STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
AUG 19 2014
S.C. Supreme Court

Appeal from York County

G. Edward Welmaker, Circuit Court Judge

DYTAVIS HINTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002625

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT (dated July 12, 2011) 1

APPLICATION FOR POST-CONVICTION RELIEF 43

RETURN 50

AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF 56

SECOND AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF 59

POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated August 15, 2013) 61

PETITIONER'S EXHIBIT# 1 (PACKET OF PHOTOS) 172

PETITIONER'S EXHIBIT# 2 (PACKET OF PHOTOS) 178

PETITIONER'S EXHIBIT# 3 (INVESTIGATIVE FILE) 218

PETITIONER'S EXHIBIT# 4 (STATEMENT OF PETITIONER) 258

PETITIONER'S EXHIBIT# 5 (STATEMENT OF PETITIONER) 261

PETITIONER'S EXHIBIT# 6 (ARREST WARRANT) 262

PETITIONER'S EXHIBIT# 7 (MEMORANDUM OF LAW) 263

ORDER OF DISMISSAL 267

MOTION FOR REHEARING 285

ORDER DENYING MOTION FOR REHEARING 290

CLERK OF COURT RECORDS 292

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT
2011-GS-46-1907, 1908,
1909, 1910

State of South Carolina)
)
vs.)
)
Dytavis Laquan Hinton)
)
)

Transcript of Record

July 12, 2011
York, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER

A P P E A R A N C E S:

Willy Thompson, Deputy Solicitor
York, South Carolina

Attorney for the Plaintiff

Harry Dest, Chief Public Defender
York, South Carolina

Attorney for the Defendant

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS

(No testimony taken)

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
S-1	Photo	4	
S-2	Photo	4	
S-3	Photo	4	
S-4	Photo	4	
S-5	Photo	4	
S-6	Photo	4	
S-7	Photo	4	
S-8	Victim Impact Statement	40	

(Documents marked as State's Exhibits 1 through 7.)

The Court - All right, Solicitor.

Mr. Thompson - Your Honor, this is State of South Carolina versus Dytavis Hinton, Indictments 2011-GS-46-01907, wherein he's pleading guilty to attempted murder, 2011-GS-46-019108 (sic) wherein he's pleading guilty to burglary first degree, 2011-GS-46-01909 for attempted armed robbery. He's pleading guilty as charged, 2011-GS-46-01910 for conspiracy to which he's also pleading guilty as charged. He's waiving presentment to the Grand Jury on each of these Indictments. Your Honor, there is a recommendation of the State in this case. As part of this plead we will be dismissing two charges. We're dismissing the charge of murder which is Warrant K617623 and possession of a firearm during the commission of a violent crime on K617711. As well, we are recommending a cap which ultimately will be a total of twenty-five years but it is structured a little different. It is a cap --- is a twenty years on the no parole offenses of attempted murder, burglary first and attempted armed robbery, a cap of twenty years is the active time on those, and then the conspiracy can be run consecutive or concurrent at the Court's discretion, but it would ultimately put him at a cap of twenty-five total.

5

The Court - All right. Mr. Dest, do you represent Mr. Hinton?

Mr. Dest - I do, Your Honor.

The Court - Dytavis ---

Mr. Dest - Yes, sir.

The Court - --- Hinton. Have you advised your client of his right to have these charges presented to the Grand Jury of York County?

Mr. Dest - I have, Your Honor.

The Court - Mr. Hinton, I need to advise you on the record, sir, you have a constitutional right to have these four charges presented to the Grand Jury of York County. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - You can waive that right and proceed here today or I'll send the charges to the Grand Jury. Which do you prefer?

Mr. Hinton - Waive it.

The Court - All right. You're charged in four indictments, sir, first with attempted armed robbery, a charge which carries a penalty of up to twenty years in jail. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - You're also charged with attempted murder, a charge which carries a penalty up to thirty

6

years in jail. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - You're also charged with burglary in the first degree, a charge which carries a penalty of a minimum of fifteen years in jail, up to life imprisonment. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - You're also charged with criminal conspiracy, a charge which carries a penalty of up to five years in jail. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - Do you understand --- Has your lawyer explained to you that some of these are what's known as no parole offenses, which means that you would serve eighty-five percent of the sentence if I --- of whatever sentence I give to you. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - He's talked to you about that.

Mr. Hinton - Yes, sir.

The Court - All right, understanding the charges you face and the punishment you could receive, how do you wish to plead, guilty or not guilty?

Mr. Hinton - Guilty.

The Court - Guilty to all charges?

Mr. Hinton - Yes, sir.

7

The Court - Do you understand by pleading guilty you're giving up your right to remain silent?

Mr. Hinton - Yes, sir.

The Court - Do you understand by pleading guilty you're giving up your right to a trial by a Jury?

Mr. Hinton - Yes, sir.

The Court - If you requested or demanded a trial by a Jury the State would give you a trial. Do you understand that?

Mr. Hinton - Yes, sir.

The Court - At that trial you'd have the right to confront and cross examine all witnesses against you. You'd have the right to present any witnesses and/or evidence in your own defense; You'd have a right to testify in your own defense if you wished to do so. No one could make you testify at your own trial. If you decided to go to trial and not testify, the Judge would tell the Jury they could not hold your failure to testify against you. In fact, the Jury could not even consider your failure to testify in their deliberations on your guilt or innocence; You;d be presumed innocent throughout your trial. The State would have to prove you guilty beyond a reasonable doubt to a Jury of twelve people; All twelve people would have to unanimously agree that you were guilty in order for you to be convicted. Even if you

8

were convicted, you'd still have the right to appeal that conviction. Do you understand your rights with regard to a trial by a Jury?

Mr. Hinton - Yes, sir.

The Court - Understanding those rights, do you still want to plead guilty?

Mr. Hinton - Yes, sir.

The Court - Has anyone promised you anything, held out any hope of reward or threatened you in any manner to make you plead guilty?

Mr. Hinton - No, sir.

The Court - Are you satisfied with the manner n which your attorney has advised and represented you in this case?

Mr. Hinton - Yes, sir.

The Court - You and your attorney fully discussed these charges against you.

Mr. Hinton - Yes, sir.

The Court - Has your attorney told you the witnesses and evidence the State has available to present at trial to prove that you're guilty?

Mr. Hinton - Yes, sir.

The Court - Has he done everything you asked him to do in preparation for this plea?

Mr. Hinton - Yes, sir.

9

The Court - You satisfied with his advice?

Mr. Hinton - Yes, sir.

The Court - Is there anything else you need to talk to him about before we complete this plea?

Mr. Hinton - No, sir.

The Court - All right. Are you under the influence of any alcoholic beverages, drugs or prescription medications at this time?

Mr. Hinton - No, sir.

The Court - Are you aware of any mental condition that would keep you from understanding what you're doing here today?

Mr. Hinton - No, sir.

The Court - Are you pleading guilty today of your own free will and accord?

Mr. Hinton - Yes, sir.

The Court - Mr. Dest, do you feel this plea is in the best interest of your client?

Mr. Dest - Yes, sir.

The Court - All right, Solicitor, give me the factual basis for the plea.

Mr. Thompson - Yes, Your Honor, if it please the Court. This occurred on September 21st of 2010 in the City of Rock Hill here in York County. About one o'clock that morning --- This incident was located at The Money in

10

downtown Rock Hill --- The Money is a local bar and club --- The Defendant, along with another Co-Defendant, Demorrio Burris, was with a group of folks and they actually had gone to McDonalds that night initially and at The Money, the band Parmalee was playing who ended up being the victims in this particular case. The band's composed of Matthew Thomas, Scott Thomas, Barry Knox and Josh McSwain. They had just finished their gig at The Money. They travelled from Greenville, North Carolina. They're --- When they travel, they travel in a large RV where they would end up spending the night in order to make the various gigs that they go to. This particular night they had their RV with them. They intended on spending the night in the RV that night in the parking lot of The Money. The parking lot is a large parking lot; It's gravel. The band had finished. Two of the members had gone back, Matthew and Scott both went back and they're brothers, they went back into the RV. The sound guy from The Money, a guy named Michael Walch, he also went with them and they were packing a few things up and just settling down after their --- after their gig in the RV. The other band members were still in The Money. The Defendant had purchased a gun just fifty-some days prior to this, legally. He was allowed to purchase the gun at the time. The pistol he had he had brought with him that

11

night, and apparently --- According to his statement he ultimately gave --- put it in the vehicle that they were travelling in, although that was not his vehicle. The two Defendants left the group that had being going back and forth from McDonalds to The Money and were waiting on some food to be made for them at McDonalds. When they left then, they went to the RV out back. The two Defendants, ultimately Mr. Burris and this Defendant, Mr. Hinton, put bandannas across their faces, covering their nose and their mouth, also had on baseball caps to help hide their identity. They went back to the RV together. Mr. Burris had the gun at that point in time. They knocked on the door. The band members thought it was the other band members wanting to get in, because they had locked the door. When they opened the door, the two Defendants rushed in at that point. Mr. Burris put the gun to the head of Matthew Thomas and demanded his money at that point in time. There's basically two or three steps going up into the RV. Going up those steps had the gun at Mr. Thomas's head. His brother Scott was actually in one of the back rooms of the RV at that point. Michael was also out in the area that he could see what was happening at that point. As they demanded money off of them Mr. Burris fired his gun into the ground or into the floor of the RV ---

12

The Court - All right, this Defendant's gun.

Mr. Thompson - This Defendant's gun. Right. It was not this Defendant, but Mr. Burris did it, fired into the floor demanding, you know, to I guess enforce his demands that he wanted more money --- that he wanted the money now and he was serious. They attempted to give them their wallets, but at that point that's when Scott came out of the back and he had armed himself with his own pistol that he had a concealed weapon's permit to carry. He came out with the pistol, ultimately shooting ensued. Mr. Burris was shot a number of times and killed and died in the stairwell of the --- as he fell into the stairwell of the RV. This Defendant, Mr. Hinton, was also shot twice in the abdomen and in the side. He ended up trying to run out of the RV at that point, made it out in the parking lot where he dropped, his bandanna lying under him at the time. I would present to the Court State's Exhibits 1 through 7 which I've showed to the defense and are photographs that were handed over in discovery, and I think they're fairly self-explanatory showing the RV and the positioning of where it was in the parking lot. The actual door to it that they went --- You actually had to go around to the side where there was kind of a culvert, so it wouldn't be a side people would normally be walking on. They would be walking on the other side where the

13

driver's side of the RV was. You could see in the doorstep where Mr. Burris was found when the officers arrived and the pistol that was fired by him that was in there as well. He got off several rounds as well shooting at Scott Thomas and shot Scott three times, once in the chest, once in the abdomen and once in the buttocks. It caused serious damage to Scott who also almost died at the scene. He was airlifted to Carolina's Medical Center and has had numerous surgeries and other physical therapy and things of that nature to try and get him back together. He's in the Courtroom today and has come a long way but still has quite a way to go. When it initially happened, calls went out immediately then the to police. There were policemen actually very close nearby. One was actually working security at McDonalds off duty and came running through. Another one happened to be just a block or so away and he came there immediately. They found the Defendant, Mr. Hinton, lying on the ground. This is the first thing they noticed as they arrived. As they approached him, they began to ask him what had happened, if he knew who had shot him, because it was obvious that he'd been shot. He said he did not know, but that he was shot by two white males who had robbed him and that they had left in a white car, and so officers started calling out at that point to try and search for a white car for

14

two white males. As well, someone yelled that they had seen a black man running. The police said they're looking for anyone else who was running as well. Ultimately though as they discovered that there was injuries that were serious within the trailer, they noticed initially that the --- that Mr. Burris was dead on the steps of the trailer and that up inside the trailer Scott Thomas appears to be going in and out of consciousness. His brother, Matt, gave the officers the gun, was able to tell the officers what had just happened to him and was able to describe the Defendants and ultimately identify Mr. Hinton out in the parking lot as the person, the second assailant in the attempted robbery. The police arrested him at that point in time and then that, of course, brings us to here that --- Of course, the trailer being the burglary and that was their dwelling that evening, the attempted armed robbery, the attempted murder of Scott Thomas and the conspiracy to rob them at that time.

The Court - All right. Mr. Hinton, is that what happened that night?

Mr. Hinton - Yes, sir.

The Court - Can't hear you.

Mr. Hinton - Yes, sir.

The Court - I find the decision of the Defendant, Dytavis Hinton, to plead guilty to be freely,

15

voluntarily and intelligently made. He's had the representation of a competent attorney and the person Mr. Dest with whom he said he's satisfied. I find the factual basis for his plea, and therefore, I will accept his plea. Mr. Hinton, if you disagree with the sentence I give you of the procedure we've just completed, you have ten days from today's date within which to file a notice of intent to appeal. Do you understand?

Mr. Hinton - Yes, sir.

The Court - All right, Solicitor, you want --- Does he have a prior criminal record?

Mr. Thompson - His prior record, Your Honor, is Magistrate level in 2006 an assault and battery, in 2007 public disorderly conduct.

The Court - All right. Your victims wish to speak?

Mr. Thompson - Yes, Your Honor, they do.

Mr. Matthew Thomas - Your Honor ---

Mr. Thompson - If you'll come around ---

The Court - I need to be able to hear you, sir, and if you'll give --- If you'll give me your name so the Court Reporter can hear your name.

Mr. Matthew Thomas - My name's Matthew Thomas.

The Court - All right.

Mr. Matthew Thomas - Because of this incident,

16

I guess, his decision, my brother is now partially handicapped in his right leg. He's a drummer and it's how he makes his living, with his right foot. He's got a scar from here to here, and I just hope you take that into consideration, that he's going to be scarred for the rest of his life. He's got to deal with that handicap for the rest of his life, and we almost lost him and, uh thank God we didn't, but he's scarred, he and I both mentally. We can't sleep. Can't go out without feeling like I'm going to be attacked by somebody, always looking over my shoulder, and I think that's all I've got to say.

The Court - Where's your brother.

Mr. Matthew Thomas - (Indicating)

The Court - Stand up, sir.

(Mr. Scott Thomas complies)

The Court - How you doing?

Mr. Scott Thomas - Not too good.

The Court - I understand you've been through a lot of surgery. Is that correct?

Mr. Scott Thomas - Yes, sir.

The Court - Is there anything you want to tell me?

Mr. Scott Thomas - My brother basically said --- It's just got a lot of emotions in me, trying to get better. It's --- Pretty much said it all.

17

The Court - All right, thank you.

Mr. Corey - Scott's also my brother.

The Court - I need your name.

Mr. Corey - Adam Corey.

The Court - Mr. Corey.

Mr. Corey - And Matt said a lot. My brother, you know, plays music as a living. He's affected by that. He has to lives with the scars emotionally. Physically he may never be back to where he was before. I was getting married three weeks after this happened. My brother was unable to be in my wedding. He was a groomsman. I have to live with that personally, you know. He does too. You know, there's just things that's happened in our lives that will never be the same. I can't get my brother back, you know, the way he was before and being the man that he was before. I just hope you take that into consideration.

The Court - All right, thank you very much, sir.

Mr. Knox - My name's Barry Knox. I'm Scott Thomas's cousin, band-mate, roommate. Basically that night after the incidents to knowing that everybody saw this horrific scene --- It's a scene that will never go out of my mind. I will forever live in fear. I will forever look over my shoulder. My life will never be the same as it was before that incident and I just want you to take that into consideration.

18

The Court - All right. Thank you very much.

Ms. Corey - I'm Scott and Matt's mother and Barry's Aunt and ---

Mr. Thompson - If you'll give your name, please.

The Court - Your name.

Ms. Corey - Sharon Corey, Scott and Matt's Mom and Barry's Aunt, and I got the worse phone call a mother could ever get, and I watched my son struggle for his life and that struggle still continues, not just physically but emotionally and mentally. We all struggle and our lives has just been changed forever and there's other families' lives that have been changed forever because of a bad choice, and I'd just like to see justice prevail and the penalty reflect the violent crime that was committed against my sons and our family.

The Court - Thank you, ma'am.

Ms. Walch - I wasn't going to speak but a name has come out ---

The Court - I need your ---

Ms. Walch - My name is Sherre, Sherre Walch.

The Court - Walch?

Ms. Walch - Yes, sir.

The Court - Yes, ma'am.

Ms. Walch - And we live here. My mother's from here. This is home.

19

The Court - Now, how are you related?

Ms. Walch - Our son ---

Mr. Thompson - Michael Walch --- Her son was in the --- with the band. He was the sound man for The Money.

The Court - Okay.

Mr. Thompson He was with the band and he was --- He was in there when it occurred that night.

Ms. Walch - So this is very hard for me. We have lived in a bubble. My heart and my prayers have gone out to all these families. I didn't even know this family, and I immediately thought about there --- There's other Moms that are getting phone calls. Our son came home with this horrific tale and I just --- It's --- You can't believe what you're hearing and he's --- look, ma and he pulls out a two-page sworn statement and you just --- And you immediately --- You know, there's a horror in your --- of what you're being told. It's like an out-of-body thing, you can't believe --- There's a mother I don't even know that I could've swapped places with. It could've been my child. There's another mother that gets a phone call and a father too that there son is no longer with them. And there's another mother that finds out that her son's life was spared, but it brings us here today. We spent two days shy of five weeks at that hospital

20

giving thanks and giving prayers and here we are today. My husband is sick today, and our son didn't want to come. He sends his love but as --- kind of like it to go away so he's like the fellows, keeps it inside. He doesn't play music as much as he used to in public, so we have it in my house twenty-four/seven. If I could turn back time for everyone of us in this room I would do that, because everybody has a family and some of us that still live here and um I just felt like I didn't want to speak but when I heard my son's name mentioned and it became public --- He's --- So at that point I --- It's --- It's very difficult, but you find a way --- And I don't live in fear, but it was a horrific night, and we live with that everyday. We will continue to live with that and there's a --- all these families involved regardless of what side they're on. As a mom, no matter which child you have --- But I was up there and I saw Scott and I met this family --- I saw Scott that first day. We were there for the recoveries; We were there for the surgeries and I have lived with my own child. He told the officer when he got up that morning, anybody that's --- he didn't think this was how his day would end. He'd just get up and think you're a happy child and you fill in for somebody and the next thing you know this is --- It's just in an instant.

The Court - All right, I think I understand,

21

ma'am. Thank you very much.

Ms. Corey - Thank you.

Mr. Bunn - Good morning, Your Honor. My name is Boris Doyle. I have been friends with the Thomas and extended family for over the past twenty years, and on the morning of September 21st I arrived approximately six hours after the incident had occurred from my home. I was the first person that Scott's brother Matt called in lieu of the tragic situation. We're here today because the Defendant has pled guilty to a series of charges, and everyone is speaking in relation to the potentialities of how long the sentence may be for the Defendant, and laws are legislatively made up and they're adjudicated from the bench, and a Judge of your experience has seen matters such as this before I'm sure. One thing I would like to state about the Thomas family is that knowing them for the past twenty years, had the Defendant just needed the twenty dollars that Matthew Thomas had in his wallet the early morning of September 21st, Matthew Thomas probably would've given the Defendant the twenty dollars, or had Mr. Burris or Mr. Hinton expressed the fact that they didn't have any funds to gain entrance to The Money to hear them play the music, I know Scott Thomas well enough that he would've not only made sure that these young men were able to come in and to witness live music, but he

22

probably would've given them a round of beverages in a hosting manner. That's the nature of the victim here. So, in summary what I'm trying to say here is the series of choices that were made and of these choices there are repercussions, and I assure you, Your honor, humbly spoken before this Court that none of the Thomas family, extended or otherwise, holds any malice directly. It's a courtroom with hearts filled of sadness I'm sure on both sides of the aisle, sadness for the situation, but yet that has not changed the predatory behavior and the plea of guilty that Mr. Hinton has admitted to and the crimes. Therefore, the choices that were made should reflect the sentences that will be administered. Thank you, Your honor.

The Court - Thank you very much. Solicitor?

Mr. Thompson - One more.

Ms. Haislip - Thank you, Your Honor, for letting me speak.

The Court - We need your name.

Ms. Haislip - Lisa Haislip, and I am Scott Thomas and Matt Thomas and Barry Knox's Aunt, and I'm speaking here on behalf of the family and the impact that this has happened and had upon our family. The incident happened September 21st, 2010, but it didn't stop then. It went on to September 22nd, 23rd, continued and we're here at July the 12th. The report doesn't show all the

23

aftermath. It list the victims, but there were more victims as far as Aunts and Uncles, Cousins, Grandfathers, Grandmothers, etcetera, that felt the impact of this, so it was more that just what's stated on the report. I'd also like to say that it goes even beyond just Rock Hill, South Carolina. It reached east coast to west coast with friends and family who felt what this crime did. Today is July the 12th is the sentencing date, and it won't even end today. It will continue on in Scott and Matt's lives and the lives of all of our families will be forever affected by this. On the night Scott's fate was in God's hands and I pray and thank God everyday that Scott is still here with us. Today the decision of the case falls on your hands and the Court's hands and our family would like to respectfully request that justice be served and that the maximum sentence that you feel that you would issue in this particular case be done. Thank you very much.

The Court - Thank you very much.

Mr. Thompson - May it please the Court, Your Honor. Scott has gone through a lot physically and just to note a little bit of it, even just on his Victim Impact Statement has he put a number of things, the large abdominal incisions that he's had, skin grafts, horrible problems with his legs where infection had set in and had

24

to basically filet the leg open to --- leg open to allow it --- the infection to not be any worse or they would have to amputate the leg. He's had number of internal injuries from kidney damage and had dialysis ports put in at one point, a number of things physically that he's still trying to overcome and likely to still have to overcome --- attempt to overcome throughout his lifetime. I pass up a copy of the Victim Impact Statement for the Court.

The Court - Share it with Mr. Dest.

(Mr. Thompson complies)

Mr. Thompson - And one of the things on it as well --- On the front are just the medical bills themselves over four hundred thousand dollars and still climbing, Through the physical therapy he has to have and the possibility of more operations and that sort of thing. He's lost, as his brother said, a lot of his ability to play the drums that he once had because of the problems with his legs. He has overcome a lot and has come a long way, but still has a long way to go. As the Court can see from the members who have talked today, here's a band that goes out for a living, they play and they perform in front of large crowds and do things that a lot of people would be terrified to do, but today they're terrified to come in Court and have to relay this to the Court for the problems

25

that they're suffering. And I point that out because it shows some of the mental distress that these band members have suffered. I think at some point they were truly guys who had a great future and thought everything was wide open for them. Now they're suspicious of people who come around. They worry about the crowds they play for. They worry about where they go and where they have to stay, what they have to do, someone's going to come and try to rob them again or shoot them again. It was a horrific night that night, that it was something that as the band members relayed to me will continue through the rest of their lives. I think one of them said earlier, even earlier today, you know, he --- Defendant faces basically a cap of twenty-five years here, but they will face much more than twenty-five years in the problems that they're going to have, especially Scott, physically and mentally recovering from this and his family's ability to recover from this. They pointed out to me as well and I think it's very appropriate, this Defendant had a number of choices and it was eluded to by one of the family who spoke or one of the friends of the family who spoke, the Defendant had a lot of choices that night. There was really no reason to bring a gun to go to McDonalds. Obviously, the gun that ended up being used in this case, the Defendant made a statement ultimately to the police

26

where he did admit that he had brought the gun and put it in the car earlier, but, of course, in that statement he tries to cover some of his culpability in this whole thing and says he didn't intend for this to happen by the fact that he saw the Defendant, the other Defendant going out but --- and knew that he probably had the gun and that he was up to no good because he was drunk and he had been mouthing off, said that he knew he was going to rob someone. Well, it's a situation where the Defendant made the choice to hang around with a man that he knew would do this sort of thing, who he knew if he had access to a gun would use it for inappropriate purpose, and so even if the statement by the Defendant and ultimately the police is one hundred percent believed, it was still his choice to join in with this robbery, it was still his choice to bring a gun and allow access to that gun at some point or at least so that this other man could take it and a man that he knew to be someone who would rob people, who he thought had done it in the past and that's the type of thing he would do. Certainly they admitted that alcohol and drugs were involved in the night that went into this, but that's no excuse. He went up in that trailer, he pulled up the bandanna, he did the same things that his Co-Defendant did. It's just that he didn't have the gun in his hand, his buddy did, but it was his gun. If he had

27

never brought it, this would have never happened. If he had kept some control over it it would've never happened. If he'd have just said no to his buddy, I believe it would've never happened. So when it comes down to it, this Defendant made a number of decisions that affected a number of lives, not only his own and his own families, but the lives of Scott Thomas and his family, that entire band and the Burris family. Mr. Burris is dead. His family will live with that for the rest of their lives, and it's directly correlated to the actions of this Defendant. As I said, we dismissed the charge of murder as it relates to that, but this Court still needs to consider the severity of this situation. Not only is this attempted robbery, armed robbery which is all bad in and of itself, this was basically the residence of this band. This is where --- Anyone who travels in an RV or stays at a hotel or does something like that, this is what people do. You live in this thing; You stay there, and this is your home. You expect to be safe. It's some place you don't have to worry about people coming in and robbing you. Unfortunately, that didn't matter to the Defendants that night. They decided they were going to go in anyway and rob them at gunpoint and obviously willing to fire. As Mr. Burris was able --- willing to fire that gun to the floor to show how he was willing to do anything if they

28

didn't give over their money at that point in time. It's scary the way that the mind of the Defendants worked in this case and I just want to point that out to the Court, because it becomes such an unfortunate thing in our society that we continue to go in this direction. As I said, basically they're dwelling; It's in the night-time; They're armed; They go in; They're willing to fire and they do and they nearly kill an innocent victim. You know, these folks --- They didn't have anything --- This wasn't the, you know, the drug deal gone wrong; This wasn't the, you know, the bad situation where there was bad blood between the group and they were all fighting and arguing before-hand and something happened. This is truly a situation of an innocent victim and I think we need to consider that in our sentencing as well. The State has given a recommendation, Your Honor. I believe we have given a generous recommendation. In doing that, the band I know as I discussed with them the recommendation and as I speak to the Court now making the recommendation we ask that --- respectfully that the Court give him what he faces today, that he get the twenty without parole and that the conspiracy be tacked on to that, the additional five years so that he serves twenty-five years in this case. It's appropriate considering the devastation and the heinousness of the acts that occurred in this crime.

29

Thank you.

The Court - Mr. Dest?

Mr. Dest - May it please the Court. Your Honor, before I begin presentation of the mitigation, I would ask the Court to recognize all the family members and friends who are here in support of my client, Dytavis Hinton. Please rise.

(Family members and friends comply)

Mr. Dest - Thank you. You may be seated. Judge, I also would like to tell the Court that my client and I and his family fully recognize the pain that his actions caused on September 21st, 2010. And it is my fervent hope and prayer that Scott Thomas, Matt Thomas and his family along with Demorrio Burris and his family and the Hinton family all can find the strength, the wisdom and faith to move on with their lives regardless of what happens today. I think it is important that we relay that to the Court and to the family of all those who are affected. My client has been in jail two hundred and eighty-six days awaiting disposition of this case. And, Your Honor, I don't think there's been a day that goes by that he doesn't think about what he did that night and how it happened and how it affected the life of Demorrio Burris who now is dead, of the Thomas family and also his family. And I understand, having done this for over

30

twenty years, the need to express frustration and anger and even to a certain extent retribution for those who are victims of crimes, but I also know that practicing over twenty years it takes a detached view, an objective view to look at all the facts, as to not only what happened but also to look at how the Defendant has lived the vast majority of his life before a just sentence can be rendered. The Solicitor indicated to the Court that my client has no prior criminal record for any felony offense, Your Honor. He's never been on probation. He's never been on parole. He is twenty-three years old, and this is the first time he's faced with a felony offense conviction. He comes from a family here in Rock Hill and as indicated in Dr. Marsh's report, which I will refer to in a few moments, he is the youngest of five children. He grew up here in York County, although dropping out of school when he was in the tenth grade, he went back after the tenth grade and received his GED. He's worked primarily as a laborer in construction industry, carpentry, and, in fact, in 2009 was in Job Corp for nine months learning some carpentry skills. Judge, as far as what happened that night, I think an objective view one could understand that this wasn't an extensive plan; This wasn't something that had been talked about a great deal; It wasn't planned out through the course of the evening.

31

Although the planning of it was in an instant and enough for him to be guilty of these offenses, I think an objective view would see that he along with other members had been drinking a considerable amount of alcohol; They had been using marijuana, and the Solicitor is right, that is not a justification, but it does help explain why their judgment was impaired. They went to several bars that night, not only The Money but other bars. They went into the McDonalds. They're walking freely through the bar, McDonalds, they're out in open and then it is true that Mr. Burris took the gun out of the car and went towards the RV. I would submit, Your Honor, that it was a decision that was made in an instant, and unfortunately my client went along with Mr. Burris. It was a foolish, reckless, ill-conceived and dangerous plan to try to rob somebody in the middle of a parking lot in the middle of a public place. But I will point out, Your Honor, that as the Solicitor indicated in his rendition of the facts, my client never had possession of that gun during the course of the robbery, never brandished it at any point in time that night and, of course, never shot the gun that night, but he is here today to accept responsibility for his part, and of course you've heard the great pain that has been inflicted on all of those who are part of this incident, and of course my client was also shot along with

32

Mr. Burris. And when I talked to Dytavis about this, every time I talk to him, he says, Mr. Dest, I'm so sorry, I'm so ashamed of what I've done; I'm so sorry to the people who are hurt; I'm sorry because of what I've done, how I've brought shame to my family and this community. Judge, as I indicated to you in chambers, because he has no prior criminal record and because my conversations with him have always been constructive --- He's always been respectful; He's always been straight-forward as to what he did, I felt that I needed to have him examined not for any particular mental illness but to try to determine what type of person is Dytavis Hinton, what is his general make-up, what is his essence. So as a result of wanting to do that, I hired Dr. Kenneth Marsh who is a forensic psychologist out of Charlotte and I have handed that document up to the Court and to the prosecution. And first of all, Judge, let me just note that Dr. Marsh probably has done over two thousand mental health evaluations for the Department of Justice, the U.S. Bureau of Prisons, the U.S. Immigration Service and Department of Home Land Security. His mental evaluations, as indicated in his report are requested by departmental boards to help determine placement of individuals within the correctional system and their released or continued detention of inmates. Although nearly all of this work is done by the

33

Federal Government, we have has asked for him to render an opinion as to his psychological make-up and more importantly with Dr. Marsh is an expert in his determining one's recidivism rate. And based upon his examination, Your Honor, I would ask the Court to take note of several factors that he indicated in his report. First of all that Dytavis does not suffer from any mental health psychosis or illness. He is not the type of person to have impulse control disorders. He is not the type of person to use violence to solve his problems or suffer from any anti-social personality disorder as indicated by Dr. Marsh. In fact, Dr. Marsh in his report states that he is essentially someone who is not likely to re-offend in a violent manner. He demonstrates, according to Dr. Marsh, a submissive behavior and difficulty expressing disagreement with others. He has accepted full responsibility for his actions in the instant case and is aware of the range of punishment that he could receive. Dr. Marsh performed a psychological --- two psychological tests on him, one for substance abuse and concluded that the results indicate alcohol and marijuana abuse obviously were a major factor in this. And this is one of the things that Dr. Marsh noted. And also in the violence risk assessment guide which is a test to determine recidivism he writes, based on numerous factors such as

34

education, family, criminal history, substance abuse and lack of personality disorder, it is estimated that he has a low risk for re-offending in a violent manner over the next ten years. According to Dr. Marsh, based on the mental health evaluator, psychological testing and clinical judgment, he appears to pose a low risk of recidivism for violent criminal behavior and since his incarceration has not received any disciplinary actions for behavioral problems. Judge, I will say that when I talked to Dr. Marsh about his report, and again he is one who generally places people within the U.S. or Federal Government prisons based upon likelihood to re-offend and whether or not they're dangerous, told me as related to his report, he doesn't believe that based on his history that it would require a lengthy prison sentence for him to be rehabilitated and for him to be a productive citizen. Much of that is based upon the fact that he is, despite this horrible incident, generally a non-violent person, not a person likely to go out and commit predatory violence against another individual. He is a malleable person who I think obviously can be influenced when under the influence of drugs and alcohol to the point where he is a follower as demonstrated by what he actually did on that night. Judge, I have spoken to the family and there are several members who again wanted to express their

35

remorse for what has happened, along with my client. I have been in contact with my client's older brother who but for serving in the military would be here today and asked me to read his letter to the Court, and this letter was accompanied by a letter from his Commander who will attest to Denorris Hinton, my client's brother, integrity and in character. So if I may, Your Honor, read briefly these two letters to the Court in mitigation.

The Court - Go right ahead.

Mr. Dest - Your Honor, this letter is from Robert Rosefield who is a Captain in the U.S. Army stationed in Fort Leonard Wood, Missouri.

Dear Judge Cooper, I am writing on behalf of Sergeant Denorris Hinton to help establish his credibility as a man of character and integrity before the York County General Sessions Court. It is my personal privilege to serve as Sergeant Hinton's Company Commander of the United States Army. Sergeant Hinton is assigned as a Crew Chief in our Unit and Combat Veteran. He is among the most compelling examples of professionalism and servant leadership in our Unit. Sergeant Hinton discharges his duties with unquestionable integrity and commitment to our organization. Sergeant Hinton is a model leader. He displays seven --- the seven Army values of loyalty, duty, respect, selfless service, honor,

36

integrity and personal courage in everything he does. I plead that the Court will accept his testimony as one grounded in complete truth and commitment to his family and respect for the law.

Judge, this letter is from Denorris Hinton, my client's older brother.

Dear Judge Cooper, my name is Sergeant Denorris Hinton. I apologize for my inability to attend the trial today. My Company is executing a field training exercise in preparation for future employment. My brother and I were raised by our Mother to do the best we can in life. She raised us in a home filled with love and we are not violent in any way. My Mom worked multiple jobs so we did not have to go without and she made sure that we stuck together at all times. Times were not always easy growing up but we kept our faith in God and we take care of one another. Dytavis generally stays to himself listening to and writing music which is his passion. He has never been involved in any type of felony criminal activity. On the contrary he was getting back on track doing many positive things such as completing his GED and preparing to go to college. My brother and I are very close, so we always hang together whenever I come home on vacation. I can honestly say that I probably know him better than anyone. In fact, I really look up to my younger brother and not

37

many people know that. He makes me proud to serve our County and our Country and our State. When I received the news about what happened I broke down in tears and prayed for my brother and the Thomas family. I prayed for their lives and for them both to pull through. I couldn't believe what I was hearing and what was told to me. I've always given to my family wherever they needed my help. They are the reason I joined the military to fight for our Country and to help my family. I wanted to make them proud. I hate that something like this has happened to my brother and the Thomas family. I would like to send my apologies and best wishes to the Thomas family from the bottom of my heart. I hope that you can find it in your heart to forgive him. I hope that you have been successful --- that you have a successful recovery and that you will do well. My family and I will continue to pray for you and your family. My brother has been given a second chance at life thanks to God. My life (sic) is the only thing that I have to keep me strong. My family is the only thing that I have to keep me strong. I ask that you extend mercy to my brother in this case.

Judge, I know what many people want in terms of a sentence, but I would ask the Court to consider under the parameters of this plea agreement that the Court can go far below the twenty years on the most serious

38

offenses. Because of his potential, because he has the capability to be so much more, because he has learned from this horrible incident, I would ask that you not give him a sentence that essentially destroys his life, but one that would be balanced with punishment but also give him the hope of getting back to the community. I would submit, Your Honor, that a minimal sentence, whatever the Court perceive as a minimal sentence for this offense, followed by probation, an extensive probation with a lot of time hanging over his head could serve two purposes, one it could punish him, but also be a warning to him that if he violates any part of his probation that he could go to jail for twenty or twenty-five years based upon what he has done. It is my request, respectful request, I implore the Court to consider a split sentence in this case, Judge, that would both punish, but yet give the opportunity and the hope for him to get his life back so that he can be productive. Thank you. Your Honor, my client would like to address the Court before you pass on sentencing.

The Court - Mr. Hinton, be glad to hear from you.

Mr. Hinton - First of all I'd like to apologize to the Thomas family for everything that's happening. I'd like to apologize to the Burris family as well. I lost a

39

close friend in the situation. It's hard, you know, nightmares and I go through a lot, too, you know. I nearly died on the helicopter and they brung me back to life ---

Court Reporter - I'm having trouble understanding him, Judge.

Mr. Hinton - --- God gave me a second chance.

The Court - She needs to hear you.

Mr. Hinton - But God gave me a second chance at life and I hope it's not to go to prison for a long time. I'd really like to apologize for everything that's happened. It's a terrible thing that happened. I understand the situation. I really hope they do accept my apologies, because I never intended for anything like this to happen. I know it affected a lot of people as far as families and just something hard that I got to live with the rest of my life. I lost somebody close and it could've been worser than what it was, but I thank God that he did what he did in the situation. I just pray and ask that you have mercy on me. Thank you.

The Court - Is that it, Mr. Dest?

Mr. Dest - Yes, Your Honor.

The Court - Anything further, Solicitor?

Mr. Thompson - No, Your Honor. I don't think anything further --- Although, one observation I would

40

briefly point out, a lot has been made that the Defendant while he brought the gun, he didn't use the gun, would also point out that he also brought a large bandanna that was used to cover his face. In the world of prosecution, there's not many good reasons for a young man to have a large bandanna with him in the middle of the night other than to commit crimes. They simply represent two things and it's either gang activity or the fact that they want to commit a crime and use those in the crimes, because they're commonly used over and over again as mask. Not only he had one, but Mr. Burris had one, so he had some preparation with thoughts --- had some preparation, more than just the gun.

The Court - All right, Mr. Hinton, on your conspiracy charge, the sentence of the Court is you be committed to the State Department of Corrections for a period of five years. On your attempted murder charge, your burglary in the first degree charge and your armed --- attempted armed robbery charge, the sentence is that you be committed to the State Department of Corrections for a period of twenty years, all sentences are to run concurrent. You're given credit for two hundred and eighty-six days time served. Good luck to you, sir.

Mr. Thompson - Thank you, Your Honor.

(Document marked as State's Exhibit Number 8.)

41

(End of transcript)

Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 42 pages constitute a true record of proceedings taken in the case of State of South Carolina vs. Dytavis Laquan Hinton, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employee of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 11th day of May, 2012.

Shirley G. Broom

Shirley G. Broom
Circuit Court Reporter
Sixteenth Judicial Circuit

FORM 5 2012CP46-1536

STATE OF SOUTH CAROLINA)
)
COUNTY OF)
Dytavis Laquan Hinton #346826)
Full name and prison number (if any) of Applicant.)
)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

FILED-RECEIVED
2012 APR 24 AM 9:16
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy.
2. Name and location of Court which imposed sentence York County General Sessions
3. Name(s) of co-defendant(s) (if any) ____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 11-GS-46-1907, 11-GS-46-1908, 11-GS-46-1909, 11-GS-46-19
   (a) ____
   (b) ____
   (c) ____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) July 12, 2011
   (b) ____

Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) ~~Ineffective Assistance of Counsel~~

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Violation of Constitutional Rights

(c) Improper Guilty Plea

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel Failed to investigate

(b) Police Obtained evidence in Violation of Rights

(c) Intelligent Voluntary not knowing about plea

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

_____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Harry A. Dest York County Public defender

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Plea and Sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate plea

20. Are you now under sentence from any other court that you have not challenged?

No

48

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of)

I, Dytavis being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Dytavis Hinton

SWORN to and subscribed before me this 23 day of April, 2012.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Dytavis hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Dytavis Hinton
Applicant

SWORN or affirmed to and subscribed before me this 23 day of April, 2012.

Debra Sides
Notary Public

My Commission Expires: 11-4-2015

50

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Dytavis Laquan Hinton, #346826, Applicant, v. State of South Carolina, Respondent.	2012-CP-46-1536 RETURN

FILED-RECEIVED
2012 JUN 29 AM 10:04
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

In response to the post-conviction relief application filed on April 24, 2012, the Respondent would show this Court:

I.

The Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was charged with Attempted Murder (2007-GS-46-1907), Burglary, 1st degree (2007-GS-46-1908), Attempted Armed Robbery (2007-GS-46-1909), and Criminal Conspiracy (2007-GS-46-1910). The Applicant was represented by the Harry Dest, Esquire. On July 12, 2011, the Applicant waived presentment to the Grand Jury and pled guilty to all charges as indicted. The Honorable G. Thomas Cooper sentenced the Applicant to confinement for twenty (20) years for Attempted Murder, twenty (20) years, concurrent, for Burglary, 1st Degree, twenty (20) years, concurrent, for Attempted Armed Robbery and five (5) years, concurrent, for Criminal Conspiracy.

A notice of appeal was filed on the Applicant's behalf. However, the Applicant's appeal was dismissed for failure to identify issues reviewable on appeal. The Remittitur was issued on

August 23, 2011.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
    a. "Counsel failed to investigate"
2. "Violation of Constitutional Rights"
    a. "Police obtained evidence in violation of rights"
3. "Improper Guilty Plea"
    a. "Intelligent Voluntary not knowing about plea"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges his guilty plea was involuntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent construes ground 2a to allege the infringement of the Applicant's constitutional rights. However, the Applicant does not specify the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague

that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

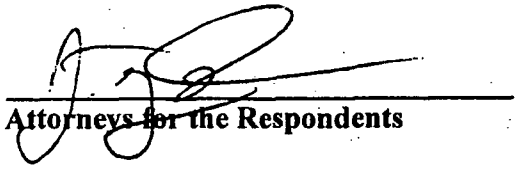
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for the Respondents

Columbia, South Carolina
_____, 2012

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)
)
) 2012-CP-46-1536
)
DYTAVIS LAQUAN HINTON)
)
Applicant,)
)
vs) AFFIDAVIT OF SERVICE BY MAIL
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

FILED-RECEIVED
2012 JUN 29 AM 10:04
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Philip W. Jamieson, Esquire
242 Oakland Avenue
Rock Hill, South Carolina 29730

DATED this 28th day of June, 2012.

Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) COUNTY OF YORK)) Dytavis L. Hinton, #346826,) Applicant,) v.)) State of South Carolina,) Respondent.)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2012-CP-46-1536 **Amendment to Application for Post Conviction Relief**

FILED-RECEIVED
2012 DEC -4 AM 9:42
CLERK OF COURT
YORK COUNTY, SC

Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire, would amend his Application for Post Conviction Relief filed on April 24, 2012, by adding the following specific allegations to his original allegation of ineffective assistance of counsel and "improper guilty plea," which is clarified as involuntary guilty plea:

1. Ineffective assistance of counsel for failure to properly prepare and investigate, specifically, but not limited to the following:
    a. Failure to completely review and discuss discovery with Applicant. Failure to ensure that Applicant had a complete copy of the discovery materials.
    b. Failure to contact and utilize witnesses.
    c. Failure to investigate crime scene and evidentiary reports (firearm/ballistics, latent print, gunshot residue, etc.).
    d. Failure to investigate inconsistencies in witnesses statements.
    e. Failure to review statements attributed to Applicant with Applicant prior to his plea and/or in preparation of trial.
2. Ineffective assistance of counsel for advising Applicant that he would receive a split or suspended sentence and informing Applicant to not be concerned with all the charges he was facing, which resulted in an involuntary guilty plea.
3. Ineffective assistance of counsel for not allowing Applicant's family to speak on his behalf at the plea hearing.
4. Ineffective assistance of counsel for failure to file a Motion for Reconsideration.

5. Ineffective assistance of counsel for failure to properly preserve issues for appeal as was admitted in the Rule 203(b), SCACR, Explanation.

Respectfully submitted,

Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

November 29 2012
Columbia, SC

58

STATE OF SOUTH CAROLINA) COUNTY OF YORK)) Dytavis L. Hinton, #346826,) Applicant,) v.)) State of South Carolina,) Respondent.)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2012-CP-46-1536 **CERTIFICATE OF SERVICE**

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 29th day of November 2012, a copy of an Amendment to Application for Post Conviction Relief, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Rutledge Johnson, Ast. AG
PO Box 11549
Columbia, SC 29211

Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

November 29, 2012

RECEIVED
2012 DEC -4 AM 9:42
CLERK OF C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA) COUNTY OF YORK)) Dytavis L. Hinton, #346826,) Applicant,) v.)) State of South Carolina,) Respondent.)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2012-CP-46-1536 **Amendment to Application for Post Conviction Relief**

Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire, would amend his Application for Post Conviction Relief filed on April 24, 2012, by adding the following specific allegation:

1. Ineffective assistance of counsel for failure to move to quash Applicant's arrest warrant for murder (K-617623) under State v. Bonner, 330 N.C. 536, 411 S.E.2d 598 (1992). Ineffective assistance of counsel for allowing the State to present the dismissal of the murder warrant as part of the plea deal to the court. Plea Transcript p. 4.

Respectfully submitted,

Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211

May 9, 2013
Columbia, SC

FILED-RECEIVED
2013 MAY 13 PM 1:57
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

60

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Dytavis L. Hinton, #346826, Applicant, v. State of South Carolina, Respondent.	)	2012-CP-46-1536 **CERTIFICATE OF SERVICE**

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I hand delivered this 9th day of May 2013, a copy of Motion for Discovery in Post Conviction Relief, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Rutledge Johnson, Ast. AG
1000 Assembly Street
Columbia, SC 29201

Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

May 9, 2013

FILED-RECEIVED
2013 MAY 13 PM 1:57
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2012-CP-46-1536
	)	
	)	
Dytavis Hinton,	)	
	)	
Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

August 15, 2013
York, South Carolina

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE.

APPEARANCES:

TRICIA A. BLANCHETTE, ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

INDEX

WITNESS	Direct	Cross	Redirect	Recross
Travis Barnette	5	7		
Marcus Thompson	8	16		
Christine Thompson	17	21		
Dytavis Hinton	22	37		
Ronald Guerette	46	72	85	
Harry Dest	88	99	105	

EXHIBITS

No.	Description	Marked	Admitted
A1	Packet of photos	5	5
A2	Packet of color photos	5	5
A3	Investigative file	5	5
A4	Statement	24	24
A5	Statement	25	25
A6	Arrest warrant	31	31
A7	Memo of law	108	--

PROCEEDINGS

MR. JOHNSON: May it please the Court, Your Honor. This is the case of Dytavis Hinton versus State of South Carolina. It's case number 2012-CP-46-1536. Mr. Hinton was charged with attempted murder, burglary first degree, attempted armed robbery, and criminal conspiracy. He is also charged with the murder charge in a possession of a firearm during the commission of a violent crime. On July 12, 2011, he waived presentment to the grand jury and pled to all charges as indicted -- all charges before the Honorable Thomas G. Cooper. As a recommended cap of 25 years, he was sentenced concurrently 20 years for the attempted murder; 20 years for burglary, first degree; 20 years for attempted armed robbery; and 5 years for criminal conspiracy. In exchange for the plea, the State dismissed the murder charge and the possession of a firearm charge. There was an appeal filed; however, the appeal was dismissed for failure to identify reviewable issues. He filed a common PCR application on April 24, 2012, and the State filed its return on June 28, 2012. And he's represented here today by Ms. Tricia Blanchette.

THE COURT: Ms. Blanchette.

MS. BLANCHETTE: Thank you, Your Honor. I'm Tricia Blanchette, here on behalf of Dytavis Hinton. I just wanted to verify that the Court has a copy of two amended

PCR applications we submitted in this case?

THE COURT: Do not have those.

MS. BLANCHETTE: And I unfortunately do not have an extra copy, so we may need to make one.

MR. JOHNSON: Sorry, Your Honor, trying to get copies for you.

THE COURT: We can make copies later if need be.

MS. BLANCHETTE: And, Your Honor, if you'd like them just to refer to, you can have these copies and then we can make an additional one later.

Your Honor, it's my understanding the State has agreed and in consideration of time, I have three exhibits that I'd like to introduce. We have previously filed a motion for discovery in this case. And as a result, I received CDs that contained the discovery and pictures that were taken in this case from Harry Dest. We also were able to go review the evidence at the Rock Hill Police Department. I have pictures of that. So I was going to introduce the pictures of the evidence at the Rock Hill Police Department as Applicant's Number 1, the pictures from the evidentiary CDs as Applicant's Number 2, and the numbered discovery is Applicant's Number 3.

THE COURT: What was Number 3?

MS. BLANCHETTE: It's portions of the numbered discovery.

THE COURT: Numbered. Okay.

Any objection from the State?

MR. JOHNSON: None, Your Honor.

THE COURT: Without objection, all three exhibits will be introduced into evidence.

(Applicant's Exhibit Numbers 1 through 3 were marked and admitted.)

MS. BLANCHETTE: I was waiting my turn.

Your Honor, at this time I would call Travis Barnett as our first witness.

TRAVIS BARNETT, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. BLANCHETTE:

Q. Could you please state your name for the record?

A. Travis Barnett.

Q. And where do you currently reside?

A. Rock Hill, South Carolina.

Q. And how is it that you know Dytavis Hinton?

A. We're friends. We met at school.

Q. Okay. And if I could take you back to the time of September 2010. Had you actually been with Mr. Hinton on the day that this incident occurred? Had you been with him earlier that day?

A. Yes, ma'am.

Q. Okay. What were you all doing that day?
A. We had a get-together at my house.
Q. And at some point, did he leave your house?
A. Yes, ma'am.
Q. Okay. And what was your understanding that he and his friends or your friends were going to do when they left your house?
A. Going home.
Q. And were they actually driving a vehicle that was yours?
A. Yes, ma'am.
Q. Okay. What vehicle was that?
A. It was a PT Cruiser.
Q. So you didn't continue on with them that night after they left your home?
A. No, ma'am, I didn't.
Q. Did you at any time hear any discussions about planning a robbery or anything like that between Mr. Burris and Mr. Hinton?
A. No, ma'am.
Q. Okay. And you're very familiar with Mr. Hinton; is that correct?
A. Yes, ma'am.
Q. Did he typically accessorize his outfit with a bandanna?

TRAVIS BARNETT - DIRECT EXAMINATION BY MS. BLANCHETTE

A. Yes, he did.
Q. How did he do that? How do you remember seeing him wear a bandanna?
A. He'll probably wear just probably around his wrist or in his pocket or around his belt for his clothing.
Q. And did those bandannas usually coordinate with the clothes that he had on?
A. Yes, ma'am, it did.
MS. BLANCHETTE: Your Honor, if I could beg the Court's indulgence one moment.
Q. Were you ever contacted by Harry Dest or anyone working on the defense of Mr. Hinton?
A. No, ma'am.
Q. If you would have been contacted, would you have been willing to talk to them?
A. Yes, ma'am.
Q. If they needed you as a witness in court, would you have been willing to testify?
A. Yes, ma'am.
MS. BLANCHETTE: Your Honor, I have no further questions of this witness.
THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. JOHNSON:
Q. Mr. Barnett, were you at The Money that night?

A. No, I wasn't.
Q. Were you at the McDonald's?
A. No, I wasn't.
Q. Were you at the RV that night?
A. No, I wasn't.
Q. So you have no idea about this case? You have no firsthand knowledge about what happened at The Money, the McDonald's, or the RV, do you?
A. No.
Q. So you couldn't have testified to anything that happened at that scene that night, could you?
A. No.

MR. JOHNSON: No further questions.

THE COURT: Thank you, sir. You can step down.

MS. BLANCHETTE: Your Honor, I would call Marcus Thompson to the stand, please.

MARCUS THOMPSON, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. BLANCHETTE:

Q. Could you please state your name for the record.
A. Marcus Thompson.
Q. And, Mr. Thompson, are you related to Dytavis Hinton?
A. Yes, ma'am, I am.
Q. And how are you related to him?

A. Dytavis is my youngest brother. I'm his oldest brother.

Q. And if I could take you back to September 2010, when this incident occurred. Were you working at the McDonald's that night?

A. Yes, ma'am, I was.

Q. Okay. And where were you working specifically in the McDonald's?

A. I was working at the drive-through right beside The Money.

Q. Okay. And do you remember when your brother and his friends came through the drive-through in a PT Cruiser?

A. Yes, ma'am, I do.

Q. Okay. And at any time did some of those people that were in the vehicle come into the McDonald's restaurant?

A. Yes, ma'am.

Q. Okay. And who did you see inside the restaurant?

A. The deceased, Mr. Burris, and Ms. Devon. I don't remember her last name, but Devon and Mr. Burris.

Q. Okay. Did you have a chance to talk with them?

A. Yes, ma'am. Immediately I recognized that he was very inebriated. Very intoxicated. And, you know, being that I know him from my brother, I told him that he needed to go home. So I know I told him probably three times maybe that he needed to go home.

