial counsel were often very contentious, and trial counsel did little to address his concerns. Mick was always upset with both Paul Rathbun and Ralph Wilson.

5. Things came to a head with trial counsel shortly before the hearing. Mick was not doing well. The stress of the pending trial was wearing on him. He was very anxious about the trial. Making matters worse, Paul and Ralph decided to do a mock trial exercise where they cross-examined Mick on the stand. The cross-examination was extremely upsetting for Mick, and he felt that his lawyers were against him rather than on his side. Apparently, Mick and Ralph Wilson had some kind of blow up shortly after the mock cross-examination. I had been with the team during the cross, but I stepped out to speak to a security guard afterward. When I came back, Mick was being led away by a guard. A couple of days later, I was asked to attend a meeting where Paul and Ralph talked to Mick about why they did not want him to testify at trial. They brought a court reporter to this meeting and had it recorded. This was very unusual. I have never worked on a case where the trial lawyers recorded a conversation like that with their client. Again, this event was extremely upsetting for Mick. His relationship with trial counsel deteriorated even further after these two events.

6. During the trial, the judge asked that I sit with Mick. It was because his relationship with his attorneys was so strained. Mick and his attorneys did not get along.

I have reviewed this affidavit, and I affirm, under the penalty of perjury, that the foregoing is true and correct.

CG

Carolyn Graham
CAROLYN GRAHAM

Sworn to and subscribed before me
This 1st day of June, 2012

Vicki Lynn Pauline Marus
Notary Public for the State of South Carolina
My commission expires: 03/06/2018

CG

STATE OF OHIO)
) AFFIDAVIT
COUNTY OF WAYNE)

Edward Genet, who appeared personally before me, affirms and states the following:

1. I currently reside at [redacted]

2. I am a childhood friend of Louis ("Mick") Winkler. We attended school together at St. Peter and St. Paul's Catholic School from kindergarten through eighth grade. We also played football together for all four years at Chippawa High School.

3. Mick was a great kid who loved the outdoors. We spent a lot of time together doing outdoor activities like hiking and biking. My parents were also good friends with Mick's parents and we did family activities together.

4. Mick was always very polite and respectful to people. Even as a kid, he would make a point to say hello to my parents and ask how they were doing when he came over. Mick has always been very meticulous about being clean. His closet was always neat and orderly. Even when he was very young, he would play with a toy and then put it back in the box and clean up afterwards.

5. Mick is very family oriented. He has always loved holidays and birthdays. Spending time with his family is very important to him. He is very close to his family and he loves them a lot. Mick seemed very troubled by his parents' divorce. I think he took it especially hard because family was so important to him.

6. I kept in touch with Mick after he moved away from Ohio. He would call me a couple of times each year. He always made a point to call me on my birthday. I would take my family on vacation to South Carolina and visit Mick.

7. I visited Mick in South Carolina once when he was married to Denise. Mick seemed very involved with Denise's son. He spent a lot of time with him doing outdoor stuff. Mick was also very good with my two kids. They called him "Uncle Mick."

8. I met Becky on a couple of occasions. Mick seemed very proud of his life with her. Mick is a hard worker and he enjoyed his job working at the condos. I last saw Mick when he and Becky came to Ohio to visit during the Christmas holidays in 2004.

PETITIONER'S EXHIBIT
11

I affirm that the foregoing is true and correct to the best of my knowledge. Further affiant sayeth naught

EDWARD GENET

Sworn to and subscribed before me
This 29 day of May, 2012

Notary Public for the State of Ohio
My commission expires: March 25, 2017

NOTARIAL SEAL STATE OF OHIO

SHIRLEY A. BLAGG
NOTARY PUBLIC
STATE OF OHIO
STARK COUNTY
My Comm. Expires March 25, 2017

STATE OF NORTH CAROLINA)
) AFFIDAVIT
COUNTY OF COLUMBUS)

Ben Hege, who appeared personally before me, affirms and states the following:

1. I met Louis "Mick" Winkler when he was the maintenance person at Tilghman Lakes by the Sea in North Myrtle Beach, South Carolina. My father owns a condo there, and I met Mick when I visited.

2. Mick had a reputation for doing a good job and being generous. I barely knew him, but on one of my visits there he let me store my boat over night at his house. Nothing about his job required him to do something like that, and I thought it was a generous gesture.

3. I was shocked to learn about this crime happening.

4. Prior to Mick's trial no one from Mick's trial team contacted me or asked me to provide the information in this affidavit. Had they asked me to do so, I would have been willing to testify to the information contained in it.

I have reviewed this affidavit, and I affirm, under the penalty of perjury, that the foregoing is true and correct.

BEN HEGE

Sworn to and subscribed before me
This 29 day of May, 2012

Notary Public for the State of North Carolina
My commission expires: July 2, 2014

CHRISTINA SIAKI-RANDOLPH NOTARY PUBLIC BRUNSWICK COUNTY, NC

PETITIONER'S EXHIBIT 12 KHR 1.10.2018

BH

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHARLESTON)

Vicki Childs, who appeared personally before me, affirms and states the following:

1. My name is Vicki Childs. My work address is P.O. Box 21297, Charleston, South Carolina 29413. I was retained to work as a private investigator on Louis Michael ("Mick") Winkler's case. My role was to serve as a fact investigator only. I was not serving as a mitigation investigator.

2. I primarily did fact interviews relating to the guilt-or-innocence phase of the case, collected documents, and other miscellaneous tasks. I did whatever I was directed to do by the trial attorneys. I was not asked to talk to witnesses about the possibility that Mick was suicidal near the time of the crime. I was not asked to investigate anything related to mental illness or Mick's mental state. These tasks would have been more appropriate for a mitigation investigator to do, which was not my role in the case.

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge: Further affiant sayeth naught

VICKI CHILDS

Sworn to and subscribed before me
This 30 day of May, 2012

Notary Public for the State of South Carolina
My commission expires: 9-21-20

PETITIONER'S EXHIBIT 13

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF HORRY)

TeAnne Oehler, who appeared personally before me, affirms and states the following:

1. My name is TeAnne Oehler. I am a clinical social worker and psychotherapist. I have a Masters Degree in Social Work from the University of North Carolina at Chapel Hill. My business address is 1601 Oak Street, Myrtle Beach, SC 29577.

2. I was retained in the Louis Michael Winkler case by his attorney, Ralph Wilson. My role was to prepare a psycho-social evaluation and testify about my findings. I testified in the penalty phase of Mr. Winkler's 2008 capital trial.

3. No specific penalty-phase theory was ever articulated to me from anyone on the defense team. My instructions were basically to just let them know if I found any mitigation.

4. I told Mr. Winkler's attorneys that they should get a neuropsychologist to evaluate Mr. Winkler because he has a history of head injury with loss of consciousness. It is my normal practice to recommend such an evaluation in any case where there is evidence of a possible head injury. Mr. Winkler's attorneys thought that I could testify about those issues myself, but I explained to them that brain damage is not my area of expertise. To my knowledge, no neuropsychological evaluation was ever performed on Mr. Winkler.

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Further affiant sayeth naught

TeAnne Oehler LCSW
TEANNE OEHLER

Sworn to and subscribed before me
This 31 day of May, 2012
Cynthia White Lana
Notary Public for the State of South Carolina
My commission expires: 2/1/2021

PETITIONER'S EXHIBIT 14

5117

PETITIONER'S
EXHIBIT
15
16th 16 20 18



PETITIONER'S
EXHIBIT
16



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERALSESSIONS
WARRANT NO(s): I-252573, I-746891, 92

STATE OF SOUTH CAROLINA,

vs.

LOUIS M. WINKLER,

Defendant.

ORDER APPOINTING COUNSEL
(Death Penalty Case)

FILED
HORRY COUNTY
2006 JUL 12 AM 10:22

The State of South Carolina has served a Notice of Intent to Seek the Death Penalty in the captioned matter pursuant to S.C. Code of Laws, as amended. I find that it is necessary pursuant to 16-3-26(B) of the South Carolina Code of Laws, 1976 as amended, for counsel to be appointed in this matter. These attorneys have agreed to represent the Defendant, Louis M. Winkler. Attorney Ralph Wilson will be designated as lead counsel and Paul Rathbun as co-counsel. The Court finds that they are eminently qualified and both have substantial criminal trial experience that exceeds the requirements for appointment in cases where the State seeks the Death Penalty.

As to lead Counsel Ralph Wilson, I find that he is a graduate of the University Of South Carolina School Of Law and was admitted to practice in the State of South Carolina in 1978. He has worked on numerous felony trials, including Capital murder trials which have been tried to a jury verdict. Attorney Wilson is familiar with the practice and procedure of Criminal Courts of this State. Finally, Attorney Wilson was certified by the South Carolina Supreme Court as Lead Counsel in Death Penalty Cases in 1999.

I, therefore, find that attorney, Ralph Wilson, has demonstrated the necessary proficiency to qualify as lead counsel in this case.

As to co-counsel Paul Rathbun, I find that he was admitted to practice law in the State of South Carolina in 1995. Mr. Rathbun has been in continuous practice in the field of criminal defense since November 1995 with eight years in the service of the Public Defender's office. During the course of service as Public Defender, Mr. Rathbun has represented defendants at trial in felony matters including Armed Robbery, Criminal Sexual Conduct with a Minor First Degree, and Possession of Crack Cocaine.

I, therefore, find that attorney, Paul Rathbun, has demonstrated the necessary proficiency to qualify as second chair co-counsel in this case.

PETITIONER'S EXHIBIT 17

The Defendant has requested that Mr. Rathbun be removed and replaced by another attorney. A hearing was held on this request on June 15, 2006 at the Horry County Courthouse. Mr. Rathbun does not join in the Defendant's request and states he feels competent and qualified to continue to represent the Defendant.

I find that the appointment of these attorneys is in compliance with and in furtherance of 15-3-26(B) of the South Carolina Code of Laws for 1976, as amended , and the Constitution of the United States of America.

I find that the Defendant's request to discharge Mr. Rathbun is without merit. His request is therefore denied.

IT IS THERFORE ORDERED that counsel herein appointed shall continue to serve until relieved by order of this Court

AND IT IS SO ORDERED.

James E. Lockemy
Circuit Court Judge
Fourth Judicial Circuit

Dillon, South Carolina
July 7, 2006

Attorney: Ralph J. Wilson all set time sheet Felony (Capital)
Louis M. Winkler Representing

A-2006-GS-26-W-00114 cid_id: 3077

		Out of Court	In Court	
1/3/2005	Scheduling Order Hearing speedy trial	0	2.2	19308
4/13/2006	reviewed correspondence and NOISD from Solicitor	0.2	0	33415
7/12/2006	reviewed correspondence and Appointment from Solicitor	0.3	0	33416
9/6/2006	hearing with Judge Lockemy	0	1	16426
9/8/2006	reviewed correspondence from co-counsel	0.2	0	33417
9/12/2006	reviewed correspondence from Solicitor	0.1	0	33418
9/13/2006	reviewed note from co-counsel	0.1	0	33419
9/14/2006	Meeting with Laura Turzak	4	0	16428
9/14/2006	telephone conference with Laura Turzak	0.1	0	33424
10/6/2006	received and reviewed email from Peggy at Solicitor's Office	0.1	0	33426
10/16/2006	Telephone conference with Mr. Winkler	0.2	0	33428
11/17/2006	received email from investigator	0.1	0	33430
11/20/2006	reviewed email from Judge	0.1	0	33432
11/21/2006	email to Judge with proposed scheduling order	0.2	0	33438
11/21/2006	sent email to Peggy at Solicitor's office	0.2	0	33436
11/27/2006	reviewed email from Judge	0.1	0	33440
12/1/2006	reviewed correspondence from Judge	0.1	0	33441
12/18/2006	Conference call with Judge Lockemy	1	0	33443
12/18/2006	Conference call with Jodi McDougal	0.5	0	16430
12/21/2006	sent supplemental discovery to Defendant	0.3	0	33445
12/28/2006	reviewed correspondence from co-counsel	0.3	0	33446
1/3/2007	Competency Hearing	0	2	16431
1/12/2007	Case preparation with Paul Rathbun	3	0	16432
1/16/2007	Prepared Affidavit of Ralph J. Wilson	0.3	0	16483
1/26/2007	Spoke to Tyler, Judge Lockemy's Law Clerk about delaying the Blair hearing	0.2	0	19315
1/26/2007	spoke to scott Bellamy re: Wikler's file	0.4	0	19310
1/26/2007	Spoke to Fran Humphries, Deputy Solicitor, re: Blair hearing scheduled for Jan. 31	0.3	0	19312
1/26/2007	Spoke to Dr. Schwartz, wre: accepting this type of matter	0.2	0	19314
1/26/2007	Interviewed Defendant at J Reuben Long	4.1	0	19309
1/26/2007	Telephoned Vicki Childs to discuss helping with fact investigating	0.3	0	19316
1/26/2007	spoke to Dr. Waid's assistant re: the evaluation and their inability to conduct the evaluation by the date set.	0.4	0	19313
1/26/2007	Blair Hearing	0	2	31822
1/26/2007	spoke to Bill Diggs re:Expert witnesses	0.6	0	19311
~~1/29/2007~~	email to Judge Lockemy will check on reason	~~0.5~~	0	33544
1/29/2007	Met with Paul Rathbun and discussed case			9321
1/29/2007	Telphone Conference with Judge Lockemy and Paul Rathbun			9320
1/29/2007	Phoned Dr. Newland and left message for him			9319

PETITIONER'S EXHIBIT 18 6/21/19

1/29/2007	Spoke to Fran, he sta[illegible]hat the State will offer Winkler no P! Bargain	0.1	0	19318
1/29/2007	spoke to Vicki childs re: winkler and her assistance in the matter	0.2	0	19317
1/30/2007	Blair Hearing with Hudge Lockemy personality issues entered during line on 1st time sheet	0	1	19322
1/30/2007	copied discovery supplementa Cand D and photos	1	0	33547
1/30/2007	Traveled to and from Charleston for Blair Hearing	4	0	19323
1/30/2007	Telephone Call with Vicki Childs	0.2	0	19325
1/30/2007	Telephone cal with Patty Tenet of MUSC Forensic Psychology	0.2	0	19324
2/2/2007	Met with Investigators Dale Davis and Vicki Childs	2.5	0	16433
2/2/2007	Vicki Childs Dale Davis and myself visited with Defendant	3	0	19328
2/5/2007	Telephone conference with Winkler's sisters Jodi and Karen	0.8	0	32040
2/5/2007	Telephone Conference with Defendant's sister re: hearing, ealuation and the case	0.8	0	19331
2/5/2007	email from SCCID	0.1	0	33552
2/6/2007	reviewed fax from Judge	0.1	0	33556
2/6/2007	Faxed order to Jail	0.1	0	33555
2/7/2007	Sent email to Dr. Waid	0.1	0	33559
2/8/2007	Sent email to Judge Lockemy	0.2	0	33561
2/9/2007	email to Tyler Lee Judge Lockemy's Law clerk	0.1	0	33564
2/11/2007	Email from Dale Davis	0.1	0	33566
2/12/2007	email to Dale Davis requesting attachment	0.1	0	33568
2/13/2007	multiple emails to Dale Davis	0.3	0	33574
2/13/2007	email to Dale Davis requesting costs affidavit many ?'s about cost.	0.4	0	33573
2/13/2007	email to Danielle for review of email	0.1	0	33570
2/15/2007	Phoned Dr. Waid to get his report, I spoke to his assistant	0.6	0	19332
2/15/2007	reviewed State Hospital Competency Report for hearing on Friday	0.6	0	19336
2/15/2007	spoke to Dr Waid re: his evaluation	0.3	0	19335
2/16/2007	reviewed notes from hearing	0.2	0	19339
2/16/2007	Compentency Hearing	4	1.5	16435
2/16/2007	Paul Rathbun and I met with Defendant in the atty-client room and allowed 2 doctors from state hospital to interview him	0.2	0	19343
2/20/2007	email to Dale Davis	0.1	0	33581
2/20/2007	reviewed email from Dale Davis	0.1	0	33582
2/21/2007	reviewed the bio and affidavit of the new Investigator and spoke to her by phone	0.6	0	19347
~~2/21/2007~~	~~email to Vicki Childs~~	~~0.1~~	0	33584
2/22/2007	Discussed with Paralegal meeting set with Winkler's sister	0.2	0	32031
2/23/2007	Received phone call from TYler, Judge Lockemy's Law Clerk to set up a phone conference with Solicitor	0.1	0	19353
~~2/23/2007~~	~~Conference with Karen, Jody and Laura~~	~~2~~	0	33588
2/23/2007	Met with Paige Tarr re: case after Winkler's sisters left	2.5	0	19349
2/23/2007	received phone call from Judge Lockemy re: conflict on scheduling trial	0.1	0	19355

2/23/2007	met with Karen, Jody and Lauren	3	0	16441
2/24/2007	Review of the Winkler case file, charges, pics, crimscene, miranda, NCIC, Autopsy, witness statements	4.5	0	32028
2/28/2007	Met with Paige Tarr traveled to J. Reuben Long	5	0	16445
2/28/2007	spent time reviewing Discovery	2.5	0	32030
3/2/2007	Review correspondence from Co-Counsel	0.3	0	33592
3/5/2007	sent letter and Waid's CV to Judge	0.2	0	33594
3/6/2007	Prepared letter to Tom Fox	0.2	0	33595
3/7/2007	email from Judge	0.1	0	33598
3/9/2007	conference with Winkler at Jail	2.5	0	33603
3/9/2007	email to Judge	0.1	0	33601
3/9/2007	email from Judge reeviewed	0.1	0	33600
3/12/2007	email from Judge	0.1	0	33607
3/12/2007	reviewed and filed fax sent from Judge	0.1	0	33605
3/12/2007	Prepared motion for Preservation of Evidence	0.5	0	16455
3/14/2007	Prepared letter to Solicitor requesting addl discovery	0.3	0	33609
3/15/2007	Letter prepared for Court reporter requesting copies	0.2	0	33612
3/16/2007	Sent ssupplement discovery to co-counsel	0.3	0	33614
~~3/19/2007~~	~~Sent fax to JRL Transportation~~	~~0.1~~	0	33615
3/26/2007	Telephone conference with Patty Tennant	0.1	0	33618
3/27/2007	Visited Defendant at J. Reuben Long	4	0	16447
3/28/2007	Met with Dr. Halavonich	3	0	16448
3/29/2007	meeting with Investigator Vicki Childs	7	0	16449
3/30/2007	Met with Paige Tarr and Defendant	6.5	0	16450
4/5/2007	reviewed correspondence from co-counsel	0.1	0	33619
4/9/2007	Faxed transport Order to Judge	0.1	0	33620
4/11/2007	Met with Vicki Childs and the Defendant	2.5	0	16451
4/12/2007	Prepared motion to replace toxic terms commonly used in the trial of a capital case	1	0	16458
4/12/2007	Prepared Motion to allow for Independent Analyzation of Blood Evidence	0.2	0	16459
4/12/2007	Prepared Motion to Allow for Independent Analyzation of Ballistic Evidence	0.3	0	16460
4/12/2007	prepared motion for leave to file additional motions	0.1	0	16453
4/12/2007	prepared notice and motion to seal Defendant's visitation log	0.4	0	16454
4/12/2007	Prepared Notice of motion and Motion To Reveal Grant of Immunity or Other Concessions	0.6	0	16456
4/12/2007	Prepared Motion to Produce all Photographs made	0.3	0	16461
4/12/2007	prepared motion to produce all evidence inventory	0.3	0	16462
4/12/2007	Prepared Motion to request in Cam hearing	0.2	0	16457
4/13/2007	prepared motion to produce any criminal history of witnesses	0.2	0	16469
4/13/2007	Motion to Produce any and all SLED reports	0.2	0	16464
4/13/2007	Motion to produce all criminal records of Jurors	0.2	0	16468

4/13/2007	Prepared motion to produce all incident reports	0.2	0	16467
4/13/2007	Prepared Motion for Witness Information	0.2	0	16471
4/13/2007	Prepared Motion to produce any and all audio recordings	0.2	0	16465
4/13/2007	Prepared Motion to Produce written, oral or third party statements	0.3	0	16463
4/13/2007	Prepared motion to produce DNA Evidence	0.9	0	16470
4/13/2007	Prepared motion for Law Enforcement Officers to Retain Notes	0.7	0	16473
4/13/2007	Prepared Notice of Motion and Motion Prohibiting Extrajudicial Statements of Trial Participants	2.5	0	16472
4/13/2007	Prepared motion to produce the registration for the Gun used in the shooting and for the Gun found under the victim's son's pillow.	0.2	0	16466
4/14/2007	Prepared Motion for an Order Requiring the Solicitor to Respond in Writing to each motion which is Contested byt the State	2	0	16477
4/14/2007	Prepared Motion for Expanded Voir Dire	2	0	16481
4/14/2007	Prepared Motion to Sequester Witnesses	0.2	0	16478
4/14/2007	Notice of and Motion for Disclosure of Similar Acts	0.3	0	16474
4/14/2007	Prepared Notice of and Motion for disclosure of surveillance	0.8	0	16475
4/14/2007	prepared motion for fair trial procedures	4	0	16476
4/14/2007	Prepared Motion to Voir Dire Jurors in panels of five at a time certain	0.7	0	16480
4/14/2007	Prepared Motion to Adjourn at a Reasonable Time	0.5	0	16479
4/16/2007	Prepared Motion for Change of venue	0.6	0	16482
4/16/2007	Prepared Motion for Jury Questions	3	0	16484
4/16/2007	Prepared Notice of and Motion to Bar Electronic Broadcasting of Court proceedings	2.5	0	16485
4/18/2007	reviewed all multi media evidence, including autopsy cds, interviews, phone calls, photos and crime scene photos	4	0	16488
4/18/2007	reviewed correspondence from Solicitor	0.2	0	33621
4/25/2007	Jail meeting with Winkler, reviewed dvd of his statement to police	3.1	0	32029
4/25/2007	discussed with Dr. Frierson from state hospital Defendant's version of the facts	2	0	32018
4/27/2007	reviewed telephone message from patty at Dr. Halavonich's Office	0.1	0	33624
5/2/2007	Faxed Transport Order to Judge	0.1	0	33625
5/8/2007	Sent Supplemental Discovery to Defendant	0.3	0	33627
5/16/2007	Telephone conference with fact investigator	0.2	0	33628
5/16/2007	Meeting with Winkler at the Jail	3	0	32020
5/17/2007	Reviewed Video of Rebecca Winkler's 2005 Hospital interview	0.6	0	16487
5/17/2007	Met with Winkler at J. Reuben Long	3	0	16486
5/18/2007	reviewed Dash Cam from officers vehicle	0.2	0	16545
5/18/2007	Reviewed books, notebooks, and other reading materials belonging to Victim,victim's son and the Defendant	2	0	16546
5/22/2007	reviewed corr. from Solicitor to Judge	0.4	0	33630
5/22/2007	Prepared 3 respnses to Fran Humphries emails and filed with clerk of court	1	0	17453
5/22/2007	phone call to Tyler Lee	0.1	0	17451

5/23/2007	email from Judge	0.1	0	33635
5/23/2007	reviewed email from Solicitor	0.1	0	33636
5/23/2007	Preparation of trial note books and evidence organization	6	0	17450
5/23/2007	Reviewed State's objections to Juror Questionire	1	0	33633
5/24/2007	met with Fran Humphries to discuss voir dire questions	2	0	17601
5/24/2007	Prepared 2 subpoenas deuces tecums for J[redacted] G[redacted]s work logs and time sheets, one to John Weaver and One to Danny Knight	1	0	17602
5/24/2007	received call from Fran	0.1	0	32026
5/24/2007	called Judge Lockemy to tell him we did not receive info or objections from Fran until Friday	0.1	0	32025
5/24/2007	reviewed State's objections from 11:30am-2:00pm	2.5	0	32027
5/24/2007	Received call re: Judge Lockemy wants conference call on Winkler	0.1	0	32023
5/24/2007	Meeting with Paul Rathbun to get ready for Conference call with Judge	0.3	0	32024
5/25/2007	Met with Paul Rathbun to discuss voir dire questions	0.8	0	17452
5/25/2007	reviewed Juror Questionnaire	0.6	0	17818
5/25/2007	reviewed email from solicitor's office and responded to email	0.2	0	17820
5/29/2007	telephone call with vicki childs,	0.1	0	18204
5/29/2007	telephone conference with Ms. Patty from Forensice Psychiatry Services of MUSC re: Defendant and continued treatment	0.1	0	18207
5/29/2007	prepared second order for fees for continued psychiatric evaluation of the Defendant	0.5	0	18209
5/29/2007	prepared order to transport Defendant from J. Reuben Long to MUSC for continued psychiatric evaluation	0.2	0	18210
5/30/2007	telephone call from Paige Tarr re: Winkler and meeting on June 5th, 2007 scheduled for 10am	0.1	0	18462
5/30/2007	reviewed email from Vicki Childs	0.1	0	19307
5/30/2007	spoke with Paige Tarr re: meeting with vicki and Ralph to view evidence and talk strategy	0.1	0	18402
5/30/2007	prepared affidavit for attorney fees for judge	0.8	0	18399
5/30/2007	Sent various Order to Judge Lockemy for execution	0.2	0	33637
5/31/2007	phone call from Peggy Snowden re: viewing evidence at HCPD	0.1	0	18657
5/31/2007	confirmation phone call with Vicki Childs	0.1	0	18640
6/4/2007	Sent letter and discovery to Defendant	0.3	0	33638
6/4/2007	prepared letter to forward copies of discovery to Defendant	0.2	0	19306
6/4/2007	reviewed chain of custody discovery	0.6	0	19305
6/6/2007	Faxed transport Order to Jail	0.1	0	33640
6/6/2007	Phone conversation with Vicki Childs re: bill for services rendered	0.1	0	20510
6/6/2007	clocked order to transport at Horry County Court House	0.4	0	19863
6/6/2007	Telephone call from Winkler's Sister	0.3	0	20078
6/6/2007	Prepared letters and checks for payment for services rendered and expenses approved for Dr. Halavonich, Dr. Waid, Johnny Hartley, Blazer Investigative,	0.6	0	19864
6/11/2007	Telephone conference with Defendant's sister	0.4	0	30214

6/12/2007	met with Paul Rathbun and Vicki Childs and viewed evidence at HCPD	3.5	0	21781
6/12/2007	research on lexis nexis	1	0	30215
6/14/2007	phone conference with Winkler's sister "Karen" to discuss case.	0.2	0	31521
6/14/2007	received call from Peggy Snowden asst. to Fran humphries	0.2	0	31516
6/14/2007	phone conference with Paul Rathbun to discuss Winkler case and his review of the evidence with investigator.	0.2	0	31518
6/14/2007	sister phoned back once more	0.1	0	31526
6/15/2007	Phoned Dr. propctor to set up meeting and discuss Winkler case re: bullet not fragmented	0.5	0	31529
6/15/2007	Prepared letter to Toby Boyd	0.2	0	33642
6/18/2007	preparing trial notebooks	7.5	0	30216
6/19/2007	preparing trial notebooks	5	0	30217
6/19/2007	meeting with Vicki Childs	3	0	32011
6/19/2007	Sent supplemental discovery to Defendant	0.3	0	33644
6/20/2007	Met with Vicki Childs to continue our work on the Winkler case	3	0	31512
6/21/2007	call re: tower records for a cell number	0.1	0	33649
6/25/2007	Received fax from AT&T telephone on the request for request	0.1	0	31514
6/25/2007	Copied discovery supplements to winkler, Rathbun, and Childs	0.6	0	30218
6/25/2007	Received call from Paul Rathbun, wants to meet	0.1	0	31513
6/26/2007	Telephone conference with Dr. Proctor's Office	0.2	0	30220
6/26/2007	Conference with Winkler at J. Ruben long	7.5	0	30219
6/26/2007	Conference with Winkler at Jail	7.5	0	33654
6/26/2007	Letter to client re: supplemental discovery	0.3	0	34099
6/27/2007	Conference with Paul Rathbun at office	3	0	30222
6/27/2007	staff conference re: Winkler case	1.5	0	30221
6/28/2007	need phone records for J[redacted]... phone conference	0.1	0	34101
6/29/2007	Reviewed transcript of April 26 2006 from Court reporter Bonnie H. Kelly	1	0	30224
6/29/2007	telephone conference with Defendant's sister (jodi)	0.75	0	30223
6/29/2007	made copies of juror questionaire for Paul Rathbun	0.15	0	30225
7/1/2007	came to office after church, to review case file and juror information	5.1	0	30226
7/2/2007	Meeting with Defendant at Jail to discuss Jurors	2	0	30228
7/2/2007	reviewing case materials and notes	1.1	0	30227
7/3/2007	phone call to Dr. Proctor	0.1	0	30256
7/3/2007	received phone call from Paul Rathbun who says he needs info from SLED	0.1	0	30255
7/3/2007	Conversation with Dr, Halavonich	0.2	0	30254
7/3/2007	met with Judge Lockemy, Fran, Paul and the Defendant were present	0	2	30257
7/3/2007	called to Waccamaw menal health and spoke to receptionist	0.2	0	30283
7/3/2007	call to Judge Lockemy Office, left message	0.1	0	30290
7/5/2007	phone call to Dr. Ellison	0.2	0	30273

7/5/2007	Phone call from Vicki Childs	0.4	0	30293
7/5/2007	Paul Rathbun and I spoke to Karen Reeves	0.5	0	30312
7/5/2007	called Paige Tarr, received the voice mail	0.1	0	30307
7/5/2007	called Danielle to get email to see if Paige Tarr had sent any information	0.2	0	30304
7/5/2007	received phone call from Fran Humphries	0.2	0	30296
7/5/2007	call to Peggy in Fran Humphries' office	0.1	0	30285
7/5/2007	Drafted notes from hearing	1	0	30280
7/5/2007	spoke to Sam Johnson at Sherriff's Office re: comment by an office of calling the Defendant "death man walking"	0.2	0	30300
7/6/2007	received an d reviewed report from waccamaw center for mental health	0.1	0	30321
7/6/2007	spoke to Jodi McDougal, the Defendant's sister	0.1	0	30314
7/6/2007	Hearing with Judge Lockemy, Paul Rathbun and Greg Hembree	2	0.3	30400
7/6/2007	called Dr. Halavonich	0.1	0	30316
7/7/2007	spent the day at jail reviewing case with the Defendant	2.5	0	30401
7/9/2007	went to see Doctor Proctor at grandstrand hospital	1.5	0	30402
7/9/2007	Arrived at airport, caught flight at 1:00pm to Ohio to visit the Family of Defendant in order to prepare for Mitigation	5.5	0	31470
7/9/2007	Met with Family from 9pm-12pm midnite	3	0	31472
~~7/9/2007~~	~~travel time to Ohio~~ Paralegal charged for time attorney was not working on case	~~10~~	0	33658
7/10/2007	meeting at hotel at 9am with Defendant's family and mother.	5	0	31508
7/12/2007	trial preparation with attorney/discussed strategy, prepared motion for continuance/ co-counsel	13	0	34104
7/13/2007	attended motion hearing for contiuance	0	1.5	34110
7/13/2007	Prep for trial met with Investigator and co-counsel	6.5	0	34109
7/13/2007	conference at Donna Elder's office to go through Jury Questionairre	1.5	0	34107
7/18/2007	telephone conference with Judge Lockemy and State	0.5	0	34113
7/18/2007	telephone conference with mitigation specialist	0.75	0	34114
7/20/2007	telephone conference with Carolyn Graham	0.8	0	34115
7/23/2007	telephone conference with Vicki Childs	0.3	0	34120
7/23/2007	Conference with Defendant and TeAnne Oehler at jail	0.75	0	34121
7/23/2007	conference with co-counsel/support staff re: mitigation	3	0	34119
7/23/2007	Telephone Conference to John Blume	0.1	0	34118
7/23/2007	email to judge Lockemy	0.3	0	34117
7/23/2007	Telephone Conference with Margaret Lashay	0.6	0	34116
7/24/2007	meeting with Paul Rathbun and TeAnne Oehler	3	0	34122
7/25/2007	Conference with Judge Lockemy in chambers re: mitigation	0.75	0	34124
7/25/2007	various phone calls to potential new mitigation specialist	0.75	0	34125
7/25/2007	telephone conference with Karen	0.4	0	34123
7/25/2007	Conference with jury/litigation consultant Jeff Bloom	0.7	0	34127
7/26/2007	Conference with Paul Rathbun re: locating mitigation expert	0.2	0	34129
7/26/2007	reviewed correspondence from Jeff Bloom	0.3	0	34131

7/27/2007	Sent fax to Indigent d[illegible]se re: investigator	0.1	0	34132
7/27/2007	conduct legal research on sentencing	2.3	0	34134
7/27/2007	telephone conference with Mitigation Specialist in Ohio (Dorian Hall)	0.3	0	34133
8/2/2007	wrote letter to Judge Lockemy re: Winkler case, faxed, mailed and emailed	0.2	0	32043
8/3/2007	received and reviewed bill for Dr. Halovonich	0.1	0	32047
8/6/2007	call from Paul Rathbun re: the confernce to held on Tuesday or wed at 2pm	0.2	0	32046
8/6/2007	phone call from Ms. Jana at the Solicitor's Office. re: phone conference	0.1	0	32042
8/6/2007	2nd phone call from Ms. Jana at the Solicitor's Office. re: 2pm conference	0.1	0	32045
8/10/2007	reviewed resume of Dorian Hall	0.5	0	33362
8/10/2007	reviewed email from mitigation specialist in Ohio (Ms. Dorian Hall)	0.2	0	33351
8/10/2007	copied email to office manager	0.1	0	33354
8/10/2007	prepared email and fax coversheet to send Judge Lockemy re: Order, letter for fees and resume for Dorian Hall, Mitigation Specialist	0.6	0	33413
8/10/2007	Prepared Order Granting Approval of Expenses for new mitigation specialist, Dorian Hall	1	0	33411
8/13/2007	spoke to Atty Bucky III re: Winkler matter	0.4	0	33982
8/13/2007	Prepared fax to Indigent Defense Commission of amended order	0.5	0	34136
8/13/2007	spoke to Mary Ann from Indigent Defense re: Order	0.1	0	34137
8/13/2007	Prepared email to send to Judge Lockemy re: amended Order	0.2	0	34138
8/14/2007	met with Vicki Childs after meeting with Defendant	0.3	0	34528
8/14/2007	Hearing with Judge Lockemy re: Paige Tarr	0	1.5	34318
8/14/2007	Met with Defendant after hearing	0.5	0	34525
8/14/2007	reviewed invoice from Investigator	0.1	0	34135
Add	Close Form	Total:	294.9	15

Attorney: Ralph J. Wilson — Felony (Capita
Louis M. Winkler — Representing
A-2006-GS-26-W-00114 cid_id: 3077 — Out of Court In Court

nursed time sheet 8-16-07

				33615
				33584
				33658
				33544
1/3/2005	Scheduling Order Hearing	0	2.2	19308
4/13/2006	reviewed correspondence and NOISD from Solicitor	0.2	0	33415
7/12/2006	reviewed correspondence and Appointment from Solicitor	0.3	0	33416
9/6/2006	hearing with Judge Lockemy	0	1	16426
9/8/2006	reviewed correspondence from co-counsel	0.2	0	33417
9/12/2006	reviewed correspondence from Solicitor	0.1	0	33418
9/13/2006	reviewed note from co-counsel	0.1	0	33419
9/14/2006	telephone conference with Laura Turzak	0.1	0	33424
9/14/2006	Meeting with Laura Turzak	4	0	16428
10/6/2006	received and reviewed email from Peggy at Solicitor's Office	0.1	0	33426
10/16/2006	Telephone conference with Mr. Winkler	0.2	0	33428
11/17/2006	received email from investigator	0.1	0	33430
11/20/2006	reviewed email from Judge	0.1	0	33432
11/21/2006	sent email to Peggy at Solicitor's office	0.2	0	33436
11/21/2006	email to Judge with proposed scheduling order	0.2	0	33438
11/27/2006	reviewed email from Judge	0.1	0	33440
12/1/2006	reviewed correspondence from Judge	0.1	0	33441
12/18/2006	Conference call with Judge Lockemy	1	0	33443
12/18/2006	Conference call with Jodi McDougal	0.5	0	16430
12/21/2006	sent supplemental discovery to Defendant	0.3	0	33445
12/28/2006	reviewed correspondence from co-counsel	0.3	0	33446
1/3/2007	Competency Hearing	0	2	16431
1/12/2007	Case preparation with Paul Rathbun	3	0	16432
1/16/2007	Prepared Affidavit of Ralph J. Wilson	0.3	0	16483
1/26/2007	Interviewed Defendant at J Reuben Long	4.1	0	19309
1/26/2007	spoke to Bill Diggs re:Expert witnesses	0.6	0	19311
1/26/2007	Spoke to Fran Humphries, Deputy Solicitor, re: Blair hearing scheduled for Jan. 31	0.3	0	19312
1/26/2007	spoke to Dr. Waid's assistant re: the evaluation and their inability to conduct the evaluation by the date set.	0.4	0	19313
1/26/2007	Blair Hearing	0	2	31822
1/26/2007	Spoke to Dr. Schwartz, wre: accepting this type of matter	0.2	0	19314
1/26/2007	Spoke to Tyler, Judge Lockemy's Law Clerk about delaying the Blair hearing	0.2	0	19315
1/26/2007	Telephoned Vicki Childs to discuss helping with fact investigating	0.3	0	19316
1/26/2007	spoke to scott Bellamy re: Wikler's file	0.4	0	19[illegible]

1/29/2007	Phoned Dr. Newland and left message for him	0.1	0	19319
1/29/2007	Telphone Conference with Judge Lockemy and Paul Rathbun	0.6	0	19320
1/29/2007	Spoke to Fran, he stated that the State will offer Winkler no Plea Bargain	0.1	0	19318
1/29/2007	spoke to Vicki childs re: winkler and her assistance in the matter	0.2	0	19317
1/29/2007	Met with Paul Rathbun and discussed case	0.6	0	19321
1/30/2007	Blair Hearing with Hudge Lockemy	0	1	19322
1/30/2007	Traveled to and from Charleston for Blair Hearing	4	0	19323
1/30/2007	Telephone cal with Patty Tenet of MUSC Forensic Psychology	0.2	0	19324
1/30/2007	Telephone Call with Vicki Childs	0.2	0	19325
1/30/2007	copied discovery supplementa Cand D and photos	1	0	33547
2/2/2007	Vicki Childs Dale Davis and myself visited with Defendant	3	0	19328
2/2/2007	Met with Investigators Dale Davis and Vicki Childs	2.5	0	16433
2/5/2007	Telephone conference with Winkler's sisters Jodi and Karen	0.8	0	32040
2/5/2007	email from SCCID	0.1	0	33552
2/5/2007	Telephone Conference with Defendant's sister re: hearing, ealuation and the case	0.8	0	19331
2/6/2007	reviewed fax from Judge	0.1	0	33556
2/6/2007	Faxed order to Jail	0.1	0	33555
2/7/2007	Sent email to Dr. Waid	0.1	0	33559
2/8/2007	Sent email to Judge Lockemy	0.2	0	33561
2/9/2007	email to Tyler Lee Judge Lockemy's Law clerk	0.1	0	33564
2/11/2007	Email from Dale Davis	0.1	0	33566
2/12/2007	email to Dale Davis requesting attachment	0.1	0	33568
2/13/2007	email to Dale Davis requesting costs affidavit	0.4	0	33573
2/13/2007	email to Danielle for review of email	0.1	0	33570
2/13/2007	multiple emails to Dale Davis	0.3	0	33574
2/15/2007	Phoned Dr. Waid to get his report, I spoke to his assistant	0.6	0	19332
2/15/2007	spoke to Dr Waid re: his evaluation	0.3	0	19335
2/15/2007	reviewed State Hospital Competency Report for hearing on Friday	0.6	0	19336
2/16/2007	reviewed notes from hearing	0.2	0	19339
2/16/2007	Paul Rathbun and I met with Defendant in the atty-client room and allowed 2 doctors from state hospital to interview him	0.2	0	19343
2/16/2007	Compentency Hearing	4	1.5	16435
2/20/2007	reviewed email from Dale Davis	0.1	0	33582
2/20/2007	email to Dale Davis	0.1	0	33581
2/21/2007	reviewed the bio and affidavit of the new Investigator and spoke to her by phone	0.6	0	19347
2/22/2007	Discussed with Paralegal meeting set with Winkler's sister	0.2	0	32031
2/23/2007	Received phone call from TYler, Judge Lockemy's Law Clerk to set up a phone conference with Solicitor	0.1	0	19353
2/23/2007	Conference with Karen, Jody and Laura	2	0	33588
2/23/2007	met with Karen, Jody and Lauren	3	0	16441

