ORIGINAL

VOL. II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM KERSHAW COUNTY

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANK TERRANCE SINGLETON, III,

APPELLANT

APPELLATE CASE NO. 2014-002004

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 14 (PHOTOGRAPH)
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STATE'S EXHIBIT NO. 77 (PHOTOGRAPH)

to hit Mr. Sullivan in the head. See any injuries I caused is a result of someone else told me to or it was an accident, or this or that, it wasn't me. Well, he distances hisself.

Folks, there is, as the saying goes, no robber among thieves, how much less so is there are among burglars, among robbers and among murderers, because that's who you've heard from as far as evidence linking Frank Singleton to this crime. There is no honor among those people. Why would do they do this to Frank? I haven't the slightest idea. I know that, we all know, life on the streets could be a down and dirty proposition. Anything can be a reason. Everything can be a reason. I don't have to prove there is a reason. I don't have to prove a single solitary thing. At the start of this trial, Frank Singleton is presumed innocent. At this point in time, he is presumed innocent. When, His Honor, charges you the law he is presumed innocent. When y'all go back to consider your verdict, he is presumed innocent. He remains presumed innocent unless you all decide otherwise. That's the law of this country. The one that separates this land from almost any other place on the face of the earth. The government with all the resources they have, can't swab for DNA. The government who can bring whatever they want bear in this case. They brought Sled in on this case. They

could bring the FBI if they wanted to. The government must stripe the robe of innocence from Frank Singleton and to your all satisfaction. Not her satisfaction, not my satisfaction, to the twelve of you, satisfaction. That's called the burden of proof. She welcomes the burden of proof. They always welcome the burden of proof. They don't have any choice in the matter. The burden of proof is on them. To prove guilt -- to prove guilt beyond a reasonable doubt. Now, you define it anyway you want to define reasonable doubt here's what reasonable doubt is. It is the highest burden of proof anywhere in the law of this land. You have a wreck and you have a trial over, you know, who did what to whom and it's by the preponderance of the evidence. It must weigh a little more to one side than the other, you decide that side. That's not here. You have to understand, all clear and convincing evidence, it's kinda middle ground. Now, the middle ground of evidence is clear and convincing. That's not the burden of proof beyond a reasonable doubt.

Beyond a reasonable doubt is the highest standard known to our law. Nothing, right. It's all -- any and all doubts must be removed from your mind. What's a doubt? Jerome Lewis is a doubt. What's a doubt? Randy Lewis is a doubt. What's a doubt? Will Smith, Ill Will, is a doubt. And what's a doubt? Diablo, the devil, Darrien Jackson, is

a doubt. Anyone of which is sufficient for y'all to do what you should do and that's return a verdict of not guilty.

Now, the law says without the jury that y'all have no friends to reward. Ya'll have no enemies to punish. You are to judge the case on facts as you find them and the law as, His Honor, charges to you and then you're to return a verdict that speaks the truth, that's what the word means, *vere* the truth, *dictum*, which is speak, combine together, Latin, is *veredictum* to speak the truth, okay? That's all I'm asking that you do. Think about the quality of the evidence. You're the judges of the credibility of the witnessed that they've given that could put Frank into this, at all. You're the judge of their credibility. If they're not credible I submit that you should find them not credible and you should return the verdicts which speak the truth that would be not guilty of murder, not guilty of burglary, not guilty of armed robbery and not guilty of possession of a weapon during a violent crime, please do so.

Thank you.

JURY CHARGE:

THE COURT: Ladies and gentlemen, it is now my duty as the trial judge under the constitution of this State to charge and instruct you on the law applicable to

this case. It is your duty to accept and apply the law as I will now state it to you.

Furthermore, it is your exclusive duty to decided all the issues of fact in this case, and to determine the effect, value, weight, and truth of the evidence. Now, both the State and the Defendant have a right to expect that you will carefully consider and evaluate the evidence and apply the law of this case to it, so that in the end- both the Sate of South Carolina and the Defendant will receive a fair and impartial trial. I want you to understand that when I use the word Defendant, I refer to Mr. Frank Terrance Singleton, III. The charges alleged in the indictment are: Murder; Burglary 1st; Armed Robbery; Possession of a weapon during the commission, or attempt to commit, a violent crime.

Now, to these charges, the Defendant has entered a plea of not guilty. This plea of not guilty places the burden of proof on the State to prove the guilt of the Defendant to you, the jury, beyond a reasonable doubt.

Now, As I mentioned above, the indictment in this case alleges four (4) separate and distinct offenses against the Defendant. You must decide each charge separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other charge. The Defendant may be convicted or acquitted on any or all of the offenses

charged. You will be asked to write a separate verdict of guilty or not guilty for each charge alleged in the indictment.

I remind you that the fact the Defendant was arrested, charged and indicted in this case, is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. The indictment is simply the formal written instrument which contains the charges made against the Defendant. It is the formal document by which this case is brought into this Court.

It is vital ladies and gentlemen, to understand that the Defendant is presumed under the law to be innocent of these charges. The Defendant has no obligation to prove his innocence. It is a fundamental rule of our law that a Defendant, irrespective of the seriousness of the charges against him, is always presumed innocent of the crimes for which he is charged, unless and until his guilt has been proven by evidence that satisfies you, the jury, beyond a reasonable doubt. The presumption of innocence is not a mere legal theory or a legal phrase. The presumption of innocence is very important and you need to understand that this presumption accompanies the Defendant from the time of his arrest and appearance in this court and continues with the Defendant even after you retire to the jury room to

deliberate. In other words, the Defendant receives the benefit of the presumption of innocence until the very end of this trail, when you, the jury, will deliberate upon the evidence and decide whether the State has proven his guilt beyond a reasonable doubt.