Q. Uh-huh.
A. And from the conversation that we had, it was my understanding that he wasn't going home until he received his money.
Q. Okay. So you were encouraging him to go home; is that correct?
A. Yes, ma'am.
Q. And when we say "him," that would be the deceased, Demario Burris?
A. That's correct.
Q. Now, you were in the McDonald's. Did you find out when this shooting occurred over at The Money?
A. It's funny because like I -- the view that I had of The Money, like anything indifferent I should have been able to see. I didn't see a gunshot. I didn't see any people scatter or anything like that. But someone came and told me that there was a shooting next door and that it was a possibility that my brother was one of the victims that was shot.
Q. As a result, did you end up going to the hospital?
A. Yes, ma'am, after my shift was over -- well, before I left to go to the hospital, I tried to text and call my brother. I didn't get a response, so I told my supervisor what was going on, and I was so shaken by it, so she drove me to Piedmont just to find out that my brother had been

airlifted to CMC.

Q. And did you then go to that hospital?

A. Yes, ma'am. I went back to McDonald's and I got my car. I called my fiance and told my fiance what was going on, and I went and picked my mom and my fiance up, and my fiance drove us up to Charlotte because I was too nervous to drive.

Q. When you first arrived at the hospital, did you run into some people that were involved in this case?

A. Yes, ma'am. I don't really know their names, but after I parked the vehicle, I dropped my mom and her boyfriend off at the door so she could go get to my brother, and as I was coming in from parking the vehicle, she -- I seen two guys. They were like -- they were irate, like they were on something, and they were yelling at my mom. My mom's a small, petite lady, so, you know, in fear for her, I'm trying to rush to get to her; but the nurse had already called the security, and by the time I got to the other end of the hallway, they were going up the elevator, go upstairs somewhere.

Q. Did you later find out who those two individuals were or who they were with?

A. I found out -- once we found out what floor my brother was on, we found out that they were actually members of the band. The guy who got shot, one was a

brother or cousin or something. That's all I -- I didn't really pay no attention to the guy.

Q. And did you ever have the opportunity to talk to anybody in law enforcement about this case?

A. When the incident fist started, when it first occurred, the very next day, Detective Tripp, I want to say was his name, he came to the home and he was telling us I guess from his point of view what he thought happened. Because he also kept pointing out that he know that Mr. Burris was a bad kid. He -- you know, like, I understand that, but, I mean, good or bad, no one deserves to really die. So that really didn't have any relevance to what was going on.

Q. Okay.

MS. BLANCHETTE: And, Your Honor, I do have a copy of the paper exhibits that I already introduced for you.

THE COURT: All right. I'll swap with you.

Q. Mr. Thompson, let me show you a piece of the numbered discovery that I've already introduced. And this would be reflected as page 87. If you could just look over that for a minute.

THE COURT: Excuse me, this exhibit -- is this my copy of Exhibit 3?

MS. BLANCHETTE: It is, Your Honor.

THE COURT: Okay. Thank you.

A. Okay.
Q. Mr. Thompson, does that reflect that interview you were just talking about with Detective Tripp?
A. Somewhat, yes, ma'am.
Q. And did you give him information as to what your brother had told you had happened?
A. Yes, ma'am. I actually told him that my brother told me, you know, once we got there that --
MR. JOHNSON: Objection to any hearsay that Mr. Hinton said.
THE COURT: If you would just testify as to what you know of your own knowledge --
THE WITNESS: Yes, sir.
Q. I'll rephrase my question. You were attempting to tell Detective Tripp what your brother had told you about those events that night?
A. That's correct.
Q. And that appears to be his record of that meeting; is that correct?
A. Yes. From his point of view, yes, ma'am, this is what I stated.
Q. I'll take that back from you.
Did you raise some concerns to the detective when you were talking with him about the case?
A. Yes, ma'am. They was telling us that two guys ran in

the RV, we have the DNA, we know they did it, and they were pointing guns and they started shooting, and all of these things we're reading and we're seeing and we're hearing these things, and we can only ask questions. And I'm asking these questions, but no one is really taking me serious. So I guess it was kind of thrown under the rug. So I was asking, like, if a person run up in the RV and just start pulling a trigger at your head, how would you survive, things of that nature. And like I said, I kept asking these same questions and no one would give us that information.

Q. Did you also try to ask these same questions of the attorney that was working on your brother's case?

A. Yes, ma'am.

Q. What happened when you tried to ask him questions?

A. I was just asking these questions because I felt like it was important to the case, and the next thing I know, my brother is calling my mom telling my mom that I need to stay away from the case because I might hurt his chances of coming home or, you know, getting more time, so to speak.

Q. So at that point, did you quit asking the questions?

A. I just stopped coming around period because I didn't -- that's my baby brother. I'm pretty much his father. His father was around, but I raised my brother,

so it's kind of hard for me to distance myself from him, and especially him being in this situation. So I was only doing what he asked my mom to do. I mean, what he asked my mom to do, I did what -- I did it for him.

Q. Now, were you given an opportunity to speak on your brother's behalf at the plea?

A. No, ma'am.

Q. Did you want to speak on your brother's behalf at the plea?

A. Yes, ma'am.

Q. What would you have said?

A. I would have said that, you know, given the situation and, I mean, it's -- nobody deserved what happened in the situation, but my mother was a single parent, and she raised us all to respect one another and to respect people in our community. And before we have to go out and take someone, we'll go out, try to help someone. It's an unfortunate situation, but my brother is not the monster that he was painted out to be.

MS. BLANCHETTE: Your Honor, if I could beg the Court's indulgence one moment.

THE COURT: Yes, ma'am.

Q. Are you familiar with your brother accessorizing his outfits with bandannas?

A. Yes, ma'am.

Q. How would he usually wear that bandanna?
A. It's funny because the first time I seen it, he had it wrapped around his belt, and I'm telling like, what that got -- what that got to do with anything? That's him being him. He was being an individual. So, you know, and then later on he started -- I started noticing more and more different colors and sometime he might have it on his belt. Sometime it's wrapped around his wrist. Sometime it's in his pocket in the front, or sometime it's in his pocket in the back. But it always coordinated with something that he had on.
Q. So he had many different color bandannas; is that correct?
A. Yes, ma'am.
MS. BLANCHETTE: Your Honor, I have no further questions of this witness.
MR. JOHNSON: Just briefly.

CROSS-EXAMINATION

BY MR. JOHNSON:
Q. Mr. Thompson, you're aware that your brother was the one who brought the gun to the scene that night?
A. Yes, sir, I am.
Q. Okay. And from where you were working at McDonald's, right?
A. Yes, sir.

MARCUS THOMPSON - CROSS-EXAMINATION BY MR. JOHNSON

Q. You couldn't see the RV where this incident took place, could you?
A. Actually, I could see the back end of the RV.
Q. You could not see the door, could you?
A. I couldn't see the door.
Q. You weren't in The Money that night either, were you?
A. No, sir.
Q. So you don't know any conversations that occurred between Mr. Hinton and Mr. Burris, do you?
A. No, sir.
Q. And you weren't there at the car when Mr. Burris gets the gun, any conversation between the two, were you?
A. No, sir.

MR. JOHNSON: No further questions, Your Honor.

THE COURT: Thank you, sir. You may -- do you have any other questions?

MS. BLANCHETTE: I do not, Your Honor. Thank you.

THE COURT: You may step down, Mr. Thompson.

MS. BLANCHETTE: Your Honor, my next witness would be Christine Thompson.

CHRISTINE THOMPSON, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. BLANCHETTE:

Q. Could you please state your name for the record?

A. Christine Thompson.
Q. And how are you related to Dytavis Hinton?
A. He's my baby son.
Q. Okay. And, Ms. Thompson, I know you lived through this whole incident and your son being arrested. But I actually want to just jump forward to the plea. Did you want the opportunity to address the court at the plea?
A. Yes, ma'am, I did. I even wrote down what the -- I was going to say at the plea because he already told me to write down what I wanted to say to the court at that time. And I did that, and I did have that statement at home in his motion of discovery, the words that I wanted to speak to the court at that time.
Q. Okay. And at some point did Mr. Dest inform you that you weren't going to be able to speak to the court?
A. Yes, that morning, when we arrived for court that morning.
Q. Okay. And what was your understanding as to why you weren't going to be able to address the court?
A. He said that it was going to turn it into like a black-and-white issue, and so I guess it wouldn't be good for us to speak on his behalf at that time.
Q. And I know you don't have your prepared statement with you today, but could you just summarize what it is you would have said on your son's behalf, please?

A. I'm the mother of four boys. I raised my boys to respect others. My kids usually always stayed around the home. They friend was always welcome to the home. They never gave me any problems. They only play video games and things like that, until I started running them out the house because they was getting on my nerves. And Dytavis, he was the baby, so he was more the quiet type, him and Denoris. He's in the service, his other brother that's next to him that's in the service. And they -- them two always stayed together and mainly did everything together until he went into the service, and that's when I was like he needed to get out the house more and start going to hang out with -- have some friends and things. So he started getting out and found some friends, but the ones that usually come by the house -- come to my house, they were very respectable boys. They never gave me any kind of problems. And I didn't mind them coming over. They make Kool-Aid, make sandwiches, and things like that. It was no problem. They was always welcome there.

Q. So you wanted to paint a picture of who your son was for the court; is that correct?

A. Yes, ma'am.

Q. And are you aware of the fact that your son would accessorize his outfits with bandannas?

A. Yeah, because he used to get on my nerves because he

used to iron them all the time. When he iron his shirts and his jeans or his jean shorts. He would iron whatever color he was putting on. I call it a head scarf. But he would iron that as well he was ironing his clothes.

Q. Okay. And I asked you if you had any pictures of those, but you weren't able to find any pictures. You did bring some with you today that you'd just like to show the court; is that correct?

A. I have the different color bandannas because I got all his stuff -- I put everything back -- when this incident happened, I put all his stuff where I could get to it.

MS. BLANCHETTE: And, Your Honor, if you would allow just for demonstrative purposes for her to be able to show those to you. I don't intend to introduce those into evidence.

THE COURT: Yes, ma'am, I'll be glad to look at them if you have them.

THE WITNESS: Yes.

THE COURT: All right. Thank you.

MS. BLANCHETTE: Thank you, Your Honor. I have no further questions of this witness.

THE COURT: Any cross-examination?

MR. JOHNSON: Just briefly.

CROSS-EXAMINATION

CHRISTINE THOMPSON - CROSS-EXAMINATION BY MR. JOHNSON

BY MR. JOHNSON:

Q. Ms. Thompson, were you aware that your son brought a gun to the scene that night?

A. Well, I wasn't aware that he had the gun on him, but I know that he had a gun. I told him to get rid of the gun because of my grandchildren. I didn't want that gun in the house. I did tell him to get rid of that gun. And he did take it away from the home. And I didn't know what he did with it, but I told him to go get rid of it because I didn't want it in the house because of my grandchildren.

Q. But are you aware that the gun that Mr. Burris used in the incident was registered to your son?

A. Yes.

Q. Dytavis, your son. Sorry, let me --

A. Yes, sir. Yes, sir. I found that out, that that was the gun that was used in the shooting.

Q. And you weren't at the scene that night, were you?

A. No. I was sick that evening. My sugar was up, and I was in the bed at that time, because I'm diabetic. And I was in the bed, so when my older son contacted me and came and got me, that's when I found out that the shooting and everything had happened at The Money.

Q. So you wouldn't have heard any conversation between Mr. Burris and Dytavis, would you?

A. No. No, sir.

MR. JOHNSON: That's all I have, Your Honor.

THE COURT: Thank you, ma'am. You may step down.

THE WITNESS: Okay. Thank you.

MS. BLANCHETTE: Your Honor, I call Dytavis Hinton to the stand.

DYTAVIS HINTON, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. BLANCHETTE:

Q. Please state your name for the record.

A. Dytavis Hinton.

Q. And, Mr. Hinton, are you currently incarcerated?

A. Yes, ma'am.

Q. And where are you incarcerated at?

A. At Lee Correctional.

Q. Okay. And did you file the application that has been documented at 2012-CP-46-1536?

A. Yes, ma'am.

Q. And by way of that application, are you alleging ineffective assistance of counsel?

A. Yes, ma'am.

Q. And you're asking this court for a new trial; is that correct?

A. Yes, ma'am.

Q. Okay. And do you realize that if you are granted a

new trial, you'll be put back in the position you were after your guilty plea and there is a possibility that you could receive more time than you currently have. Knowing that, do you still want to go forward today?

A. Yes, ma'am.

Q. Now, Mr. Hinton, let me take you back to September 21st, 2010. After this incident occurred, were you immediately arrested or were you hospitalized?

A. I was hospitalized.

Q. And how did you get back to South Carolina? Could you take us through the events.

A. I was extradited by North Carolina.

Q. And where did you arrive once you were back in South Carolina?

A. At Rock Hill City Jail.

Q. Okay. And after you got back to the city jail, did you receive a bond?

A. No, ma'am.

Q. Okay. Did you talk to any officers or anybody in law enforcement?

A. I talked to Detective Tripp.

Q. Okay.

MS. BLANCHETTE: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Mr. Hinton, could you identify this document, please.
A. This is the statement that I wrote -- told Detective Tripp.
MS. BLANCHETTE: Your Honor, at this time I would move Mr. Hinton's statement in as Applicant's Number 4.
THE COURT: Without objection?
MR. JOHNSON: It's already in, isn't it?
MS. BLANCHETTE: It wasn't included in the numbered discovery.
MR. JOHNSON: No objection, Your Honor.
(Applicant's Exhibit Number 4 was marked and admitted.)
Q. Mr. Hinton, do you remember when you gave this statement, were you on any type of medication as a result of your injuries?
A. Yes, I was on narcotics.
Q. And did you do your best to remember what had happened and to give the officers an account of that?
A. Yes, ma'am.
Q. Okay. And then let me also show you this document that's marked 160 of the numbered discovery. You could review that for a minute, please.
And does that appear to be a summary of information that you gave to law enforcement?
A. Yes, ma'am.

MS. BLANCHETTE: Your Honor, at this time, I move this in as Applicant's Number 5.

MR. JOHNSON: No objection, Your Honor.

THE COURT: Without objection, Exhibit 5 is admitted.

(Applicant's Exhibit Number 5 was marked and admitted.)

Q. Now, Mr. Hinton, you have in front of you a summary of an interview that you had with Detective Tripp and then your written statement. Do you agree with all of the details in those two documents?

A. No, ma'am.

Q. Okay. And is there information that is omitted or that was not complete as to all the details?

A. Yes, ma'am.

Q. Would you please take us through the details of what you remember happening that night.

A. When we pulled up to McDonald's, we got out of the car. I left my .380 pistol in the glove department with the clip out in the glove department of the PT Cruiser. We walked over to The Money. There was no searching. There was no club fees. We went into The Money. We bought some more drinks. We drunk a little. I was talking to a female at the pool table. Then on my way out, I came back outside and I seen Demario. And Demario was walking toward the RV. And he waved me to come on.

So I went, and when we got to the RV, he was already inside of the RV. I knocked on the door, and there Demario was holding my pistol.

Q. And what happened after you saw him with the pistol?

A. I told him to give it back. And he told me that he got this. And after that, the shots were fired and I ran.

Q. And where did you end up?

A. In the parking lot of The Money.

Q. And how many times were you shot?

A. Twice.

Q. Now, do you have a copy of your transcript in front of you from your guilty plea?

A. No, ma'am.

MS. BLANCHETTE: Your Honor, may I approach with a copy?

THE COURT: You may.

Q. If you could look here on page 13 and towards the bottom of the page there. I'll give you a line number just a moment. Line 23, recounted what you told the officers at the scene. And I'll refer to exactly what the transcript says. I rely upon the transcript, but essentially that you told officers that you had been robbed by two individuals and they took off. Is that what you told the officers at the scene?

A. No, ma'am.

DYTAVIS HINTON - DIRECT EXAMINATION BY MS. BLANCHETTE

Q. What did you tell the officers at the scene?
A. I told them that someone thought I tried to rob them as I pointed at the RV.
Q. And so you at no time intended to tell them that you had been robbed?
A. No, ma'am.
Q. Mr. Hinton --

MS. BLANCHETTE: And I apologize, I forgot to ask the Court about this. Just for demonstrative purposes, I did want him to be able to show his scars from where he was shot.

MR. JOHNSON: That's fine.

THE COURT: I'll be glad to see them. If you can just stand right there, I'll be glad to take a look.

MS. BLANCHETTE: Thank you, Your Honor.

Q. We've had some talk today about these bandannas, and it was discussed at your guilty plea that you allegedly used a bandanna to cover your face as part of this robbery scheme. Could you explain why you had a bandanna on you that night and what you typically did with the bandannas, please?
A. I had the bandanna with the dress, the colors that I had on that night. It was just an accessory.
Q. Did you ever use that bandanna to cover your face that night?

A. No, ma'am.
Q. What did you use the bandanna for?
A. I used it to stop the bleeding in the parking lot.
Q. And that bandanna was located by you in the parking lot; is that correct?
A. Yes, ma'am.
Q. Mr. Hinton, did you retain or were you appointed an attorney?
A. I was appointed one.
Q. And who were you appointed?
A. Harry Dest.
Q. Do you remember about how many times you got the opportunity to meet with him?
A. Two or three times.
Q. Did you ever meet with an investigator that was working with his office?
A. Yes, ma'am.
Q. And what did you discuss with that investigator?
A. The gunshot residues and the statements and ballistic tests.
Q. And as part of your PCR, we made a motion to get the ballistic results, the ballistic reports, gunshot residue results, all of those different reports. And do you recall that the last time we were in court we were informed that those reports did not exist and we had

everything that was available?
A. Yes, ma'am.
Q. Did your attorney ever explain to you why those reports or evidentiary items that you were asking for weren't available?
A. No, ma'am.
Q. Now, you said something about statement. What were you bringing up to him about statement?
A. That the statements were changing.
Q. Did you ever ask him to speak with any of your codefendants or the people that you were there with that night?
A. Yes.
Q. And specifically who did you ask him to speak with?
A. Travis and Devon and Broderick.
Q. And you had requested that I locate Devon Braden and Broderick Page for your PCR today; is that correct?
A. Yes, ma'am.
Q. And you received indigent funds for a private investigator, Mr. Pete Skidmore, but we were unable to locate those two witnesses for today's proceeding; is that correct?
A. Yes, ma'am.
Q. Why did you want him to speak with each of those individuals? And let's take them one at a time. Why did

you want him to speak with Travis?

A. Because Travis knows me.

Q. Did you also want him to speak with your brother Marcus that testified today?

A. Yes, ma'am.

Q. And why did you want him to speak with Marcus?

A. Because he was there that night.

Q. Why did you request that he speak with Devon?

A. Because she was the driver that night.

Q. And finally, why did you want him to speak with Broderick Page?

A. Because he was in the club with us.

Q. Now, did Mr. Dest go over the charges that you were facing and what your possible defenses could be?

A. He didn't. The investigator talked to me about it.

Q. Was there one of the charges that you really questioned or you didn't understand why you had gotten that charge?

A. Yes.

MS. BLANCHETTE: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Mr. Hinton, can you identify what that is for the record, please.

A. First-degree murder.

Q. Is this your arrest warrant for first-degree murder in this case?

A. Yes, ma'am.

MS. BLANCHETTE: Your Honor, at this time, I move this in as Applicant's Number 6.

THE COURT: Without objection?

MR. JOHNSON: The only objection I would have to relevance, this charge was ultimately dropped. And, therefore, we find -- I ask the Court find no relevance to this --

THE COURT: I believe it to be relevant as far as the discussion with his attorney. Admitted over objection.

(Applicant's Exhibit Number 6 was marked and admitted.)

MS. BLANCHETTE: It would go to our final amended PCR application, the allegation therein.

Q. And, I'm sorry, what did you question about this murder arrest warrant?

A. I asked him why was I being charged with Demario's death.

Q. Did you ever receive an explanation for that?

A. He told me because I was involved in the incident.

Q. Was the legal theory of hand of one, hand of all ever explained to you?

A. Yes.

Q. And what was your understanding of that as it related to your charges?
A. That my codefendant did it and I was being charged with what he did.
Q. Did you ever have the opportunity to go through all of the discovery materials and discuss specific information contained in those materials, such as the autopsy and the crime scene photos?
A. No, ma'am.
Q. Now, did you sit down and begin preparing for trial, or did you always discuss a plea?
A. I was preparing for trial.
Q. Did your attorney bring plea offers to you?
A. Yes.
Q. What was the first offer?
A. A cap of 25 years.
Q. And what did you decide to do with that offer?
A. I declined.
Q. And then did he come at you with a second offer?
A. Yes.
Q. And what was your understanding of that offer?
A. A cap of 20 years.
Q. Okay. Did he explain that to you, how that could be -- how that sentence could be construed or applied by the court, what that 20 years could look like?

A. No, ma'am.
Q. Now, with a cap of 20 years, was it your understanding that you could get less than 20 years?
A. Yes.
Q. Did your attorney, Mr. Dest, give you any idea of what type of sentence he anticipated that you could receive?
A. Yes, ma'am.
Q. And what did he tell you?
A. A suspended split sentence.
Q. And the transcript that you have in front of you, actually on pages 37 through 38, he asks the Court for a suspended or split sentence; is that correct?
A. Yes, ma'am.
Q. Now, if you could look at that plea transcript that you have in front of you there. The first thing that occurs is actually a waiver of presentment of your charges. Did Mr. Dest discuss that with you, that your charges weren't going to be presented to the grand jury?
A. No, ma'am.
Q. Okay. Now if you could look at page 4. There they discuss the fact that part of this deal, part of the bargain that you're getting is they're going to dismiss your murder. And then again on page 27, the State reminds the Court right before he sentences you that they're going

to dismiss the murder charge. Did Mr. Dest ever answer your questions about why you were being charged with murder and if you could properly be charged with your coconspirator's murder under the law in South Carolina?

A. No, ma'am.

Q. And that was presented to the judge as part of the deal that you were getting, part of the benefit of this plea; is that correct?

A. Yes, ma'am.

Q. If you could turn to page 10, please, of the plea transcript. There they are going through the facts -- and, I'm sorry, it actually starts on page 9. Mr. Thompson goes through the facts. And then you were asked on page 14, "Is that what happened that night," and you say, "Yes, sir." Now, the facts that you've given today are different. Why did you say you agreed with the facts that Mr. Thompson gave at the plea?

A. Because I was doing what my attorney advised me to.

Q. And were you relying upon your attorney's advice in entering this guilty plea?

A. Yes, ma'am.

Q. Now, you actually had the opportunity to speak to the court. Did Mr. Dest prepare you as to what you needed to say?

A. No, ma'am.

DYTAVIS HINTON - DIRECT EXAMINATION BY MS. BLANCHETTE

Q. Do you feel like you adequately presented your case to the judge or let him understand what you were asking for as far as a sentence when you made your comments?

A. No, ma'am.

Q. Now, were you aware of the fact or had you requested that your family, your mother and your brother be able to speak?

A. Yes, ma'am.

Q. Do you know why they weren't allowed to speak? Was that ever explained to you?

A. He said he didn't want them to speak because they would turn it into a racial issue.

Q. Now, after you received your sentence from Judge Cooper, did your attorney file a motion to reconsider on your behalf?

A. No, ma'am.

Q. Did he file an appeal?

A. I believe so.

Q. Okay. And is it your understanding that that appeal was turned down because Mr. Dest said there was no arguable basis or no merit to that appeal?

A. Yes, ma'am.

Q. After you were sentenced, did you have the opportunity to ever speak with Mr. Dest again?

A. Yes. He came to see me one last time.

Q. And what did you all discuss?
A. I told him that he lied to me.
Q. And why did you say that?
A. Because he told me I wasn't going to get 20 years.
Q. Mr. Hinton, as part of this PCR process, we also moved before the court and you were awarded the opportunity to have a crime scene investigator work on your case. And is that something that you wanted done? You wanted a more thorough investigation done in your case?
A. Yes, ma'am.
Q. Why?
A. Because it wasn't right and the things -- all the statements and the problems that I brung to Mr. Dest, they overlooked them.
Q. And did you have the opportunity to meet with Mr. Skidmore, Mr. Guerette who both are working on your PCR case?
A. Yes, ma'am.
Q. And you had an opportunity to discuss all those issues with them; is that correct?
A. Yes, ma'am.

MS. BLANCHETTE: Your Honor, if I could beg the Court's indulgence one moment.

Your Honor, I have no further questions of this

witness.

THE COURT: Cross-examine the witness.

MR. JOHNSON: Thank you, Your Honor, may it please the Court.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Mr. Hinton.

A. Yes, sir.

Q. The first thing that you testified to was that when you gave a statement, you were on narcotics.

A. Yes, sir.

Q. Are you aware that the statement was taken nine days after you were shot?

A. Yes, sir.

Q. Okay. But the statement you gave gives the most accurate view of the facts as you remember them; isn't that correct?

A. Yes, sir.

Q. But the fact was you were drunk and you were high on marijuana that night; isn't that correct?

A. Yes, sir.

Q. You also, when you were arrested, found in the parking lot with the bandanna in the same vicinity, you told the police that two white guys tried to rob you and they left in a white car; isn't that correct?

A. No, sir.
Q. Never said that to the police?
A. No, sir.
MR. JOHNSON: May I approach, Your Honor?
THE COURT: Yes.
MR. JOHNSON: Check and see if this is in -- already in evidence.
Q. Do you remember giving a statement to an Officer Kitts on -- I believe it's September 21st. Do you remember being interviewed by law enforcement?
A. If that was the officer that was there when I was on the ground when I was shot.
Q. This officer responded to a shooting at The Money. Would you agree that you gave a statement to the officer?
A. No, I gave no statement.
Q. You gave no statement?
MR. JOHNSON: Court's indulgence, Your Honor. I can get it in through another witness.
Q. You also were evaluated by a Kenneth Marsh; isn't that correct? Mr. Dest had you mentally evaluated. Do you remember that?
A. Yes.
Q. Did you make statements to him?
A. Yes.
Q. Okay. Have you seen his report?

A. No, sir.

MS. BLANCHETTE: Your Honor, I would just like to put on the record that we had a previous motion where I asked for a complete copy of defense counsel's file, and I did not receive this report. So me nor my client have seen this report.

THE COURT: It wasn't in the police file?

MR. JOHNSON: No. This is a mental evaluation.

MS. BLANCHETTE: One of our listed items that we had requested was a complete copy of defense counsel's file which we had to have a subsequent motion because I discovered I hadn't gotten a complete copy.

THE COURT: Private evaluation or --

MR. JOHNSON: Yes.

THE COURT: Not through mental health?

MR. JOHNSON: It's a private evaluation.

THE COURT: All right. You need some time to review that?

MS. BLANCHETTE: I would like to at least read through it. It just concerns me that I had two motion hearings where I asked for a complete copy of defense counsel's file and even met with defense counsel and wasn't provided this.

THE COURT: Withdrawn.

MR. JOHNSON: All right. Thank you, Your Honor.

Q. You gave your version of the facts as you gave that statement today here in court; isn't that correct?
A. Yes, sir.
Q. And that's different from the facts that were presented at the guilty plea; isn't that correct?
A. Yes, sir.
Q. But you agreed to the facts at the guilty plea while under oath; isn't that right?
A. Yes, sir.
Q. So were you lying at the guilty plea when you agreed to those facts?
A. No, sir. I was doing what my attorney advised me to.
Q. But the Court gave you an opportunity to speak. You didn't correct that in any way, did you?
A. No, sir.
Q. And this is your guilty plea, not Mr. Dest's; isn't that right?
A. Yes, sir.
Q. Because you're the one going to prison or in prison, not Mr. Dest?
A. Yes, sir.
Q. Do you see Mr. Page or Ms. Brown in the courtroom here today?
A. No, sir.
Q. You said that Mr. Dest explained the

hand-of-one-hand-of-all concept to you; isn't that correct?

A. Yes, sir.

Q. But that you didn't understand why you were charged with Mr. Burris's death; isn't that right?

A. Yes, sir.

Q. But you admit you brought the gun to the scene that night, correct? Into the car? You brought it --

A. Yes, sir.

Q. -- up to the PT Cruiser?

Had you not done that, Mr. Burris would not have had access to a gun that night, would he?

A. No, sir.

Q. And he would not have had access to rob or attempt to rob the victims in this case in the RV; isn't that correct?

A. Yes, sir.

Q. And, in essence, he may still be alive here today --

A. Yes, sir.

Q. -- correct?

And you realize that you got 20 years concurrent for all your charges; isn't that correct?

A. Yes, sir.

Q. But only just the burglary first alone, you were facing 15 to life; isn't that correct?

A. Yes, sir.
Q. Which cannot be suspended, which means you would get the minimum of 15 years, correct?
A. Yes, sir.
Q. Okay. So you were really willing to risk a life in prison for five years?
A. Could you ask that again?
Q. You're serving a 20-year sentence right now. All right. And if you get the minimum on that burg first charge, that's five years' difference between your sentence now and the sentence for the burglary first. You are willing to risk going to trial and getting a life in prison on just that one charge, let alone all the other charges, for five years?
A. Yes, sir.
Q. Your constitutional rights were read to you at the guilty plea, including the right to trial, the right to present your witnesses, the right to cross-examine any witnesses that are presented against you; isn't that correct?
A. Yes, sir.
Q. But you waived those rights in order to take advantage of the very favorable plea offer; isn't that correct?
A. I wouldn't say favorable. I was doing, as I said,

Mr. Dest asked me to.

Q. But once again I remind you, Mr. Hinton, is it your life or is it Mr. Dest's life that's on the line here?

A. It's my life.

Q. And you decided to listen to your attorney's advice and take this plea offer; isn't that correct?

A. Yes, sir.

Q. And nobody threatened or promised you anything to get you to plead guilty, correct?

A. He told me I wouldn't get 20 years.

Q. Did anybody threaten or promise you anything to get you to plead guilty?

A. No, sir.

Q. And you said you were satisfied with your attorney at the guilty plea; isn't that correct?

A. Yes, sir.

Q. And that you fully discussed all the charges?

A. Yes, sir.

Q. And that he has done everything you had asked him to do, isn't that correct? It's what you agreed to at the guilty plea?

A. Yes, sir, it's what I agreed to.

Q. And that you were satisfied with his representation; isn't that right?

A. Yes, sir.

Q. And satisfied with his advice?
A. Yes, sir.
Q. But now you're saying you're not, correct?
A. Yes, sir.
Q. So you lied at the guilty plea?
A. No, sir.
Q. But you pled freely and voluntarily in this case; isn't that right?
A. No.
Q. What was that answer? Sorry, I didn't...
A. I did not want to take the plea.
Q. But you told the plea court that you were pleading freely and voluntarily, didn't you?
A. Yes, sir.
Q. But you didn't plead freely and voluntarily. Is that your testimony here today?
A. As I said once, I was doing what Mr. Dest advised me to.
Q. You have prior convictions, don't you? Assault and battery and disorderly conduct?
A. Simple assault and disorderly conduct.
Q. You apologized at this guilty plea and accepted responsibility for your actions in this case; isn't that right?
A. Yes, sir, for having my gun on the scene.

DYTAVIS HINTON - CROSS-EXAMINATION BY MR. JOHNSON

Q. Did you ever make a statement that you were going with Mr. Burris to rob the RV?
A. No, sir.
Q. Not in the split second that you made a bad decision that then you went and joined Mr. Burris?
A. No, sir.
Q. That you had a bandanna over your face?
A. No, sir.
Q. That you were found and the bandanna in your vicinity had a knot tied in it as if to be used to cover your face?
A. No, sir.
Q. You never made a statement that two white guys shot you in a white car and took off?
A. No, sir.
Q. Did you ever tell Dr. Marsh that you made a split-second decision to join Mr. Burris and rob the brothers?
A. No, sir.

MR. JOHNSON: No further questions, Your Honor.

THE COURT: Any redirect?

MS. BLANCHETTE: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. JOHNSON: Your Honor, may I run to the restroom real quick?

THE COURT: Do you have more witnesses?

MS. BLANCHETTE: I have one more witness. He will be my longest witness.

THE COURT: Yeah. Let's take a short break before we call him, then.

(A recess was taken from 3:12 p.m. to 3:27 p.m.)

THE COURT: You may call your next witness.

MS. BLANCHETTE: Thank you, Your Honor. I would call Ronald Guerette to the stand.

RONALD GUERETTE, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. BLANCHETTE:

Q. Could you please state your name for the record?

A. Ronald Thomas Guerette.

Q. And, Mr. Guerette, is it true that I contacted you in this case for assistance with investigation and with utilizing your expertise to assist in the preparation of this PCR case?

A. Yes, ma'am.

Q. Let's talk a little bit about your experience and background. Could you please take me through your experience as far as in law enforcement and in private practice?

A. I was a police officer in Arvada, Colorado. There I went through the police academy given by the Colorado

State Bureau of Investigation. Within that academy, I had received death investigation experience or knowledge. Then I went on to Charlotte Police Department, went through the same -- not same academy but different academy. At that time I also received information on death investigations. Eventually I went to a two-week, 80-hour course in Louisville, Kentucky, at University of Louisville. It's for advanced training on homicide investigations.

I also took criminal justice courses at Pfeiffer College as well as Central Piedmont College, which included death investigations. I also was involved in a couple incidents, one undercover, where I witnessed a shooting in Colorado. And then I was involved in a search and seizure here in Charlotte -- or not here in Charlotte but in Charlotte, North Carolina, while I was working narcotics where a motorcycle gang member was killed.

Q. Do you know approximately how many homicide investigations you have handled in your career?

A. When I was on the Charlotte Police Department, I was lead investigator on at least 75 cases. I also attended close to 300 homicides over a three-year period. At that time, there were four of us working homicides. One would always be assigned as a lead investigator, and the others would assist. Sometimes we did crime scene; sometimes we

did interviews and things of that nature. In those days, we didn't have any crime scene experts. We did our own crime scenes.

Q. And have you had any experience in teaching or lecturing on the issue of homicide investigations or crime scene investigation?

A. Right. I refer to it as death investigations because we have suicides, we have accidental, and then of course we have homicides. I taught school as an instructor at Central Piedmont Community College for about eight years, one of the courses that I would teach would be death investigations. I've also taught at the police academy for two years on death investigations. I had two classes for advanced courses on death investigations. Two -- I say advanced. It was to senior law enforcement officers in Charlotte area. The --

MR. JOHNSON: Your Honor, speed this up, the State will stipulate he's an expert in crime scene investigations.

THE COURT: All right, sir.

MS. BLANCHETTE: Thank you, Your Honor.

Q. Now that you've been duly qualified, Mr. Guerette, could you please explain what you did in this case.

A. The first thing I did was receive three CDs from Mr. Skidmore in reference to CDs that had been received

from -- I believe Mr. Dest, is it?
Q. That's correct.
A. And I looked at those. I interviewed the -- Mr. Hinton. Also interviewed Mr. Welch (phonetic). And that's basically it.
Q. And you had the opportunity to review all of the discovery, being both pictures and paper discovery, that was on those CDs; is that correct?
A. Right. Documents, pictures, video.
Q. And I or Mr. Skidmore provided you everything that was told to me to be a complete copy of the defense's file in this case; is that correct?
A. That is correct.
Q. Now if you could take us through what you reviewed. And what my question is on the items that you reviewed is what information with your expertise would you have pointed out to defense counsel and how could you have assisted him with the preparation of the case for Mr. Hinton based upon what you found in these items that you're going to go through?
A. Like many cases I've been involved in, it's my job generally to go through what we receive as discovery, interview people, as well as help the attorney make a decision as to which way do you go, what the proper defense would be. And speak with the client, eventually

talk with the client, and keep the client up to date as to what's happening. And sometimes help the client make a decision.

Q. Okay. And could you take us through what you reviewed and what your findings were, please.

A. Well, I found there was no indication whatsoever that this case had been investigated. Everything that I saw in the CD were items, documents received from the police department. There was nothing whatsoever indicating -- no handwritten notes whatsoever. That's normal in a case. No typed notes, nothing. Other than the items received from the police. This indicates that there was not an investigation done in this case.

Q. And you're aware that we made a specific discovery request in this case for all of the investigators' reports that worked with the public defender's office; is that correct?

A. Yes, ma'am. Can I get some water?

I also did not see any indication that the medical examiner had been communicated with, which after reviewing the autopsy report and the diagram items in the discovery that the medical examiner should have been communicated with to determine further information in reference to the gunshot wounds that were received on Mr. Burris.

Q. And could you please explain the basis on which you

made that finding, why you believe he should have been contacted further?

A. Because there was evidence that after the first couple shots to Mr. Burris in the hip area, that there was execution style shots, one in the back of the neck, one in the shoulder that went down as an oblong. That's based on the projectiles -- not the projectiles but the shell casings that were found around the area in specific locations. There should have been closer contact with the medical examiner to determine if there was any contact wounds like I suspected. And none of that was ever done.

Q. Please continue.

A. In reference to medical examiner or others?

Q. If you want to go through what you reviewed in your findings, and I'll try to not interrupt you.

A. Okay. I found that there was no indication that any of the fingerprints that were found at the scene, specifically a print that was on a door, which would have been beneficial to determine whose blood it was on the door, that had not been analyzed, nor was the blood analyzed there. There was a marker, which I can show a little bit later here, in reference to blood that was on a drawer, and that was never analyzed as to whose blood it was. It was pretty significant because of the location of where Mr. Burris would have been versus the location of

where Mr. Thomas would have been.

The statements that I saw from the Thomas brothers -- I refer to them as such -- were inconsistent, did not match what really was at the crime scene, what was seen during the crime scene and everything, and I can explain that here in a few minutes. There was no indication whatsoever that guests or members from The Money lounge, bar, whatever it is, were ever interviewed, even though Mr. Hinton had been in the bar speaking with a black female, somebody made the statement that the black female was a member of the bar. This in itself would have helped determine his path.

There was a few items from a police video but no video whatsoever of Mr. Hinton being on the ground or anything else. I also observed photographs of the trajectories that they did. There was no reports whatsoever, which there should have been a report for trajectory, as to what the findings were that the police did. There was no indication that any of the physical evidence or the property was ever viewed, in other words, the items from the property report. I still have not had the opportunity because of a late notice by the Rock Hill Police Department. I was not able to make it till the following morning. Mr. Skidmore did view the items and took photographs of same.

Q. And you had the opportunity to review the photographs of the items that are contained in the keeping-of-the-evidence department at Rock Hill Police Department; is that correct?

A. Right, right.

Q. Okay. Now would you like to take us through some of the specifics that you alluded to?

A. Yes. The first -- I put these pages in the group, and these are the pages that are on it. The first one is page 61 and 62, which is the statement by Hinton where he indicates that he was at the bar, Money Tree, drinking that the keys -- he got the keys to the PT Cruiser. Gun was in there. On an interview with Mr. Hinton, he indicated there was only four bullets in the .380 that belonged to him.

Per his statements, when I interviewed him, the statements were basically all consistent as to what had happened. The statements that he gave to the police, particular one of them stated, "Hinton stated that he observed Burris holding the pistol to the head of two males." All of these were consistent with items that I was able to look at at the crime scene. The fact that there were seven or eight shots heard. Also that Mr. Hinton at one time stated that after he was laying down -- after he had been shot, he was laying down on the

ground behind the RV or somewhere around that area, that he heard another shot. Mr. Welch indicates that there's -- after Mr. Burris was hit, that there was two or three other shots that were done to -- he claims to the head area. However, there was one to the back of the neck in the autopsy, one that was on a top shoulder.

There's also an indication that Mr. Hinton was stating that the two people that was in the van were sitting down in the couch, and I've got a description which I'll mention here in a minute, or a diagram, to where the two individuals were on a couch to where the shooter, meaning Mr. Burris, was at the top of the stairs when the shots allegedly occurred.

The page number 35 is a very important document and page number 36. This is a police rendition of where certain shell casings were. Even then, you have to look at it in the sense that there are four .380 spent casings. Now, I can't tell you exactly where they were. I can tell you where they ended up at. All four of them ended up, if you see on page 35, it has markers Number 11, Number 8, Number 9, and Number 10. All of those spent casings are up there at the top near the couch area where the two individuals, meaning allegedly Mr. Welch and one of the Thomas boys, was sitting on a couch when the individual came out the back room. If you look on this diagram also,

there's some projectiles from the 9 millimeter. Now, when they -- I mean the police itemized the spent casings for the 9 millimeter, there were five of them indicated on here. But in one of the reports it indicates -- I could be specific as to where -- it indicates that two more spent casings were right in the doorway of the RV at the time that the police got there. Now, there's no other markings with the exception of that but of one statement by a police officer who removed the spent casings. So this indicates that there were seven spent casing. The thing that's very disturbing to me is that you've got a photograph of Hinton sitting on the steps, his feet pointing outward, the gun on the last step downward.

Q. Just if I could correct you, do you mean the victim Mr. Burris? You said Hinton.

A. I'm sorry, Mr. Burris.

Q. Go ahead. I just wanted to make sure that's what you were talking about.

A. I appreciate that.

But Mr. Burris was sitting down, and two of the spent shell casings are right there on the floor on the steps where the police officer got them. How did they get there? I know spent casings will bounce off, but you've got two of them right there, you've got one underneath the seat of the bus and another one in the area, indicating

four of the shots were placed right around that area, either from up top. In order for the two spent casings to be down, had to be around the area. The first spent casing was in the bedroom, way back. And we have an indication that it's a robbery going down. Why is somebody shooting that far distance when two people have a gun to their head? Clint Eastwood can do it in a movie, but I don't know of too many other people who can shoot through the witnesses and not hurt the witnesses or anything at all. But yet the first couple shots are in the side of Mr. Burris, indicating that, hey, where did these shots come from? Where are the people when the shooting occurs?

The whole thing that bothers me and why I think this case should have been investigated no matter what Mr. Hinton is saying is the fact that really, it doesn't match. The crime scene does not match what the witnesses are saying. And it really appears that something very funny occurred after the initial shots to the hip area and very possibility that there was an execution of Mr. Burris after he was sitting down, which his gun is down there. He only had four shots. The four shots were at the top. I know you don't -- you can't think fast enough when things happen like this. I've been there. But the execution is totally different than shooting somebody in

self-defense.
Q. And are you aware of the fact that it was recorded by multiple officers in this discovery document that the one Thomas brother who was uninjured actually had the gun in his hand when they responded to the RV?
A. That is correct, and there was no GSR done on that individual's hands. There was only GSR done on the left hand of the victim Scott Thomas, not Matt Thomas but Scott Thomas, GSR on his left hand, and then on Mr. Burris, GSR was done on his hand.
Q. And I'm sorry I interrupted you. Please continue.
A. The other thing that should have caused alarm is that -- can I just look at this for one minute before I move on to the next?
Q. Yes, please.
A. Going back, ink impressions on page 14 have been taken but never analyzed by anybody else.
Q. And when you say "ink impressions," would that be fingerprints for those of us that are --
A. Right.
Q. -- not as knowledgable?
A. Right.
Q. Thank you.
A. In reference to the two 9-millimeter spent shell casings, that's on page 10. And on page -- or Document

Number 066, it's the item where possibly two 9 millimeters that were not marked, two shell casings were in the doorway found by Officer Slawson. Supposedly videotaped it with his video, but I haven't seen the video on that particular item.

Of course one of the things that bothered me initially is the fact that Mr. Walsh, Michael Walsh had different testimony that was inconsistent with what the findings were. The police even picked up on that. Went back and re-asked him for a second statement. His first statement is on 88 and 89, and his second statement was on document number 91. He's all over the place. One minute he's got the shooter coming from the back end of the trailer, outside of the trailer. The other time he's got him coming out the back of the trailer. One time he's sitting there when the shooting occurred. He's within a foot of where Mr. Burris was when the shooting occurred. I have a hard time believing which version that Mr. Walsh actually is convinced in his mind as to which one is correct.

Q. And did you have the opportunity to personally interview Mr. Walsh?

A. Yes, I did.

Q. And did he provide you yet another version of events?

A. Yes, another version. This time he was sitting down.

This time there was two to three shots to the back of --

MR. JOHNSON: Objection as to anything Mr. Walsh would have said. He's not here to testify, and I have no notes that this interview ever occurred.

THE COURT: Is Mr. Walsh going to testify?

MS. BLANCHETTE: He is not going to, Your Honor.

THE COURT: Okay. If you would just stick with your investigation, if you would, please.

A. When I went to the autopsy report, gunshot path 1 and gunshot path 2 were the fatal ones. Number 1 is behind the left ear. Number 2 is in the upper chest region. The -- in path number 2, which is the one on the chest, it had a slightly oblong entrance. Gunshot number 3 -- well, gunshot number 3 turns into 7 and 8 and different things like that. There's no sense in really going to that unless there's some questions. But gunshot path number 6 also had oblong version.

Like I said earlier, in this autopsy report, there's no indication whatsoever that anybody spoke to the medical examiner to try to get additional information. The indication was that Mr. Burris had put the sweatshirt over his head, but yet there's some bullet holes in his sweatshirt. How do you -- you tell somebody to stop shooting and let me put my shirt down? He's shot in the stomach area where there's bullet holes in there. Where

does the head come from? If he's got his head in his sweatshirt, it's going to be lifting it up. There's also a bullet wound in the back where I think an exit wound, and there's a hole back there in the shirt also.

I considered the statements from Broderick Page in reference to Burris saying, "Don't eat all my damn food. Here I come." Although we did receive phone records -- I think it's the phone records, but I'm not sure -- for Mr. Burris, there was no indication whatsoever that anybody was made contact on these phone numbers to determine the time frame and stuff like that.

He also stated that -- on page 131 that Hinton was talking with a black female inside the club. It's pretty important to try to trace that person down because one of the employees knew the black female, knew she was a member. They could have found out exactly who she was and been able to determine what her story would have been in reference to what Mr. Hinton was doing.

There was a members and guest list received but no indication whatsoever that anybody paid attention to it. The Welch brothers, the thing that bothers me about this and why it should have been investigated is so little information as to what their version is.

Q. And are you referring to the Thomas brothers? You said the Welch brothers.

A. I'm sorry, Thomas brothers. Page 159, page 21, page 72, page 85. This is the first time I've been involved in a case where there's so little information gained from the victim or witness. So minor that nobody would be able to figure out what exactly happened. This -- these people should have been interviewed. They might have told you "no," but they should have -- there should have been an attempt to interview them because their statements do not jive. It just doesn't -- it doesn't -- and I look at the $70 that's in the pockets of Burris. Where'd that $70 come from?

Q. And there are actually pictures there that show those --

A. There are pictures that show it, which is in that stack.

Q. The contents of Mr. Burris's pocket?

A. Right, right. And the $70, what's strange is the $70 is in one pocket and then he's got some additional -- like a dollar or something in another pocket. Most people put all their money together. I know what $70 can buy, you know, in the hood area. You can buy cocaine for $70. You can buy a gram of cocaine for 70. So where did that $70 come from? And so I'm thinking is this a drug deal or is this a robbery?

Q. And is there another -- I'll show you here the

pictures I'm referring to. This displays the contents of Mr. Burris's pockets. Was there also another item in that that got your attention?

A. Well, marijuana. And a cell phone.

Q. Could you explain when you say "marijuana" what you see there?

A. It looks like a dime bag. A dime bag is about $10. It looks like a dime bag, and the police have it labeled as marijuana. So there was some marijuana there. There was no indication whatsoever that the trailer was searched. In fact, there's some items that have been misplaced from one photograph to another. That's a concern because you got an item on the floor here and the next item -- next time the item is on the stove, there's no indication of why it was moved from one to another.

Q. And is there a specific item that you'd like to reference that's been moved, as you're saying that?

A. Yes. I'm sorry. Mixed up here. If I can just go through the photographs.

Q. Yes, please. Just go through what you identified as part of your investigation and work in this case.

A. I thought there was some numbers on this.

MS. BLANCHETTE: Your Honor, may I approach the witness?

THE COURT: Yes.

MS. BLANCHETTE: Help him here.

(A discussion was held off the record.)

MS. BLANCHETTE: So if the Court is okay with him just describing what picture he's referring to.

A. I see that. My eyes are not...

In reference to disk number 2 is a photograph of the victim, Mr. Thomas, sitting on a couch or sofa area as you come into the motor home. The disk number 2 photograph --

Q. And they actually aren't marked. We just introduced these all as Applicant's Number 2, so you can just describe what the photograph is and if there's anything specific that you wanted to point out in the photograph.

A. Okay. I think I gotcha. Just hold it up, I guess?

Q. Yeah. And I have these on electronic disk, but I did print a copy.

THE COURT: I'll be glad to just look now.

A. This photograph here shows the Busch box down here at the bottom. They're getting ready to be packed -- to pack to leave in one statement. The other statement, they're going to celebrate. There was an indication by one of the individuals, Mr. Thomas, that he did go get a box of Busch. The fact that the carpet is rolled back here indicates that something happened there.

This is a stairway. It's going outside the trailer. There's a bullet hole here, which I'll talk about in a few

moments.

This photograph shows the blood on the doorway, which DNA should have been done to try to determine is it Mr. Hinton's blood or is it the blood of Mr. Burris or is it Mr. Thomas' blood. This photograph shows where the four spent projectiles, being the .380 spent casings, I mean, shell casings, Number 10, Number 9, Number 8, and Number 11 markers. These are the locations final resting period of the .380, the four spent casings from the .380.

Back in this photograph, back number 14 and 15, which is all the way back in the bedroom, the first spent casing of the 9 millimeter was back there. The -- where this bag is -- and you'll see a little bit later there's a shot that went down into the ground that allegedly Mr. Burris, according to Mr. Welsh, fired. This photograph just shows the trajectory of the bullet from through here. It's important to note that there's no other bullet holes in this particular railing-type thing. This again shows a photograph where the spent casing is for the 9 millimeter, indicating that the first shot would have had to have been back here.

This is where the box has been moved and apparently because -- to show Number 17 marker where rod or laser was shown where the shot that was down on the ground, according to -- one of the witness stated that Mr. Burris

shot into the ground. This photograph's centering on that and that's where the blood is, but that's marker number 18, which will be on one of these other photographs. Number 12 indicates where another shell casing was. This is 9 millimeter. This is going out the door. This is a seating area right next to it. This is a seating area where the two individuals were allegedly sitting at the time. Mr. Hinton also says that he saw -- when he opened the door, he saw two people sitting up here in this area.

Here's Number -- marker number 18, which shows the blood on there. It was taken, but it was -- no further investigation ever occurred on it. So we don't know whose blood that is, but once again, this is the trajectory of the spent casing. These two photographs are identical except this is a close one. There's a spent casing, Number 19, which is a marker of a 9 millimeter. It's in the hat. This is the seat of the table, the table, and then the door over here to the left, so this could have been the second shot.

21 is another spent casing. These are the fingerprints on the end of the gun, and nothing else was done with that. Don't know why, but they have a fingerprint. I don't know whose print that is. This is where they start the measurements, the distance and et

cetera. What I did is I looked at this photograph, this photograph, this photograph. This photograph shows height of the rail, where the bullet hole went through. Here's where a trajectory goes through here. Don't really know what that's for. This shows the door, the rod that they used for the trajectory. There's a little red spot right here where the bullet would have hit if the door would have been closed. However, there's no indication of any damage whatsoever at that area. Same as -- this photograph shows the same thing. There's no indication where the light -- that a bullet hit, indicating that the door would have had to have been opened or somebody caught the bullet.

These are all trajectory shots. The problem with all of these is you have no indication, no report whatsoever would be able to tell you anything about it except what you see in the photograph. These again are done on the outside. Shows where the door is open. Everything is from the trajectory of that shot out here. Same as this photograph. Same as this photograph. Same as this photograph. And this right here as well as this one, I took the heights. Also I had Mr. Hinton, when I observed him, he says he's got two bullet holes, he's got two holes, but one's an entrance and the other one's an exit and it's at an angle from back here and it comes out over

here. And so you're talking about this angle here.

MR. JOHNSON: Objection, Your Honor. He's not an expert in ballistics. He has no authority to testify to this. Plus Mr. Hinton's already admitted he was shot twice.

THE COURT: I saw the scars.

A. This trajectory here would be about the only place that Mr. Hinton could have been, around that area, not inside the trailer. All of these indicate to me that further investigation definitely should have been done to try to determine.

Q. Mr. Guerette, you also had the opportunity to review these smaller photographs that were obtained from the evidence file at the Rock Hill Police Department. And if you could just explain what information you were able to ascertain based upon those photographs, if any.

A. Well, this photograph here is just a photograph of the envelope that had swabs of the red stain, and that's the only time I've seen any indication in reference to the red stain, with the exception of on the SBI -- SBI. I'm not in North Carolina -- the SLED agency's inventory of the items that were in the box. These were not -- these were returned back to the local authorities on 1/15/2013, where an indication that these items were kept down there. These are just photographs of the two hats. One witness

says it was a P. This is an A. I can understand why they'd get confused if somebody's got a gun and shooting.

You got ink impressions, but nothing else was done of it. We received three CDs. In the discovery that Mr. Skidmore photographed, there are five different CDs, so we don't know if we saw everything that the police had. We have not been able to spend time with these particular CDs that they have. We have three here. Got two more CDs.