2/23/2007	received phone call from Judge Lockemy re: conflict on sched[illegible] trial	0.1	0	19355
2/23/2007	Met with Paige Tarr re: case after Winkler's sisters left	2.5	0	19349
2/24/2007	Review of the Winkler Case file, charges, pics, crimscene, miranda, NCIC, Autopsy, witness statements	4.5	0	32028
2/28/2007	spent time reviewing Discovery	2.5	0	32030
2/28/2007	Met with Paige Tarr traveled to J. Reuben Long	5	0	16445
3/2/2007	Review correspondence from Co-Counsel	0.3	0	33592
3/5/2007	sent letter and Waid's CV to Judge	0.2	0	33594
3/6/2007	Prepared letter to Tom Fox	0.2	0	33595
3/7/2007	email from Judge	0.1	0	33598
3/9/2007	email from Judge reeviewed	0.1	0	33600
3/9/2007	email to Judge	0.1	0	33601
3/9/2007	conference with Winkler at Jail	2.5	0	33603
3/12/2007	reviewed and filed fax sent from Judge	0.1	0	33605
3/12/2007	email from Judge	0.1	0	33607
3/12/2007	Prepared motion for Preservation of Evidence	0.5	0	16455
3/14/2007	Prepared letter to Solicitor requesting addl discovery	0.3	0	33609
3/15/2007	Letter prepared for Court reporter requesting copies	0.2	0	33612
3/16/2007	Sent ssupplement discovery to co-counsel	0.3	0	33614
3/26/2007	Telephone conference with Patty Tennant	0.1	0	33618
3/27/2007	Visited Defendant at J. Reuben Long	4	0	16447
3/28/2007	Met with Dr. Halavonich	3	0	16448
3/29/2007	meeting with Investigator Vicki Childs	7	0	16449
3/30/2007	Met with Paige Tarr and Defendant	6.5	0	16450
4/5/2007	reviewed correspondence from co-counsel	0.1	0	33619
4/9/2007	Faxed transport Order to Judge	0.1	0	33620
4/11/2007	Met with Vicki Childs and the Defendant	2.5	0	16451
4/12/2007	Prepared motion to replace toxic terms commonly used in the trial of a capital case	1	0	16458
4/12/2007	prepared motion to produce all evidence inventory	0.3	0	16462
4/12/2007	Prepared Motion to Produce all Photographs made	0.3	0	16461
4/12/2007	Prepared Motion to Allow for Independent Analyzation of Ballistic Evidence	0.3	0	16460
4/12/2007	Prepared Motion to allow for Independent Analyzation of Blood Evidence	0.2	0	16459
4/12/2007	Prepared Motion to request in Cam hearing	0.2	0	16457
4/12/2007	Prepared Notice of motion and Motion To Reveal Grant of Immunity or Other Concessions	0.6	0	16456
4/12/2007	prepared notice and motion to seal Defendant's visitation log	0.4	0	16454
4/12/2007	prepared motion for leave to file additional motions	0.1	0	16453
4/13/2007	Prepared Notice of Motion and Motion Prohibiting Extrajudicial Statements of Trial Participants	2.5	0	16472
4/13/2007	Prepared Motion to Produce written, oral or third party statements	0.3	0	16463

4/13/2007	Motion to Produce any and all SLED reports	0.2	0	16464
4/13/2007	Prepared motion to produce the registration for the Gun used in the shooting and for the Gun found under the victim's son's pillow.	0.2	0	16466
4/13/2007	Prepared Motion to produce any and all audio recordings	0.2	0	16465
4/13/2007	Prepared motion to produce all incident reports	0.2	0	16467
4/13/2007	Motion to produce all criminal records of Jurors	0.2	0	16468
4/13/2007	Prepared motion for Law Enforcement Officers to Retain Notes	0.7	0	16473
4/13/2007	Prepared Motion for Witness Information	0.2	0	16471
4/13/2007	Prepared motion to produce DNA Evidence	0.9	0	16470
4/13/2007	prepared motion to produce any criminal history of witnesses	0.2	0	16469
4/14/2007	Prepared Motion to Voir Dire Jurors in panels of five at a time certain	0.7	0	16480
4/14/2007	Notice of and Motion for Disclosure of Similar Acts	0.3	0	16474
4/14/2007	Prepared Motion for Expanded Voir Dire	2	0	16481
4/14/2007	Prepared Motion to Adjourn at a Reasonable Time	0.5	0	16479
4/14/2007	Prepared Motion to Sequester Witnesses	0.2	0	16478
4/14/2007	Prepared Notice of and Motion for disclosure of surveillance	0.8	0	16475
4/14/2007	Prepared Motion for an Order Requiring the Solicitor to Respond in Writing to each motion which is Contested byt the State	2	0	16477
4/14/2007	prepared motion for fair trial procedures	4	0	16476
4/16/2007	Prepared Motion for Change of venue	0.6	0	16482
4/16/2007	Prepared Notice of and Motion to Bar Electronic Broadcasting of Court proceedings	2.5	0	16485
4/16/2007	Prepared Motion for Jury Questions	3	0	16484
4/18/2007	reviewed all multi media evidence, including autopsy cds, interviews, phone calls, photos and crime scene photos	4	0	16488
4/18/2007	reviewed correspondence from Solicitor	0.2	0	33621
4/25/2007	Jail meeting with Winkler, reviewed dvd of his statement to police	3.1	0	32029
4/25/2007	discussed with Dr. Frierson from state hospital Defendant's version of the facts	2	0	32018
4/27/2007	reviewed telephone message from patty at Dr. Halavonich's Office	0.1	0	33624
5/2/2007	Faxed Transport Order to Judge	0.1	0	33625
5/8/2007	Sent Supplemental Discovery to Defendant	0.3	0	33627
5/16/2007	Meeting with Winkler at the Jail	3	0	32020
5/16/2007	Telephone conference with fact investigator	0.2	0	33628
5/17/2007	Met with Winkler at J. Reuben Long	3	0	16486
5/17/2007	Reviewed Video of Rebecca Winkler's 2005 Hospital interview	0.6	0	16487
5/18/2007	reviewed Dash Cam from officers vehicle	0.2	0	16545
5/18/2007	Reviewed books, notebooks, and other reading materials belonging to Victim,victim's son and the Defendant	2	0	16546
5/22/2007	phone call to Tyler Lee	0.1	0	17451
5/22/2007	reviewed corr. from Solicitor to Judge	0.4	0	33630
5/22/2007	Prepared 3 respnses to Fran Humphries emails and filed with clerk of court	1	0	17453

5/23/2007	Reviewed State's objections to Juror Questionire	1	0	33633
5/23/2007	email from Judge	0.1	0	33635
5/23/2007	reviewed email from Solicitor	0.1	0	33636
5/23/2007	Preparation of trial note books and evidence organization	6	0	17450
5/24/2007	met with Fran Humphries to discuss voir dire questions	2	0	17601
5/24/2007	Prepared 2 subpoenas deuces tecums for J[redacted] G[redacted]'s work logs and time sheets, one to John Weaver and One to Danny Knight	1	0	17602
5/24/2007	received call from Fran	0.1	0	32026
5/24/2007	reviewed State's objections from 11:30am-2:00pm	2.5	0	32027
5/24/2007	called Judge Lockemy to tell him we did not receive info or objections from Fran until Friday	0.1	0	32025
5/24/2007	Meeting with Paul Rathbun to get ready for Conference call with Judge	0.3	0	32024
5/24/2007	Received call re: Judge Lockemy wants conference call on Winkler	0.1	0	32023
5/25/2007	Met with Paul Rathbun to discuss voir dire questions	0.8	0	17452
5/25/2007	reviewed Juror Questionnaire	0.6	0	17818
5/25/2007	reviewed email from solicitor's office and responded to email	0.2	0	17820
5/29/2007	prepared order to transport Defendant from J. Reuben Long to MUSC for continued psychiatric evaluation	0.2	0	18210
5/29/2007	telephone call with vicki childs,	0.1	0	18204
5/29/2007	telephone conference with Ms. Patty from Forensice Psychiatry Services of MUSC re: Defendant and continued treatment	0.1	0	18207
5/29/2007	prepared second order for fees for continued psychiatric evaluation of the Defendant	0.5	0	18209
5/30/2007	telephone call from Paige Tarr re: Winkler and meeting on June 5th, 2007 scheduled for 10am	0.1	0	18462
5/30/2007	reviewed email from Vicki Childs	0.1	0	19307
5/30/2007	prepared affidavit for attorney fees	0.8	0	18399
5/30/2007	Sent various Order to Judge Lockemy for execution	0.2	0	33637
5/30/2007	spoke with Paige Tarr re: meeting with vicki and Ralph to view evidence and talk strategy	0.1	0	18402
5/31/2007	phone call from Peggy Snowden re: viewing evidence at HCPD	0.1	0	18657
5/31/2007	confirmation phone call with Vicki Childs	0.1	0	18640
6/4/2007	prepared letter to forward copies of discovery to Defendant	0.2	0	19306
6/4/2007	reviewed chain of custody discovery	0.6	0	19305
6/4/2007	Sent letter and discovery to Defendant	0.3	0	33638
6/6/2007	Phone conversation with Vicki Childs re: bill for services rendered	0.1	0	20510
6/6/2007	clocked order to transport at Horry County Court House	0.4	0	19863
6/6/2007	Prepared letters and checks for payment for services rendered and expenses approved for Dr. Halavonich, Dr. Waid, Johnny Hartley, Blazer Investigative,	0.6	0	19864
6/6/2007	Telephone call from Winkler's Sister	0.3	0	20078
6/6/2007	Faxed transport Order to Jail	0.1	0	33640
6/11/2007	Telephone conference with Defendant's sister	0.4	0	30214

6/12/2007	research on lexis nexi	1	0	30215
6/12/2007	met with Paul Rathbun and Vicki Childs and viewed evidence at HCPD	3.5	0	21781
6/14/2007	phone conference with Winkler's sister "Karen" to discuss case.	0.2	0	31521
6/14/2007	received call from Peggy Snowden asst. to Fran humphries	0.2	0	31516
6/14/2007	sister phoned back once more	0.1	0	31526
6/14/2007	phone conference with Paul Rathbun to discuss Winkler case and his review of the evidence with investigator.	0.2	0	31518
6/15/2007	Prepared letter to Toby Boyd	0.2	0	33642
6/15/2007	Phoned Dr. propctor to set up meeting and discuss Winkler case re: bullet not fragmented	0.5	0	31529
6/18/2007	preparing trial notebooks	7.5	0	30216
6/19/2007	meeting with Vicki Childs	3	0	32011
6/19/2007	Sent supplemental discovery to Defendant	0.3	0	33644
6/19/2007	preparing trial notebooks	5	0	30217
6/20/2007	Met with Vicki Childs to continue our work on the Winkler case	3	0	31512
6/21/2007	call re: tower records for a cell number	0.1	0	33649
6/25/2007	Received call from Paul Rathbun, wants to meet	0.1	0	31513
6/25/2007	Copied discovery supplements to winkler, Rathbun, and Childs	0.6	0	30218
6/25/2007	Received fax from AT&T telephone on the request for request	0.1	0	31514
6/26/2007	Letter to client re: supplemental discovery	0.3	0	34099
6/26/2007	Telephone conference with Dr. Proctor's Office	0.2	0	30220
6/26/2007	Conference with Winkler at J. Ruben long	7.5	0	30219
6/26/2007	Conference with Winkler at Jail	7.5	0	33654
6/27/2007	Conference with Paul Rathbun at office	3	0	30222
6/27/2007	staff conference re: Winkler case	1.5	0	30221
6/28/2007	need phone records for J[redacted]... phone conference	0.1	0	34101
6/29/2007	Reviewed transcript of April 26 2006 from Court reporter Bonnie H. Kelly	1	0	30224
6/29/2007	telephone conference with Defendant's sister (jodi)	0.75	0	30223
6/29/2007	made copies of juror questionaire for Paul Rathbun	0.15	0	30225
7/1/2007	came to office after church, to review case file and juror information	5.1	0	30226
7/2/2007	Meeting with Defendant at Jail to discuss Jurors	2	0	30228
7/2/2007	reviewing case materials and notes	1.1	0	30227
7/3/2007	phone call to Dr. Proctor	0.1	0	30256
7/3/2007	received phone call from Paul Rathbun who says he needs info from SLED	0.1	0	30255
7/3/2007	met with Judge Lockemy, Fran, Paul and the Defendant were present	0	2	30257
7/3/2007	called to Waccamaw menal health and spoke to receptionist	0.2	0	30283
7/3/2007	call to Judge Lockemy Office, left message	0.1	0	30290
7/3/2007	Conversation with Dr, Halavonich	0.2	0	30254
7/5/2007	Paul Rathbun and I spoke to Karen Reeves	0.5	0	30312

7/5/2007	Drafted notes from hearing	1	0	30280
7/5/2007	call to Peggy in Fran Humphries' office	0.1	0	30285
7/5/2007	Phone call from Vicki Childs	0.4	0	30293
7/5/2007	received phone call from Fran Humphries	0.2	0	30296
7/5/2007	spoke to Sam Johnson at Sherriff's Office re: comment by an office of calling the Defendant "deam man walking"	0.2	0	30300
7/5/2007	called Danielle to get email to see if Paige Tarr had sent any information	0.2	0	30304
7/5/2007	called Paige Tarr, received the voice mail	0.1	0	30307
7/5/2007	phone call to Dr. Ellison	0.2	0	30273
7/6/2007	received an d reviewed report from waccamaw center for mental health	0.1	0	30321
7/6/2007	spoke to Jodi McDougal, the Defendant's sister	0.1	0	30314
7/6/2007	Hearing with Judge Lockemy, Paul Rathbun and Greg Hembree	2	0.3	30400
7/6/2007	called Dr. Halavonich	0.1	0	30316
7/7/2007	spent the day at jail reviewing case with the Defendant	2.5	0	30401
7/9/2007	went to see Doctor Proctor at grandstrand hospital	1.5	0	30402
7/9/2007	Arrived at airport, caught flight at 1:00pm to Ohio to visit the Family of Defendant in order to prepare for Mitigation	5.5	0	31470
7/9/2007	Met with Family from 9pm-12pm midnite	3	0	31472
7/10/2007	meeting at hotel at 9am with Defendant's family and mother.	5	0	31508
7/12/2007	trial preparation with attorney/discussed strategy, prepared motion for continuance/ co-counsel	13	0	34104
7/13/2007	attended motion hearing for contiuance	0	1.5	34110
7/13/2007	Prep for trial met with Investigator and co-counsel	6.5	0	34109
7/13/2007	conference at Donna Elder's office to go through Jury Questionairre	1.5	0	34107
7/18/2007	telephone conference with Judge Lockemy and State	0.5	0	34113
7/18/2007	telephone conference with mitigation specialist	0.75	0	34114
7/20/2007	telephone conference with Carolyn Graham	0.8	0	34115
7/23/2007	telephone conference with Vicki Childs	0.3	0	34120
7/23/2007	Conference with Defendant and TeAnne Oehler at jail	0.75	0	34121
7/23/2007	conference with co-counsel/support staff re: mitigation	3	0	34119
7/23/2007	Telephone Conference to John Blume	0.1	0	34118
7/23/2007	email to judge Lockemy	0.3	0	34117
7/23/2007	Telephone Conference with Margaret Lashay	0.6	0	34116
7/24/2007	meeting with Paul Rathbun and TeAnne Oehler	3	0	34122
7/25/2007	Conference with Judge Lockemy in chambers re: mitigation	0.75	0	34124
7/25/2007	various phone calls to potential new mitigation specialist	0.75	0	34125
7/25/2007	telephone conference with Karen	0.4	0	34123
7/25/2007	Conference with jury/litigation consultant Jeff Bloom	0.7	0	34127
7/26/2007	Conference with Paul Rathbun re: locating mitigation expert	0.2	0	34129
7/26/2007	reviewed correspondence from Jeff Bloom	0.3	0	34131
7/27/2007	Sent fax to Indigent defense re: investigator	0.1	0	34132

7/27/2007	conduct legal research sentencing	2.3	0	34134
7/27/2007	telephone conference with Mitigation Specialist in Ohio (Dorian Hall)	0.3	0	34133
8/2/2007	wrote letter to Judge Lockemy re: Winkler case, faxed, mailed and emailed	0.2	0	32043
8/3/2007	received and reviewed bill for Dr. Halovonich	0.1	0	32047
8/6/2007	call from Paul Rathbun re: the confernce to held on Tuesday or wed at 2pm	0.2	0	32046
8/6/2007	phone call from Ms. Jana at the Solicitor's Office. re: phone conference	0.1	0	32042
8/6/2007	2nd phone call from Ms. Jana at the Solicitor's Office. re: 2pm conference	0.1	0	32045
8/10/2007	copied email to office manager	0.1	0	33354
8/10/2007	reviewed email from mitigation specialist in Ohio (Ms. Dorian Hall)	0.2	0	33351
8/10/2007	prepared email and fax coversheet to send Judge Lockemy re: Order, letter for fees and resume for Dorian Hall, Mitigation Specialist	0.6	0	33413
8/10/2007	Prepared Order Granting Approval of Expenses for new mitigation specialist, Dorian Hall	1	0	33411
8/10/2007	reviewed resume of Dorian Hall	0.5	0	33362
8/13/2007	spoke to Atty Bucky III re: Winkler matter	0.4	0	33982
8/13/2007	Prepared fax to Indigent Defense Commission of amended order	0.5	0	34136
8/13/2007	spoke to Mary Ann from Indigent Defense re: Order	0.1	0	34137
8/13/2007	Prepared email to send to Judge Lockemy re: amended Order	0.2	0	34138
8/14/2007	met with Vicki Childs after meeting with Defendant	0.3	0	34528
8/14/2007	Hearing with Judge Lockemy re: Paige Tarr	0	1.5	34318
8/14/2007	Met with Defendant after hearing	0.5	0	34525
8/14/2007	reviewed invoice from Investigator	0.1	0	34135
Add	Close Form	Total:	276.4	15

Attorney: Ralph J. Wilson — Felony (Capit
Louis M. Winkler — Representing
A-2006-GS-26-W-00114 cid_id: 700

		Out of Court	In Court
1/7/2007	Copied crime scene photos and Autopsy photos for Montele to take to client at jail.	0.3	0
1/26/2007	Prepared Order to Transport for evaluation with Dr. Waid.	0.1	0
1/26/2007	Sent email to Investigator Dale Davis	0.1	0
1/26/2007	Sent email to Judge Lockemy with Transport Order attached.	0.1	0
1/29/2007	Telephone conference with Johnny Harley.	0.2	0
1/29/2007	email to Judge Lockemy with Transport Order.	0.1	0
1/29/2007	Re-sent email to Judge Lockemy for signature on Transport Order	0.1	0
1/30/2007	Copied discovery Supplement CD and Photos to disc and delivered to Paul Rathbun	0.1	0
2/7/2007	Sent email to Judge Lockemy attaching expenses for Dr. Halavonich and Hartley	0.1	0
2/9/2007	Sent email to Tyler Lee regarding Expense Orders.	0.1	0
2/13/2007	Sent communication to Dale Davis requesting costs.	0.1	0
2/15/2007	Telephone conference with Defendant's sister	0.1	0
2/20/2007	Called Paige Tarr, Mitigation Specialist	0.1	0
2/20/2007	spoke with Jody McDougal re: Friday's hearing	0.1	0
2/20/2007	Telephone conference with Dale Davis re: constraints	0.2	0
2/21/2007	Prepared package for Dr. Halavonich's services mailed	0.4	0
2/21/2007	Telephone conference with Paige Tarr re: discovery	0.1	0
2/21/2007	telephone conference with Jody Mac Dougal	0.1	0
2/21/2007	Sent email to Vicki Childs	0.1	0
2/28/2007	phone conference with Vicki Childs	0.2	0
2/28/2007	Left message with Dr. Wiad's asst. that we need bio.	0.1	0
2/28/2007	Sent Expense Orders re: Hartley and Waid to Judge Lockemy	0.1	0
3/2/2007	Phone conference with Laura Turzek	0.1	0
3/2/2007	Prepared expense orders and Transport Order to send to Judge Lockemy	0.5	0
3/2/2007	Phone conference with Patty at Dr. Halovonich's office	0.2	0
3/2/2007	phone conference with Jody McDougal	0.1	0
3/9/2007	phonce call to Patty re rescheduling	0.1	0
3/12/2007	phone conference with Jody McDougal	0.5	0
3/15/2007	clocked transfer order for Dr. Halavonich	0.3	0
3/15/2007	Prepared copy of photo disc for Vicki Childs	0.2	0
3/15/2007	Prepared second Compentency Hearing request for transcripts	0.1	0
3/15/2007	Prepared 1.3.7 Compentency Hearing transcript request	0.2	0
3/16/2007	Prepared copy of Discovery Supplement E for Paul Rathbun	0.1	0
3/19/2007	Sent fax to JRL transport Dept. forwarding transport order	0.1	0
3/26/2007	Telephone conference with Paige Tarr	0.2	0
3/26/2007	telephone conference with Vicki Childs	0.1	0

3/26/2007	Conference with Pa[illegible]bun	0.3	0
3/30/2007	Prepared authorization forms and went to J. Reuben Long to have Defendant sign	2	0
4/12/2007	Telephone Conference with Fran Humphries re: extension to file motions	0.3	0
4/13/2007	Prepared letter to judge Lockemy re: extension	0.2	0
4/20/2007	telephone conference with Dr. Halovonich re: letter to jail and removal from suicide watch	0.2	0
4/20/2007	follow up conversation w/ Dr. Halovonich re: removal from suicide watch	0.4	0
4/20/2007	Telephone conference with Fran Humphries re: voir dire	0.3	0
4/20/2007	pleading, proposed voir dire	2.3	0
Add	Close Form	Total: 11.8	0

Attorney: Ralph J. Wilson — Felony (Capit

Louis M. Winkler — Representing

A-2006-GS-26-W-00114 cid_id: 700

		Out of Court	In Court
1/7/2007	Copied crime scene photos and Autopsy photos for Montele to take to client at jail.	0.3	0
1/26/2007	Prepared Order to Transport for evaluation with Dr. Waid.	0.1	0
1/26/2007	Sent email to Investigator Dale Davis	0.1	0
1/26/2007	Sent email to Judge Lockemy with Transport Order attached.	0.1	0
1/29/2007	Telephone conference with Johnny Harley.	0.2	0
1/29/2007	email to Judge Lockemy with Transport Order. esputchang dates	0.1	0
1/29/2007	Re-sent email to Judge Lockemy for signature on Transport Order	0.1	0
1/30/2007	Copied discovery Supplement CD and Photos to disc and delivered to Paul Rathbun	0.1	0
2/7/2007	Sent email to Judge Lockemy attaching expenses for Dr. Halavonich and Hartley	0.1	0
2/9/2007	Sent email to Tyler Lee regarding Expense Orders.	0.1	0
2/13/2007	Sent communication to Dale Davis requesting costs.	0.1	0
2/15/2007	Telephone conference with Defendant's sister	0.1	0
2/20/2007	Called Paige Tarr, Mitigation Specialist	0.1	0
2/20/2007	spoke with Jody McDougal re: Friday's hearing	0.1	0
2/20/2007	Telephone conference with Dale Davis re: constraints	0.2	0
2/21/2007	Prepared package for Dr. Halavonich's services mailed	0.4	0
2/21/2007	Telephone conference with Paige Tarr re: discovery	0.1	0
2/21/2007	telephone conference with Jody Mac Dougal	0.1	0
2/21/2007	Sent email to Vicki Childs	0.1	0
2/28/2007	phone conference with Vicki Childs	0.2	0
2/28/2007	Left message with Dr. Wiad's asst. that we need bio.	0.1	0
2/28/2007	Sent Expense Orders re: Hartley and Waid to Judge Lockemy	0.1	0
3/2/2007	Phone conference with Laura Turzek	0.1	0
3/2/2007	Prepared expense orders and Transport Order to send to Judge Lockemy	0.5	0
3/2/2007	Phone conference with Patty at Dr. Halovonich's office	0.2	0
3/2/2007	phone conference with Jody McDougal	0.1	0
3/9/2007	phonce call to Patty re resceduling	0.1	0
3/12/2007	phone conference with Jody McDougal	0.5	0
3/15/2007	clocked transfer order for Dr. Halavonich	0.3	0
3/15/2007	Prepared copy of photo disc for Vicki Childs	0.2	0
3/15/2007	Prepared second Compentency Hearing request for transcripts	0.1	0
3/15/2007	Prepared 1.3.7 Compentency Hearing transcript request	0.2	0
3/16/2007	Prepared copy of Discovery Supplement E for Paul Rathbun	0.1	0
3/19/2007	Sent fax to JRL transport Dept. forwarding transport order	0.1	0
3/26/2007	Telephone conference with Paige Tarr	0.2	0
3/26/2007	telephone conference with Vicki Childs	0.1	0

3/26/2007	Conference with Pa hbun	0.3	0
3/30/2007	Prepared authorization forms and went to J. Reuben Long to have Defendant sign	2	0
4/12/2007	Telephone Conference with Fran Humphries re: extension to file motions	0.3	0
4/13/2007	Prepared letter to judge Lockemy re: extension	0.2	0
4/20/2007	telephone conference with Dr. Halovonich re: letter to jail and removal from suicide watch	0.2	0
4/20/2007	follow up conversation w/ Dr. Halovonich re: removal from suicide watch	0.4	0
4/20/2007	Telephone conference with Fran Humphries re: voir dire	0.3	0
4/20/2007	pleading, proposed voir dire	2.3	0
Add	Close Form	Total: 11.8	0

$590.00

Paid $50.00 $175.00

Attorney: Ralph J. Wilson — Felony (Capital)

Louis M. Winkler — Representing

A-2006-GS-26-W-00114 cid_id: 5108

		Out of Court	In Court
7/20/2007	emailed Lockemy's law clerk re: Order for Fees	0.2	0
8/2/2007	Sent letter and orders for Mitigation Specialist to Lockemy via law clerk	0.4	0
8/24/2007	met with vicki childs re: invoice, payment, and mitigation specialist	1	0
8/24/2007	pulled past invoices from file and compared to new invoices. made check payable to Blazer Investigative	0.2	0
8/24/2007	reviewed phone records from HTC re: J[redacted]'s cell number and other numbers called and prepared for meeting with Defendant re: these records and case	0.4	0
8/24/2007	filed witness statements and interviews in two notebooks	0.4	0
8/24/2007	met with Winkler at J. Reuben Long with Investigator Vicki Childs	3.5	0
8/24/2007	spoke to the mitigation specialist Carolyn Graham re: case and working with our firm on this matter	0.5	0
8/27/2007	received and reviewed Carolyn Graham's affidavit	0.6	0
8/28/2007	composed an Order for expenses for mitigation specialist Carolyn graham and forwardedd it to Judge Lockemy	0.8	0
8/28/2007	spoke to Paul Rathbun re: status of the case and the specialist	0.3	0
8/28/2007	edited the first page of Ms. Graham's affidavit	0.5	0
8/28/2007	composed email and attachment to specialist Dorian Hall re: case	0.6	0
9/5/2007	fowarded Carolyn Graham's affidavit to Judge Lockemy and Orders for his signature	0.5	0
9/13/2007	received clocked Orders for Expenses from J. Lockemy for Dorian Hall, Carolyn Graham and Dr. Halavonich	0.7	0
9/13/2007	prepared letters to Dorian Hall and Carolyn Graham and attached pdf file of the clocked orders	0.6	0
9/17/2007	Sent Death Penalty Statute to Dorian Hall	0.2	0
9/21/2007	review scheduling Order from Peggy	0.3	0
9/24/2007	prepared and copied data cds of discovery for mitigation specialist Dorian Hall and Carolyn Graham	2	0
9/25/2007	spoke to Carolyn Graham re: discovery info	0.1	0
9/25/2007	spoke with Winkller's sister Karen Reeves re: information for Mitigation Specialist	0.2	0
9/25/2007	wrote letter to Dorian Hall and priority mailed CDs containing discovery	0.7	0
10/1/2007	Sent email to Dorian Hall Re. receipt of discovery	0.1	0
10/1/2007	reviewed email correspondence from Dorian Hall	0.1	0
10/1/2007	sent email response to Dorian Hall	0.1	0
10/2/2007	Second phone call from Carolyn Graham re: mitigation specialist in Ohio and meeting with Ralph Sr.	0.1	0
10/2/2007	phone call with Carolyn Graham re: Discovery and meeting with Defendant	0.3	0
10/10/2007	Spoke with Patty from Dr. Halavonich's office re: Winkler and visit	0.1	0
10/10/2007	viewed and burned DVDs and CDs of discovery of Interview,	2.5	0

	statement in 2005 and other visual and audio evidence re: Death Penalty Matter		
10/10/2007	Carolyn Graham 3rd phone call	0.1	0
10/10/2007	second phone call with Carolyn Graham	0.1	0
10/10/2007	phone call with Carolyn Graham	0.1	0
10/11/2007	wrote letter and forwarded with attached info re: additional discovery	0.5	0
10/11/2007	spoke with Patty re: submitting bill to Indigent defense	0.1	0
10/11/2007	Scheduling Order Hearing re: additional motions	0	0.8
Add	Close Form	Total: 18.9	0.8

$2079.00 48.00

Attorney: Ralph J. Wilson — Felony (Capital)

Louis M. Winkler — Representing

A-2006-GS-26-W-00114 cid_id: 6828

		Out of Court	In Court
10/10/2007	message from Dr. Holovonich	0.1	0
10/10/2007	meeting and hearing with Judge Lockemy re: additional motions to be filed	0.9	0.6
10/11/2007	Carolyn Graham phone for Danielle	0.1	0
10/17/2007	researched death penalty trial strategies and motions pulled South Carolina Treatise on the subject and prepared notes	4.1	0
10/18/2007	reviewed life and language, the art of Voir dire in preparation of trial	3.6	0
10/18/2007	sent email to Dorian Hall	0.2	0
10/18/2007	reviewed email from Dorian Hall	0.1	0
10/19/2007	Spoke with Karen Reeves, Defendant's Sister	0.3	0
10/19/2007	reviewed and studied Defendants transcipt and video interview, developing trial strategy	2.5	0
10/22/2007	Spoke with Carolyn Graham, Mitigation Specialist re: meeting and case	0.3	0
10/22/2007	organized discovery and prepared to discuss case with Mitigation specialist	2.5	0
10/23/2007	reviewed email from Carolyn Graham	0.1	0
10/23/2007	Spoke to Judge Lockemy re: transport order	0.1	0
10/24/2007	Meeting with Carolyna Graham, Mitigation Specialist	3	0
10/25/2007	Spoke with Jodi McDougal	0.5	0
10/26/2007	Patty called left message for Danielle	0.1	0
10/26/2007	reviewed notes from prior convo with Doctor's Office and notes re client and his personality disorder	3.1	0
10/29/2007	Dr. Mulbry called to set an appointment	0.1	0
10/29/2007	researched pharmacology and expert testiminy in death penalty cases	2.3	0
10/29/2007	phone with patty from MUSC re: Dr. Holovonich	0.1	0
10/31/2007	faxed copies of case docs to Carolyn Graham	0.6	0
10/31/2007	received and reviewed the Vita of Dr. Aurel Emerson Smith, Jury Selection Expert, and prepared an Order for fees and appointment	1	0
10/31/2007	carolyn Graham phoned for Danielle	0.1	0
10/31/2007	Karen called from MUSC	0.1	0
11/1/2007	Dr. Alex Morton phoned Ralph Sr./ Message	0.1	0
11/1/2007	received and reviewed the Curriculum Vitae for Dr. William Alexander Morton, Psychopharmocology, and prepared an Order for fees and appointment	1.5	0
11/1/2007	copying discovery for appointed experts Dr. Morton and Smith	2.5	0
11/1/2007	phone call from Dr. Smith, Jury Expert	0.2	0
11/1/2007	Meeting with Paul Rathbun, 2nd chair counsel in this matter.	2	0
11/2/2007	research on death penalty, reviewed death penalty seminar cd on voir dire and law review article on jurors	3	0

36.5 6 0/3614

11/2/2007	received and reviewed affidavit from Te Anne Oehler, Psycho-Sociologist, and prepar[illegible] Order for fees and appointment	1	0
11/4/2007	spoke to Carolyn Graham	0.2	0
11/5/2007	Spoke to Judge Lockemy's Secretary re: law clerks information	0.1	0
11/5/2007	prepared and sent email to Judge Lockemy's Law Clerk re: Proposed Orders	0.2	0
11/5/2007	TeAnne Oehler called for Ralph Sr., left message	0.1	0
11/5/2007	spoke to Judge Lockemy's Law Clerk	0.1	0
11/6/2007	Traveled to J. Reuben Long to meet Dr. Michael Smith to who will be the treating physician for Winkler	1	0
11/6/2007	Dr. Smith called re: being late for meeting	0.1	0
11/7/2007	went to J Reuben Long to meet with Winkler and Carolyn for introductions	0.8	0
11/8/2007	spoke to Carolyn Graham re: Dr. Morton and hiring a Crime Scene Investigator	0.3	0
11/8/2007	Spoke to Carolyn Graham re: Mr. Naylor	0.2	0
11/8/2007	spoke to Jodi McDougal, Defendant's sister re: case	0.9	0
11/8/2007	reviewed another email from J. Lockemy's law clerk	0.1	0
11/8/2007	prepared email to Mr. Naylor re: more info about cases he's worked on and testified in as an expert	0.2	0
11/8/2007	reviewed email from Ms. Tricia re: Orders confirmation	0.1	0
11/8/2007	spoke to J. Lockemy's assistant in Dillon, Ms Tricia	0.1	0
11/8/2007	emailed Chip, Judge Lockemy's law clerk regarding the status of Orders	0.2	0
11/8/2007	received and reviewed Dr. Michael Smith's CV, and prepared an Order for appointment re: his services as a treating forensic psychiatrist.	1	0
11/8/2007	spoke to Chip re: Orders and format of Orders for emailing	0.2	0
11/9/2007	reviewed email from Mr. Naylor re: more information about his trial and case experience.	0.1	0
11/9/2007	examined photographs an compared notes re: theory	2.7	0
11/15/2007	met with Dr.Morton re: Winkler matter.	1.5	0
11/15/2007	teaveled to j ruben long to introduce Dr. Morton to Winkler	0.7	0
11/15/2007	reviewed and compared telephone records in this matter	1.3	0
11/16/2007	received and reviewed signed orders from judge Lockemy. copied files with orders.	1.2	0
11/19/2007	reviewed 2005 tape of Victim and the victim's statement to the police while in hospital, prepared notes and looked for inconsistencies and compared defendant's statement re: the event	3.1	0
11/27/2007	spoke to Karen Reeves re: Defendant's case	0.3	0
11/30/2007	message from Carolyn Graham re: Winkler matter	0.1	0
11/30/2007	spoke to Ms. Trisha in Judge Lockemy's office	0.1	0
11/30/2007	spoke to Judge Lockemy's law clerk re: unsigned Order	0.1	0
11/30/2007	prepared email for Judge Lockemy with order to be signed attached	0.2	0
11/30/2007	Phone call from Carolyn Graham re: meeting with Father and	0.1	0

	brother of Defendant		
11/30/2007	spoke to Defendant's brother re: he and the brother coming down to visit with Defendant	0.2	0
12/3/2007	TC (multiple) w/ Carolyn Graham re: status and team mtg	0.3	0
12/3/2007	phone call from Vicki Childs	0.2	0
12/3/2007	Inner-office planning mtg.	0.75	0
12/4/2007	TC w/ Oehler confriming appt	0.2	0
12/4/2007	TC to Oehler's ofc. Left msg.	0.1	0
12/4/2007	TC Patty w/ Dr. Halonovich's ofc scheduling team mtg	0.2	0
12/4/2007	TC to Rathbun's ofc. Left msg.	0.1	0
12/5/2007	TC w/ Dr. Halonovich confirming appt and status	0.2	0
12/5/2007	TC w/ Judge's Clerk re: scheduling	0.2	0
12/5/2007	phone call to Paul Rathbun 2nchair attorney	0.1	0
12/6/2007	conference with associate attorney re: case	0.2	0
12/6/2007	reviewed case file to prepare for meeting with Defendant's brother and father	0.7	0
12/7/2007	drove and lead defendant's brother and father to the prison to visit defendant	0.6	0
12/7/2007	Spoke with Dr. SMith Re: Defendant and how to communicate with him.	0.3	0
12/7/2007	met with defendant's brother and father for a second time from 6:30pm to 10pm discussed defendant and case procedure and more of the evidence and Defendant's concerns	3.5	0
12/7/2007	met with Defendant's brother and father at 10am to 1:30pm discussed case and viewed evidence	3.5	0
12/10/2007	met with Defendant to discuss his concerns re: evidence and crime scene.	1.8	0
12/11/2007	received and reviewed Order from Judge Lockemy re: Te Ann Oheir as expert witness	0.4	0
12/11/2007	called prison to set up conference for Wed.	0.2	0
12/11/2007	Inter-office conference re: consultation with Defendant	0.4	0
12/11/2007	telephone call with paul Rathbun re: blair hearing scheduled fore Thursday December 13, 2007	0.1	0
12/12/2007	went to the jail to meet with defense team and and the Defendant to prepare for trial	8.5	0
12/12/2007	began organizing and preparing file in prep for meeting with entire defendse team and defendant	2.5	0
12/12/2007	spoke to Paul Rathbun re: case and upcoming Blair hearing	0.3	0
12/13/2007	conference with Paul Rathbun about trial prep	0.3	0
12/13/2007	drove to Dillon County for Blair Hearing (competency hearing) with Judge Lockemy and Fran Humphries	3	0.7
12/13/2007	spoke to carolyn gram re: case	0.4	0
12/14/2007	reviewing crime scene evidence and comparing notes from clients statement	3.7	0
12/14/2007	email to Jeff Naylor re: meeting and crime scene evidence	0.2	0
12/14/2007	prepared order for Crime Scene Expert for court appointment and	0.8	0

33.95

	approval		
12/14/2007	reviewed info from Paul Rathbun re: a violation by channel 13 news of Judge Lockemy's Order re: Defendant not being shown in chains or shackles	0.2	0
12/14/2007	prepared email to Shipp, Judge Lockemy's Law Clerk	0.2	0
12/14/2007	spoke with Carolyn Graham re: Jef Naylor as an expert and Mr. Naylor's fees	0.1	0
12/16/2007	reviewed email re: Monday meeting with Ralph sr. and jeff naylor	0.1	0
12/16/2007	sent email to Jeff Naylor	0.2	0
12/17/2007	phone call to Jeff Naylor re: crime scene evidence and postponing meeting until evidence could be reviewed by Mr. Naylor	0.2	0
12/17/2007	pulled case file to isolate crime scene evidence to copy for Mr. Naylor crime scene expert.	0.7	0
12/17/2007	spoke to Carolyn Graham re: CSI	0.1	0
12/18/2007	compiled discovery and burned that info onto 3 cds and 1 dvd/ evidence for csi expert to review	2.7	0
12/18/2007	reviewed file and phone call records	2.1	0
Add	Close Form	Total: 94.15	1.3

6.6.