This is just a photograph of the money in one pocket of Mr. Burris and money in the other pocket of Mr. Burris. Photograph of the bandanna that was found outside. Unless somebody took the knot out, there's no knot in there that I can see. There's just a pair of pants. Just indicating where the money was at in the left front pocket. This is the GSR where Burris' hands were done. Nothing else was done after that. This is just for the photograph of the CDs.

Q. Mr. Guerette, is there anything else that -- in your review that you would like to point out to the court as far as the evidentiary items that you reviewed there?

A. I can't think of anything, unless you can remind me of something I forgot.

Q. In your experience, what would you have been able to tell plea counsel based upon your work in this case? Or,

I'm sorry, what would you have been able to tell Mr. Dest based upon your work in this case?

A. I would definitely emphasize to him that this needed to be investigated.

Q. And would you have been in agreement if you were working on this case, as you have done for the postconviction relief, would you have been in agreement with Mr. Hinton entering a plea based upon the lack of investigation or the stage of the case as you saw it?

A. No, I would not have.

Q. Have you had the opportunity to work on similar cases involving guilty pleas?

A. Yes, I have.

Q. And could you explain your experience with that?

A. It was a case in Asheville, North Carolina. The Innocence Commission got involved. Five individuals, all black males, had pled guilty. All of them had five different public defenders. The DA had convinced them that they had extra evidence that they did not. Make a long story short, they spent ten years in prison. Two of them were still in prison when the Innocence Commission got involved.

We investigated it. Went back in front of a three-judge panel, and they exonerated all the members of -- even though they had pled guilty, even though they

had signed a plea agreement, everything similar to this case, and they had not done anything, because during the course of the investigation, we came up with three other individuals who were suspects that the DA had the information, DNA, and never gave it to anybody. So they pled guilty thinking that they had to play the game.

MR. JOHNSON: Objection, Your Honor. I move to strike all that testimony. First of all, it's not relevant. Second of all, there's no allegation that the State didn't turn over any of the DNA evidence. The facts here are completely different than any case in Asheville. We'd ask you to strike that from the record.

THE COURT: I've already heard it. I think I can filter what's relevant and what's not relevant. It's out. You've noted your record -- your objection to the record being stricken.

Q. And, Mr. Guerette, we did talk some about how I had requested certain materials so that you would be able to do a complete investigation in this case. Did you ever see any medical records of the Thomas brother that was the victim in this case?

A. No. And that would have been important.

Q. Okay. And did you ever see a report by a Kenneth Marsh or a Dr. Mash?

A. Never heard of the person.

Q. Okay.

MS. BLANCHETTE: Your Honor, if I could beg the Court's indulgence one moment.

THE COURT: Yes, ma'am.

Q. Now, Mr. Guerette, I think you've been clear about where -- based upon your investigation and review where, in your opinion, Demario Burris was located when the last two fatal shots were made. But were you able to make a determination based upon the review of the evidence in the file as to where you could -- where you thought Mr. Hinton was located when he was shot?

MR. JOHNSON: That would be pure speculation, Your Honor.

MS. BLANCHETTE: Your Honor, he's an expert and I'm just asking for his opinion. He's -- they stipulated to his qualification in crime scene investigation.

THE COURT: Well, if he's got a basis for his opinion, I'll be glad to hear his opinion, but I'd also like to hear the basis for that opinion.

Q. And, Mr. Guerette, I should have asked a better question. Can you provide a basis for your opinion as to where Mr. Hinton was located when he was shot?

A. Through the -- yes, I can. Through the trajectory measurements that the police did, the laser trajectories, the only place he could have been would have been outside

that trailer and approximately where that police officer was, which would have been outside the door of the trailer, not inside the trailer.

Q. And I believe you may have said this before, but did you have the opportunity to visually inspect Mr. Hinton's wounds?

A. Yes, I did.

Q. And you had the opportunity to meet with him at Lee Correctional; is that correct?

A. Right.

MS. BLANCHETTE: If I could just beg the Court's indulgence one more time. Your Honor, I have no further questions at this time.

THE COURT: Any cross-examination?

MR. JOHNSON: Yes, sir, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Mr. Guerette, you said you've never heard of Dr. Kenneth Marsh; is that correct?

A. That's correct?

Q. Did you read the transcript in this case?

A. Transcript?

Q. Yeah, the transcript from the guilty plea.

A. No.

Q. Okay. Would you agree with me that Dr. Marsh's

findings were in the transcript or would you argue with me that they were?

MS. BLANCHETTE: Your Honor, I object. He just said he did not review --

THE COURT: I sustain the objection.

Q. You also state you believe Mr. Hinton was on the outside of the trailer; isn't that correct?

A. That's correct.

Q. And that's based on your review of all the pictures and the trajectory?

A. That is correct.

Q. But you weren't there that night, were you?

A. Nope.

Q. And isn't it possible for Mr. Hinton to be in the trailer and him -- because he gets hit on the right side. He gets shot on the right hip; isn't that correct?

A. Right.

Q. For him, that shot pointing down to hit him as he's leaving the trailer?

A. No.

Q. Isn't that a possibility?

A. No.

Q. Were you there that night?

A. No. But you can tell the trajectory it's along -- where the height of his -- there's some photographs in the

CDs that we got -- and I don't have the photographs with me -- where he's standing up, and they measure this side versus -- they measure this side up here and then down here where the exit wound is. They measure that. And those measurements are identical to what the laser trajectory is. It could not have been done in the trailer unless he would have been at the top. There's no indication that he was at the top. There's only one shot through that thing -- that wall, and that shot, any other place in there -- I can take you through it if you want me to, but the measurements from the top of there, the hole down to the step, first step, second step, the top, doesn't match. There's no way he would have been shot there.

Q. Did you examine the -- Mr. Hinton's medical records in this case?

A. I don't believe so.

Q. Okay. Would you agree with me that his own testimony -- you were in the courtroom for his testimony --

A. Uh-huh.

Q. -- and he admitted that he was shot twice. It wasn't an entrance and an exit wound; it was two different shots?

A. I think he's nervous because he told me differently.

MR. JOHNSON: Your Honor, strike that answer about

his belief about being nervous.

THE COURT: I'll disregard it.

Q. Would your investigation change if you knew that Mr. Hinton admitted to Mr. Dest that he went there to rob the Thomas brothers?

A. Still should have had an investigation.

Q. But wouldn't you agree with me that it's not necessary once Mr. Hinton admits to his purpose in that?

A. I disagree. And the reason I disagree is the attorney and investigators that's representing an individual have the duty and the obligation to make sure that his rights are protected, that the case is investigated. You can't rely a lot of times on an individual, especially an individual that's afraid of getting more time. Or whatever the circumstances are. You cannot rely on that. You've got to guide -- you're professional. You've got to guide the people who know less. Especially somebody in the hood. They have different views than you and I have. As a result of that, you've got to put a little bit more effort into representing them properly and making sure that their rights are protected.

Q. And did you go to law school?

A. No, but I've been around for 40 years, and I've heard enough lawyers talk this stuff to where I think I can --

Q. So you're a legal expert is what you're telling me?
A. No, I didn't say that.
Q. Okay. Would your investigation change if you knew that Mr. Hinton admitted to his psychologist, Dr. Marsh, that he went there and made a split-second decision to rob the trailer?
A. That's what you're saying, but I've never seen a document -- we were never provided that document.
Q. Does it make a difference that it's not Mr. Hinton's trailer; it's the Thomas brothers' trailer?
A. That -- I'm not talking as a lawyer. I don't know. That's the law. I wasn't trying to give you a law. I was trying to tell you what -- professionally what people should do when they're involved in representing somebody.
Q. But you understand the right to defend yourself, don't you?
A. Right.
Q. As a former law enforcement officer?
A. Right.
Q. And do you believe that the Thomas brothers had a right to defend themselves that night?
A. Yes, they did, but not to the extent --
Q. And Mr. Burris and Mr. Hinton had no --
MS. BLANCHETTE: Your Honor, I would ask that my witness be able to finish his answer.

THE COURT: Let him finish his answer, Mr. Johnson.

A. But not to the point to where you walk up to somebody and take a gun and put it behind an ear or on their chest and pull the trigger and those are the two fatal gunshot wounds.

Q. Are you aware there was no stippling found behind Mr. Burris's ear?

A. I don't know where you saw that. I have not seen anything in the documentation that there is or was not any stippling.

Q. Or any gunshot residue?

A. It wasn't documented, but that doesn't mean it wasn't there.

Q. You said you reviewed Mr. Burris's autopsy.

A. Right.

Q. And it clearly would have showed that if it was there?

A. Not necessarily.

Q. You also say the law enforcement should have done more than what they did, correct?

A. I don't think I put the whole thing on law enforcement. There's a few things they should have done.

Q. Fingerprinting?

A. Fingerprinting.

Q. Blood DNA?

A. DNA.
Q. Did you talk to any of the law enforcement officers in this case in preparation for this hearing?
A. No.
Q. You are aware that all the shell casings were found inside the RV?
A. The ones that were documented, yes, sir.
Q. So those that were documented, all the shooting would have taken place inside the RV?
A. Exactly.
Q. And it was Mr. Hinton's gun that was used by Mr. Burris, correct?
A. Yes.
Q. So you've admitted that you were not there that night, so you cannot say exactly which order the shots were fired, can you?
A. No. I can give you an indication as to the location where the person was.
Q. But you can't tell me exactly where everybody was when it happened?
A. Nobody can.
Q. You also state that you reviewed a statement where Mr. Hinton said that once he was on the ground outside that he heard another shot?
A. Right.

Q. Where was that statement?
A. That's what he told me when I met with him.
Q. But that's not in any of the interviews with Mr. Hinton?
A. No, unh-unh.
Q. So that would be an inconsistency with his statements, correct?
A. Either that or it was admitted by the police if he told the police. I don't know what he told the police. I wasn't there.
Q. But that would be an inconsistency with his statements, correct?
A. If he did not mention it to them, it would be an inconsistency, but that's something that could have developed after the interviews.
Q. But you reviewed all the statements from the other witnesses, right?
A. Right.
Q. And they all state that there is just one round of gunfire; that was not a single shot later on, correct?
A. No, that's wrong.
Q. Please point me to where there's a single shot.
A. Well, Mr. Welch --
Q. Mr. Walsh?
A. Walsh, I'm sorry.

Q. And admittedly, he has conflicting testimony, does he not?

A. Sir?

Q. He has conflicting statements?

A. Oh, yeah.

Q. But he also states in his statements that he sees two guys with bandannas around their face; isn't that correct?

A. That's one statement. Another one is a hood over the head.

Q. But there's something covering the face. Mr. Burris was said to have a T-shirt above his face; isn't that right?

A. I thought it was over the back of his head.

Q. But his shirt was above his head?

A. All right.

Q. You also say that it would be very important to track down the black female that Mr. Hinton was seen in the club with to interview her --

A. Right.

Q. -- correct?

Did you track her down?

A. No.

Q. So she's not here today to testify, is she?

A. No. I mean, I'm limited as to what I can do.

Q. Did you ever interview Harry Dest --

A. No.
Q. -- in this case?
A. Unh-unh. That was the attorney's job.
Q. You also said that the $70 found in Mr. Burris, based on your experience, could be drug money. So you're indicating that there may have been a drug deal that happened, correct?
A. Could have been.
Q. Okay. But there's no evidence that there was a drug deal, is there?
A. Not really, no.
Q. And admittedly, Mr. Hinton was smoking marijuana that night, correct?
A. I think so.
Q. And Mr. Burris was found to have marijuana in his system, correct?
A. Right. It was cannabis.
Q. And he was the one that had the marijuana on him?
A. Right.
Q. But there's no evidence that it was a drug deal between the Thomas brothers, the band members, and the defendants, is there?
A. Nobody's admitting to it.
MR. JOHNSON: May I approach the witness, Your Honor?
THE COURT: Yes.

Q. So you state that law enforcement or Mr. Dest should have had the blood tested in the stairwell, correct?
A. Right.
Q. But all the evidence, all the statements put Mr. Burris and Mr. Hinton in or around the stairwell, correct?
A. Right.
Q. And Mr. Thomas was not in the stairwell, the victim who was shot?
A. Right.
Q. He was not in the stairwell at all, was he? According to statements?
A. According to statements.
Q. So there are --
MR. JOHNSON: I withdraw that question, Your Honor. Court's indulgence, please.
Q. Do we have any photographs of Mr. Burris laying in the stairwell in this case? Did you review that photograph?
A. Yes, I did.
Q. With all the -- riddled with gunshots. Why isn't that in this group to show his body position in the RV that night?
A. I can get it to you real quick. It's over there. I thought it had been put in.

Q. One last question and just -- will you confirm that you said the officers didn't take a picture of the shell casings that were found in the stairwell that night?
A. No, that's not what I said.
Q. What did you say?
A. I said they did take picture.
Q. And that's not in that package either?
A. It's on -- it's a video that was taken of it, and it's mentioned in one of the police reports --
Q. Okay.
A. -- by the officer who took the photograph of it.
MS. BLANCHETTE: And, Your Honor, if I may, we plan to show the video if the State would like that video shown --
MR. JOHNSON: I thought he had a picture.
Q. So just to sum it up, you can't tell what really occurred that night, who went in the RV first and who was shot when and where they were shot from, can you?
A. I can tell you the approximate location of some individuals were, meaning Mr. Thomas. Had to be back in the bedroom the first shot.
Q. And that's what the statement says, he comes out of the bedroom shooting.
A. Right. And then there are four spent casings right there at the doorway, so he had to have been right there

while Mr. Hinton was down when the four shots were fired. Somewhere around there.

Q. And there's a bullet found in the floor, bullet hole found in the floor; isn't that correct?

A. There's a bullet hole found in the floor not far from the stove, but it's quite a distance from where Mr. Hinton, where the shell casings -- I'm sorry, it's quite a distance -- the four .380 shell casings were found quite a distance away from where the shot down in the floor was done. Mr. Walsh, whatever his name is, says that Mr. Burris shot in the floor. At that time, he would have been halfway to the...

Q. Demanding money? That's how he shoots?

MS. BLANCHETTE: I'm sorry, Your Honor, appears the State is making hand signals. I just ask that there be an actual verbal question or an explantation of what the hand signal --

MR. JOHNSON: I'll ask it after he finishes his --

THE COURT: Finish your answer.

A. I can't remember where I was at, when he started pointing.

Q. My question was: There was a gunshot found in the RV floor --

A. Right.

Q. -- correct?

And that would confirm the witnesses' statements that Mr. Burris was in the RV shot, demanding money, correct?
A. If he's the one that shot -- if the bullet that was in the floor was the one that came from the .380, that would be correct.
Q. Okay. And Mr. Burris has no right to be in the RV; it's not his?
A. No. Not that I know of.
Q. Okay.
MR. JOHNSON: No further questions, Your Honor.
THE COURT: Any redirect?
MS. BLANCHETTE: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MS. BLANCHETTE:
Q. Mr. Guerette, your services were obtained in this case to review the evidence and the investigation done, not to solve this case; is that correct?
A. That is correct.
Q. Now, the State asked you questions about the pictures of the trailer. Did those pictures as you perceived them show a trailer that was nice and clean and they were getting ready to go to sleep for the night, or what did you see in those pictures?
A. I saw a case of beer laying on the floor that one of the Thomas brothers had gone to the store and got, or

appeared to be. There's other pieces of papers. Rug being pushed aside. It didn't look like they were packing to leave. It looked like maybe a fight or something happened where stuff was on the floor.

Q. Now, the State asked you questions about the casings that were found. Is it possible that a casing could be in the trailer but Mr. Hinton could be hit by the projectile outside of the trailer?

A. Oh, definitely.

Q. And just for my own clarity, what's the difference between a casing and a projectile?

A. The casing is the -- the bullet is enclosed into it. A projectile is the item that's in of the bullet that comes out and does the damage. Casing, all it does is contain the projectile until it's fired.

Q. So would the casing typically be where the shot was fired, not where the shot ended up? And please correct me if I'm wrong.

A. In everything I've seen in person, everything I've experienced, it's difficult to say exactly where that casing hit first. Did it hit the ceiling? Did it hit the floor? Did it hit a couch? Did it hit a person? You can't tell. You can tell where they land. So, therefore, the shots would have been fired around that area someplace. The fact that one casing was in the bedroom

indicates that something happened to where a bullet was fired from the bedroom, and another bullet was fired because the casing is up on the bench, so there's one, two that's farther away from the body and then the rest are all concentrated up front where Mr. Burris was -- ended up sitting on the step with his feet on the bottom step.

Q. And the State asked you a number of questions about the pictures of the trailer and then asked if you had any evidence that this was a drug deal gone bad. Were you able to determine if everything was inventoried from the trailer? Did it appear as though law enforcement inventoried the entire trailed?

A. There was no inventory sheet. There's no indication it was searched or anything like that.

Q. And when the actual trajectory with the laser beams and whatever it is they do with those trajectory pictures, that was actually done after the trailer had been moved and cleaned up; is that correct?

A. That is correct.

MS. BLANCHETTE: Your Honor, if I could just beg the Court's indulgence one moment. Your Honor, I have no further questions of this witness.

THE COURT: Thank you, sir. You may step down.

MS. BLANCHETTE: Your Honor, except for the submission of a memorandum of law and some case law, I

have no further evidence or witnesses on behalf of Mr. Hinton. And I can hold those to the end if you'd like.

THE COURT: Hold them.

State have any witnesses?

MR. JOHNSON: Yes, sir. We call Harry Dest to the stand.

HARRY DEST, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Afternoon, Mr. Dest.

A. Good afternoon.

Q. Please tell me how you became involved in this case.

A. Well, I'm the 16th circuit public defender of this judicial circuit, and I was appointed to represent Mr. Hinton shortly after his arrest. He was originally charged with, obviously, murder, burglary first, attempted murder, and criminal conspiracy.

Q. Just as background, how long have you been a public defender?

A. I've been a public defender for 23 years. I was -- originally after I graduated from law school, I worked in Charlotte. I'm licensed in both North and South Carolina. I practiced -- well, I was in a private firm briefly in

Charlotte, and then I was with the solicitor's office for a brief period of time in 1990, and then about seven months after working as a solicitor, I switched sides and became a public defender. I was -- served as an assistant public defender for about three years, and then I was deputy public defender, and I was chief public defender in 1997. And then when the State went to a statewide public defender system, I became the circuit public defender for the 16th circuit in 2008.

Q. And in all those years of being a defense attorney, have you had the chance to handle homicide cases, burglary cases?

A. Yes, sir, I have.

Q. And around how many would you say, if you could put a number on it?

A. Hundreds, probably -- I mean, I can't pinpoint it, but at least probably 150 maybe.

Q. And have you had the opportunity to investigate crime scenes?

A. Yes, sir.

Q. Photographs?

A. Yes, sir, and certainly have had the opportunity to past to either have our in-house investigators work on cases or retain the services of private investigators as well.

Q. So you understand the concept of trajectory, ballistics, things of that nature?
A. I do have, yes, a basic understanding just by virtue of the fact that I've been a criminal defense lawyer for 23 years, yes.
Q. And if you don't understand something, would you reach out to an expert?
A. I would, yes.
Q. And in this case, did you file for discovery?
A. Yes, sir, we did.
Q. Just basically what all did you receive in discovery? And kind of give the timeline of...
A. I don't recall the specifics, but as it appears he testified, there were -- discovery comes in packets of disks and that Solicitor Thompson who was working on the case turned that over to me. And that really is basically everything the State has in terms of discovery is turned over to us in the form of disks, and we run those disks off.
Q. And did you share that information with Mr. Hinton?
A. Yes, sir, we did. Let me just first start off by saying a couple things. Dytavis Hinton told us not too much -- not too far into the case that he did go inside the trailer and he did go in there to help his friend Mr. Burris commit a robbery. As I indicated in the plea,

as I indicated on the record, it was an ill-conceived, quick decision that he made. And he made that decision under the influence of marijuana and alcohol. He had been drinking all day, as evidenced by his statement. He had been doing marijuana that day, as evidenced by his statement. And there's been a lot to -- lot of hoodoo about what he actually said. But let me just kind of break it down to what happened when we talked to him.

He had -- when I say we, it's me and Mr. Barton O'Kelly, who was the investigator from our office. The first statement that he gave to the police was the statement he gave to Officer Swiger where he said that it was a white male with black hair that robbed him right after the shooting. Within minutes after that, he was interviewed by Detective Kitts. Detective Kitts in his report indicates that he then said he was robbed by two white individuals that got into a white vehicle and fled the scene. The third statement that's recorded was a statement that he gave to Marcus Thompson while he was in the hospital which he said that he tried to stop Mr. Burris. Then the next statement he gave is the statement that he gave to detective, his sworn statement. Whereas, you know, you've seen a copy, but where he says, "I knew he was going to rob. I knocked on the door," and that's when he sees what's going on inside.

When we confronted him with this after trying to get the information, he did finally admit to us that he went there to rob; that he did put the bandanna around his face; and that he'd never thought it would go this far, but he was inside the trailer, shots were fired inside the trailer by the three, which all the casings from the .380 shots are inside the trailer. What is consistent is that Mr. Thomas, both Matthew Thomas and Scott Thomas, both say that two individuals came in to the trailer with masks on their face. That's consistent. And there was demanding money and that they obviously had shots inside the trailer at least one time.

And that's when shortly after that, Scott came from behind the back to the left and began shooting. And there was shooting back and forth. I don't know where people were exactly. I don't know how they were situated, but it is clear that all of the shooting occurred within the trailer. And it was clear to me based upon what Dytavis told me that he went there to rob.

Now, he didn't have the gun. He didn't have -- he never brandished a gun that night. And he finally told us that after he said, "I want you to go talk to Broderick Page and Devon Braden." And -- because he didn't believe that his friend Broderick Page would say what he said or what he wrote down -- or not wrote but what was recorded

in his statement, which was that he had the .380 when they went into The Money, right before then. And that when he heard shots after going to McDonald's, he said, "I bet Dytavis and Mr. Burris went there to rob." He didn't believe he said that. He said, "I can't believe he would say that." And he also said -- because we asked him about the keys, that Devon Braden said -- we showed him the statement, Devon Braden said that she doesn't remember giving him the keys that night to get back into the car. After we interviewed those two people and after we confronted them with the inconsistencies, he told us the truth.

Now, it is true we did not go beyond that in our investigation. We did not go and look at other things, because I felt at that point in time that our best efforts could be used to try to mitigate this, and I did retain the services of Dr. Kenneth Marsh, who is a clinical psychologist out of Charlotte who basically analyzes or evaluates people for two things: One, where to place them within the federal system, when -- generally does federal work; and what their recidivism rate likely is. And I felt because Dytavis did not have a significant prior record that we could make an argument to convince the judge to be lenient with him and that his recidivism rate would be very low. And, in fact, Dr. Marsh did issue a

report that indicated that. And I handed that up to the Court on the day of the plea. And that's why I didn't have it in my file, and I apologize for that. But that was the direction that we were going.

Now, it is true that I wasn't able to tell his family a lot of information. And the reason why that is true is because he did not want me to tell them anything about the case because he was ashamed of what had happened. That's the truth. That's what he told us, and that's why we conducted -- or that's why we went the direction that we went in terms of trying to mitigate the damage.

I did not speak to Mr. Thomas, both Scott or Matt. I had made a request to speak to them through Solicitor Thompson. That's the way I ordinarily do things when it comes to victims. After making that request, Mr. Thompson indicated to me that they were not willing to meet with me.

Q. Mr. Dest, one of the allegations that you failed to file a motion for reconsideration. Is there a reason that you didn't do so in this case?

A. I just don't think the judge would have -- based upon that hearing that day, I don't believe there was any chance the judge would have reduced the sentence.

Q. Is that based on your experience in front of this judge?

A. Yes.
Q. And the facts of the case?
A. Yes, sir.
Q. Mr. Hinton has testified that you advised him that he would receive a split or suspended sentence and not to be concerned with the charges he was facing, which he claims resulted in an involuntary guilty plea. Did you ever promise him a split sentence or a suspended sentence?
A. No. I said I would ask for it, but I never promised him anything.
Q. Do you ever promise a client a certain sentence?
A. No, sir, not unless it's a negotiated plea.
Q. And this was not?
A. No, sir.
Q. But this was a cap of 20?
A. Yes, sir.
Q. So the judge was within his discretion to sentence Mr. Hinton to 20 years --
A. Yes.
Q. -- in this case?
Another claim is that, and I think you may have touched on this, you were ineffective for not allowing his family to speak on his behalf at the hearing. Did you ever disallow his family to speak on his behalf?
A. No, sir. I -- my recollection was that they did not

want to speak that day. I did -- I believe, in looking at the transcript the other day, I think I did read a letter from one of his brothers who is in the military, which was a very lengthy and eloquent letter. And I did share that with them. I think after that, they decided they didn't want to speak. And I never suggested at any point in time that it was a black/white thing. I mean, the charge was quite severe. Unfortunately, one person was dead. Could have very easily been others killed as well.

Q. And Mr. Hinton testified that based on your advice, that he pled guilty only based on your advice. Did you promise or threaten Mr. Hinton in any way to get him to plead guilty?

A. No, sir.

Q. When you talked to him and he gave you all the statements that you have testified to, did he want to plead at that point?

A. Yes, sir, he did.

Q. So he was on board with the negotiation --

A. Yes, he was.

Q. -- process?

MR. JOHNSON: Court's indulgence, Your Honor.

Q. Mr. Dest, did you discuss the charges, all of them, with Mr. Hinton?

A. Yes, sir, I did.

Q. And I know that counsel had alluded to this murder charge that was ultimately dropped.

A. Yes, sir.

Q. In South Carolina, based on your experience, has felony murder been ruled upon by our supreme court?

A. In terms of a codefendant being killed by a third party?

Q. Yes.

A. They have not. Now, I will say that in most jurisdictions, the majority of jurisdictions, that they would be precluded from pursuing the case of felony murder rule. For example, North Carolina is one that falls in line with the majority. South Carolina has not settled that question yet, to my knowledge.

And let me just say, in working this case, I never thought that -- I shouldn't -- I did not think that Mr. Thompson would pursue -- I mean could pursue it if he chose to, but, you know, the other thing is I thought that you have a burglary first there, which also carries a potential life sentence. So really, he had two charges that carried a potential life sentence, not one. Now, if they had tried to go on forward with the murder, obviously there would have been a huge legal battle as to the merits of that in terms of the felony murder rule, but that simply was not going to be the case here. So once that

went away, then the next challenge was to certainly get the other potential life sentence or something in excess of 20 years out of the way, and that's where we negotiated to a cap in this case.

Q. And was the State ever willing to come off the burglary first degree charge?

A. No, sir.

Q. So the minimum is nonsuspendable 15 years?

A. It's 15 years, but I believe at that time it could have been suspendible, hence the request for a split sentence. And the reason Dr. Marsh was important was because Dr. Marsh's report indicates that he believed that based upon his prior record, which was very limited, based upon his psychological makeup, which was that he is a malleable person, which is consistent with what he told me and Dr. Marsh, that it was Burris who got him to go along with this, it was Burris who had the gun, it was Burris who brandished the gun, that he -- and because psychological evaluation showed that Dytavis was not a type of person to commit predatory violence, that we thought we could get a much lesser sentence. Or at least make a good argument for it.

Q. And, in fact, that's what you did?

A. And that's what we did, but of course the case was so difficult and so serious that, you know, I thought we did

the best we could under the circumstances.

Q. Did you explain the legal concept of hand of one, hand of all to Mr. --

A. I did.

Q. And did he seem to understand that concept?

A. He did. I will say this: He did ask me, "How could I be charged with murder when I didn't shoot my friend," and that's when I had to explain to him the complexity of the felony murder rule and how I thought that under these circumstances, it would be unusual to go forward based upon the facts in this case under the felony murder rule, but that the State still had the potential to do that if they chose. I didn't think they would, and they didn't, but it's still a unanswered question, I believe, in South Carolina at this time.

MR. JOHNSON: No further questions at this time, Your Honor. Thank you, Mr. Dest.

THE COURT: You may cross-examine the witness.

MS. BLANCHETTE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. BLANCHETTE:

Q. I believe you stated that Mr. Hinton was on board with the idea of taking a plea in this case?

A. I didn't say he was on board. I said he wanted to plea.

Q. And do you recall there being a first offer to 25 years?

A. I don't remember that.

Q. Do you remember ever him turning down an initial plea offer?

A. I don't remember. He may have. There may have been discussion. I just don't remember clearly if there was.

Q. And I believe you gave your explanation -- and actually, let me withdraw that. We had the opportunity to meet, and I explained to you this claim of failing to move to quash the murder arrest warrant --

A. Right.

Q. -- and allowing that to be considered part of the bargain or the benefit of this plea in front of Judge Cooper. And I take it that it's your position that that is an unsettled question in this state as to whether or not that was a valid murder charge?

A. Yes, obviously.

Q. And you're familiar with the case that is cited in the amendment State versus Bonner out of the North Carolina Supreme Court?

A. That's correct. And that's -- like I said, I believe North Carolina is in the majority with respect to that aspect of the felony murder rule.

Q. And would you dispute that that case has been relied

upon and cited to in the state of South Carolina?
A. It has, but I don't believe directly on point. There hasn't been a holding that is analogous to that case.
Q. And is that why you allowed that to be presented as a valid charge in front of the deal in this case?
A. First of all, it wasn't part of the deal. It was dismissed anyway, so it really was irrelevant to me at that point because we still had another burglary first charge that we had to contend with -- I mean a life sentence charge that we had to contend with.
MS. BLANCHETTE: If I could just beg the Court's indulgence one moment.
A. If you're saying was it mentioned on the record under State v. Thrift, yes, it was.
Q. So it was presented to Judge Cooper as stated on page 4 --
A. Right.
Q. -- as part of this plea, we'll be dismissing two charges, one being the murder charge?
A. Yes, it was.
Q. And then again if the solicitor mentioned it shortly before he was sentenced, that they were dismissing a murder charge, you don't dispute that?
A. No, I don't.
Q. Okay. Now, the record speaks for itself and you

recall that you asked for a split or suspended sentence in this case; is that correct?

A. Yes, ma'am.

Q. If you thought that was appropriate to argue for, why were you not surprised or felt there was no need to file a motion to reconsider when your client was given 20 years?

A. Because I think we said everything we wanted to say. There was nothing new that I could present to the court.

Q. Does Mr. Hinton's alleged confession to you excuse any lack of investigation on the part of law enforcement in this case?

A. I don't know. You have to talk to them about that.

Q. Okay. Now, since you're such an experienced attorney, I'd like to ask you this question. If the threat had ceased inside this RV and the uninjured brother, John Matthew Thomas, had approached Demario Burris and delivered the two fatal shots, could he be charged with murder in the state of South Carolina?

A. I don't know about that under the homestead. I don't know. I mean, you have an individual, taking his -- has the right to shoot until the danger is over with under our self-defense law. And he has a -- certainly the right to protect his own home. I think the RV is his castle. Once the shooting starts, he could keep shooting until the danger has ceased. So I think that's -- I think it would

be a tough call to make, unless you had definitive evidence that the danger had ceased.

Q. Is it an argument you've made in your career?

A. No, I haven't made that argument.

Q. So you've not had experience with arguing I guess what we all commonly call the castle doctrine?

A. No, I have had that. I've won cases on that, and I've lost cases on that doctrine too. I've argued that concept of law many times.

Q. Based upon your review --

A. But I can tell you this: On every case that I've won or a case that's ended in not guilty or dismissal, it was because somebody invaded my client's property, came into his house, and shot in self-defense.

MS. BLANCHETTE: Your Honor, if I could just beg the Court's indulgence one moment.

Q. Do you ever remember drawing out a grid or giving Mr. Hinton some type of visual explanation as to the sentence you thought that the Court was likely to impose?

A. I may have given him -- drawn out a range, but I don't think -- you mean like guarantee that the judge would give a certain time?

Q. No, I didn't say guarantee. I said give him an idea as to the length of sentence the Court could impose.

A. In terms of a range, I may have done that, yes.

Q. Was there any strategy on your part as far as getting this case called in front of Judge Cooper out of Richland County?

A. There -- yes, probably there was. Because it's been my experience that our local judges, and this is just from my perspective, are more heavy handed in their sentencing when it comes to homicide cases. So I thought that getting it in front of a different judge would be beneficial to my client.

Q. And would you have conveyed those thoughts to Mr. Hinton?

A. Surely, yeah.

MS. BLANCHETTE: Beg the Court's indulgence one more time.

Q. Do you recall a meeting with Mr. Hinton after he was sentenced?

A. Yes. I think we reviewed right to appeal.

Q. Okay. And do you recall him accusing you of lying about the type of sentence that he would get in this case or the length of sentence?

A. I don't remember that.

Q. Okay.

MS. BLANCHETTE: Your Honor, I have no further questions.

THE COURT: Any redirect?

MR. JOHNSON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. There has also been an accusation that there were no notes in the file. Is there a reason there were no notes in your file to turn over to Ms. Blanchette in this case?

MS. BLANCHETTE: Your Honor, I believe this is outside the scope of my cross-examination.

THE COURT: I'll allow it nevertheless.

A. I just don't know where the notes are. They may have been misplaced. I've not been able to find them.

Q. But you wouldn't intentionally withhold them from the applicant in this case?

A. No.

Q. How many notes did you take in this case?

A. I don't remember. I know sometimes I dictate notes. Sometimes Mr. O'Kelly does. But I don't remember.

Q. But you reviewed the pictures in this case --

A. Yes.

Q. -- and all of the crime scene photos --

A. Uh-huh.

Q. -- and made the determination that there was no further investigation after Mr. Hinton explained what happened to you?

A. Right.

Q. And that's based on your experience and the facts of this case?

A. Yes, sir.

MR. JOHNSON: No further questions, Your Honor.

THE COURT: All right. Thank you, sir. You may step down.

Anything else from the State?

MR. JOHNSON: No further witnesses, Your Honor.

THE COURT: Anything in reply?

MS. BLANCHETTE: Your Honor, we have nothing in reply.

THE COURT: Before I hear from you on your brief and your argument, let me just make sure I've got from both of you the exhibits in order. Exhibit 3 is the investigative file or excerpts from the investigative file; is that right?

MS. BLANCHETTE: That is what I have, Your Honor.

THE COURT: Exhibit 4 is Number 61 through 63 of the statement given by Mr. Hinton. Page 160, is that Exhibit 5 or was that the arrest warrant?

MS. BLANCHETTE: I can verify.

THE COURT: I can maybe ask our court reporter. She would know that.

MS. BLANCHETTE: Let me double-check because I'd rather rely on these than myself.

THE COURT: What Exhibit 1 and --

MS. BLANCHETTE: I have page 160 is Exhibit Number 5, to confirm. And the arrest warrant would be Exhibit Number 6.

THE COURT: All right. What was 1 and 2?

MS. BLANCHETTE: Number 2 is the eight-by-ten printed photographs, and those are just on regular paper.

THE COURT: Okay.

MS. BLANCHETTE: And Number 1 would be the four-by-six --

THE COURT: The small ones.

MS. BLANCHETTE: -- photo-quality pictures.

THE COURT: Any respondent exhibits? There were none, were there?

MR. JOHNSON: Don't believe, Your Honor. I think I've got it.

THE COURT: The other thing I need for my benefit is the spelling of Mr. --

MR. JOHNSON: Guerette.

THE COURT: Guerette.

MR. JOHNSON: How do you spell your name?

THE WITNESS: G-U-E-R-E-T-T-E.

THE COURT: G-U-E-R-E-T-T-E?

THE WITNESS: Yes, sir.

THE COURT: First name was?

THE WITNESS: Ronald.

THE COURT: Ronald. All right.

Ms. Blanchette.

MS. BLANCHETTE: Thank you, Your Honor. As was submitted in the last case, you heard I have a memorandum of law just on the discretion of this court to grant specific relief. We did very briefly raise the issue of failure to file a motion to reconsider. I would ask that I can mark this as part of the record in the case.

THE COURT: That would be fine. That would be 7, I guess.

(Applicant's Exhibit Number 7 was marked.)

MS. BLANCHETTE: Your Honor, I also would have a copy of State versus Bonner, which is referenced in the amendment and that I asked Mr. Dest about for this Court to review. I also have a copy of Stock versus State, and the reason why I'm handing this up is it goes into the duty of counsel to do an investigation prior to a guilty plea.

THE COURT: That's the same case I had in the other brief?

MS. BLANCHETTE: These cases I'm handing up actually are not inside the --

THE COURT: Bonner was and I thought the other one was. Maybe it wasn't. I know Bonner is the North

Carolina case, right? You've given --

MS. BLANCHETTE: Yeah. I provided these in the other cases.

THE COURT: I have them, but I'll be glad to take them again.

MS. BLANCHETTE: And then Cole versus State, Your Honor, that goes to the idea of expressing satisfaction at the plea. Then I have the case of McKnight versus State, which goes into issues of utilizing experts and obtaining records such as an autopsy report. And those are the cases that I would be handing up for the Court's review in support of our allegations. If the Court has any questions, I'd be happy to answer those at this time.

THE COURT: And I probably need to read those cases before I ask questions, so I'll do that later. If I do have questions after reviewing.

Anything else that we need to...

MS. BLANCHETTE: That would be all for the applicant, Your Honor.

MR. JOHNSON: Nothing from the State, Your Honor.

THE COURT: I'll try to review the transcript and all the other documents and issue an order or at least notify you to prepare an order in the near future hopefully. Thank you very much.

MS. BLANCHETTE: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

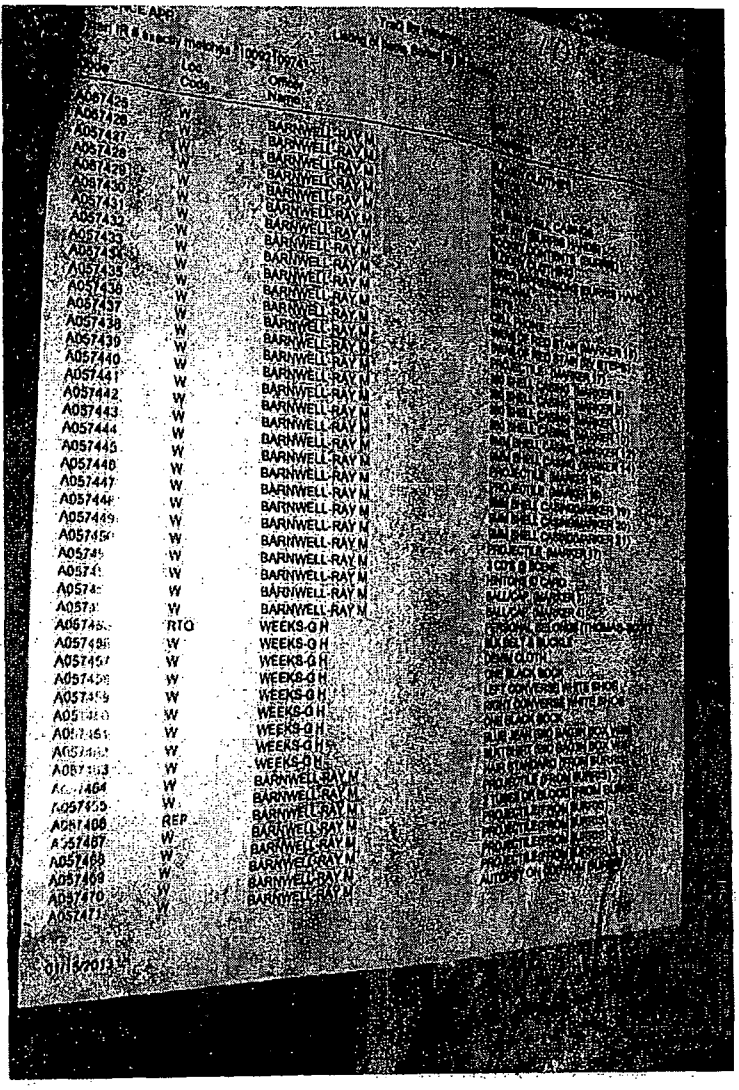
STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

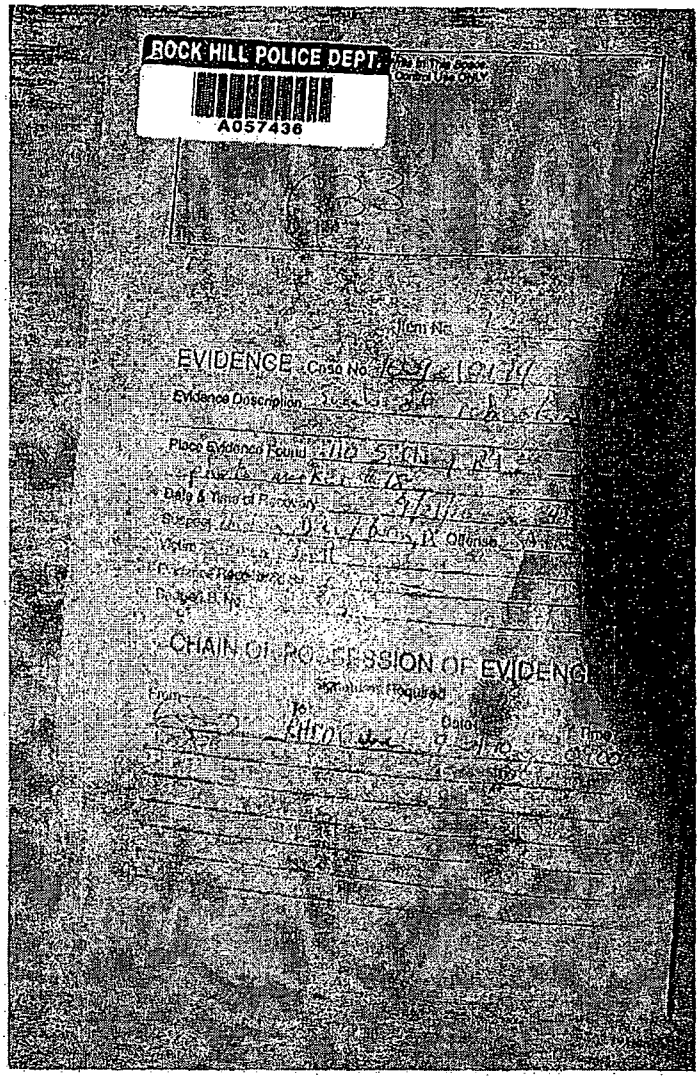
I, Aminah R. Hardy, RPR, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 15 day of August, 2013.

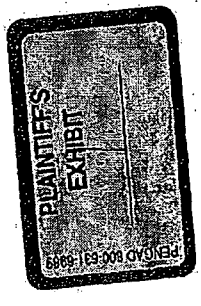
March 11th, 2014

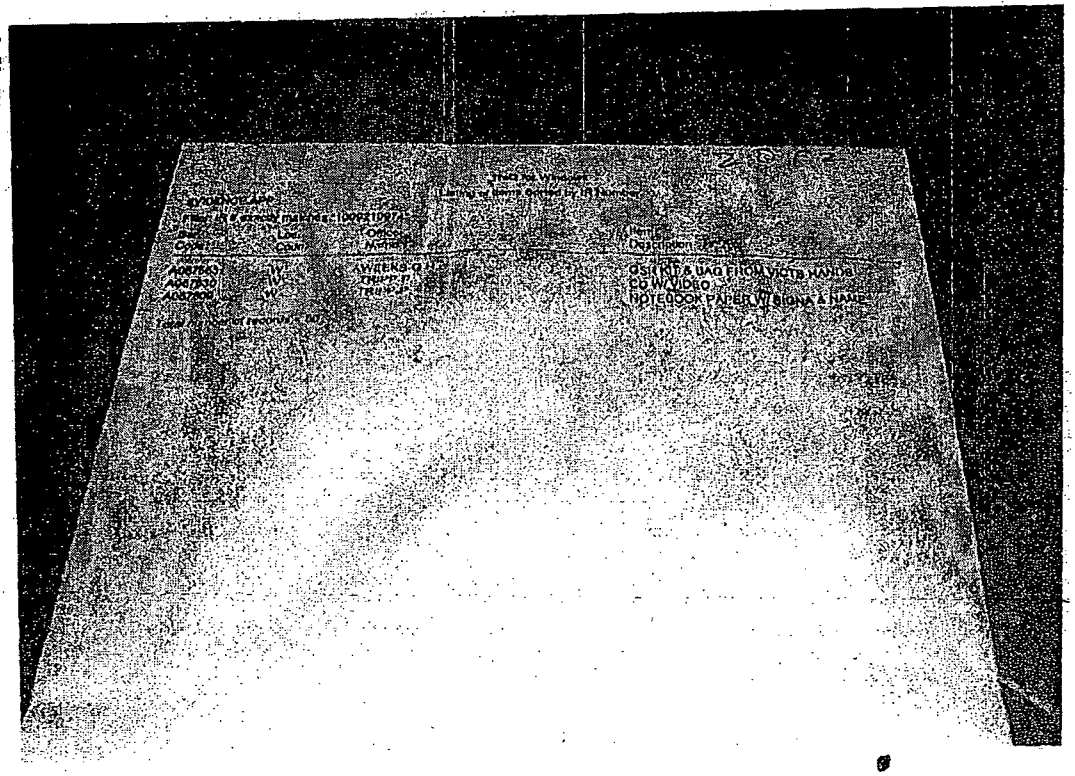
Aminah R. Hardy

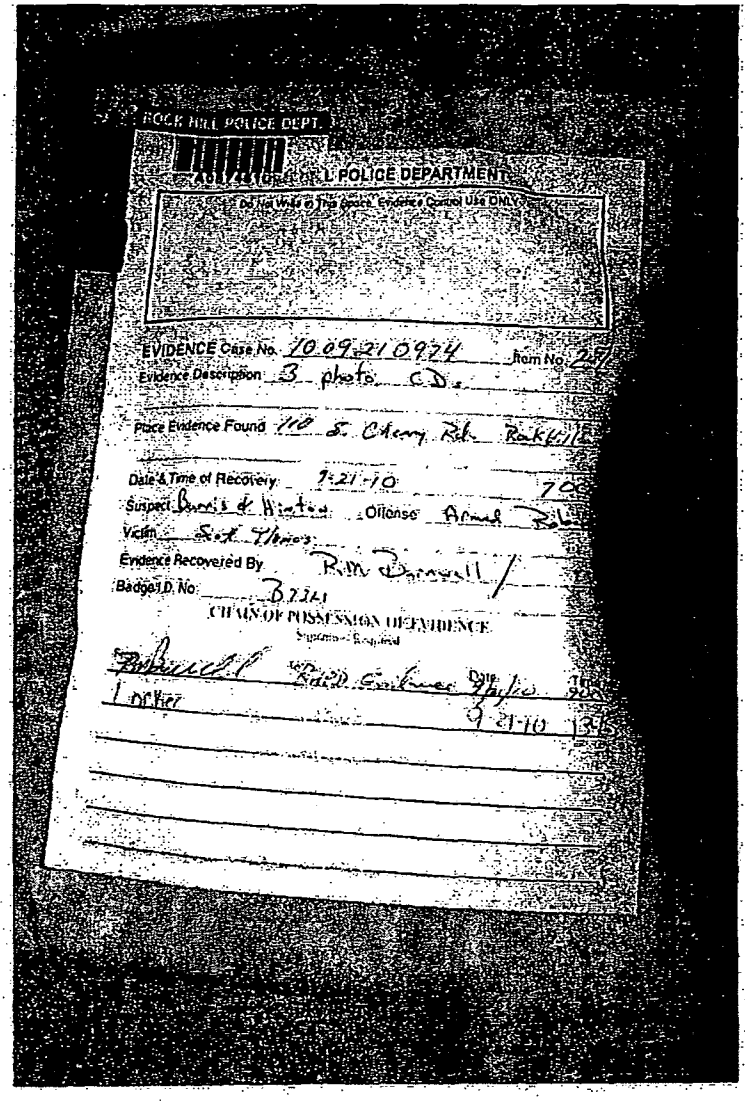
Aminah R. Hardy, RPR, CVR-CM


A057426
A057427
A057428
A057429
A057430
A057431
A057432
A057433
A057434
A057435
A057436
A057437
A057438
A057439
A057440
A057441
A057442
A057443
A057444
A057445
A057446
A057447
A057448
A057449
A057450
RTO
WEEKS-G H
BARNWELL-RAY M


ROCK HILL POLICE DEPT.
A057436
EVIDENCE
CHAIN OF POSSESSION OF EVIDENCE


PLAINTIFF'S
EXHIBIT


A057450
RTO
WEEKS-G H
DSK RT & BAG FROM VICTIMS HOME
CD W VIDEO
NOTEBOOK PAPER W SIGNATURE


ROCK HILL POLICE DEPT.

ROCK HILL POLICE DEPARTMENT

Do Not Write in This Space. Evidence Control Use ONLY

EVIDENCE Case No. 10-09-210924 Item No. 2

Evidence Description 3 photo CDs.

Place Evidence Found 110 S. Cherry Rd. Rock Hill

Date & Time of Recovery 9-21-10 7C

Suspect Burris & Hinton Offense Armed Rob

Victim Sat Things

Evidence Recovered By R.M. Bennett

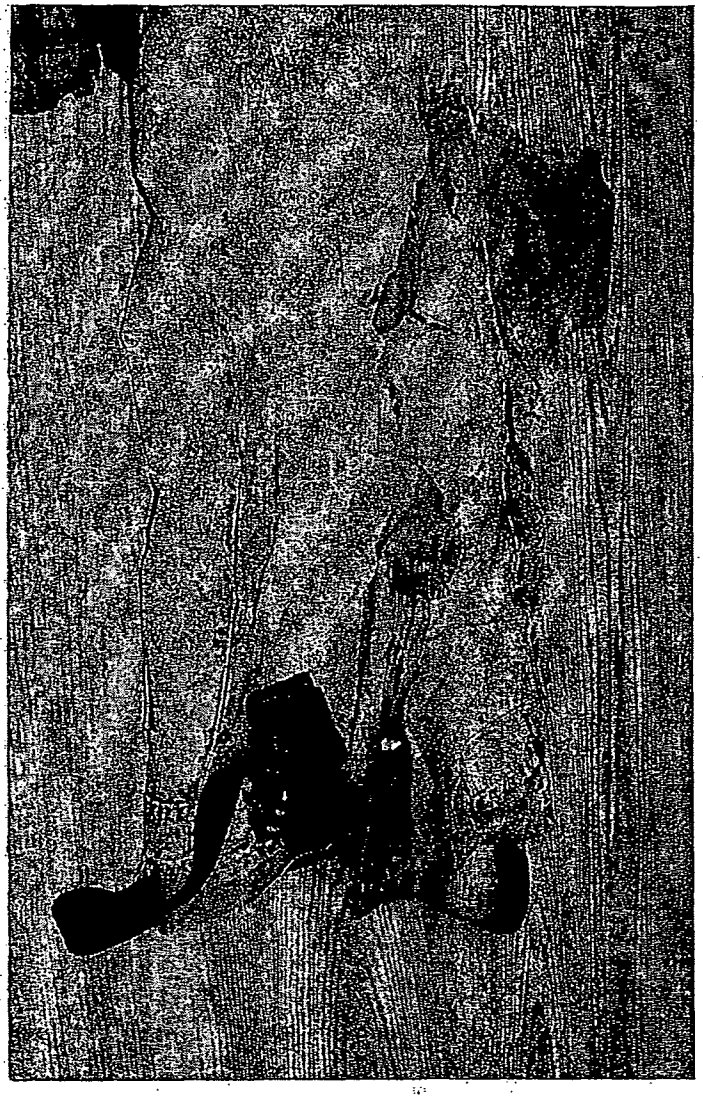
Badge/I.D. No. 3734

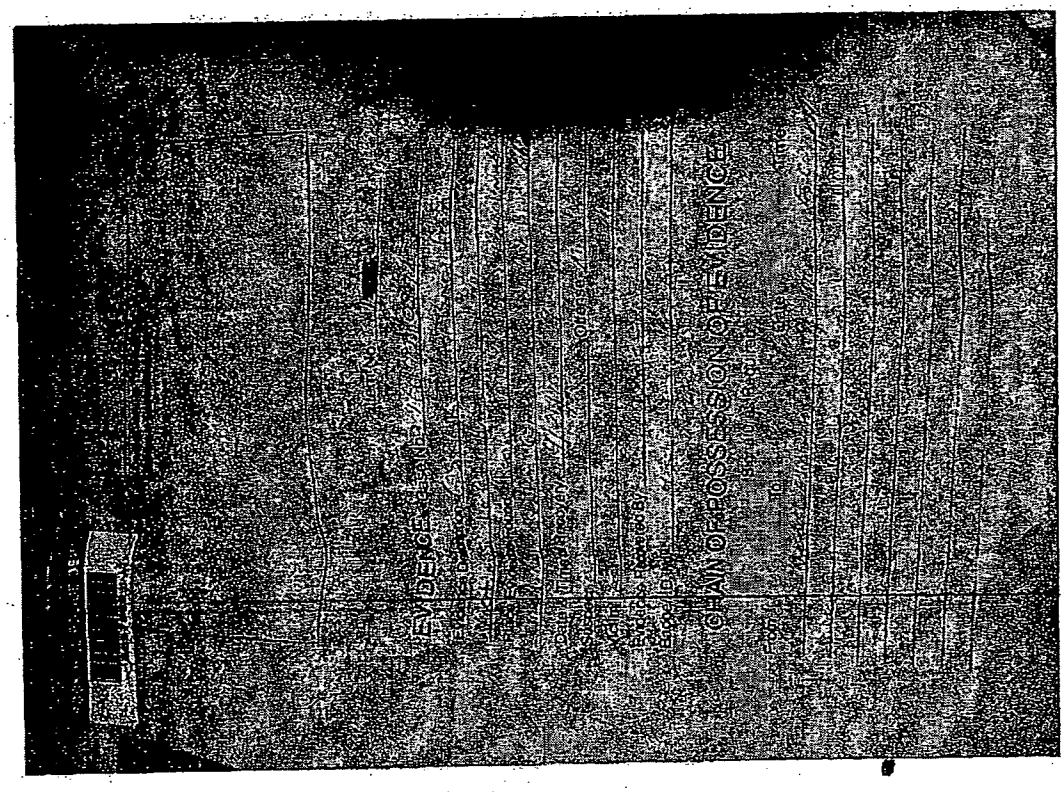
CHAIN OF POSSESSION OF EVIDENCE

Signature Required

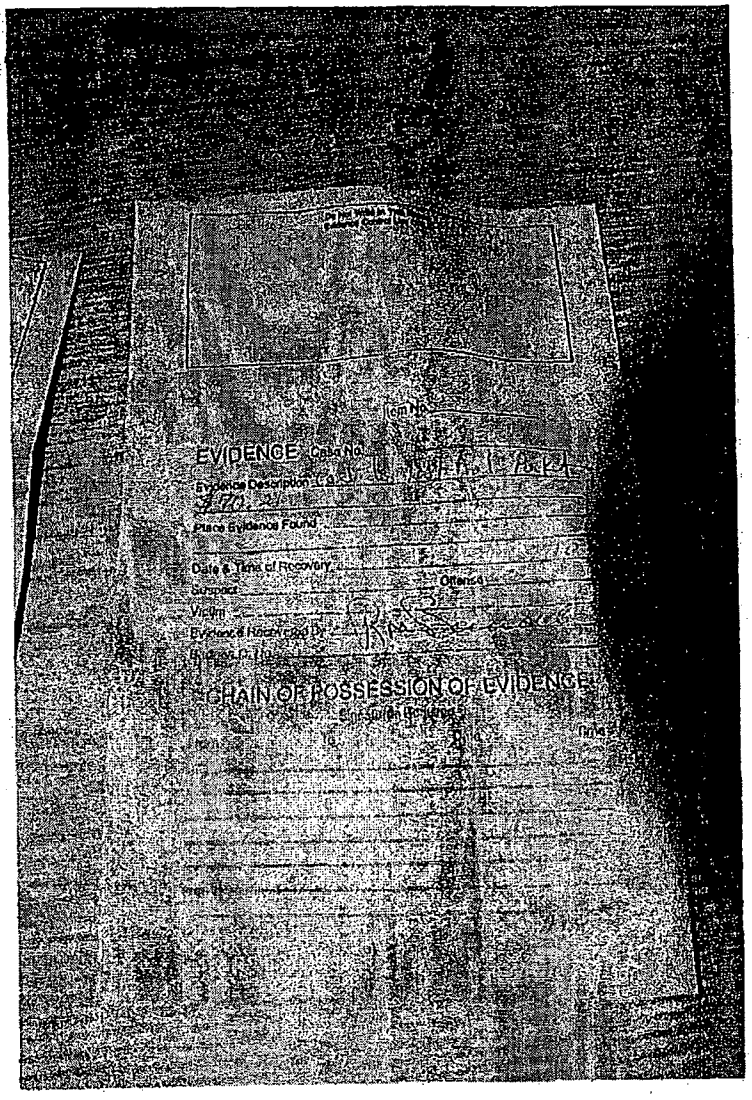
R.M. Bennett RMB Evidence Date 9/21/10 Time 900

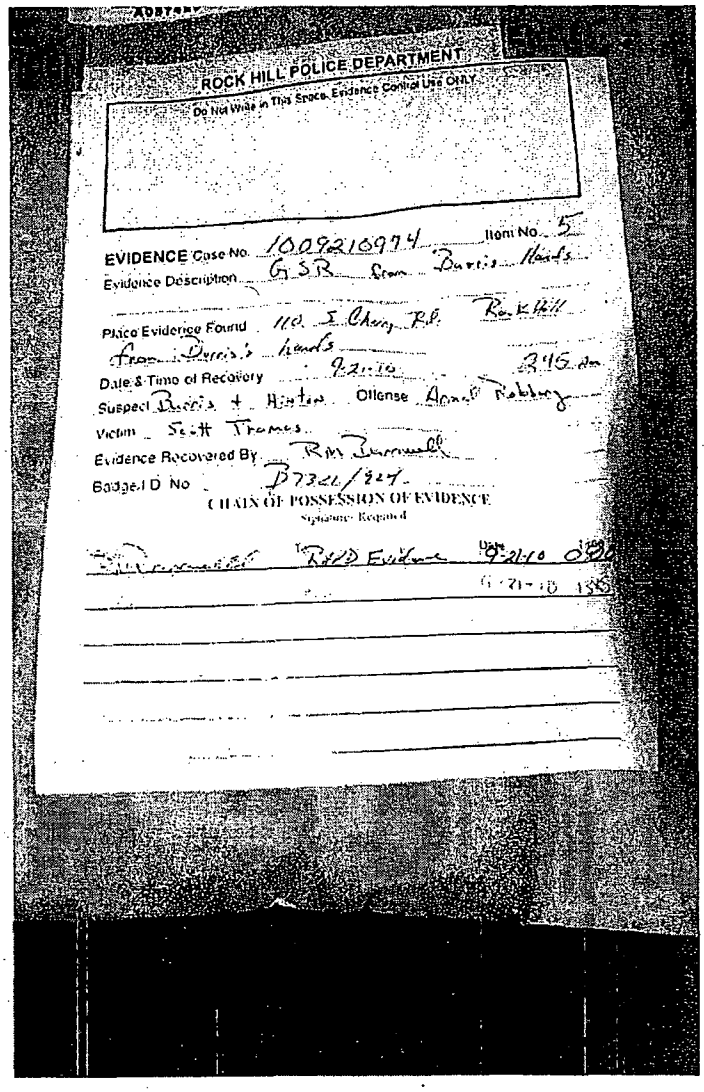
Other 9-21-10 135

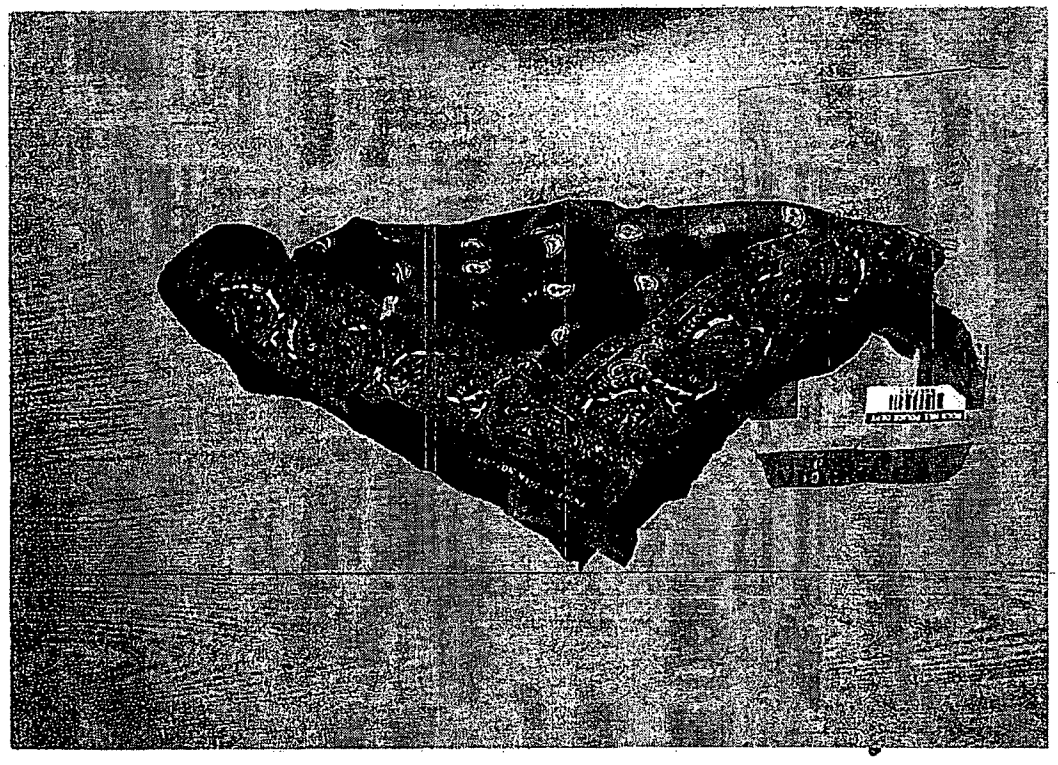


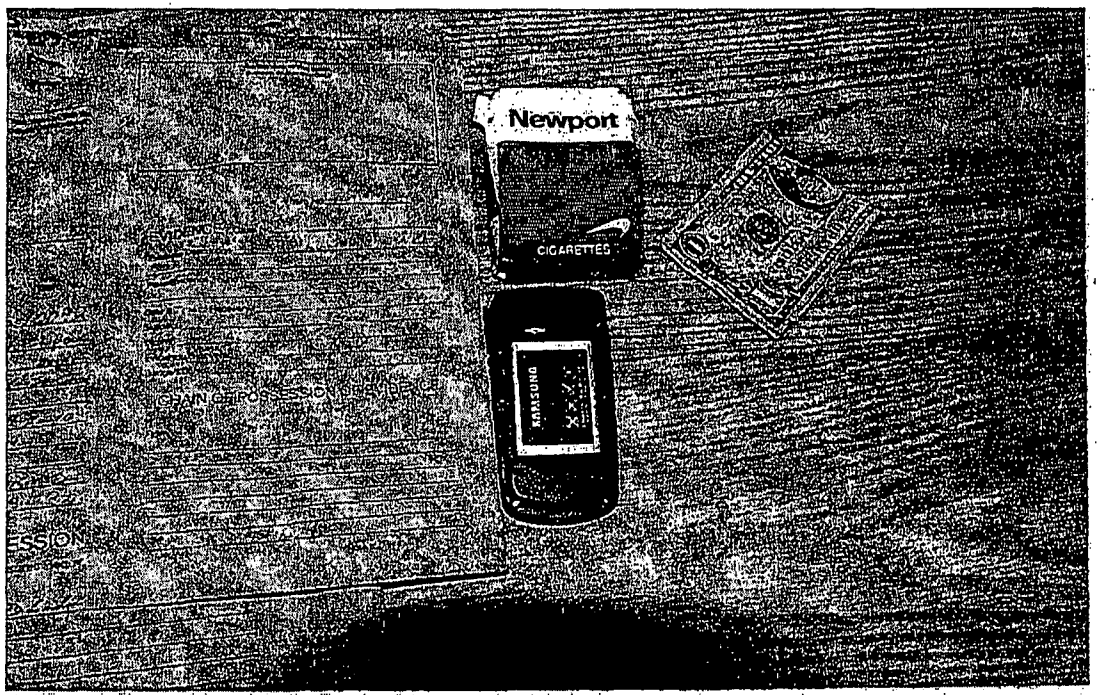


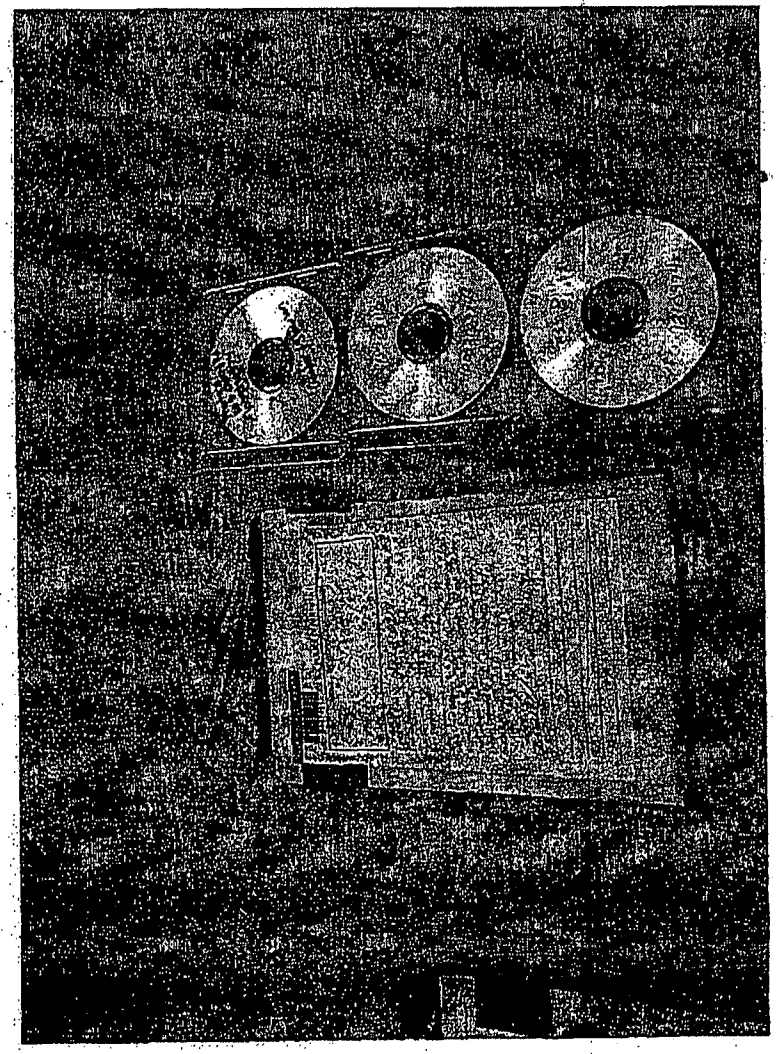
17

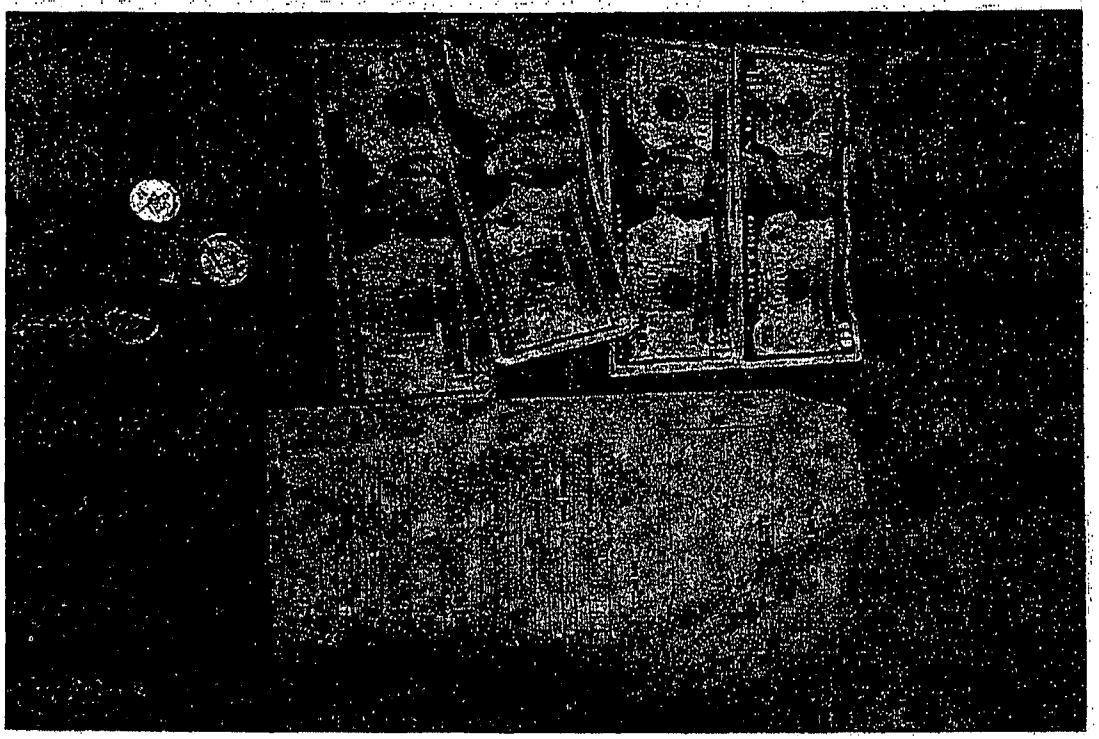

EVIDENCE
CHAIN OF POSSESSION OF EVIDENCE

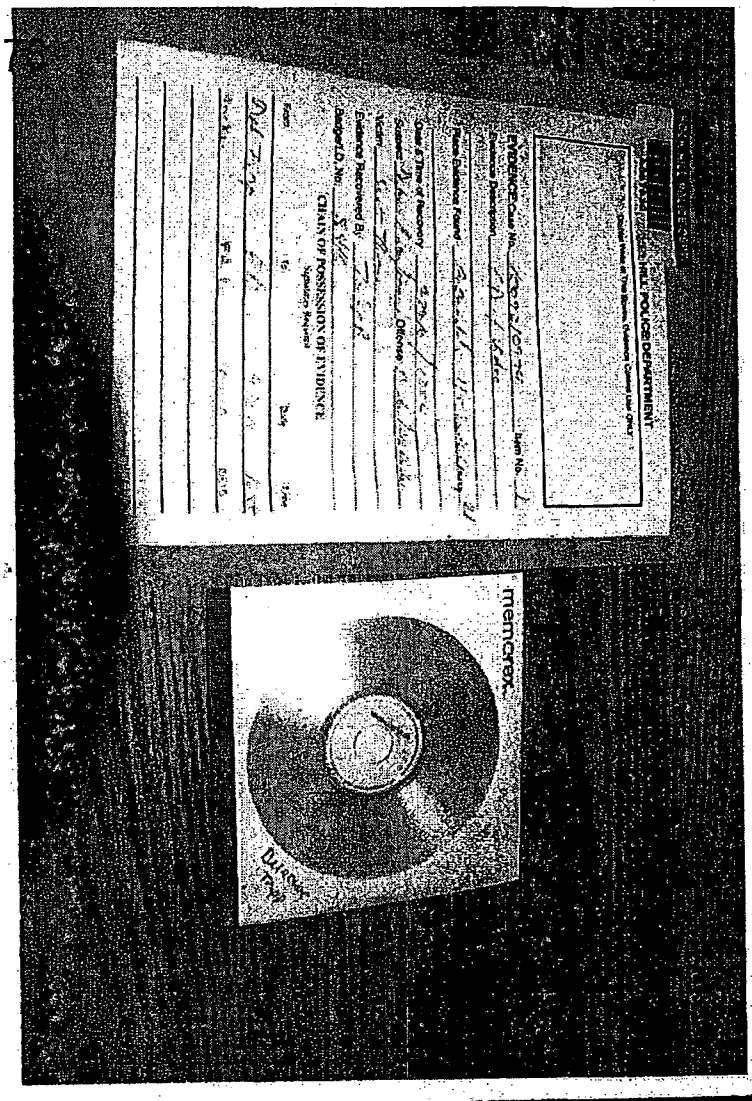

ROCK HILL POLICE DEPARTMENT
Do Not Write in This Space. Evidence Control Use ONLY
EVIDENCE Case No. 1009210974 Item No. 5
Evidence Description GSR from Davis Hands
Place Evidence Found 110 I Cherry Rd Rock Hill
from Davis's hands
Date & Time of Recovery 9-21-10 3:15 am
Suspect Davis + Hinton Offense Armed Robbery
Victim Scott Thomas
Evidence Recovered By Ron Jarrell
Badge/I D No D732L/824
CHAIN OF POSSESSION OF EVIDENCE
Signature Required
RHD Evidence 9-21-10 0320
9-21-10 1350

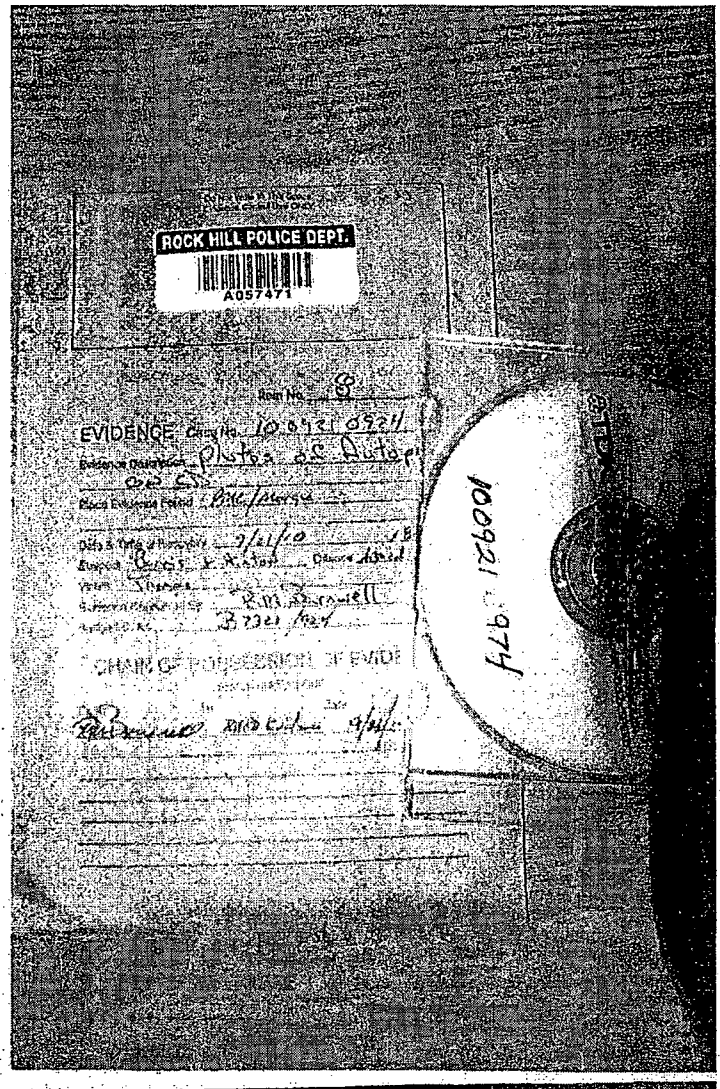


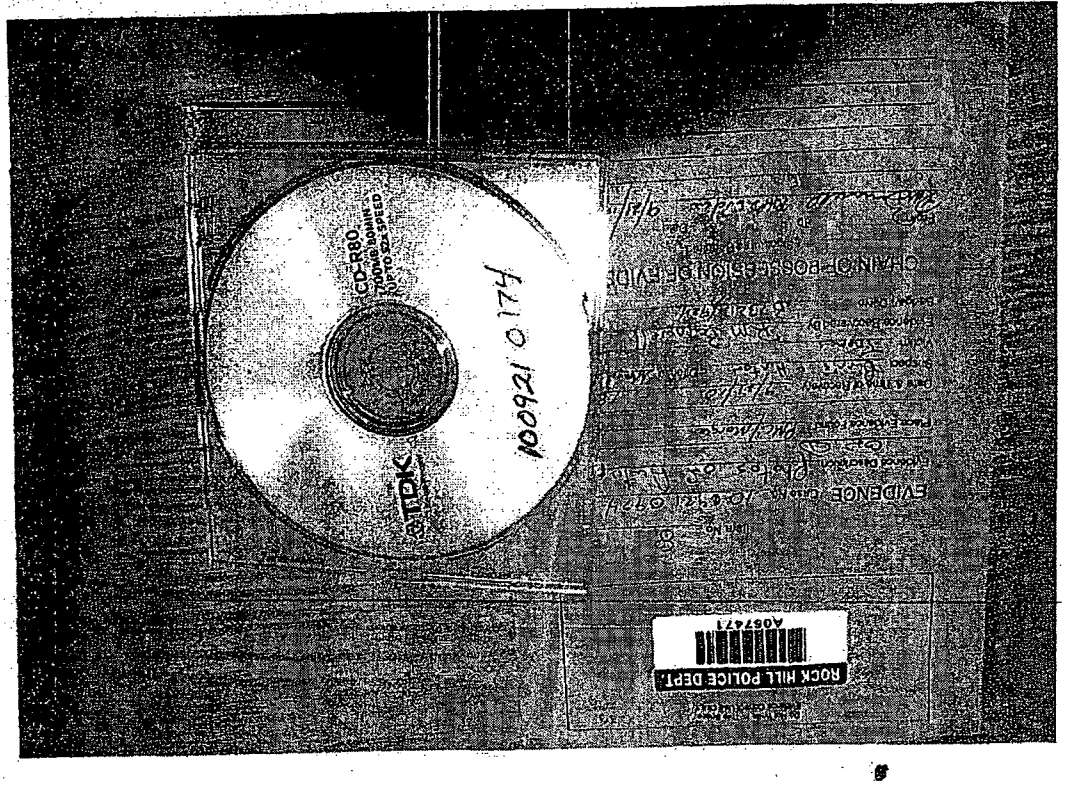

Newport
CIGARETTES
SAMSUNG

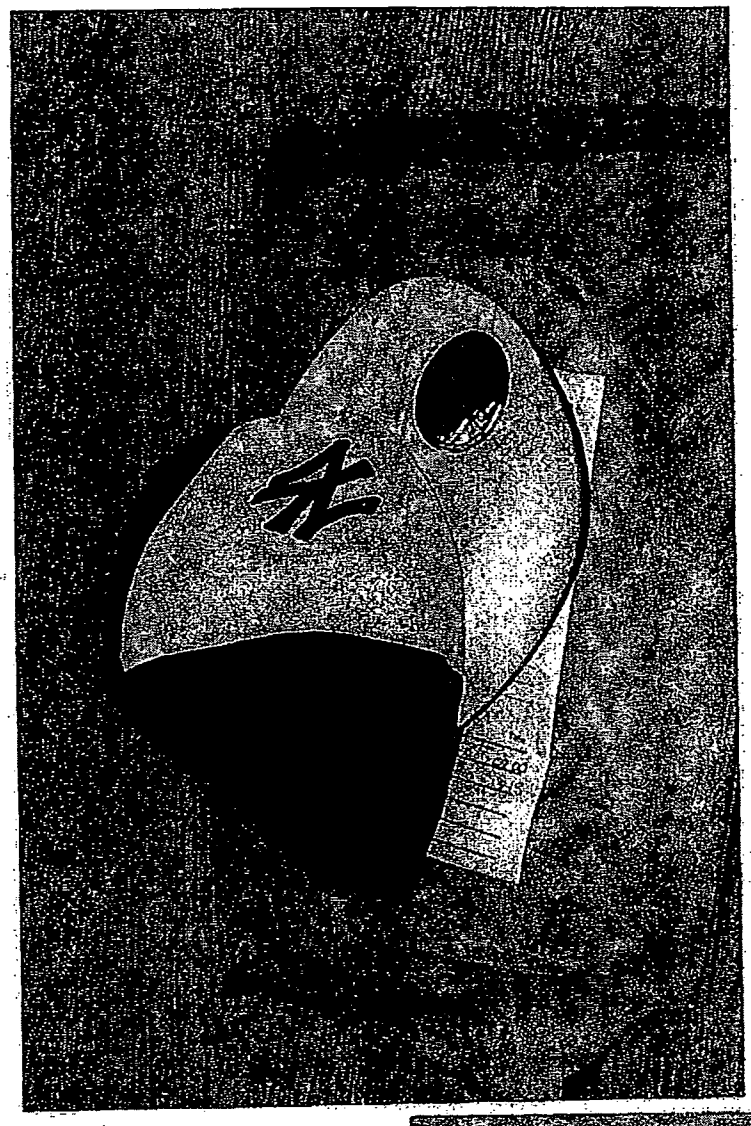


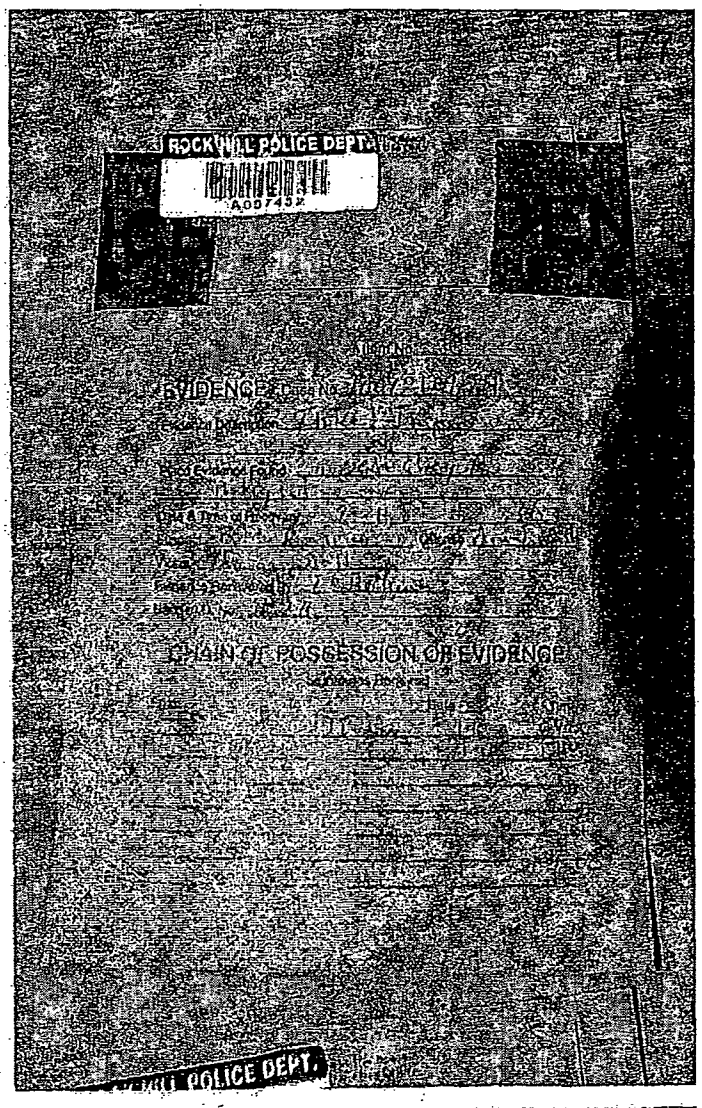


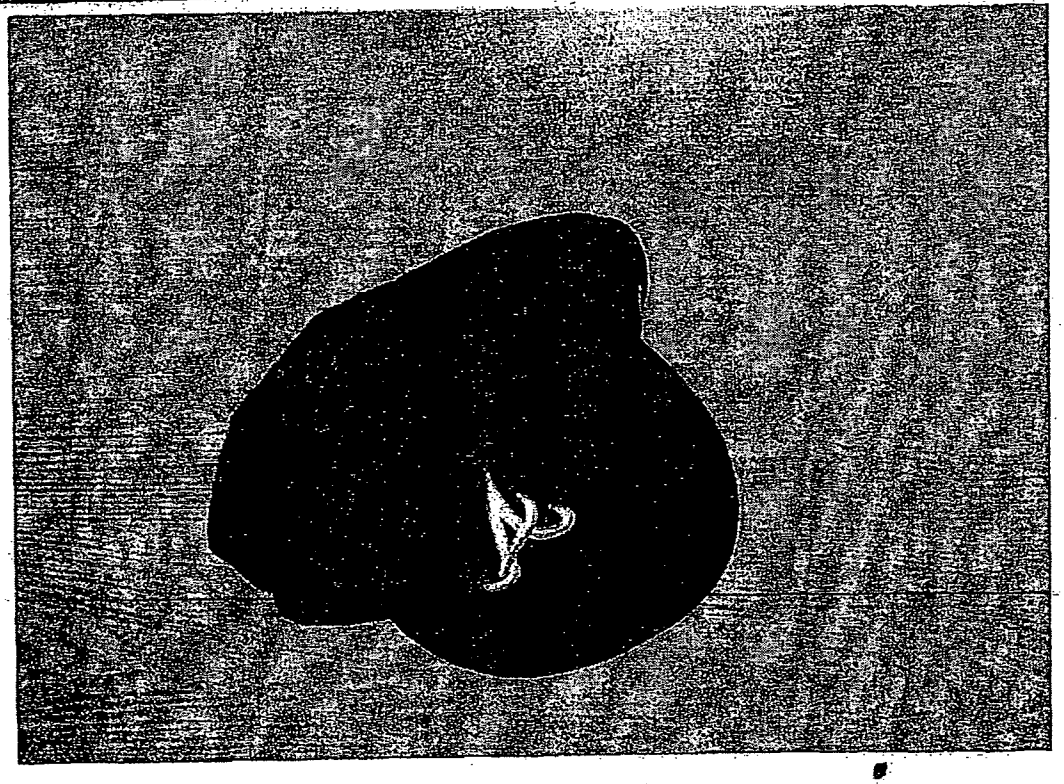

ROCK HILL POLICE DEPARTMENT
EVIDENCE
CHAIN OF POSSESSION OF EVIDENCE
memorex
DVD-R

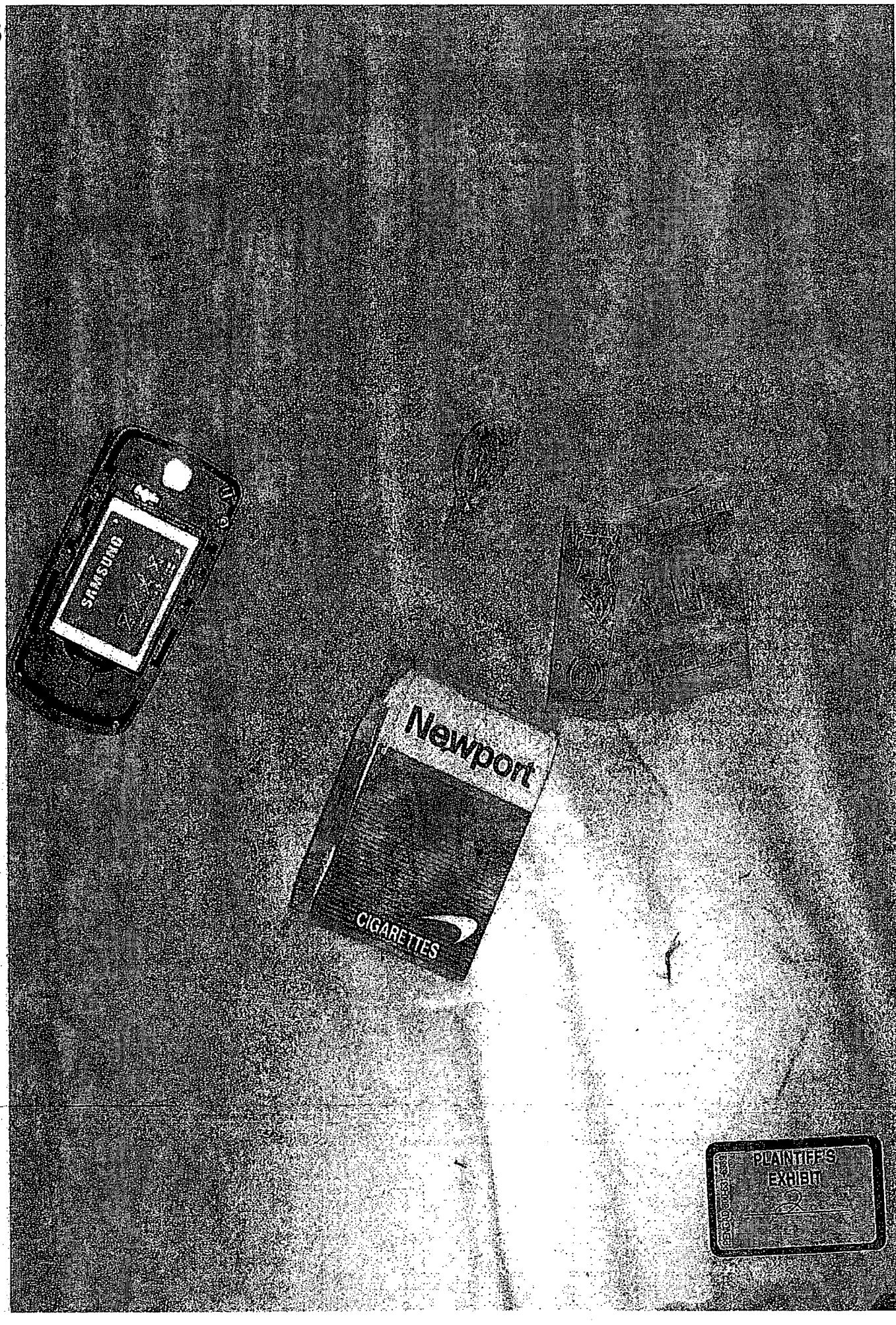

ROCK HILL POLICE DEPT.
A057471
EVIDENCE
CHAIN OF POSSESSION OF EVIDE
TDK
1009210174

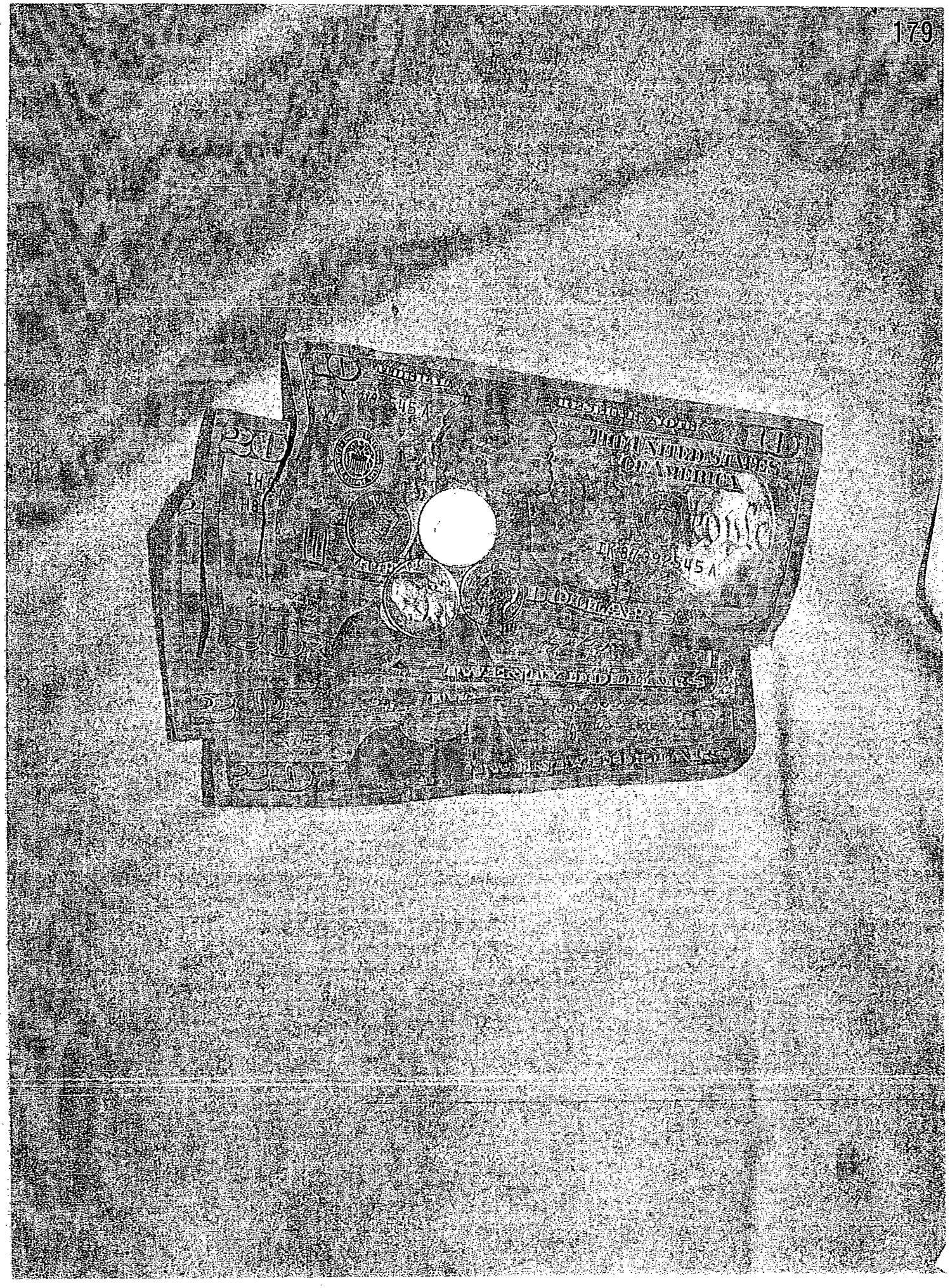

EVIDENCE
CHAIN OF POSSESSION OF EVIDE
TDK
CD-R80
1009210174
ROCK HILL POLICE DEPT.
A057471

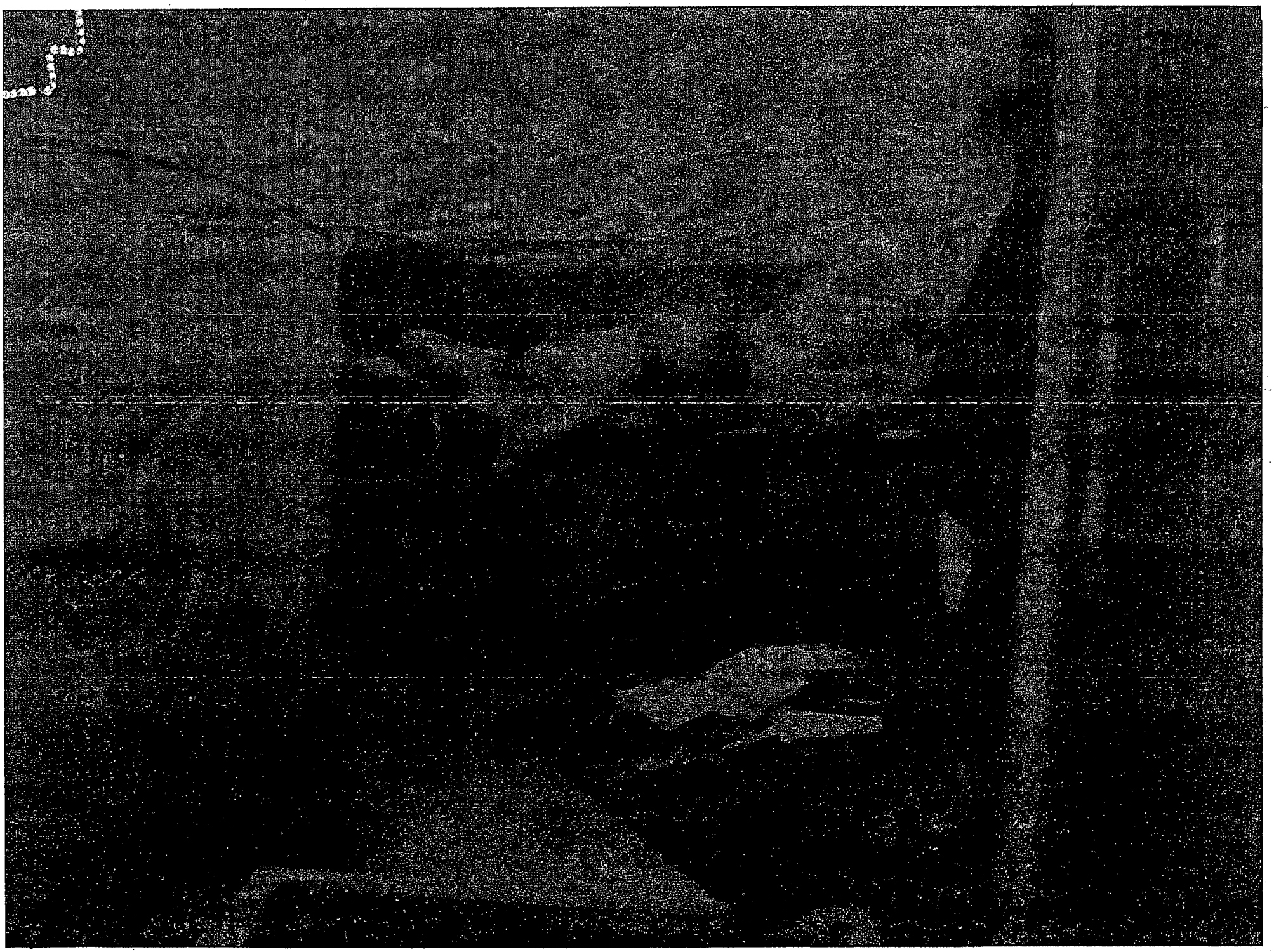


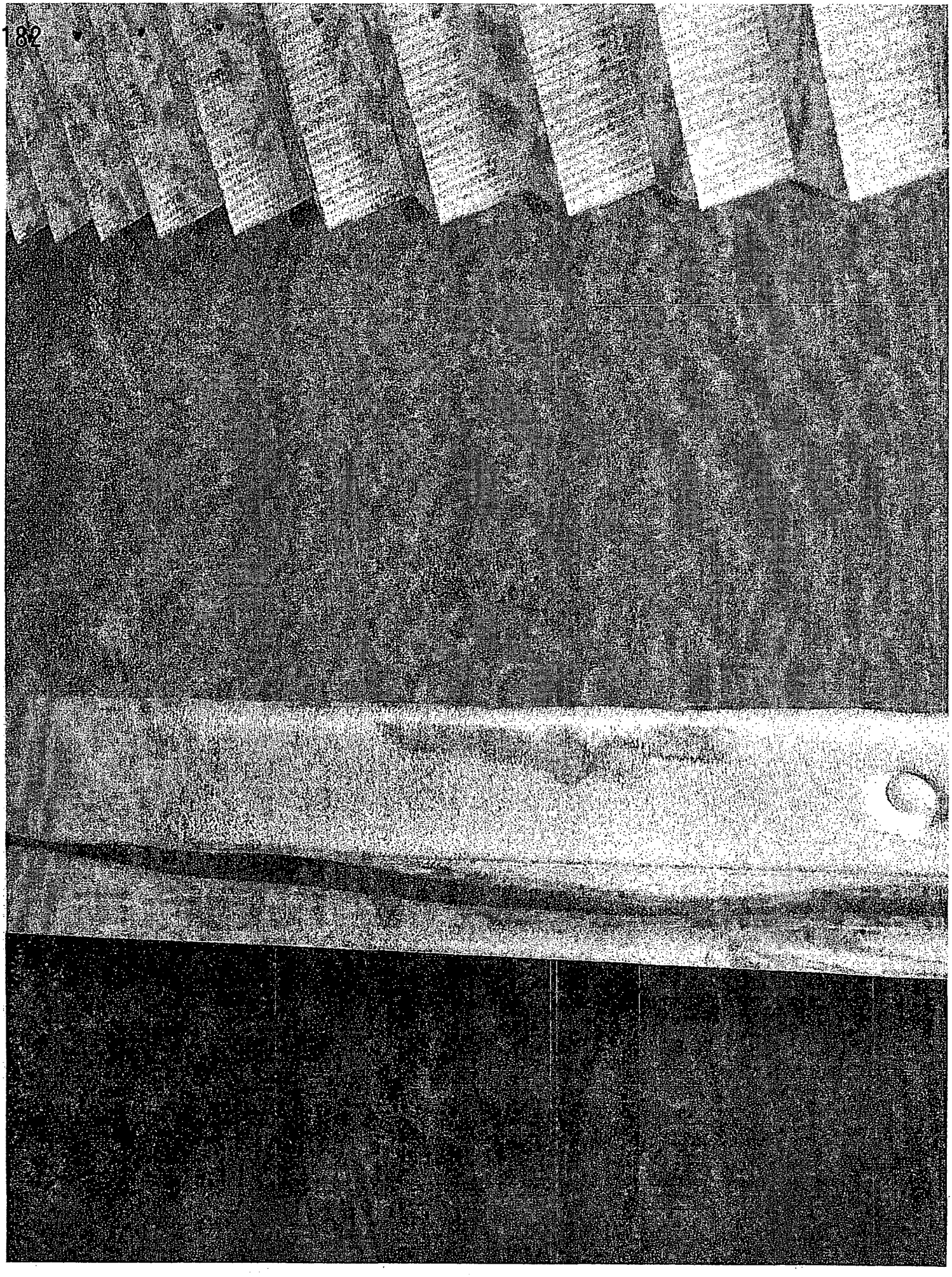

ROCKWALL POLICE DEPT.
A007452
EVIDENCE
CHAIN OF POSSESSION OF EVIDENCE
POLICE DEPT.