10,356.50
143.00
10,499.50

Attorney: Ralph J. Wilson — Felony (Capital)

Louis M. Winkler — Representing

A-2006-GS-26-W-00114 cid_id: 8866

		Out of Court	In Court
12/19/2007	Scanned Family Court Files into Computer for Data Case File.	0.3	0
12/19/2007	Forwarded a copy of the Notice to Seek the Death Penalty to Investigator Carolyn Graham per her request.	0.1	0
12/19/2007	Emailed Carolyn Graham regarding requested subpoena for incident reports involving Roger Grainger and Denise Williams Winkler.	0.1	0
12/19/2007	Went to Courthouse to make copies of all Family Court files regarding Louis Winkler.	1.3	0
12/19/2007	Prepared subpoenas to previous Employers of Louis Winkler and to BiLo Pharmacy for pharmacy records on Rebecca Winkler and Louis Winkler, as requested by Investigator Carolyn Graham.	2	0
12/19/2007	Phone conversation w/Carolyn Graham regarding requested subpoenas.	0.2	0
12/19/2007	conference with paralegal re: subpoenas for pharmacy recorda and employee records	0.2	0
12/19/2007	2 phone calls from Carolyn Graham and a message	0.1	0
12/19/2007	call from Carolyn Graham re: case	0.1	0
12/19/2007	received and reviewed email from Jeff Naylor	0.1	0
12/20/2007	Emailed Carolyn Graham forwarding Family Court Files. Also mailed two Family Court files too large to send by email.	0.6	0
12/20/2007	Prepared subpoena to HCPD Records Department for incident reports regarding Roger Grainger. Went to Clerk's Office for signature. Served subpoena by certified mail.	0.7	0
12/20/2007	Served subpoenas by certified mail.	0.9	0
12/27/2007	Entered Certified Mail Receipts into the USPS website for electronic notification. Printed electronic notifications.	0.4	0
12/29/2007	reviewed documents from Dorian Hall	2.7	0
12/29/2007	phone call from Carolyn Graham re: Winkler trial.	0.2	0
1/2/2008	received reviewed and copied discovery material from mitigation specialist	3	0
1/2/2008	rceived reply to subpoena by fax and by mail, reviewed and copied file	0.7	0
1/2/2008	telephone conference with Jeff Naylor	0.5	0
1/2/2008	went to j ruben long to meet with defendant to discuss case and prepare for trial	4.2	0
1/2/2008	conference with associate attorney re: Winkler matter including material forwarded from Dorian Hall and telephone conversation with Carolyn Graham	0.7	0
1/2/2008	reviewed the case materials forwarded from Dorian Hall	1.5	0
1/3/2008	reviewed notes and spoke with paralegal re: conference with experts	0.8	0
1/3/2008	coordinated conference with all investigators and experts to meet with lead counsel	3	0
1/3/2008	copied orders of protection to all courts in Horry, Marion and Darlington Counties in preparation for Death Penalty Trial	1.5	0

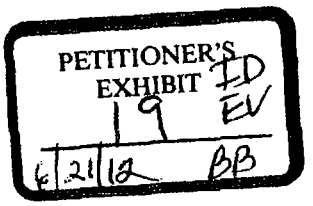
25.9

1/3/2008	phone conference with Teanne Oheller re: conferece meeting with all experts and investigators	0.1	0
1/3/2008	Picked up and reviewed Jury summons from Clerk of Court.	2.5	0
1/4/2008	traveled to j ruben long detention center to confer with Defendant re: case and trial and testimony	3.1	0
1/4/2008	phone call with Vicki Childs, Fact investigator for Defense team re: Defendant and trial	1	0
1/4/2008	Phone conversation with HCPD Records Dept. regarding subpeonaed info.	0.2	0
1/4/2008	received documents from Dorian Hall, scannned and save to computer and printed copies for the hard file and for lead attorney.	0.5	0
1/4/2008	sent email to Jeff Naylor re: requested documents	0.1	0
1/4/2008	received and reviewed email from Jeff Naylor CSI expert	0.1	0
1/4/2008	prepared court docs and additional evidence and reports and mailed them overnight to Jeff Naylor, CSI expert	1	0
1/4/2008	met with paralegal to discuss subpoenas needed and other documents necessary, also discussed re-organizing case file to make trial ready	0.8	0
1/5/2008	Jodi McDougal telephone and left message, reviewed message and attempted to call her back	0.2	0
1/7/2008	Called Karen Reeves re: Defendant	0.1	0
1/7/2008	Emailed conference reminders to Carolyn Graham and Vicki Childs along with directions.	0.3	0
1/7/2008	TC with jury consultant	0.4	0
1/7/2008	TC to Alex Morton re status and records request	0.4	0
1/7/2008	spoke to Dr. Emerson Smith re: case	0.6	0
1/8/2008	received and replied to email from Carolyn Graham	0.3	0
1/8/2008	contacted Paul Rathbun re: meeting on Wed	0.2	0
1/8/2008	spoke to Dr. Halovonich and Dr. Morton re: trial and Defendant and meeting on Wed.	0.8	0
1/8/2008	reviewed email from jeff naylor, CSI expert and sent email to Jeff Naylor re: Wed. meeting and docs	0.3	0
1/8/2008	Preparing, scanning and organizing Juror Return forms	5.5	0
1/8/2008	returned jodi Mc dougals phone call re defendant	0.1	0
1/9/2008	conferenced with all experts in case in cluding investigators and CSI experts and Mitigation Specialist.	5.2	0
1/10/2008	organized expense orders and records of expenses in case file and scanned	1.1	0
1/10/2008	Phone conversation with Jeff Naylor.	0.2	0
1/10/2008	began preparing tabs and id slips for trial notebooks	5.1	0
1/10/2008	Sent requested fax for Caroyn Graham	0.4	0
1/11/2008	Phone conversation and email correspondence with Jeff Naylor	0.1	0
1/11/2008	Prepared disc for jury specialist.	2	0
1/11/2008	phone call from Jeff Naylor re: request for additional documents	0.2	0
1/11/2008	telephone call from J Ruben Long Detention Center re: a visitor for Winkler	0.2	0

1/11/2008	telephone call with Te Ann Oheller re; attempt to visit with Defendant	0.2	0
1/11/2008	continued to work on labels and tabs for all trial notebooks	2.5	0
1/12/2008	Beginning to organize case file, dicovery and evidence in trial note books and folders	7.2	0
1/12/2008	cell phone call from Te Anne Oheller re: seeing defendant in J Reuben Long Detention Center	0.2	0
1/14/2008	meeting re: case	4	0
1/14/2008	preparing subpoenas for trial	2.5	0
1/14/2008	continuing: Organizing and preparing trial notes and note books, assigning indexes and labels	4.1	0
1/15/2008	phone call from Carolyn Graham re: Corporal Jones not allowing Te Ann Oheller to meet with Winkler in a private room, calling him a flight risk	0.2	0
1/15/2008	meeting with Defendant at J Reuben Long Detention Center	2.9	0
1/15/2008	meeting with defense team	2.5	0
1/15/2008	meeting re: Winkler Trial with experts	2.2	0
1/15/2008	preparing additional subpoenas and continuing to organize and label case file	3.2	0
1/16/2008	Preparing subpoenas to be served on various, parites,	1.5	0
1/16/2008	discovery request prepared	0.6	0
1/16/2008	Sending information to Emerson Smith re: Winkler case	0.6	0
1/16/2008	phone coversation with Dr. Morton re: meeting on Thursday afternoon	0.2	0
1/16/2008	Attorney working evidence and trial notebooks to prepare for trial, and preparing notes	8.3	0
1/16/2008	Phone call from Paul Rathbun re: subpoenas and police reports	0.1	0
1/16/2008	Phone call from Carolyn Graham re: case	0.2	0
1/17/2008	conference re: Winkler case with paralegal and associate attorney	0.5	0
1/17/2008	phone call to J. Reuben Long re: allowing experts to visit with Defendant privately	0.3	0
1/17/2008	Lead Counsel preparing for trial, reviewing evidence, continuing to prepare notes, and organize exibits	5.8	0
1/18/2008	phone call from Carolyn Graham re: Kiser Mick's first wife and records in NC	0.2	0
1/18/2008	phone call from Joyce Hart from Rape Crisis Center re: their failure to comply to a criminal subpoena duces tecum.	0.4	0
1/18/2008	research on laws re: rape crisis center and south carolina licensing board's authority ability to ignore criminal subpoena in a death penalty trial	2	0
1/18/2008	pone conference with Dr. Emerson Smith from Defense team Expert	0.4	0
1/18/2008	conference with associate attorney re: case and trial strategy for Mick's testimony, if he testifies as well as Mick's first wife, and subpoenas for Joyce Hart	1.7	0
1/21/2008	preparing juror list and organizing data	2.5	0
1/21/2008	conference with Defendant and with defense team preparing for trial	6.2	0

1/22/2008	conference with defense team and meeting with Defendant to prepare for trial... Incl...ng strategy and preping defendant to testify	5.3	0
1/22/2008	preparing juror questionaires sifting thru and rating jurors	4.1	0
1/23/2008	meeting with Carloyn Graham, Paul Rathbun and Vicki Childs re trial and defendant, preparing for trial	4.6	0
1/23/2008	meeting with client	1.1	0
1/23/2008	phone call to Judge Lockemy	0.4	0
1/23/2008	phone call from Clerk of Court Melanie Huggins re: Winkler matter	0.2	0
1/23/2008	phone call to the Sheriff re: gag order	0.2	0
1/23/2008	phone call from Defendant's sister Laura re: J Ruben long meeting	0.6	0
1/23/2008	phone call with Carolyn Graham	0.2	0
1/24/2008	hearing re case status and gag order issue	1.5	1
1/24/2008	meeting with client to continue prepare for trial	3.1	0
1/25/2008	attorney working evidence and exibits for trial and preparing cross examination portion for expected witnesses	4.7	0
1/25/2008	meeting with Dr. Smith and Te Ann Oheller re Defendant's case	1.8	0
1/25/2008	phone conversation with Vicki Childs re: subpoenas that need to to be issued	0.5	0
1/25/2008	received and reviewed email from Vicki Childs re: case matter	0.1	0
Add	Close Form	Total: 150.6	1

284



DRAFT

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Karen Reeves Witness Sheet

Lou and Joann's Relationship

Marital problems for Joann and Lou began when the family moved into town and Lou had to move his office out of his home. (Mick was about twelve at the time the family moved into town.) Most of the time Lou spent his time outside the family home, when he was home he and his wife literally did not speak to each other. When Mick's parents (Joann and Lou) began to have marital problems and then divorced, Mick began to leave the house to hang out with friends and drink.

It was in 1976/1977 when Karen began to notice that her parents' marriage had problems. Karen's father was out of the house making home calls to sell insurance much of the time because he did not want to be in the home, not returning until late. There were suspicions of another woman because most of the time her father did not return home until 2:00/3:00AM, too late for selling insurance.

Karen states she would be embarrassed when she came home late from a date with Bill and her father would not be home yet. Karen was embarrassed to bring friends to her home because they would find out her father was not home and would ask where he was.

Karen states that after she married in 1982 she wasn't involved as much in Mick's life. Karen, at a different stage of her life, was focused on her marriage and children. (Note: Although Karen and Mick's parents had been separated their divorce hearing was on the day that Karen returned home from her honeymoon.)

According to Karen her parents' divorce was a "big deal" because at that time people, especially practicing Catholics like the Winkler family did not divorce. Also the town was small so everyone knew each other's business. Joann and Lou's divorce was very tough on their children. Mick especially was upset because he continued to want all of the family (including both his parents) to be at holidays and family functions. Mick wanted these family events to be the same as before.

Karen's mother received nothing financially from the divorce, no retirement no

insurance or anything and is currently living on a very limited income. In the divorce Karen's father got all assets even though he is the one who wanted his wife to remain in the home not working. Karen's father claims Karen's mother Joann "was not a wife to him."

According to Karen her parents are bitter toward each other since the divorce, not really speaking to each other when in the same place. At Christmas the Winkler kids gathered together with both of their parents, but neither parent would speak to the other. Karen recalls that after the divorce, tension always existed between her parents. Karen's mother was stressed out and fearful that her ex-husband would say one of his sarcastic or mean comments or even glare at her during family gatherings.

The Winkler kids were at a loss on how to deal with divorced parents whom were both loved but couldn't get along. Karen's father would make comments as if he were jealous of their mother having a boyfriend and would vent about their mother to his kids.

Winkler Family Life

Karen describes her childhood as "normal." The Winkler family was financially stable and lived a comfortable life

Karen reports her father was an insurance salesman, selling auto and home insurance from his home. Karen's mother stayed at home because Karen's father did not want his wife to work outside the home. When their kids became older, Karen's mother wanted to get out of the house more but Karen's father would not allow his wife to do this.

Louis handled finances. Louis held control of all of the family money only giving his wife money for groceries. If she had extra money she could spend it as she wished, but at some point in the marriage Louis failed to give Joann any extra money. If Joann needed additional money, then she had to ask her husband for the money. Karen feels her father controlled the Winkler home and his wife.

While his father was out late, Mick stayed out late as well. In the late evenings Mick hung out with friends, frequented bars and drank without his parents' being aware of his activities since his father was out late as well and Mick's mother went to bed early. Mick seemed to use drinking and being out with friends as a way to cope with the marital problems between his parents. Mick's behavior worsened after his parents officially divorced.

Mick's Childhood

As a kid, Mick was fun and loving. Mick had a lot of friends and was active in sports.

Mick did not spend much time with his father growing up because his father was out of the house almost all of the time.

Karen recalls Mick as being a decent student, earning B's and C's. Karen could not recall Mick getting into any trouble in school. The Winkler kids all attended a Catholic School from Kindergarten through 8th grade.

The entire Winkler family attended church each Sunday at the Catholic Church affiliated with the school and on Saturdays Louis helped with the Bingo at the church. Mick was an alter boy and attended CCD classes each Wednesday evening.

As a child, Mick was active in baseball and football as well as being an alter boy at the church.

With his father gone from home all evening until maybe 2am the next day and his mother in bed early, Mick would sneak out of the home to hang out with older boys to drink and smoke pot. Mick would not return home until late. When Mick's parents (Joann and Lou) began to have marital problems and then divorced, Mick began to leave the house to hang out with friends and drink.

Mick's Head Injuries/Illnesses

Mick had some head injuries.

Mick was involved in a car accident.

Jeff and Mick (age 17) hit heads when playing in the family pool. The brothers hit their heads so hard that Jeff was knocked unconscious.

Mick had his head wrapped in gauze after he was hit in the head with sticks or spears.

Mick may have sustained other injuries to his head due to sports and bar fights.

Mick broke his collarbone while playing football.

Mick's Adulthood

Mick as a person who "loves people and life" plus he has a "great heart."

When Mick was married to his first wife Karla the couple lived in an apartment near a pub. Mick hung out at this pub all of the time drinking with his buddies. Karen recalls Mick running up his bar tab pretty high. During high school and into his twenties, Mick smoked pot; it was the thing to do at the time.

On payday Mick cashed his check at the bar and spent the night buying rounds of drinks for himself and others at the bar so that by the end of the one evening Mick's paycheck would be gone, having nothing left to live on. Mick had a lot of debts because all of his paycheck went to buying drinks rather than paying for food or rent.

Mick usually had a job, typically in the construction field. But he lost or quit jobs because he owed his co-workers money that he could not pay back. Mick would borrow money from co-workers/friends to cover his bills, but they would become upset when Mick was unable to repay his debts to them. Mick quit jobs to avoid these people he owed money or was asked to leave the job because of the friction the unpaid debts caused on the job.

Mick seemed to use drinking and being out with friends as a way to cope with the marital problems between his parents. Mick's behavior worsened after his parents officially divorced. Mick was really torn up about his parents' marital problems.

Karen recalls that Mick lived in the basement of her father's home in Norton for a period of time. She recalls her father complaining that Mick drank all of the left over liquor from a wedding or party that her father had stored in the basement. Karen also recalls a pub across the street from her father's home.

Mick loved his job at the condo association where he had responsibilities and loved the residents. Karen has heard that the people at the condo speak highly of Mick. Then, Mick began to miss work when he and Becky got into arguments.

Mick's Relationships (3rd wife Becky/victim)

A few years ago Mick was very excited about this church he had begun to attend that was very similar to the church where Karen's husband is associate pastor. Becky was also involved in the church and both seemed to know a lot of people in the church.

Becky and Mick drank alcohol and that there was always a presence of alcohol in Mick and Becky's home.

Mick and Becky had a "loving relationship," but Becky did bring out the worst in Mick.

Laura and Mick Similar Path

Karen believes that Mick and Laura were the two in the family most likely to push the limits. Also Mick and Laura are like their father who is temperamental. Mick is more quick tempered compared to his siblings.

Karen and Mick's oldest sister, Laura has lived the same cycle as Mick.

Laura began to drink and use drugs at an early age, like Mick and like Mick continued to abuse substances through out her life including the present.

The first thing Mick and Laura do when they arrive home from work is to get a drink of alcohol and then continuously have a drink in hand for the remainder of the evening.

Laura also has made poor choices in marital partners and boyfriends. Laura's boyfriends/husbands have tended to be drug and alcohol users like Mick's and also like Mick, Laura has been divorced several times.

Laura, like Mick has been depressed and both tend to compare their life (problems, failed relationships, etc) to their siblings' "better" more successful lives and families. Laura is the only person aside from Mick who had any mental health problems. Karen feels that Laura has been depressed at times, recalling phone calls she received from Laura when Laura was crying and complaining about her life.

Both Laura and Mick seem to be in search of that successful life like their siblings. (Laura's son is currently in jail/prison on an armed robbery charge. He didn't really have a gun, but did pretend to have one.)

1-26-07

Mtg w/ △

Mitigation Witness

- Telephone Estates
  - Jane Franks [redacted]
  - Dickie Cairns [redacted]
  - Ann McKenzie [redacted]
  - CB Wicker [redacted]
  - Nancy Salco [redacted]
  - Betty Gerald Hoy [redacted]
  - Bernie Mank [redacted]
  - Play - Cindy Smith [redacted]
  - Jeff Karr [redacted]
  - Caroluse (Carolyn) [redacted]
  - Larry Marcione [redacted]
  - Mike Faust [redacted]

Ray Mason - behind Biscuit Shack
Eddie @ Eddie's - Jordan Plaza
Pat White [redacted]
Peg Conner [redacted]
Shawna Cutting - Houston, TX
Jeff & Cathy Wallin - Hwy 5 moon
Mark Chad Hoover - Harvest ~~Moon~~ C
Jane Wheeldon - Benchmark Mgmt [redacted]

PETITIONER'S EXHIBIT 21

Tilghman Lakes Newsletter

TILGHMAN LAKES BY THE SEA

Tilghman Lakes by the Sea--A Good Investment

Benchmark Management

Winter 2004

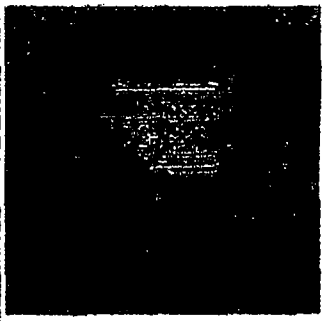


Your Board of Directors and Benchmark Management Group wish you and yours the Happiest of Holiday Seasons.

From the Board of Directors

Another year will soon pass and we will welcome 2005. The Board hopes each of you were able to fully utilize your property and are making plans to be here even more often during 2005. Our Annual Members' Meeting was held at the Surf Golf Club on October 9 (pertinent information summarized inside). We appreciate those attending and their participation and input. Jim Stutts was re-elected to a new term and the Board would like to thank Ron Sanderson for his interest and willingness to serve. A decision was made to include a luncheon social in the pool area at the conclusion of the October 2005 meeting. The purpose will be to allow owners to interact and get together in a less formal setting. The post-meeting golf tournament will not be held. The Social after the Spring meeting in May will not be held. The numbers of owners attending did not justify the expense.





Board of Directors

- *John Braddy--President*
- *Don Fish--Vice-President*
- *Dicki Caines--Secretary*
- *Jim Mann--Treasurer*
- *Joe McDonald--Director at Large*
- *Jim Stutts--Director at Large*
- *Ron Krall--Director at Large*

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Owners' Corner	4
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Winterize your Unit

Winter is around the corner and now is the time for unit owners to think about safe guarding your unit for winter. This means leaving the heat on low during the winter months, draining your water pipes and turning off the water source to your unit. It is the responsibility of UNIT OWNERS to make sure your units are ready for the cold months. Broken water pipes damaging your unit and units around you only costs all of us additional money in terms of insurance deductibles and additional premiums. Lets make 2004-2005 a loss free year for frozen water pipes.

Note: Some hardware stores offer a list of things to do to winterize your unit..

PETITIONER'S EXHIBIT ID EV 22 6/21/13 BB

Horry County Police Department

Criminal Investigations Division

Case Activity Report

Victim's Name: Becky Winkler
Case #: 06010298

Date	Activity
3-9-06	Det. Boyd obtained a warrant for Winkler's residence from Judge Brad Mayers at approx. 1130 hours
3-9-06	Got a message from Russell Jordan he has the subpoena 1438 hours
3-9-06	Executed search warrant at Winkler residence 1500 hours
3-9-06	Got a call from Russell Jordan that a male had just called HTC and asked for the phone to be disconnected at Winkler's residence on [redacted] 1559 hours
3-9-06	Got a message from Russell Jordan that the voice was an older man requested the disconnect 1606 hours
3-9-06	Called Agent Cottingham and gave him an update
3-9-06	Searched the woods near Winkler's residence
3-9-06	Brought the evidence taken during the search warrant back to the Horry County Police Department and turned it in
3-10-06	Got information on L[redacted] G[redacted], her mother's name, address, and phone
3-10-06	Got a message from Capt. Tucker with Florence County SO 0901 hours
3-10-06	Got a message from Russell Jordan that the phone records were at the HTC front desk
3-10-06	Called Cathy Craft and set up for Det. Graham to interview L[redacted]
3-10-06	Called Agent Cottingham and gave him his bank account information
3-10-06	Got a call from Agent Cottingham about Archie Bethea's phone records-no calls shown at time Bethea advised that Winkler had called him (calls would no show up if same first three digits) 1120 hours
3-10-06	Got a call from Capt. McKenzie with SLED requesting info on journal approx 1121 hours
3-10-06	Faxed a copy of journal to Capt. McKenzie 1124 hours
3-10-06	Called Russell Jordan and left a message
3-10-06	Got a call back from Jordan at 1224 hours advising that there was no pay phone list, all different carriers have pay phones
3-11-06	Got a call back from Capt. McKenzie at SLED advising a threat analysis was done on the journal writings and it was thought that Winkler could be suicidal or may try suicide by cop when approached 1248 hours
3-11-06	Called Lt. Jones and advised him of SLED's call
3-13-06	Got a call from Agent Cottingham US Marshals had met with the family in Ohio except for the father, no new information 1042 hours
3-13-06	Got a call from Jill Shelley 1208 hours advised her of the update

PETITIONER'S EXHIBIT 23 6/21/17 BB

THE WACCAMAW CENTER FOR MENTAL [redacted] TH

REFERRAL/TRACKING/CONSULTATION FORM

NAME: Winkler, Jason SS#: [redacted]

ADDRESS: [redacted] J Reuben Long TELEPHONE NO.: (H) _____ (W) _____

AGE: 42 RACE: CA SEX: M MARITAL STATUS: Q

REFERRAL AGENCY: VA REFERRING AGENT: Medical

HAVE YOU HAD PRIOR SERVICES AT ANY STATE MENTAL HEALTH AGENCY? _____ WHEN? _____ YEAR

REASON FOR REFERRAL (PRESENTING PROBLEM): I/M interviewed at the request of J Reuben Long Medical Staff. I/M also Pt requested consult.

CONSULTATION COMMENTS: I/M is calm, cooperative, fully oriented. Responses are well-organized and to the point with evidence of response to internal stimuli. Reports improvement in Rx and greater tolerance for frustration/disappointment which he attributes to Rx medication (Seroquel). Adamantly denies thoughts, plan or intent of harming himself or others. Discussed the needs for forced Pt's refusal by the strength of statements from patient, chatting Rm with nurse 12/5/06, and pt's self-reported reminders voiced to staff

IF BEING DISCH'D FROM PSYCHIATRIC FACILITY, MEDICATIONS: ad Mental Health Professionals. 3 day review addressed frustration with "not getting clothes". Conversation was direct, calm and devoid of any thought disorder or reminders implying

FOLLOW-UP APPOINTMENT? YES _____ NO / DATE: _____ TIME: _____

PLACE: _____ WITH WHOM: _____

IS A FOLLOW-UP REPORT REQUESTED? YES _____ NO /

from the family & others. I/M reports his psychiatrist in Charleston is going to make a statement on his behalf to have suicide precautions removed

DATE: 4/15/07

4/24/07 1200

SCDMH FORM
NOV 81 (REV OCT 95) C-33
MH-FCC-2

PETITIONER'S EXHIBIT
24
6/21/17

NURSES NOTE

INMATES NAME Winkler, Lewis

BOOKING# 169203

Date and Time	
	2/24/07 0810 IM in good spirits this am. — Am med given, IM placed in mattress & breast (water). No complaints voiced. Observing given suicide suit. — Rebekah Lo
2/25/07 0840	IM alert & oriented. No problems observed. IM noted to be pleasant. Denies any problems. Am med given took. — Rebekah Lo
Harlon ORN	IM released to care of [illegible] for [illegible]
2/26/07 1640	Spoke to IM about refusing his meds but reports to atty and judge we stopped his meds. I/M has no explanation. Informed me I am under judge order to get this off of suicide watch and that today is 10th day. I/M states he has never threatened harm to anyone or tried to harm himself & remind him off running into the wall & just came when JRDC officers came to get him and that since he was here she tried to hang herself. I/M goes on and on about other Pts getting off suicide watch and he still is and has been for months. I've informed IM we are sending him out per Dr. Dwyer in Columbia for WNH eval. Awaiting [illegible]
Harlon ORN	IM out of facility — Rebekah RN
2/28/07 0745	IM out in cell for medications. No problems observed. IM took Am med took F/U any difficulty. Remains on suicide watch, wearing green suicidal suit. — Rebekah Lo

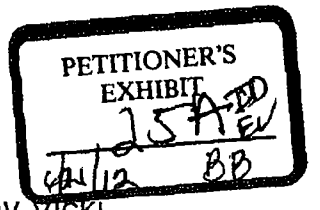
NURSES NOTE

INMATES NAME Lewis Winkler

BOOKING# 169209

Date and Time	
12-5-06 0520	Code Black called for this IM (in B1 Pod. Officers & this nurse responded - IM clutching at his stomach - refuses to answer any questions - officers state (IM) he had 2 packs wrapped around his neck & metal bar in bed - neck is slightly reddened IM turned over into his back by 2 officers - will not open his eyes or speak VSS BP 120/80 - P67 R 18 O2 sat 98% - made IM sit up in bed - states "I just want to die". Notified D. Hipps NP & also spoke to D. Wilson LPN supervisor. IM assisted to be wearing a paper suicide (white) suit - Ø notified officers & Ms. Hipps order. — Jackie
12/5/06 0900	IM observed sitting on bunk in cell. IM is NAD, NO not due to Physician Not open + visual observation of clothing + clothing folded up + wrapped around waist for bed. IM advised to come to door for visual "I'm not getting up"

LMW D000832 JRL #4



This interview was conducted by telephone with Frank Patterson by Vicki Childs on June 13, 2007.

Frank Patterson lives at [redacted]

His phone number is [redacted].

Mr Patterson revealed the following:

Mick was a top notch neighbor. Frank did not care for Becky and she was unfriendly and stayed drunk most of the time. She would not talk unless she was drunk. She worked at home and drank most of the day. On Fridays when Frank got off work at 10:00 a.m. and would be home by 10:30, he often saw Becky drinking at that time of day. She would hardly be able to stand up. Frank believed that Becky was looney and a fake and thought that Mick's family had money.

Mick was a very hard working guy. Frank and his wife Cathy would often feed Mick after he lost his job. They could see him going down and being depressed because he was dependant on his dad for money. His father was cutting off his money and he had no prospect for work. The house was in his father's name and he was going to stop paying for it. Mick had worked very hard on the house and yard and was very upset that his dad was not going to keep paying for it. All Mick could do was sit at home and pace the yard. He would often play basketball with the neighborhood kids.

The Christmas of 2005, Mick got really down and no one came to see him or offered to spend Christmas with him. Frank went over to see him and provide comfort to him. He seemed to be alright for a while after that, but became more depressed and upset that he was getting accused of something he did not do.

After the kidnapping and rape charges, the police searched his house. If there was a gun in the house Frank wonders why they did not find it.

After the kidnapping and rape charges. Becky would ride by often with her mother or friend and sometimes sit outside Mick's house and watch. Frank felt that Becky was just taunting Mick. At first this was going on every day to 2 or 3 times per week. She had been known to sit out there for 10 to 30 minutes at a time.

The weekend before the October, 2005 charges Becky spent the weekend with Mick at their marital home. That Friday, it was their anniversary and Becky was

5163
PETITIONER'S EXHIBIT EV
25B
6/21/12 BB

This interview was conducted by telephone with Frank Patterson by Vicki Childs on June 13, 2007.

Frank Patterson lives at [redacted]
His phone number is [redacted].

Mr Patterson revealed the following:

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The weekend before the October, 2005 charges Becky spent the weekend with Mick at their marital home. That Friday, it was their anniversary and Becky was at Mick's house that morning when Frank got home at about 10:30. Mick later told Frank that she left and then came back that afternoon and they met behind the hospital and Becky wrecked the car and was drunk. Mick told Frank that she wanted to hide in the woods so the police would not charge her with DUI. Becky

did not want her daughter to know she was going over to Mick's because she was so against it. Frank believes that was Jill.

Frank's brother Stephan had taped Becky out there at one point and gave the tape to Mick.

Frank also recalled that Roger Grainger would sometimes come over during the day when Mick was at work and visit with Becky. His truck would be in the driveway. Frank saw this happen 4 or 5 times.

Mick's dad had owned his own insurance company. Frank believes he was/is wealthy.

The following interview was with Denise Bellamy by Vicki Childs on June 13, 2007 at [redacted].

Denise Bellamy has lived at the above address for more than 6 years. Jeffrey Joslin used to stay with them sometimes and transport her blind brother around. Joslin has not lived there since shortly after the Winkler murder. Denise said she has no idea where he is or how to get in touch with him.

Denise remembers March 6, 2006 when Joslin gave Mick a ride. Mick had come over earlier that day and asked for a ride, but Joslin had to run some errands for Denise first. Later, he did tell Mick that he would give him a ride to look for work. She remembers that Joslin was upset when he found out that Mick was charged with murder.

Of Mick and Becky Denise said that Mick was very friendly and outgoing. He played basketball with the neighborhood kids and was a very good neighbor. She was shocked when she heard about the charges. She said the Becky was not friendly, would not speak and made Mick crazy. (Denise referred to him as Mitch even when I said he went by Mick). She said that Mick was always trying to abide by the ankle bracelet requirements and stay at home. She did say that Becky drank a lot.

PETITIONER'S EXHIBIT 1D EV BD 6/21/17

TF014253

5166
PETITIONER'S EXHIBIT ID EV 27 6/21/12 BB

Winkler 7/9/07

Arrived at 5:30 pm in Ohio
Had Dinner at 7:00
Met w/ Family from 9:00 to 12:00 midnite
After loading at Air port I called Mickes Sister Karen who arranged mtg of family at our Hotel at 9:00 pm.
We met at the Hotel conf. Rm: a Ramada Limited in Wadsworth
present: Rick, Jody, Mom, KAREN, Paul and my self.

~~Sept attack~~

after some discussion we called Ed Genete who came over to meet with us. he is a life long friend of Mick attended school, played ball together and have kept in touch over the years. has spent time at Micks home & Mick at his. He is will to come testify but has problem w/ finances. we will try to accomodate him if possible. I explained to him what I wanted from him and the circumstances of the case and how his testimony would be helpful.

After about an hour Ed left and Paul & I continued meeting w/ the family we Covered the case for arrest to Pre-trial motions and even theories we hoped to

FORENSIC UNIT STAFFING

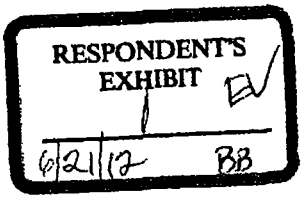
DATE: October 4, 2006 and October 18, 2006

PRESIDING: R. Gregg Dwyer, M.D., Ed.D.

SECOND EXAMINER: Richard L. Frierson, M.D.

OTHERS PRESENT: Cornethia Matthews, M.D., General Psychiatry Resident
University of South Carolina
Erin Will, Fourth Year Medical Student
University of South Carolina (October 4, 2006 only)

DIAGNOSES:
AXIS I: Depressive Disorder, Not Otherwise Specified.
Anxiety Disorder, Not Otherwise Specified, by History.
Alcohol Abuse, by History.
AXIS II: Paranoid Personality Disorder Traits
AXIS III: Gastroesophageal Reflux Disease, by history.



CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: Yes.

DISPOSITION: Mr. Winkler was returned to his unit at the Columbia Care Center to await disposition of his charges.

IDENTIFYING DATA: Mr. Winkler is a 46-year-old Caucasian male seen at the Columbia Care Center pursuant to a court order from the Horry County Court of General Sessions. The order requests an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about March 6, 2006 pursuant to S.C. Code Ann. §17-24-10 (1976). He is currently charged with Capital Murder, Assault and Battery of a High and Aggravated Nature, Burglary 1st Degree, Possession of a Firearm during the Commission of a Violent Crime, and Escape.

SOURCES OF INFORMATION:

1. Horry County General Sessions Court order for a competency to stand trial evaluation dated June 15, 2006.
2. Horry County General Sessions Court order for a criminal responsibility and capacity to

conform evaluation dated June 15, 2006.

3. Indictment #2006-GS-26-2101 for Murder, Burglary 1st degree, Assault and Battery of a High and Aggravated Nature, and Escape dated May 25, 2006.
4. Arrest Warrant #I-252573 for Murder dated March 6, 2006.
5. Arrest Warrant #I-746891 for Assault and Battery of a High and Aggravated Nature dated March 21, 2006.
6. Arrest Warrant #I-746892 for Burglary 1st degree dated March 21, 2006.
7. Arrest Warrant #I-746890 for Possession of a Firearm or Knife during Commission of a Violent Crime dated March 21, 2006.
8. Incident Report #06010298 and Supplemental and Supplementary Reports #10610298 (Death Investigation) by Officer R. Stephens dated March 6, 2006.
9. Incident Report #06000160 (Escape) by Officer R. Orlowski dated March 29, 2006.
10. Horry County Police Department Criminal Investigations Division Report of Investigation case #06010298 by Detective T. Boyd [undated].
11. Horry County Police Department Criminal Investigations Division Report of Investigation case #2006010298 by Detective L. Graham [undated].
12. Horry County Police Department Criminal Investigations Division Report of Investigation case #06010298 by Detective J. Lewis [undated].
13. Horry County Police Department Criminal Investigations Division Report of Investigation case #0610298 by Detective A. Pitts [undated].
14. Horry County Police Department Report of Investigation case #06010298 by Detective W. Larrimore [undated].
15. Horry County Police Department Special Operations Division Report of Investigation case #06010298 by Captain W. Rutherford [undated].
16. Horry County Police Department Special Operations Division Report of Investigation case #06010298 by Sergeant L. Green [undated].
17. Horry County Police Department Forensic Services Section Investigative Report UCR# 06-010298 by CSI A. Cooper dated March 6, 2006.
18. Investigative Report case #06-000160 by Lieutenant R. Orlowski [undated].
19. Copy of a handwritten letter to "Jill" from "your mothers [sic] husband" [undated].
20. Horry County Police Department Criminal Investigations Division Voluntary Statement by Jeffery L. Joslin dated March 7, 2006.
21. Horry County Police Department Criminal Investigations Division Voluntary Statement by Leah Munson dated March 6, 2006.
22. Horry County Police Department Criminal Investigations Division Voluntary Statement by Jodene Wyatt dated March 6, 2006.
23. Horry County Police Department Patrol Division Voluntary Statement by Thomas Knoch dated March 6, 2006.
24. Anatomical Pathology Results #FA-06-34 by E. Proctor, Jr., MD signed May 12, 2006.
25. National Medical Services, Inc. Toxicology Report on patient ID #FA-06-34 dated April 4, 2006.
26. Psychiatric Social Work Admission Assessment on Louis Winkler dated October 4, 2006.
27. Application for Involuntary Emergency Hospitalization for Mental Illness for Louis Winkler

dated October 4, 2006.

28. Access Medical Center records for Louis Winkler's treatment for the period of December 7, 2003 to September 26, 2005.
29. J. Reubin Long Detention Center Medical Department records for Louis Winkler for the period of October 11, 2005 to August 1, 2006.
30. Columbia Care Center records for Louis Winkler's admission from October 4 to 18, 2006.
31. Clinical interview of Louis Winkler on October 4, 2006 lasting 3 hours and 21 minutes.
32. Clinical interview of Louis Winkler on October 18, 2006 lasting 1 hour and 22 minutes.
33. Indictment #2006-GS-0476 for Kidnapping dated January 26, 2006.
34. Indictment #2006-GS-0477 for Criminal Sexual Conduct First Degree dated January 26, 2006.
35. Indictment #2006-GS-0478 for Assault and Battery with Intent to Kill dated January 26, 2006.
36. Arrest Warrant #I-762363 for Kidnapping dated October 11, 2005.
37. Arrest Warrant #I-762364 for Criminal Sexual Conduct First Degree dated October 11, 2005.
38. Arrest Warrant #I-762365 for Assault and Battery with Intent to Kill dated October 11, 2005.
39. South Carolina Law Enforcement Division Forensic Services Laboratory Report # L06-01396 for Case #05089443 dated March 14, 2006.
40. Horry County Police Department Criminal Investigations Division Solicitor's report for Case #05089443 with multiple attachments.
41. Loris Healthcare System Seacoast Medical Center Emergency Department Evaluation of Rebekah Winkler dated October 11, 2005.
42. South Carolina Law Enforcement Division Sexual Assault Examination Protocol Information and Examination Form for Rebekah S. Winkler dated October 11, 2005.
43. Video tape titled "Louis "Mick" Winkler 05089443 copy."
44. Psychological Consultation report on Louis Winkler by J. Musick, PhD dated November 6, 2006.
45. DVD titled "Winkler Arrest Interview 3-20-06."

STATEMENT OF CONFIDENTIALITY: On October 4, 2006, Mr. Winkler read aloud the "Information About Court Ordered Evaluations" form. During review of the form Mr. Winkler advised that he had not discussed his charges with his attorney. Of several options presented to Mr. Winkler, he chose to have his attorney called. He spoke privately by phone with his attorney and then agreed to proceed with the interview. He acknowledged understanding of the aforementioned form's contents and signed the form indicating that he wanted to proceed with the interview.

On October 18, 2006, the form "Information About Court Ordered Evaluations" was reviewed with Mr. Winkler. He acknowledged an understanding of its contents and signed the form indicating that he wanted to proceed with the interview.

SOCIAL HISTORY: Mr. Winkler was born [redacted] in Medina, Ohio. He was raised by his parents on a farm until age twelve years when they moved into town. He is the fourth of six children

including two older sisters, one older brother, one younger brother, and one younger sister. He has contact and gets along with his parents and siblings. He did not report a history of childhood physical or sexual abuse or neglect. He does not have a childhood history of trauma, running away from home, animal cruelty, or fire setting.

Mr. Winkler attended regular classes in school and graduated from the 12th grade. He was never expelled or suspended from school, was never truant, and never had to repeat a grade.

Mr. Winkler has been married three times. His first marriage was from 1980 to 1982 and ended with divorce after he discovered that he was not the father of his wife's daughter. His second marriage (after dating for eight years) was from 2001 to 2003. It ended in divorce after he discovered that his wife had an intimate relationship with his best friend. His third marriage was for over three years and ended with his wife's death. He may have fathered a child by a woman in Ohio, but he has no known children.

His was a condominium complex manager for the past twelve years. Previously he worked in the construction field in Ohio. He has never been fired or resigned from a job. He has never served in the military.

PERTINENT STATEMENTS: Mr. Winkler's history of psychiatric treatment began in 2003 when his wife recommended he get medication because of being "hyper and a lot of stress." A general practitioner prescribed alprazolam (Xanax®), an anti-anxiety medicine, which he did not take on a daily basis. He was also prescribed paroxetine (Paxil®), a medication used for both anxiety and depression which he took for approximately two months but stopped because of sexual side effects. Records from the prescribing physician indicated a diagnosis of anxiety and a history of panic and depression. In addition, it listed a prescription for bupropion (Wellbutrin®), a medication used for depression. The buproprion was stopped after four days because of headaches.

Mr. Winkler's first and only mental health hospitalization was at the Columbia Care Center being in October 2006. Mr. Winkler's diagnoses at the Columbia Care Center at the time of his second interview were Depressive Disorder Not Otherwise Specified and Rule Out Bipolar Disorder Not Otherwise Specified. He was prescribed escitalopram (Lexapro®), an antidepressant, and quetiapine (Seroquel®) an antipsychotic medication. He also had a prescription for lorazepam (Ativan®), an anti-anxiety medication, to be used on an as needed basis.

Mr. Winkler was inconsistent in describing the onset of depressive symptoms with a range from his twenty's to after receiving criminal charges in October of 2005. He described symptoms of decreased sleep, feelings of sadness, and suicidal thoughts. He has never had a plan for suicide or attempted suicide. While being held in the detention center, he thought of suicide because he would rather take his own life than be killed by one of the other inmates who have threatened him. In addition, he expects to be convicted and sentenced to death and would rather take his own life than allow the

state to execute him. These reports as well as his comments that he had no reason not to take his own life lead to his being involuntarily hospitalized to the Just Care Center at the conclusion of his first evaluation interview on October 4, 2006. He has never experienced auditory or visual hallucinations. His description of depressive symptoms without a clear duration or frequency meets diagnostic criteria for a diagnosis of Depressive Disorder Not Otherwise Specified.

He described believing since high school that other people are talking about him. He also lacks trust in others, believing that no one tells him the truth. He does not think that these concerns have impacted his employment or interpersonal relationships. He described being able to conceal his paranoid-type thoughts from others. Psychological testing conducted as a consultation to this evaluation indicated that based on test results and self-report Mr. Winkler exhibits some features of Paranoid Personality Disorder.

Mr. Winkler began drinking alcohol at sixteen or seventeen years old. Prior to being detained on his current charges he typically drank alcohol at happy hour every night of the week. He was first intoxicated between the ages of eighteen and twenty and most recently became intoxicated four to five times per week. He denies ever having difficulties with relationships or with his job as a result of his drinking, but he was arrested for Driving Under the Influence (DUI) at about age twenty. He has also driven under the influence of alcohol at other times but has not been caught by law enforcement. He has never experienced symptoms consistent with withdrawal or blackouts. His description of alcohol use is consistent with a history of Alcohol Abuse.

He started using cocaine after he met his most recent wife approximately three years ago. Prior to his current detention he generally used $100 to $140 worth of cocaine each night of the weekend. He has never experienced symptoms consistent with withdrawal from or tolerance to cocaine. He has never over spent money or spent more time using cocaine than he had intended. He has never had employment or legal problems as a result of using cocaine.

He has not tried other illicit substances other than mushrooms a couple of times during high school. He has not used prescription or over-the-counter medications inappropriately. He smoked tobacco from age 25 until his current detention. During the week he smoked less than a pack per day and on the weekends he smoked two packs per day.

His general medical history includes a past diagnosis of Gastroesophageal Reflux Disease (GERD) treated with esomeprazole (Nexium®). He has never been hospitalized for general medical reasons. He has never had surgery or seizures. He reports that he may have lost consciousness with a possible concussion in 1978. He takes no prescriptions for general medical conditions.

Other than his current charges and a dropped charge for Driving Under the Influence, Mr. Winkler has also been charged with Kidnapping, Criminal Sexual Conduct 1st degree, and Assault and Battery with Intent to Kill.

MENTAL STATUS EXAM: On October 4, 2006, Mr. Winkler appeared his stated age and arrived attired in a detention center uniform. He was awake, alert, and in no acute distress. He was cooperative and had appropriate eye contact. He displayed no increased or decreased motor activity and his gait was steady. His speech had a conversational volume and rate. He described his mood as "emotion" and as a one on a ten point scale with ten being the best and one being the worst. He appeared sad. His thought process was logical and goal directed with no indication of delusions. He denied auditory and visual hallucinations. He denied homicidal ideation. He endorsed suicidal ideation advising that probably nothing would keep him from taking his own life. He was oriented to person, place, and time. He was able to spell *world* correctly both forwards and backwards. He correctly performed serial seven's and calculated $1.00 - $0.67 as $0.33. His immediate recall of three words was intact and after five minutes required a prompt for one of the three words. He named the current, the first, and several previous United States Presidents. He named the months of the year and the days of the week. His thoughts were abstract based on similarities and proverbs. His judgment was appropriate based on a hypothetical scenario, but questionable based on reported recent history.

On October 18, 2006, Mr. Winkler arrived in a Columbia Care Center uniform with fair grooming. He was awake, alert, and in no acute distress. He was defensive at times. His eye contact was appropriate. He displayed no increased or decreased motor activity. His speech was of conversational volume and rate. He described his mood as "tired" and as a three on a ten point scale with ten being the best and one being the worst. His affect was at times irritable. His thought process was logical and goal directed with no indication of delusions. He denied auditory and visual hallucinations. He denied homicidal and suicidal ideations. He was oriented to person, place, and time except getting the day wrong by one day. He correctly spelled *world* both forwards and backwards. His immediate and delayed recall of three words was intact.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Based on self-report and medical records, Mr. Winkler has symptoms consistent with a diagnosis of Depressive Disorder Not Otherwise Specified and a history of Anxiety Disorder Not Otherwise Specified and Alcohol Abuse. Available information provides no evidence that symptoms from these illnesses affected his behavior relative to his current charges.