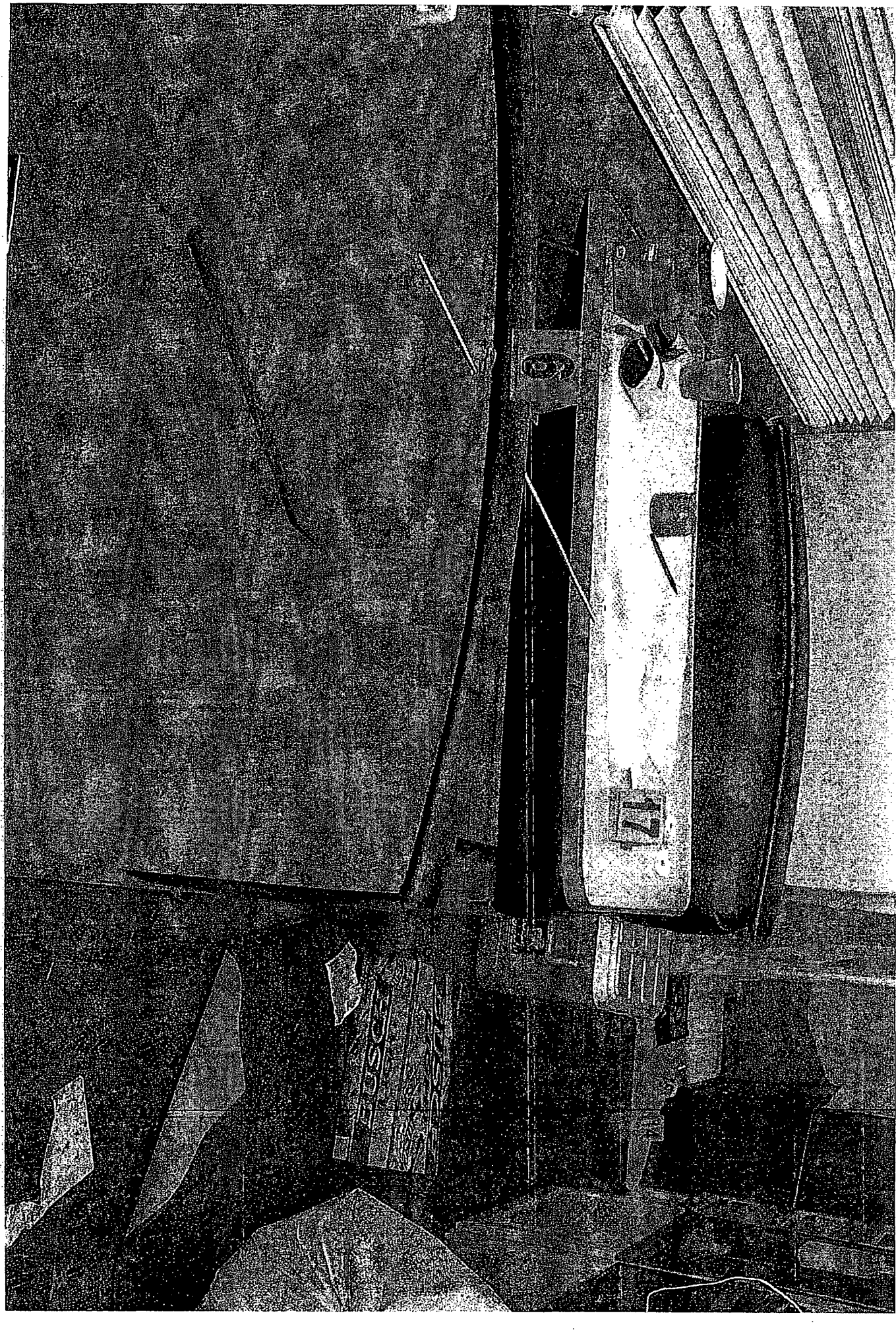


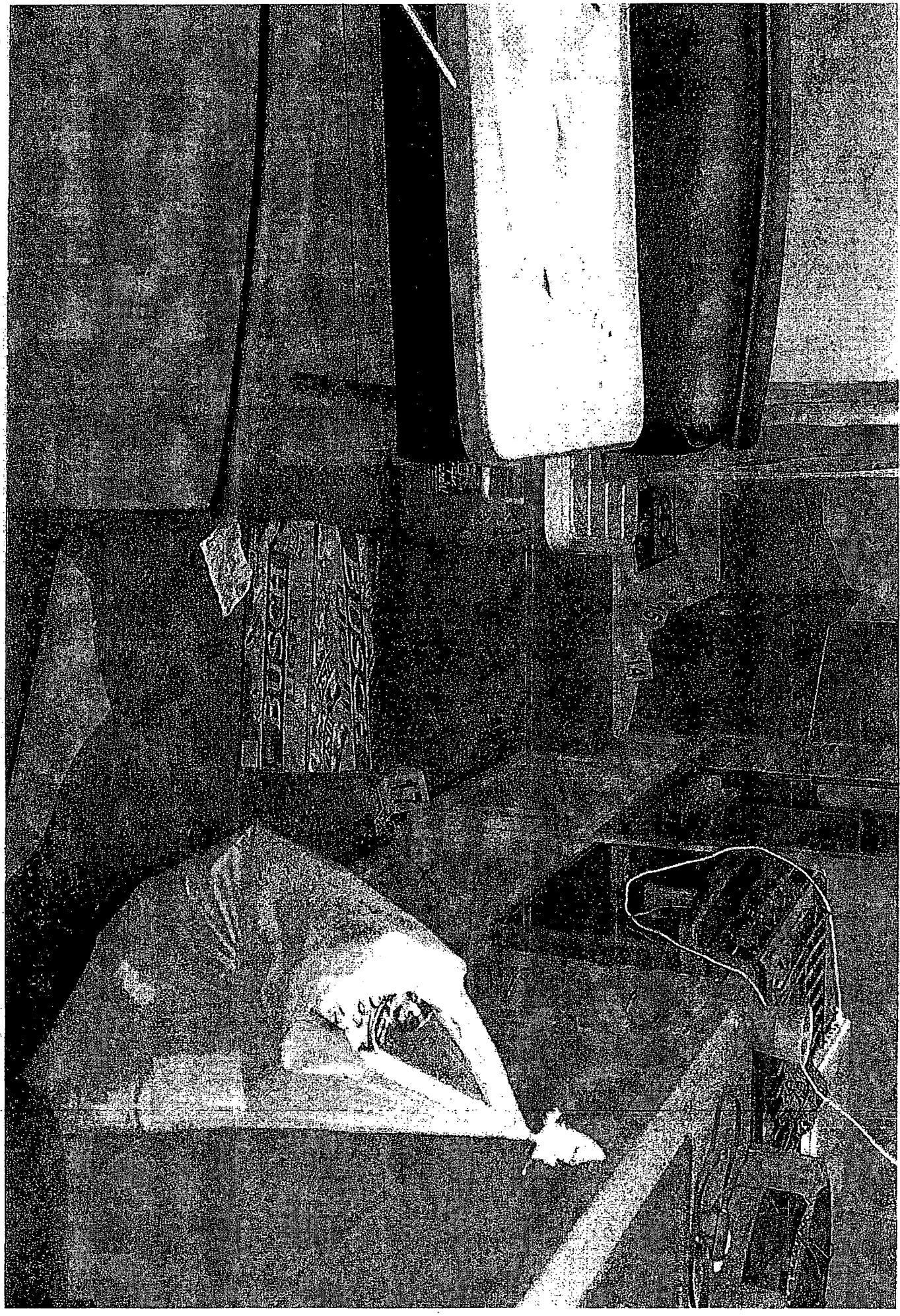

SAMSUNG
Newport
CIGARETTES
PLAINTIFF'S
EXHIBIT
2

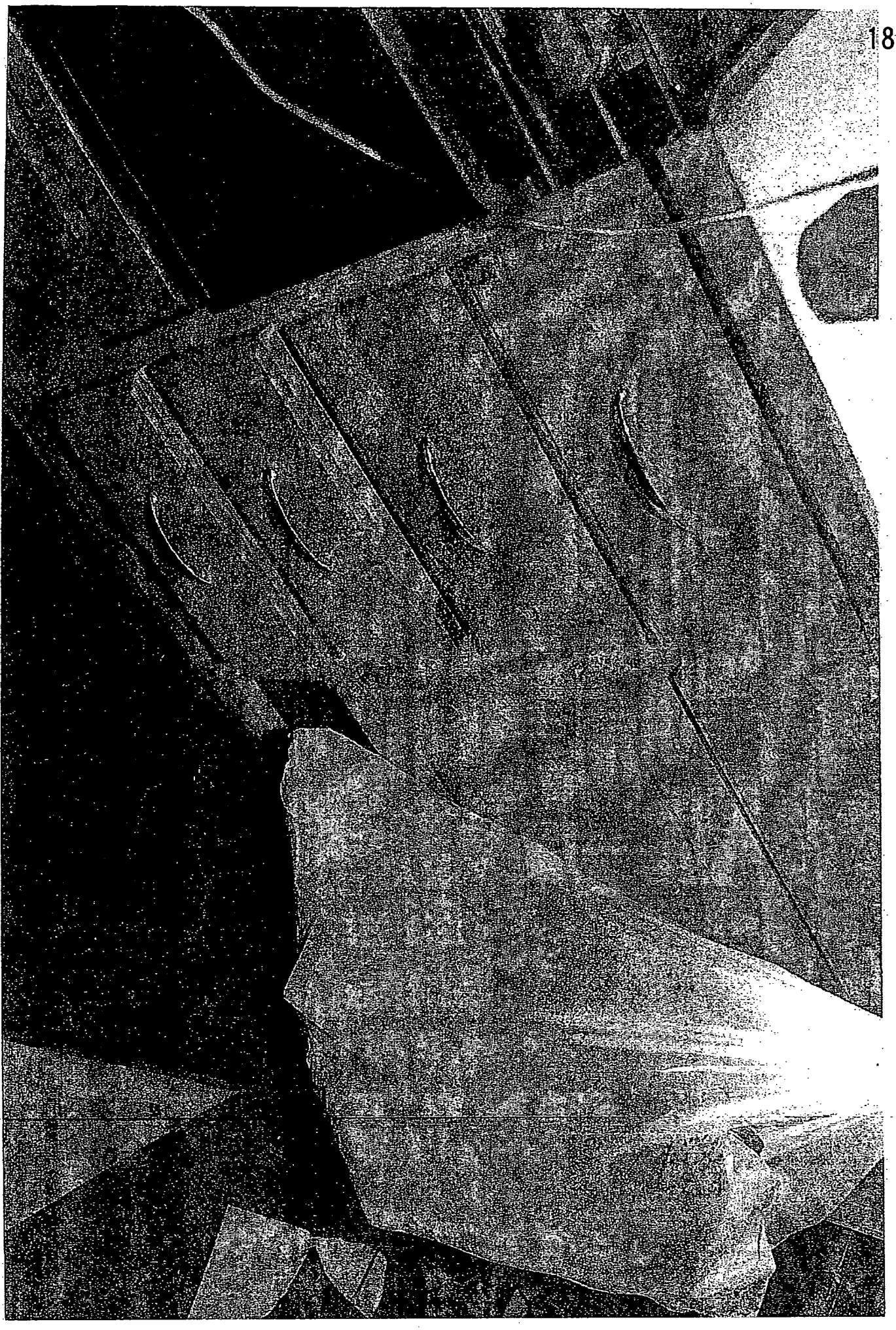

UNITED STATES
OF AMERICA

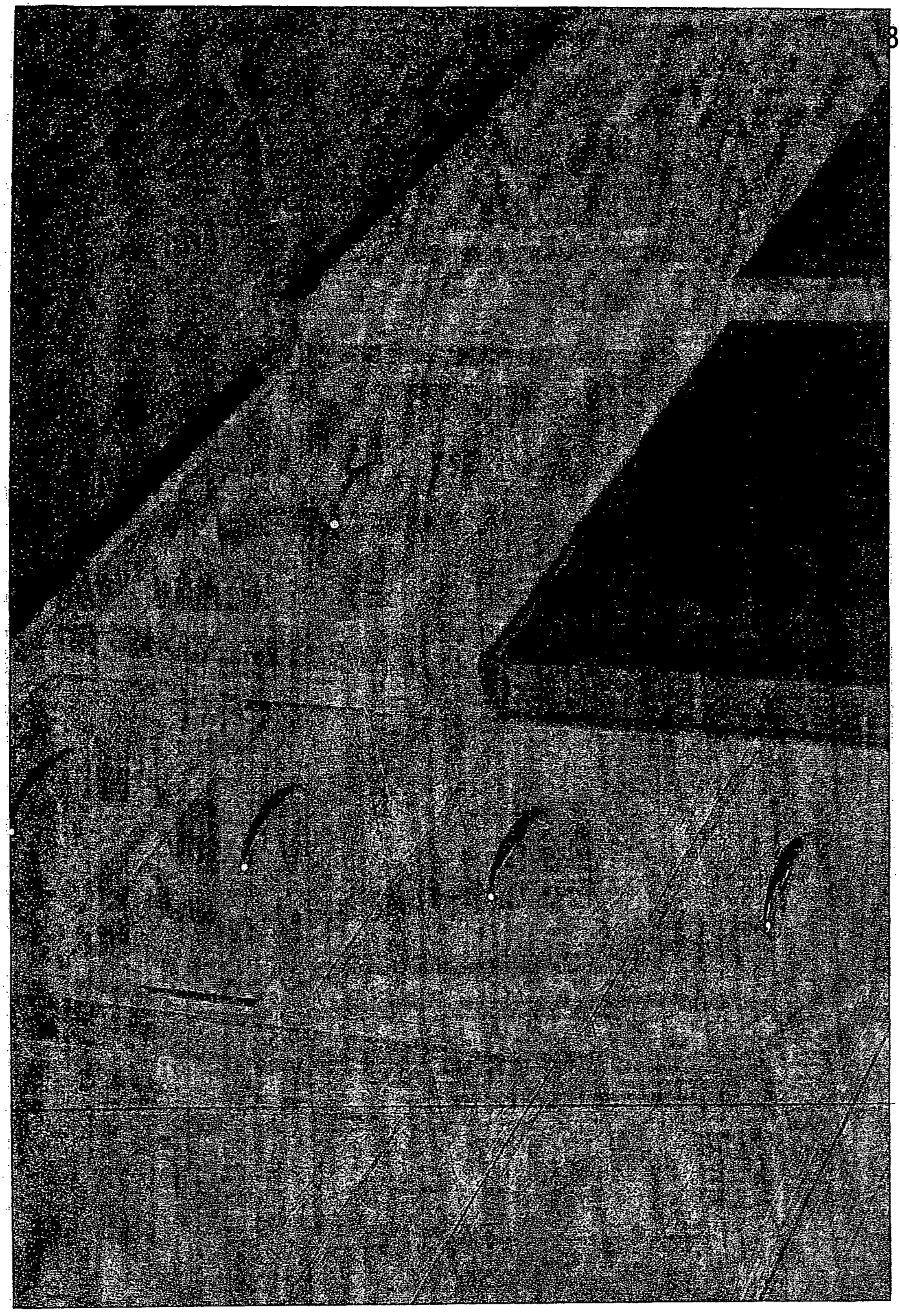


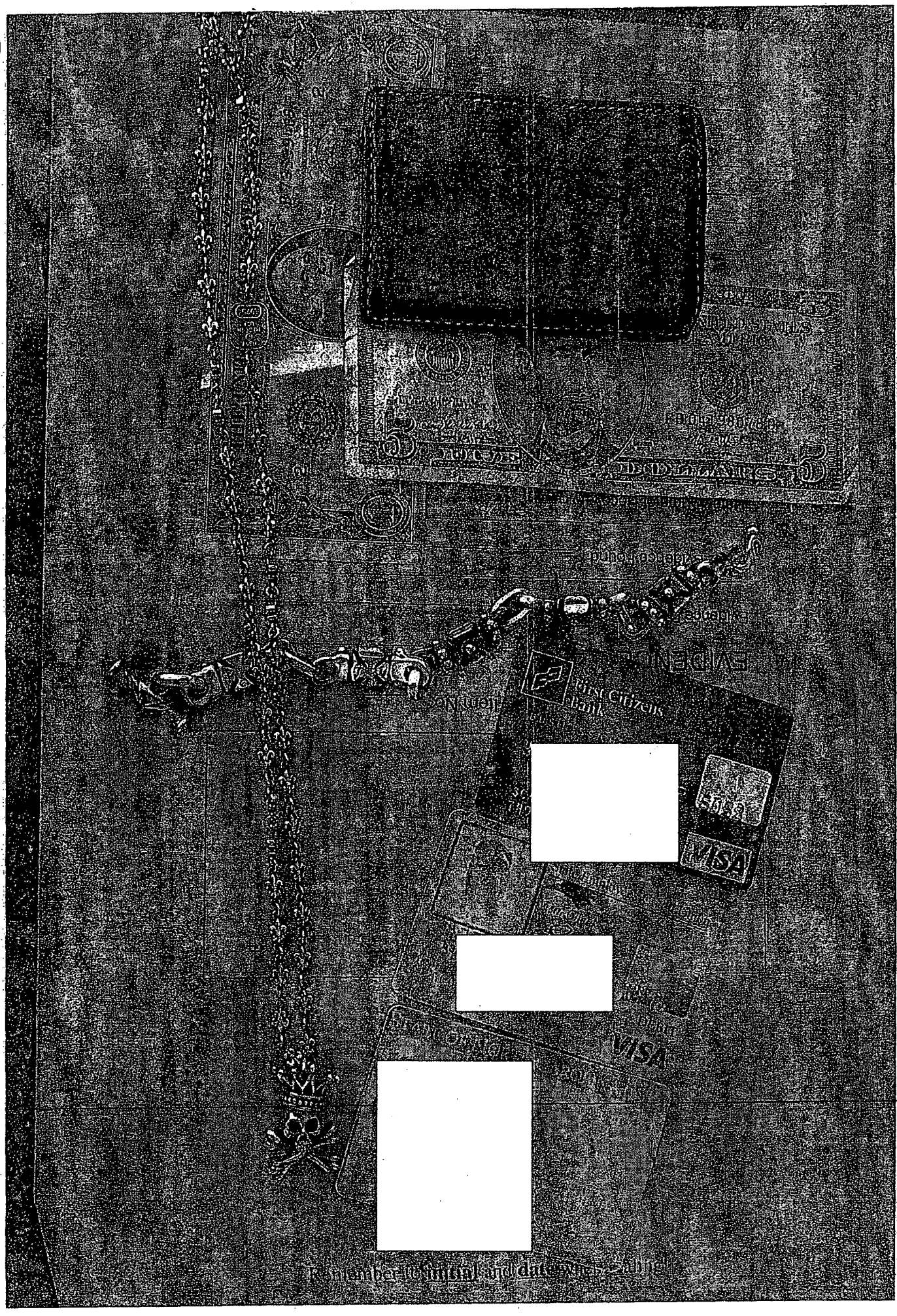


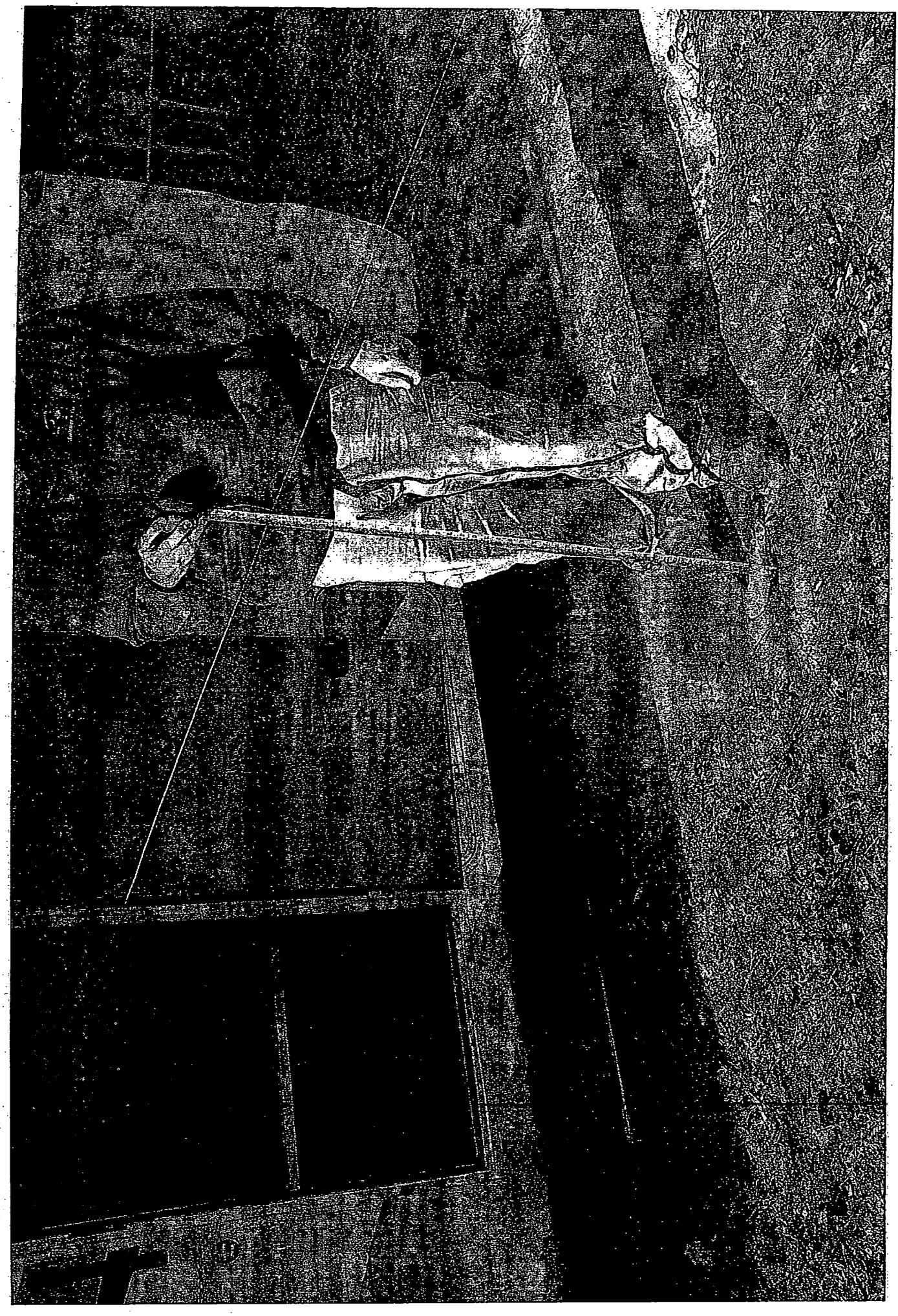


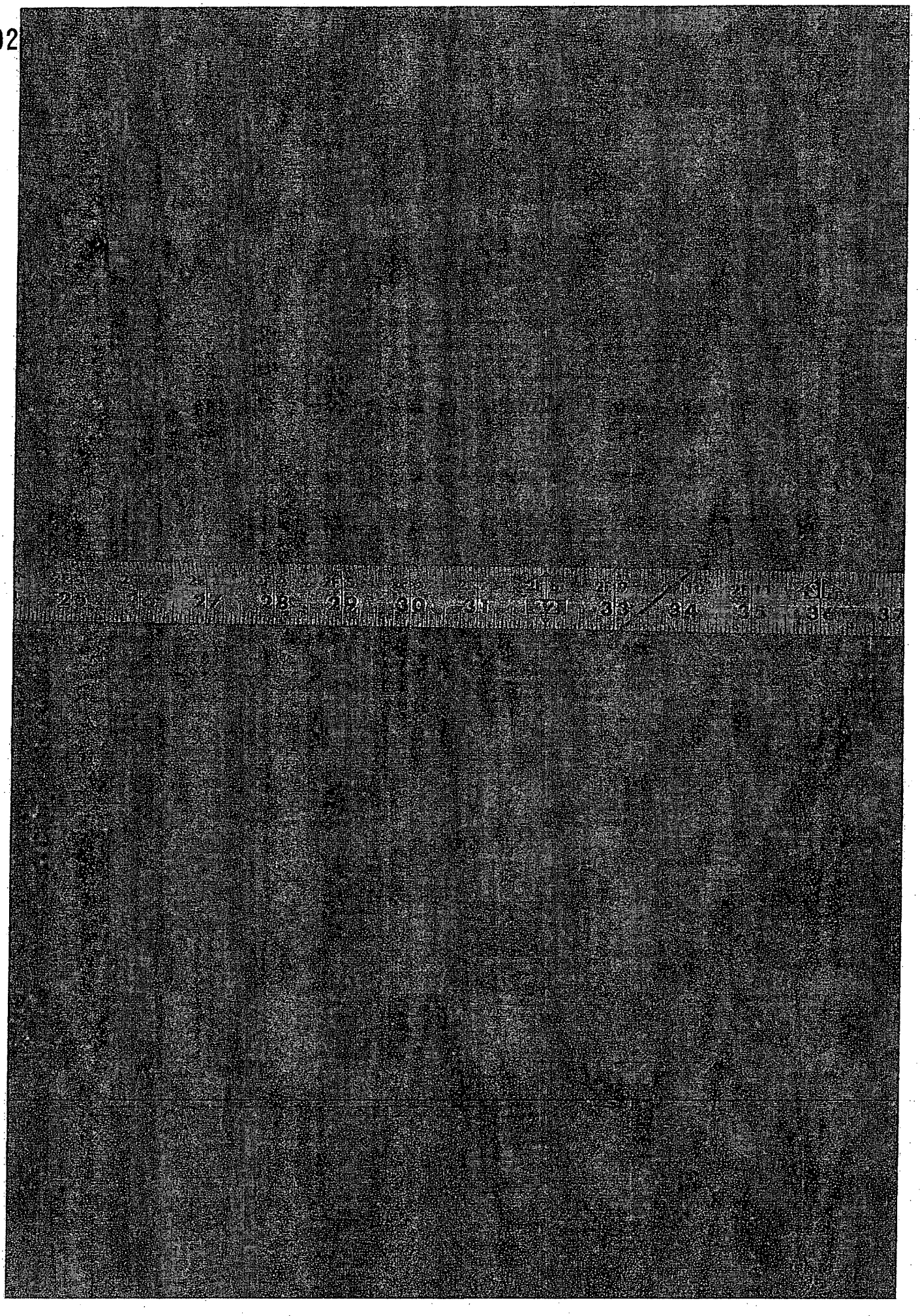


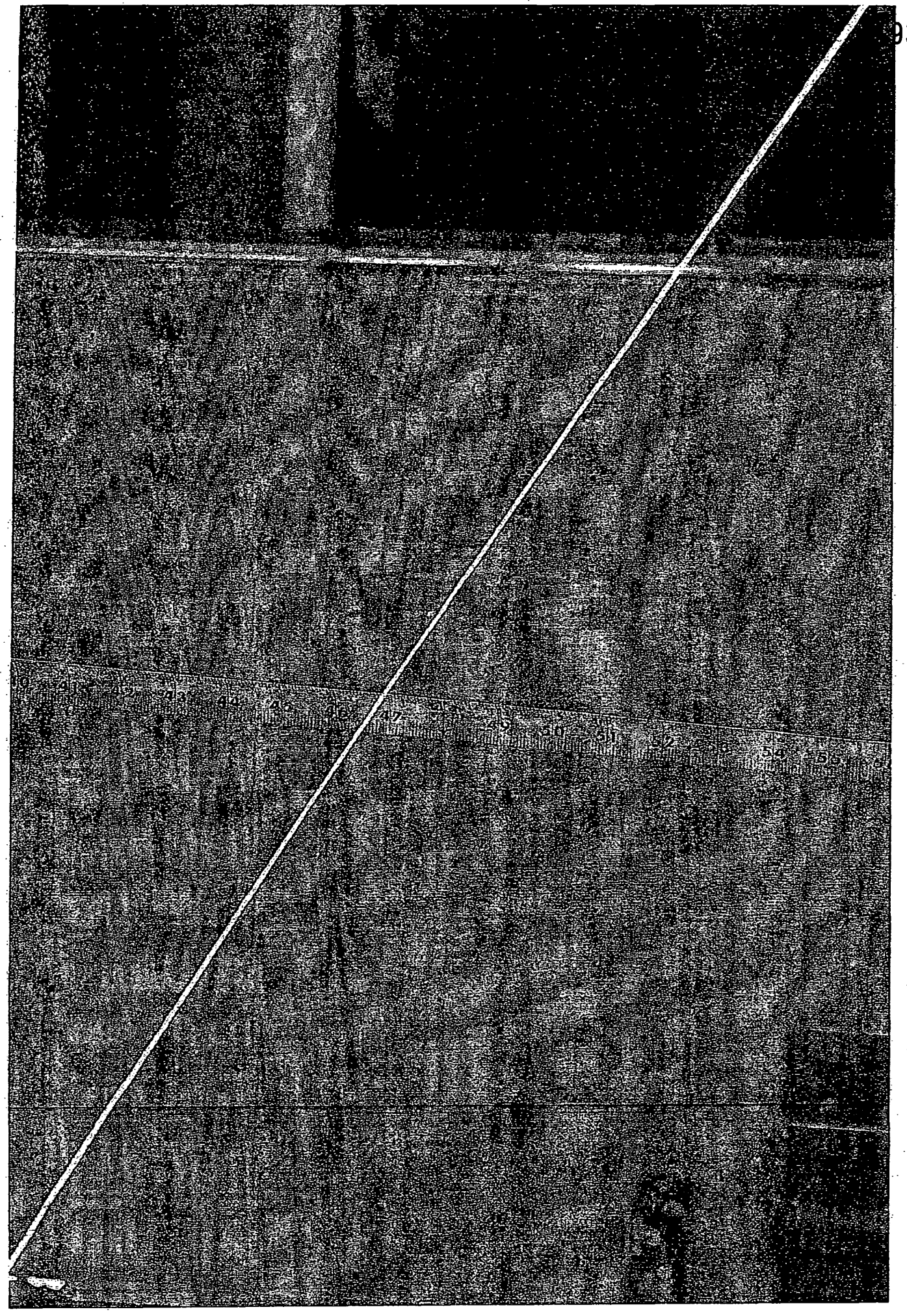


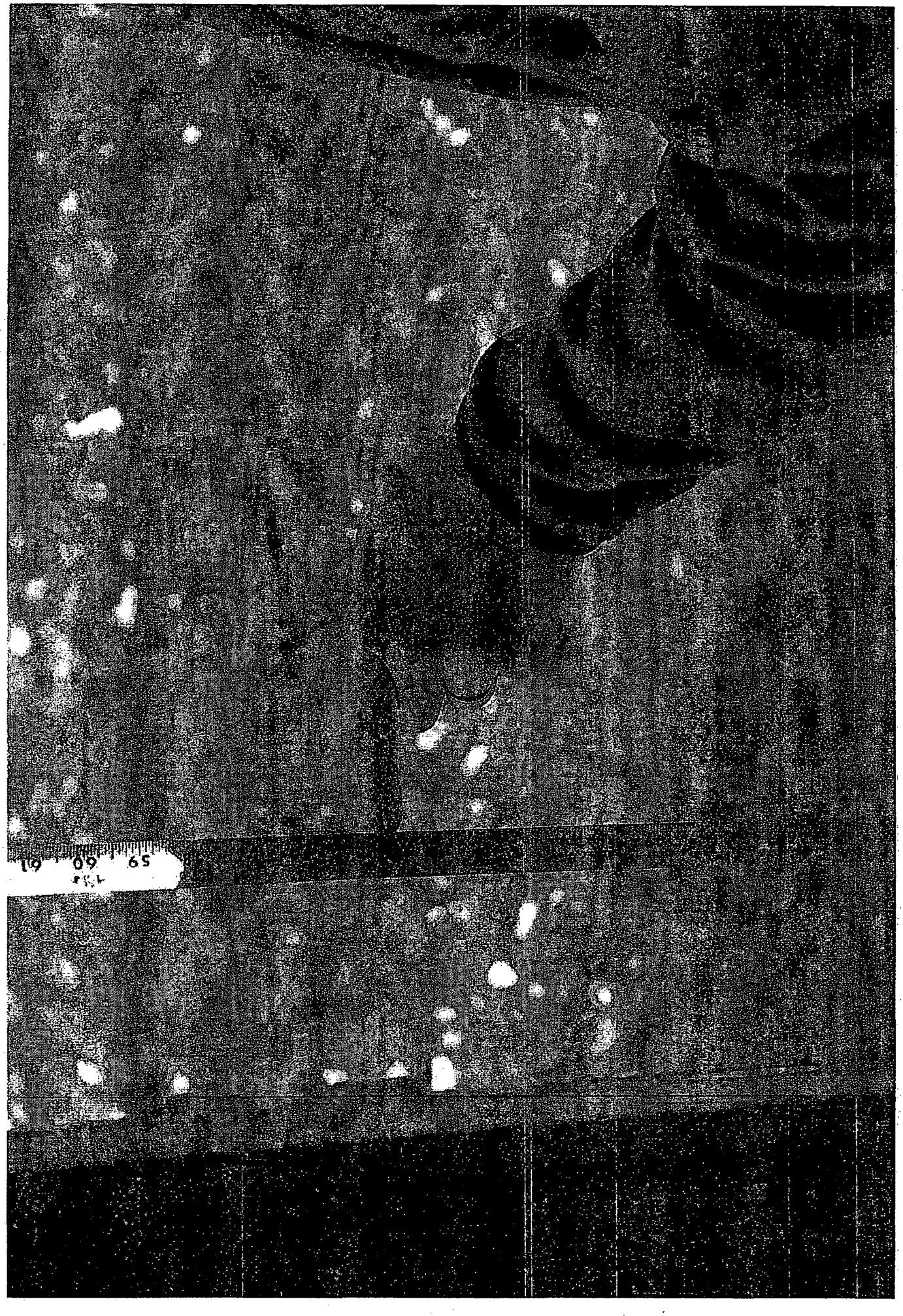


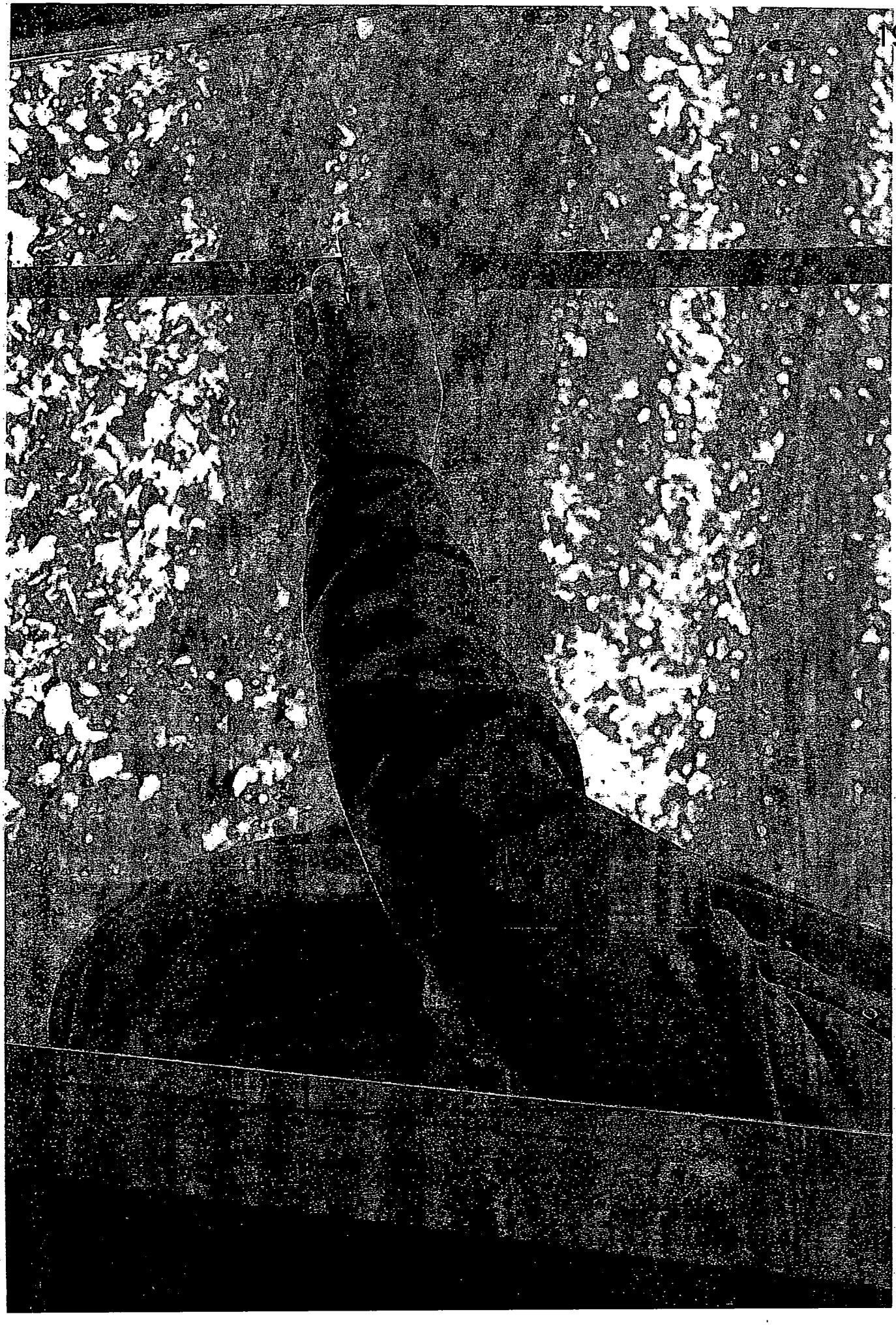

First Citizens Bank
VISA
VISA



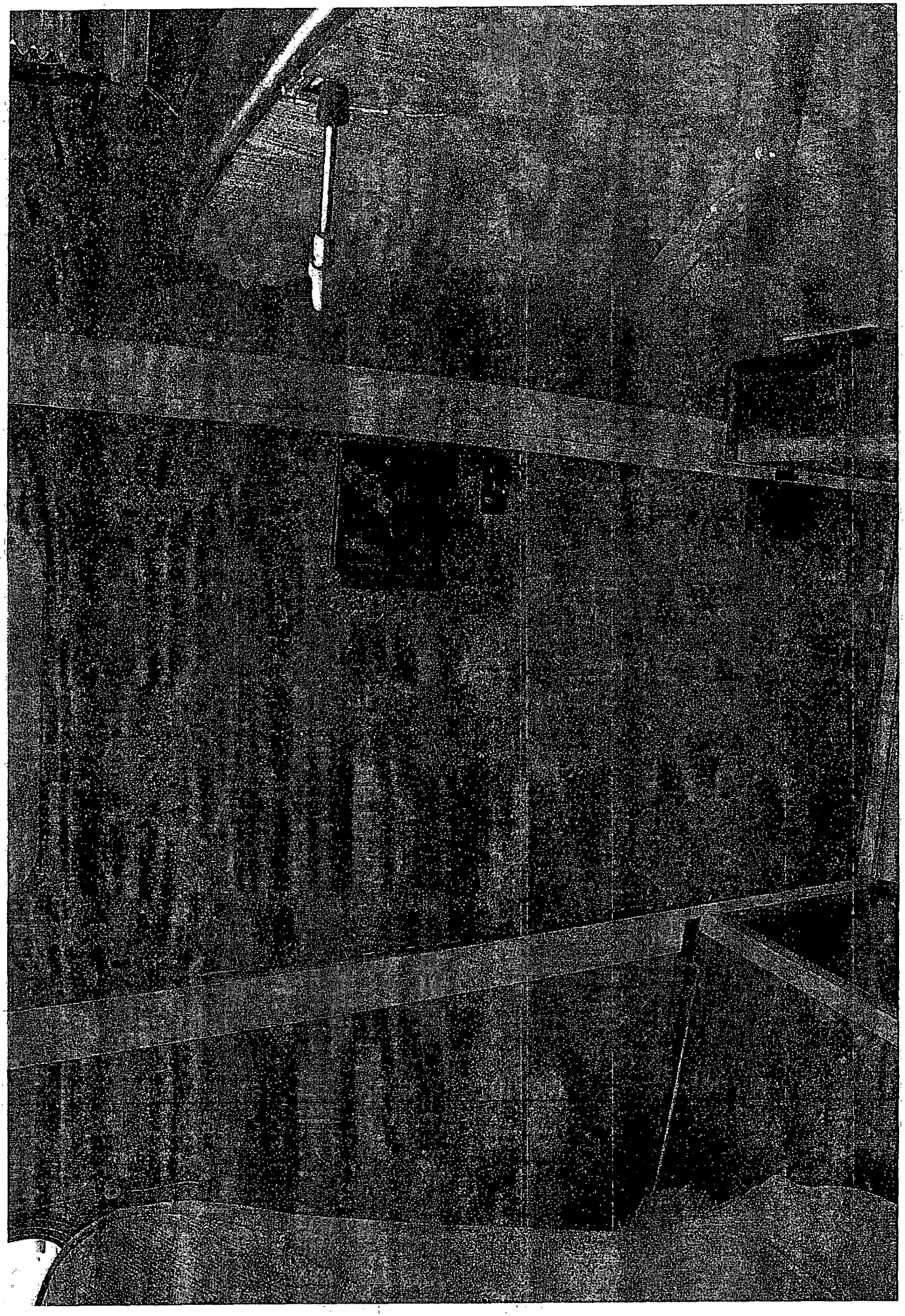


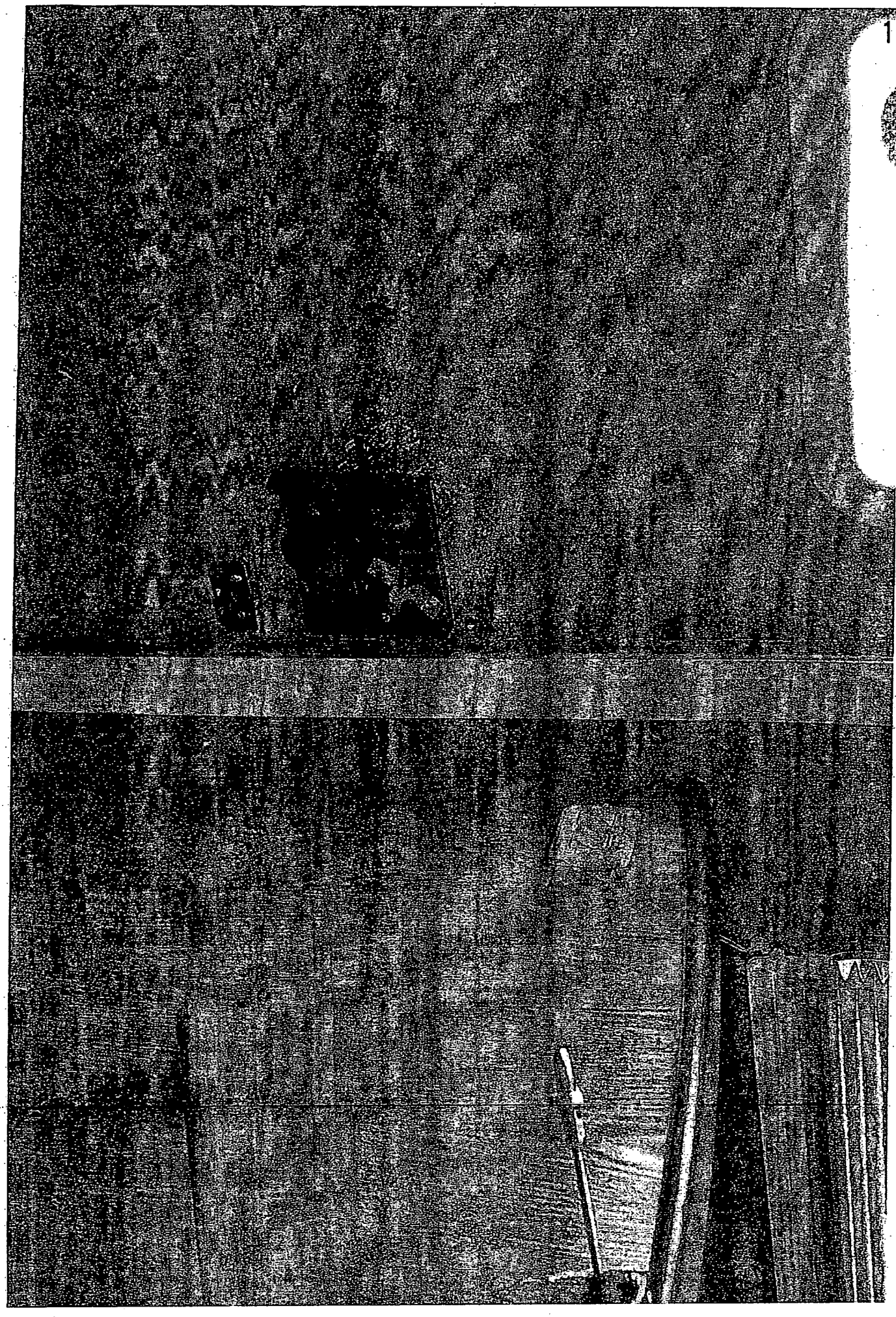


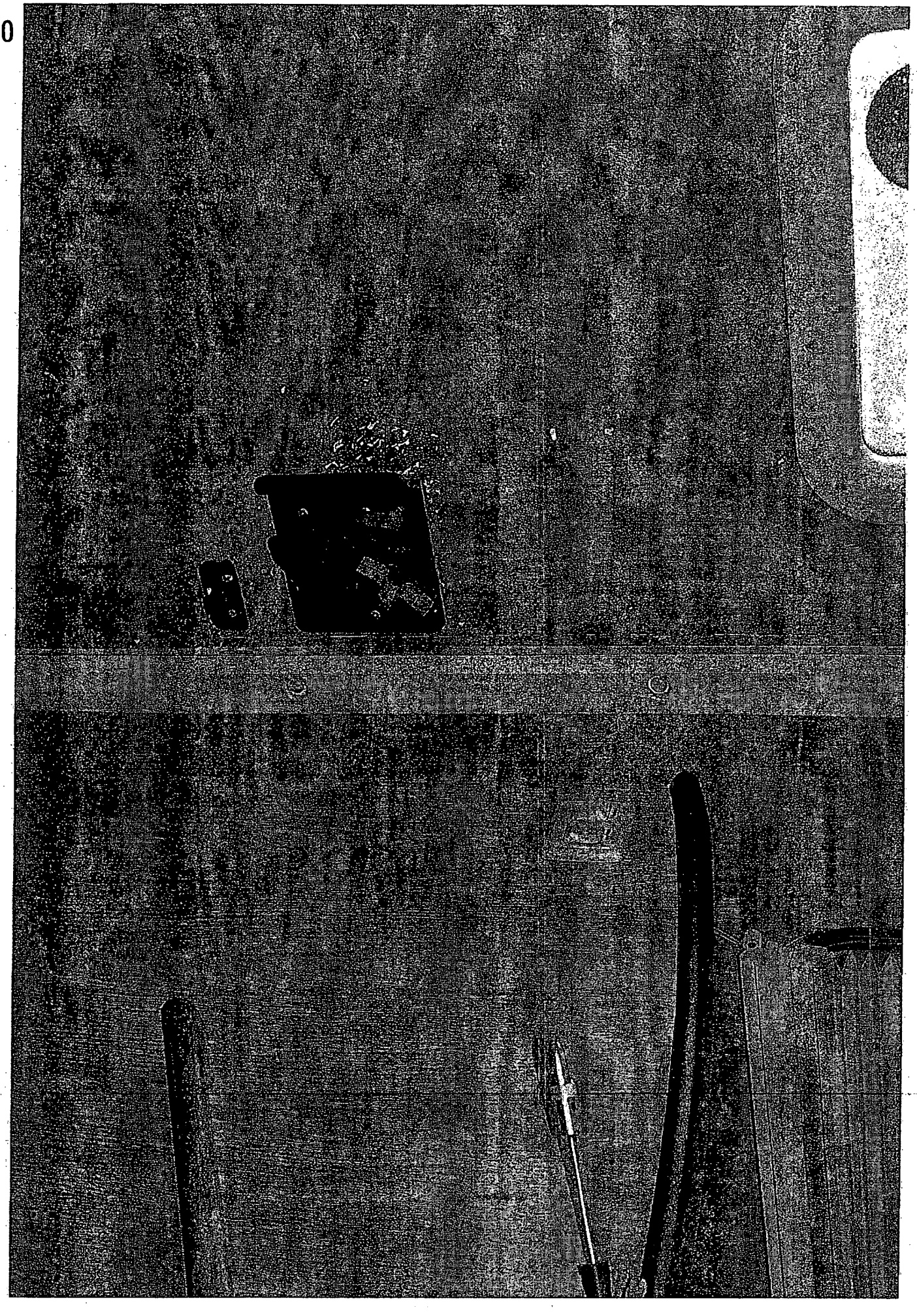


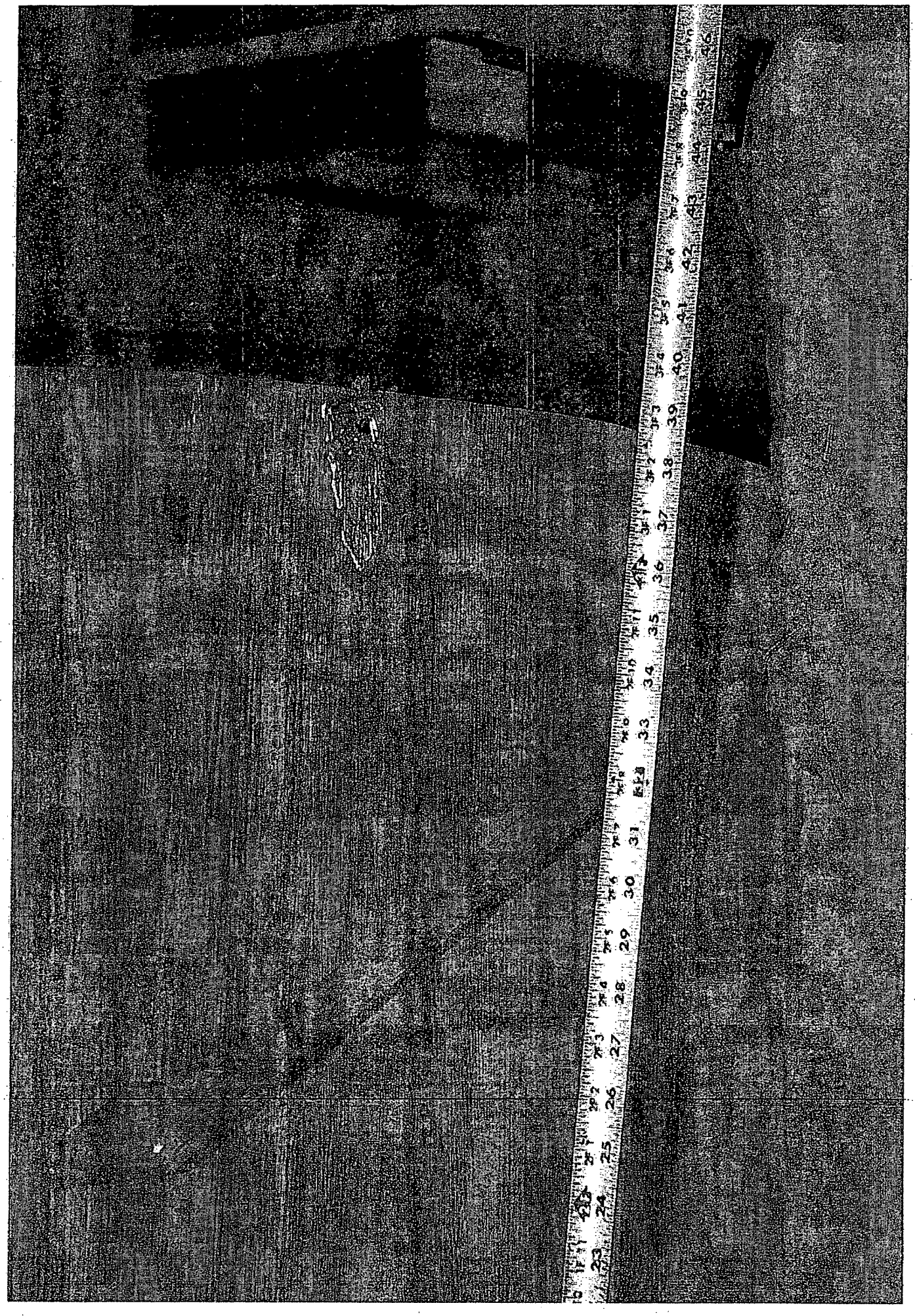


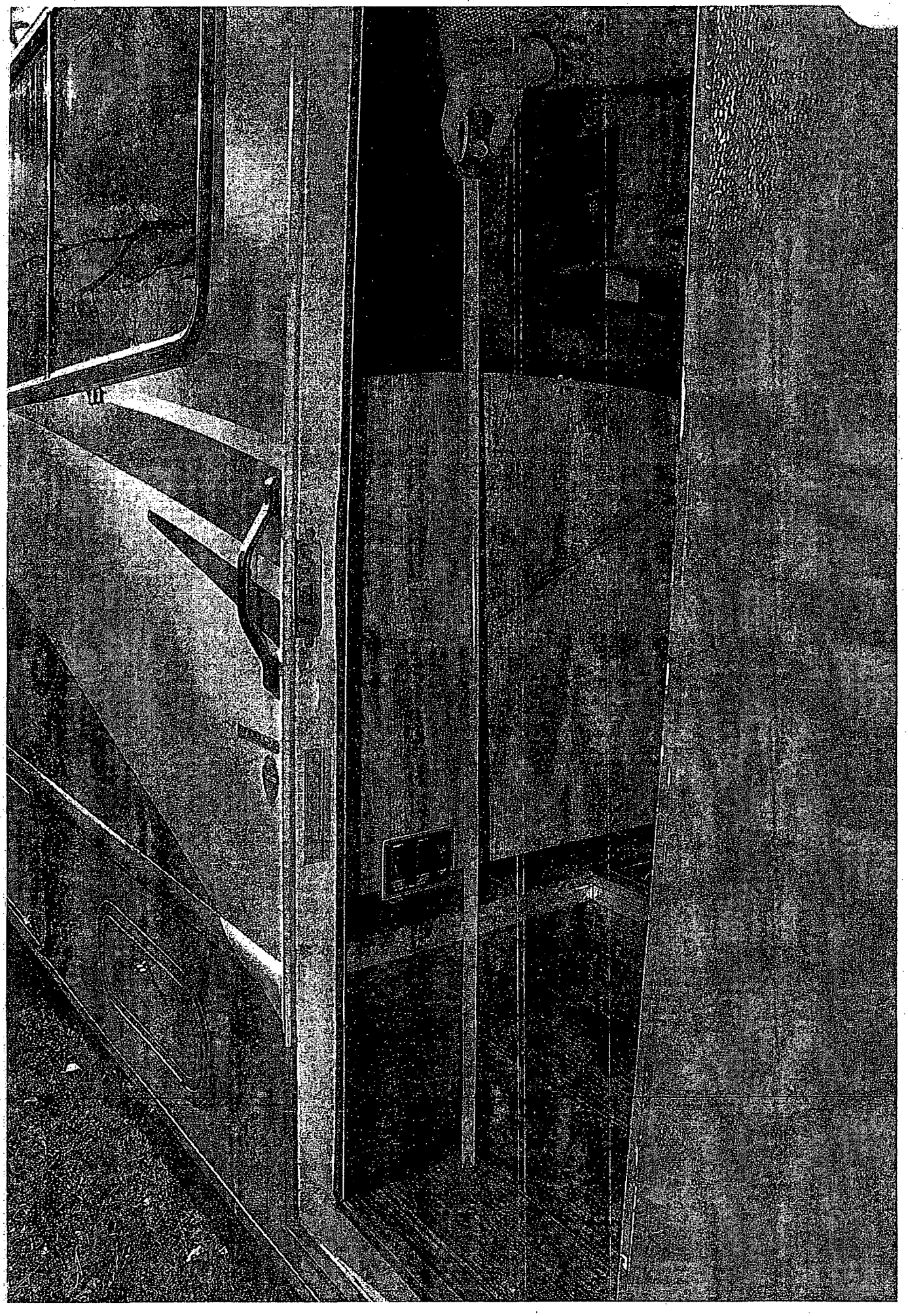
196

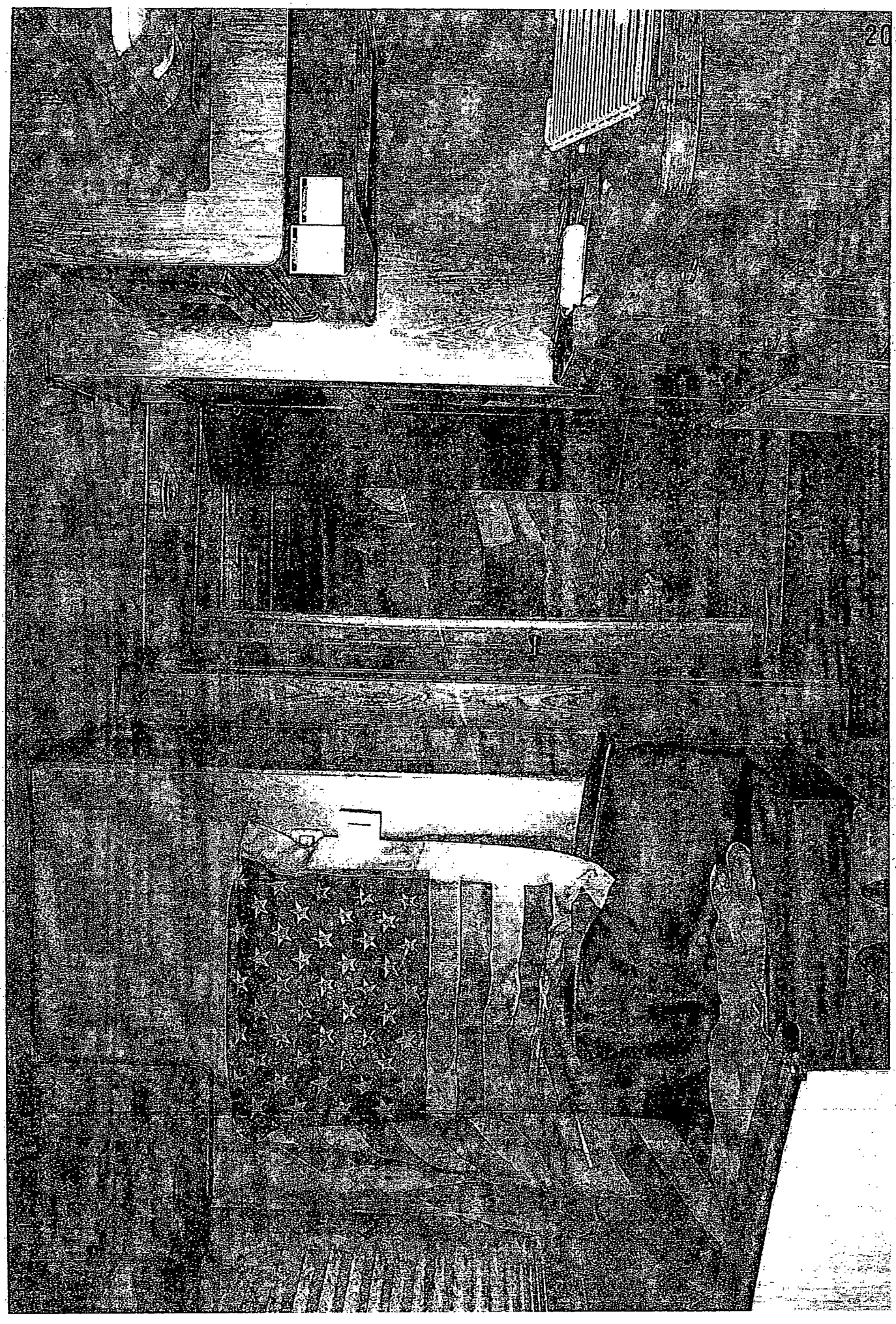


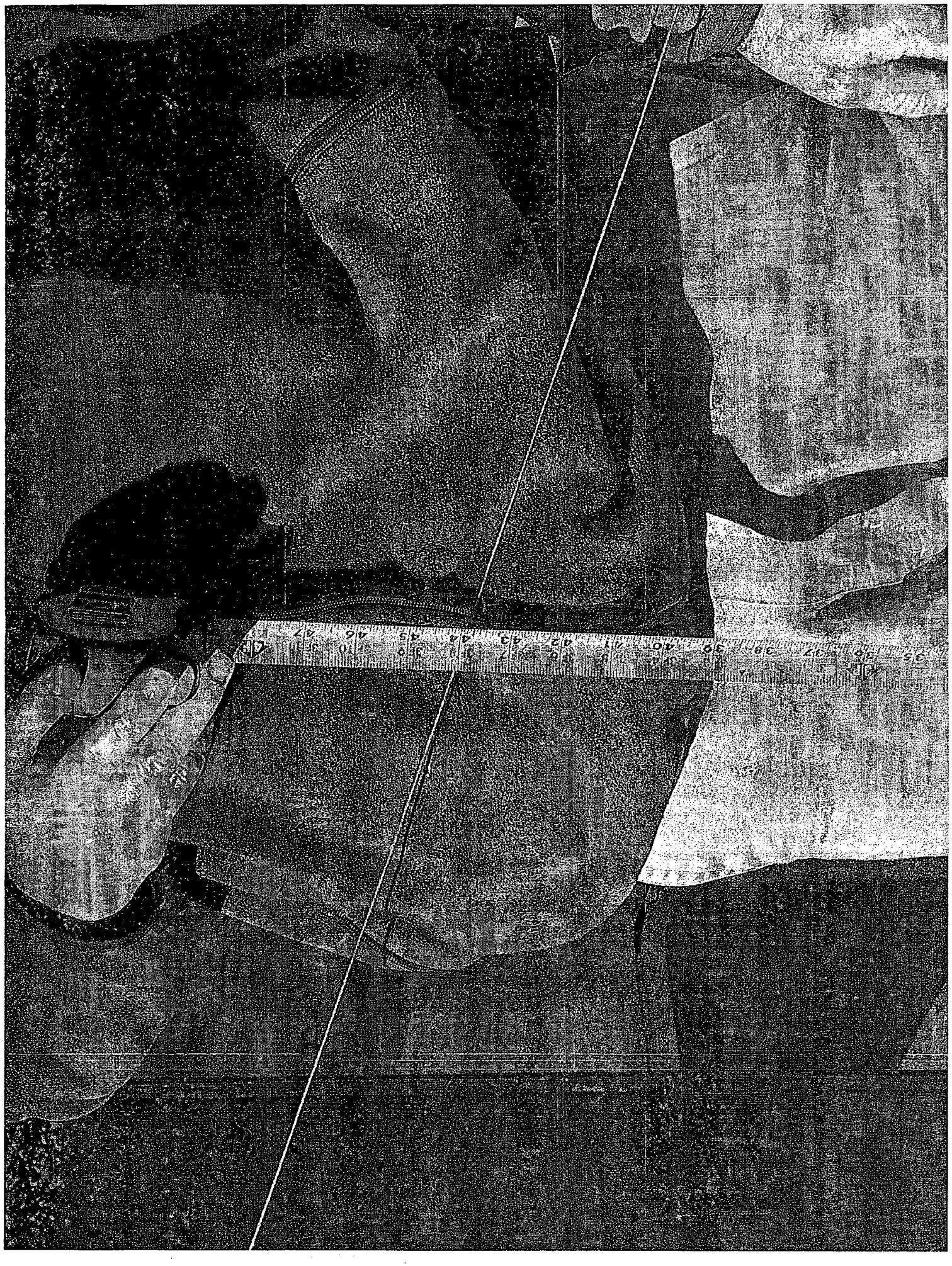


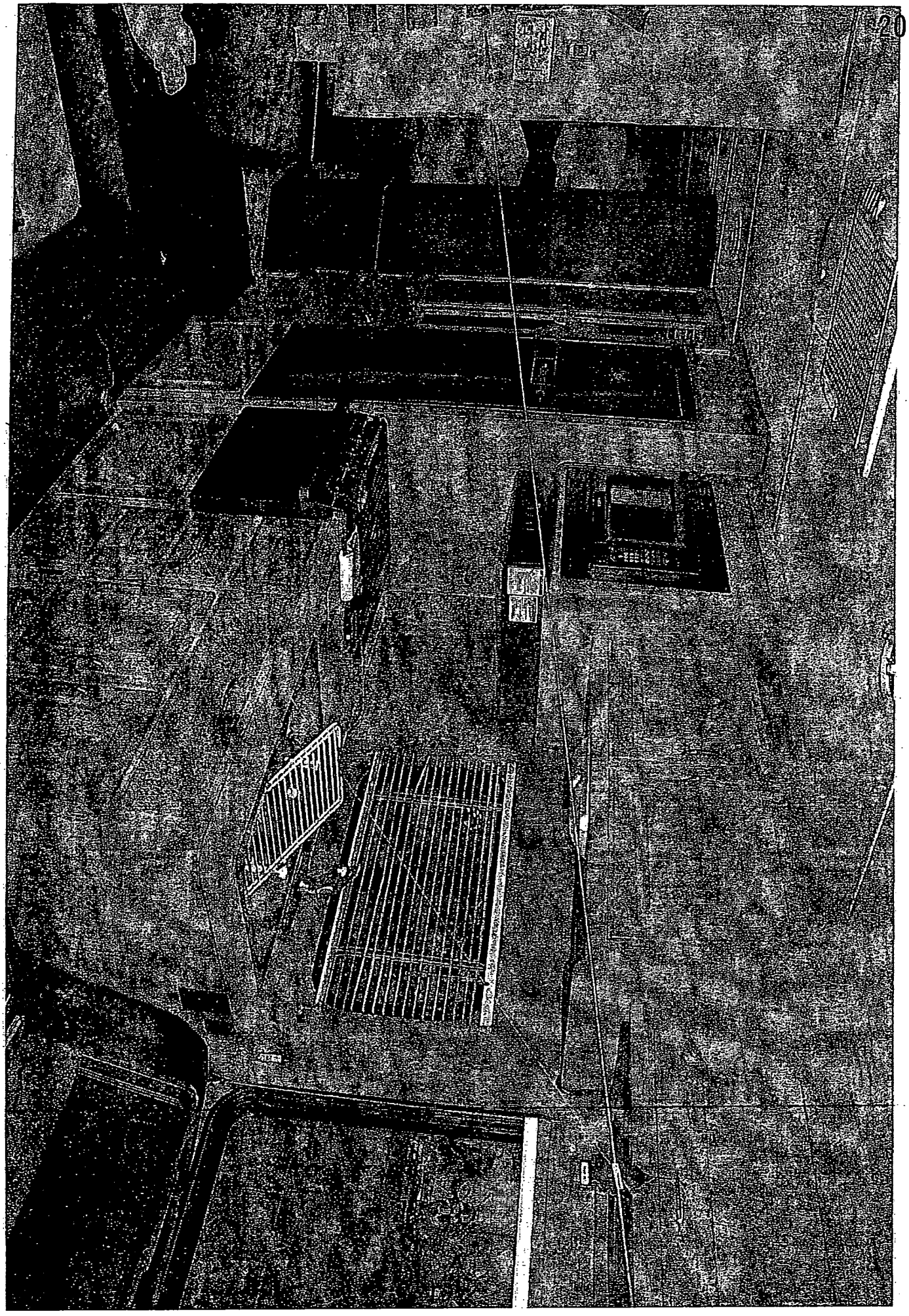


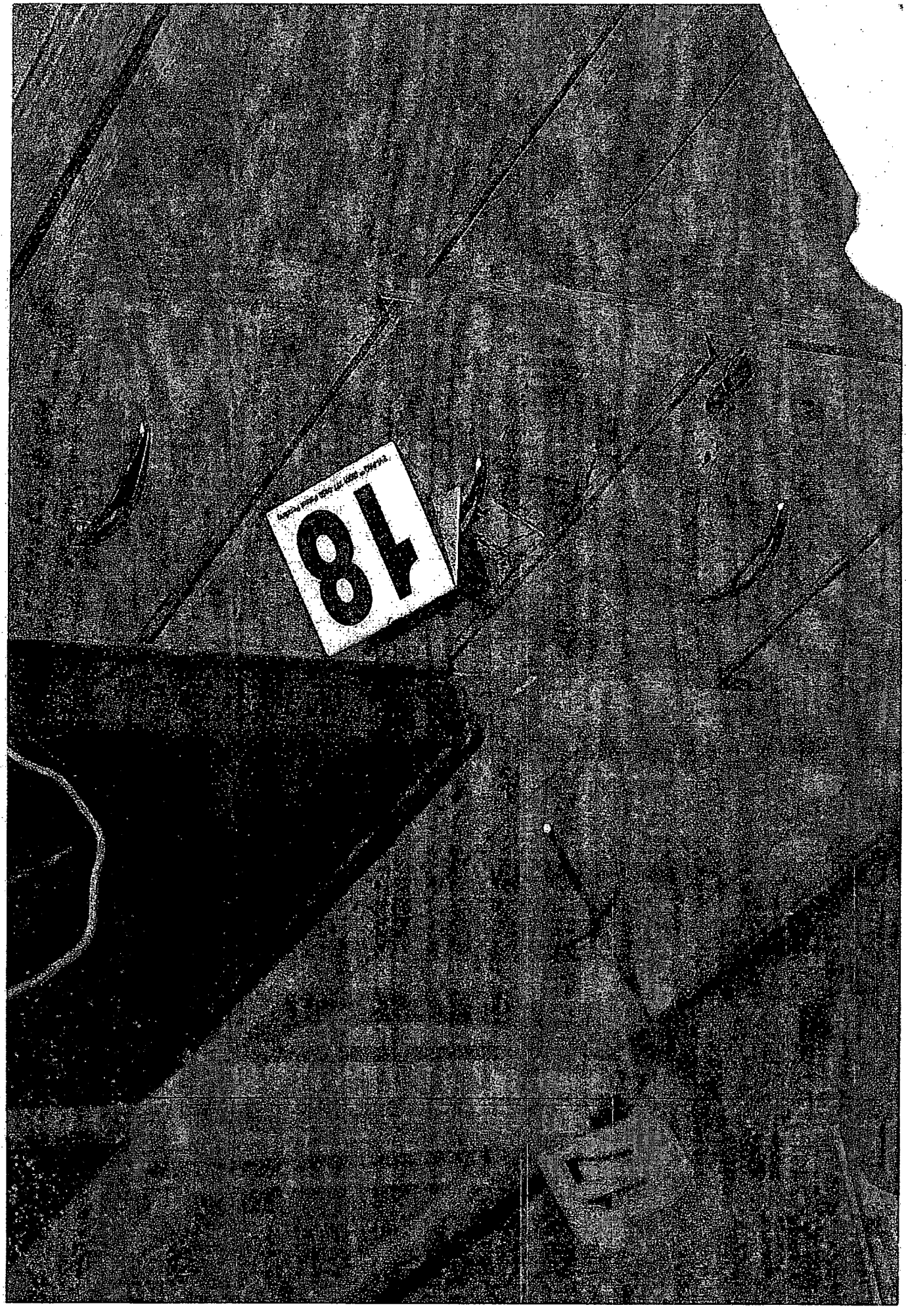


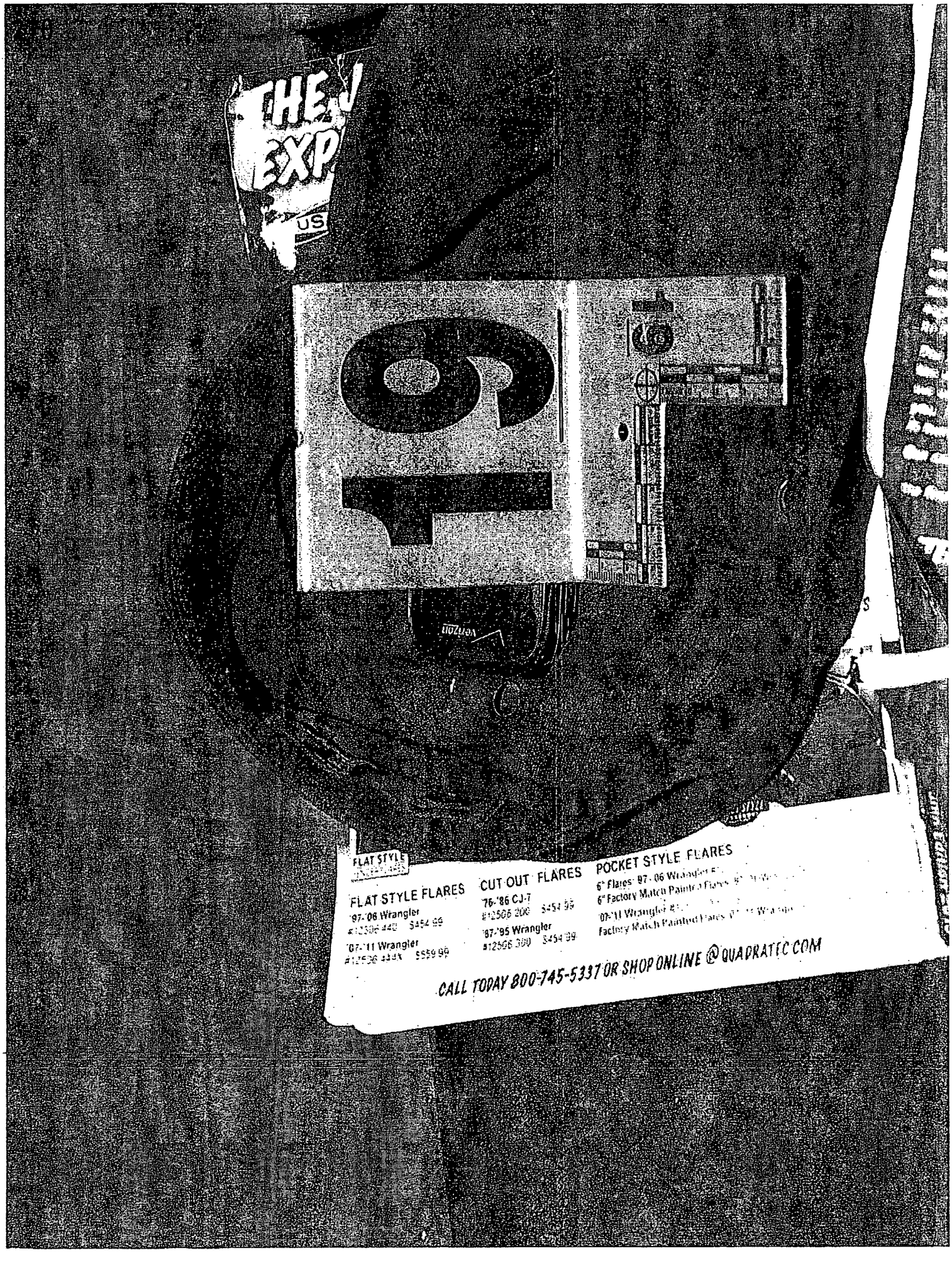


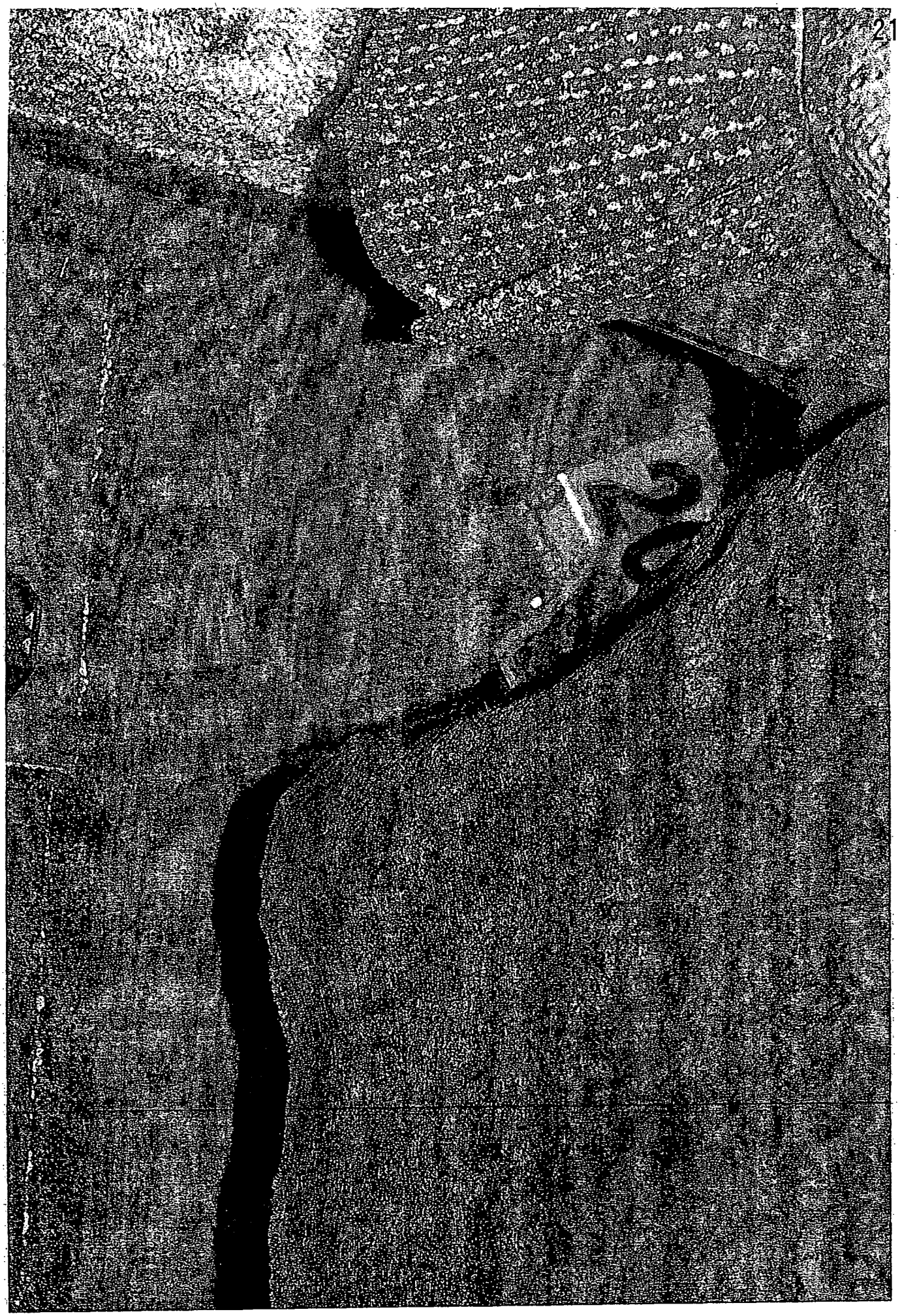


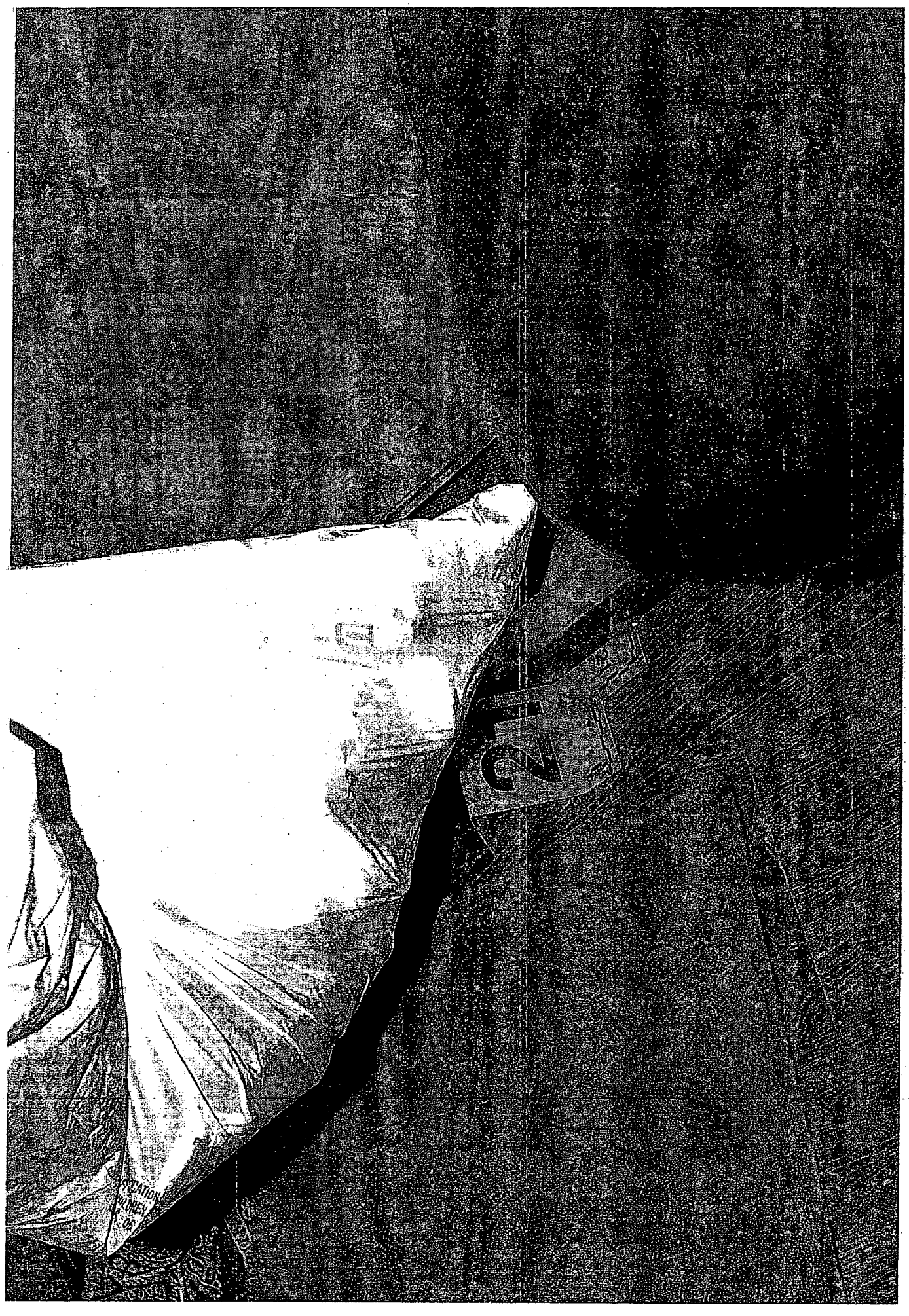


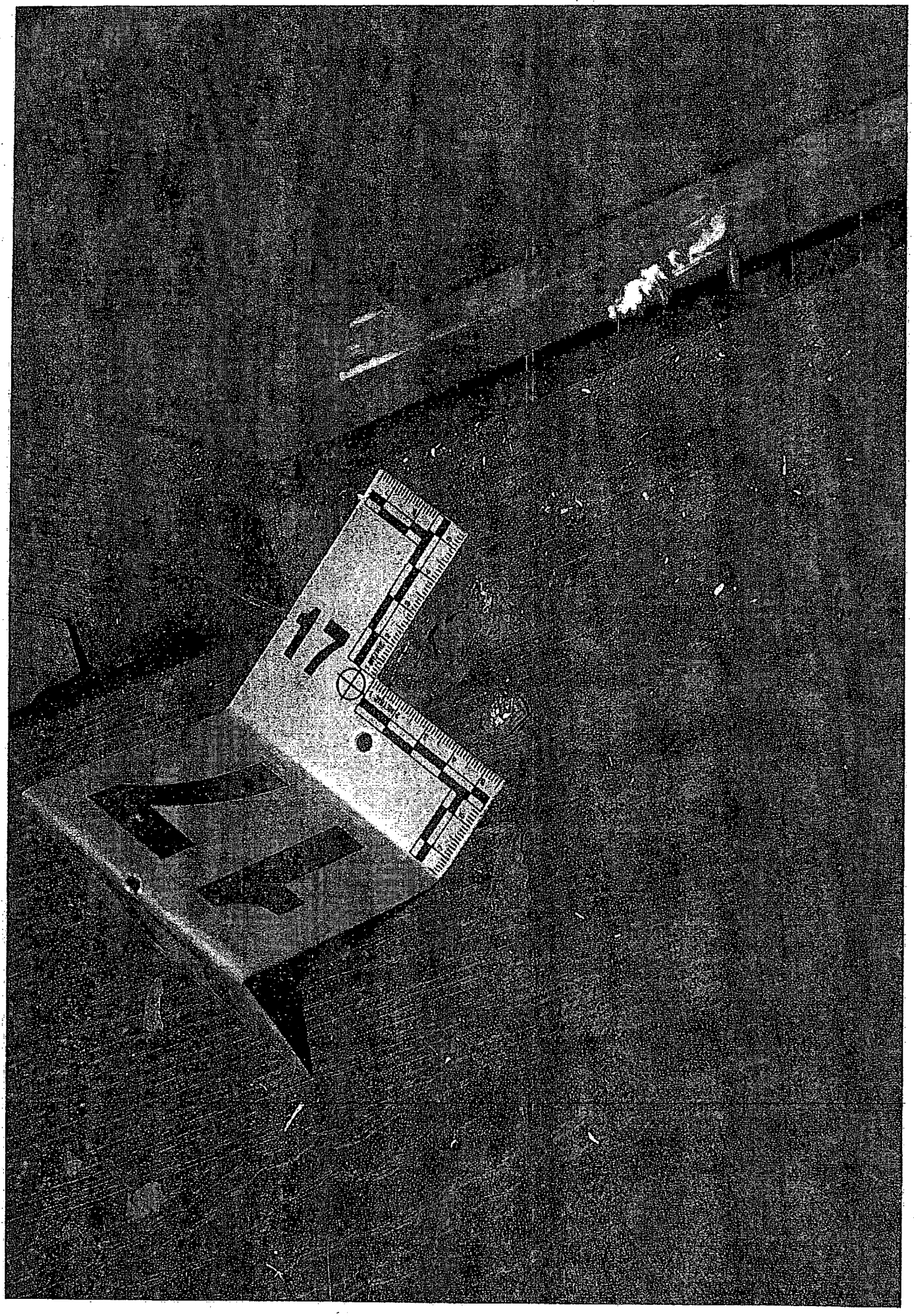


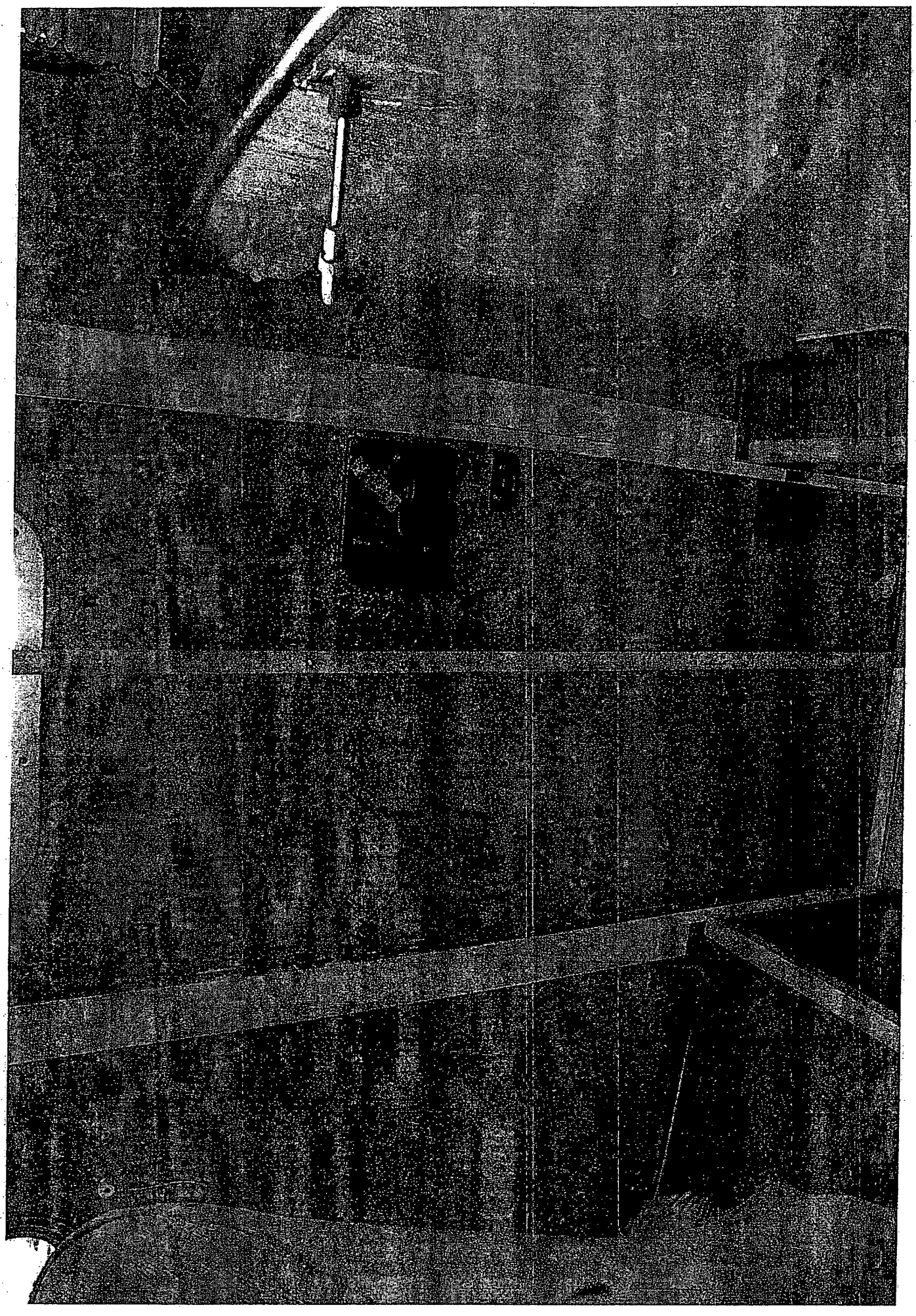

18

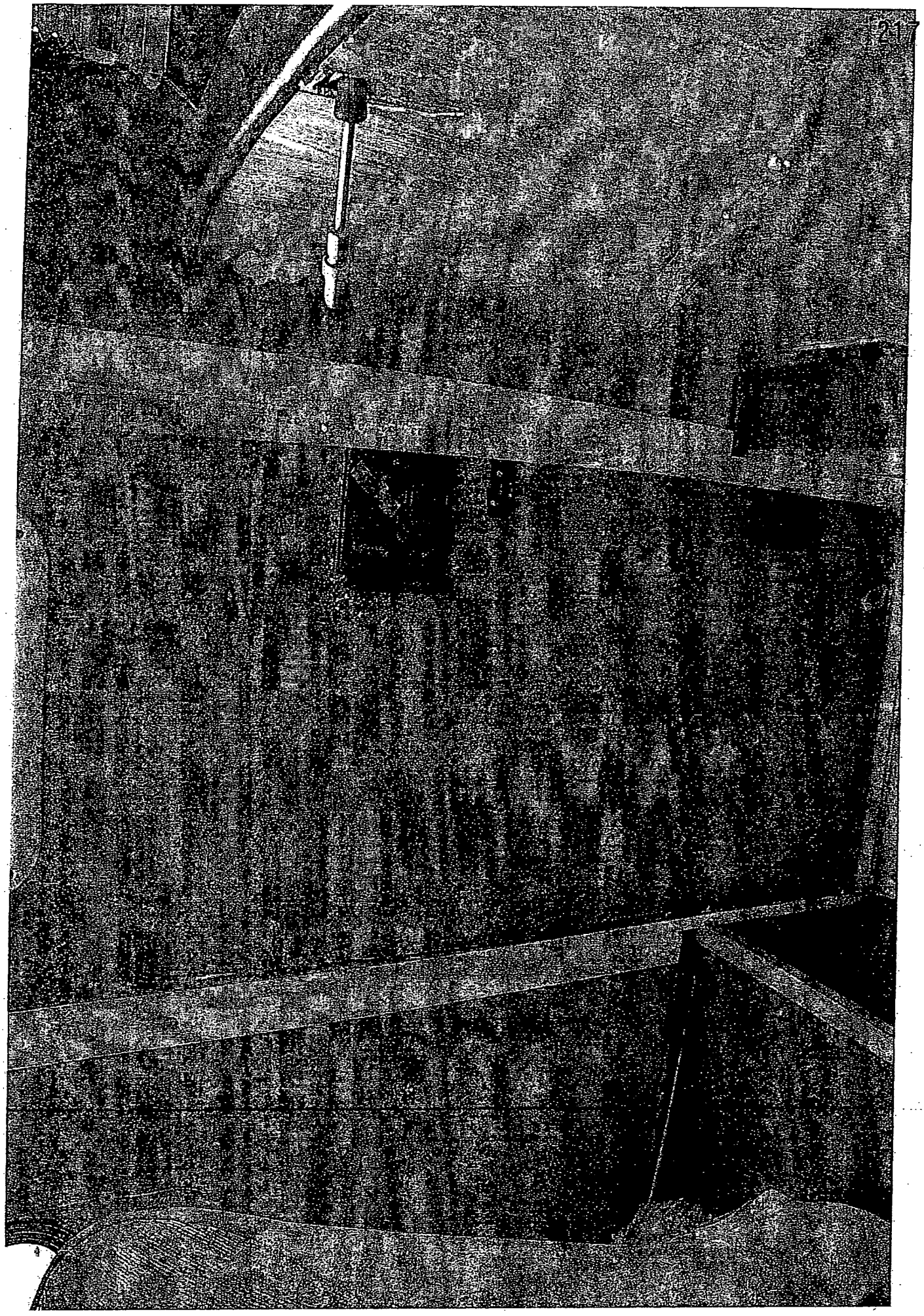

THE J
EXP
US
FLAT STYLE FLARES
FLAT STYLE FLARES
'97-'06 Wrangler
'07-'11 Wrangler
CUT-OUT FLARES
76-'86 CJ-7
$454.99
'87-'95 Wrangler
$454.99
POCKET STYLE FLARES
6" Flares: '97-'06 Wrangler
6" Factory Match Painted Flares
'07-'11 Wrangler
Factory Match Painted Flares
CALL TODAY 800-745-5337 OR SHOP ONLINE @ QUADRATEC.COM











York County Forensic Services Unit

Investigator's Report

016

Jurisdiction: Rock Hill P.D. **Incident #:** 1009210974

Date of Incident: 9/21/10 **Disp. Time:** 1:32 AM **Arrival Time:** 2:15 AM **Depart Time:** 9:56 AM

Incident Type: Shooting Incident **Type of Location:** Parking Lot

Location of Incident: Rd Rock Hill S.C.

Victim(s): Thomas, Scott **D.O.B.** **Suspect(s):** Burris, Demorrio/Hinton,Dytavis **D.O.B.**

Report Type: Scene Processing

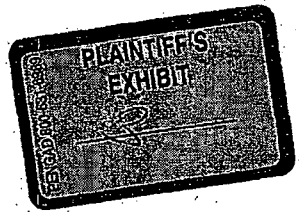
Narrative

On above date and time R/O was called to the scene of a shooting at a nightclub (The Money). R/O was briefed by Inv. Barnwell who was taking digital photos of the scene when I arrived. Inv. Barnwell stated that two suspects Demorrio Burris and Dytavis Hinton had tried to rob the band Parmalee at gunpoint in their RV and one of the band members shot the two suspects killing one and wounding the other. The victim was shot and both the wounded suspect and victim were transported to CMC. R/O and Inv. Barnwell collected ;

Bloody clothing collected by RHPD Officers, Bloody clothing and contents of pockets of Burris, 1-KelTech 9mm serial # AB163 collected by RHPD Officers from victim, 1-HI Point 380 caliber serial # P8027469 collected by RHPD Officers , 2-9mm spent shell casings collected by RHPD Officers, Inked Impressions, a bandanna, keys, cellphone, a GSR kit from Burris, 5- 9mm spent casings, 4-380 spent shell casings, 4 projectiles, 2- swabs of red stains, Hinton's id card, and 2-ball caps(hat).

All items collected were placed in RHPD evidence with the exception of the bloody clothing which was placed in the FSU drying chambers in Rock Hill and YC.

Director Weeks went to CMC to collect evidence report to follow.



Make:	Model:	Color:	ID #:
Make:	Model:	Color:	ID #:

Initial Reporting/Investigating Officer		Environment
Grayson, J		Night Clear
Forensic Investigator (R/O)	Date	Outside Dry
Buchanan, Tim	9/24/10	Comments
Approving Officer	Date	Barnwell, Ray; Weeks, George
	9/24/10	

TCB

York County Forensic Services Unit
Investigator's Supplemental Report

012

Jurisdiction: Rock Hill P.D. **Incident #:** 1009210974

Date of Incident: 9/21/10 **Arrival Time:** **Depart Time:**

Incident Type: Homicide **Report Type:** Autopsy

Location of Incident: Rd. Rock Hill S.C.

Narrative

On 9/21/10, R/O attended the autopsy of Mr. Burris. The autopsy was preformed by Dr. Rob Thomas. Also in attendance was RHPD Detective Tripp, Assist Coroner Ev Amick, and R/O . Using a digital camera, R/O photographed Mr. Burris' injuries. All collected items were turned into RHPD evidence and are listed below:

Item #1 hair standards
item #2 projectile from mid back area
item #3 two (2) grey top tubes of blood
item #4 projectile from back/right shoulder
item #5 projectile from left abdomen
item #6 projectile from right buttocks (buttox) area
item #7 projectile from head
item #8 Photo CD

Forensic Investigator (R/O)	Date	
T. Barnwell	10/3/10	
Approving Officer	Date	
J. Barnwell	10/3/10	

Tripp

York County Multijurisdictional Forensic Services Unit
Evidence/Inventory Sheet

013

Incident Number	Date	BIN #:
1009210974	9-21-10	

Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other
Name: Burris

Found or Recovered From: ☐ Victim ☐ Suspect ☐ Other
Name: Hinton

Found or Recovered From: ☐ Victim ☐ Suspect ☐ Other
Name: Thomas

Found or Recovered From: ☐ Victim ☐ Suspect ☐ Other
Name:

Incident/Seizing Location: 110 S. Cherry Rd Rock Hill SC

Time	Officer	Item #	Description, Model, Serial No., Color, etc...	Location Found/Seized	Evidence Use Only
1:53	TSB	1	Bloody Clothes	110 South Cherry	
1:25	"	2	Hi Point .380 S/N P8502746	"	
1:35	"	3	Kel Tec 9mm S/N AB163	"	
1:38	"	4	2 ea. 9mm shell casings	"	
2:45	"	5	GSR Kit	From Burris' Hands	
3:05	"	6	Burris Contents of Pockets	(9.21.10) 110 S. Cherry / Burris' pants	
3:14	TSB	7	Bloody Clothing	110 South Cherry	
3:20	"	8	Inked Impressions	Burris' hands	
3:16	"	9	Bandanna	110 S. Cherry Rd Parking Lot	
3:31	"	10	[redacted] Keys photo Marker #3	"	
3:32	"	11	Cell phone photo Marker #5	"	

I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

Signature X

Item # _____ Processing request _____

Comments: (i.e., Biohazard/Sharps/Loaded Weapon/Court Date, etc.)

Item # (s)	From: (Sign)	To: Sign	Date and Time Received
			0900

Type of Disposition: ☐ Release ☐ Disposal ☐ Other _____

Item #'s _____ Date _____

If released, property released to:

Name _____

Address _____

I.D. # _____

AUTHORIZATION FOR DISPOSITION

Person Authorizing _____

Name (print) _____

Signature _____

Date _____

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO RETURN PROPERTY TO AN AUTHORIZED OWNER

WHITE - Evidence with Property CANARY - Department PINK - Officer GOLD - Defendant / Owner

York County Multijurisdictional Forensic Services Unit
Evidence/Inventory Sheet

Incident Number	Date	BIN #
1009210924	9-21-10	014

Found or Recovered From: ☐ Victim ☑ Suspect ☐ Other
Name: Burris

Found or Recovered From: ☐ Victim ☑ Suspect ☐ Other
Name: Hinton

Found or Recovered From: ☑ Victim ☐ Suspect ☐ Other
Name: Thomas

Found or Recovered From: ☐ Victim ☐ Suspect ☐ Other
Name:

Incident/Seizing Location: 110 S. Cherry Rd Rock Hill SC

Time	Officer	Item #	Description, Model, Serial No., Color, etc...	Location Found/Seized	Evidence Use Only
1:53	958	1	Bloody Clothes	110 w. Ne Cherry	
125	"	2	H. Pow .380 & Ammo	"	
135	"	3	Kel Tec 9mm & Ammo	"	
138	"	4	2 ea 9mm shell casings	"	
245	"	5	GSR Kit	Sam Corris Hands	
305	"	6	Burris Contents of Pockets	(1 ea) 110 S Cherry Rd	
314	758	7	Bloody Clothing	110 South Cherry	
302	"	8	Facial Impressions	[illegible]	
316	"	9	Buccal	110 Cherry Rd South	
331	"	10	Keys	[illegible]	
332	"	11	Cell phone	[illegible]	

I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.
Signature X

Item #_____ Processing request
Comments:
(i.e.,Biohazard/Sharps/Loaded Weapon/Court Date, etc.)

Item # (s)	From (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From (Sign)	To: Sign	Date and Time Received

0900

Type of Disposition: ☐ Release ☐ Disposal ☐ Other

Item #'s _____ Date _____

If released, property released to:

Name _____

Address _____

I.D. # _____

AUTHORIZATION FOR DISPOSITION

Person Authorizing _____

Name (print) _____

Signature _____

Date _____

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO RETURN PROPERTY TO AN AUTHORIZED OWNER

WHITE - Evidence with Property CANARY - Department PINK - Officer GOLD - Defendant / Owner

York County Multijurisdictional Forensic Services Unit
Evidence/Inventory Sheet

Incident Number	Date	BIN #:
100921 0774	9-21-10	015

Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other
Name: Bivins

Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other
Name: Hinton

Found or Recovered From: ☒ Victim ☐ Suspect ☐ Other
Name: Inmon

Found or Recovered From: ☐ Victim ☐ Suspect ☐ Other
Name:

Incident/Seizing Location: 110 S. Cherry Rd. Rock Hill SC

Time	Officer	Item #	Description, Model, Serial No., Color, etc...	Location Found/Seized	Evidence Use Only
410	Bernard Buchanan	12	Swab of red Stain	photo marker #18 / 110 S. Cherry Rd.	
415	"	13	Swab of red stain	Steps of RV / "	
425	"	14	projectile	photo marker #17 / "	
426	"	15	.380 Shell Casing	photo marker #6 / "	
427	"	16	.380 Shell Casing	photo marker #4 / "	
428	"	17	.380 Shell Casing	photo marker #11 / "	
428	"	18	.380 Shell Casing	photo marker #10 / "	
429	"	19	9mm shell casing	photo marker #12 / "	
430	"	20	9mm shell casing	photo marker #14 / "	
439	"	21	projectile	photo marker #15 / "	
440	"	22	projectile	photo marker #16 / "	

I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.
Signature X

Item #_____. Processing request
Comments:
(i.e.,Biohazard/Sharps/Loaded Weapon/Court Date, etc.)

Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received
Item # (s)	From: (Sign)	To: Sign	Date and Time Received

Type of Disposition: ☐ Release ☐ Disposal ☐ Other

Item #'s _____ Date: _____

If released, property released to:

Name _____

Address _____

I.D. # _____

AUTHORIZATION FOR DISPOSITION

Person Authorizing: _____

Name (print) _____

Signature _____

Date _____

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO RETURN PROPERTY TO AN AUTHORIZED OWNER

WHITE - Evidence with Property CANARY - Department PINK - Officer GOLD - Defendant / Owner

York County Multijurisdictional Forensic Services Unit
Evidence/Inventory Sheet

Incident Number	Date	BIN #:
1009210974	9-21-10	016

Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other
Name: Burris

Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other
Name: Hinton

Found or Recovered From: ☒ Victim ☐ Suspect ☐ Other
Name: Thomas

Found or Recovered From: ☐ Victim ☐ Suspect ☐ Other
Name:

Incident/Seizing Location: 99, Rd. Rock Hill

Time	Officer	Item #	Description, Model, Serial No., Color, etc.	Location Found/Seized		Evidence Use Only
445	Sgt Buchanan	23	9mm shell casing	photo marker #19	1105 S. Cherry Rock Hill	
450	"	24	9mm shell casing	photo marker #20	"	
457	"	25	9mm shell casing	photo marker #21	"	
503	"	26	projectile	photo marker # 17		
700	"	27	3 CDs of photos	110 S. Cherry Rd.		
701	"	28	Hintons ID Card	Photo marker #18	"	
333	"	29	Bull Cap / Hat	photo marker #3		
334	"	30	Bull Cap / Hat	photo marker #4		

I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

Signature X

Item # _____ Processing request _____

Comments: (Le., Biohazard/Sharps/Loaded Weapon/Court Date, etc.)

Item # (s)	From: (Sign)	To: Sign	Date and Time Received
1	KM Bunnell	RHPD Drying Chamber	9/21/10 900
2-6	KM Bunnell	RHPD Evidence	9/21/10 900
7	KM Bunnell	YCSO Drying Chamber	9/21/10 900
8-28	KM Bunnell	RHPD Evidence	9/21/10 0900

Type of Disposition: ☐ Release ☐ Disposal ☐ Other _____

Item #'s _____ Date _____

If released, property released to:

Name _____

Address _____

I.O. # _____

AUTHORIZATION FOR DISPOSITION

Person Authorizing: _____

Name (print) _____

Signature _____

Date _____

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO RETURN PROPERTY TO AN AUTHORIZED OWNER

WHITE - Evidence with Property CANARY - Department PINK - Officer GOLD - Defendant / Owner

ROCK HILL POLICE DEPARTMENT ADDRESS: 120 EAST BLACK STREET ROCK HILL SC 29730- PHONE#:(803)328-7200

AGENCY I.D. SC0460300

INCIDENT REPORT

WORK NUMBER: 1009210974 — NCIC: NO. T, ENTD. F

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. ARMED ROBBERY	■ YES ☐ NO	☐ YES ☐ NO	PARKING LOT/...	
2. ASSAULT BATTERY (HIGH AGGRAVATED)	■ YES ☐ NO	☐ YES ☐ NO	PARKING LOT/...	
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ■ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): ROCK HILL SC — ZIP CODE: 29732- — WEAPON TYPE: HANDGUN

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
09/21/2010	01:10		09/21/2010	02:02	09/21/2010	01:14	01:15	03:00	2

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE

ADDRESS: | CITY: | STATE: | ZIP CODE: | LOCATION NO.:

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
THOMAS, SCOTT				S	W	M	37	N	252-561-5330	- -

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
600	200	BROWN	BROWN	

ADDRESS: GREENVILLE BLVD — CITY: GREENVILLE — STATE: ~~SC~~ NC — ZIP CODE: 29601- — LOCATION NO.:

VISIBLE INJURY (VICT. 1) ■ YES NO ☐ EXPLAIN— Internal Injuries, Unconscious, Other Injuries — COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES NO ☐

VICTIM (NO. 1) USING: ALCOHOL ☐ YES NO ■ UNK ☐ DRUGS: ☐ YES NO ■ UNK ☐ TYPE:

TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLAINCL. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ — * J—This Jurisdiction. S—State. O—Out of State. U—Unknown

SUBJECT NO. 1

■ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
HINTON, DYTAVIS	B	M	22	N		511	170	BL...	BRO...

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS: | CITY: ROCK HILL | STATE: SC | ZIP CODE: 29730- | LOCATION NO.:

SUBJECT(NO. 1) USING: ALCOHOL: ☐ YES NO ■ UNK ☐ DRUGS: ☐ YES NO ■ UNK ☐ TYPE: — ARRESTED NEAR OFFENSE SCENE ■ YES NO ☐ — TOTAL # ARRESTED 1 — DATE/TIME OF OFFENSE: 09/21/2010 01:10 — DATE/TIME OF ARREST: 09/21/2010 01:15

NARRATIVE

1009210974 / ARMED ROBBERY - ASSAULT BATTERY (HIGH AGGRAVATED) / THOMAS

On 09-21-2010 Officers responded to 110 Cherry Rd (The Money) at approximately 0114 hours in reference to a shooting victim in the parking lot. Upon arrival Officers Gander and Swiger observed a black male laying the parking lot between The Money and The Silver Dollar with gunshot wounds to his lower body. As officers were getting information, Officer Gander was directed to an RV parked in the lot by a female stating that there were more victims inside. Officer Gander observed in the doorway on the stairs the body of a black unconscious male with multiple gunshot wounds to his body. Officer Gander observed a black and silver handgun on the stairs next to the black male. Further inside on the couch was a white male with gunshot wounds. Next to the injured male was Matt Thomas, victim 2, holding a small brown handgun. Officer Gander demanded Thomas drop the handgun and exit the RV which he complied. Thomas was detained in handcuffs and placed in Officer Ganders patrol vehicle. Thomas was able to identify the white male as his brother, Scott Thomas (victim 2). Matt told Officers that the handgun he was holding belonged to his brother. Matt told Officers that he was in a band that had just played a show at The Money and that they were in the RV celebrating. It was then that he saw two black males forcefully make entry to the RV. Matt stated that one black male had a handgun and that they demanded money. Matt stated that Scott then came from the rear of the RV with his handgun and ordered the two males to leave. It was at that time, according to Matt, that the black males fired on Scott, in which he returned fire. Officers secured both hand guns. FSU responded and processed the scene. Detectives responded to interview witnesses. FSU was able identify the unconscious black male (suspect 2) in the RV as Demario Burris through his ID Card in his pocket. The male in the parking was identified as Dytavis Hinton (suspect 1) at the hospital. Case remains active.