During the clinical interview on October 18, 2006, Mr. Winkler provided the following information regarding the charges of Burglary 1st Degree, Possession of a Firearm during the Commission of a Violent Crime, and Capital Murder. He said that he got a ride to his wife's place of residence on the date of the alleged offenses leading to his current charges from a neighbor of his that he knows only by his first name, Jeff. He reported having with him a DVD of 4 1/2 hours of he and his wife engaged in sexual acts taped over the previous three years. He said that he was going to put the video on the Internet if his wife did not tell the truth regarding criminal charges against him related to an incident that occurred in October of 2005. He reported that he knocked on the door and was told to go away

by J[redacted], his wife's son. Mr. Winkler said that he then put his shoulder against the door and the door broke open.

He said that inside the residence J[redacted] stood to the left near the kitchen and that Becky, Mr. Winkler's wife and the alleged murder victim, got up from the couch holding one of her daughter's dogs. Mr. Winkler said that while he was looking at his wife she covered her mouth and looked behind him at which point he "reacted" and "the gun went off." He described the reaction as moving his shoulder and elbow up. He said that when he "reacted" he must have hit Roger Grainger, his wife's ex-husband, who was standing behind him. He said he had never met Mr. Grainger before that date, but had seen him from a distance and in photographs. He described scuffling with Mr. Grainger and reaching for the hand gun which was on the ground. He reported noticing that his wife was laying face down on the ground and that she "flinched" once. He said that he obtained the firearm, turned, and left the residence after having been there about one to two minutes.

He said that after leaving the residence, he went to a golf course and then ran to the end of the woods to his house. He reported that the individual who had given him a ride to his wife's home had not waited for him. When asked why he stayed in the woods after the alleged events, he said that he could not explain why. He further stated that "I showed myself," "I was ready," and "I didn't fight it" referring to his apprehension by the police.

Mr. Winkler denied committing the alleged murder. He said he thought that Mr. Grainger was pointing the firearm at his back with a plan of shooting him and probably fired by accident. Mr. Winkler stated that the gun was registered to someone named Charlie whose last name he did not know and that his wife kept the firearm. When asked how Roger Grainger would have had the firearm, he did not answer the specific question but rather said "you're drilling me like you're prosecution."

Regarding his current charge of Assault and Battery of a High and Aggravated Nature, Mr. Winkler stated that he did not strike the alleged victim of this offense, J[redacted] G[redacted]. He further stated that J[redacted] had a right black eye and that he, Mr. Winkler, is right handed implying that if he were to have hit the victim with his right hand, the victim would not have a right black eye. When asked what happened to Jo[redacted] G[redacted], Mr. Winkler said that he presumed that J[redacted]'s father had struck him.

With regard to his current charge of Escape, he stated that when he went to his wife's residence, he was still within the approved time period for being away from his residence while wearing a house arrest electronic monitoring device. He said that he was aware of the restraining order preventing him from going to her residence and was not concerned about being there with that order in place.

Mr. Winkler denied drinking alcohol, using illicit substances, or using prescription medications on the date of the alleged offenses. He said at that time he did not have a prescription for medications. When asked about using over-the-counter medications that day, he said "I don't think so." He denied being depressed on the date of the alleged offenses. With regards to being anxious on the date, he

said "no more than usual" as a result of just losing his job and expecting to lose everything that he had. During a video taped police interrogation dated March 20, 2006, Mr. Winkler said the day of the alleged offenses was a "normal day," "like any other day," during which he watched television, worked around the house, and played basketball with boys in the neighborhood.

Several of Mr. Winkler's comments during his forensic interviews were inconsistent with police reports to including the following: During a video taped police interrogation dated March 20, 2006, he said he went to the alleged murder victim's residence to talk with her about money he owed the court, which his father was helping to pay. During that same video he said that he had armed himself with a hand gun before leaving home to go to his wife's residence, did not remember how he entered the residence, did not recall hearing the gun go off, and had no recall of the time after he knocked on the residence door until he exited the residence except that he talked with J[redacted], but could not recall what they talked about. During the police interrogation, Mr. Winkler said he heard a voice "behind me" that might have been a neighbor. According to police reports, Mr. Winkler struck the door to his wife's residence twice before it opened, hit J[redacted] G[redacted] in the face twice, and then pulled a "shiny silver gun from his waistband," and shot the alleged murder victim. On October 18, 2006, when asked if he had told the police that he had armed himself before leaving home on the day of the alleged offenses, he said that he probably did. When asked why he told them that he said he did not know and that he told them a lot of things.

Police documented that after the alleged offenses Mr. Winkler went to the residence of an individual he had known for several years, requested that she open her door, and fled after she activated her panic alarm. Police reports indicated that during a search of a wooded area by law enforcement officers, Mr. Winkler was observed and then ran into another section of woods. This behavior was described as "fled from Patrolman Gordon." Police reports also noted that Mr. Winkler observed officers and then fled back into the woods discarding items of clothing to include a sweatshirt and a hat. These descriptions are consistent with someone taking actions to avoid apprehension indicating an understanding of the wrongfulness of past actions.

Based on clinical interviews and a review of medical records and police reports we find no evidence that Mr. Winkler would have lacked the ability to distinguish legal or moral right from legal or moral wrong on the date of the alleged offenses and therefore it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. §17-24-10 (1976).

CONCLUSION REGARDING CAPACITY TO CONFORM: We also find no evidence of symptoms of mental illness which would have caused an irresistible impulse, compulsion, or other symptom that would have substantially impaired Mr. Winkler's ability to conform his conduct to the requirements of the law on or about March 6, 2006.

RECOMMENDATIONS:

1. Mr. Winkler would likely benefit from treatment for his depressive disorder and his history of anxiety.

2. Mr. Winkler would also likely benefit from treatment for his history of Alcohol Abuse.

3. Should Mr. Winkler be convicted, there is a strong possibility that his suicidal ideation could return. Therefore, we would recommend that the Department of Corrections be informed of his potential suicide risk should Mr. Winkler be convicted of the alleged offenses.

R. Gregg Dwyer, M.D., Ed.D.
Forensic Psychiatry Fellow

Richard L. Frierson, M.D.
Associate Professor of Psychiatry
Director, Forensic Psychiatry Fellowship
University of South Carolina School of Medicine

RGD/khr

D: 11/15/06
RT/EM: 11/16/06
F/EM:

BENCHMARK MANAGEMENT GROUP, INC.

EMPLOYEE WARNING

EMPOLYEE NAME: LEWIS "MIC" WINKLER, JR.

ADDRESS: [redacted]
PHONE #: [redacted]
SS #: [redacted]
DATE ISSUED: OCTOBER 3, 2005 - MONDAY

RESPONDENT'S EXHIBIT 2
6/21/10 BB

DATE OF OCCURENCE: FRIDAY -SEPTEMBER 30, 2005
POSITION: ON SITE MAINTENANCE MANAGER
LOCATION OF PROJECT: TILGHMAN LAKES BY THE SEA

WARNING #1:

On the day of occurrence, Friday - September 30th, the day before the annual homeowners meeting, Mic was called about the pool condition being green from mustard algae. He blatantly stated that he had been to the property. While his supervisor stood over the pool speaking with him stating that the pool was not fine, it was green. He admitted to not having gone into work as he had moments earlier mentioned because his tee time was too early. He also at that time said that he knew the pool was green. That it had been now for days and he thought he could "handle it". Yet he did not inform any upper management as well as not coming into work to take care or attempt to take care of the problem. So, not only was there a case of not showing up for work to check the property, there was also blatant disrespect, misrepresentation of the situation, indifference and insubordination.

WARNING#2

His total lack of concern for the property and his supervisor was exhibited in his response that day.

CONDITION OF HIRE:

TO SERVICE & MAINTAIN POOL, MAINTAIN PROPERTY, GRASS, BEDS, LIGHTS, JANITORIAL, OVERALL OVERSEEING OF PHYSICAL PROPERTY AND HAVING IT BE DONE IN A TIMELY MANOR AND REPORTING ALL TO AND INFORMING ALL PROPERTY INFORMATION TO MANAGEMENT.

NOTED AND ATTESTED TO:
EMPLOYEE SUPERVISOR - _____ DATE 10-4-05

EMPLOYEE SIGNATURE _____ DATE _____

BENCHMARK MANAGEMENT GROUP, INC.

EMPLOYEE WARNING

EMPOLYEE NAME: LEWIS "MIC" WINKLER, JR.

ADDRESS: [redacted]
PHONE #: [redacted]
SS #: [redacted]
DATE ISSUED: OCTOBER 3, 2005 - MONDAY

RESPONDENT'S EXHIBIT 3
6/21/12 BB

DATE OF OCCURENCE: FRIDAY -SEPTEMBER 30, 2005
POSITION: ON SITE MAINTENANCE MANAGER
LOCATION OF PROJECT: TILGHMAN LAKES BY THE SEA

WARNING #1:
On the day of occurrence, Friday - September 30th, the day before the annual homeowners meeting, Mic was called about the pool condition being green from mustard algae. He blatantly stated that he had been to the property. While his supervisor stood over the pool speaking with him stating that the pool was not fine, it was green. He admitted to not having gone into work as he had moments earlier mentioned because his tee time was too early. He also at that time said that he knew the pool was green. That it had been now for days and he thought he could "handle it". Yet he did not inform any upper management as well as not coming into work to take care or attempt to take care of the problem. So, not only was there a case of not showing up for work to check the property, there was also blatant disrespect, misrepresentation of the situation, indifference and insubordination.

WARNING#2
His total lack of concern for the property and his supervisor was exhibited in his response that day.

CONDITION OF HIRE:
TO SERVICE & MAINTAIN POOL, MAINTAIN PROPERTY, GRASS, BEDS, LIGHTS, JANITORIAL, OVERALL OVERSEEING OF PHYSICAL PROPERTY AND HAVING IT BE DONE IN A TIMELY MANOR AND REPORTING ALL TO AND INFORMING ALL PROPERTY INFORMATION TO MANAGEMENT.

NOTED AND ATTESTED TO:
EMPLOYEE SUPERVISOR - _____ DATE 10-4-05

EMPLOYEE SIGNATURE Mic Winkler DATE 10-4-05

BENCHMARK MANAGEMENT GROUP, INC.

EMPLOYEE TERMINATION

EMPOLYEE NAME: LEWIS "MIC" WINKLER, JR.

ADDRESS: [redacted]
PHONE #: [redacted]
SS #: [redacted]
DATE: OCTOBER 3, 2005

RESPONDENT'S EXHIBIT 4
6/2/12 BB

DATE OF OCCURENCE: MONDAY - OCTOBER 3RD, 2005
POSITION: ON SITE MAINTENANCE MANAGER
LOCATION OF PROJECT: TILGHMAN LAKES BY THE SEA

REASONS FOR TERMINANTION:

Supervisor arrived on property today at 7:30am. Mic called the supervisor at 8:05am and the supervisor was told that he could not come into work today and was given no excuse as to the reason for his absence. After this call was made the supervisor called the BOD and the board stated that a decision needed to be made by Benchmark on his employment status. It was decided at this time to terminate the employment of Lewis "Mic" Winkler, Jr. The call was made with no answer on his phone and a message was left for him to report to the main office at 9am on Tuesday, October 4th.

CONDITION OF HIRE:
TO SERVICE & MAINTAIN POOL, MAINTAIN PROPERTY, GRASS, BEDS, LIGHTS, JANITORIAL, OVERALL OVERSEEING OF PHYSICAL PROPERTY AND HAVING IT BE DONE IN A TIMELY MANOR AND REPORTING ALL TO AND INFORMING ALL PROPERTY INFORMATION TO MANAGEMENT.

NOTED AND ATTESTED TO:
EMPLOYEE SUPERVISOR - _____ DATE 10-4-05

EMPLOYEE SIGNATURE _____ DATE _____

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF HORRY)
) 15TH JUDICIAL CIRCUIT

Rebekah Winkler

FILED
HORRY COUNTY
2005 OCT 20 PM 12: 22
MELANIE HUGGINS
CLERK OF COURT

Petitioner)

vs.)

Louis Winkler)
Respondent)

PETITION FOR ORDER OF PROTECTION
(For Use in Family Court)

Respondent's SSN: _____
DOB 3-24-60 Race W Sex M

I ask this court to issue an Order of Protection, because:

RESPONDENT'S EXHIBIT 5 6/21/05 BB

1. This is the county where this case should be handled, since (check one):
   - ☒ a. The alleged act of abuse occurred in this county; or,
   - ☐ b. The person who caused the abuse lives in this county; or
   - ☐ c. The person who caused the abuse and I last lived together in this county.

2. The person who caused the abuse lives at [redacted] (street address) in or near the town or city of Little River, which is in Horry County, and the State of South Carolina.

3. The person who was abused was (check one or both, and supply information):
   - ☒ a. Rebekah Winkler, who is the person asking for an Order of Protection; or,
   - ☐ b. , who is a child under 18 years old who lives with me.

4. That the abuser and the victim (check one or more):
   - ☒ are husband and wife ☐ were formerly husband and wife
   - ☐ have a child/children in common, who is/are:
   - ☐ are living together ☐ were formerly living together
   - ☐ are household or family members pursuant to S.C. Code Section 20-4-20(a)(2)

5. The abuse happened at (address/location) Saw Tell Road on October 10, 2005, at 9:45 o'clock, p.m. when Louis Winkler (Name of person causing abuse) did this:

Respondent slammed his vehicle into Pertitioner's vehicle so that she could not get away from him. Respondent got into Petitioner's car with her and drove away. Respondent stopped the car and Sexually assaulted the Petitioner before making her get out of the vehicle and forcing her to go into the woods.Respondent then physically abuses her by pushing his thumb into her left eye,he hit her in the face and slammed her head into a tree. Respondent made Petitioner remove her clothing and he sexually assaulted her many times during the night. The Petitioner was not allowed to put any clothing on until the next morning when they exited the woods.Respondenrt molested the Petitioner at least 15 times or more that night. Respondent took Petitioner to a warehouse on Hwy 57 and her kept her there until one of the employees told him he had to leave. As a result of this incident the Petitioner's nose was broken she has large bruises on her face and a sratched Cornea from the Respoondent taking his thumb and pushing it intio her eye. Petitioner fears for her safety because of the physical abuse she suffered. The Respondent was arrested (see pictures)...

6. Have there been prior convictions of domestic violence or prior orders of protection? Yes ☒ No ☐. If yes, please state date

7. I ask this court to grant the following temporary relief (check as many as apply and supply information)
   - ☒ a. issue an order of protection which prohibits and forbids respondent from abusing, threatening to abuse, or molesting, or engaging in any other conduct that would place Petitioner in reasonable fear of bodily injury.
   - ☒ b. issue an order of protection which restrains and prohibits respondent from using, attempting to use, or threatening to use physical force against Petitioner that would reasonably be expected to cause bodily injury.
   - ☒ c. issue an order of protection which restrains, prohibits, and forbids respondent from communicating or attempting to communicate with Petitioner in any way, and from entering or attempting to enter the home of the victim, place of employment, education, or other location as the Court may order.
   - ☐ d. issue an order granting _____ temporary custody of the following minor child(ren).

Name Date of Birth Address

☐ grant reasonable visitation or ☐ deny visitation.

☐ e. issue an order granting Petitioner temporary child support
(Financial Declaration [Form SCCA/430] MUST be completed and attached).

☐ f. issue an order granting Petitioner temporary financial support
(Financial Declaration [Form SCCA/430] MUST be completed and attached).

☐ g. issue an order granting Petitioner temporary exclusive use and possession of the home and furnishings.

☒ h. issue an order which forbids Respondent from transferring, selling destroying, encumbering, or otherwise disposing of real or personal property belonging to Petitioner or jointly owned.

☒ i. issue an order which gives Petitioner assistance from law enforcement in that Petitioner will be accompanied:
☒ (1)in removing Personal property from [redacted] (Street Address)
in Little River (City) Horry (County), South Carolina.
☐ (2)in placing Petitioner in possession of the home and furnishings at _____(Street Address)
in _____ (City) Horry(County), South Carolina.

☐ j. issue an order reimbursing Petitioner for costs and attorney's fees.

☒ k. hold a hearing within 15 days of the date of filing these papers.

☐ l. hold an emergency hearing within 24 hours.

☒ m. issue an order granting Petitioner the following additional requests: Petitioner requests sole use and possession of the 2000 Izuzu Rodeo..

Sworn to and Subscribed before me
this 20 day of October, 2005

Jennifer Lee
Notary Public for South Carolina

My Commission expires 9-18-2010

Rebekah S. Winkler
Signature of Petitioner or
Person on Behalf of Petitioner under 18 years old

NOTICE TO RESPONDENT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT
)
FILED
2005 OCT 21 PM 12:34
CLERK OF COURT
REBEKAH S. WINKLER) **FAMILY COURT ORDER**
Petitioner) **PROTECTION FROM DOMESTIC ABUSE ACT**
) (For Use By Family Court Judges)
vs.) FILE NO. 2005 DR 26 2620
) Judge: LISA A. KINON
LOUIS M. WINKLER, JR.) Attorney for Petitioner:
Respondent.) Attorney for Respondent:
) Court Reporter: SANDRA ALLEN

PETITIONER IDENTIFIERS

[redacted]
Date of Birth of Petitioner

And/or on behalf of minor family member(s) or other Protected persons: (list name and DOB)

RESPONDENT IDENTIFIERS

SEX *	RACE *	DOB*
M	W	[redacted]

EYES	HAIR	SOCIAL SECURITY #
BLU	BRN	[redacted]

DRIVERS LICENSE #	STATE

Relationship to Petitioner: HUSBAND

[redacted]
Respondent's Address

CAUTION: *Indicates required information for entry into NCIC
☐ Weapon Involved ☐ Weapon Present on Respondent's Property ☐ Access to weapons

THE COURT HEREBY FINDS:
That it has jurisdiction over the parties and subject matter,
Respondent has been provided with reasonable notice and opportunity to be heard.
Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:
☒ That the above named Respondent be restrained from committing further acts of abuse or threats of abuse.
☒ That the above named Respondent be restrained from any contact with the Petitioner/Plaintiff as set forth on the attached pages.
The terms of the this order shall be effective until October 25, 2005.

WARNINGS TO RESPONDENT;

This order shall be enforced in any county of South Carolina and by the courts of any state, District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

Sheriff 843-915-5080 **Clerk of Court**

Phone Number Phone Number

SCCA/426ABCD (03/05)

RESPONDENT'S EXHIBIT EV 6 8/21/12 BB

A Petition for Order of Protection was filed on October 20, 2005. I held a hearing on October 21, 2005. Respondent was given actual notice and an opportunity to participate. Respondent did appear. After hearing the evidence, and examining the affidavits and verified pleadings, I have determined that the petition should be GRANTED, based on these facts:

1. That the Respondent and the Petitioner (check one or more):

☒ are husband and wife	☐ have this child/children in common:	☐ are cohabiting
☐ were husband and wife	☐ are household or family members pursuant to S.C. Code § 20-4-20(a)(2)	☐ were cohabiting

2. Venue is properly in this county, since this is the county where
   - ☒ a. the act of abuse occurred; or
   - ☐ b. the Respondent resides; or
   - ☐ c. the parties last resided together.
3. Abuse occurred on (date) October 10, 2005 at 9:45 o'clock p. m. at Saw Tell Rd. in this manner:

   ____
4. committed this abuse.
5. Rebekah Winkler was the victim(s) of this abuse.

   ☐ Check here if the victim is less than 18 years old and name: _____

6. ☐ The evidence establishes that Respondent represents a credible threat to the physical safety of the victim. The Respondent used, attempted to use, or threatened to use physical force against Petitioner that is reasonably expected to cause bodily injury.

☐ 7. The Petitioner is a fit and proper person to have custody of the minor child or children.

☐ 8. Respondent is employed at and earns approximately $ gross per month and has reasonable monthly expenses of $

☐ 9. Petitioner is employed and earns approximately $ gross per month, and has reasonable monthly expenses of $ for herself and the minor children.

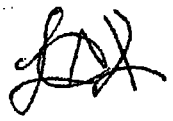
☐ 10. Petitioner has shown a need for child support in the amount of $ per and Respondent has the ability to make these payments.

☐ 11. Petitioner has shown a need for temporary financial support in the amount of $ per and Respondent has the ability to make those payments.

☐ 12. Petitioner should have the use and possession of the home and furnishings located at in , S.C., with Respondent making the mortgage and/or rental payments plus any taxes and/or insurance on the property.

☐ 13. Petitioner retained an attorney, $ is a reasonable attorney's fee, and Respondent should contribute to this expense.

☐ 14. Other: Petitioner requests sole use and possession of the 2000 Izuzu Rodeo.



IT IS THEREFORE ORDERED THAT:

☒ A. Respondent is temporarily restrained, prohibited and forbidden to abuse, threaten to abuse, or molest, Petitioner or engage in any other conduct that would place Petitioner in reasonable fear of bodily injury.

☒ B. Respondent is temporarily restrained and prohibited from using, attempting to use, or threatening to use physical force against Petitioner that would reasonably be expected to cause bodily injury.

☒ C. Respondent is temporarily restrained, prohibited and forbidden to communicate or attempt to communicate with Petitioner/Respondent in any way or to enter or attempt to enter Petitioner's place of residence, employment, education or the following locations: _____

☐ D. Petitioner is awarded temporary custody of the minor children named: _____

☐ E. Respondent is awarded temporary visitation rights with the minor children as follows: _____

☐ F. Respondent shall pay the sum of $ each as temporary child support through the clerk of court, plus 5% court costs, making a total payment of $, commencing on , and each and every thereafter.

☐ G. Respondent shall pay the sum of $ each as temporary financial support through the clerk of court, plus 5% court costs, making a total payment of $, thereafter commencing on , and each and every thereafter.

☐ H. The sole, exclusive possession of the residence and furnishings located at the aforementioned address (appearing under number "11" of this order) is awarded to Petitioner with Respondent making the mortgage and/or rental payments plus any taxes and/or Insurance on the property.

☐ I. Respondent is temporarily restrained, prohibited, and forbidden to transfer, encumber, destroy, sell or otherwise dispose of, except in the ordinary course of business, real or personal property jointly owned or leased by the parties or in which Petitioner claims an equitable interest including, but not limited to, the following: _____

☐ J. Respondent shall pay $, to the Petitioner by (date) as a contribution toward Petitioner's attorney fees.

☐ K. The following law enforcement agencies be served with a copy of this Order by the clerk of court:

_____

☐ L. The law enforcement agencies listed below are directed to assist Petitioner as follows:

☐ (1) Accompany Respondent to remove his personal property at:

☐ (2) Accompany Petitioner to assist in placing her in possession of the residence, located at:

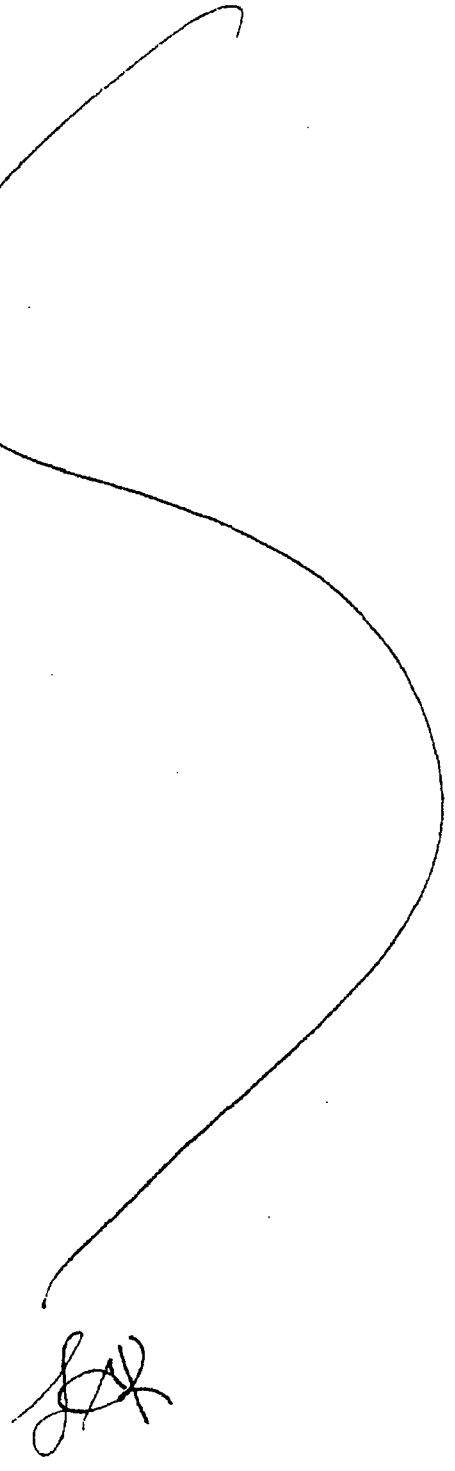
☐ (3) Other:

RESPONSIBLE LAW ENFORCEMENT AGENCIES:

☒ M. IT IS FURTHER ORDERED, pursuant to S.C. Code Ann. § 20-7-420-, that this matter is continued until October 25, 2005 at 2:30 pm.

☒ N. Federal Firearms Prohibition, pursuant to 18 U.S.C § 922.

1. Does this Order protect an intimate partner, a child of an intimate partner, or a child Respondent? ☒ YES ☐ NO
2. Did the person restrained have actual notice and an opportunity to participate in the hearing? ☒ YES ☐ NO
3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force? ☒ YES ☐ NO



THE PROVISIONS OF THIS ORDER SHALL EXPIRE ON October 25, 2005 (a date which is not less than 6 months and does not exceed 12 months from the date of this Order) UNLESS OTHERWISE PROVIDED BY S.C. CODE ANN. §20-4-70.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY NOT MORE THAN THIRTY DAYS IN JAIL AND A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

AND IT IS SO ORDERED.
October 21, 2005 Date
Conway, SC

FAMILY COURT JUDGE

COPY GIVEN TO PETITIONER BY _____ (initials) COPY GIVEN TO RESPONDENT BY _____ (initials)

RESPONDENT'S HOME ADDRESS: 2408 Bittar Spar Rd., Little River
RESPONDENT'S PLACE OF EMPLOYMENT:

Information which may be of assistance to law enforcement: Respondent's height 509 weight 185 DL number

ATTACH PHOTOSTATIC COPY OF RESPONDENT'S DRIVERS LICENSE, IF AVAILABLE.

5186

RESPONDENT'S EXHIBIT 7 6/21/18 BB

STATE OF SOUTH CAROLINA
CERTIFIED COPY
COUNTY OF HORRY
2008 FEB -1 AM 9:01

2005 OCT 25 PM 5:30
CLERK OF COURT

IN THE FAMILY COURT
15TH JUDICIAL CIRCUIT

FAMILY COURT ORDER
PROTECTION FROM DOMESTIC ABUSE ACT
(For Use By Family Court Judges)

REBEKAH S. WINKLER, Petitioner

vs.

LOUIS M. WINKLER, JR., Respondent.

FILE NO. 2005 DR 26 2620
Judge: H.E. BONNOITT, JR.
Attorney for Petitioner: SAM HODGES
Attorney for Respondent: SCOTT BELLAMY
Court Reporter: DEBBIE WRIGHT

PETITIONER IDENTIFIERS

[redacted]
Date of Birth of Petitioner

And/or on behalf of minor family member(s) or other Protected persons: (list name and DOB)

RESPONDENT IDENTIFIERS

SEX *	RACE *	DOB*
M	W	[redacted]

EYES	HAIR	SOCIAL SECURITY #
BLU	BRN	[redacted]

DRIVERS LICENSE #	STATE

Relationship to Petitioner: HUSBAND

[redacted]
Respondent's Address

*Indicates required information for entry into NCIC

CAUTION:
☐ Weapon Involved ☐ Weapon Present on Respondent's Property ☐ Access to weapons

CERTIFIED COPY
2008 FEB -1 AM 9:02

THE COURT HEREBY FINDS:
That it has jurisdiction over the parties and subject matter,
Respondent has been provided with reasonable notice and opportunity to be heard.
Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:
☒ That the above named Respondent be restrained from committing further acts of abuse or threats of abuse.
☒ That the above named Respondent be restrained from any contact with the Petitioner/Plaintiff as set forth on the attached pages.
The terms of the this order shall be effective until APRIL 25, 2006.

WARNINGS TO RESPONDENT;

This order shall be enforced in any county of South Carolina and by the courts of any state, District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

843-248-1521 Sheriff Phone Number

843-915-5080 Clerk of Court Phone Number

A Petition for Order of Protection was filed on October 20, 2005. I held a hearing on October 25, 2005. Respondent was given actual notice and an opportunity to participate. Respondent did not appear. After hearing the evidence, and examining the affidavits and verified pleadings, I have determined that the petition should be GRANTED, based on these facts:

1. That the Respondent and the Petitioner (check one or more):

☒ are husband and wife	☐ have this child/children in common:	☐ are cohabiting
☐ were husband and wife	☐ are household or family members pursuant to S.C. Code § 20-4-20(a)(2)	☒ were cohabiting

2. Venue is properly in this county, since this is the county where
   - ☒ a. the act of abuse occurred; or
   - ☐ b. the Respondent resides; or
   - ☐ c. the parties last resided together.
3. Abuse occurred on (date) October 10, 2005 at 9:45 o'clock p. m.. at Saw Tell Rd. in this manner:
   Scott Bellamy represented the Defendant who was not present; Sam Hodges represented the Petitioner who was not present; they came to an agreement.
4. committed this abuse.
5. Revekah Winkler was the victim(s) of this abuse.

☐ Check here if the victim is less than 18 years old and name: _____

6. ☐ The evidence establishes that Respondent represents a credible threat to the physical safety of the victim. The Respondent used, attempted to use, or threatened to use physical force against Petitioner that is reasonably expected to cause bodily injury.

☐ 7. The Petitioner is a fit and proper person to have custody of the minor child or children.

☐ 8. Respondent is employed at and earns approximately $ gross per month and has reasonable monthly expenses of $

☐ 9. Petitioner is employed and earns approximately $ gross per month, and has reasonable monthly expenses of $ for herself and the minor children.

☐ 10. Petitioner has shown a need for child support in the amount of $ per and Respondent has the ability to make these payments.

☐ 11. Petitioner has shown a need for temporary financial support in the amount of $ per and Respondent has the ability to make those payments.

☐ 12. Petitioner should have the use and possession of the home and furnishings located at in , S.C., with Petitioner making the mortgage and/or rental payments plus any taxes and/or insurance on the property.

☐ 13. Petitioner retained an attorney, $ is a reasonable attorney's fee, and Respondent should contribute to this expense.

☐ 14. Other: _____

IT IS THEREFORE ORDERED THAT:

☒ A. Respondent is temporarily restrained, prohibited and forbidden to abuse, threaten to abuse, or molest, Petitioner or engage in any other conduct that would place Petitioner in reasonable fear of bodily injury.

☒ B. Respondent is temporarily restrained and prohibited from using, attempting to use, or threatening to use physical force against Petitioner that would reasonably be expected to cause bodily injury.

☒ C. Respondent is temporarily restrained, prohibited and forbidden to communicate or attempt to communicate with Petitioner/Respondent in any way or to enter or attempt to enter Petitioner's place of residence, employment, education or the following locations: _____

☐ D. Petitioner is awarded temporary custody of the minor children named: _____

☐ E. Respondent is awarded temporary visitation rights with the minor children as follows: _____

☐ F. Respondent shall pay the sum of $ each as temporary child support through the clerk of court, plus 5% court costs, making a total payment of $, commencing on , and each and every thereafter.

☐ G. Respondent shall pay the sum of $ each as temporary financial support through the clerk of court, plus 5% court costs, making a total payment of $, thereafter commencing on , and each and every thereafter.

☐ H. The sole, exclusive possession of the residence and furnishings located at the aforementioned address (appearing under number "12" of this order) is awarded to Petitioner with Petitioner making the mortgage and/or rental payments plus any taxes and/or Insurance on the property.

☐ I. Respondent is temporarily restrained, prohibited, and forbidden to transfer, encumber, destroy, sell or otherwise dispose of, except in the ordinary course of business, real or personal property jointly owned or leased by the parties or in which Petitioner claims an equitable interest including, but not limited to, the following: _____

☐ J. Respondent shall pay $, to the Petitioner by (date) as a contribution toward Petitioner's attorney fees.

☐ K. The following law enforcement agencies be served with a copy of this Order by the clerk of court:

_____

☐ L. The law enforcement agencies listed below are directed to assist Petitioner as follows:

☐ (1) Accompany Petitioner to remove her personal property at:

☐ (2) Accompany Petitioner to assist in placing her in possession of the residence, located at:

☐ (3) Other:

RESPONSIBLE LAW ENFORCEMENT AGENCIES:

☐ M. IT IS FURTHER ORDERED, pursuant to S.C. Code Ann. § 20-7-420-, that .

☒ N. Federal Firearms Prohibition, pursuant to 18 U.S.C § 922.

1. Does this Order protect an intimate partner, a child of an intimate partner, or a child Respondent? ☒ YES ☐ NO
2. Did the person restrained have actual notice and an opportunity to participate in the hearing? ☒ YES ☐ NO
3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force? ☒ YES ☐ NO

THE PROVISIONS OF THIS ORDER SHALL EXPIRE ON April 25, 2006 (a date which is not less than 6 months and does not exceed 12 months from the date of this Order) UNLESS OTHERWISE PROVIDED BY S.C. CODE ANN. §20-4-70.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY NOT MORE THAN THIRTY DAYS IN JAIL AND A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

AND IT IS SO ORDERED.
October 25, 2005 Date
CONWAY, SC

FAMILY COURT JUDGE

COPY GIVEN TO PETITIONER BY _____ (initials) COPY GIVEN TO RESPONDENT BY _____ (initials)

RESPONDENT'S HOME ADDRESS: 2408 Bittar Spar Rd., Little River
RESPONDENT'S PLACE OF EMPLOYMENT:

Information which may be of assistance to law enforcement: Respondent's height 509 weight 185 DL number

ATTACH PHOTOSTATIC COPY OF RESPONDENT'S DRIVERS LICENSE, IF AVAILABLE.

5190

RESPONDENT'S EXHIBIT 8 6/21/17 BB

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT
FILED 2005 OCT 26 AM 10:56 CLERK OF COURT
— AMENDED —

REBEKAH S. WINKLER, Petitioner
vs.
LOUIS M. WINKLER, JR., Respondent.

FAMILY COURT ORDER
PROTECTION FROM DOMESTIC ABUSE ACT
(For Use By Family Court Judges)

FILE NO. 2005 DR 26 2620
Judge: H.E. BONNOITT, JR.
Attorney for Petitioner: SAM HODGES
Attorney for Respondent: SCOTT BELLAMY
Court Reporter: DEBBIE WRIGHT

PETITIONER IDENTIFIERS

[redacted]
Date of Birth of Petitioner

And/or on behalf of minor family member(s) or other Protected persons: (list name and DOB)

RESPONDENT IDENTIFIERS

SEX *	RACE *	DOB*
M	W	[redacted]

EYES	HAIR	SOCIAL SECURITY #
BRN	BRN	[redacted]

DRIVERS LICENSE #	STATE

Relationship to Petitioner: HUSBAND

[redacted]
Respondent's Address

*Indicates required information for entry into NCIC

CAUTION:
☐ Weapon Involved ☐ Weapon Present on Respondent's Property ☐ Access to weapons

THE COURT HEREBY FINDS:
That it has jurisdiction over the parties and subject matter,
Respondent has been provided with reasonable notice and opportunity to be heard.
Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:
☒ That the above named Respondent be restrained from committing further acts of abuse or threats of abuse.
☒ That the above named Respondent be restrained from any contact with the Petitioner/Plaintiff as set forth on the attached pages.
The terms of the this order shall be effective until APRIL 25, 2006.

WARNINGS TO RESPONDENT;

This order shall be enforced in any county of South Carolina and by the courts of any state, District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

843-248-1521 Sheriff Phone Number

843-915-5080 Clerk of Court Phone Number

A Petition for Order of Protection was filed on October 20, 2005. I held a hearing on October 25, 2005. Respondent was given actual notice and an opportunity to participate. Respondent did not appear. After hearing the evidence, and examining the affidavits and verified pleadings, I have determined that the petition should be GRANTED, based on these facts:

1. That the Respondent and the Petitioner (check one or more):

☒ are husband and wife	☐ have this child/children in common:	☐ are cohabiting
☐ were husband and wife	☐ are household or family members pursuant to S.C. Code § 20-4-20(a)(2)	☒ were cohabiting

2. Venue is properly in this county, since this is the county where
   - ☒ a. the act of abuse occurred; or
   - ☐ b. the Respondent resides; or
   - ☐ c. the parties last resided together.
3. Abuse occurred on (date) October 10, 2005 at 9:45 o'clock p. m.. at Saw Tell Rd. in this manner:
   Scott Bellamy represented the Defendant who was not present; Sam Hodges represented the Petitioner who was not present; they came to an agreement.
4. committed this abuse.
5. Revekah Winkler was the victim(s) of this abuse.

   ☐ Check here if the victim is less than 18 years old and name: _____

6. ☐ The evidence establishes that Respondent represents a credible threat to the physical safety of the victim. The Respondent used, attempted to use, or threatened to use physical force against Petitioner that is reasonably expected to cause bodily injury.

☐ 7. The Petitioner is a fit and proper person to have custody of the minor child or children.

☐ 8. Respondent is employed at and earns approximately $ gross per month and has reasonable monthly expenses of $

☐ 9. Petitioner is employed and earns approximately $ gross per month, and has reasonable monthly expenses of $ for herself and the minor children.

☐ 10. Petitioner has shown a need for child support in the amount of $ per and Respondent has the ability to make these payments.

☐ 11. Petitioner has shown a need for temporary financial support in the amount of $ per and Respondent has the ability to make those payments.

☐ 12. Petitioner should have the use and possession of the home and furnishings located at in , S.C., with Petitioner making the mortgage and/or rental payments plus any taxes and/or insurance on the property.

☐ 13. Petitioner retained an attorney, $ is a reasonable attorney's fee, and Respondent should contribute to this expense.

☐ 14. Other: _____

IT IS THEREFORE ORDERED THAT:

☒ A. Respondent is temporarily restrained, prohibited and forbidden to abuse, threaten to abuse, or molest, Petitioner or engage in any other conduct that would place Petitioner in reasonable fear of bodily injury.

☒ B. Respondent is temporarily restrained and prohibited from using, attempting to use, or threatening to use physical force against Petitioner that would reasonably be expected to cause bodily injury.

☒ C. Respondent is temporarily restrained, prohibited and forbidden to communicate or attempt to communicate with Petitioner/Respondent in any way or to enter or attempt to enter Petitioner's place of residence, employment, education or the following locations: _____

☐ D. Petitioner is awarded temporary custody of the minor children named: _____

☐ E. Respondent is awarded temporary visitation rights with the minor children as follows: _____

☐ F. Respondent shall pay the sum of $ each as temporary child support through the clerk of court, plus 5% court costs, making a total payment of $, commencing on , and each and every thereafter.

☐ G. Respondent shall pay the sum of $ each as temporary financial support through the clerk of court, plus 5% court costs, making a total payment of $, thereafter commencing on , and each and every thereafter.

☐ H. The sole, exclusive possession of the residence and furnishings located at the aforementioned address (appearing under number "12" of this order) is awarded to Petitioner with Petitioner making the mortgage and/or rental payments plus any taxes and/or Insurance on the property.

☐ I. Respondent is temporarily restrained, prohibited, and forbidden to transfer, encumber, destroy, sell or otherwise dispose of, except in the ordinary course of business, real or personal property jointly owned or leased by the parties or in which Petitioner claims an equitable interest including, but not limited to, the following: _____

☐ J. Respondent shall pay $, to the Petitioner by (date) as a contribution toward Petitioner's attorney fees.

☐ K. The following law enforcement agencies be served with a copy of this Order by the clerk of court:

_____

☐ L. The law enforcement agencies listed below are directed to assist Petitioner as follows:

☐ (1) Accompany Petitioner to remove her personal property at:

☐ (2) Accompany Petitioner to assist in placing her in possession of the residence, located at:

☐ (3) Other:

RESPONSIBLE LAW ENFORCEMENT AGENCIES:

☐ M. IT IS FURTHER ORDERED, pursuant to S.C. Code Ann. § 20-7-420-, that .

☒ N. Federal Firearms Prohibition, pursuant to 18 U.S.C § 922.

1. Does this Order protect an intimate partner, a child of an intimate partner, or a child Respondent? ☒ YES ☐ NO
2. Did the person restrained have actual notice and an opportunity to participate in the hearing? ☒ YES ☐ NO
3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force? ☒ YES ☐ NO

THE PROVISIONS OF THIS ORDER SHALL EXPIRE ON April 25, 2006 (a date which is not less than 6 months and does not exceed 12 months from the date of this Order) UNLESS OTHERWISE PROVIDED BY S.C. CODE ANN. §20-4-70.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY NOT MORE THAN THIRTY DAYS IN JAIL AND A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

AND IT IS SO ORDERED.
October 25, 2005 Date
CONWAY, SC

FAMILY COURT JUDGE

COPY GIVEN TO PETITIONER BY _____ (initials) COPY GIVEN TO RESPONDENT BY _____ (initials)

RESPONDENT'S HOME ADDRESS: 2408 Bittar Spar Rd., Little River
RESPONDENT'S PLACE OF EMPLOYMENT:

Information which may be of assistance to law enforcement: Respondent's height 509 weight 175 DL number

ATTACH PHOTOSTATIC COPY OF RESPONDENT'S DRIVERS LICENSE, IF AVAILABLE.