	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
		SC0460300 Rock Hill Police Depa...

PROPERTY EST.

	TYPE (GROUP)					TOTAL VALUE
STOLEN	FIREARMS					$0.00
DAMAGED	$0.00					$0.00
BURNED	$0.00					$0.00
RECOVERED	$200.00					$200.00
SEIZED	$0.00					$0.00

COPY

ACTIVE

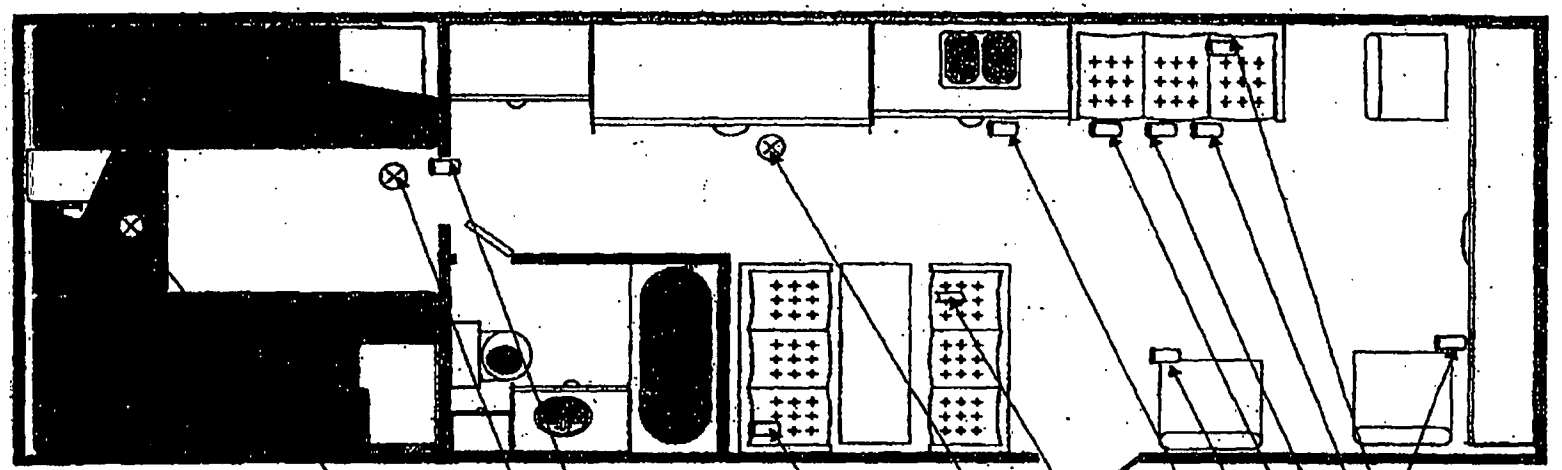
SUBJECT IDENTIFIED ■ YES NO ☐ — SUBJECT LOCATED ■ YES NO ☐ — ■ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED — ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER — ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY

AIR

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
GANDER, ROBIN M	09/21/2010 01:16	05394	[signature]	09-21-10	8508
[illegible]GHAN, L L	09/21/2010 01:15	08508	FOLLOW-UP INVESTIGATION ■ YES NO ☐ — OFFICER		

DET



Item #	Frront Cab	Driver Wall
7	4' 6" 5'	
8	6' 9" 2' 6"	
9	7' 10"	2' 8"
10	8' 3" 2' 5"	
11	5' 6" 8"	
12	9' 2" 5' 1"	
14	19' 5"	2' 3"
15	20' 2"	2' 4"
16	24' 7"	3' 9"
17	14' 2"	2' 2"
18	13' 6"	7' 9"
20	3' 3" 5' 6"	
21	9' 10"	2' 1"

Incident #: 1009210074	
Address: 110 Cherry Rd	
Page 1 of 1	
Created: 10/3/2010	Time: 6:43:41 PM
Drawn By: Tim Buchanan	

035

225

064

Statement for call 9/21/10 call # 2010-00018683 we where called to the money for three gun shot victims I was the first person to my knowledge to enter the RV which had two victims in it. There was one hand gun with it slide locked back, it was on the first step in the entrance to the camper next the black victim #1. There was another gun lying in front of the coach in front of victim #2. This gun slide was not lock back. Victim #2 stated he had been robbed and he had a concealed weapons permit. I did not move any of the weapons, and only touched the area of the couch with victim #2 on it.

Lloyd Blythe NREMT-I

ROCK HILL POLICE DEPARTMENT
INCIDENT SUMMARY

066

Officer R. Gander Incident Number 1009210974

Narrative:

On 09-21-2010 I was working street patrol in the Boyd Hill area of Rock Hill, SC. At 0114 hours dispatch alerted officers of a shooting victim in the parking lot of The Money (110 S. Cherry Rd). I activated my patrol lights and siren as I was in the immediate vicinity. As I pulled into the parking lot I observed Officer Swiger running towards a black male on the ground near the back end of the parking lot. The black male appeared to have multiple gunshot wounds to his lower body. I pulled my patrol vehicle up to the male and exited. As Officer Swiger attended to the male I began rounding up the bystanders in the parking lot. At that time I heard a female yell from behind me that she needed Officers. I ran to an RV that was parked along the ditch line of the parking lot. As I rounded the corner and looked into the open front door of the RV I observed a black male curled into the staircase. The black male appeared to be unconscious or dead due to the multiple visible gunshot wounds. On the bottom step of the RV, next to the males' hands, I observed a silver and black handgun that was fully discharged with the slide cocked back. I then looked up into the RV and saw a white male lying on the couch not moving. I was unsure if the male was conscious or not. I announced my presence and called out into the RV if anyone was inside. At that time a white male stood up from the front of the RV. The male had in his hand a small brown handgun. I immediately ordered the male to drop the handgun and come out of the RV with his hands visible. The male complied and Officer Slawson and I placed the male into handcuffs. The male stated that the person on the couch was his brother and that the RV was theirs. He stated that they were in the band that played a show at The Money that night. I then escorted the male to the rear passenger seat of my patrol vehicle and sat him inside and secured the doors. I then took my patrol issued digital camera and took pictures of the guns inside the RV so that EMS could gain access and work freely with the two subjects inside. Once I took the pictures I took the two guns, with gloves on, to the rear of my patrol vehicle, cleared the guns of any ammunition and secured them in the front passenger seat of my vehicle. I then went back to the entrance of the RV and took pictures of two (2) shell casings in the door way with Officer Slawsons' patrol camera and then collected them and secured them in my patrol vehicle with the handguns. After securing the two patrol cameras in the trunk of my patrol vehicle I spoke with the male subject in rear passenger seat of my vehicle. The male identified himself as Matt Thomas and that the white male in the RV on the couch was his brother Scott Thomas. Matt Thomas stated that Scott had a Concel Matt Thomas stated to Officer Gander that they had just played a show inside The Money and were on the RV celebrating. Matt Thomas stated two black male stormed inside the RV and that one of them had a gun. Matt Thomas stated that one of the males held a gun to his head and demanded money. At that time Matt stated that Scott came from the rear of the RV with his handgun. Matt stated that the black males began firing at Scott and that Scott returned fire. Matt then stayed inside with Scott until Officers arrived. I remained on scene and assisted the Detectives and Forensics. Once FSU took the handguns and the two (2) shell casings I left the scene and returned to the Rock Hill Law Center. There I uploaded the nine (9) pictures that I took while on scene and wrote them to a CD for FSU.

R. Gander 5394 — Officer Signature / ID#
09-21-10 — Date
[illegible] — Unit Supervisor / ID#
09/21/10 — Date

070

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

WITNESS STATEMENT

My name is: J. Darin Switzer
Date of Birth: Social Security Number:
My Address is: Lane Rock Hill, SC
Place of employment: RHPD
Home Phone Number: Work Phone Number: (803) 322-0338
I completed 16 years in school and I can (✓) cannot ( ) read and write English.

After hearing the emergency tones from dispatch, I heard the dispatcher state there had been a shooting at the Money on Cherry Road. I was working contract overtime at McDonalds at this time. I ran from the front of McDonalds, through the gap between the Money and the old Indigo Moon building and entered the parking lot of the Money. I quick checked the area both left & right and saw no one moving or directing me to a focus point of activity. I continued to move forward and as I cleared the corner of Indigo Moon I looked right and saw a subject laying in the parking lot toward the Silver Dollar. The subject was approx. 120 ft. from the entrance to the Money. I approached the subject, a black male with dreads, black pants, dark shirt laying on his left side. I surveyed the immediate area and saw no weapons. I spoke with the subject who was fully conscious but in extreme pain, and he stated his name was Dontavius or Donquavis. I asked

Signature Of Person Giving Statement

him if he knew who shot him, and he stated "no". I asked him if he could describe them/him and he stated it was a white male – black hair left in a car – did not know which way they went. ——— (over)

I alerted dispatch that EMS was needed - code 3. 071

I assessed the subjects injuries and could see a bullet wound at the belt line on the subjects left side. The subject had blood on both his abdomen and back, but I did not attempt to ~~move~~ move him or search for additional wounds. EMS arrived on scene and I allowed them to attend to the subject.

Lt. Kitts arrived on scene and I gave him this quick assessment of what I observed. As I was speaking with him, I observed Ofc. Gaudar struggling with a subject as she was attempting to get him to sit in her patrol car. I assisted Ofc. Gaudar and we placed the subject in ~~the~~ her patrol car. This is the extent of my observations. JDS J. Darin Spriggs 9/21/2010 @ 0315

072

On 10-07-2010 at 12:40 PM I went to CMC room 11130 to interview Scott Lee Thomas. Scott was sitting up and able to talk to me. His brother Matt also came into the room. Scott advised me that he remembers being on the R/V in the rear section while his brother Matt was hanging out with the sound guy Michael. He advised me that he kept his Kel-Tek 9mm pistol in his book bag along with any extra money. He remembers hearing two guys come into the R/V demanding money. He grabbed the pistol and started firing his pistol at the guys and taking a step towards them as he fired. He remembers the gun man waving his arms as if trying to get away. He then remembers telling his brother that he had been shot. Things got blurry from there.

I also talked to Matt Thomas who advised me that both robbers came into the R/V after knocking on the door. He unlocked the door thinking that it was one of the other band members. He thought that the second robber may have had a gun but was not sure. Both robbers were on top of the two steps with Hinton just behind Burris and both were masked via the face. When the first robber put the gun to Matt Thomas' head demanding money, both Thomas and Michael tried to hand them their wallets. Burris shot one shot into the ground demanding cash. Matt remembers yelling for Scott and then ducking after hearing the gunshots. He thinks Scott yelled to him "I have been shot".

Detective Phil Tripp

10-7-10

074

State of South Carolina)
City of Rock Hill :
Rock Hill Police Department)

PERSONALLY appears before me: Devon Kristine Braden , who after being duly sworn deposes and says: "My name is. Devon Kristine Braden
Date of birth: Social Security Number:
My address is Rock Hill, S.C. 29732
Place of Employment: McDonalds-South Cherry Road
Home Telephone Number: (803) Work Telephone Number: (803) 327-1413
I completed 12 years in school and I can (X) cannot ( ) read and write English.

Last Monday 09-20-2010 I got off work around 10:30 PM at the McDonalds on South Cherry Road. Travis Barnette picked me up along with Demorrio "Man" Burris, Devond "Erb" Erby, and Jerry "Junior" Barnette. We drove over to Travis' house who lives off Adana Hills Road. Junior, Man, Erb, Dytavis "Twhiz" Hinton, and Mario (Travis' cousin who works at my McDonald). Everyone was playing Madden NFL on the Playstatin 3. Latoya Young and their child Diamond Barnette were both sleeping at the house. Dareese Barnette was also playing the video game with the guys. Around 12:00 am, Dareese wanted to go home. I drove Travis' car along with Man, Junior, and Erb over to Dareese's apartment at Stovehaven. After dropping off Dareese, we drove over to Cardinal Pointe apartments so that Man could see his chid which was a baby. After about ten minutes, we drove to the gas station and put about $12 in the tank. We drove back to Travis' house. About ten minutes later, everyone wanted to go home. I drove Junior, Twhiz, Erb, Mario, and Man in Travis' car. I dropped Mario off at Crest Street first. We drove over to Sweet Pea's house on Walnut where Junior lives. Everyone got out at Sweet Pea's house and I drove off. Man called me about five minutes later asking me to come get them because they are bored. I drove back to Sweet Pea's house and picked up Man, Twhiz, and Erb. They asked me to pick up Broderick "Teddy P" Page over at his grandmother's house. We picked up Teddy P. After picking him up, we drove by the Odyssey and I told them that I would drop them off. We drove by and there was no one at the Odyssey. Everyone then said that they were hungry. I then drove us over to the McDonalds at South Cherry around 01:30 am. I drove through the drive-thru and ordered all the food for everyone. Because we ordered a 50 piece of McNuggets, I had to pull over for the nuggets to be cooked. I parked th car at the white line next to the patio. Man, Teddy P, Twhiz, and Erb all wanted to go check out the Money while waiting on the food. I went inside the McDonalds after telling them to stay out of trouble. I never saw Twhiz with his pistol, but I knew that he always carried the pistol with him. I had heard him fire the pistol once a long time ago. About 3-4 minutes later, Teddy P and Erb came back over to the McDonalds. Erb went to the restroom because he thought that he was going to puke. He kept sticking his finger in his mouth trying to puke. Teddy P stayed next to me waiting on the food. When we got all the food, we went outside on the patio. As we started getting the food out, Teddy P called Man and told him that the food was ready. About 2-3 minutes later, we heard gun shots at the Money. I thought that I heard about 7-8 shots. It did not sound like Twhiz' gun and we did not think much about it. We saw the police run over to the Money and started asking where Man and Twhiz were at. Teddy P, Erb, and myself went over to the Money

X 9/27/2010 5:08pm

075

and heard people talking about the suspects ran. We then ran back to McDonalds and got into the car. Teddy called Dareese up telling him to get in touch with Man. Teddy P kept calling Man's cell phone with no answer. We put more gas in the car and drove around looking for Man and Twhiz thinking that they had ran away. After driving through Boyd Hill, College Park area, Hagins area, and even Sweet Pea's house, we decided that they must be fine and hiding out. I then dropped off Erb first and then dropped Teddy P off at his grandmother's house. I then drove back to Travis' house and crashed out on the sofa. Around 4:30 in the morning, Latoya woke me saying that Man was dead and Twhiz had been shot. I stayed at the house watching Diamond and Travis with Latoya went to Man's mother's house. I heard that Twhiz tried to stop Man from going into the R/V. I had also heard that Man had asked to hold Twhiz' gun to put back in my car before they went into the Money. I heard that Twhiz had got shot twice and told someone to call 911 after he fell in the parking lot. I believe that Broderick "Teddy P" Page knows more that he is telling. He was first going to walk over to get Man and Twhiz for the food being ready and then walked back asking to use the cell phone to call Man. While we were at the Money, Teddy P looked at me saying that we got to get out of here. He told me that he can not get into anymore trouble. People were also saying that three black guys with hats entered the Money together. I later thought that Teddy P knew what happen inside the Money. Neither Erb nor Teddy P ever said anything what might have happen inside the Money.

x [signature] 9/24/2010 5:08pm

SIGNATURE OF PERSON GIVING STATEMENT

676

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

PERSONALLY appears before me: Devon Kristine Braden, who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

I have read or had read to me the above statement consisting of (3) page (s) and have received a copy of this statement."

(SIGNATURE)

(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME
THIS 27th DAY OF September 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 02-27-2016

STATEMENT PREPARED BY: Tripp-P.
DATE: 09-27-2010 TIME: 17:08 PM

077

State of South Carolina)
City of Rock Hill :
Rock Hill Police Department)

PERSONALLY appears before me: Devon Kristine Braden , who after being duly sworn deposes and says: "My name is. Devon Kristine Braden
Date of birth: Social Security Number:
My address is Rock Hill, S.C. 29730
Place of Employment: McDonalds
Home Telephone Number: (803) Work Telephone Number:
I completed 12 years in school and I can (X) cannot ( ) read and write English.

I knew that Twhiz use to his pistol on his side. When we have gone to the Money in the past, he would put the pistol underneath the car seat. I never saw the pistol on 09-21-2010 nor did I ever hear Twhiz or Man talk about the pistol. I do not remember giving Twhiz the keys to the car. I think that the car was unlocked with the window being down.

4 [signature] 10-6-10

SIGNATURE OF PERSON GIVING STATEMENT

4:25 pm

078

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

PERSONALLY appears before me: Devon Kristine Braden , who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

I have read or had read to me the above statement consisting of (2) page (s) and have received a copy of this statement."

(SIGNATURE)

(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME
THIS 6th DAY OF October 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 02-27-2016

STATEMENT PREPARED BY: Tripp-P.
DATE: 10-06-2010 TIME: 16:24 PM

082

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

VICTIM/WITNESS STATEMENT

Personally appears before me: Broderick Page , who after being duly sworn deposes and says: "My name is Broderick Page Date of Birth:
Social Security Number:
My address is: Ave
Place of employment:
Home Phone Number: Work Phone Number:

Earlier on the night that Mann(Demorrio Burris) and Tay(Dytavius Hinton) had got shot we had gone to McDonald's. It was me. Mann, Tay, Erb(unknown real name) and Devin(unknown last name). We had pulled in and Mann was gonna get us all some cheeseburgers. Devin ordered the 50 piece chicken nuggets to try and sober up Mann, Tay and Erb. We pulled in the drive-thru and ordered. We had parked the car at McDonald's cause they had to cook up the chicken nuggets. Devin and Erb got out of the car. Mann looked back at me and Tay and asked us if we wanted to go to The Money. Tay said he couldn't go in cause he had a gun. I got out of the car when he said that so I don't know if he kept the gun or gave it to Mann or what. Devin stayed at McDonald's and talked to some of her co-workers. Me, Mann, Tay and Erb walked over to The Money to see what was going on. It was some time between midnight and two in the morning. I could tell by the amount of the cars in the parking lot that there wasn't too many people inside. We walked in the club and walked around a bit. I saw some dudes that I had a problem with a few weeks before but everything was cool. We all sat down at the back and was chillin. Tay was talking to a girl. Mann, Tay and Erb had already been drinking before we got to The Money. I don't know how much Mann and Tay had to drink but they were functioning like me. I didn't have anything to drink. After about thirty minutes at The Money I said, "C'mon, let's go. Our foods ready." As we were about to walk out, Mann had said something like, "I could rob The Money." I told him he was drunk and to come on and get some food to sober up. We walked outside. Erb was behind me and I thought Mann and Tay were too. We went through the little cut through between The Money and McDonald's. Me, Erb and Devin sat down at the outside tables at McDonald's. A few seconds went by so I called Mann to see where they were at. Mann said, "Don't eat all my damn food. Here I come." Right after that is when we heard a bunch of gun shots. We ran over to The Money to see what had happened. There was a white girl in the parking lot and she said two black guy s ran off. I started thinking that Mann and Tay had done something stupid and robbed somebody. So we went back to the car and started driving around, trying to find them. We had been calling there phones and sending text messages trying to find them. We went back, parked at McDonald's and walked over to The Money. There was a bunch

084

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 1

PERSONALLY appears before me: Broderick Page, who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 2 pages and have received a copy of this statement."

Broderick Page
(SIGNATURE)

9/27/16
(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME:
THIS 27th DAY OF September 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:

STATEMENT PREPARED BY: B.D. HAIRE
DATE: 09-27-2010 TIME: 4:50PM

085

State of South Carolina)
City of Rock Hill :
Rock Hill Police Department)

PERSONALLY appears before me: John Matthew Thomas , who after being duly sworn deposes and says: "My name is. John Matthew Thomas
Date of birth: Social Security Number:
My address is Greenville Blvd. Greenville, N.C. 27858
Place of Employment: Parmalee Inc.
Home Telephone Number: (252) Work Telephone Number:(252)
I completed 16 years in school and I can (X) cannot ( ) read and write.

My band Parmalee traveled downed to Rock Hill today Monday 09-20-10 for a show tonight at the Money on Cherry Road. My cousin Barry Knox, Josh McSwain, and brother Scott all travel down together from Greenville, North Carolina. We got to Rock Hill about 3:00 PM going straight to the Money. We starting loading up in the Money at 6:30 PM. Around 9:00 PM I walked down by myself to the convenient store next door and bought a case of Busch light draft and some chewing gum. I saw four older black males in the store. I walked back to the R/V. After we finished our show, my brother Scott and myself went back to the R/V and started packing up. We kept the door locked. I heard a knock at the door and thought that it was one of our band mates. As soon as I opened the door, this black male put a gun to my head and pushed me inside saying "Where is the money at?" This black male had a blue bandana on his head and looked about 23-24. This second black male came in behind him. My brother Scott was in the back of the R/V and had his concealed weapon Kel-Tec .9mm with him. My brother started shooting at the two robbers. He shot several rounds at the robbers and I could not tell who he shot. I think that the guy had a gun on me shot towards my brother. I heard Scott yell that he got shot. Everything happen so fast. I picked up the pistol after Scott got shot. The police then arrived at the Money and I gave them the pistol. We never had any problems that night until the robbery. I do not remember if anyone was else on the R/V with us during the robbery.

X [signature] 9-20-10
SIGNATURE OF PERSON GIVING STATEMENT

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

PERSONALLY appears before me:,John Matthew Thomas who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

I have read or had read to me the above statement consisting of (2) page (s) and have received a copy of this statement."

(SIGNATURE)

(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME
THIS 21st DAY OF September 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 02-22-2016

STATEMENT PREPARED BY: Tripp-P.
DATE: 09-21-2010 TIME: 02:50 am

687

INTERVIEW

SUBJECT: Marcus Lameko Thompson

ADDRESS: Street

CITY: Rock Hill, S.C. 29730

TELEPHONE: **HOME:** **WORK:**

DOB: **SSN:**

RACE: B **SEX:** M **HGT:** 510 **WGT:** 165

DATE: 09-22-2010

TIME:1821 hours

PLACE: Street

PRESENT: Det. Tripp

DATE & EVENTS: Thompson advised me that he spoke to Dytavis Hinton his younger brother at the hospital around 5:00 am. Hinton advised him that he saw Demorrio Burris coming from his car where he kept the .380 Hi-Pont that he had bought from Nichols Store. Hinton told him that he was trying to stop Burris but it was too late. He did not know that he was shot until he looked down seeing the blood.

088

State of South Carolina)
City of Rock Hill :
Rock Hill Police Department)

PERSONALLY appears before me: _Michael Walch, who after being duly sworn deposes and says: "My name is":_Michael Walch
Date of birth: Social Security Number:
My address is: Dr. RHSC
Place of Employment: Leroy Springs Fort Mill SC / Sound Man at Money
Home Telephone Number: 803 Cell 803
I completed 12 years in school and I can (X) cannot ( ) read and write English.

I was working at the Money Club as the Sound Guy. I work once at week there. Tonight, Sept. 20th, 2010 we had 4 bands at the Money. The name of the last band that performed was Parmalee. Two of the guys from that band walked outside and two were inside. I decided to walk outside to talk with the two guys. They had told me that that I was a good sound guy so I went out there to talk with them. The lead singer had walked inside their RV that was in the Money parking lot. I knocked on the RV door and I saw the lead singer, who opened the door for me. Before I could go inside a black male walked up to me. I had befriended this guy before as I had seen him at the Money before. There was another black guy with him and he had a bandanna on his face from his nose down. The black guy that I had befriended walked up to me and pulled out a black colored semi-automatic gun that had a goldish colored barrel and he pointed the gun to my head. This guy was wearing a white t-shirt and he was holding the neck of the shirt up covering his face from his nose down. He was also wearing a red ball cap with a white letter P on it. He touched my forehead with the barrel of the gun and he asked me where my money was and he told me to hand him my money. I reached in my back pocket and pulled out my wallet and held it out to him and told him to take it. He could clearly see the wallet. He poked me in the head again and told me again to give him my money. I asked him how much did he need and I told him to take it, take it. I was telling him to take my wallet and he shot once into the ground. After this black guy shot into the ground the other band member that had walked outside came around from the side of the RV. As soon as this black guy saw the other band member walk around from the side of the RV, he shot him twice in the stomach. The band member that was shot pulled out a gun from under his shirt, I think and he shot the black guy twice in the stomach and the black

MSW

guy fell to the ground. After the black guy fell, the band member walked up to him and shot him twice in the head and then again in the stomach. As soon as the black guy that tried to rob me got shot, the other black guy with the bandanna took off running. I never saw a gun on the guy with the bandanna on. The bandanna was black in color and he was wearing all black clothes.

Michael Welch
Signature

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 03

PERSONALLY appears before me: Michael Walch , who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 3 page and have received a copy of this statement."

Michael Walch
(SIGNATURE)

(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME:
THIS 21st DAY OF Sept. 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 07-28-2018

STATEMENT PREPARED BY: L.R. Herring
DATE: 09-21-2010 TIME: 3:30AM

091

Follow up Interview
Michael Walch
09-21-10 2:00PM
Herring / Belk

Walch was contacted and asked to meet with detectives in the Money parking lot on S. Cherry Rd. in reference to the statement he gave detectives earlier this same date where he witnessed the shooting where 3 individuals had been shot.

When Walch arrived the RV where the shooting took place was still parked where it had been during the shooting and detectives had Walch walk through the events as the evidence recovered didn't match how Walch described where the shooting took place.

Walch showed detectives how he knocked on the RV door and the band's lead singer opened the door. Walch said as soon as the door opened he stepped up onto the RV step and about this same time he was approached by the black male with the white T-shirt pulled up over his nose and mouth, that had a pistol and was demanding his money. He said that there was another black male with the first one, who was behind the first one and he was wearing all black and had a bandanna covering the lower park of his face. He said that he didn't see if the 2nd black male was armed because his attention was focused on the gun being poked to his head.

Walch said that as he was standing in the doorway of the RV, the black male with the gun was standing on the step and was still demanding money and he shot his gun once into the ground and that's when he saw the band's drummer come from behind the RV and get shot 2 times by the black male with the gun. He said that the drummer then shot back at the black male with the gun. Walch was asked if he was sure the shooting took place outside of the RV because the recovered evidence indicated the shots were fired inside the RV. He stated that he wasn't sure because he was standing in the doorway and when he was looking at the gun the black male had he got tunnel vision and it is possible that the drummer could have been inside the RV coming from the back bedroom instead of coming from outside, behind the RV.

*Note- Walch was still visibly upset when talking with detectives.

134

Members	Guests
Mando	Jamie Creighton
Donna Kelly	Joann Spencer
Tyler Hardy	Matt Curran
[illegible]	Amanda Burke
[illegible]	David Burke
[illegible]	Shonn Pendleton
[illegible]	Cassandra Medley
[illegible]	Kendal Ireland
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Lil Sigurdson
[illegible]	Eric Hatch
[illegible]	Kelli Hunter
[illegible]	Matt Honeycutt
[illegible]	Darren Craft
[illegible]	Josh McSwain
[illegible]	~~Kim~~ from WIHM
[illegible]	[illegible]
[illegible]	Nicole [illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Andy Allen
[illegible]	Tyler Brooks

144

York County Coroner's Office
Coroner's Report:

RE: Burris, Demorrio
DOD: September 21, 2010
CASE No.: 10-554

Summary: On the above date, Deputy Coroner Ev Amick responded to
Rd in Rock Hill to investigate a death at the business. The decedent, Demorrio Burris age 22, was found outside the Money near a RV in the parking lot. Rock Hill Police Department and FSU were on scene. He was transported to the morgue at Piedmont Medical Center for further examination.

Cause of death is traumatic brain injury due to gunshot wound to the head. Manner of death is homicide.

Sabrina Gast, RN, MSN, D-ABMDI
Coroner
York County Coroner's office

145

York Pathology Associates
James L. Maynard MD
E. Earl Jenkins, Jr. MD
Robert E. Thomas, Jr. MD
Craig F. Hart MD

Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
803-329-6845 / Fax: 803-327-7598

Autopsy Report

[redacted]

DECEDENT:	**BURRIS,DEMORRIO DEMARCUS**
AGE:	22 YEAR OLD BLACK MALE
DATE OF BIRTH:	
AUTOPSY AUTHORIZED BY:	EV AMICK, YORK COUNTY CORONER'S OFFICE
DATE AND TIME OF DEATH:	09/21/10, EARLY AM HOURS
DATE AND TIME OF AUTOPSY:	09/21/10, 1500 HOURS
PROSECTOR:	ROBERT E. THOMAS, JR., M.D.
PERSON(S)PRESENT:	E AMICK/A EDIE/R BARNWELL/J GEORGE/P TRIPP

[redacted] FINAL PATHOLOGIC DIAGNOSIS

I. **MULTIPLE GUNSHOT WOUNDS:**

A. GUNSHOT PATH #1:
- **--ENTRANCE WOUND, BEHIND LEFT EAR**
- **--PATH TRAJECTORY LEFT TO RIGHT, FORWARD, AND UPWARD**
- **--PERFORATES LEFT TEMPORAL BONE, LEFT CEREBELLAR LOBE, RIGHT CEREBELLAR LOBE, AND RIGHT TEMPORAL LOBE**
- **--TWO FRAGMENTS RECOVERED, RIGHT TEMPORAL LOBE AND SOFT TISSUE OF LEFT NECK**

B. GUNSHOT PATH #2:
- **--ENTRANCE WOUND IN LEFT UPPER CHEST REGION**
- **--TRAJECTORY LEFT TO RIGHT, BACKWARD, AND SLIGHTLY DOWNWARD**
- **--PERFORATES LEFT UPPER LOBE OF LUNG, ASCENDING AORTA, AND RIGHT UPPER LOBE OF LUNG**
- **--BULLET RECOVERED RIGHT POSTERIOR SHOULDER REGION**

C. GUNSHOT PATH #3:
- **--INITIAL ENTRANCE, RIGHT RADIAL FOREARM REGION (GUNSHOT WOUND #7)**
- **--EXIT WOUND, RIGHT ULNAR REGION (GUNSHOT WOUND #6)**
- **--RE-ENTRANCE RIGHT LOWER ABDOMINAL REGION (GUNSHOT WOUND #3)**
- **--TRAJECTORY RIGHT TO LEFT, SLIGHTLY BACKWARD, AND DOWNWARD**
- **--PERFORATES RIGHT LOWER LOBE OF LIVER AND MESENTERY**
- **--BULLET RECOVERED BENEATH LEFT LATERAL RIB #10**

D. GUNSHOT PATH #4:
- **--ENTRANCE WOUND IN RIGHT HIP REGION (GUNSHOT WOUND #4)**
- **--EXIT WOUND RIGHT HIP REGION (GUNSHOT WOUND #5)**

E. GUNSHOT PATH #5: (GUNSHOT WOUND #6)
- **--RIGHT HIP REGION**

146

York Pathology Associates
James L. Maynard MD
E. Earl Jenkins, Jr. MD
Robert E. Thomas, Jr. MD
Craig F. Hart MD

Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
803-329-6845 / Fax 803-327-7598

[redacted]

--TRAJECTORY RIGHT TO LEFT, BACKWARD, AND DOWNWARD
--EXTENSIVELY FRACTURES RIGHT FEMORAL SHAFT
--BULLET RECOVERED IN RIGHT POSTERIOR GLUTEUS MAXIMUS MUSCLE

F. GUNSHOT PATH #6:
--INITIAL ENTRANCE WOUND (GUNSHOT WOUND #10), LEFT ELBOW REGION
--EXIT WOUND (GUNSHOT WOUND #9) LEFT ELBOW REGION
--RE-ENTRANCE WOUND, LEFT BACK REGION (GUNSHOT WOUND #11)
--TRAJECTORY: LEFT TO RIGHT AND SLIGHTLY UPWARD
--BULLET RECOVERED IN MID BACK REGION

II. FATAL SHOT(S):
--GUNSHOT PATH #1 AND #2

III. LUNGS:
--BILATERAL HEMOTHORACES

IV. HEART/PERICARDIUM:
--HEMOPERICARDIUM

V. NATURAL DISEASE PROCESSES
--CONCENTRIC LEFT VENTRICULAR HYPERTROPHY

VI. TOXICOLOGICAL ANALYSIS:
--POSITIVE FOR ETHANOL (0.169% w/v)
--POSITIVE FOR CANNABINOIDS, CONFIRMED AS 1-CARBOXY-TETRAHYDROCANNABINOL (6.8 µg/L)

CAUSE OF DEATH

MULTIPLE GUNSHOT WOUNDS TO THE HEAD, THORAX, ABDOMEN, AND EXTREMITIES

MANNER OF DEATH

HOMICIDE

Robert E Thomas, Jr, MD 01/24/11
*** Report Electronically Signed ***

[redacted]

141

York Pathology Associates
James L. Maynard MD
E. Earl Jenkins, Jr. MD
Robert E. Thomas, Jr. MD
Craig F. Hart MD

Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
803-329-6845 / Fax 803-327-7598

[redacted]

CLIA #: 42D0253490 CAP LAB ACCREDITATION #: 1432201

CLINICAL SUMMARY

The decedent was the alleged assailant is an attempted robbery outside The Money in Rock Hill, South Carolina, in the early morning hours of 09/21/10. According to investigative reports, the decedent allegedly tried to rob the members of a band who had just finished playing at The Money. He allegedly stormed the RV and put his gun to one of the band member's head and demanded money. Soon thereafter, gunshot erupted and the decedent was found slumped over in the doorway of the said RV. He was pronounced dead shortly thereafter. A full autopsy was performed later that day in the Piedmont Medical Center Morgue at the request of the York County Coroner's Office.

EXTERNAL EXAMINATION

The body is that of a young black male appearing his stated age of 22 years. The body weighs 161 pounds and measures 68 inches in height. The body is unclothed (clothing previously removed by York County Forensic Unit). Personal effects include diamond earring stubs in each ear and a hair band around his head. The body is identified as the decedent by the York County Coroners Office. Identifying marks and scars include an irregular slightly oblique scar extending from the left medial abdomen to the right lower abdominal area. A small scar is also identified on the thenar region of the left palm. A blood stained green arm band is present on the right wrist. A cross and the name "Mary" are present on the right deltoid area. The right forearm contains a tattoo "TEX"? in Old English. The name "Burris" is present on the left neck area. The left deltoid contains a tattoo of the word "Squat Up". "Crazy C" is tattooed in Old English on the left forearm region. Evidence of medical therapy and/or emergency resuscitation includes EKG pads on the lower abdominal regions and both upper axillary regions (seven total). The body build is muscular. The hair is black, curly and configured as multiple short dreadlocks, each measuring up to approximately 2 inches in length. A thin goatee style beard and mustache are present, black in color. The irises are brown in color. The pupils measure 6 mm in diameter. The conjunctivae are clear. The sclerae are clear. The nose and nasal orifices are unremarkable. The ears and external auditory canals are unremarkable. The dentition is fair. The neck is symmetric. The chest is symmetric. The abdomen is flat. The genitalia are uncircumcised. The anus is unremarkable. The back is symmetric. The extremities are symmetric. All digits are present. Rigor mortis is 3 to 4+ in the extremities and the jaw. Lividity is minimal. The body is cool to touch.

DISCRIPTION OF INJURIES

A total of 11 gunshot wounds are identified which account for five separate recovered bullets and a total of six separate gunshot paths, including entrances, exits, and re-entrances.

GUNSHOT PATH #1: Gunshot path #1 is comprised of an entrance wound which is in the left lateral neck area. This is located 6 inches from the top of the head and 1 inch behind the left ear pinna. It is 1/4 inch in diameter, is round and has

148

York Pathology Associates
James L. Maynard MD
E. Earl Jenkins, Jr. MD
Robert E. Thomas, Jr. MD
Craig F. Hart MD

Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
803-329-6845 / Fax: 803-327-7596

[redacted]

an 1/8 of an inch abrasion border. Bullet path progresses from the left to right, forward and upward. It perforates the underlying soft tissues of the left neck, strikes and perforates the left temporal bone, perforates the left cerebellar lobe, the right cerebellar lobe, and the anterior aspect of the right temporal lobe. Two separate fragments are recovered associated with this gunshot path, one in the right temporal lobe, and one in the soft tissue of the neck just beneath the left temple bone (ricochet fragment). These fragments measure less than ¼ inch each.

GUNSHOT PATH #2: Gunshot path #2 is comprised of a slightly oblong entrance wound (gunshot wound #2) in the left upper chest region which is 13 inches from the top of the head, 4 inches to the left of the midline and 4 inches above the left nipple. It measures 7/16 x 5/16 of an inch, is oval in configuration, and is bordered by a 1/16 to 1/8 of an inch abrasion border. This gunshot progresses from left to right, backward, and slightly downward. It passes between left ribs #1 and #2, perforates the upper left lobe of lung, transects the ascending aorta, perforates the right upper lobe of lung, passes between right lateral ribs 3 and 4, and comes to rest beneath the skin in the right posterior shoulder region, 14 inches from the top of the head and 7-1/2 inches to the right of midline. This fragment measures less than ½ inch.

GUNSHOT PATH #3: Gunshot path #3 is comprised of an entrance gunshot wound in the right radial forearm region (gunshot wound #7 on diagram), an exit wound in the right ulnar region of the forearm (gunshot wound #8), and a re-entrance in the right lower abdominal region (gunshot wound #3). This path progresses from right to left, slightly backward, and downward. Gunshot wound #7 (initial entrance) is located 30 inches from the top of the head and is 3/8 of an inch in diameter, is oblong in configuration, and has a 1/16 of an inch abrasion border. The associated exit wound (wound #8) is on the ulnar aspect, is 29 inches from the top of the head, is irregular, and measures 1/2 x 7/16 of an inch in diameter. The re-entry wound in the right lower abdomen is located 22 inches from the top of the head and 5 inches to the right of midline. It is 1/2 of an inch in diameter, is irregular, and has an abrasion border measuring from 1/8 to 3/16 inch. A dried collar is also present surrounding this abrasion border. A small abrasion is also identified just medial to gunshot wound #3. Gunshot path #3 then passes between ribs 8 and 9, perforates the right lower lobe of the liver, transects the mesentery, and comes to rest just beneath the left lateral 10th rib where it is recovered. It measures less than 1/2 inch.

GUNSHOT PATH #4: Gunshot path #4 is comprised of an entrance and exit wound in the right hip region. The entrance wound (gunshot wound #4) is 29 inches from the top of the head, 5-1/2 inches to the right of the midline, and measures 5/16 of an inch in diameter. It has an irregular abrasion border ranging from 1/16 to 1/8 of an inch. The path of this gunshot trajectory is from left to right, slightly downward, and backward. It exits the body (gunshot wound #5) 30 inches from the top of the head, 7 inches from the right of midline, and is irregular with the diameter ranging from 1/2 to 7/16 of an inch. A small abrasion border measuring 1/16 to 1/8 of an inch is present.

Gunshot path #5: Gunshot path #5 is comprised of an entrance wound in the right hip region (gunshot wound #6). The entrance wound is 30 inches from the top of the head, 7-1/2 inches to the right of midline, and measures 3/8 to 1/4 of an inch in diameter. It has a 1/16 inch abrasion border. The pathway is from right to left, backward, and downward. It strikes and fractures the right femoral shaft and comes to rest in the right posterior gluteus maximus muscle, where a deformed bullet is recovered. It measures less than 1/2 inch.

GUNSHOT PATH #6: Gunshot path #6 is comprised of an entrance wound, an exit wound, and a re-entrance wound. The initial entrance wound is designated gunshot wound #10 and is located in the left lateral elbow region. It is 22 inches from the top of the head, is oblong in configuration, and ranges from 1/2 to 7/16 of an inch in diameter. It contains a 1/16 to 1/8 inch abrasion border. The bullet path transects some of the soft tissue in the right elbow region and exits 22 inches from the top of the head in the medial left elbow region (gunshot wound #9). The exit wound is irregular and measures 5/16 of an inch in diameter. A re-entrance is identified in the left mid back region which is 20-1/2 inches from the top of the head

York Pathology Associates
James L. Maynard MD
E. Earl Jenkins, Jr. MD
Robert E. Thomas, Jr. MD
Craig F. Hart MD

Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
803-329-6845 / Fax: 803-327-7598

[redacted]

and 3-1/2 inches to the left midline. It measures 3/4 x 1/2 of an inch in diameter and is oblong with a 1/8 of an inch abrasion border. This path tunnels underneath the subcutaneous skin and comes to rest at the midline, 19-1/2 inches from the top of the head. This is where the bullet is recovered, which measures less than ½ inch. This pathway is from left to right and slightly upward.

INTERNAL EXAMINATION

The body is opened with a Y-shaped thoracoabdominal incision. All internal organs are in their normal anatomic position.

BODY CAVITIES: The pericardial sac contains approximately 200 cc's of partially clotted fresh blood. The right and left pleural cavities each contain approximately 1 liter of partially clotted blood. The abdominal cavity is free of significant fluid accumulation.

NECK: The neck organs are in their normal anatomic location. There is hemorrhage and soft tissue destruction associated with gunshot path #1. The hyoid bone is intact. No significant strap muscle hemorrhage is identified.

HEART: The heart weighs 360 grams. The pericardial surface is smooth and shiny. The coronaries have a normal distribution. There is no significant cardiovascular disease. The myocardium is red-brown with no significant scarring. The left myocardial wall measures approximately 2 cm in thickness and shows evidence of concentric left ventricular hypertrophy. The valves have the usual number of cusps/leaflets.

LUNGS: The right lung weighs 200 grams. The left lung weighs 210 grams. The pleural surface of each is pink red and smooth with areas of hemorrhage associated with the perforating gunshot wound associated with gunshot path #2. The bronchi are free of obstructing material. The pulmonary vessels are free of thromboemboli. The cut surface of the lung parenchyma is red-brown and smooth. No parenchymal lesions are identified.

LIVER: The liver weighs 1350 grams. The capsular surface is dark brown and smooth. The cut surface is smooth and homogeneous. No parenchymal lesions are identified. The gallbladder is present and contains a small amount of bile.

SPLEEN: The spleen weighs 80 grams. The capsular surface is slightly wrinkled. The cut surface is soft. No lesions are identified.

KIDNEYS: The right kidney weighs 130 grams. The left kidney weighs 130 grams. The cortical surface is smooth. The capsular surface strips with ease from the underlying cortex. The cortex is of normal thickness. The corticomedullary junction is well defined. The collecting system is unremarkable.

ADRENAL GLANDS: The adrenal glands are of normal size. The cortex and medulla are unremarkable.

GASTROINTESTINAL SYSTEM: The esophagus is unremarkable. The mucosa is gray-white and unremarkable. The stomach contains approximately 20 ounces of clear liquefied food substance (predominantly liquid). The mucosa is pink-tan and contains normal rugal folds. The small intestine is unremarkable and contains a normal amount of soft fecal material. The appendix is identified. The large bowel contains a normal amount of fecal material.

152

York Pathology Associates
James L. Maynard MD
E. Earl Jenkins, Jr. MD
Robert E. Thomas, Jr. MD
Craig F. Hart MD

Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
803-329-6845 / Fax 803-327-7598

[redacted]

FINAL SUMMARY

The decedent was the alleged assailant in an attempted robbery outside of The Money in Rock Hill, South Carolina, on the early morning hours of 9/21/10. According to investigative reports, the decedent allegedly tried to rob members of a band who had just finished playing at The Money. The decedent allegedly stormed the RV and put his gun to one of the band member's head, demanding money. Gunshot erupted and the decedent was found slumped over in the doorway of the said RV. He was pronounced dead shortly thereafter. A full autopsy was performed later that day in the Piedmont Medical Center morgue at the request of the York County Coroner's Office.

Significant findings at autopsy included the presence of eleven gunshot wounds which, after detailed examination, appeared to be accounted for by a total of six separate gunshot paths. Both gunshot path #1 and gunshot path #2 are generally considered to be fatal or potentially fatal gunshot wounds. Gunshot path #1 struck the left lateral neck area, entered the intracranial vault, and perforated both the right and left cerebellar lobes and the right temporal lobe. Gunshot path #2 entered the left anterior chest region, perforated the left lung, the ascending aorta, the right lung, and came to rest in the right posterior shoulder region.

Gunshot path #3 was comprised of an entrance and exit in the right forearm region, and a re-entrance in the right lower abdominal region. It perforated the right lobe of the liver, transecting the mesenteric tissue, and came to rest beneath the left lateral 10th rib.

Gunshot path #4 was identified in the right hip region and was comprised of an entrance and an exit wound.

Gunshot path #5 was also located in the right hip region and caused significant fracturing of the right femoral shaft.

Gunshot path #6 was comprised of an entrance and an exit wound in the left elbow region and a re-entrance in the left back area.

Natural disease processes identified at autopsy included the presence of concentric left ventricular hypertrophy. Toxicologic testing performed at SLED was positive for ethanol at a level of 0.169% w/v and was also positive for 11-carboxy-Tetrahydrocannabinol at a level of 8.8 µg/L. These levels are not felt to be directly contributory to the cause of death.

After review of the events on the early morning hours of 9/21/10, correlation with investigative efforts, and full autopsy examination of the decedent, it is the opinion of the prosector that the decedent, Demorrio Demarcus Burris, died of multiple gunshot wounds to the head, thorax, abdomen, and extremities. The fatal shots are bullet path #1 (see description of injuries) and bullet path #2. The manner of death is homicide.

[redacted]

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

REGINALD I. LLOYD
Director

Coroner Sabrina Gast
York County Coroner's Office
P.O. Box 1156
York, SC 29745

TOXICOLOGY DEPARTMENT
January 18, 2011
SLED No: L10-12470
Your Case No: 10554
Incident Date: 09/21/2010

[S-Deceased] Demorrio Burris

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology)** - labeled "BURRIS, DEMORRIO YCCO-10-555"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.169	% w/v	0.01
Methanol	Negative	% w/v	0.01
Acetone	Negative	% w/v	0.01
Isopropanol	Negative	% w/v	0.01

154

SLED No :L10-12470

1/18/11

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Cannabinoids	Positive	mg/L	0.03
Amphetamine	Negative	mg/L	0.15
Benzodiazepines	Negative	mg/L	0.05
Methamphetamine	Negative	mg/L	0.15
Oxycodone	Negative	mg/L	0.10

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Cocaine Metabolite	Negative	mg/L	0.10
Opiates	Negative	mg/L	0.10

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
11-carboxy-Tetrahydrocannabinol	6.8	µg/L	2.00
Synonyms: THC metabolite			

Quintus Young II

Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department, (803) 896-7385.

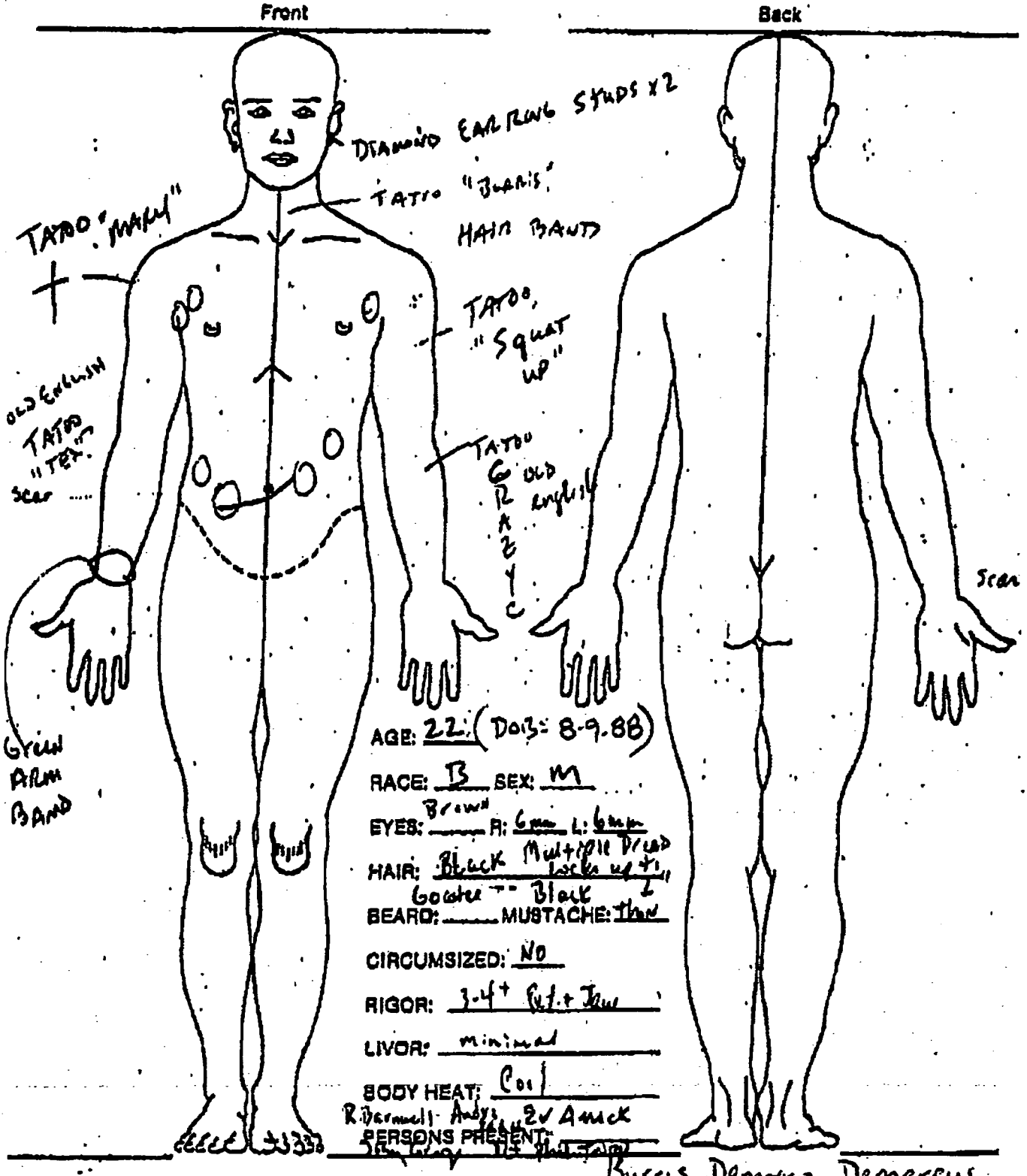
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

YORK COUNTY CORONER/ YORK PATHOLOGY

155, 1/2

Case No: 10AU-79

BODY DIAGRAM



AGE: 22 (DOB: 8-9-88)

RACE: B SEX: M

EYES: Brown R: 6mm L: 6mm

HAIR: Black Multiple Dread locks up to 1" Goatee - Black

BEARD: ____ MUSTACHE: Thin

CIRCUMSIZED: NO

RIGOR: 3-4+ Ext. + Jaw

LIVOR: minimal

BODY HEAT: Cool

PERSONS PRESENT: R. Dermudi, Andy, 2 V Amick

Decedent's Height 68 inches

Weight 161 pounds

Name Burris, Demorio Demarcus

Examined By Robert E Huk

9/21/88 @ 1500 Hours

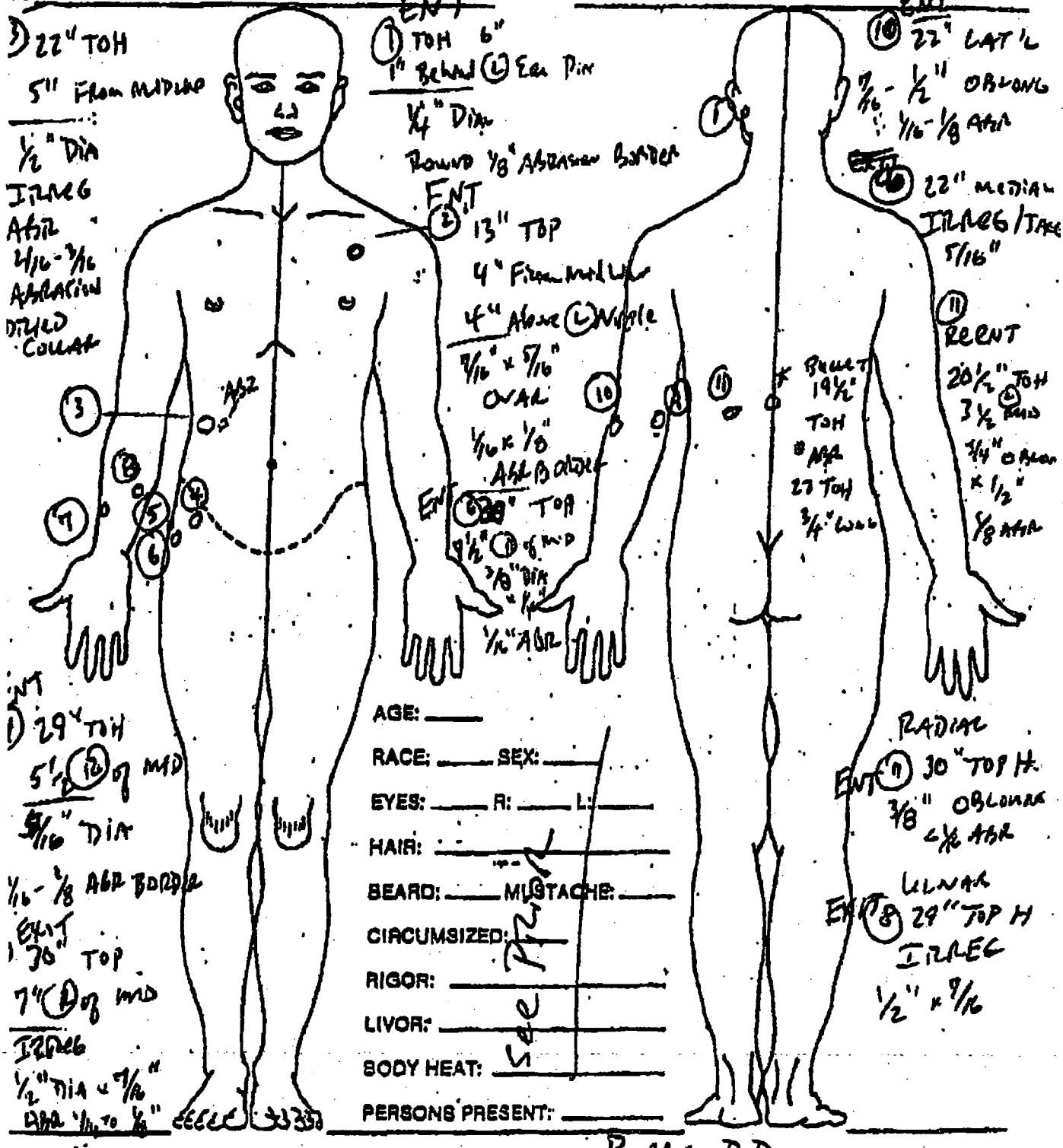
6 gunshots

YORK COUNTY CORONER/ YORK PATHOLOGY

156 2/2

Case No: 10Au-MG

BODY DIAGRAM



Decedent's Height ___ inches

Weight ___ pounds

Name Burris, D D

Examined By R E Thomas

157

Internal Description

Name of Deceased: **Autopsy No:**

Body cavities:

Cardiovascular: Heart: 360

Neck Organs: WNL

Lungs: (R) 200 perf (L) 210 LUL perf

Liver: 1350

Pancreas: –

GI Tract: Appendix ✓

Spleen: 90

Adrenal Glands: –

Kidneys: (R) 130 (L) 130

Bladder: D. Studded

Internal Genitalia: –

Brain and Meninges: 1550 per (R) + (L) Cerebellum

Skull: Bullet (L) Temp Lobe

Vertebrae:

Ribs: Bullets

Pelvis: PATH #6 (1) MID BACK

Long Bones:

Hands: PATH #2 (2) BACK (R) Shoulder 14" TOD
7½" (R) Mid Line

Laboratory Procedures:

Disposition of Evidence: PATH #3 (3) LEFT LAT'L Lower Abdomen Below Rib #10

PATH #5 (4) (R) Gluteus muscle

PATH #1 (5) (R) Temp Lobe Brain

State of South Carolina)
City of Rock Hill :
Rock Hill Police Department)

661

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present.