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2005-DR-26-
REBEKAH S. WINKLER,)	
SSN# [redacted])	
)	
Plaintiff,)	
)	
vs.)	SUMMONS
)	
LOUIS MICHAEL WINKLER, JR.,)	
SSN#)	
)	
Defendant.)	
)	
and LOUIS MICHAEL WINKLER,)	
Sr.)	
Third Party Defendant)	
)	



TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, the original of which is filed in the Office of the Clerk of Court of Horry County and to serve a copy of your Answer on the subscribers at their office at 112 Ye Olde Kings Highway, North Myrtle Beach, SC 29582, within thirty (30) days of the date of service hereof, exclusive of the date of such service, and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

Melissa M. Frazier

Melissa M. Frazier
WYLIE & FRAZIER, PC
Attorneys for the Plaintiff
112 Ye Olde Kings Highway
Post Office Box 389
North Myrtle Beach, SC 29597
(843) 249-0025 Fax (843) 280-6190

Dated: 11/14/05

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2005-DR-26-
REBEKAH S. WINKLER,)	
SSN# [redacted])	
)	
Plaintiff,)	
)	
vs.)	COMPLAINT FOR DIVORCE
)	
LOUIS MICHAEL WINKLER, JR.,)	
SSN#)	
)	
Defendant.)	
)	
and LOUIS MICHAEL WINKLER,)	
SR.)	
)	
Third Party Defendant)	
)	

Plaintiff, complaining of the Defendant, would show unto this Honorable Court as follows:

FOR A FIRST CAUSE OF ACTION
(Divorce on the Statutory Grounds of Physical Cruelty)

1. Plaintiff and Defendant are citizens and residents of Horry County, South Carolina and have been so for more than three months immediately prior to the commencement of this action. The parties last resided together as husband and wife in Horry County, South Carolina. Third party Defendant, Louis Michael Winkler is a citizen and resident of Ohio. However, he is listed as the titled owner on the parties marital home.

2. Plaintiff and Defendant are husband and wife, having been married on October 10, 2003, in Horry County, South Carolina. No children were born of this marriage. However, the Plaintiff has two (2) children who are emancipated and one (1) minor child, who are not subject to this action.

3. The parties have met the residency requirement, pursuant to §20-3-30 of the Code of Laws of South Carolina, (1976, as amended) and Horry County is the proper venue, pursuant to §20-

3-60 of the Code of Laws of South Carolina, (1976, as amended.) This Court has jurisdiction over the parties hereto and the subject matter herein, pursuant to §20-7-420 of the Code of Laws of South Carolina.

4. Defendant has a history of physically abusing the Plaintiff, culminating in an incident on October 10, 2005, where the Defendant, Louis Michael Winkler, Jr., kidnaped the Plaintiff, physically abused and raped her repeatedly. Plaintiff is informed and believes that she is entitled to a divorce a vinculo matrimonii from the Defendant, Louis Michael Winkler, Jr., on the statutory grounds of physical cruelty.

FOR A SECOND CAUSE OF ACTION
(Marital Assets and Marital Debt)

5. Plaintiff realleges the allegations contained in the previous cause of action and would reiterate the same as if repeated verbatim herein.

6. Defendant's misconduct caused the break-up of this marriage and has made it impossible for the parties to continue to cohabit. The parties pay the mortgage payments on the marital residence, and made substantial contributions to the improvement of the property located at [redacted], in Little River, South Carolina, which is titled in the name of the third party Defendant, Louis Michael Winkler, Sr., who is the father of the other Defendant in this action. Plaintiff does not object to the Defendant, Louis Michael Winkler, Jr., continuing to reside in the former marital residence, pendente lite and permanently.

7. Plaintiff currently does not own a vehicle. Plaintiff was driving her son-in-law's vehicle until the Defendant, Louis Michael Winkler, Jr., wrecked this vehicle, leaving the Plaintiff with no vehicle. However, Defendant, Louis Michael Winkler, Jr., owns a 2000 Isuzu Rodeo which is paid for. Plaintiff is informed and believes that she is entitled to a vehicle to be provided to her by the

Defendant, Louis Michael Winkler, Jr., pendente lite and permanently.

8. Throughout their marriage, the parties have accumulated certain real and personal property, including among other items, the marital home and its contents. Plaintiff's contribution to the acquisition and maintenance of the marital property was substantial and material and she is informed and believes that she is entitled to an equitable distribution of that property. In addition, the parties have some marital debt. Plaintiff is informed and believes that she is entitled to an equitable distribution of the marital debt. In particular, the parties owe an income tax debt in the approximate amount of $4,500.00, which the Plaintiff has been making monthly payments on in the amount of $400.00. The Plaintiff is informed and believes that the Defendant, Louis Michael Winkler, Jr., should be responsible for a substantial portion of this debt, and indemnify and hold the Plaintiff harmless therefrom, pendente lite and permanently.

9. Plaintiff is informed and believes that the Defendant, Louis Michael Winkler, Jr., will hide or dispose of marital assets in an attempt to deprive the Plaintiff of an equitable distribution. She is informed and believes that the parties should be restrained from transferring, selling, hypothecating, encumbering, dissipating, destroying, concealing, harming, reducing or dissolving any marital assets, pendente lite.

FOR A THIRD CAUSE OF ACTION
(Physical Restraint)

10. Plaintiff realleges the allegations contained in the previous causes of action and would reiterate the same as if repeated verbatim herein.

11. Plaintiff is in fear for her life due to the actions of the Defendant, Louis Michael Winkler, Jr. Plaintiff is informed and believes that she is entitled to an order strictly restraining the Defendant from harming or harassing her in any manner, or from contacting or coming about her

person for any reason, and at any place she may be, pendente lite and permanently.

FOR A FOURTH CAUSE OF ACTION
(Discovery)

12. Plaintiff realleges the allegations contained in the previous causes of action and would reiterate the same as if repeated verbatim herein.

13. There are several issues of this marriage into which the parties must inquire. Plaintiff is therefore informed and believes that she is entitled to discovery in accordance with the South Carolina Rules of Civil Procedure.

FOR A FIFTH CAUSE OF ACTION
(Attorney's Fees)

14. Plaintiff realleges the allegations contained in the previous causes of action and would reiterate the same as if repeated verbatim herein.

15. The Defendant, Louis Michael Winkler, Jr.'s, misconduct precipitated this action and caused the Plaintiff to incur attorney's fees and costs. Plaintiff is without the funds with which to pay her attorney and she is informed and believes that the Defendant, Louis Michael Winkler, Jr., should be required to pay her attorney's fees and costs, pendente lite and permanently.

WHEREFORE, PLAINTIFF PRAYS AS FOLLOWS:

a. for a divorce a vinculo matrimonii from the Defendant, Louis Michael Winkler, Jr., on the statutory grounds of physical cruelty;

b. for the Defendant, Louis Michael Winkler, Jr., to continue to reside in the former marital residence, pendente lite and permanently;

c. for an order requiring the Defendant, Louis Michael Winkler, Jr., to provide the Plaintiff with a vehicle, pendente lite and permanently;

d. for the Defendant, Louis Michael Winkler, Jr., to be responsible for a substantial

portion of the income tax debt, and indemnify and hold the Plaintiff harmless therefrom, pendente lite and permanently, and for an order restraining the parties from incurring any further debt for which the other party may be held responsible for, pendente lite and permanently;

e. for an order restraining the parties from transferring, selling, hypothecating, encumbering, dissipating, destroying, concealing, harming, reducing or dissolving any marital assets, pendente lite;

f. for an order strictly restraining the Defendant, Louis Michael Winkler, Jr., from harming or harassing her in any manner, or from contacting or coming about her person for any reason, and at any place she may be, pendente lite and permanently;

g. for discovery in accordance with the South Carolina Rules of Civil Procedure;

h. for the Defendant, Louis Michael Winkler, Jr., to pay Plaintiff's attorney's fees and costs, pendente lite and permanently;

I. for such other and further relief as this court deems necessary and just.

MELISSA M. FRAZIER
WYLIE AND FRAZIER
Attorney for the Plaintiff
PO Box 389
112 Ye Olde Kings Highway
North Myrtle Beach, SC 29597
83.249.0025 fax: 843.280.6190

Dated: 11/14/05

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2005-DR-26-
REBEKAH S. WINKLER,)	
SSN# [redacted])	
)	
Plaintiff,)	
)	
vs.)	VERIFICATION
)	
LOUIS MICHAEL WINKLER, JR.,)	
SSN#)	
)	
Defendant.)	
)	
and LOUIS MICHAEL WINKLER, SR.)	
)	
Third Party Defendant)	
)	

PERSONALLY appeared before me, Rebekah S. Winkler, Plaintiff in the foregoing action, who, being duly sworn, states as follows:

That the allegations contained in the attached Pleadings are true and correct, and are based upon the personal knowledge of this Deponent, except for those allegations which are based upon this Deponent's information and belief and, as to those, this Deponent verily believes same to be true.

Rebekah S. Winkler
REBEKAH S. WINKLER

Sworn before me this the
9th day of November 2005
Melissa M. Dorn
Notary Public for South Carolina
My Commission Expires: 10/4/12

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2005-DR-26-2788
REBEKAH S. WINKLER,)	
SSN# [redacted])	
Plaintiff,)	
vs.)	
LOUIS MICHAEL WINKLER, JR.,)	**TEMPORARY ORDER**
SSN# [redacted])	(NOT ENDING ACTION)
Defendant.)	
and LOUIS MICHAEL WINKLER, Sr.)	
Third Party Defendant)	

FILED
2006 FEB 10 AM 10: 23
CLERK OF COURTS
HORRY COUNTY

CERTIFIED COPY
2006 FEB - 1 AM 9: 03

HEARING DATE:	JANUARY 17, 2006
PRESIDING JUDGE:	H.E. BONNOITT, JR.
PLAINTIFF'S ATTORNEY:	MELISSA M. FRAZIER
DEFENDANTS' ATTORNEY:	RONALD R. NORTON
COURT REPORTER:	DIXIE C. EUBANK

This matter came before me on Plaintiff's Motion for Temporary Relief, seeking an order requiring the Defendant-Husband to provide the Plaintiff with a vehicle; requiring the Defendant-Husband to be responsible for a substantial portion of the income tax debt and indemnify and hold the Plaintiff harmless therefrom; restraining the parties from incurring any further debt for which the other might be responsible; restraint on marital assets; a strict physical restraining order; discovery in accordance with the South Carolina Rules of Civil Procedure; and attorney's fees and costs from the Defendant-Husband.

A hearing was held on January 17, 2006, present at which were the parties and their attorneys. Prior to the hearing, the parties were able to agree on some of the issues. Their agreement

RESPONDENT'S EXHIBIT 10
6/21/12 BB

is as follows:

A. Both parties will be restrained from transferring, selling, hypothecating, encumbering, dissipating, destroying, concealing, harming, reducing or dissolving any marital assets.

B. Both parties will be restrained from incurring any further debts for which the other might be responsible.

C. Both parties will be restrained from harassing the other.

D. The parties will engage in mutual, reasonable and liberal discovery, in accordance with the South Carolina Rules of Civil Procedure.

They were unable to agree on any further issues.

Based on the contents of the file, the affidavits and exhibits presented at the hearing, and arguments of counsel, this Court makes the following findings of fact and conclusions of law:

1. Plaintiff and Defendant are citizens and residents of Horry County, South Carolina and have been so for more than three months immediately prior to the commencement of this action. The parties last resided together as husband and wife in Horry County, South Carolina. Third party Defendant, Louis Michael Winkler, Sr., is a citizen and resident of Ohio. However, he is listed as the titled owner on the parties marital home.

2. Plaintiff and Defendant are husband and wife, having been married on October 10, 2003, in Horry County, South Carolina. No children were born of this marriage. However, the Plaintiff has two (2) children who are emancipated and one (1) minor child, who is not subject to this action.

3. The parties have met the residency requirement, pursuant to §20-3-30 of the Code of

Laws of South Carolina, (1976, as amended) and Horry County is the proper venue, pursuant to §20-3-60 of the Code of Laws of South Carolina, (1976, as amended.) This Court has jurisdiction over the parties hereto and the subject matter herein, pursuant to §20-7-420 of the Code of Laws of South Carolina.

4. The parties were able to settle some of the issues before the Court. Their agreement is set forth herein above, and should be approved and incorporated into this Temporary Order.

5. Defendant-Husband should deliver the Isuzu Rodeo vehicle in good running condition, along with all keys to that vehicle to Plaintiff's attorney's office no later than 12:00 noon on Friday, January 20, 2006. Defendant-Husband should continue to timely pay all liens, taxes and insurance on that vehicle, until further order of the Court.

6. Defendant-Husband should pay $1,000.00 in temporary attorney's fees to Plaintiff's attorney within forty-five (45) days of this hearing.

7. The income tax issue should be deferred, until such time as the parties may conduct discovery.

IT IS THEREFORE ORDERED that:

a) Both parties are restrained from transferring, selling, hypothecating, encumbering, dissipating, destroying, concealing, harming, reducing or dissolving any marital assets;

b) Both parties are restrained from incurring any further debts for which the other might be responsible;

c) Both parties are restrained from harassing the other;

d) The parties shall engage in mutual, reasonable and liberal discovery, in accordance

with the South Carolina Rules of Civil Procedure;

e) Defendant-Husband shall deliver the Isuzu Rodeo vehicle in good running condition, along with all keys to that vehicle to Plaintiff's attorney's office no later than 12:00 noon on Friday, January 20, 2006;

f) Defendant-Husband shall continue to timely pay all liens, taxes and insurance on that vehicle, until further order of the Court;

g) Defendant-Husband shall pay $1,000.00 in temporary attorney's fees to Plaintiff's attorney within forty-five (45) days of this hearing;

h) The income tax issue shall be deferred, until such time as the parties may conduct discovery;

i) This order has no precedential value at the final hearing in this matter;

j) **A VIOLATION OF THIS ORDER MAY CONSTITUTE CONTEMPT, WHICH IS PUNISHABLE BY IMPRISONMENT, A FINE, COMMUNITY SERVICE OR ANY COMBINATION THEREOF.**

AND IT IS SO ORDERED.

H.E. BONNOITT, JR.
PRESIDING JUDGE

January 26, 2006
Conway, South Carolina.

The following telephonic interview with Frank Patterson took place on Jan. 28, 2008 . Frank's cell phone number is [redacted] and his home number is [redacted].

Frank informed me that he does not want to be involved in this case. He is upset that Mick lied to him about things. He can't resolve the lies. He does not think he has anything to offer.

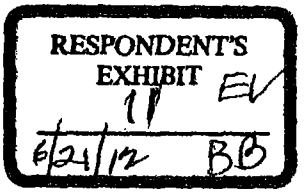
Kathy Patterson is not working now and they are financially strained. His mother in law Hortense Jones, is having health problems and has no phone. She lives in Atlantic Beach, but he does not know the address. She does not have a phone.

Stephan took the video of the person driving around Mick's and he did not see any of it.

On Jan. 30, 2008 Frank provided me with the apartment (Levon Apt) on 30th in Atlantic Beach.

On Jan, 31, 2008, I interviewed Hortense Jones who told me she was present when someone she believes was Becky was riding by Mick's house. Mrs. Jones does not know Becky and only believes it was her because her son Stephan Fitzwater told her it was Becky. She does not know her enough to be sure it was here.

On Jan. 31, 2008, I spoke telephonically with Stephan Fitzwater. Stephan told me that after October, 2005, he saw Becky ride by with an older woman in a silver car. He saw them at least 3 times around midday. Mick saw her in the car too. It would circle the neighborhood. Mick said the other woman in the car was Becky's mother. He is not sure if that car ever visited Mick's house before. Stephan is sure that the woman in the car was Becky.



COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NUMBER: 2011-CP-26-3907
Louis Michael Winkler, Jr.,)	
)	
Applicant,)	
)	ORDER
vs.)	GRANTING POST-CONVICTION RELIEF
)	RE: DEATH SENTENCE
State of South Carolina,)	
)	
Respondent.)	
)	

HORRY COUNTY
12 AUG 15 PM 2:06
MELANIE HUGGINS-WARD
CLERK OF COURT

TRIAL DATES.....June 18 – 21, 2012
PRESIDING JUDGE.....Benjamin H. Culbertson
APPLICANT'S ATTORNEYS.....Emily C. Paavola
John R. Mills
RESPONDENT'S ATTORNEYS.....Alphonzo Simon
Brendon McDonald
Anthony Mabry
COURT REPORTER.....Brenda R. Babb (June 18, 19, 21, 2012)
Kay H. Richardson (June 20, 2012)

In this case, the Applicant, Louis Michael Winkler, Jr., ("Winkler") seeks post-conviction relief from his conviction and death sentence for murder. Winkler alleges that he received ineffective assistance of counsel. He also alleges that his constitutional and statutory rights were violated when the trial court refused to allow him to discharge his appointed counsel and proceed *pro se*, when the trial court refused to charge the jury on what would happen if they could not reach a unanimous verdict during the sentencing phase of his trial and when the trial court gave jury instructions under unduly coercive circumstances. The Respondent, State of South Carolina, ("State") denies that Winkler is entitled to post-conviction relief.

Based upon a preponderance of the evidence in this case and a review of the pertinent parts of the criminal trial transcript, I do hereby find the following salient facts:

FINDINGS OF FACT

In 2006, Winkler was indicted for the murder of his estranged wife, first degree burglary, and assault and battery of a high and aggravated nature. On March 12, 2007, the State filed its Notice of Intent to Seek the Death Penalty in which the State asserted the following statutory aggravating circumstances supporting the death penalty: 1) that the murder was committed during the commission of a burglary; and 2) that the murder was of a witness or potential witness committed for the purpose of impeding or deterring prosecution of a crime.[1]

Attorneys Ralph J. Wilson and Paul Elbert Rathbun were appointed to represent Winkler. During the early stages of their representation, Winkler became dissatisfied with his attorneys and wanted new attorneys. All requests to relieve his attorneys and appoint new counsel were denied by the court. At no time prior to the start of the criminal trial did Winkler ever ask the court to relieve his attorneys and allow him to proceed *pro se*.

In preparing for trial, Winkler advised his attorneys that the victim was killed by her ex-husband, [redacted] Grainger ("Grainger"). Winkler told his attorneys that he and Grainger fought over a pistol and that Grainger gained control of the pistol and shot the victim. Winkler never disputed that the fatal shot was fired from the pistol. His only contention was that he did not shoot the victim; Grainger did.

During the guilt or innocence phase of Winkler's criminal trial, the State presented Vello Paavel as an expert witness in the field of firearm and tool mark identification. Mr. Paavel opined that the bullet killing the victim was fired from the Jennings Bryco pistol found in Winkler's possession. During cross examination of Mr. Paavel, Winkler's attorney challenged whether any evidence existed to indicate that Winkler fired the Jennings Bryco pistol but did not

[1] When this murder occurred, charges were already pending against Winkler for the kidnapping and rape of his estranged wife.

challenge whether the fatal shot was fired from that pistol. Ultimately, Winkler was found guilty of murder, first degree burglary and assault and battery of a high and aggravated nature.

During the sentencing phase of his criminal trial, Winkler asked the court to discharge his attorneys and allow him to represent himself. The court denied Winkler's request.

More than 6 ½ hours into deliberations during the sentencing phase of Winkler's trial, the jury asked the court what would happen if they could not reach a unanimous decision.[2] The judge advised the jury that he could not answer their question "as it [was] asked." Two hours later, the jury asked the court again what would happen if they could not reach a unanimous decision. The court advised the jury that their question was hypothetical and the court could not answer hypothetical questions. Winkler's attorneys never objected to the court's refusal to answer the jury's question.

More than 10 hours into deliberations, the jury informed the court that they were deadlocked on whether to impose the death penalty or life. The judge gave the jury an Allen charge in which he advised them that their decision must be unanimous without telling them the law if they could not reach a unanimous decision. The court then allowed the jury to cease deliberations for the night and return the following morning.

The following morning, prior to resuming deliberations, several jurors asked for the judge to give them the Allen charge again. The judge recharged the jury and, again, advised them that their decision had to be unanimous without advising them on the law of what would happen if they could not reach a unanimous decision. Winkler's attorneys objected to the judge recharging the Allen charge but never objected to the contents of his charge or his failure to advise the jury

[2] This court cannot determine exactly how long the jury had been deliberating on Winkler's sentence before submitting its question to the court. However, the trial transcript indicates that the jury began deliberations at 1:30 p.m. and submitted its question to the court after 8:15 p.m.

on the law of what would happen if they could not reach a unanimous decision. After resuming deliberations, the jury returned a decision to impose the death penalty.[3]

LAW AND DISCUSSION

I. RIGHT TO SELF REPRESENTATION

Winkler argues that his constitutional right to self-representation was violated by the trial court's refusal to allow him to discharge his attorneys and proceed in his criminal trial *pro se*.[4] Winkler further argues that he was denied his right to effective assistance of counsel due to his attorneys' failure to object to the trial court's pre-trial refusal to permit him to discharge his appointed counsel and proceed in the criminal trial *pro se*. However, a preponderance of the evidence indicates that Winkler never requested to discharge his attorneys and proceed *pro se* until the sentencing phase of his trial. Prior to that time, Winkler only requested that he be appointed new attorneys; not that he be allowed to proceed *pro se*.

An accused may waive the right to counsel and proceed *pro se*. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, "[a] defendant's right to waive the assistance of counsel is not unlimited." *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). "The request to proceed *pro se* must be ***clearly asserted*** by the defendant ***prior to trial***." *Id.* (emphasis added). "If the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge." *Id.* (citing *United States v. Singleton*, 107 F.3d 1091 (4th Cir.1997); *United States v. Lawrence*, 605 F.2d 1321 (4th Cir.1979)). The sentencing phase of a capital trial does not constitute a separate

[3] Winkler was also sentenced by the presiding judge to concurrent sentences of thirty years in prison for first degree burglary and ten years in prison for assault and battery of a high and aggravated nature.

[4] The court's refusal to discharge Winkler's attorneys and allow Winkler to proceed *pro se* was addressed and affirmed by the South Carolina Supreme Court in Winkler's criminal appeal. See *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596, (S.C.2010).

trial. See S.C.Code Ann. § 16-3-20(B) (2003); see also *State v. Stewart*, 288 S.C. 232, 235, 341 S.E.2d 789, 791 (1986).

Because Winkler never "clearly asserted" that he wanted to represent himself prior to trial, the court's refusal to discharge his attorneys and allow him to proceed *pro se* did not violate his constitutional rights. Further, his attorneys' failure to object to the court's "pre-trial" denial of his request to represent himself when no pre-trial request was made does not constitute ineffective assistance of counsel. Therefore, Winkler is not entitled to post-conviction relief because the trial court denied his request to represent himself, nor is he entitled to post-conviction relief due to his attorneys' failure to object to the court's denial.

II. FAILURE TO IMPEACH STATE'S EXPERT WITNESS

Next, Winkler argues that he was denied effective assistance of counsel when his attorneys failed to object to and/or adequately impeach the trial testimony of the State's firearm and tool mark expert, Mr. Vello Paavel. Winkler argues that his attorneys should have challenged Mr. Paavel's testimony that the bullet that killed the victim was fired from the Jennings Bryco pistol found in Winkler's possession. However, until Winkler filed this action for post-conviction relief, he never disputed that the fatal shot was fired from the Jennings Bryco pistol. The defense trial strategy was that Grainger, not Winkler, fired the fatal shot.

Based upon Winkler's pre-trial account to his attorneys that Grainger shot the victim with the Jennings Bryco pistol, his attorneys challenged the State's failure to find Winkler's fingerprints or DNA on the Jennings Bryco pistol. Challenging whether or not the bullet that killed the victim was fired from that pistol would serve no purpose since Winkler acknowledged to his attorneys while preparing for his criminal trial that the victim was shot by Grainger with the Jennings Bryco pistol. Therefore, his attorneys' failure to challenge Mr. Paavel's opinion

that the victim was shot with the Jennings Bryco pistol is not ineffective assistance of counsel and Winkler's request for post-conviction relief on this ground should be denied.

III. FAILURE TO IMPEACH OTHER STATE WITNESSES

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to impeach the State's witnesses with evidence that J[redacted] G[redacted] was not on the telephone with E[redacted] C[redacted] at the time of the crime. However, in presenting his case for post-conviction relief, Winkler did not identify or present any evidence that his attorneys could have used to impeach the State's witnesses. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

The burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). Therefore, since Winkler failed to present any evidence that his attorneys could have used to impeach the State's witnesses, the State's motion for directed verdict on this ground for relief should be granted.

IV. FAILURE TO PRESENT EVIDENCE OF NEUROLOGICAL AND COGNITIVE IMPAIRMENTS AND/OR DYSFUNCTION

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to investigate and present evidence of Winkler's neurological and cognitive impairments and/or dysfunction. However, Winkler did not present any evidence that he suffered from neurological and cognitive impairments or dysfunction. Therefore, at the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As previously stated, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any evidence supporting his claim that he suffers from neurological and cognitive impairments and/or dysfunction, the State's motion for directed verdict on this ground for relief should be granted.

V. FAILURE TO PRESENT EVIDENCE OF MENTAL STATE

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to present mitigating evidence regarding Winkler's change in demeanor and mental state before the crime and evidence that the victim harassed and taunted Winkler while he was on home arrest. However, the preponderance of the evidence indicates that the victim did not taunt Winkler while he was on home arrest and, thus, Winkler did not have any change in demeanor or mental state due to the victim's conduct. Winkler's attorneys did not have any mitigating evidence to present to show a change in demeanor or mental state and, thus, any failure to present evidence of a change in demeanor or mental state does not constitute ineffective assistance of counsel. Therefore, Winkler's claim for post-conviction relief on this claim should be denied.

VI. PHYSICAL HARM AND INTIMIDATION OF JUROR

Winkler also alleges that he is entitled to post-conviction relief due to the physical harm and intimidation of a juror. However, Winkler did not present any evidence of physical harm and intimidation of a juror. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As stated before, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any

evidence of physical harm and intimidation of a juror, the State's motion for directed verdict on this ground for relief should be granted.

VII. FAILURE TO CHARGE JURY

Lastly, Winkler alleges that he is entitled to post-conviction relief because his attorneys failed to object to the court's refusal to answer the jury's question regarding what would happen if the jury failed to reach a unanimous verdict on Winkler's sentence. Winkler further alleges that his attorneys were ineffective for failing to object to the court's improper jury instructions under unduly coercive circumstances. Further, Winkler alleges that the trial court's refusal to charge the jury on what would happen if they could not reach a unanimous verdict and/or the court's jury instructions given under unduly coercive circumstances entitles him to post-conviction relief.

Under Code of Laws of South Carolina 1976 §16-3-20, when aggravating circumstances are found to exist in a capital murder case tried before a jury, the jury decides whether the defendant should be sentenced to death or life in prison. A jury's decision to impose the death penalty must be unanimous. Code §16-3-20(C) states, in pertinent part, that "[i]f members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment...."

In the case at hand, more than 6 ½ hours into jury deliberations during the sentencing phase of the trial, the jury asked on two different occasions what would happen if they could not reach a unanimous verdict on Winkler's sentence. The judge refused to answer the question both times and Winkler's criminal trial attorneys never objected to the judge's refusal to answer the question.

Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

The burden is on the petitioner to prove the allegations in the PCR application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). To establish a claim of ineffective assistance of counsel, the PCR applicant must prove: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defendant's case. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624, (1989) - "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052.

To establish prejudice, the applicant is required "to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). Moreover, no prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Rosemond v. Catoe*, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009).

In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his conviction for murder is DENIED; it is further

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his sentence of death for murder is GRANTED; it is further

ORDERED, that Louis Michael Winkler, Jr.'s sentence of death is set aside and he is sentenced to life in prison without parole for his conviction for murder; it is further

ORDERED, that the sentence imposed hereunder shall run concurrently with the sentences imposed for the applicant's convictions for first degree burglary and assault and battery of a high and aggravated nature.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
Presiding Judge

August 15, 2012
Conway, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3907

Louis Michael Winkler, Jr.
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

HORRY COUNTY
12 AUG 15 PM 2:06
MELANIE HUGGINS-WARD
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$ N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

August 15, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola
John R. Mills

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alphonzo Simon
Brendon McDonald
Anthony Mabry

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Brenda R. Babb**
Kay H. Richardson

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF HORRY)	
)	
Louis Michael Winkler, Jr., #6027,)	C/A No. 2011-CP-11-3907
)	
Applicant,)	
v.)	**RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCP**
)	
The State of South Carolina,)	**(Capital Case)**
)	
Respondent.)	
)	

HORRY COUNTY
2012 SEP -4 AM 8:25
MELANIE HUGGINS-BOARD
CLERK OF COURT

Comes now Respondent, above-named, by and through the Office of the Attorney General, and hereby moves to alter or amend the Judgment issued by this Court on August 15, 2012. Respondent received written notice of the Order on Monday, August 20, 2012 from Judge Culbertson, and written notice of entry of the Order from the Horry County Clerk of Court on August 24, 2012. Respondent submits the judgment in this case should be amended to deny post-conviction relief, and Applicant's death sentence should be restored. In support of this Motion, Respondent asserts the following:

In the Order, this Court granted relief upon Ground 10(b)(3)(a), in which Applicant asserted that trial counsel was ineffective because counsel "failed to object when the trial court repeatedly refused to answer the jurors' question about what would happen if they could not reach a unanimous sentencing verdict." In granting relief, this Court stated as follows:

> Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will

> receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

Order at pg. 9. This Court further concluded:

> In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

Order at pg. 10.

This judgment should be altered and amended to deny relief and restore Applicant's death sentence. The current Order incorrectly finds that a jury must be advised what happens if the jury does not reach a unanimous verdict. The Order improperly finds trial counsel was deficient despite the fact that counsel's decision not to object was reasonable in light of the overwhelming case law that supports the trial court's decision to not respond to the jury's question. The Order relies upon an unsupportable assumption the trial judge would have given an instruction that explained sentencing becomes a matter of law if the jury deadlocked in its sentencing deliberations. The Order also fails to provide any basis for its finding that the outcome

in sentencing would have been different had such an instruction been granted (albeit improperly as set forth below). Respondent submits the remedy set forth by the Order is not appropriate. Finally, while this Order is correct in finding there was no merit to Applicant's freestanding claim that he was improperly denied his right to represent himself during the guilt phase of the trial, this Court should not have reached the merits of that issue because it was not a proper claim for review in post-conviction relief.

1. The Order is incorrect in asserting that, as a matter of law, a jury is entitled to know what happens if it does not reach a unanimous verdict under S.C. Code § 16-3-20. No such requirement exists under South Carolina law. As explained in State v. Adams,

> [t]he language of the statute[S.C. Code § 16-3-20(C)] provides that where a sentence of death is not recommended by the jury, a life sentence must be given. The situation implicitly envisioned here is that normally the jury will unanimously either recommend life or death. **The undecided jury is the exception. That portion of the statute addressing the legal effect given to the existence of an unalterably divided jury is addressed to the trial judge only and need not be divulged to the jury.**

Adams, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981)(emphasis added), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). In other words, S.C. Code § 16-3-20(C) prohibits a trial judge from explaining what occurs if the jury does not reach a unanimous verdict in sentencing. See State v. Copeland, 278 S.C. 572, 584-85, 300 S.E.2d 63, 70 (1982); State v. Spann, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983)(finding harmless error when judge instructed jury that any sentence for life imprisonment must be unanimous because jury need not be instructed of legal effect of unalterable divided jury).

This Court's assessment that the jury must be advised what happens in the event the jury deadlocks on sentencing is also contrary to longstanding United States Supreme Court precedent. "[T]he Eighth Amendment does not require that the jurors be instructed as to the consequences of their failure to agree." Jones v. United States, 527 U.S. 373, 381 (1999). As noted by the U.S. Supreme Court in Jones,

> We have never suggested, for example, that the Eighth Amendment requires a jury be instructed as to the consequences of a breakdown in the deliberative process. On the contrary, we have long been of the view that "[t]he very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves." Allen v. United States, 164 U.S. 492, 501, 17 S.Ct. 154, 41 L.Ed. 528 (1896). We further have recognized that in a capital sentencing proceeding, the Government has "a strong interest in having the jury express the conscience of the community on the ultimate question of life or death." Lowenfield v. Phelps, 484 U.S. 231, 238, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988) (citation and internal quotation marks omitted). We are of the view that a charge to the jury of the sort proposed by petitioner might well have the effect of undermining this strong governmental interest.[1]

Jones, 527 U.S. at 382 (footnote omitted).

2. This Court finds that the jury was entitled to an instruction that states, "the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict." This alternate instruction would create additional Eighth

---

[1] In Jones, the jury instruction that was requested and denied was as follows:

> "In the event, after due deliberation and reflection, the jury is unable to agree on a unanimous decision as to the sentence to be imposed, you should so advise me and I will impose a sentence of life imprisonment without possibility of release...."In the event you are unable to agree on [a sentence of] Life Without Possibility of Release or Death, but you are unanimous that the sentence should not be less than Life Without Possibility of Release, you should report that vote to the Court and the Court will sentence the defendant to Life Without the Possibility of Release."

Jones, 527 U.S. at 379.

Amendment concerns in that it would **minimize** the jury's sense of responsibility for determining the appropriate sentence because it would remove any responsibility for the sentence. See generally Caldwell v. Mississippi, 472 U.S. 320, 105 S. Ct. 2633 (1985) ("[I[t is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere.").

3. In granting relief, this Court improperly assesses the reasonableness of trial counsel's decision not to object to how the trial judge handled responding to the jurors' questions. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." Strickland v. Washington, 466 U.S. 668, 689 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000). "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Counsel's actions, consistent with state law, cannot be deemed deficient. See generally Patterson v. State, 359 S.C. 115, 118, 597 S.E.2d 150, 151 (2004)(noting counsel's advice was not deficient when there was no statutory law or judicial precedent inconsistent with counsel's advice); see e.g. Harden v. State, 360 S.C. 405, 408, 602

S.E.2d 48, 49 (2004)(" An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction.").

At the evidentiary hearing, Ralph Wilson, Applicant's lead counsel at trial, explained he did not object to Judge Lockemy's decision not to respond to the jurors' question regarding the consequences of a split verdict on sentencing. Wilson was well aware the case law did not require the trial judge to answer the question posed by the jury. Respondent submits that counsel's decision not to object was clearly reasonable under prevailing professional norms since there was overwhelming case law supporting his position that an objection was not warranted because the trial judge was not required to answer the question. The case law underlying counsel's decision is set forth in section 1 and section 5, including Jones, Adams, Spann, Copeland, and State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990).

4. This Court's Order also improperly assesses Strickland prejudice in this case. In order to show Strickland prejudice, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

This Court's grant of relief is based upon two improper assumptions. First, this Court assumes the trial judge would have given an instruction "that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict," if such an instruction was requested. Nothing in the record supports this assumption or the authority for such an instruction, which minimizes the

jury's responsibility. To the contrary, Judge Lockemy indicated he had concerns about responding, noting that it appeared the jury was potentially asking a hypothetical question. Judge Lockemy was not inclined to respond to the question because it was unclear whether the jury was deadlocked. (R. 2921-22, 2925-26). In light of Judge Lockemy's concerns, and in light of the lack of reference to any authority that would have required Judge Lockemy to give the charge this Court proposes, Respondent submits it is highly unlikely the proposed charge would have been given if requested. As already noted, the proposed charge is inconsistent with state and federal law.

Second, this Court asserts that there was a reasonable probability that the result at sentencing would have been different had the jury's question been answered. However, this Order makes no specific findings of fact that support the conclusion. It is not clear why this Court finds the result at trial would have been different where the deadlock ended after the proper instruction was given by Judge Lockemy. Understanding that none of the jurors' testimony could be considered by this Court in making a finding the result at trial would be different, Respondent submits there is no factual basis underlying the finding of prejudice. State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995)("As a general rule, juror testimony may not be the basis for impeaching a jury verdict. Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."); see Rule 606(b), SCRE. [2]

[2] None of the jurors' testimony would have been admissible in addressing this claim because this claim is not about whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Rule 606(b), SCRE. Nor does this claim rely upon an allegation of internal misconduct. See Hunter, supra.

Furthermore, this Court's finding of prejudice does not account for the presumption that jurors follow the trial judge's instructions. State v. Dunlap, 346 S.C. 312, 550 S.E.2d 889 (Ct.App.2001), affirmed as modified on writ of cert., 353 S.C. 539, 579 S.E.2d 318 (2003) (quoting Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265 n .1, 335 S.C. 586, 518 S.E.2d 265, 267 n. 1 (1999))("A jury is presumed to [have followed the trial judge's] instructions."). An Allen charge would be warranted even if the jury was informed that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. Since an Allen charge instructs the jurors to reconsider their own positions, to consider the positions of other jurors, and to attempt to reach a consensus, Respondent submits a finding of Strickland prejudice is improper because there is no support for a finding the result at trial would have been different. Altogether, the Order's discussion regarding prejudice must be revised because there is no legal or factual basis for this Court's finding of prejudice.

5. This Order is incorrect to the extent it assumes the Allen charge did not correctly state the law in capital sentencing. This Order finds that a jury's verdict in capital sentencing does not have to be unanimous. This finding is contrary to South Carolina law. Otherwise, the South Carolina Supreme Court would have no reason to consistently find that an Allen charge is entirely appropriate in capital sentencing. See State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990)(finding trial judge properly required jury to continue deliberating after jury indicated it was hung in a capital resentencing trial); State v. Hughes, 336 S.C. 585, 597-98, 521 S.E.2d 500, 506-07 (1999)(finding modified Allen charge given during sentencing deliberations was even-handed and proper); Tucker v. Catoe, 346 S.C. 483, 490-91, 552 S.E.2d 712, 716

(2001)("Neither the Due Process clause nor the Eighth Amendment forbid the giving of an Allen charge in the sentencing phase of a capital proceeding."); State v. Williams, 386 S.C. 503, 512, 690 S.E.2d 62, 66-67 (2010)(finding use of Allen charge in sentencing appropriate); see generally Gill v. State, 346 S.C. 209, 219, 552 S.E.2d 26, 32 (2001)(noting that life sentence imposed in capital case after jury deadlock does not preclude the State from seeking death in a retrial if case reversed on appeal; jury deadlock does not imply finding that State did not prove its sentencing case beyond a reasonable doubt)("In the event of a jury deadlock, the trial judge exercises no discretion and merely imposes the sentence mandated by section 16-3-20(C).").

6. Respondent submits that the remedy set forth in the PCR Court's Order is improper. If this Court is to grant relief, Respondent submits the appropriate remedy would be to vacate the sentence and remand the case back to the Court of General Sessions for a new sentencing proceeding. See Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001)(habeas relief granted and case remanded for sentencing in light of faulty Allen charge).

7. While the Respondent agrees with this Court there was no merit to Applicant's freestanding claim that he should have been allowed to represent himself during the guilt phase, Respondent asserts the claim should not have been addressed on the merits because it is not a claim that can be properly raised in post-conviction relief. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517, 519 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

CONCLUSION

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court grant its Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, deny Applicant's Application for Post-Conviction Relief in full, and restore Applicant's death sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

BRENDAN J. McDONALD
Assistant Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: _____
ATTORNEYS FOR RESPONDENT

August 28, 2012.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the **Respondent's Motion To Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP** via U.S. mail, first class, postage pre-paid, addressed to:

Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

This 28th day of August, 2012.

ALPHONSO SIMON, JR.

HORRY COUNTY
2012 SEP -4 AM 8:25
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF HORRY Louis Michael Winkler Jr. Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS Case No. 2011-CP 26-03907 **RETURN TO RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT**

Applicant, Louis Michael Winkler Jr., files this Return to the arguments raised in Respondent's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRP ("Motion"). Because Respondent's Motion is untimely, this Court lacks jurisdiction to alter or amend the judgment. *See, e.g., Ackerman v. 3-V Chemical*, 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002) (untimely service of a Rule 59, SCRCP, motion rendered "the trial judge without jurisdiction to act upon it."). Moreover, the Motion misconstrues the Court's order, ignores important facts about trial counsel's strategy, and, therefore, relies on argument and precedents irrelevant to the questions addressed by the Court.

PROCEDURAL HISTORY

On August 15, 2012, this Court entered an order granting Applicant post-conviction relief. On the same day, both parties received notice of the order and a copy of the order via e-mail. On Monday, August 20, both parties received a paper copy of the same order. Respondent claims to have signed its Motion on August 28, 2012. However, Respondent did not mail the Motion to counsel for Applicant until August 31, 2012. *See Exhibit 1* (envelopes and motion received by both counsel for Applicant post-marked August 31, 2012).

ARGUMENT

A. BECAUSE RESPONDENT FAILED TO TIMELY SERVE THE MOTION, THIS COURT LACKS JURISDICTION TO ACT UPON IT.

A motion to alter or amend the judgment must be "served not later than 10 days after receipt of written notice of entry of the order." S.C. R. Civ. Proc. 59(e) (West 2012). If neither party serves a motion within the ten-day period, the trial court loses jurisdiction to alter or amend its judgment. *See, e.g., Ackerman v. 3-V Chemical, Inc.*, 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002); *Ness v. Eckerd, Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002); *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999). A motion made pursuant to this rule is considered served when mailed. *See Curtis v. Blake*, 381 S.C. 189, 191-92, 672 S.E.2d 576, 577-78 (2009) (holding motions for new trial under Rule 59 are "made" when mailed). The date of service is when the date upon which the motion is deposited with the Untied States Postal Service, not, for example, the date a party deposits the Motion with a third party for mailing. *See Southbridge Properties, Inc. v. Jones,* 292 S.C. 198, 198, 355 S.E.3d 535,535 (1987).