(Witness) (Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing to make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person(s) talking with me is a police officer and I understand what he is talking about.

(Witness) (Signed)

PERSONALLY appears before me: Dytavis Laquan Hinton who after being duly sworn deposes and says:

"My name is: Dytavis Laquan Hinton
Date of Birth:
Social Security Number:
My address is: Street Rock Hill, S.C. 29730
Home Phone: (803) Work/Cell Phone:(803) 5 (Verizon)
Employer: Unemployed
I have completed years 10 of School and can (X) read and write ( )cannot read or write English

PLAINTIFF'S EXHIBIT 54

I was hanging out at Travis Barnette's house in Newport on Monday 09-20-2010 with my Jerry "Junior" Barnette, Demorrio "Man" Burris, Dareese "Reese" Barnette, Devond "Erb" Erby, and me. We were all drinking and smoking some marijuana. Devin came over to Travis' house for awhile. Travis then told us that he had to go to work that morning. Devond told me that I could stay at his house. I had my .380 Hi-Point pistol with me that I had purchased at Nichols Store. I had been threaten for my life at a cookout awhile back. I had the pistol for about two-three months ago. I put the pistol in the glove box in the PT Crusier with the clip out of it. Devin drove us to Dareese' girlfriend house at first during the ride. I was tired from drinking. Everyone wanted to go to the club. We drove by the Odyessy and no one was there. Everyone wanted to check out the Money. We drove through the McDonald's parking and ordered some food. Erb, Broderick "Teddy-P" Page, Man, and myself all walked over to the Money while Devin stayed over at the McDonald's . When we went into the Money, everyone was talking to some females. There was hardly no one inside the club and no one was taking up any cover charge. I had about two more beers. When we first walked into the club, Man was talking a lot of trash to the few people and drinking more drinks. After awhile, I could not find Man inside and I thought about my pistol being in the car. I went back over to McDonald's and asked Devin for the keys to the PT Cruiser. I checked out the car and did not see my pistol in the glove box. I gave the keys back to Devin and asked everyone if they had seen Man. I then noticed Man walking towards the front of the big RV in the parking lot. I knew that Man must have had my pistol and knew that he was going to rob someone as drunk as he was. I ran over to him yelling out his name, but he did not stop. I went to the front door and I knocked on the door. I then

662

open the door and I saw Man on top of the steps holding my pistol to this guy's head. It looked like Man's shirt was pulled up by his back of the neck. I then heard about three gun shots and I then took off running. As I ran through the parking lot, I noticed that I was bleeding near my stomach. I fell down and got up trying to run towards the crowd behind the Money. I then fell down to the ground and told someone to call an ambulance for me. I did not know that Man was dead as I was being taken away. I am sorry for being there or having my gun in the car. I wish that I had gone on home that night and that this would have never happen. I did not have any bandana or shirt over my face at the R/V.

X Dayton L. Hitter
Signature Of Person Giving Statement

9/30/10 11:29
Date

063

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

PERSONALLY appears before me:, Dytavis Laquan Hinton who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

I have read or had read to me the above statement consisting of (3) page (s) and have received a copy of this statement."

Dytavis L. Hinton
(SIGNATURE)

(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME
THIS 30th DAY OF September 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 6/01/2014

STATEMENT PREPARED BY: Tripp-P.
DATE: 09-30-2010 TIME: 11:29 am

160

On 09-30-2010 Det. Tripp interviewed Hinton and advised him of his Miranda Rights which he waived. Hinton stated that he left his .380 pistol in the glove box of the PT Cruiser before going inside the Money. Hinton stated that he later noticed Burris missing and went back to the Cruiser unable to locate his .380 pistol. Hinton stated that he walked back to the Money and noticed Burris walking in front of the R/V. Hinton ran tot he R/V and knocked on the door. Hinton stated that he observed Burris holding his pistol to the head of two males. Hinton stated that he heard gun shots and ran towards the Silver Dollar . Hinton fell down and noticed that he was bleeding from the stomach. Hinton had two gun shot wounds to his stomach area.

ARREST WARRANT

K-617623

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

THE STATE
against

Dytravis Layman Hinton
Address: Street
Rock Hill, SC 29731-1706
Phone: SSN:
Sex: M Race: B Height: 5'11" Weight: 150
DL State: SC DL#:
DOB: Agency ORI#: SC0460300
Prosecuting Agency: Rock Hill Police Department
Prosecuting Officer: Tripp-P
Offense: Murder 16-3-10
Offense Code:
Code/Ordinance Sec: 16-3-10

This Warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Dytravis Hinton on 9-30-10

S Blair 3533
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JANE WOODS, MUNICIPAL JUDGE
120 E. Black Street
Rock Hill, SC 29731-1706
803-329-5695

262

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Rock Hill Municipal Court

AFFIDAVIT

Approved by Attorney General 21, 2003 A 518

Personally appeared before me the affiant Phil Tipper Tripp wh being duly sworn deposes and says that defendant Dytravis Layman Hinton did within this county and state on September 21, 2010 violate the criminal laws of th State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court in the following particulars:
DESCRIPTION OF OFFENSE: Murder 16-3-10

I further state that there is probable cause to believe that the defendant named above did comm the crime set forth and that probable cause is based on the following facts:

Defendant Hinton on 09-21-2010 did willfully and unlawfully violate S.C. code of laws 16-3-10 Murder by shooting Demorrio Burris with a pistol during the comission of an armed robbery and Burris did die at the scene as result of the injuries. Incident occurred at 119 South Cherry Road which is within the city limits of Rock Hill, S.C.
Police Investigation
Recovery of Evidence
Sworn Witness Statement

PLAINTIFF'S EXHIBIT 2

Signature of Affiant

Affiant's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Affiant's Telephone 803-329-7005

STATE OF SOUTH CAROLINA
☐ County/ ☐ Municipality of
Rock Hill Municipal Court

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe tha on September 21, 2010 defendant Dytravis Layman Hinton did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of Rock Hill Municipal Court) as set forth below:
DESCRIPTION OF OFFENSE: Murder 16-3-10

030

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 09/21/2010

D Williams (L.S.)
Signature of Issuing Judge
Judge Code 6316

Judge's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

K-617623 Ref #: 100011...

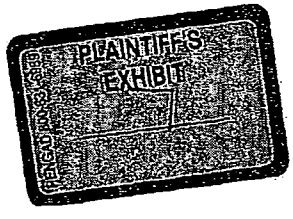
STATE OF SOUTH CAROLINA) COUNTY OF YORK)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Dytavis L. Hinton, #346826,) Applicant,) v.)	2012-CP-46-1536
State of South Carolina,) Respondent.)	**Memorandum of Law**

By way of his Application and the testimony and evidence presented at the evidentiary hearing, Applicant submits that plea counsel rendered ineffective assistance of counsel with the mitigation he offered during Applicant's plea and when he failed to file a motion to reconsider under Rule 29(a), SCRCrimP. By way of his Application for Post Conviction Relief, Applicant has requested relief in the form of a "new trial", which is the standard form of relief in Post Conviction Relief Actions. Alternatively to his request for a new trial, Applicant requests the specific relief of a resentencing or a belated motion to reconsider based upon the below discussion of the law and the evidence and testimony presented at the evidentiary hearing.

South Carolina Code § 17-27-80, in pertinent part provides:

> If the Court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or **sentence** in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or **other matters that may be necessary or proper.** (emphasis added)

In the instant case, Applicant submits that it would be necessary and proper for this Court to find plea counsel was ineffective for his performance during the mitigation portion of the plea hearing and/or that counsel was ineffective for failing to file a motion to reconsider. As a result, Applicant would urge this Court to grant a resentencing or a belated motion to reconsider.



In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), the United States Supreme Court held that a defendant has a right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Interestingly, in Strickland, the Court addressed ineffective assistance of counsel during the penalty phase or sentencing portion of a death penalty case. As is established by Strickland, Applicant has the right to effective assistance with mitigation and during sentencing. Similarly, in New Jersey v. Hess, 207 N.J. 123, 23 A.3d 373 (2011), the Supreme Court of New Jersey reversed the lower court's denial of post conviction relief and found that counsel rendered ineffective assistance when he deprived the court of mitigating evidence that was necessary for a meaningful sentencing hearing and failed to object to a video tribute to the victim during the sentencing hearing. As a result, the court ordered a new sentencing hearing for Hess.

In South Carolina, the appellate courts have repeatedly crafted a remedy that was tailored to the precise injury suffered in Post Conviction Relief. In Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009), the South Carolina Supreme Court reversed the lower court's denial of relief and found that counsel rendered ineffective assistance when he failed to make a motion to withdraw applicant's guilty plea. Noting that the prejudice analysis presented in the case did not fit squarely within the traditional prejudice framework, the South Carolina Supreme Court remanded the case to the point in the plea proceeding in which counsel should have sought to withdraw the plea since this tailored relief remedied the precise prejudice resulting from counsel's deficient performance. Id. at 413-15, 683 S.E.2d at 474.

In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the South Carolina Supreme Court also reversed the lower court's denial of relief finding that counsel was ineffective for failing to communicate a fifteen year plea offer. The court reasoned that there was no evidence in the record that applicant expressed a desire to proceed to trial; therefore, a remand for a new trial was not the appropriate remedy. Id. at 615, 675 S.E.2d at 423-4. The Court concluded that resentencing was the proper remedy because the remedy should be tailored to the injury suffered. Id. at 614, 675 S.E.2d at 423.

In Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), the South Carolina Supreme Court reversed the lower court and remanded for resentencing. The Court found that counsel was ineffective when he failed to object to a ten year difference between the oral pronouncement of the sentence and the term written on the sentencing sheet. Id. at 275-6, 695 S.E.2d at 851-2. The Court noted previously rulings holding that post conviction relief "may be tailored to remedy the precise prejudice resulting from trial counsel's deficient performance" and found that resentencing on the charge at issue was the proper remedy. Id. at 277, 695 S.E.2d at 852-3.

Similarly, to the instant case, Applicant has attached the recent decision of the Honorable Larry B. Hyman, Jr., in Jovon Brown v. State granting Brown a rehearing on sentencing or a belated motion to reconsider sentence. In this PCR Application out of Horry County (Docket No.: 2010-CP-26-4774), the attached Order Denying Post-Conviction Relief as to the Conviction but Granting Post Conviction Relief as to the Sentencing was issued on May 21, 2012. Applicant understands that this case does not hold any precedential value as it is not a published appellate decision, but it is of

consideration that the State did not appeal this recent decision granting relief tailored to remedy the precise prejudice suffered by counsel's deficient performance.

Based upon the above discussion of the law and the evidence and testimony presented at the evidentiary hearing, Applicant submits that plea counsel rendered ineffective assistance of counsel with the mitigation he offered during Applicant's plea and when he failed to file a motion to reconsider under Rule 29(a), SCRCrimP. Alternatively to a new trial, Applicant further submits the necessary and proper relief in this case should be the granting of a resentencing or a belated motion for reconsideration during which the Court could consider the mitigating evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,

Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Dytavis Laquan Hinton, #346826, Applicant, v. State of South Carolina, Respondent.	)	2012-CP-46-1536 **ORDER OF DISMISSAL**

FILED-RECEIVED
2013 OCT 16 PM 2:14
YORK COUNTY, S.C.
C.C.C.P. & G.S.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 24, 2012. Respondent made its Return on June 28, 2012. An evidentiary hearing into the matter was convened on August 15, 2013, at the Moss Justice Center in York, SC. Tricia Blanchette, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Travis Barnette, Marcus Thompson, Christine Thompson, Ronald Guerette and Applicant testified on Applicant's behalf. Harry Dest, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the crime scene photographs, Applicant's memorandum and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was charged with Attempted Murder (2007-GS-46-1907), Burglary, 1st degree (2007-GS-46-1908), Attempted Armed

Robbery (2007-GS-46-1909), and Criminal Conspiracy (2007-GS-46-1910)[1]. Applicant was represented by the Harry Dest, Esquire. On July 12, 2011, Applicant waived presentment to the Grand Jury and pled guilty to all charges. The Honorable G. Thomas Cooper sentenced Applicant to confinement for twenty (20) years for Attempted Murder, twenty (20) years, concurrent, for Burglary, 1st Degree, twenty (20) years, concurrent, for Attempted Armed Robbery and five (5) years, concurrent, for Criminal Conspiracy.

A notice of appeal was filed on Applicant's behalf. However, Applicant's appeal was dismissed for failure to identify issues reviewable on appeal. The Remittitur was issued on August 23, 2011.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
   a. "Counsel failed to investigate"
2. "Violation of Constitutional Rights"
   a. "Police obtained evidence in violation of rights"
3. "Improper Guilty Plea"
   a. "Intelligent Voluntary not knowing about plea"

In his amended application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel for failure to properly prepare and investigate, specifically, but not limited to the following:

---

1 Applicant was also charged with Murder, but the State agreed to dismiss this charge in exchange for Applicant's guilty plea.

a. "Failure to completely review and discuss discovery with Applicant. Failure to ensure that Applicant had a complete copy of the discovery materials."
b. "Failure to contact and utilize witnesses"
c. "Failure to investigate crime scene and evidentiary reports (firearm/ballistics, latent print, gunshot residue, etc.)."
d. "Failure to investigate inconsistencies in witnesses(sic) statements."
e. "Failure to review statements attributed to Applicant with Applicant prior to his plea and/or in preparation for trial."

2. "Ineffective assistance of counsel for advising Applicant that he would receive a split or suspended sentence and informing Applicant to not be concerned with all the charges that he was facing, which resulted in an involuntary guilty plea."
3. "Ineffective assistance of counsel for not allowing Applicant's family to speak on his behalf at the plea hearing."
4. "Ineffective assistance of counsel for failure to file a Motion for Reconsideration."
5. "Ineffective assistance of counsel for failure to properly preserve issues for appeal as was admitted in the Rule203(b), SCACR, Explanation."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel listed in his amended application.

SUMMARY OF TESTIMONY

Travis Barnette testified he was Applicant's friend from school and was with Applicant earlier in the day on the day of the incident. He stated he heard no discussion about Applicant planning a robbery. He also claimed Applicant "accessorized" his clothing with bandanas. He lastly testified Counsel did not contact him. On cross-examination, Mr. Barnette admitted he was not

present at the Money (the bar) or McDonald's and had no first-hand knowledge about what transpired that night.

Marcus Thompson, Applicant's brother, testified he was working the drive-through window at McDonald's on the night in question. He stated Applicant and Applicant's friends drove through the drive-through window in a PT Cruiser. He testified Applicant's co-defendant, Demorrio Burris, was intoxicated, and he told Burris to go home three times. Burris said he was not going home until he received his money. Mr. Thompson also testified he had a view of the Money from where he was working, but did not see the incident.

Mr. Thompson further stated he spoke with Detective Tripp and gave him information that Applicant had given him. He asked questions to both Detective Tripp and Counsel, but got no answers. He also stated he wanted to speak at Applicant's guilty plea, but was not given the opportunity. He lastly said Applicant often wore bandanas. On cross-examination, Mr. Thompson admitted that he knew Applicant brought the gun used by Burris to the scene that night. He also admitted he could not see the front door of the RV where the shooting occurred. He lastly stated he was not at the Money that night.

Christine Thompson, Applicant's mother, testified she wanted to address the plea court, but did not have the opportunity to do so. She also stated Applicant often wore different colored bandanas. On cross-examination, Ms. Thompson stated she did not know that Applicant possessed a gun that night, but knew Applicant owned one and told him to get rid of it. She also admitted that she knew the gun that was used in the attempted robbery was registered to Applicant. She lastly testified that she was not present at the scene that night.

Applicant testified he was hospitalized after the incident in Charlotte and was extradited back to South Carolina. He spoke with Detective Tripp to whom he gave a statement. Applicant claims he was on narcotics for pain because of his injuries (two gunshot wounds) when he gave this statement. He also presented his version of the facts on the night in question. Applicant stated he was at McDonald's and left his gun in the car with the clip out. He then went into the Money with friends where he bought a few drinks. On the way out of the Money, he claims he saw Burris walking towards Victims' RV, and when he met up with Burris, Burris was already inside the RV. Burris had Applicant's gun and allegedly stated "I got this." Thereafter, shots were fired and Applicant ran away after being shot twice, once in the hip and once in the abdomen. He was found by officers in the parking lot of the Money lying on the ground. Applicant also claimed he did not tell officers at the scene that someone tried to rob him. Additionally, Applicant stated at the plea, the State said he used a bandana to cover his face during the robbery, but at the PCR hearing, Applicant claimed the bandana was just an accessory to his outfit and that he used it to stop the bleeding from his wounds.

Applicant testified Counsel was appointed and he met with Counsel and Counsel's investigator two to three times to discuss gunshot residue, ballistics, and statements. He stated he asked Counsel to speak with witnesses. Applicant also testified he met with Counsel's investigator who discussed the charges with him including a charge of felony murder. Counsel explained he was charged with murder under the theory of "hand of one, hand of all." Applicant stated he was preparing for a trial when Counsel presented him two offers from the State: 1.) a cap of twenty-five years, which declined and 2.) a cap of twenty years. He also stated Counsel indicated he could receive a split sentence. Applicant testified Counsel never explained the waiver of presentment of

the charges to the grand jury. He also stated the facts presented by the State were different than what occurred, but he did not correct them because he was simply going along with Counsel's advice. Applicant further claimed Counsel did not prepare him for the plea and that he wanted his mother and brother to testify, but Counsel would not allow them to because Counsel said they would turn the plea into a racial issue. Lastly, Applicant testified Counsel promised he would not get a twenty-year sentence.

On cross-examination, Applicant admitted he made the statement to Detective Tripp nine days after the incident date. He also admitted he was both drunk and high on marijuana the night of the incident. He claims he did not tell law enforcement when arrested that two white males tried to rob him and left in a white car. Applicant stated that he agreed with the facts as presented at the plea but did not lie because he was simply heeding Counsel's advice. However, when given the opportunity to speak at the plea, Applicant did not correct the facts. Applicant testified while Counsel explained to him the theory of "hand of one, hand of all," he did not understand why he was charged with Burris's death. Applicant then admitted had he not brought the gun to the scene that night, Burris would not have had access to it. Applicant stated he realized if successful on his PCR, he would be facing fifteen years to life on the Burglary, 1st degree charge alone. He also stated he was willing to risk a five-year reduction for a potential of life in prison. Applicant admitted he waived his right to a trial when he plead guilty and that no one threated or promised him anything to get him to plead guilty. He also admitted he stated at the plea that he was satisfied with Counsel's representation and apologized for bringing his gun to the scene that night.

Ronald Guerette, qualified as an expert in crime scene investigation, testified he received three compact discs from Counsel's file, interviewed a witness (Michael Walsh) and Applicant and

reviewed the discovery in this case. He stated there was no indication that this case had been investigated and that there were no hand-written notes from law enforcement on the case. Mr. Guerette also testified the medical examiner should have been contacted as there was evidence of an execution-style shooting of Burris. He stated there was no indication that the patrons of the Money were ever interviewed. He also stated while there were photographs of the bullet trajectories, there was no report of findings or physical evidence in the State's property report.

Mr. Geurette testified Applicant's statements to law enforcement were consistent with each other and the evidence at the crime scene. He also claimed law enforcement's explanation of the crime scene did not match what witnesses stated. He further stated that after Burris was shot in the hip, Burris was shot execution-style. Mr. Guerette testified gunshot residue kits were only performed on Burris and Scott Thomas, and no fingerprint evidence was collected. He stated Walsh's statements to police conflicted each other. Mr. Guerette testified there was a small bag of marijuana found at the scene, alluding that a drug sale might have occurred. He also stated he reviewed many photographs of the crime scene and could have told a trial court that this case should have been investigated more thoroughly and that Applicant should not have pled guilty based on the lack of investigation. He lastly stated his opinion of what occurred, based on his review of the crime scene photographs and other documents, was that Applicant was outside of the RV when shot and that Applicant was only shot once and had an entrance and exit wound which produced the two wounds on his body.

On cross-examination, Mr. Guerrette testified he did not review Applicant's medical records, and Applicant did not tell him that Applicant was shot twice during the incident. He stated his investigation would not have changed if Applicant told him that Applicant was shot twice. He also

 AWM 7

stated he does not know if his investigation would change if he knew that Applicant told the treating physician he was shot twice because he did not review the medical report. Mr. Guerette stated the Victims had a right to protect themselves in their own RV, but not to the point of shooting Burris from point-blank range[2]. He also testified that just because gunshot residue on Victim was not documented does not mean that it did not exist. Mr. Geurette admitted he did not speak to any of the law enforcement officials working the scene that night. He also claimed that the blood on the staircase should have been tested to determine whose blood it was.

Mr. Geurette admitted that all of the shell casings were found inside the RV, which indicated that all of the shooting occurred inside the RV. He also stated he knew Burris used Applicant's gun. Mr. Geurette admitted he could not tell the order in which the shots were fired. He testified Applicant told him that Applicant heard another gunshot while Applicant was lying on the ground in the parking lot, but this account was not contained in any of the other witnesses' statements. Mr. Guerette also testified he did not interview Counsel in preparation for the PCR hearing. He stated he was aware that Burris had marijuana in his system, the marijuana that was found at the scene was outside the RV, Applicant admitted to smoking marijuana that night and that there was no evidence that a drug sale occurred. Mr. Guerette admitted he did not review the plea transcript in preparation for his testimony. Lastly, Mr. Geurette testified there was no possibility, based on the bullets' trajectory, that Applicant was inside the RV that night.

On re-direct examination, Mr. Geurette testified his role was to review the investigation done in this case. He stated the pictures reveal what looked to be a fight inside the RV. He also stated

---

2 Mr. Guerette admitted that he was not a legal expert or trained in the law.

Applicant could have been outside of the RV, but he could not tell exactly from where the bullets were fired.

Counsel testified he was appointed shortly after Applicant's arrest, has been a public defender for twenty-three years and has handled hundreds of murder cases. He also stated he has investigated many crime scenes and hired investigators to investigate crime scenes on many occasions. Counsel testified he has an understanding of bullet trajectory, but would hire an expert if he did not understand a certain concept. Counsel stated he filed for discovery and received packets of compact disks from the State. Counsel testified that Applicant, early in the case, told Counsel that he went inside the RV that night to help Burris commit a robbery. This was a last-minute decision and not a planned event. Applicant also told Counsel he was under the influence of alcohol and marijuana that night. Counsel testified Applicant give four different statements during the investigation of the case: 1.) a woman with black hair tried to rob him; 2.) two white males robbed him and fled in a white car; 3.) he went to the RV to try and stop Burris from robbing Victims; and 4.) he knew Burris was going to RV to rob and went with Burris. Counsel testified he confronted Applicant with these statements, and Applicant admitted he put the bandana over his face and went into the RV to rob Victims and shot were fired inside the RV.

Counsel testified that all of the empty shell casings were found inside the RV. He also stated the Victims gave statements that two black males came into the RV with masks/bandanas covering their faces, demanded money, and shots were fired. Counsel testified Applicant did not have a gun during the incident, but Burris used Applicant's gun. Counsel stated Applicant wanted Counsel to interview other witnesses because Applicant did not believe that Broderick was going to make a

statement against Applicant. Broderick told Counsel he thought Applicant and Burris were going to the RV to rob Victims.

Counsel testified he did not investigate the case further after Applicant admitted his involvement in the crime, but made efforts to mitigate the crime. He hired Dr. Kenneth Marsh to evaluate Applicant about possible recidivism. Applicant had no significant prior criminal history, and Counsel used this report to argue for leniency at the plea. Counsel also stated Applicant did not want Counsel to tell Applicant's family much information because Applicant was ashamed of his actions.

Counsel testified he did not meet with Victims, but requested through the State to meet with them. However, Victims would not meet with Counsel. He also stated he did not file a motion to reconsider because in his opinion, based on his experience and the facts of the case, the plea judge would not have reduced Applicant's sentence. Counsel testified he did not promise Applicant a split or suspended sentence, but asked for it at the plea hearing. He stated he never promise his clients a certain sentence. The negotiation with the State was a cap of twenty years, and Applicant's sentence was within the plea judge's discretion. Counsel further stated he did not disallow Applicant's family from speaking at the plea, but it was his recollection that Applicant's family did not want to speak during the hearing. Moreover, Counsel testified he never told Applicant's family that this case was fueled by a racial issue.

Counsel testified he made no threats or promises to get Applicant to plead guilty. Counsel discussion all of the charges with Applicant and explained why the State dismissed the murder charge. Counsel testified, while other states have decided whether the "felony murder" rule applies in cases such as this one, South Carolina has not decided the issue. He stated he thought the State

would not pursue the murder charge because the Burglary, 1st degree charge carried a maximum sentence of life in prison, and the State was not willing to pursue a lesser offense. Counsel also explained the "hand of one, hand of all" theory and Applicant understood it.

On cross-examination, Counsel testified Applicant wanted to accept the plea offer. He also stated he did not remember a twenty-five year offer or Applicant declining an initial offer. Counsel discussed again the "felony murder" rule and its applicability in South Carolina. Counsel stated he asked for a split or suspended sentence but did not file a motion to reconsider because he and Applicant expressed all of the facts they wanted to present and had no new or additional information which would necessitate a motion for reconsideration. Additionally, Counsel testified he has argued "Castle Doctrine" cases previously, and the cases where he prevailed were cases in which someone invaded his client home and his client protected himself. He stated this was not one of those cases. Further, Counsel testified, in his opinion, the local judges tend to be heavy on the sentencing, and it was strategy to have Judge Cooper hear Applicant's guilty plea. Lastly, Counsel stated he met with Applicant immediately after the plea and does not remember Applicant accusing him about the type and length of the sentence Applicant would receive.

On re-direct examination, Counsel testified he pursued no more investigation of the crime scene due to Applicant's confession, his experience and the facts of the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds the testimony of the Applicant and Mr. Guerette not credible while

finding Counsel's testimony very credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and

would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Counsel was competent and diligent in his representation of Applicant in this case. Counsel sufficiently advised Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactory investigated this case based on the information supplied by Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to Applicant. This Court also finds Applicant was well informed by Counsel in this case. This Court is convinced that all of Counsel's strategies and his advice that Applicant accept a plea offer from the State were reasonable professional decisions based upon Counsel's experience and the facts of the case. As such, Applicant cannot show any resulting prejudice.

Failure to investigate crime scene

The thrust of Applicant's claims relate to Counsel not conducting a full investigation of the crime scene. An expert witness, Mr. Guerette, testified on Applicant's behalf and discussed inconsistencies in numerous State exhibits and witness statements, using documents of the investigative file in support. This Court, in analyzing each point raised, finds that differences are commonplace in investigations and none of those relied upon by the expert would have resulted in a change in the outcome. (Even Applicant's statements to law enforcement varied.) In preparation for his testimony, the expert acknowledged never having discussed with local law enforcement their investigation or reading the guilty plea transcript. In the light of all of the facts and testimony presented, Counsel did more than an adequate investigation of the facts to present to Applicant for his consideration before entering his guilty plea. Accordingly, Applicant has failed to demonstrate that the outcome of the proceeding would have been different. *See* Cherry v. State, 300 S.C. 115, 386

 Am 4/13

S.E.2d 624 (1998). Applicant has failed to meet his burden as to this allegation.

Failure to review discovery with Applicant

Applicant claims Counsel failed to fully review discovery with him and provide him with a complete copy of discovery.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066 (1984).

Counsel testified he filed for and received discovery from the State. Counsel also testified that early in the case, Applicant admitted he joined Burris in attempting to rob Victims. At this point, fully discussing the discovery was futile. Nevertheless, Counsel testified he reviewed all of the charges with Applicant and his family and that it was Applicant's desire to accept the State's plea negotiation. Applicant has failed to meet his burden of proving that had Counsel more thoroughly reviewed discovery with Applicant, Applicant would have not pled guilty, but would have insisted on going to trial. *See* Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Failure to contact and utilize witnesses

Applicant claims Counsel was ineffective for failing to contact and utilize witnesses before and during the guilty plea. Witnesses at the PCR on Applicant's behalf testified they would have been willing to speak on Applicant's behalf at the plea or testify at trial. Most of the testimony centered around Applicant's use of bandanas to accessorize his clothing. The State argued at the plea that Applicant's use of bandanas (which arose as an afterthought by Solicitor (p. 40 Tr.)

 MH 4/14

displayed Applicant's preparation for the crime or speculated on Applicant's gang activity. Counsel testified Applicant told him Applicant used the bandana to cover his face during the attempted robbery. Additionally, Counsel stated it was his recollection that these witnesses chose not to address the plea court when given the chance. Further, none of the witnesses presented at the PCR hearing witnessed the actual incident. Therefore, these witnesses would not have been able to provide a first-hand account that would lessen Applicant's accountability in this case. Regardless, the issue of the bandana would not have changed the outcome of the plea before a very experienced and seasoned circuit court judge.

Failure to investigate inconsistencies in witnesses' statements/Failure to review statements attributed to Applicant prior to his guilty plea

Applicant claims Counsel failed to investigate inconsistencies in witnesses' statements and failed to review statements attributed to Applicant prior to his guilty plea.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066 (1984).

As stated prior, Counsel testified Applicant told him early in the case that Applicant joined Burris for the purpose of robbing Victims. Once Applicant admitted his involvement in these crimes, Counsel was not required to further investigate any more statements as such effort would be fruitless. Clearly, Counsel's actions in this case were heavily influenced and guided by the information provided by Applicant. As such, Applicant has failed to prove Counsel's actions fell

below the reasonableness standard or that the outcome would have changed had Counsel more thoroughly investigated or discussed the various statements with Applicant.

Failure to file a Motion for Reconsideration

Counsel's failure to ask for a reconsideration of the sentence is without merit based on the negotiations and interchanges with the plea judge. Further, Counsel testified he and Applicant were able to elucidate all of the defense's theory in mitigation and that there was no new evidence which would have warranted seeking a reduced sentence.

Failure to move to quash murder charge under State v. Bonner

Applicant claims Counsel was ineffective for failing to move to quash his arrest warrant for murder under State v. Bonner, 330 N.C. 536, 411 S.E.2d 598 (1992). This Court finds this allegation is without merit. First, Bonner is a North Carolina case and therefore, is not binding. Second, Bonner is concerned with the "felony murder" rule and whether a defendant can be convicted of the murder of a co-defendant at the hands of his adversaries. In South Carolina, the law is unsettled as to whether a defendant can be charged with the death of a co-defendant during the commission of a felony at the hands of his adversaries. Counsel testified he is licensed in both North Carolina and South Carolina, has practiced criminal defense for twenty-three years and has handled hundreds of murder case. He also testified he is very familiar with State v. Bonner. He thoroughly explained that South Carolina has yet to resolve the "felony murder" rule. He further testified he did not believe the State would pursue the murder charge because Applicant was also charged with Burglary, 1st degree, which carries the same maximum penalty as murder: life imprisonment. Moreover, this charge was dismissed by the State and had no influence on the very experienced circuit court judge's acceptance of the negotiated plea agreement. This Court finds Applicant has failed to meet his burden of proving

that had Counsel moved to quash the murder charge under State v. Bonner, he would not have pled guilty, but insisted on going to trial.

In sum, Counsel's representation did not fall below the reasonable professional standard. Bennett v. State, 371 S.C. 198, 204 S.E.2d 673 (2006). Applicant has the burden of proving to the Court that, but for counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different. *See, e.g.* Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1998). Applicant has not satisfied this burden. Similarly, Applicant has not shown a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *See* Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Other allegations

While the Applicant alleged in his application and at the evidentiary hearing that Counsel was ineffective for misadvising Applicant concerning a split or suspended sentence and for failure to preserve issues for appeal, this Court finds Applicant failed to meet his burden of proving Counsel's ineffectiveness. Specifically, Counsel testified he never promised Applicant a certain sentence and even asked for a split sentence during the guilty plea. Further, Applicant failed to produce evidence sufficient to show how Counsel failed to preserve issues for appeal. Applicant also failed to show how these alleged deficiencies prejudiced his guilty plea. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

G. Edward Welmaker
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

30 Oct, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	DOCKET NO.: 2012-CP-46-1536
DYTAVIS L. HINTON, 346826,	)	
Applicant,	)	NOTICE OF MOTION AND MOTION
v.	)	FOR REHEARING PURSUANT TO
	)	RULE 59(a), SCRCP, AND/OR MOTION
STATE OF SOUTH CAROLINA,	)	TO ALTER OR AMEND PURSUANT TO
Respondent,	)	RULE 59(e), SCRCP
	)	

COMES NOW Applicant, through his undersigned attorney, and requests the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amendment of the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on April 24, 2012. The State made its Return on June 28, 2012. An evidentiary hearing was held at the Moss Justice Center in front of the Honorable G. Edward Welmaker on August 15, 2013. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by J. Rutledge Johnson, Senior Assistant Attorney General.

On October 3, 2013, the Honorable G. Edward Welmaker issued an Order of Dismissal, which was filed on October 16, 2013. Applicant, through counsel, received written notice of the entry of the Order on October 21, 2013.

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully

request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant would further request that this Court review the evidentiary hearing transcript, reconsider the standing Order of Dismissal and rehear Applicant's case pursuant to Rule 59(a), SCRCP.

Specifically, Applicant would submit the following:

1. In the section entitled "Procedural History", Applicant's Amendment submitted on May 9, 2013 is not referenced nor is the allegation listed that is contained therein.
2. At the evidentiary hearing, Ron Guerette was qualified as an expert by this Court, yet the Order finds that Mr. Guerette was "not credible". Order pp. 11-12. Applicant submits that this credibility findings is inconsistent and unsupported by his qualification and testimony offered at the evidentiary hearing. Furthermore, Applicant submits the Order improperly summarizes Ron Guerette's lengthy testimony and makes errant findings as a result.
3. At the evidentiary hearing, the Assistant Solicitor was present at the State's table, but he was not utilized as a witness. Throughout the Order, findings are made based upon pure speculation as to the Assistant Solicitor's position, such as the bandana argument was an afterthought by him. Order p. 14. Applicant submits that the Assistant Solicitor's testimony was not in the record before the Court and should not be relied upon in the Order.

4. On page 11 of the Order of Dismissal, a handwritten insertion is made to reference the Memorandum submitted by counsel at the evidentiary hearing, which addressed the specific relief of a belated motion for reconsideration. On page 16 of the Order of Dismissal, the issue of "Failure to file a Motion for Reconsideration" is addressed via two sentences, but Applicant's Memorandum and the argument and request for specific relief contained therein and made at the evidentiary hearing is not addressed. Therefore, Applicant would request a ruling on his the arguments contained in the Memorandum and his request for specific relief – a belated motion for reconsideration.

As to the entire Order, Applicant submits that the standing Order does not completely or accurately reflect the testimony and evidence presented at the evidentiary hearing. Therefore, Applicant would respectfully request that this Court review the evidentiary hearing transcript before entering a final ruling.

For the above stated reasons, Applicant would respectfully request that this Court reconsider the Order of Dismissal, obtain and review the evidentiary hearing transcript, and hold a motion hearing to ensure that all the testimony and arguments are fully addressed by this Court prior to appeal. Applicant would specifically move before this Court to direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

288

I so move,

Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

October 30, 2013
Columbia, SC

STATE OF SOUTH CAROLINA) COUNTY OF YORK)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Dytavis L. Hinton, #346826,) Applicant,) v.)) State of South Carolina,) Respondent.)	2012-CP-46-1536 **CERTIFICATE OF SERVICE**

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 30th day of October 2013, a copy of Motion Pursuant to Rule 59(a) & (e), SCRCP, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Rutledge Johnson, Ast. AG
PO Box 11549
Columbia, SC 29211

Tricia A. Blanchette
Attorney for Applicant
PO Box 12725
Columbia, SC 29211
(803) 988-0008

October 30, 2013

290

FILED-RECEIVED
2013 NOV 25 PM 2:30
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS
Dytavis L. Hinton, #346826 Applicant, vs. State of South Carolina, Respondent.	DOCKET NO.: 2012-CP-46-1536 **ORDER DENYING APPLICANT'S MOTION FOR REHEARING AND TO ALTER/AMEND**

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRCP. Applicant asks this Court to reconsider its Order of Dismissal filed on October 16, 2013. Specifically, Applicant submits that the Order of Dismissal fails to reference Applicant's Amendment submitted on May 9, 2013, the Order inaccurately summarizes expert witness Ron Guerette's testimony and improperly finds his testimony not credible, the Order improperly relies upon testimony of the Assistant Solicitor, and the Order briefly discusses the issue of "Failure to File a Motion for Reconsideration" without addressing Applicant's request for specific relief.

Applicant's Amendment was reviewed by the Court, and the Court considers that expert witnesses, like lay witnesses, have varying degrees of credibility. The transcript of record was thoroughly reviewed, and sufficient notes were made at the PCR Hearing. After careful consideration of the record in this case and the arguments of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Applicant's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about October 16, 2013. Pursuant to Rule 59(f), the Court is

of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

November 23, 2013
Pickens, South Carolina

Honorable G. Edward Welmaker
Judge, Thirteenth Judicial Circuit

292

ARREST WARRANT

K-617708

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Rock Hill Municipal Court

FILED-RECEIVED 2010 OCT 06 PM 3:27

THE STATE

against

Dytravis Laquan Hinton

Address:

Rock Hill, SC 29731-1706

Phone: SSN:

Sex: M Race: B Height: 5'11" Weight: 150

DL State: SC DL#:

DOB: Agency ORI#: SC0460300

Prosecuting Agency: Rock Hill Police Department

Prosecuting Officer: Tripp-P.

Offense: Attempted Murder 16-3-29

Offense Code:

Code/Ordinance Sec: 16-3-29

This Warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Dytravis Hinton on 9-30-10.

SBlair 3533

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

[illegible] MUNICIPAL JUDGE
[illegible] Black Street
[illegible] Hill, SC 29731-1706
[illegible]-5695

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Rock Hill Municipal Court)

Personally appeared before me the affiant Phil Dewey Tripp who being duly sworn deposes and says that defendant Dytravis Laquan Hinton did within this county and state on September 21, 2010 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court) in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Murder 16-3-29 3410

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Defendant Hinton on 09-21-2010 did willfully and unlawfully violate S.C. code of laws 16-3-29 Attempted Murder by shooting Scott Thomas with a pistol during the commission of an Attempt Armed Robbery and Thomas did suffer great bodily injuries at the scene. Victim Thomas was transported to CMC in critical condition. Victim Thomas remains in critical condition. Incident occurred at 110 South Cherry Road which is within the city limits of Rock Hill, S.C.

Police Investigation

Recovery of Evidence

Sworn Witness Statement

Signature of Affiant

Affiant's Address 120 E. Black Street
Rock Hill, SC 29731-1706

Affiant's Telephone 803-329-7205

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Rock Hill Municipal Court)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on September 21, 2010 defendant Dytravis Laquan Hinton did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: Attempted Murder 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 09/30/2010

_____ (L.S.)

Signature of Issuing Judge

Judge Code: 1236

Judge's Address 120 E. Black Street
Rock Hill, SC 29731-1706

Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

K-617708 Iref #: 100821097.

293

WITNESSES

HPD / Tripp

ARREST WARRANT NUMBER

K617708

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS46- 01907

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16, TERM 2011

THE STATE

vs.

DYTAVIS LAQUAN HINTON

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Dytavis Hinton
Defendant

I Dytavis L. Hinton
hereby appear in my own proper person and plea guilty to the within indictment or to

as charged

X Dytavis Hinton
Defendant

Witness:

Regina Y. Rutledge
C.C.C. PLS. AND G.S. Ct. Spec.

294

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath:

ATTEMPTED MURDER

Dytavis Laquan Hinton did in York County on or about September 21, 2010, feloniously, willfully and with malice aforethought, either express or implied, attempt to kill Scott Lee Thomas by means of shooting him. The attempted murder was done with the intent to kill Scott Lee Thomas, all in violation of Section 16-3-0029 *Code of Laws of South Carolina* (1976, 2010), as amended. This occurring in the mobile home of the victim while in the parking lot at Road in the City of Rock Hill, South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Willy Thompson
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF York Jail)
VS.)
Dytavis Laquan Hinton)
AKA:)
Race: B Sex: M Age: 23)
DOB: SS#:)
Address:)
City,State,Zip: Rock Hill, SC 29731)
DL#: SID#: SC 01690473)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS46-01907
A/W#: K617708
Date of Offense: 9/21/2010
S.C. Code § : 16-03-0029
CDR Code #: 3410

ORIGINAL

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒PLEADS
TO: Murder / Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☒Defendant Waives Presentment to Grand Jury. YDH (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Willy Thompson 65118 X Dytavis Hinton Harvey Dest 11871
Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☐ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 20 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ ~~CONCURRENT~~ or ☐ CONSECUTIVE to sentence on: _____ _____
☒ ~~The~~ Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 286 DAYS
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is ~~unlawful for a person~~ convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ ~~50~~-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Shirley Broome
Presiding Judge G. Thomas Cooper
Judge Code: 2126
Sentence Date: 7-12-11

SCCA/217 (03/2011)

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

ARREST WARRANT

K-617709

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

FILED-RECD
2010 OCT -6 PM 3:27
YORK COUNTY, SC

THE STATE
against

Dytavis Laquan Hinton

Address:
Rock Hill, SC 29731-1706

Phone: SSN:
Sex: M Race: B Height: 5'11" Weight: 150
DL State: SC DL#:
DOB: Agency ORI#: SC0460300
Prosecuting Agency: Rock Hill Police Department
Prosecuting Officer: Tripp-P.
Offense: Burglary 1st 16-11-311
Offense Code:
Code/Ordinance Sec: 16-11-311

This Warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Dytravis Hinton on 9-30-10.

SBlair 3533
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
[illegible] HODLA, MUNICIPAL JUDGE
[illegible] E. Black Street
[illegible] Hill, SC 29731-1706
[illegible]-5695

296

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Rock Hill Municipal Court

AFFIDAVIT

ENTERED

Personally appeared before me the affiant Phil Henry Tripp who being duly sworn deposes and says that defendant Dytavis Laquan Hinton within this county and state on September 21, 2010 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court) in the following particulars:

DESCRIPTION OF OFFENSE: Burglary 1st 16-11-311 0079

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Defendant Hinton on 09-21-2010 did willfully and unlawfully violate S.C. code of laws 16-11-311 Burglary 1st by entering the victim's 2004 Hurricane House Recreational motor home via the front front door without consent or permission. Once inside the motor home, defendant attempted to rob the victims of their moneies while armed with a pistol. One victim did suffer gunshot wounds resulting in great bodily injuries at the scene as a result of the attempted armed robbery. Incident occurred at 116 South Cherry Road which is within the city limits of Rock Hill, S.C.

Police Investigation
Recovery of Evidence
Sworn Witness Statement

Signature of Affiant

Affiant's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Affiant's Telephone 803-329-7205

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Rock Hill Municipal Court

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on September 21, 2010 defendant Dytavis Laquan Hinton did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: Burglary 1st 16-11-311

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 09/29/2010

D Williams (L.S.)
Signature of Issuing Judge
Judge Code: 6316

Judge's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

K-617709 Zref #: 1009010974

297

WITNESSES

IPD / Tripp

ARREST WARRANT NUMBER

K617709

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-46- 01908

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16, TERM 2011

THE STATE

vs.

DYTAVIS LAQUAN HINTON

Indictment for

BURGLARY FIRST DEGREE

SC Code: 16-11-311
CDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Dytavis Hinton
Defendant

I Dytavis L. Hinton hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

Y Dytavis Hinton
Defendant

Witness:

Regina L Rutledge
C.C.O. PLS. AND G.S. Ct. Spec.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath:

BURGLARY FIRST DEGREE

Dytavis Laquan Hinton, did in York County on or about September 21, 2010, willfully and unlawfully enter the mobile home dwelling of Scott Lee Thomas while located in the parking lot at _____ Road in the City of Rock Hill, South Carolina. Dytavis Laquan Hinton entered without consent and with the intent to commit a crime therein. The entering occurred in the nighttime, the defendant caused physical injury to Scott Lee Thomas who was not a participant in the crime resulting in serious bodily injury to Mr. Thomas, and the Defendant was armed with a deadly weapon. All in violation of Section 16-11-311, *Code of Laws of South Carolina* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Willy Thompson
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF York Jail)
VS.)
Dytavis Laquan Hinton)
AKA:)
Race: B Sex: M Age: 23)
DOB: SS#:)
Address:)
City,State,Zip: Rock Hill, SC 29731)
DL#: SID#: SC 01690473)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS46-01908
A/W#: K617709
Date of Offense: 9/21/2010
S.C. Code § : 16-11-0311
CDR Code #: 0079

ORIGINAL

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. DH (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Walker Thompson 65118 X Dytavis Hinton Harry DeLa 11871
Thompson, Walker W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ ~~State~~ Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 286 DAYS
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is ~~unlawful for a~~ person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Shirley Broome

Presiding Judge G. [signature]
Judge Code: 2126
Sentence Date: 7.12.11

SCCA/217 (03/2011)

ARREST WARRANT

K-617710

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

FILED-RECEIVED
2010 OCT 6 PM 3:27
YORK COUNTY

THE STATE
against

Dytavis Lagnan Hinton

Address:
Rock Hill, SC 29731-1706

Phone: SSN:
Sex: M Race: B Height: 5'11" Weight: 150
DL State: SC DL#:
DOB: Agency ORI#: SC0460300
Prosecuting Agency: Rock Hill Police Department
Prosecuting Officer: Tripp-D.
Offense: Attempted Armed Robbery 16-11-330
Offense Code:
Code/Ordinance Sec: 16-11-330

This Warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Dytravis Hinton on 9-30-10

SBlair 3533
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JANE MODLA, MUNICIPAL JUDGE
120 E. Black Street
Rock Hill, SC 29731-1706
329-5695

300

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Rock Hill Municipal Court

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

Personally appeared before me the affiant Phil Dewey Tripp who being duly sworn deposes and says that defendant Dytavis Lagnan Hinton did within this county and state on September 21, 2010 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court) in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Armed Robbery 16-11-330 0026

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Defendant Hinton on 09-21-2010 did willfully and unlawfully violate S.C. code of laws 16-11-330 Attempted Armed Robbery by attempting to rob the victim Matt Thomas of his money while armed with a pistol. The victim did suffer gunshot wounds resulting in great bodily injuries at the scene as a result of the attempted armed robbery. Incident occurred at 110 South Cherry Road which is within the city limits of Rock Hill, S.C.
Police Investigation
Recovery of Evidence
Sworn Witness Statement

Signature of Affiant

Affiant's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Affiant's Telephone 803-329-7205

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Rock Hill Municipal Court

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on September 21, 2010 defendant Dytavis Lagnan Hinton did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: Attempted Armed Robbery 16-11-330

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 09/29/2010

_____ (L.S.)
Signature of Issuing Judge
Judge Code: 6316

Judge's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

K-617710 Xref #: 1000218973

301

WITNESSES

RHPD / Tripp

ARREST WARRANT NUMBER

K617710

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-46- 01909

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16 , TERM 2011

THE STATE

vs.

DYTAVIS LAQUAN HINTON

Indictment for

COUNT 1 – ATTEMPTED ARMED ROBBERY
SC Code: § 16-11-0330
CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Y Dytavis Hinton
Defendant

I Dytavis L. Hinton
hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

Y Dytavis Hinton
Defendant

Witness:

Regina Y Rutledge
C.C.C. PLS. AND G.S. Ct Spec

302

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

Dytavis Laquan Hinton did in York County on or about September 21, 2010, feloniously attempt to rob Scott Lee Thomas of currency or other items of value while at or near [redacted] Road in the City of Rock Hill, South Carolina. Dytavis Laquan Hinton did attempt this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Willy Thompson
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF York Jail)
VS.)
Dytavis Laquan Hinton)
AKA:)
Race: B Sex: M Age: 23)
DOB: SS#)
Address:)
City,State,Zip: Rock Hill, SC 29731)
DL#: SID#: SC 01690473)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS46-01909
A/W#: K617710
Date of Offense: 9/21/2010
S.C. Code § : 16-11-0330(B)
CDR Code #: 0026

ORIGINAL

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Robbery / Attempted armed, or allegedly armed, robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. DLH (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Willy Thompson 6518 Dytavis Hinton Henry Dee 11871
Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 286 DAYS
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Shirley Broome

Presiding Judge G. Thomas Cooney
Judge Code: 2120
Sentence Date: 7-12-11

SCCA/217 (03/2011)

WITNESSES

RHPD / Tripp

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

304

DOCKET NO. 2011-GS-46- 01910

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16, TERM 2011

THE STATE

vs.

DYTAVIS LAQUAN HINTON

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code:0049

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Dytavis Hinton
Defendant

I Dytavis L. Hinton hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

Y Dytavis Hinton
Defendant

Witness:

Regina Y. Rutledge
C.C.G. PLS. AND G.S. Ct. Spec.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

Dytavis Laquan Hinton did in York County on or about September 21, 2010, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have a tacit understanding with Demorrio Demarcus Burris for the purpose of committing Burglary 1st Degree and Armed Robbery. The crimes occurred while at or near ..... Road in the City of Rock Hill, South Carolina, all in violation of Section 16-17-410, *Code of Laws of South Carolina, 1976*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Willy Thompson
DEPUTY SOLICITOR

306

STATE OF SOUTH CAROLINA)
COUNTY OF York Jail)
VS.)
Dytavis Laquan Hinton)
AKA:)
Race: B Sex: M Age: 23)
DOB: SS#:)
Address:)
City,State,Zip: Rock Hill, SC 29731)
DL#: SID#: SC 01690473)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS46-01910
A/W#: DI11001910
Date of Offense: 9/21/2010
S.C. Code § : 16-17-0410
CDR Code #: 0049

ORIGINAL

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defi

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. DH (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Willy Thompson 65118 Dytavis Hinton Henry Dost 11871
Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 286 DAYS
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Shirley Broome
Presiding Judge G. Thomas Cooney
Judge Code: 2126
Sentence Date: 7.12.11

SCCA/217 (03/2011)