Here, Respondent failed to timely serve its Motion, and the Motion should be dismissed because this Court no longer has jurisdiction to alter or amend the judgment. Respondent had until August 30, 2012, to file any Motion to Alter or Amend the Judgment. *See* S.C. R. Civ. Proc. 59(e) (ten days from the date of receipt of written notice). Although Respondent's Certificate of Service states that the Motion was mailed to Applicant on August 28, 2012, the envelope it arrived in is postmarked August 31.[1] Thus, the order was not actually served until

[1] Respondent appears to make a habit of this practice. In *Mercer v. South Carolina*, 2009-CP-32-5465, Respondent's Petition for Writ of Certiorari was due to be filed and served on January

August 31—the day it was mailed—, which is after the deadline[2] for serving the Motion. *See Curtis*, 381 S.C. at 191-92, 672 S.E.2d at 577-78.

Because Respondent failed to file its Motion within the prescribed time period, this Court lacks jurisdiction to alter or amend the judgment and should dismiss the motion. *See Ness*, 350 S.C. at 402, 566 S.E.2d at 195; *Ackerman*, 349 S.C. at 215, 562 S.E.2d at 615.

B. RESPONDENT'S MOTION MISCONSTRUES THE COURT'S ORDER, IGNORES IMPORTANT FACTS ABOUT TRIAL COUNSEL'S STRATEGY, AND, THEREFORE RELIES ON PRECEDENT IRRELEVANT TO THE QUESTION ADDRESSED BY THE COURT.

Even if this Court had jurisdiction to alter or amend its order, Respondent's arguments still fail. First, Respondent has disregarded the context for the Court's order and, therefore, misconstrued the basis for granting relief. The Court was addressing whether trial counsel was prejudicially ineffective for failing to ask the trial judge to answer the jurors' twice repeated question: what would happen if they could not reach a unanimous decision. *See* Order at 8 ("The judge refused to answer the question both times and Winkler's criminal trial attorney's never objected to the judge's refusal to answer."). It is in this context that this Court held that the jury was entitled to know that the "defendant's sentence becomes a matter of law to be imposed by the court, if they cannot reach a unanimous verdict." *Id.* Not only did trial counsel neglect to ensure the jury was informed of the truth—that the trial court would impose judgment—they failed to object to the affirmatively misleading instruction informing them that the jury *must*

3, 2012. Undersigned counsel did not receive service, however, until January 10, 2012, when the brief arrived with a certificate of service dated January 3rd, but contained in an envelope post-marked January 9, 2012. *See Exhibit 2*, Letter to the South Carolina Supreme Court.

[2] Missed deadlines have had serious consequences for death-sentenced inmates. *See, e.g., Maples v. Thomas*, __ U.S. __, 132 S. Ct. 912 (2012) (reversing lower court decision dismissing petition for habeas corpus because capital habeas petitioner missed deadline when his attorneys had abandoned his case); *Judge Sued in Death Penalty*, CBS News May 7, 2009 available at http://www.cbsnews.com/2100-201_162-3471610.html (discussing how Michael Richard was executed because his lawyers missed a filing deadline by less than one hour).

reach a unanimous verdict. *Id.* It is in this context that this Court ruled that trial counsel's failure to object was prejudicially ineffective.

Because the cases Respondent relies on address a difference context, the initial jury charge, those precedents are inapposite. Specifically, those cases address whether a defendant is entitled, as an initial matter, to an instruction that should the jury fail to reach a unanimous verdict, a life sentence should be imposed. *See State v. Adams*, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981) ("The appellant argues the trial judge erred by failing to instruct the jury *initially* that if they failed to agree to the verdict, then the court would be required to sentence the him *to life imprisonment*." (emphasis added)); *State v. Copeland*, 278 S.C. 572, 584, 300 S.E.2d 70-71 (1982) (same); *State v. Spann*, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983) (same); *see also Jones v. United States*, 527 U.S. 373, 381 (1999) (same). Thus, the cases are different from the situation here in two respects: the instruction is required in response to the jury's questions, not as an initial matter; and the required instruction informs the jury that the Applicant would be sentenced and does not specify the sentence imposed. Moreover, as the Court noted, jurors are entitled to accurate information about the law. *See Romano v. Oklahoma*, 512 U.S. 1, 9 (1994) (a jury cannot be "affirmatively misled regarding its sentencing process."). And the law is clear that where a jury is unable to reach a unanimous verdict in a capital case, the sentence becomes a matter of law for the trial court to decide. S.C. Code § 16-2-20(C) (West 2012) ("[i]f members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment."). Failing to answer the jurors' question—and affirmatively misleading them instead—caused the jury to reach a

compromise verdict of death where they would have otherwise hung and Applicant would have received a sentence of life.

Finally, Respondent's Motion fails to address key aspects of trial counsel's testimony. Trial counsel testified that his goal in the penalty phase was to obtain a life verdict. He testified that if he had objected when the jury sent out the first note, then the trial judge would have imposed a life sentence when the second, and certainly the third, note was sent out. Thus, trial counsel had no reasonable strategic reason for failing to request that the trial court answer the jurors' questions. *See Wiggins v. Smith*, 539 U.S. 510, (2003); *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984).

Respondent also fails to address trial counsel's testimony about the situation presented here: whether to accurately respond to the jurors' inquiry as to what would happen if they failed to reach a unanimous verdict. As Respondent, notes, trial counsel was aware of the case law prohibiting an instruction during the initial charge explaining that should the jury not reach a unanimous verdict, a life sentence would be imposed. However, trial counsel also admitted that if he was wrong about that prohibition applying to answering jurors' repeated questions, he would have no strategic reason for failing to request a jury instruction such as the one this Court found was appropriate. *See Wiggins*, 539 U.S. at 527 (declining to find counsel's decision reasonable because it was uninformed).

Therefore, the Court did not err in finding trial counsel prejudicially ineffective for failing to object to the misleading instruction and for failing to request that the jury receive accurate information responsive to their questions. The Court also did not err in imposing the life sentence that Applicant would have received but for trial counsel's deficient performance: a life sentence.

CONCLUSION

The Court's decision is supported by law and by the evidence presented at the hearing. Because the Respondent's Motion is untimely and unsupported by the law, the Court should dismiss or deny Respondent's Motion.

Respectfully submitted,

Emily C. Paavola

COUNSEL FOR MR. WINKLER

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Avenue
Suite 101
Columbia, SC 29201
(803) 765-1044

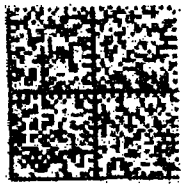
JOHN R. MILLS
Attorney at Law
201 W. Main Street
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(919) 251-6259

September 6, 2012

Exhibit 1



POST OFFICE BOX 11549
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Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

ALAN WILSON
ATTORNEY GENERAL

August 28, 2012

The Honorable Melanie Huggins-Ward
Clerk of Court
PO Box 677
Conway, SC 29528-0677

RE: *Louis Michael Winkler, Jr., #6027 vs. The State of South Carolina*
C/A No. 2011-CP-11-3907

Dear Ms. Huggins-Ward:

Enclosed please find an original and one (1) copy of Respondent's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, and Certificate of Service regarding the above matter.

Kindly please file same in your office and return a copy marked accordingly to the undersigned in the self-addressed stamped envelope provided.

Thank you for your kind attention to this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd
Enclosures
cc: The Honorable Benjamin H. Culbertson (w/copy of encls.)
Emily Paavola, Esq. (w/copy of encls.)
John Mills, Esq. (w/copy of encls.)
The Honorable J. Gregory Hembree (w/copy of encls.)
Sandi Wofford, Victims Services (w/copy of encls.)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
Louis Michael Winkler, Jr., #6027,	)	C/A No. 2011-CP-11-3907
Applicant,	)	
v.	)	**RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCP (Capital Case)**
The State of South Carolina,	)	
Respondent.	)	

Comes now Respondent, above-named, by and through the Office of the Attorney General, and hereby moves to alter or amend the Judgment issued by this Court on August 15, 2012. Respondent received written notice of the Order on Monday, August 20, 2012 from Judge Culbertson, and written notice of entry of the Order from the Horry County Clerk of Court on August 24, 2012. Respondent submits the judgment in this case should be amended to deny post-conviction relief, and Applicant's death sentence should be restored. In support of this Motion, Respondent asserts the following:

In the Order, this Court granted relief upon Ground 10(b)(3)(a), in which Applicant asserted that trial counsel was ineffective because counsel "failed to object when the trial court repeatedly refused to answer the jurors' question about what would happen if they could not reach a unanimous sentencing verdict." In granting relief, this Court stated as follows:

> Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will

> receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

Order at pg. 9. This Court further concluded:

> In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

Order at pg. 10.

This judgment should be altered and amended to deny relief and restore Applicant's death sentence. The current Order incorrectly finds that a jury must be advised what happens if the jury does not reach a unanimous verdict. The Order improperly finds trial counsel was deficient despite the fact that counsel's decision not to object was reasonable in light of the overwhelming case law that supports the trial court's decision to not respond to the jury's question. The Order relies upon an unsupportable assumption the trial judge would have given an instruction that explained sentencing becomes a matter of law if the jury deadlocked in its sentencing deliberations. The Order also fails to provide any basis for its finding that the outcome

in sentencing would have been different had such an instruction been granted (albeit improperly as set forth below). Respondent submits the remedy set forth by the Order is not appropriate. Finally, while this Order is correct in finding there was no merit to Applicant's freestanding claim that he was improperly denied his right to represent himself during the guilt phase of the trial, this Court should not have reached the merits of that issue because it was not a proper claim for review in post-conviction relief.

1. The Order is incorrect in asserting that, as a matter of law, a jury is entitled to know what happens if it does not reach a unanimous verdict under S.C. Code § 16-3-20. No such requirement exists under South Carolina law. As explained in State v. Adams,

> [t]he language of the statute[S.C. Code § 16-3-20(C)] provides that where a sentence of death is not recommended by the jury, a life sentence must be given. The situation implicitly envisioned here is that normally the jury will unanimously either recommend life or death. **The undecided jury is the exception. That portion of the statute addressing the legal effect given to the existence of an unalterably divided jury is addressed to the trial judge only and need not be divulged to the jury.**

Adams, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981)(emphasis added), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). In other words, S.C. Code § 16-3-20(C) prohibits a trial judge from explaining what occurs if the jury does not reach a unanimous verdict in sentencing. See State v. Copeland, 278 S.C. 572, 584-85, 300 S.E.2d 63, 70 (1982); State v. Spann, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983)(finding harmless error when judge instructed jury that any sentence for life imprisonment must be unanimous because jury need not be instructed of legal effect of unalterable divided jury).

This Court's assessment that the jury must be advised what happens in the event the jury deadlocks on sentencing is also contrary to longstanding United States Supreme Court precedent. "[T]he Eighth Amendment does not require that the jurors be instructed as to the consequences of their failure to agree." Jones v. United States, 527 U.S. 373, 381 (1999). As noted by the U.S. Supreme Court in Jones,

> We have never suggested, for example, that the Eighth Amendment requires a jury be instructed as to the consequences of a breakdown in the deliberative process. On the contrary, we have long been of the view that "[t]he very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves." Allen v. United States, 164 U.S. 492, 501, 17 S.Ct. 154, 41 L.Ed. 528 (1896). We further have recognized that in a capital sentencing proceeding, the Government has "a strong interest in having the jury express the conscience of the community on the ultimate question of life or death." Lowenfield v. Phelps, 484 U.S. 231, 238, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988) (citation and internal quotation marks omitted). We are of the view that a charge to the jury of the sort proposed by petitioner might well have the effect of undermining this strong governmental interest.[1]

Jones, 527 U.S. at 382 (footnote omitted).

2. This Court finds that the jury was entitled to an instruction that states, "the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict." This alternate instruction would create additional Eighth

[1] In Jones, the jury instruction that was requested and denied was as follows:

> "In the event, after due deliberation and reflection, the jury is unable to agree on a unanimous decision as to the sentence to be imposed, you should so advise me and I will impose a sentence of life imprisonment without possibility of release...."In the event you are unable to agree on [a sentence of] Life Without Possibility of Release or Death, but you are unanimous that the sentence should not be less than Life Without Possibility of Release, you should report that vote to the Court and the Court will sentence the defendant to Life Without the Possibility of Release."

Jones, 527 U.S. at 379.

Amendment concerns in that it would **minimize** the jury's sense of responsibility for determining the appropriate sentence because it would remove any responsibility for the sentence. See generally Caldwell v. Mississippi, 472 U.S. 320, 105 S. Ct. 2633 (1985) ("[I[t is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere.").

3. In granting relief, this Court improperly assesses the reasonableness of trial counsel's decision not to object to how the trial judge handled responding to the jurors' questions. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." Strickland v. Washington, 466 U.S. 668, 689 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000). "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Counsel's actions, consistent with state law, cannot be deemed deficient. See generally Patterson v. State, 359 S.C. 115, 118, 597 S.E.2d 150, 151 (2004)(noting counsel's advice was not deficient when there was no statutory law or judicial precedent inconsistent with counsel's advice); see e.g. Harden v. State, 360 S.C. 405, 408, 602

S.E.2d 48, 49 (2004)(" An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction.").

At the evidentiary hearing, Ralph Wilson, Applicant's lead counsel at trial, explained he did not object to Judge Lockemy's decision not to respond to the jurors' question regarding the consequences of a split verdict on sentencing. Wilson was well aware the case law did not require the trial judge to answer the question posed by the jury. Respondent submits that counsel's decision not to object was clearly reasonable under prevailing professional norms since there was overwhelming case law supporting his position that an objection was not warranted because the trial judge was not required to answer the question. The case law underlying counsel's decision is set forth in section 1 and section 5, including Jones, Adams, Spann, Copeland, and State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990).

4. This Court's Order also improperly assesses Strickland prejudice in this case. In order to show Strickland prejudice, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

This Court's grant of relief is based upon two improper assumptions. First, this Court assumes the trial judge would have given an instruction "that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict," if such an instruction was requested. Nothing in the record supports this assumption or the authority for such an instruction, which minimizes the

jury's responsibility. To the contrary, Judge Lockemy indicated he had concerns about responding, noting that it appeared the jury was potentially asking a hypothetical question. Judge Lockemy was not inclined to respond to the question because it was unclear whether the jury was deadlocked. (R. 2921-22, 2925-26). In light of Judge Lockemy's concerns, and in light of the lack of reference to any authority that would have required Judge Lockemy to give the charge this Court proposes, Respondent submits it is highly unlikely the proposed charge would have been given if requested. As already noted, the proposed charge is inconsistent with state and federal law.

Second, this Court asserts that there was a reasonable probability that the result at sentencing would have been different had the jury's question been answered. However, this Order makes no specific findings of fact that support the conclusion. It is not clear why this Court finds the result at trial would have been different where the deadlock ended after the proper instruction was given by Judge Lockemy. Understanding that none of the jurors' testimony could be considered by this Court in making a finding the result at trial would be different, Respondent submits there is no factual basis underlying the finding of prejudice. State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995)("As a general rule, juror testimony may not be the basis for impeaching a jury verdict. Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."); see Rule 606(b), SCRE. [2]

[2] None of the jurors' testimony would have been admissible in addressing this claim because this claim is not about whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Rule 606(b), SCRE. Nor does this claim rely upon an allegation of internal misconduct. See Hunter, supra.

Furthermore, this Court's finding of prejudice does not account for the presumption that jurors follow the trial judge's instructions. State v. Dunlap, 346 S.C. 312, 550 S.E.2d 889 (Ct.App.2001), affirmed as modified on writ of cert., 353 S.C. 539, 579 S.E.2d 318 (2003) (quoting Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265 n .1, 335 S.C. 586, 518 S.E.2d 265, 267 n. 1 (1999))("A jury is presumed to [have followed the trial judge's] instructions."). An Allen charge would be warranted even if the jury was informed that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. Since an Allen charge instructs the jurors to reconsider their own positions, to consider the positions of other jurors, and to attempt to reach a consensus, Respondent submits a finding of Strickland prejudice is improper because there is no support for a finding the result at trial would have been different. Altogether, the Order's discussion regarding prejudice must be revised because there is no legal or factual basis for this Court's finding of prejudice.

5. This Order is incorrect to the extent it assumes the Allen charge did not correctly state the law in capital sentencing. This Order finds that a jury's verdict in capital sentencing does not have to be unanimous. This finding is contrary to South Carolina law. Otherwise, the South Carolina Supreme Court would have no reason to consistently find that an Allen charge is entirely appropriate in capital sentencing. See State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990)(finding trial judge properly required jury to continue deliberating after jury indicated it was hung in a capital resentencing trial); State v. Hughes, 336 S.C. 585, 597-98, 521 S.E.2d 500, 506-07 (1999)(finding modified Allen charge given during sentencing deliberations was even-handed and proper); Tucker v. Catoe, 346 S.C. 483, 490-91, 552 S.E.2d 712, 716

(2001)("Neither the Due Process clause nor the Eighth Amendment forbid the giving of an Allen charge in the sentencing phase of a capital proceeding."); State v. Williams, 386 S.C. 503, 512, 690 S.E.2d 62, 66-67 (2010)(finding use of Allen charge in sentencing appropriate); see generally Gill v. State, 346 S.C. 209, 219, 552 S.E.2d 26, 32 (2001)(noting that life sentence imposed in capital case after jury deadlock does not preclude the State from seeking death in a retrial if case reversed on appeal; jury deadlock does not imply finding that State did not prove its sentencing case beyond a reasonable doubt)("In the event of a jury deadlock, the trial judge exercises no discretion and merely imposes the sentence mandated by section 16-3-20(C).").

6. Respondent submits that the remedy set forth in the PCR Court's Order is improper. If this Court is to grant relief, Respondent submits the appropriate remedy would be to vacate the sentence and remand the case back to the Court of General Sessions for a new sentencing proceeding. See Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001)(habeas relief granted and case remanded for sentencing in light of faulty Allen charge).

7. While the Respondent agrees with this Court there was no merit to Applicant's freestanding claim that he should have been allowed to represent himself during the guilt phase, Respondent asserts the claim should not have been addressed on the merits because it is not a claim that can be properly raised in post-conviction relief. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517, 519 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

CONCLUSION

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court grant its Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, deny Applicant's Application for Post-Conviction Relief in full, and restore Applicant's death sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

BRENDAN J. McDONALD
Assistant Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: _____
ATTORNEYS FOR RESPONDENT

August 28, 2012.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the **Respondent's Motion To Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP** via U.S. mail, first class, postage pre-paid, addressed to:

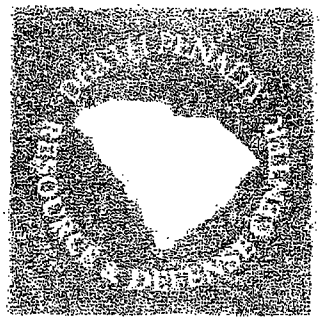
Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

This 28th day of August, 2012.

ALPHONSO SIMON, JR.

Exhibit 2



February 1, 2012

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Re: *Kevin Mercer v. State of South Carolina*, 2009-CP-32-5465
Capital PCR

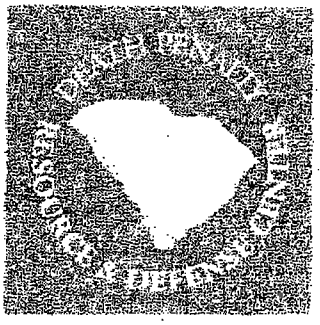
Dear Mr. Shearouse:

I am writing to request an extension of thirty (30) days in which to file the Return to Petition for Writ of Certiorari on behalf of Petitioner/Respondent in the above referenced case. This request for a continuance is based on counsel's heavy caseload and the complexity of the issues involved. Although Respondent/Petitioner's Petition for Writ of Certiorari was due to be filed and served on January 3, 2012, undersigned counsel did not receive service until January 10, 2012, when the brief arrived in an envelope post-marked on January 9, 2012. Thus, I am requesting an extension of thirty (30) days calculated by the date of actual service, making the Return due on March 9, 2012.

Moreover, please note that my mailing address has recently changed. I have previously provided written notice to the Court and to opposing counsel regarding this change, and I have updated my Attorney Information System information. My new mailing address is:

Emily C. Paavola
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 101
Columbia, SC 29201

I am informing opposing counsel of my request by copy of this letter. If you should have any questions, please do not hesitate to contact me.



Sincerely yours,

Emily C. Paavola

Emily C. Paavola

cc: Alphonso Simon, Esq.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	11-CP-26-03907
	)	
LOUIS MICHAEL WINKLER, JR. SK6027	)	
Applicant,	)	
vs.	)	**CERTIFICATE OF SERVICE**
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
	)	

The undersigned certifies that a copy of the foregoing Applicant's Return to Respondent's Motion to Alter or Amend Judgment, was served by first class United States mail, postage prepaid, this 6th day of September, 2012, upon the following:

Alphonso Simon, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Jill A. Rider

Jill A. Rider

STATE OF SOUTH CAROLINA COUNTY OF HORRY Louis Michael Winkler Jr. Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS Case No. 2011-CP 26-03907 **SUPPLEMENTAL RETURN TO RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT**

Counsel for Applicant submits this brief Supplemental Return in light of Respondent's counsel's recent response to the Return.

On Friday, September 7, counsel for Respondent informed counsel for Applicant that because of how the envelopes in Exhibit 1 were scanned, the exhibit was missing some postage that would indicate the envelope was mailed, albeit with insufficient postage, on August 28, 2012. After receiving this notice, Mr. Mills' paralegal retrieved the envelope from the trash and reassembled the envelope he had opened. The envelope is attached as Exhibit 3.

Counsel for Respondent claimed that this missing postage proves that their motion was timely mailed. To the contrary, the only postage on the envelope indicating that the parcel was mailed is dated August 31, 2012, and nothing indicates that the parcel was marked or returned for insufficient postage.[1] Ex. 3.

Moreover, for proper service by mail, the parcel must "be properly addressed with sufficient postage." *Lindsey v. South Carolina Tax Com'n*, 323 S.C. 57, 59, 448 S.E.2d 577, 578 (1994). Because, by their own account, counsel for Respondent failed to provide adequate postage, their motion was not timely filed. *Id.*

In short, the Attorney General's Office has not complied with the timeline for serving a Rule 59(e) motion, and their motion should be dismissed because this Court no longer has

[1] United States Postal Service Policy is to mark parcels with insufficient postage with the total "deficiency of postage and fees." USPS *Domestic Mail Manual*, 600 USPS Basic Standards for All Mailing Services § 8.1.1 *available at* http://pe.usps.com/text/dmm300/604.htm#1080945. There are no such markings on the envelope. Ex. 3.

jurisdiction to alter or amend the judgment. *See Ackerman v. 3-V Chemical, Inc.*, 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002).

Respectfully submitted,

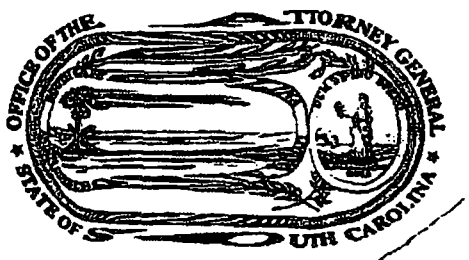


COUNSEL FOR MR. WINKLER

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900 Elmwood Avenue
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Columbia, SC 29201
(803) 765-1044

JOHN R. MILLS
Attorney at Law
201 W. Main Street
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Durham, NC 27701
(919) 251-6259

Exhibit 3



POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

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$00.400
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US POSTAGE

U.S. POSTAGE
$.45
29201
Date of sale
08/28/12
08282013

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	11-CP-26-03907
	)	
LOUIS MICHAEL WINKLER, JR.	)	**CERTIFICATE OF SERVICE**
Applicant,	)	
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
	)	

The undersigned certifies that a copy of Applicant's Supplemental Return to Respondent's Motion to Alter or Amend the Judgment was served by first class United States mail, postage prepaid on this the 10th day of September 2012 upon the following:

Mr. Al Simon
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

John R. Mills
Law Offices of John R. Mills

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
Louis Michael Winkler, Jr., #6027,	)	C/A No. 2011-CP-26-3907
Applicant,	)	
v.	)	**REPLY TO APPLICANT'S RETURN TO RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT**
The State of South Carolina,	)	**(Capital Case)**
Respondent.	)	

Respondent, above-named, by and through the Office of the Attorney General, hereby replies to the Return to Respondent's Motion to Alter or Amend Judgment. In reply, Respondent would show this Court the following:

1. Respondent's Motion to Alter or Amend Judgment was timely. Rule 59(e), SCRCP, states, "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." As noted in Respondent's Motion, counsel for Respondent received a copy of the signed Order from Judge Culbertson on August 20, 2012. The Order received on August 20, 2012 was a copy of the signed Order from Judge Culbertson with no indication that the Order had been entered by the Clerk's Office.[1] Counsel for Respondent did not receive notice of entry of judgment from the Horry County Clerk of Court's Office until August 22, 2012, when undersigned counsel received a file-stamped copy of the signed Order from the

[1] A copy of the Order received on August 20, 2012 is attached as Exhibit 1.

Clerk's Office.[2] The document received on August 22, 2012 was a file-stamped copy of the Order, which was first notice of entry of the judgment.[3] "An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case." Upchurch v. Upchurch, 367 S.C. 16, 22-23, 624 S.E.2d 643, 646 (2006) (disapproved of on other grounds by Miles v. Miles, 393 S.C. 111, 711 S.E.2d 880 (2011)); Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct.App.1999) (citations omitted). However, "the moment ... [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties." Archer v. Long, 46 S.C. 292, 295, 24 S.E. 83, 84 (1896). Since the copy of the Order received on August 22, 2012 was the first notice of entry of the judgment received by counsel for Respondent, the time for filing the Motion to Alter or Amend is based upon the receipt of the file-stamped Order on August 22, 2012. Rule 59(e), SCRCP; see generally S.C. Code § 17-27-80. Thus, the deadline for serving the Motion to Alter or Amend was September 1, 2012. As a result, Respondent's Motion to Alter or Amend Judgment was timely served.

2. Contrary to the Applicant's assertions, the Certificate of Service attached to Respondent's Motion to Alter or Amend Judgment was correct. At approximately 8 p.m. on August 28, 2012, undersigned counsel went to the post office in Columbia, SC located at 1601 Assembly Street (29201). Undersigned counsel utilized the automated

[2] Counsel for Respondent would note that the Motion indicates our office received the file-stamped copy of the Order from the Clerk's Office on August 24, 2012. This was incorrect. The Civil Division of the Attorney General's Office initially received the file-stamped copy of the Order on August 22, 2012.

[3] A copy of the file-stamped Order counsel received from the Clerk's Office is attached as Exhibit 2.

postage machine at that location. Undersigned counsel weighed the envelope addressed to Ms. Paavola. The automated machine indicated that based upon the weight of the envelope and its contents, a forty-five cent stamp would be needed. The automated machine also indicated that to use a debit card to pay for the stamp, undersigned counsel would have to purchase at least two more forty-five cent stamps to meet a one dollar minimum purchase requirement for the machine. Undersigned counsel purchased the three stamps, and then undersigned counsel affixed one stamp on each of the envelopes addressed to Ms. Paavola, Mr. Mills, and Judge Culbertson. After that purchase was completed, undersigned counsel weighed the envelope that was being sent to the Horry County Clerk of Court. It was a larger envelope and contained a self-addressed stamp envelope and a second copy of the Motion to be returned after it had been time-stamped. The automated machine indicated that postage for the package would be one dollar and seventy cents. Undersigned counsel purchased the $1.70 stamp, and then affixed it to the envelope to the Clerk's Office. Undersigned counsel then placed all four envelopes into the large blue metal mail depository that was located next to the automated stamp machine. Attached hereto as Exhibit 3 are the receipts from the two stamp purchases. Respondent submits that placing the stamped envelopes with postage that the USPS automated machine indicated was sufficient in the mail depository constituted proper service.

Counsel for Respondent are unaware if, when, and/or why any of the envelopes mailed on August 28, 2012 were returned to our office. We only assume that the envelopes may have been returned because the account number on the $.40 postage appears to be consistent with the office's business hours postage meter. Counsel for

Respondent would further note that we were never advised by anyone in our office that the mailings of the Motion to Alter or Amend Judgment were returned. Our first and only notice that the copies of the Motion mailed on August 28, 2012 were possibly returned was Applicant's Return to the Motion to Alter or Amend Judgment on September 6, 2012. Counsel for Respondent did investigate to see if there was any record in our office indicating the copies of the Motions were returned. During the course of that investigation, counsel learned that returned mail is not logged, and there is no record either envelope being returned. Altogether, counsel is unable to ascertain what happened to the mailings after they were deposited in the post office on August 28, 2012. Based upon the $0.40 of metered postage on the copies of the envelopes submitted by Applicant's counsel, Respondent can only assume the mailings may have been returned to our office by the USPS for additional postage.

3. Applicant's argument regarding the merits of the Motion to Alter or Amend Judgment underscores the primary problems with this Court's Order granting post-conviction relief. First, there is no precedent from this State's appellate courts or from the United States Supreme Court that requires a trial judge to inform a jury what happens if the jury does not reach a unanimous verdict in sentencing. To the contrary, the case law from this State and from the United States Supreme Court all indicates that the jury is not entitled to know. State v. Adams, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981)(emphasis added), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Copeland, 278 S.C. 572, 584-85, 300 S.E.2d 63, 70 (1982); State v. Spann, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983)(finding harmless error when judge instructed jury that any sentence for life imprisonment must

be unanimous because jury need not be instructed of legal effect of unalterable divided jury); Jones v. United States, 527 U.S. 373, 381 (1999). The distinction Applicant attempts to make between the long line of cases that hold the jury is not entitled to know what happens if it does not reach a unanimous verdict is of no consequence. In Jones, the Supreme Court noted the "strong interest in having the jury express the conscience of the community on the ultimate question of life or death" would be undermined if the jury was advised of what occurs if the jury does not reach a unanimous verdict. See Jones, 527 U.S. at 382. Respondent submits this concern holds true if such an instruction is given in response to a question from the jury.

Second, Applicant is incorrect in his assessment that the trial court affirmatively misled the jury by not answering the question and by giving the Allen charge. The trial court's decision not to answer the juror's question was not affirmatively misleading. As was the case in Jones, "the proposed instruction has no bearing on the jury's role in the sentencing process. Rather, it speaks to what happens in the event that the jury is unable to fulfill its role-when deliberations break down and the jury is unable to produce a unanimous sentence recommendation." Jones, 527 U.S. at 382. Furthermore, the trial court's Allen charge was wholly consistent with similar charges that were approved in other capital sentencing proceedings. See State v. Williams, 386 S.C. 503, 512, 690 S.E.2d 62, 66-67 (2010); Lowenfield v. Phelps, 484 U.S. 231, 237 (1988). Respondent submits that under Applicant's theory, an Allen charge could never be given during the sentencing phase of a capital trial because the charge necessarily instructs the jurors attempt to reach a unanimous verdict. The case law clearly does not support that position.

Finally, Respondent would note that trial counsel was not wrong about his understanding of the law regarding whether a trial judge is required to inform the jury of what occurs if the jury cannot reach a unanimous verdict in sentencing. The case law does not support a finding that any instruction must be given to address this issue. Thus, trial counsel was not deficient in not objecting to the trial court's decision not to answer the jurors' questions regarding what occurs if the jury could not reach a unanimous verdict.

WHEREFORE, premises considered, for the reasons stated above and in the Respondent's Motion to Alter or Amend Judgment, Respondent requests this Court grant its Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, deny Applicant's Application for Post-Conviction Relief in full, and restore Applicant's death sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

BRENDAN J. McDONALD
Assistant Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General

Post Office Box 11549

Columbia, South Carolina 29211
(803) 734-6305

By: _____
ATTORNEYS FOR RESPONDENT

September 12, 2012.

EXHIBIT 1

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

P. O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
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August 15, 2012

Via Email and U.S. Mail Delivery

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RE: *Louis Michael Winkler, Jr. v. State of South Carolina*
Case Number: 2011-CP-26-03907

Dear Attorneys:

Please find enclosed a copy of the Form 4 and Order Granting Post-Conviction Relief in the above referenced case.

Emily C. Paavola, Esquire
John R. Mills, Esquire
Alphonzo Simon, Jr., Asst. Attorney General
Brendon McDonald, Asst. Attorney General
Anthony Mabry, Asst. Attorney General
J. Gregory Hembree, Solicitor

By copy of this letter and enclosure to the Clerk of Court, I am forwarding the original Form 4 and order for filing.

With kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
Enclosures (a/s)
pc: Melanie Huggins-Ward, Clerk of Court
(via hand delivery)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3907

Louis Michael Winkler, Jr.
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$ N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge | 2148 **Judge Code** | August 15, 2012 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola
John R. Mills

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alphonzo Simon
Brendon McDonald
Anthony Mabry

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Brenda R. Babb**
Kay H. Richardson

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NUMBER: 2011-CP-26-3907
Louis Michael Winkler, Jr.,)	
)	
Applicant,)	
)	ORDER
vs.)	GRANTING POST-CONVICTION RELIEF
)	RE: DEATH SENTENCE
State of South Carolina,)	
)	
Respondent.)	
)	

TRIAL DATES.....June 18 – 21, 2012
PRESIDING JUDGE.....Benjamin H. Culbertson
APPLICANT'S ATTORNEYS.....Emily C. Paavola
John R. Mills
RESPONDENT'S ATTORNEYS.....Alphonzo Simon
Brendon McDonald
Anthony Mabry
COURT REPORTER.....Brenda R. Babb (June 18, 19, 21, 2012)
Kay H. Richardson (June 20, 2012)

In this case, the Applicant, Louis Michael Winkler, Jr., ("Winkler") seeks post-conviction relief from his conviction and death sentence for murder. Winkler alleges that he received ineffective assistance of counsel. He also alleges that his constitutional and statutory rights were violated when the trial court refused to allow him to discharge his appointed counsel and proceed *pro se*, when the trial court refused to charge the jury on what would happen if they could not reach a unanimous verdict during the sentencing phase of his trial and when the trial court gave jury instructions under unduly coercive circumstances. The Respondent, State of South Carolina, ("State") denies that Winkler is entitled to post-conviction relief.

Based upon a preponderance of the evidence in this case and a review of the pertinent parts of the criminal trial transcript, I do hereby find the following salient facts:

FINDINGS OF FACT

In 2006, Winkler was indicted for the murder of his estranged wife, first degree burglary, and assault and battery of a high and aggravated nature. On March 12, 2007, the State filed its Notice of Intent to Seek the Death Penalty in which the State asserted the following statutory aggravating circumstances supporting the death penalty: 1) that the murder was committed during the commission of a burglary; and 2) that the murder was of a witness or potential witness committed for the purpose of impeding or deterring prosecution of a crime.[1]

Attorneys Ralph J. Wilson and Paul Elbert Rathbun were appointed to represent Winkler. During the early stages of their representation, Winkler became dissatisfied with his attorneys and wanted new attorneys. All requests to relieve his attorneys and appoint new counsel were denied by the court. At no time prior to the start of the criminal trial did Winkler ever ask the court to relieve his attorneys and allow him to proceed *pro se*.

In preparing for trial, Winkler advised his attorneys that the victim was killed by her ex-husband, [redacted] Grainger ("Grainger"). Winkler told his attorneys that he and Grainger fought over a pistol and that Grainger gained control of the pistol and shot the victim. Winkler never disputed that the fatal shot was fired from the pistol. His only contention was that he did not shoot the victim; Grainger did.

During the guilt or innocence phase of Winkler's criminal trial, the State presented Vello Paavel as an expert witness in the field of firearm and tool mark identification. Mr. Paavel opined that the bullet killing the victim was fired from the Jennings Bryco pistol found in Winkler's possession. During cross examination of Mr. Paavel, Winkler's attorney challenged whether any evidence existed to indicate that Winkler fired the Jennings Bryco pistol but did not

[1] When this murder occurred, charges were already pending against Winkler for the kidnapping and rape of his estranged wife.

challenge whether the fatal shot was fired from that pistol. Ultimately, Winkler was found guilty of murder, first degree burglary and assault and battery of a high and aggravated nature.

During the sentencing phase of his criminal trial, Winkler asked the court to discharge his attorneys and allow him to represent himself. The court denied Winkler's request.

More than 6 ½ hours into deliberations during the sentencing phase of Winkler's trial, the jury asked the court what would happen if they could not reach a unanimous decision.[2] The judge advised the jury that he could not answer their question "as it [was] asked." Two hours later, the jury asked the court again what would happen if they could not reach a unanimous decision. The court advised the jury that their question was hypothetical and the court could not answer hypothetical questions. Winkler's attorneys never objected to the court's refusal to answer the jury's question.

More than 10 hours into deliberations, the jury informed the court that they were deadlocked on whether to impose the death penalty or life. The judge gave the jury an Allen charge in which he advised them that their decision must be unanimous without telling them the law if they could not reach a unanimous decision. The court then allowed the jury to cease deliberations for the night and return the following morning.

The following morning, prior to resuming deliberations, several jurors asked for the judge to give them the Allen charge again. The judge recharged the jury and, again, advised them that their decision had to be unanimous without advising them on the law of what would happen if they could not reach a unanimous decision. Winkler's attorneys objected to the judge recharging the Allen charge but never objected to the contents of his charge or his failure to advise the jury

[2] This court cannot determine exactly how long the jury had been deliberating on Winkler's sentence before submitting its question to the court. However, the trial transcript indicates that the jury began deliberations at 1:30 p.m. and submitted its question to the court after 8:15 p.m.

on the law of what would happen if they could not reach a unanimous decision. After resuming deliberations, the jury returned a decision to impose the death penalty.[3]

LAW AND DISCUSSION

I. RIGHT TO SELF REPRESENTATION

Winkler argues that his constitutional right to self-representation was violated by the trial court's refusal to allow him to discharge his attorneys and proceed in his criminal trial *pro se*.[4] Winkler further argues that he was denied his right to effective assistance of counsel due to his attorneys' failure to object to the trial court's pre-trial refusal to permit him to discharge his appointed counsel and proceed in the criminal trial *pro se*. However, a preponderance of the evidence indicates that Winkler never requested to discharge his attorneys and proceed *pro se* until the sentencing phase of his trial. Prior to that time, Winkler only requested that he be appointed new attorneys; not that he be allowed to proceed *pro se*.

An accused may waive the right to counsel and proceed *pro se*. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, "[a] defendant's right to waive the assistance of counsel is not unlimited." *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). "The request to proceed *pro se* must be ***clearly asserted*** by the defendant ***prior to trial***." *Id.* (emphasis added). "If the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge." *Id.* (citing *United States v. Singleton*, 107 F.3d 1091 (4th Cir.1997); *United States v. Lawrence*, 605 F.2d 1321 (4th Cir.1979)). The sentencing phase of a capital trial does not constitute a separate

[3] Winkler was also sentenced by the presiding judge to concurrent sentences of thirty years in prison for first degree burglary and ten years in prison for assault and battery of a high and aggravated nature.

[4] The court's refusal to discharge Winkler's attorneys and allow Winkler to proceed *pro se* was addressed and affirmed by the South Carolina Supreme Court in Winkler's criminal appeal. See *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596, (S.C.2010).

trial. See S.C.Code Ann. § 16-3-20(B) (2003); see also *State v. Stewart*, 288 S.C. 232, 235, 341 S.E.2d 789, 791 (1986).

Because Winkler never "clearly asserted" that he wanted to represent himself prior to trial, the court's refusal to discharge his attorneys and allow him to proceed *pro se* did not violate his constitutional rights. Further, his attorneys' failure to object to the court's "pre-trial" denial of his request to represent himself when no pre-trial request was made does not constitute ineffective assistance of counsel. Therefore, Winkler is not entitled to post-conviction relief because the trial court denied his request to represent himself, nor is he entitled to post-conviction relief due to his attorneys' failure to object to the court's denial.

II. FAILURE TO IMPEACH STATE'S EXPERT WITNESS

Next, Winkler argues that he was denied effective assistance of counsel when his attorneys failed to object to and/or adequately impeach the trial testimony of the State's firearm and tool mark expert, Mr. Vello Paavel. Winkler argues that his attorneys should have challenged Mr. Paavel's testimony that the bullet that killed the victim was fired from the Jennings Bryco pistol found in Winkler's possession. However, until Winkler filed this action for post-conviction relief, he never disputed that the fatal shot was fired from the Jennings Bryco pistol. The defense trial strategy was that Grainger, not Winkler, fired the fatal shot.

Based upon Winkler's pre-trial account to his attorneys that Grainger shot the victim with the Jennings Bryco pistol, his attorneys challenged the State's failure to find Winkler's fingerprints or DNA on the Jennings Bryco pistol. Challenging whether or not the bullet that killed the victim was fired from that pistol would serve no purpose since Winkler acknowledged to his attorneys while preparing for his criminal trial that the victim was shot by Grainger with the Jennings Bryco pistol. Therefore, his attorneys' failure to challenge Mr. Paavel's opinion

that the victim was shot with the Jennings Bryco pistol is not ineffective assistance of counsel and Winkler's request for post-conviction relief on this ground should be denied.

III. FAILURE TO IMPEACH OTHER STATE WITNESSES

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to impeach the State's witnesses with evidence that J[redacted] G[redacted] was not on the telephone with E[redacted] C[redacted] at the time of the crime. However, in presenting his case for post-conviction relief, Winkler did not identify or present any evidence that his attorneys could have used to impeach the State's witnesses. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

The burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). Therefore, since Winkler failed to present any evidence that his attorneys could have used to impeach the State's witnesses, the State's motion for directed verdict on this ground for relief should be granted.

IV. FAILURE TO PRESENT EVIDENCE OF NEUROLOGICAL AND COGNITIVE IMPAIRMENTS AND/OR DYSFUNCTION

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to investigate and present evidence of Winkler's neurological and cognitive impairments and/or dysfunction. However, Winkler did not present any evidence that he suffered from neurological and cognitive impairments or dysfunction. Therefore, at the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As previously stated, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any evidence supporting his claim that he suffers from neurological and cognitive impairments and/or dysfunction, the State's motion for directed verdict on this ground for relief should be granted.

V. FAILURE TO PRESENT EVIDENCE OF MENTAL STATE

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to present mitigating evidence regarding Winkler's change in demeanor and mental state before the crime and evidence that the victim harassed and taunted Winkler while he was on home arrest. However, the preponderance of the evidence indicates that the victim did not taunt Winkler while he was on home arrest and, thus, Winkler did not have any change in demeanor or mental state due to the victim's conduct. Winkler's attorneys did not have any mitigating evidence to present to show a change in demeanor or mental state and, thus, any failure to present evidence of a change in demeanor or mental state does not constitute ineffective assistance of counsel. Therefore, Winkler's claim for post-conviction relief on this claim should be denied.

VI. PHYSICAL HARM AND INTIMIDATION OF JUROR

Winkler also alleges that he is entitled to post-conviction relief due to the physical harm and intimidation of a juror. However, Winkler did not present any evidence of physical harm and intimidation of a juror. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As stated before, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any

evidence of physical harm and intimidation of a juror, the State's motion for directed verdict on this ground for relief should be granted.

VII. FAILURE TO CHARGE JURY

Lastly, Winkler alleges that he is entitled to post-conviction relief because his attorneys failed to object to the court's refusal to answer the jury's question regarding what would happen if the jury failed to reach a unanimous verdict on Winkler's sentence. Winkler further alleges that his attorneys were ineffective for failing to object to the court's improper jury instructions under unduly coercive circumstances. Further, Winkler alleges that the trial court's refusal to charge the jury on what would happen if they could not reach a unanimous verdict and/or the court's jury instructions given under unduly coercive circumstances entitles him to post-conviction relief.

Under Code of Laws of South Carolina 1976 §16-3-20, when aggravating circumstances are found to exist in a capital murder case tried before a jury, the jury decides whether the defendant should be sentenced to death or life in prison. A jury's decision to impose the death penalty must be unanimous. Code §16-3-20(C) states, in pertinent part, that "[i]f members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment...."

In the case at hand, more than 6 ½ hours into jury deliberations during the sentencing phase of the trial, the jury asked on two different occasions what would happen if they could not reach a unanimous verdict on Winkler's sentence. The judge refused to answer the question both times and Winkler's criminal trial attorneys never objected to the judge's refusal to answer the question.

Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

The burden is on the petitioner to prove the allegations in the PCR application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). To establish a claim of ineffective assistance of counsel, the PCR applicant must prove: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defendant's case. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624, (1989) - "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052.

To establish prejudice, the applicant is required "to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). Moreover, no prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Rosemond v. Catoe*, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009).

In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his conviction for murder is DENIED; it is further

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his sentence of death for murder is GRANTED; it is further

ORDERED, that Louis Michael Winkler, Jr.'s sentence of death is set aside and he is sentenced to life in prison without parole for his conviction for murder; it is further

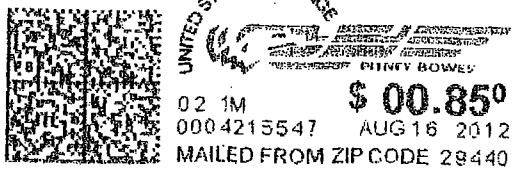
ORDERED, that the sentence imposed hereunder shall run concurrently with the sentences imposed for the applicant's convictions for first degree burglary and assault and battery of a high and aggravated nature.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
Presiding Judge

August 15, 2012
Conway, SC

Benjamin H. Culbertson, Judge
The Circuit Court of the Fifteenth Judicial Circuit
Post Office Box 479
401 Cleland Street
Georgetown, SC 29442



Alphonzo Simon, Jr., Asst. Attorney General
Brenda McDonald, Asst. Attorney General
Anthony Mabry, Assist. Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

29211@1549 5099

EXHIBIT 2

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NUMBER: 2011-CP-26-3907
Louis Michael Winkler, Jr.,)	
)	
Applicant,)	
)	ORDER
vs.)	GRANTING POST-CONVICTION RELIEF
)	RE: DEATH SENTENCE
State of South Carolina,)	
)	
Respondent.)	
)	

HORRY COUNTY
12 AUG 15 PM 2:06
MELANIE HUGGINS-WARD
CLERK OF COURT

TRIAL DATES.....June 18 – 21, 2012
PRESIDING JUDGE.....Benjamin H. Culbertson
APPLICANT'S ATTORNEYS.....Emily C. Paavola
John R. Mills
RESPONDENT'S ATTORNEYS.....Alphonzo Simon
Brendon McDonald
Anthony Mabry
COURT REPORTER.....Brenda R. Babb (June 18, 19, 21, 2012)
Kay H. Richardson (June 20, 2012)

In this case, the Applicant, Louis Michael Winkler, Jr., ("Winkler") seeks post-conviction relief from his conviction and death sentence for murder. Winkler alleges that he received ineffective assistance of counsel. He also alleges that his constitutional and statutory rights were violated when the trial court refused to allow him to discharge his appointed counsel and proceed *pro se*, when the trial court refused to charge the jury on what would happen if they could not reach a unanimous verdict during the sentencing phase of his trial and when the trial court gave jury instructions under unduly coercive circumstances. The Respondent, State of South Carolina, ("State") denies that Winkler is entitled to post-conviction relief.

Based upon a preponderance of the evidence in this case and a review of the pertinent parts of the criminal trial transcript, I do hereby find the following salient facts:

FINDINGS OF FACT

In 2006, Winkler was indicted for the murder of his estranged wife, first degree burglary, and assault and battery of a high and aggravated nature. On March 12, 2007, the State filed its Notice of Intent to Seek the Death Penalty in which the State asserted the following statutory aggravating circumstances supporting the death penalty: 1) that the murder was committed during the commission of a burglary; and 2) that the murder was of a witness or potential witness committed for the purpose of impeding or deterring prosecution of a crime.[1]

Attorneys Ralph J. Wilson and Paul Elbert Rathbun were appointed to represent Winkler. During the early stages of their representation, Winkler became dissatisfied with his attorneys and wanted new attorneys. All requests to relieve his attorneys and appoint new counsel were denied by the court. At no time prior to the start of the criminal trial did Winkler ever ask the court to relieve his attorneys and allow him to proceed *pro se*.

In preparing for trial, Winkler advised his attorneys that the victim was killed by her ex-husband, [redacted] Grainger ("Grainger"). Winkler told his attorneys that he and Grainger fought over a pistol and that Grainger gained control of the pistol and shot the victim. Winkler never disputed that the fatal shot was fired from the pistol. His only contention was that he did not shoot the victim; Grainger did.

During the guilt or innocence phase of Winkler's criminal trial, the State presented Vello Paavel as an expert witness in the field of firearm and tool mark identification. Mr. Paavel opined that the bullet killing the victim was fired from the Jennings Bryco pistol found in Winkler's possession. During cross examination of Mr. Paavel, Winkler's attorney challenged whether any evidence existed to indicate that Winkler fired the Jennings Bryco pistol but did not

[1] When this murder occurred, charges were already pending against Winkler for the kidnapping and rape of his estranged wife.

challenge whether the fatal shot was fired from that pistol. Ultimately, Winkler was found guilty of murder, first degree burglary and assault and battery of a high and aggravated nature.

During the sentencing phase of his criminal trial, Winkler asked the court to discharge his attorneys and allow him to represent himself. The court denied Winkler's request.

More than 6 ½ hours into deliberations during the sentencing phase of Winkler's trial, the jury asked the court what would happen if they could not reach a unanimous decision.[2] The judge advised the jury that he could not answer their question "as it [was] asked." Two hours later, the jury asked the court again what would happen if they could not reach a unanimous decision. The court advised the jury that their question was hypothetical and the court could not answer hypothetical questions. Winkler's attorneys never objected to the court's refusal to answer the jury's question.

More than 10 hours into deliberations, the jury informed the court that they were deadlocked on whether to impose the death penalty or life. The judge gave the jury an Allen charge in which he advised them that their decision must be unanimous without telling them the law if they could not reach a unanimous decision. The court then allowed the jury to cease deliberations for the night and return the following morning.

The following morning, prior to resuming deliberations, several jurors asked for the judge to give them the Allen charge again. The judge recharged the jury and, again, advised them that their decision had to be unanimous without advising them on the law of what would happen if they could not reach a unanimous decision. Winkler's attorneys objected to the judge recharging the Allen charge but never objected to the contents of his charge or his failure to advise the jury

[2] This court cannot determine exactly how long the jury had been deliberating on Winkler's sentence before submitting its question to the court. However, the trial transcript indicates that the jury began deliberations at 1:30 p.m. and submitted its question to the court after 8:15 p.m.

on the law of what would happen if they could not reach a unanimous decision. After resuming deliberations, the jury returned a decision to impose the death penalty.[3]

LAW AND DISCUSSION

I. RIGHT TO SELF REPRESENTATION

Winkler argues that his constitutional right to self-representation was violated by the trial court's refusal to allow him to discharge his attorneys and proceed in his criminal trial *pro se*.[4] Winkler further argues that he was denied his right to effective assistance of counsel due to his attorneys' failure to object to the trial court's pre-trial refusal to permit him to discharge his appointed counsel and proceed in the criminal trial *pro se*. However, a preponderance of the evidence indicates that Winkler never requested to discharge his attorneys and proceed *pro se* until the sentencing phase of his trial. Prior to that time, Winkler only requested that he be appointed new attorneys; not that he be allowed to proceed *pro se*.

An accused may waive the right to counsel and proceed *pro se*. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, "[a] defendant's right to waive the assistance of counsel is not unlimited." *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). "The request to proceed *pro se* must be ***clearly asserted*** by the defendant ***prior to trial***." *Id.* (emphasis added). "If the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge." *Id.* (citing *United States v. Singleton*, 107 F.3d 1091 (4th Cir.1997); *United States v. Lawrence*, 605 F.2d 1321 (4th Cir.1979)). The sentencing phase of a capital trial does not constitute a separate

[3] Winkler was also sentenced by the presiding judge to concurrent sentences of thirty years in prison for first degree burglary and ten years in prison for assault and battery of a high and aggravated nature.

[4] The court's refusal to discharge Winkler's attorneys and allow Winkler to proceed *pro se* was addressed and affirmed by the South Carolina Supreme Court in Winkler's criminal appeal. See *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596, (S.C.2010).

trial. See S.C.Code Ann. § 16-3-20(B) (2003); see also *State v. Stewart*, 288 S.C. 232, 235, 341 S.E.2d 789, 791 (1986).

Because Winkler never "clearly asserted" that he wanted to represent himself prior to trial, the court's refusal to discharge his attorneys and allow him to proceed *pro se* did not violate his constitutional rights. Further, his attorneys' failure to object to the court's "pre-trial" denial of his request to represent himself when no pre-trial request was made does not constitute ineffective assistance of counsel. Therefore, Winkler is not entitled to post-conviction relief because the trial court denied his request to represent himself, nor is he entitled to post-conviction relief due to his attorneys' failure to object to the court's denial.

II. FAILURE TO IMPEACH STATE'S EXPERT WITNESS

Next, Winkler argues that he was denied effective assistance of counsel when his attorneys failed to object to and/or adequately impeach the trial testimony of the State's firearm and tool mark expert, Mr. Vello Paavel. Winkler argues that his attorneys should have challenged Mr. Paavel's testimony that the bullet that killed the victim was fired from the Jennings Bryco pistol found in Winkler's possession. However, until Winkler filed this action for post-conviction relief, he never disputed that the fatal shot was fired from the Jennings Bryco pistol. The defense trial strategy was that Grainger, not Winkler, fired the fatal shot.

Based upon Winkler's pre-trial account to his attorneys that Grainger shot the victim with the Jennings Bryco pistol, his attorneys challenged the State's failure to find Winkler's fingerprints or DNA on the Jennings Bryco pistol. Challenging whether or not the bullet that killed the victim was fired from that pistol would serve no purpose since Winkler acknowledged to his attorneys while preparing for his criminal trial that the victim was shot by Grainger with the Jennings Bryco pistol. Therefore, his attorneys' failure to challenge Mr. Paavel's opinion

that the victim was shot with the Jennings Bryco pistol is not ineffective assistance of counsel and Winkler's request for post-conviction relief on this ground should be denied.

III. FAILURE TO IMPEACH OTHER STATE WITNESSES

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to impeach the State's witnesses with evidence that J[redacted] G[redacted] was not on the telephone with E[redacted] C[redacted] at the time of the crime. However, in presenting his case for post-conviction relief, Winkler did not identify or present any evidence that his attorneys could have used to impeach the State's witnesses. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

The burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). Therefore, since Winkler failed to present any evidence that his attorneys could have used to impeach the State's witnesses, the State's motion for directed verdict on this ground for relief should be granted.

IV. FAILURE TO PRESENT EVIDENCE OF NEUROLOGICAL AND COGNITIVE IMPAIRMENTS AND/OR DYSFUNCTION

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to investigate and present evidence of Winkler's neurological and cognitive impairments and/or dysfunction. However, Winkler did not present any evidence that he suffered from neurological and cognitive impairments or dysfunction. Therefore, at the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As previously stated, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any evidence supporting his claim that he suffers from neurological and cognitive impairments and/or dysfunction, the State's motion for directed verdict on this ground for relief should be granted.

V. FAILURE TO PRESENT EVIDENCE OF MENTAL STATE

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to present mitigating evidence regarding Winkler's change in demeanor and mental state before the crime and evidence that the victim harassed and taunted Winkler while he was on home arrest. However, the preponderance of the evidence indicates that the victim did not taunt Winkler while he was on home arrest and, thus, Winkler did not have any change in demeanor or mental state due to the victim's conduct. Winkler's attorneys did not have any mitigating evidence to present to show a change in demeanor or mental state and, thus, any failure to present evidence of a change in demeanor or mental state does not constitute ineffective assistance of counsel. Therefore, Winkler's claim for post-conviction relief on this claim should be denied.

VI. PHYSICAL HARM AND INTIMIDATION OF JUROR

Winkler also alleges that he is entitled to post-conviction relief due to the physical harm and intimidation of a juror. However, Winkler did not present any evidence of physical harm and intimidation of a juror. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As stated before, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any

evidence of physical harm and intimidation of a juror, the State's motion for directed verdict on this ground for relief should be granted.

VII. FAILURE TO CHARGE JURY

Lastly, Winkler alleges that he is entitled to post-conviction relief because his attorneys failed to object to the court's refusal to answer the jury's question regarding what would happen if the jury failed to reach a unanimous verdict on Winkler's sentence. Winkler further alleges that his attorneys were ineffective for failing to object to the court's improper jury instructions under unduly coercive circumstances. Further, Winkler alleges that the trial court's refusal to charge the jury on what would happen if they could not reach a unanimous verdict and/or the court's jury instructions given under unduly coercive circumstances entitles him to post-conviction relief.

Under Code of Laws of South Carolina 1976 §16-3-20, when aggravating circumstances are found to exist in a capital murder case tried before a jury, the jury decides whether the defendant should be sentenced to death or life in prison. A jury's decision to impose the death penalty must be unanimous. Code §16-3-20(C) states, in pertinent part, that "[i]f members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment...."

In the case at hand, more than 6 ½ hours into jury deliberations during the sentencing phase of the trial, the jury asked on two different occasions what would happen if they could not reach a unanimous verdict on Winkler's sentence. The judge refused to answer the question both times and Winkler's criminal trial attorneys never objected to the judge's refusal to answer the question.

Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

The burden is on the petitioner to prove the allegations in the PCR application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). To establish a claim of ineffective assistance of counsel, the PCR applicant must prove: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defendant's case. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624, (1989) - "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052.

To establish prejudice, the applicant is required "to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). Moreover, no prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Rosemond v. Catoe*, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009).

In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his conviction for murder is DENIED; it is further

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his sentence of death for murder is GRANTED; it is further

ORDERED, that Louis Michael Winkler, Jr.'s sentence of death is set aside and he is sentenced to life in prison without parole for his conviction for murder; it is further

ORDERED, that the sentence imposed hereunder shall run concurrently with the sentences imposed for the applicant's convictions for first degree burglary and assault and battery of a high and aggravated nature.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
Presiding Judge

August 15, 2012
Conway, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3907

Louis Michael Winkler, Jr.
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

HORRY COUNTY
12 AUG 15 PM 2:06
MELANIE HUGGINS-WARD
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$ N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

August 15, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola
John R. Mills

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alphonzo Simon
Brendon McDonald
Anthony Mabry

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Brenda R. Babb**
Kay H. Richardson

Horry County
SOUTH CAROLINA
Committed to Excellence

After Five Days Return To
Melanie Huggins – Ward
Clerk of Court of Horry County
P.O Box 677
Conway, South Carolina 29528-0677

RETURN SERVICE REQUESTED

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.674
0004253621 AUG 20 2012
MAILED FROM ZIPCODE 29526

ALPHONZO SIMON JR
BRENDON MCDONALD
ANTHONY MABRY
OFFICE OF THE ATTORNEY GENERAL
P O 11549
COLUMBIA SC 29211

740230853 96 CL*JNMP 29211

EXHIBIT 3

COLUMBIA MPO APC 1
1601 ASSEMBLY ST
COLUMBIA, SC 29201-9998

08/28/2012 08:04:40 PM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
COLUMBIA, SC 29201 Zone-1 First-Class Mail® Letter 0 lb. 0.60 oz.			$.45
Issue Postage:			$.45
$.45 Stamps	2	$.45	$.90
Total:			$1.35

Paid by:
DebitCard $1.35
Account #: XXXXXXXXXXXX2528
Approval #: 152091
Transaction #: 092
23-901980128-99
Receipt #: 125448

APC Transaction #: 97
USPS® # 451804-9550

Thanks.
It's a pleasure to serve you.

ALL SALES FINAL ON STAMPS AND POSTAGE.
REFUNDS FOR GUARANTEED SERVICES ONLY.

5300

COLUMBIA MPO APC 1
1601 ASSEMBLY ST
COLUMBIA, SC 29201-9998

08/28/2012 08:06:36 PM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
CONWAY, SC 29528 Zone-2 First-Class Mail® Large Envelope 0 lb. 4.70 oz.			$1.70
Issue Postage:			$1.70
Total:			$1.70

Paid by:
DebitCard $1.70
Account #: XXXXXXXXXXXX2528
Approval #: 124376
Transaction #: 093
23-901980128-99
Receipt #: 125449

APC Transaction #: 98
USPS® # 451804-9550

Thanks.
It's a pleasure to serve you.

ALL SALES FINAL ON STAMPS AND POSTAGE.
REFUNDS FOR GUARANTEED SERVICES ONLY.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the ***Reply to Applicant's Return to Respondent's Motion to Alter or Amend Judgment,*** by depositing one (1) copy of same in the United States mail, postage prepaid, addressed to:

Emily C. Paavola, Esquire
Death Penalty Resource and Defense Ctr
900 Elmwood Ave., Ste. #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. # 301
Durham, NC 27701

This 12th day of September, 2012.

ALPHONSO SIMON, JR.

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
SEP 17 2012
S.C. Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas (PCR)
The Honorable Benjamin H. Culbertson, Circuit Court Judge

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

LOUIS MICHAEL WINKLER, JR., #6027,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order Granting Post-Conviction Relief submitted by the Honorable Benjamin H. Culbertson, dated and filed August 15, 2012. Counsel for the State received written notice of entry of the judgment by way of a file-stamped copy of the Order from the Horry County Clerk of Court on August 22, 2012. The State timely served a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP. The Applicant has challenged the timeliness of the service of that Motion to Alter or Amend Judgment. As of the date of this Notice, the Motion to Alter or Amend Judgment is pending before Judge Culbertson.

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713
P. O. Box 11549
Columbia, SC 29211
(803) 734-6305

September 14, 2012.

OTHER COUNSEL OF RECORD:
Emily C. Paavola, Esquire
John R. Mills, Esquire

RECEIVED
SEP 17 2012
S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas (PCR)
The Honorable Benjamin H. Culbertson, Circuit Court Judge

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

LOUIS MICHAEL WINKLER, JR., #6027,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Alphonso Simon Jr., hereby certify that a true copy of the Notice of Appeal with Order attached has been served upon opposing counsel by depositing copies in the United States mail, postage prepaid, to the following:

Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

This 14th day of September, 2012.

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

CA No. 11-CP-26-3907

LOUIS MICHAEL WINKLER, JR., SK 6027, ... *Respondent/Petitioner*

v.

STATE OF SOUTH CAROLINA, ... *Petitioner/Respondent*

NOTICE OF CROSS APPEAL

Louis Michael Winkler appeals the order of the Honorable Judge Benjamin H. Culbertson, dated August 15, 2012, granting post-conviction relief as to sentencing. Respondent/Petitioner received Petitioner/Respondent's Notice of Appeal today, September 17, 2012.

Emily C. Paavola

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
(803)765-1044

JOHN R. MILLS
201West Main Street, Suite 301
Durham, NC 27701
(919)251-6259

September 17, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

CA No. 11-CP-26-3907

LOUIS MICHAEL WINKLER, JR., SK 6027, ... *Respondent/Petitioner*

v.

STATE OF SOUTH CAROLINA, ... *Petitioner/Respondent*

PROOF OF SERVICE

I, Jill Rider, hereby certify that I have served upon the attorney for the petitioner/respondent one (1) copy respondent/petitioner's Notice of Cross Appeal in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Alphonso Simon, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

This the17th day of September, 2012, in Columbia, South Carolina.

Jill Rider
JILL RIDER

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3907

Louis Michael Winkler, Jr.
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.*

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

2012 OCT -1 PM 3:24
STEPHANIE HUGGINS-WARD
CLERK OF COURT
FILED
HORRY COUNTY

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Respondent's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP, is INVOLUNTARILY DISMISSED.

***This motion was decided without oral arguments.**

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$ N/A
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson, Circuit Court Judge | 2148 Judge Code | September 26, 2012 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola	Alphonzo Simon, Jr.
John R. Mills	Brendon McDonald
	Anthony Mabry
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter: None

COPIES MAILED
FILED
HORRY COUNTY
2012 OCT -1 PM 3:24
MELANIE HUGGINS-BLANCHARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NUMBER: 2011-CP-26-3907
Louis Michael Winkler, Jr.,)	
)	
Applicant,)	
)	
vs.)	ORDER DISMISSING RESPONDENT'S
)	MOTION TO ALTER OR AMEND JUDGMENT
State of South Carolina,)	
)	
Respondent.)	
)	

Before the court is the respondent's "Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP." This motion is involuntarily dismissed due to this court's lack of jurisdiction over the motion.[1]

On 8/15/2012, this court issued its order ("PCR Order") denying the applicant's petition for post-conviction relief from his conviction for murder but granting the applicant's petition for post-conviction relief from his sentence of death. On 8/28/2012, the respondent mailed its motion to alter or amend the PCR Order pursuant to Rule 59(e), SCRCP, to the clerk of court, opposing counsel and the undersigned presiding judge. On 9/14/2012, the respondent filed its Notice of Appeal with the South Carolina Supreme Court appealing the PCR Order. On 9/17/2012, the applicant filed his Notice of Cross Appeal in this case with the South Carolina Supreme Court; likewise appealing the PCR Order. Both the respondent's Notice of Appeal and the applicant's Notice of Cross Appeal were filed prior to this court ruling on the respondent's motion to alter or amend the PCR Order.

[1] This motion is dismissed and this order issued without oral arguments.

 /mtc

Rule 205, SCACR, states:

> Upon the service of the notice of appeal, the appellate court shall have ***exclusive jurisdiction*** over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal. (emphasis added).

Both parties' appeals directly affect the respondent's pending motion to alter or amend and neither party has sought a writ of supersedeas. Therefore, pursuant to Rule 205, SCACR, the South Carolina Supreme Court has exclusive jurisdiction in this case and this court is without jurisdiction to rule on the respondent's motion to alter or amend.

NOW, THEREFORE, based upon the above, it is hereby

ORDERED, that the respondent's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP, dated 8/28/2012 is INVOLUNTARILY DISMISSED.

AND IT IS SO ORDERED

Benjamin H. Culbertson
Presiding Judge

September 26, 2012
Georgetown, SC

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

P. O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
Facsimile: (843) 545-3282
Email: bculbertsonj@sccourts.org

September 26, 2012

Via Email and U.S. Mail Delivery

Emily C. Paavola, Esquire
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, SC 29201

Email: Emily@deathpenaltyresource.org

John R. Mills, Esquire
Attorney at Law
201 W. Main Street, Suite 301
Durham, NC 27701

Email: John@jrmillslaw.com

FILED
HORRY COUNTY
2012 OCT -1 PM 3:24
MELANIE HUGGINS-WARD
CLERK OF COURT

Alphonzo Simon, Jr., Asst. Attorney General
Brendon McDonald, Asst. Attorney General
Anthony Mabry, Asst. Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Email: asimon@scag.gov

J. Gregory Hembree, Solicitor
Office of the Solicitor, 15th Judicial Circuit
P.O. Box 1276
Conway, SC 29528

Email: hembree1@horrycounty.org
psnowden@horrycounty.org

RE: *Louis Michael Winkler, Jr. v. State of South Carolina*
Case Number: 2011-CP-26-03907

Dear Attorneys:

Please find enclosed a copy of the Form 4 and Order Dismissing Respondent's Motion To Alter Or Amend Judgment in the above referenced case.

By copy of this letter and enclosure to the Clerk of Court, I am forwarding the original Form 4 and order for filing.

With kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
Enclosures (a/s)
pc: Melanie Huggins-Ward, Clerk of Court

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
Louis Michael Winkler, Jr., #6027,	)	C/A No. 2011-CP-11-3907
Applicant,	)	
v.	)	**RESPONDENT'S MOTION FOR RECONSIDERATION OF ORDER DISMISSING RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT**
The State of South Carolina,	)	**(Capital Case)**
Respondent.	)	

HORRY COUNTY
2012 OCT 15 PM 1:50
CLERK OF COURT

Comes now Respondent, above-named, by and through the Office of the Attorney General, and pursuant to Rule 59(e), SCRCP, and Elam v. S. Carolina Dept. of Transp., 361 S.C. 9, 20, 602 S.E.2d 772, 777 (2004), hereby moves this Court to reconsider its Order Dismissing Respondent's Motion to Alter or Amend Judgment, signed by this Court on September 26, 2012. Respondent received a copy of the signed Order on Monday, October 1, 2012 from Judge Culbertson. Respondent requested and received notice of entry of the Order from the Horry County Clerk of Court on October 11, 2012.[1] Respondent submits this Court did not have jurisdiction to enter the Order Dismissing Respondent's Motion to Alter or Amend Judgment. In support of this Motion, Respondent asserts the following:

In the Order, this Court determined that it did not have jurisdiction to rule upon Respondent's Motion to Alter or Amend Judgment under Rule 205, SCACR, because

[1] To date, Respondent has not received written notice of entry of the Order. On October 11, 2012, Respondent requested a copy of the file-stamped Order and Form 4 from the Horry County Clerk of Court. A copy of both the Order and the form were subsequently emailed to Respondent.

both parties had filed a notice of appeal. Based upon that finding, this Court ordered the Motion was involuntarily dismissed. Respondent submits this Court did not have jurisdiction to enter this Order. As noted by this Court, Rule 205, SCACR states,

> Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

See also Grosshuesch v. Cramer, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008).

Respondent's Motion to Alter or Amend Judgment included matters affected by the appeal. Thus, this Court had no jurisdiction to take any action upon the Motion to Alter or Amend Judgment, including filing and entering the Order Dismissing the Motion to Alter or Amend Judgment. Respondent submits action on the Motion to Alter or Amend Judgment could only be taken by this Court if the South Carolina Supreme Court remands the case to this Court for consideration of the post-trial motions. See Otten v. Otten, 287 S.C. 166, 337 S.E.2d 207 (1985)(granting motion to remand and dismissing appeal without prejudice where Appellant filed motions under Rule 59(e) and Rule 60(a) to modify order and Appellant served and filed notice of appeal before trial court ruled on motions); see also Wicker v. Anderson County Council, 289 S.C. 479, 347 S.E.2d 96 (1986)(Supreme Court remanded case back to trial court for consideration of timely post-trial motion filed after filing of notice of appeal); but see Hudson v. Hudson, 290 S.C. 215, 215-16, 349 S.E.2d 341, 341-42 (1986)(holding service and filing of Notice of Appeal before filing of timely post-trial motion under Rule

59 does not deprive lower court of jurisdiction to consider the motion).[2] As a result, Respondent submits this Court should reconsider and withdraw its Order Dismissing Respondent's Motion to Alter or Amend Judgment.

[2] Respondent notes that even under the reasoning in Hudson, this Court's Order Dismissing Respondent's Motion to Alter or Amend Judgment would be improper. Under Hudson, this Court arguably had jurisdiction to rule upon Respondent's Motion to Alter or Amend Judgment; thus, the denial based upon a lack of jurisdiction would have been incorrect.

CONCLUSION

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court reconsider its Order Dismissing Respondent's Motion to Alter or Amend Judgment.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

BRENDAN J. McDONALD
Assistant Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 11, 2012.

By: _____
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HORRY	)	
	)	
Louis Michael Winkler, Jr., #6027,	)	C/A No. 2011-CP-11-3907
	)	
Applicant,	)	
v.	)	
	)	**CERTIFICATE OF SERVICE**
	)	
The State of South Carolina,	)	
	)	
Respondent.	)	
	)	

HORRY COUNTY
12 OCT 15 PM 1:50
MELANIE DUBOIS-WARD
CLERK OF COURT

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the **Respondent's Motion For Reconsideration of Order Dismissing Respondent's Motion to Alter or Amend Judgment,** via U.S. mail, first class, postage pre-paid, addressed to:

Emily C. Paavola, Esquire
Death Penalty Resource and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

Robert M. Dudek, Esq.
SCCID/Division of Appellate Defense
1330 Lady St., Ste. #401
Columbia, SC 29201

This 11th day of October, 2012.

ALPHONSO SIMON, JR.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas (PCR)
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2012-212932

LOUIS MICHAEL WINKLER, JR., #6027,

Respondent-Petitioner,

v.

STATE OF SOUTH CAROLINA,

Petitioner-Respondent.

MOTION TO STAY APPEAL AND REMAND FOR CONSIDERATION OF POST-TRIAL MOTIONS

Comes now Petitioner-Respondent, above named, by and through the Office of the South Carolina Attorney General, and hereby moves to stay the appeal and remand this matter back to the PCR Court for consideration and ruling upon two post-trial motions filed in this case. In support of this Motion, Petitioner-Respondent (hereinafter referred to as the State) would show this Court the following:

1. The State served and filed the Notice of Appeal in this action on September 14, 2012. Prior to the filing of the Notice of Appeal, the State had served and filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. The State had received written notice of entry of judgment to the Order Granting Post-Conviction Relief on August 22, 2012. In the Return to Motion to Alter or Amend Judgment, Respondent-Petitioner (hereinafter referred to as Winkler) asserted the service of the Motion was untimely. Winkler also filed a Supplemental Return to the Motion to Alter or Amend Judgment. The State served a Reply to the Return to the Motion to Alter or Amend Judgment on

September 12, 2012. Subsequent to filing the Reply, the State served and filed the Notice of Appeal on September 14, 2012. Winkler also served and filed a Notice of Cross Appeal on September 17, 2012. At the time of the filing of the Notice of Appeal, the State's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP was still pending. A copy of the packet filed with the Notice of Appeal, which contained all of the above mentioned filings, is attached hereto as Exhibit 1. A copy of the Cross Notice of Appeal is attached as Exhibit 2.

2. On October 1, 2012, the PCR Court filed an Order Dismissing Respondent's Motion to Alter or Amend Judgment. In that Order, the PCR Court found it did not have jurisdiction to rule upon the State's Motion to Alter or Amend Judgment in light of the fact that both the State and Winkler had filed Notices of Appeal. The PCR Court therefore determined that the Motion to Alter or Amend Judgment was involuntarily dismissed. A copy of the Order is attached hereto as Exhibit 3. The State subsequently filed a Motion for Reconsideration of Order Dismissing Respondent's Motion to Alter or Amend Judgment. In that Motion, the State argues that in light of the PCR Court's finding that it did not have jurisdiction to rule upon the Motion to Alter or Amend Judgment, the PCR Court could not enter any Order on the Motion. A copy of the Motion is attached hereto as Exhibit 4.

3. The State moves for this appeal to be stayed and the case be remanded back to the PCR Court to allow the PCR Court to rule upon both the Motion for Reconsideration of Order Dismissing Respondent's Motion to Alter or Amend Judgment and the Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. The State submits that a remand is necessary to avoid piecemeal appellate litigation in this case, and is proper under South Carolina law. See Otten v. Otten, 287 S.C. 166, 337 S.E.2d 207 (1985)(granting motion to remand where Appellant filed motions under Rule 59(e) and Rule 60(a) to modify order and Appellant served and filed notice of appeal before trial court

ruled on motions); see also Wicker v. Anderson County Council, 289 S.C. 479, 347 S.E.2d 96 (1986)(Supreme Court remanded case back to trial court for consideration of timely post-trial motion filed after filing of notice of appeal); but see Hudson v. Hudson, 290 S.C. 215, 215-16, 349 S.E.2d 341, 341-42 (1986)(holding service and filing of Notice of Appeal before filing of timely post-trial motion under Rule 59 does not deprive lower court of jurisdiction to consider the motion).

WHEREFORE, premises considered, Respondent respectfully requests this Court stay this appeal and remand the case back to the PCR Court for rulings on the pending post-trial motions. The State further requests any other relief this Court deems appropriate.

Respectfully Submitted,

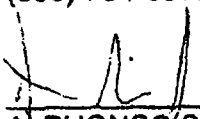
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

P. O. Box 11549
Columbia, SC 29211
(803) 734-6305



ALPHONSO SIMON JR.
Assistant Attorney General

November 14, 2012.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas (PCR)
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2012-212932

LOUIS MICHAEL WINKLER, JR., #6027,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Alphonso Simon Jr., hereby certify that a true copy of the Motion to Stay Appeal and Remand for Consideration of Post Trial Motions has been served upon opposing counsel by depositing copies in the United States mail, postage prepaid, to the following:

Robert M. Dudek, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street
Ste. 401
Columbia, SC 29201

Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esquire
201 West Main St., Ste. #301
Durham, NC 27701

This 14th day of November, 2012.

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

Exhibit 1

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas (PCR)
The Honorable Benjamin H. Culbertson, Circuit Court Judge

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

LOUIS MICHAEL WINKLER, JR., #6027,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order Granting Post-Conviction Relief submitted by the Honorable Benjamin H. Culbertson, dated and filed August 15, 2012. Counsel for the State received written notice of entry of the judgment by way of a file-stamped copy of the Order from the Horry County Clerk of Court on August 22, 2012. The State timely served a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP. The Applicant has challenged the timeliness of the service of that Motion to Alter or Amend Judgment. As of the date of this Notice, the Motion to Alter or Amend Judgment is pending before Judge Culbertson.

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713
P. O. Box 11549
Columbia, SC 29211
(803) 734-6305

September 14, 2012.

OTHER COUNSEL OF RECORD:
Emily C. Paavola, Esquire
John R. Mills, Esquire

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas (PCR)
The Honorable Benjamin H. Culbertson, Circuit Court Judge

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

LOUIS MICHAEL WINKLER, JR., #6027,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

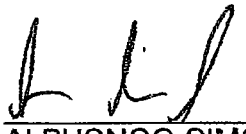
PROOF OF SERVICE

I, Alphonso Simon Jr., hereby certify that a true copy of the Notice of Appeal with Order attached has been served upon opposing counsel by depositing copies in the United States mail, postage prepaid, to the following:

Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

This 14th day of September, 2012.



ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NUMBER: 2011-CP-26-3907
Louis Michael Winkler, Jr.,)	
)	
Applicant,)	
)	ORDER
vs.)	GRANTING POST-CONVICTION RELIEF
)	RE: DEATH SENTENCE
State of South Carolina,)	
)	
Respondent.)	
)	

HORRY COUNTY
12 AUG 15 PM 2:06
MELANIE HUGGINS-WARD
CLERK OF COURT

TRIAL DATES.....June 18 – 21, 2012
PRESIDING JUDGE.....Benjamin H. Culbertson
APPLICANT'S ATTORNEYS.....Emily C. Paavola
John R. Mills
RESPONDENT'S ATTORNEYS.....Alphonzo Simon
Brendon McDonald
Anthony Mabry
COURT REPORTER.....Brenda R. Babb (June 18, 19, 21, 2012)
Kay H. Richardson (June 20, 2012)

In this case, the Applicant, Louis Michael Winkler, Jr., ("Winkler") seeks post-conviction relief from his conviction and death sentence for murder. Winkler alleges that he received ineffective assistance of counsel. He also alleges that his constitutional and statutory rights were violated when the trial court refused to allow him to discharge his appointed counsel and proceed *pro se*, when the trial court refused to charge the jury on what would happen if they could not reach a unanimous verdict during the sentencing phase of his trial and when the trial court gave jury instructions under unduly coercive circumstances. The Respondent, State of South Carolina, ("State") denies that Winkler is entitled to post-conviction relief.

Based upon a preponderance of the evidence in this case and a review of the pertinent parts of the criminal trial transcript, I do hereby find the following salient facts:

FINDINGS OF FACT

In 2006, Winkler was indicted for the murder of his estranged wife, first degree burglary, and assault and battery of a high and aggravated nature. On March 12, 2007, the State filed its Notice of Intent to Seek the Death Penalty in which the State asserted the following statutory aggravating circumstances supporting the death penalty: 1) that the murder was committed during the commission of a burglary; and 2) that the murder was of a witness or potential witness committed for the purpose of impeding or deterring prosecution of a crime.[1]

Attorneys Ralph J. Wilson and Paul Elbert Rathbun were appointed to represent Winkler. During the early stages of their representation, Winkler became dissatisfied with his attorneys and wanted new attorneys. All requests to relieve his attorneys and appoint new counsel were denied by the court. At no time prior to the start of the criminal trial did Winkler ever ask the court to relieve his attorneys and allow him to proceed *pro se*.

In preparing for trial, Winkler advised his attorneys that the victim was killed by her ex-husband, [redacted] Grainger ("Grainger"). Winkler told his attorneys that he and Grainger fought over a pistol and that Grainger gained control of the pistol and shot the victim. Winkler never disputed that the fatal shot was fired from the pistol. His only contention was that he did not shoot the victim; Grainger did.

During the guilt or innocence phase of Winkler's criminal trial, the State presented Vello Paavel as an expert witness in the field of firearm and tool mark identification. Mr. Paavel opined that the bullet killing the victim was fired from the Jennings Bryco pistol found in Winkler's possession. During cross examination of Mr. Paavel, Winkler's attorney challenged whether any evidence existed to indicate that Winkler fired the Jennings Bryco pistol but did not

[1] When this murder occurred, charges were already pending against Winkler for the kidnapping and rape of his estranged wife.

challenge whether the fatal shot was fired from that pistol. Ultimately, Winkler was found guilty of murder, first degree burglary and assault and battery of a high and aggravated nature.

During the sentencing phase of his criminal trial, Winkler asked the court to discharge his attorneys and allow him to represent himself. The court denied Winkler's request.

More than 6 ½ hours into deliberations during the sentencing phase of Winkler's trial, the jury asked the court what would happen if they could not reach a unanimous decision.[2] The judge advised the jury that he could not answer their question "as it [was] asked." Two hours later, the jury asked the court again what would happen if they could not reach a unanimous decision. The court advised the jury that their question was hypothetical and the court could not answer hypothetical questions. Winkler's attorneys never objected to the court's refusal to answer the jury's question.

More than 10 hours into deliberations, the jury informed the court that they were deadlocked on whether to impose the death penalty or life. The judge gave the jury an Allen charge in which he advised them that their decision must be unanimous without telling them the law if they could not reach a unanimous decision. The court then allowed the jury to cease deliberations for the night and return the following morning.

The following morning, prior to resuming deliberations, several jurors asked for the judge to give them the Allen charge again. The judge recharged the jury and, again, advised them that their decision had to be unanimous without advising them on the law of what would happen if they could not reach a unanimous decision. Winkler's attorneys objected to the judge recharging the Allen charge but never objected to the contents of his charge or his failure to advise the jury

[2] This court cannot determine exactly how long the jury had been deliberating on Winkler's sentence before submitting its question to the court. However, the trial transcript indicates that the jury began deliberations at 1:30 p.m. and submitted its question to the court after 8:15 p.m.

on the law of what would happen if they could not reach a unanimous decision. After resuming deliberations, the jury returned a decision to impose the death penalty.[3]

LAW AND DISCUSSION

I. RIGHT TO SELF REPRESENTATION

Winkler argues that his constitutional right to self-representation was violated by the trial court's refusal to allow him to discharge his attorneys and proceed in his criminal trial *pro se*.[4] Winkler further argues that he was denied his right to effective assistance of counsel due to his attorneys' failure to object to the trial court's pre-trial refusal to permit him to discharge his appointed counsel and proceed in the criminal trial *pro se*. However, a preponderance of the evidence indicates that Winkler never requested to discharge his attorneys and proceed *pro se* until the sentencing phase of his trial. Prior to that time, Winkler only requested that he be appointed new attorneys; not that he be allowed to proceed *pro se*.

An accused may waive the right to counsel and proceed *pro se*. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, "[a] defendant's right to waive the assistance of counsel is not unlimited." *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). "The request to proceed *pro se* must be ***clearly asserted*** by the defendant ***prior to trial***." *Id.* (emphasis added). "If the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge." *Id.* (citing *United States v. Singleton*, 107 F.3d 1091 (4th Cir.1997); *United States v. Lawrence*, 605 F.2d 1321 (4th Cir.1979)). The sentencing phase of a capital trial does not constitute a separate

[3] Winkler was also sentenced by the presiding judge to concurrent sentences of thirty years in prison for first degree burglary and ten years in prison for assault and battery of a high and aggravated nature.

[4] The court's refusal to discharge Winkler's attorneys and allow Winkler to proceed *pro se* was addressed and affirmed by the South Carolina Supreme Court in Winkler's criminal appeal. See *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596, (S.C.2010).

trial. See S.C.Code Ann. § 16-3-20(B) (2003); see also *State v. Stewart*, 288 S.C. 232, 235, 341 S.E.2d 789, 791 (1986).

Because Winkler never "clearly asserted" that he wanted to represent himself prior to trial, the court's refusal to discharge his attorneys and allow him to proceed *pro se* did not violate his constitutional rights. Further, his attorneys' failure to object to the court's "pre-trial" denial of his request to represent himself when no pre-trial request was made does not constitute ineffective assistance of counsel. Therefore, Winkler is not entitled to post-conviction relief because the trial court denied his request to represent himself, nor is he entitled to post-conviction relief due to his attorneys' failure to object to the court's denial.

II. FAILURE TO IMPEACH STATE'S EXPERT WITNESS

Next, Winkler argues that he was denied effective assistance of counsel when his attorneys failed to object to and/or adequately impeach the trial testimony of the State's firearm and tool mark expert, Mr. Vello Paavel. Winkler argues that his attorneys should have challenged Mr. Paavel's testimony that the bullet that killed the victim was fired from the Jennings Bryco pistol found in Winkler's possession. However, until Winkler filed this action for post-conviction relief, he never disputed that the fatal shot was fired from the Jennings Bryco pistol. The defense trial strategy was that Grainger, not Winkler, fired the fatal shot.

Based upon Winkler's pre-trial account to his attorneys that Grainger shot the victim with the Jennings Bryco pistol, his attorneys challenged the State's failure to find Winkler's fingerprints or DNA on the Jennings Bryco pistol. Challenging whether or not the bullet that killed the victim was fired from that pistol would serve no purpose since Winkler acknowledged to his attorneys while preparing for his criminal trial that the victim was shot by Grainger with the Jennings Bryco pistol. Therefore, his attorneys' failure to challenge Mr. Paavel's opinion

that the victim was shot with the Jennings Bryco pistol is not ineffective assistance of counsel and Winkler's request for post-conviction relief on this ground should be denied.

III. FAILURE TO IMPEACH OTHER STATE WITNESSES

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to impeach the State's witnesses with evidence that J[redacted] G[redacted] was not on the telephone with E[redacted] C[redacted]t at the time of the crime. However, in presenting his case for post-conviction relief, Winkler did not identify or present any evidence that his attorneys could have used to impeach the State's witnesses. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

The burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). Therefore, since Winkler failed to present any evidence that his attorneys could have used to impeach the State's witnesses, the State's motion for directed verdict on this ground for relief should be granted.

IV. FAILURE TO PRESENT EVIDENCE OF NEUROLOGICAL AND COGNITIVE IMPAIRMENTS AND/OR DYSFUNCTION

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to investigate and present evidence of Winkler's neurological and cognitive impairments and/or dysfunction. However, Winkler did not present any evidence that he suffered from neurological and cognitive impairments or dysfunction. Therefore, at the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As previously stated, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any evidence supporting his claim that he suffers from neurological and cognitive impairments and/or dysfunction, the State's motion for directed verdict on this ground for relief should be granted.

V. FAILURE TO PRESENT EVIDENCE OF MENTAL STATE

Next, Winkler alleges that he was denied effective assistance of counsel because his attorneys failed to present mitigating evidence regarding Winkler's change in demeanor and mental state before the crime and evidence that the victim harassed and taunted Winkler while he was on home arrest. However, the preponderance of the evidence indicates that the victim did not taunt Winkler while he was on home arrest and, thus, Winkler did not have any change in demeanor or mental state due to the victim's conduct. Winkler's attorneys did not have any mitigating evidence to present to show a change in demeanor or mental state and, thus, any failure to present evidence of a change in demeanor or mental state does not constitute ineffective assistance of counsel. Therefore, Winkler's claim for post-conviction relief on this claim should be denied.

VI. PHYSICAL HARM AND INTIMIDATION OF JUROR

Winkler also alleges that he is entitled to post-conviction relief due to the physical harm and intimidation of a juror. However, Winkler did not present any evidence of physical harm and intimidation of a juror. At the conclusion of Winkler's case in chief, the State moved for a directed verdict on Winkler's request for post-conviction relief on this ground.

As stated before, the burden is on the petitioner to prove the allegations in a post-conviction relief application. *Smith v. State, ibid.* Therefore, since Winkler failed to present any

evidence of physical harm and intimidation of a juror, the State's motion for directed verdict on this ground for relief should be granted.

VII. FAILURE TO CHARGE JURY

Lastly, Winkler alleges that he is entitled to post-conviction relief because his attorneys failed to object to the court's refusal to answer the jury's question regarding what would happen if the jury failed to reach a unanimous verdict on Winkler's sentence. Winkler further alleges that his attorneys were ineffective for failing to object to the court's improper jury instructions under unduly coercive circumstances. Further, Winkler alleges that the trial court's refusal to charge the jury on what would happen if they could not reach a unanimous verdict and/or the court's jury instructions given under unduly coercive circumstances entitles him to post-conviction relief.

Under Code of Laws of South Carolina 1976 §16-3-20, when aggravating circumstances are found to exist in a capital murder case tried before a jury, the jury decides whether the defendant should be sentenced to death or life in prison. A jury's decision to impose the death penalty must be unanimous. Code §16-3-20(C) states, in pertinent part, that "[i]f members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment...."

In the case at hand, more than 6 ½ hours into jury deliberations during the sentencing phase of the trial, the jury asked on two different occasions what would happen if they could not reach a unanimous verdict on Winkler's sentence. The judge refused to answer the question both times and Winkler's criminal trial attorneys never objected to the judge's refusal to answer the question.

Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

The burden is on the petitioner to prove the allegations in the PCR application. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); citing *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). To establish a claim of ineffective assistance of counsel, the PCR applicant must prove: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defendant's case. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624, (1989) - "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052.

To establish prejudice, the applicant is required "to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). Moreover, no prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Rosemond v. Catoe*, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009).

In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his conviction for murder is DENIED; it is further

ORDERED, that the application for post-conviction relief by the applicant, Louis Michael Winkler, Jr., for his sentence of death for murder is GRANTED; it is further

ORDERED, that Louis Michael Winkler, Jr.'s sentence of death is set aside and he is sentenced to life in prison without parole for his conviction for murder; it is further

ORDERED, that the sentence imposed hereunder shall run concurrently with the sentences imposed for the applicant's convictions for first degree burglary and assault and battery of a high and aggravated nature.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
Presiding Judge

August 15, 2012
Conway, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3907

Louis Michael Winkler, Jr.
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

HORRY COUNTY
12 AUG 15 PM 2:06
MELANIE HUGGINS-WARD
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$ N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

August 15, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola	Alphonzo Simon
John R. Mills	Brendon McDonald
	Anthony Mabry
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Brenda R. Babb**
Kay H. Richardson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	
	)	
Louis Michael Winkler, Jr., #6027,	)	C/A No. 2011-CP-11-3907
	)	
Applicant,	)	
v.	)	**RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCP (Capital Case)**
	)	
The State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Comes now Respondent, above-named, by and through the Office of the Attorney General, and hereby moves to alter or amend the Judgment issued by this Court on August 15, 2012. Respondent received written notice of the Order on Monday, August 20, 2012 from Judge Culbertson, and written notice of entry of the Order from the Horry County Clerk of Court on August 24, 2012. Respondent submits the judgment in this case should be amended to deny post-conviction relief, and Applicant's death sentence should be restored. In support of this Motion, Respondent asserts the following:

In the Order, this Court granted relief upon Ground 10(b)(3)(a), in which Applicant asserted that trial counsel was ineffective because counsel "failed to object when the trial court repeatedly refused to answer the jurors' question about what would happen if they could not reach a unanimous sentencing verdict." In granting relief, this Court stated as follows:

> Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will

> receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

Order at pg. 9. This Court further concluded:

> In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

Order at pg. 10.

This judgment should be altered and amended to deny relief and restore Applicant's death sentence. The current Order incorrectly finds that a jury must be advised what happens if the jury does not reach a unanimous verdict. The Order improperly finds trial counsel was deficient despite the fact that counsel's decision not to object was reasonable in light of the overwhelming case law that supports the trial court's decision to not respond to the jury's question. The Order relies upon an unsupportable assumption the trial judge would have given an instruction that explained sentencing becomes a matter of law if the jury deadlocked in its sentencing deliberations. The Order also fails to provide any basis for its finding that the outcome

in sentencing would have been different had such an instruction been granted (albeit improperly as set forth below). Respondent submits the remedy set forth by the Order is not appropriate. Finally, while this Order is correct in finding there was no merit to Applicant's freestanding claim that he was improperly denied his right to represent himself during the guilt phase of the trial, this Court should not have reached the merits of that issue because it was not a proper claim for review in post-conviction relief.

1. The Order is incorrect in asserting that, as a matter of law, a jury is entitled to know what happens if it does not reach a unanimous verdict under S.C. Code § 16-3-20. No such requirement exists under South Carolina law. As explained in State v. Adams,

> [t]he language of the statute[S.C. Code § 16-3-20(C)] provides that where a sentence of death is not recommended by the jury, a life sentence must be given. The situation implicitly envisioned here is that normally the jury will unanimously either recommend life or death. **The undecided jury is the exception. That portion of the statute addressing the legal effect given to the existence of an unalterably divided jury is addressed to the trial judge only and need not be divulged to the jury.**

Adams, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981)(emphasis added), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). In other words, S.C. Code § 16-3-20(C) prohibits a trial judge from explaining what occurs if the jury does not reach a unanimous verdict in sentencing. See State v. Copeland, 278 S.C. 572, 584-85, 300 S.E.2d 63, 70 (1982); State v. Spann, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983)(finding harmless error when judge instructed jury that any sentence for life imprisonment must be unanimous because jury need not be instructed of legal effect of unalterable divided jury).

This Court's assessment that the jury must be advised what happens in the event the jury deadlocks on sentencing is also contrary to longstanding United States Supreme Court precedent. "[T]he Eighth Amendment does not require that the jurors be instructed as to the consequences of their failure to agree." Jones v. United States, 527 U.S. 373, 381 (1999). As noted by the U.S. Supreme Court in Jones,

> We have never suggested, for example, that the Eighth Amendment requires a jury be instructed as to the consequences of a breakdown in the deliberative process. On the contrary, we have long been of the view that "[t]he very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves." Allen v. United States, 164 U.S. 492, 501, 17 S.Ct. 154, 41 L.Ed. 528 (1896). We further have recognized that in a capital sentencing proceeding, the Government has "a strong interest in having the jury express the conscience of the community on the ultimate question of life or death." Lowenfield v. Phelps, 484 U.S. 231, 238, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988) (citation and internal quotation marks omitted). We are of the view that a charge to the jury of the sort proposed by petitioner might well have the effect of undermining this strong governmental interest.[1]

Jones, 527 U.S. at 382 (footnote omitted).

2. This Court finds that the jury was entitled to an instruction that states, "the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict." This alternate instruction would create additional Eighth

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[1] In Jones, the jury instruction that was requested and denied was as follows:

> "In the event, after due deliberation and reflection, the jury is unable to agree on a unanimous decision as to the sentence to be imposed, you should so advise me and I will impose a sentence of life imprisonment without possibility of release...."In the event you are unable to agree on [a sentence of] Life Without Possibility of Release or Death, but you are unanimous that the sentence should not be less than Life Without Possibility of Release, you should report that vote to the Court and the Court will sentence the defendant to Life Without the Possibility of Release."

Jones, 527 U.S. at 379.

Amendment concerns in that it would **minimize** the jury's sense of responsibility for determining the appropriate sentence because it would remove any responsibility for the sentence. See generally Caldwell v. Mississippi, 472 U.S. 320, 105 S. Ct. 2633 (1985) ("[I[t is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere.").

3. In granting relief, this Court improperly assesses the reasonableness of trial counsel's decision not to object to how the trial judge handled responding to the jurors' questions. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." Strickland v. Washington, 466 U.S. 668, 689 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000). "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Counsel's actions, consistent with state law, cannot be deemed deficient. See generally Patterson v. State, 359 S.C. 115, 118, 597 S.E.2d 150, 151 (2004)(noting counsel's advice was not deficient when there was no statutory law or judicial precedent inconsistent with counsel's advice); see e.g. Harden v. State, 360 S.C. 405, 408, 602

S.E.2d 48, 49 (2004)(" An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction.").

At the evidentiary hearing, Ralph Wilson, Applicant's lead counsel at trial, explained he did not object to Judge Lockemy's decision not to respond to the jurors' question regarding the consequences of a split verdict on sentencing. Wilson was well aware the case law did not require the trial judge to answer the question posed by the jury. Respondent submits that counsel's decision not to object was clearly reasonable under prevailing professional norms since there was overwhelming case law supporting his position that an objection was not warranted because the trial judge was not required to answer the question. The case law underlying counsel's decision is set forth in section 1 and section 5, including Jones, Adams, Spann, Copeland, and State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990).

4. This Court's Order also improperly assesses Strickland prejudice in this case. In order to show Strickland prejudice, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

This Court's grant of relief is based upon two improper assumptions. First, this Court assumes the trial judge would have given an instruction "that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict," if such an instruction was requested. Nothing in the record supports this assumption or the authority for such an instruction, which minimizes the

jury's responsibility. To the contrary, Judge Lockemy indicated he had concerns about responding, noting that it appeared the jury was potentially asking a hypothetical question. Judge Lockemy was not inclined to respond to the question because it was unclear whether the jury was deadlocked. (R. 2921-22, 2925-26). In light of Judge Lockemy's concerns, and in light of the lack of reference to any authority that would have required Judge Lockemy to give the charge this Court proposes, Respondent submits it is highly unlikely the proposed charge would have been given if requested. As already noted, the proposed charge is inconsistent with state and federal law.

Second, this Court asserts that there was a reasonable probability that the result at sentencing would have been different had the jury's question been answered. However, this Order makes no specific findings of fact that support the conclusion. It is not clear why this Court finds the result at trial would have been different where the deadlock ended after the proper instruction was given by Judge Lockemy. Understanding that none of the jurors' testimony could be considered by this Court in making a finding the result at trial would be different, Respondent submits there is no factual basis underlying the finding of prejudice. State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995)("As a general rule, juror testimony may not be the basis for impeaching a jury verdict. Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."); see Rule 606(b), SCRE. [2]

[2] None of the jurors' testimony would have been admissible in addressing this claim because this claim is not about whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Rule 606(b), SCRE. Nor does this claim rely upon an allegation of internal misconduct. See Hunter, supra.

Furthermore, this Court's finding of prejudice does not account for the presumption that jurors follow the trial judge's instructions. State v. Dunlap, 346 S.C. 312, 550 S.E.2d 889 (Ct.App.2001), affirmed as modified on writ of cert., 353 S.C. 539, 579 S.E.2d 318 (2003) (quoting Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265 n .1, 335 S.C. 586, 518 S.E.2d 265, 267 n. 1 (1999))("A jury is presumed to [have followed the trial judge's] instructions."). An Allen charge would be warranted even if the jury was informed that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. Since an Allen charge instructs the jurors to reconsider their own positions, to consider the positions of other jurors, and to attempt to reach a consensus, Respondent submits a finding of Strickland prejudice is improper because there is no support for a finding the result at trial would have been different. Altogether, the Order's discussion regarding prejudice must be revised because there is no legal or factual basis for this Court's finding of prejudice.

5. This Order is incorrect to the extent it assumes the Allen charge did not correctly state the law in capital sentencing. This Order finds that a jury's verdict in capital sentencing does not have to be unanimous. This finding is contrary to South Carolina law. Otherwise, the South Carolina Supreme Court would have no reason to consistently find that an Allen charge is entirely appropriate in capital sentencing. See State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990)(finding trial judge properly required jury to continue deliberating after jury indicated it was hung in a capital resentencing trial); State v. Hughes, 336 S.C. 585, 597-98, 521 S.E.2d 500, 506-07 (1999)(finding modified Allen charge given during sentencing deliberations was even-handed and proper); Tucker v. Catoe, 346 S.C. 483, 490-91, 552 S.E.2d 712, 716

(2001)("Neither the Due Process clause nor the Eighth Amendment forbid the giving of an Allen charge in the sentencing phase of a capital proceeding."); State v. Williams, 386 S.C. 503, 512, 690 S.E.2d 62, 66-67 (2010)(finding use of Allen charge in sentencing appropriate); see generally Gill v. State, 346 S.C. 209, 219, 552 S.E.2d 26, 32 (2001)(noting that life sentence imposed in capital case after jury deadlock does not preclude the State from seeking death in a retrial if case reversed on appeal; jury deadlock does not imply finding that State did not prove its sentencing case beyond a reasonable doubt)("In the event of a jury deadlock, the trial judge exercises no discretion and merely imposes the sentence mandated by section 16-3-20(C).").

6. Respondent submits that the remedy set forth in the PCR Court's Order is improper. If this Court is to grant relief, Respondent submits the appropriate remedy would be to vacate the sentence and remand the case back to the Court of General Sessions for a new sentencing proceeding. See Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001)(habeas relief granted and case remanded for sentencing in light of faulty Allen charge).

7. While the Respondent agrees with this Court there was no merit to Applicant's freestanding claim that he should have been allowed to represent himself during the guilt phase, Respondent asserts the claim should not have been addressed on the merits because it is not a claim that can be properly raised in post-conviction relief. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517, 519 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

CONCLUSION

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court grant its Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, deny Applicant's Application for Post-Conviction Relief in full, and restore Applicant's death sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

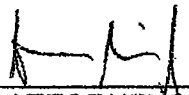
DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

BRENDAN J. McDONALD
Assistant Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: 

ATTORNEYS FOR RESPONDENT

August 28, 2012.

CERTIFICATE OF SERVICE

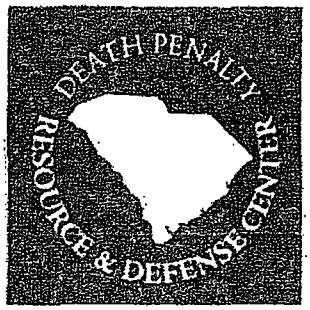
I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the **Respondent's Motion To Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP** via U.S. mail, first class, postage pre-paid, addressed to:

Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

This 28th day of August, 2012.

ALPHONSO SIMON, JR.



September 6, 2012

Melanie Huggins-Ward
Horry County Clerk of Court
1301 Second Avenue
Conway, SC 29526

RE: *Louis Michael Winkler v. The State of South Carolina*
11-CP-26-03907

Dear Ms. Huggins-Ward:

Please find enclosed for filing, along with certificate of service, the original and one copy of the Applicant's Return to Respondent's Motion to Alter or Amend Judgment in the above captioned case. Please clock in and return the copy to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact me. Thank you in advance for your cooperation on this matter.

Sincerely,

Jill A. Rider

Jill A. Rider
Paralegal

Enclosure

cc: Honorable Judge Benjamin H. Culbertson
Alphonso Simon, Jr. , Esq.
John Mills, Esq.

STATE OF SOUTH CAROLINA COUNTY OF HORRY Louis Michael Winkler Jr. Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS Case No. 2011-CP 26-03907 **RETURN TO RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT**

Applicant, Louis Michael Winkler Jr., files this Return to the arguments raised in Respondent's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRP ("Motion"). Because Respondent's Motion is untimely, this Court lacks jurisdiction to alter or amend the judgment. *See, e.g., Ackerman v. 3-V Chemical*, 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002) (untimely service of a Rule 59, SCRCP, motion rendered "the trial judge without jurisdiction to act upon it."). Moreover, the Motion misconstrues the Court's order, ignores important facts about trial counsel's strategy, and, therefore, relies on argument and precedents irrelevant to the questions addressed by the Court.

PROCEDURAL HISTORY

On August 15, 2012, this Court entered an order granting Applicant post-conviction relief. On the same day, both parties received notice of the order and a copy of the order via e-mail. On Monday, August 20, both parties received a paper copy of the same order. Respondent claims to have signed its Motion on August 28, 2012. However, Respondent did not mail the Motion to counsel for Applicant until August 31, 2012. *See Exhibit 1* (envelopes and motion received by both counsel for Applicant post-marked August 31, 2012).

ARGUMENT

A. BECAUSE RESPONDENT FAILED TO TIMELY SERVE THE MOTION, THIS COURT LACKS JURISDICTION TO ACT UPON IT.

A motion to alter or amend the judgment must be "served not later than 10 days after receipt of written notice of entry of the order." S.C. R. Civ. Proc. 59(e) (West 2012). If neither party serves a motion within the ten-day period, the trial court loses jurisdiction to alter or amend its judgment. *See, e.g., Ackerman v. 3-V Chemical, Inc.*, 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002); *Ness v. Eckerd, Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002); *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999). A motion made pursuant to this rule is considered served when mailed. *See Curtis v. Blake*, 381 S.C. 189, 191-92, 672 S.E.2d 576, 577-78 (2009) (holding motions for new trial under Rule 59 are "made" when mailed). The date of service is when the date upon which the motion is deposited with the Untied States Postal Service, not, for example, the date a party deposits the Motion with a third party for mailing. *See Southbridge Properties, Inc. v. Jones,* 292 S.C. 198, 198, 355 S.E.3d 535,535 (1987).

Here, Respondent failed to timely serve its Motion, and the Motion should be dismissed because this Court no longer has jurisdiction to alter or amend the judgment. Respondent had until August 30, 2012, to file any Motion to Alter or Amend the Judgment. *See* S.C. R. Civ. Proc. 59(e) (ten days from the date of receipt of written notice). Although Respondent's Certificate of Service states that the Motion was mailed to Applicant on August 28, 2012, the envelope it arrived in is postmarked August 31.[1] Thus, the order was not actually served until

[1] Respondent appears to make a habit of this practice. In *Mercer v. South Carolina*, 2009-CP-32-5465, Respondent's Petition for Writ of Certiorari was due to be filed and served on January

August 31—the day it was mailed—, which is after the deadline[2] for serving the Motion. *See Curtis*, 381 S.C. at 191-92, 672 S.E.2d at 577-78.

Because Respondent failed to file its Motion within the prescribed time period, this Court lacks jurisdiction to alter or amend the judgment and should dismiss the motion. *See Ness*, 350 S.C. at 402, 566 S.E.2d at 195; *Ackerman*, 349 S.C. at 215, 562 S.E.2d at 615.

B. RESPONDENT'S MOTION MISCONSTRUES THE COURT'S ORDER, IGNORES IMPORTANT FACTS ABOUT TRIAL COUNSEL'S STRATEGY, AND, THEREFORE RELIES ON PRECEDENT IRRELEVANT TO THE QUESTION ADDRESSED BY THE COURT.

Even if this Court had jurisdiction to alter or amend its order, Respondent's arguments still fail. First, Respondent has disregarded the context for the Court's order and, therefore, misconstrued the basis for granting relief. The Court was addressing whether trial counsel was prejudicially ineffective for failing to ask the trial judge to answer the jurors' twice repeated question: what would happen if they could not reach a unanimous decision. *See* Order at 8 ("The judge refused to answer the question both times and Winkler's criminal trial attorney's never objected to the judge's refusal to answer."). It is in this context that this Court held that the jury was entitled to know that the "defendant's sentence becomes a matter of law to be imposed by the court, if they cannot reach a unanimous verdict." *Id.* Not only did trial counsel neglect to ensure the jury was informed of the truth—that the trial court would impose judgment—they failed to object to the affirmatively misleading instruction informing them that the jury *must*

3, 2012. Undersigned counsel did not receive service, however, until January 10, 2012, when the brief arrived with a certificate of service dated January 3rd, but contained in an envelope post-marked January 9, 2012. *See Exhibit 2*, Letter to the South Carolina Supreme Court.

[2] Missed deadlines have had serious consequences for death-sentenced inmates. *See, e.g., Maples v. Thomas*, __ U.S. __, 132 S. Ct. 912 (2012) (reversing lower court decision dismissing petition for habeas corpus because capital habeas petitioner missed deadline when his attorneys had abandoned his case); *Judge Sued in Death Penalty*, CBS News May 7, 2009 available at http://www.cbsnews.com/2100-201_162-3471610.html (discussing how Michael Richard was executed because his lawyers missed a filing deadline by less than one hour).

reach a unanimous verdict. *Id.* It is in this context that this Court ruled that trial counsel's failure to object was prejudicially ineffective.

Because the cases Respondent relies on address a difference context, the initial jury charge, those precedents are inapposite. Specifically, those cases address whether a defendant is entitled, as an initial matter, to an instruction that should the jury fail to reach a unanimous verdict, a life sentence should be imposed. *See State v. Adams*, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981) ("The appellant argues the trial judge erred by failing to instruct the jury *initially* that if they failed to agree to the verdict, then the court would be required to sentence the him *to life imprisonment.*" (emphasis added)); *State v. Copeland*, 278 S.C. 572, 584, 300 S.E.2d 70-71 (1982) (same); *State v. Spann*, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983) (same); *see also Jones v. United States*, 527 U.S. 373, 381 (1999) (same). Thus, the cases are different from the situation here in two respects: the instruction is required in response to the jury's questions, not as an initial matter; and the required instruction informs the jury that the Applicant would be sentenced and does not specify the sentence imposed. Moreover, as the Court noted, jurors are entitled to accurate information about the law. *See Romano v. Oklahoma*, 512 U.S. 1, 9 (1994) (a jury cannot be "affirmatively misled regarding its sentencing process."). And the law is clear that where a jury is unable to reach a unanimous verdict in a capital case, the sentence becomes a matter of law for the trial court to decide. S.C. Code § 16-2-20(C) (West 2012) ("[i]f members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment."). Failing to answer the jurors' question---and affirmatively misleading them instead---caused the jury to reach a

compromise verdict of death where they would have otherwise hung and Applicant would have received a sentence of life.

Finally, Respondent's Motion fails to address key aspects of trial counsel's testimony. Trial counsel testified that his goal in the penalty phase was to obtain a life verdict. He testified that if he had objected when the jury sent out the first note, then the trial judge would have imposed a life sentence when the second, and certainly the third, note was sent out. Thus, trial counsel had no reasonable strategic reason for failing to request that the trial court answer the jurors' questions. *See Wiggins v. Smith*, 539 U.S. 510, (2003); *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984).

Respondent also fails to address trial counsel's testimony about the situation presented here: whether to accurately respond to the jurors' inquiry as to what would happen if they failed to reach a unanimous verdict. As Respondent, notes, trial counsel was aware of the case law prohibiting an instruction during the initial charge explaining that should the jury not reach a unanimous verdict, a life sentence would be imposed. However, trial counsel also admitted that if he was wrong about that prohibition applying to answering jurors' repeated questions, he would have no strategic reason for failing to request a jury instruction such as the one this Court found was appropriate. *See Wiggins*, 539 U.S. at 527 (declining to find counsel's decision reasonable because it was uninformed).

Therefore, the Court did not err in finding trial counsel prejudicially ineffective for failing to object to the misleading instruction and for failing to request that the jury receive accurate information responsive to their questions. The Court also did not err in imposing the life sentence that Applicant would have received but for trial counsel's deficient performance: a life sentence.

CONCLUSION

The Court's decision is supported by law and by the evidence presented at the hearing. Because the Respondent's Motion is untimely and unsupported by the law, the Court should dismiss or deny Respondent's Motion.

Respectfully submitted,

Emily C. Paavola

COUNSEL FOR MR. WINKLER

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Death Penalty Resource & Defense Center
900 Elmwood Avenue
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Columbia, SC 29201
(803) 765-1044

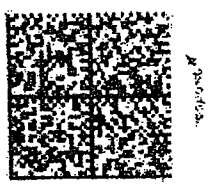
JOHN R. MILLS
Attorney at Law
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September 6, 2012

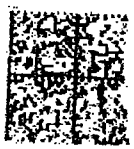
Exhibit 1



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COLUMBIA, SOUTH CAROLINA [illegible]



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05/31/2012
Mailed From 29201
US POSTAGE



John R. Mills, Esq.
201 West Main St., Ste. #301
Durham, NC 27701

POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

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08/31/2012
Mailed From 29201
US POSTAGE

Emily C. Paavola, Esquire
Death Penalty and Defense Center
900 Elmwood Ave., Suite #101
Columbia, SC 29201

ALAN WILSON
ATTORNEY GENERAL

August 28, 2012

The Honorable Melanie Huggins-Ward
Clerk of Court
PO Box 677
Conway, SC 29528-0677

RE: *Louis Michael Winkler, Jr., #6027 vs. The State of South Carolina*
C/A No. 2011-CP-11-3907

Dear Ms. Huggins-Ward:

Enclosed please find an original and one (1) copy of Respondent's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, and Certificate of Service regarding the above matter.

Kindly please file same in your office and return a copy marked accordingly to the undersigned in the self-addressed stamped envelope provided.

Thank you for your kind attention to this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd
Enclosures
cc: The Honorable Benjamin H. Culbertson (w/copy of encls.)
Emily Paavola, Esq. (w/copy of encls.)
John Mills, Esq. (w/copy of encls.)
The Honorable J. Gregory Hembree (w/copy of encls.)
Sandi Wofford, Victims Services (w/copy of encls.)

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF HORRY)	
)	
Louis Michael Winkler, Jr., #6027,)	C/A No. 2011-CP-11-3907
)	
Applicant,)	
v.)	**RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCP (Capital Case)**
)	
The State of South Carolina,)	
)	
Respondent.)	
)	

Comes now Respondent, above-named, by and through the Office of the Attorney General, and hereby moves to alter or amend the Judgment issued by this Court on August 15, 2012. Respondent received written notice of the Order on Monday, August 20, 2012 from Judge Culbertson, and written notice of entry of the Order from the Horry County Clerk of Court on August 24, 2012. Respondent submits the judgment in this case should be amended to deny post-conviction relief, and Applicant's death sentence should be restored. In support of this Motion, Respondent asserts the following:

In the Order, this Court granted relief upon Ground 10(b)(3)(a), in which Applicant asserted that trial counsel was ineffective because counsel "failed to object when the trial court repeatedly refused to answer the jurors' question about what would happen if they could not reach a unanimous sentencing verdict." In granting relief, this Court stated as follows:

> Although sentencing in non-capital cases is a matter of law to be decided by the court, sentencing in capital murder cases is made by the jury and, therefore, the jury is entitled to know the law on sentencing. Even if the jury is not entitled to an instruction that the defendant will

> receive a life sentence if they cannot reach a unanimous verdict of death, the jury is entitled to an instruction that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. During the Allen charge by the judge in this case, the jury was informed that their verdict must be unanimous. However, Code §16-3-20 does not require the jury to reach a unanimous verdict. It only requires a unanimous jury verdict if the death penalty is to be imposed.

Order at pg. 9. This Court further concluded:

> In the case at hand, Winkler's criminal defense attorneys' performance not only fell below an objective standard of reasonableness when they failed to object to the trial judge's refusal to answer the jury's question on what would happen if the jury could not reach a unanimous verdict on Winkler's sentence, that deficient performance prejudiced the sentencing phase of Winkler's case. Had the jury's question been answered by the judge, a reasonable probability exists that the jury would not have reached a unanimous verdict and the court would have imposed a sentence of life in prison. Therefore, the results of the proceedings would have been different. Although overwhelming evidence of Winkler's guilt exists in the case at hand, the ineffective assistance of counsel did not occur during the guilt or innocence phase of the trial. It occurred during the sentencing phase of the trial. Therefore, Winkler is entitled to post-conviction relief as to the sentence imposed in this case.

Order at pg. 10.

This judgment should be altered and amended to deny relief and restore Applicant's death sentence. The current Order incorrectly finds that a jury must be advised what happens if the jury does not reach a unanimous verdict. The Order improperly finds trial counsel was deficient despite the fact that counsel's decision not to object was reasonable in light of the overwhelming case law that supports the trial court's decision to not respond to the jury's question. The Order relies upon an unsupportable assumption the trial judge would have given an instruction that explained sentencing becomes a matter of law if the jury deadlocked in its sentencing deliberations. The Order also fails to provide any basis for its finding that the outcome

in sentencing would have been different had such an instruction been granted (albeit improperly as set forth below). Respondent submits the remedy set forth by the Order is not appropriate. Finally, while this Order is correct in finding there was no merit to Applicant's freestanding claim that he was improperly denied his right to represent himself during the guilt phase of the trial, this Court should not have reached the merits of that issue because it was not a proper claim for review in post-conviction relief.

1. The Order is incorrect in asserting that, as a matter of law, a jury is entitled to know what happens if it does not reach a unanimous verdict under S.C. Code § 16-3-20. No such requirement exists under South Carolina law. As explained in State v. Adams,

> [t]he language of the statute[S.C. Code § 16-3-20(C)] provides that where a sentence of death is not recommended by the jury, a life sentence must be given. The situation implicitly envisioned here is that normally the jury will unanimously either recommend life or death. **The undecided jury is the exception. That portion of the statute addressing the legal effect given to the existence of an unalterably divided jury is addressed to the trial judge only and need not be divulged to the jury.**

Adams, 277 S.C. 115, 124, 283 S.E.2d 582, 587 (1981)(emphasis added), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). In other words, S.C. Code § 16-3-20(C) prohibits a trial judge from explaining what occurs if the jury does not reach a unanimous verdict in sentencing. See State v. Copeland, 278 S.C. 572, 584-85, 300 S.E.2d 63, 70 (1982); State v. Spann, 279 S.C. 399, 404, 308 S.E.2d 518, 521 (1983)(finding harmless error when judge instructed jury that any sentence for life imprisonment must be unanimous because jury need not be instructed of legal effect of unalterable divided jury).

This Court's assessment that the jury must be advised what happens in the event the jury deadlocks on sentencing is also contrary to longstanding United States Supreme Court precedent. "[T]he Eighth Amendment does not require that the jurors be instructed as to the consequences of their failure to agree." Jones v. United States, 527 U.S. 373, 381 (1999). As noted by the U.S. Supreme Court in Jones,

> We have never suggested, for example, that the Eighth Amendment requires a jury be instructed as to the consequences of a breakdown in the deliberative process. On the contrary, we have long been of the view that "[t]he very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves." Allen v. United States, 164 U.S. 492, 501, 17 S.Ct. 154, 41 L.Ed. 528 (1896). We further have recognized that in a capital sentencing proceeding, the Government has "a strong interest in having the jury express the conscience of the community on the ultimate question of life or death." Lowenfield v. Phelps, 484 U.S. 231, 238, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988) (citation and internal quotation marks omitted). We are of the view that a charge to the jury of the sort proposed by petitioner might well have the effect of undermining this strong governmental interest.[1]

Jones, 527 U.S. at 382 (footnote omitted).

2. This Court finds that the jury was entitled to an instruction that states, "the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict." This alternate instruction would create additional Eighth

[1] In Jones, the jury instruction that was requested and denied was as follows:

> "In the event, after due deliberation and reflection, the jury is unable to agree on a unanimous decision as to the sentence to be imposed, you should so advise me and I will impose a sentence of life imprisonment without possibility of release...."In the event you are unable to agree on [a sentence of] Life Without Possibility of Release or Death, but you are unanimous that the sentence should not be less than Life Without Possibility of Release, you should report that vote to the Court and the Court will sentence the defendant to Life Without the Possibility of Release."

Jones, 527 U.S. at 379.

Amendment concerns in that it would **minimize** the jury's sense of responsibility for determining the appropriate sentence because it would remove any responsibility for the sentence. See generally Caldwell v. Mississippi, 472 U.S. 320, 105 S. Ct. 2633 (1985) ("[I[t is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere.").

3. In granting relief, this Court improperly assesses the reasonableness of trial counsel's decision not to object to how the trial judge handled responding to the jurors' questions. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." Strickland v. Washington, 466 U.S. 668, 689 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000). "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Counsel's actions, consistent with state law, cannot be deemed deficient. See generally Patterson v. State, 359 S.C. 115, 118, 597 S.E.2d 150, 151 (2004)(noting counsel's advice was not deficient when there was no statutory law or judicial precedent inconsistent with counsel's advice); see e.g. Harden v. State, 360 S.C. 405, 408, 602

S.E.2d 48, 49 (2004)(" An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction.").

At the evidentiary hearing, Ralph Wilson, Applicant's lead counsel at trial, explained he did not object to Judge Lockemy's decision not to respond to the jurors' question regarding the consequences of a split verdict on sentencing. Wilson was well aware the case law did not require the trial judge to answer the question posed by the jury. Respondent submits that counsel's decision not to object was clearly reasonable under prevailing professional norms since there was overwhelming case law supporting his position that an objection was not warranted because the trial judge was not required to answer the question. The case law underlying counsel's decision is set forth in section 1 and section 5, including Jones, Adams, Spann, Copeland, and State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990).

4. This Court's Order also improperly assesses Strickland prejudice in this case. In order to show Strickland prejudice, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

This Court's grant of relief is based upon two improper assumptions. First, this Court assumes the trial judge would have given an instruction "that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict," if such an instruction was requested. Nothing in the record supports this assumption or the authority for such an instruction, which minimizes the

jury's responsibility. To the contrary, Judge Lockemy indicated he had concerns about responding, noting that it appeared the jury was potentially asking a hypothetical question. Judge Lockemy was not inclined to respond to the question because it was unclear whether the jury was deadlocked. (R. 2921-22, 2925-26). In light of Judge Lockemy's concerns, and in light of the lack of reference to any authority that would have required Judge Lockemy to give the charge this Court proposes, Respondent submits it is highly unlikely the proposed charge would have been given if requested. As already noted, the proposed charge is inconsistent with state and federal law.

Second, this Court asserts that there was a reasonable probability that the result at sentencing would have been different had the jury's question been answered. However, this Order makes no specific findings of fact that support the conclusion. It is not clear why this Court finds the result at trial would have been different where the deadlock ended after the proper instruction was given by Judge Lockemy. Understanding that none of the jurors' testimony could be considered by this Court in making a finding the result at trial would be different, Respondent submits there is no factual basis underlying the finding of prejudice. State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995)("As a general rule, juror testimony may not be the basis for impeaching a jury verdict. Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."); see Rule 606(b), SCRE. [2]

[2] None of the jurors' testimony would have been admissible in addressing this claim because this claim is not about whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Rule 606(b), SCRE. Nor does this claim rely upon an allegation of internal misconduct. See Hunter, supra.

Furthermore, this Court's finding of prejudice does not account for the presumption that jurors follow the trial judge's instructions. State v. Dunlap, 346 S.C. 312, 550 S.E.2d 889 (Ct.App.2001), affirmed as modified on writ of cert., 353 S.C. 539, 579 S.E.2d 318 (2003) (quoting Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265 n .1, 335 S.C. 586, 518 S.E.2d 265, 267 n. 1 (1999))("A jury is presumed to [have followed the trial judge's] instructions."). An Allen charge would be warranted even if the jury was informed that the defendant's sentence becomes a matter of law to be imposed by the court if they cannot reach a unanimous verdict. Since an Allen charge instructs the jurors to reconsider their own positions, to consider the positions of other jurors, and to attempt to reach a consensus, Respondent submits a finding of Strickland prejudice is improper because there is no support for a finding the result at trial would have been different. Altogether, the Order's discussion regarding prejudice must be revised because there is no legal or factual basis for this Court's finding of prejudice.

5. This Order is incorrect to the extent it assumes the Allen charge did not correctly state the law in capital sentencing. This Order finds that a jury's verdict in capital sentencing does not have to be unanimous. This finding is contrary to South Carolina law. Otherwise, the South Carolina Supreme Court would have no reason to consistently find that an Allen charge is entirely appropriate in capital sentencing. See State v. Atkins, 303 S.C. 214, 220, 399 S.E.2d 760, 763 (1990)(finding trial judge properly required jury to continue deliberating after jury indicated it was hung in a capital resentencing trial); State v. Hughes, 336 S.C. 585, 597-98, 521 S.E.2d 500, 506-07 (1999)(finding modified Allen charge given during sentencing deliberations was even-handed and proper); Tucker v. Catoe, 346 S.C. 483, 490-91, 552 S.E.2d 712, 716

(2001)("Neither the Due Process clause nor the Eighth Amendment forbid the giving of an Allen charge in the sentencing phase of a capital proceeding."); State v. Williams, 386 S.C. 503, 512, 690 S.E.2d 62, 66-67 (2010)(finding use of Allen charge in sentencing appropriate); see generally Gill v. State, 346 S.C. 209, 219, 552 S.E.2d 26, 32 (2001)(noting that life sentence imposed in capital case after jury deadlock does not preclude the State from seeking death in a retrial if case reversed on appeal; jury deadlock does not imply finding that State did not prove its sentencing case beyond a reasonable doubt)("In the event of a jury deadlock, the trial judge exercises no discretion and merely imposes the sentence mandated by section 16-3-20(C).").

6. Respondent submits that the remedy set forth in the PCR Court's Order is improper. If this Court is to grant relief, Respondent submits the appropriate remedy would be to vacate the sentence and remand the case back to the Court of General Sessions for a new sentencing proceeding. See Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001)(habeas relief granted and case remanded for sentencing in light of faulty Allen charge).

7. While the Respondent agrees with this Court there was no merit to Applicant's freestanding claim that he should have been allowed to represent himself during the guilt phase, Respondent asserts the claim should not have been addressed on the merits because it is not a claim that can be properly raised in post-conviction relief. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517, 519 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

CONCLUSION

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court grant its Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, deny Applicant's Application for Post-Conviction Relief in full, and restore Applicant's death sentence.

Respectfully submitted,

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August 28, 2012.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the **Respondent's Motion To Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP** via U.S. mail, first class, postage pre-paid, addressed to:

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This 28th day of August, 2012.

ALPHONSO SIMON, JR.