Now, what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now, there are very few things in this world that we know with absolute certainty, so even in criminal cases the law does not require proof that overcomes every possible doubt.

However, if, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Jurors please understand that reasonable doubt may arise from evidence which has been presented in the case or from the lack of evidence in this case. It is your responsibility to determine whether or not reasonable doubt exists as to the guilt of this Defendant.

I charge you that the Defendant is entitled to every reasonable doubt arising in the whole case. If, upon any issues of fact essential to conviction and a verdict of guilty, you have a reasonable doubt as to how that issues should be resolved it would be your duty to resolve that reasonable doubt in favor of the Defendant.

Now, during this trial, ladies and gentlemen, you and I have had separate duties to perform. As the trial Judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule upon the admissibility of the evidence offered during the process of this trial. In that regard, you are to consider only the competent evidence before you, and you are to disregard from your mind any testimony ordered stricken from the record of this case during the progress of the trial, if there was any. And you are to consider only the testimony which has been presented from this witness stand, together with any exhibits admitted into the record of this case and any stipulations of counsel made into the record.

Furthermore, I have the additional duty to charge you on the applicable law of this case and in that regard, I am the sole Judge of the law of this case. It is your duty to accept and apply the law as I state it to you. If you have any preconceived ideas as to what the law is, or what the law ought to be, and it does not agree with what I tell you

the law is - you obligated under your oath to abandon these preconceptions, because you are sworn to accept the law precisely as I state it to you.

Now, in this trial, ladies and gentlemen, you are the sole and exclusive Judge of the facts, and I am the Judge of the law. Do not infer that I have any opinion about the facts in this case from anything that I have said during the course of the this trial in ruling upon the admissibility of evidence or otherwise, or from anything that I may say during the course of this charge to you. In this regard, the law simply does not permit me to have an opinion about the facts. As jurors, it is your duty alone to determine the effect, value, weight, and truth of the evidence presented during the course of this trial.

In determining, ladies and gentlemen, what the facts are in this case are, you must judge the credibility, which simply means the believability, of the witnesses and the value of weight to be given to their testimony. You alone must decide the force, effect, and truth of the testimony. In making this decision there are many things that you may, and should, take into consideration, such as:

(1) The appearance and manner of the witness on the stand - a characteristic often referred to as the demeanor of the witness.

(2) Was the witness forthright or hesitant?

(3) Was the witness' testimony consistent or did it contain discrepancies?

(4) What was the ability of the witness to know the facts about which he or she testified?

(5) Did the witness have a cause or reason to be biased and prejudiced in favor of the testimony that he or she gave?

(6) Was the testimony of the witness corroborated or made stronger by other testimony and evidence or was it made weaker or impeached by such other testimony and evidence?

As jurors please understand that you have the right to believe a small portion of a witness' testimony and discard the larger portion or vice versa. You may believe all of a witness' testimony or none. You may believe the testimony of a single witness against that of many witnesses or the other way around.

In exercising your mental processes and attempting to decide the truth, the law simply requires that you exercise your good judgment, your common sense, your sense of logic and reason, and your experiences in life. You then apply these attributes to the evidence and apply the law as I state it to you, and thus arrive at a verdict.

Now, there are two type of evidence which are generally presented during a trail, direct evidence and

circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction, ladies and gentlemen, between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Now, there has been evidence presented during the course of this trail that witnesses have made prior statements which are not consistent with the witnesses' present testimony. You may use this evidence to decide you believe, whether to believe, the witness. You may also use evidence of the earlier contradictory statements to

determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

You have heard testimony from individuals who had a prior criminal records. A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness' believability.

Remember, you are the sole Judge of the facts in the case and of the believability of any and all of the witnesses.

In this case you also heard the testimony of individuals that were qualified as expert witnesses. The rules of evidence, ladies and gentlemen, ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call "expert witnesses". A witness who, by education and experience, has become and expert in some art, science, profession, or

calling may state an opinion as to a relevant and material matter, in which the witness claims to be an expert, and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight that you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Furthermore, an expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

Now, ladies and gentlemen, I instruct you and emphasize to you that the fact that the Defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the gilt or the innocence of the Defendant. It must not be considered by you in any manner whatsoever. A Defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you

are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that this Defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have state to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, ladies and gentlemen, if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequences of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of a larceny or stealing of farm equipment, valued at more than $2,000.00, when two go to the scene and only one drives the equipment away. If the two, excuse me, if two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or, as it is sometimes said, "the hand of one is the hand of all".

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the

crime is committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constrictive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element, for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the

result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

Furthermore, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. Now, there is no way to prove intent, ladies and gentlemen, to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring -- requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

Now, the Defendant, ladies and gentlemen, is charged with the murder of Mr. Robert Mackey. The State must prove beyond a reasonable doubt that the Defendant killed Mr. Robert Mackey with malice aforethought.

Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be express or inferred. These terms, "express" and "inferred" do not mean different kinds

of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished; for example, lying and wait for a person or any other acts of preparation going to show that the deed was within the Defendant's mind would be express malice.

Malice may be inferred from conduct showing a total disregard for human life. The law says if one intentionally kills another during the commission of a felony, the implication of malice may arise. If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it the weight as you determine it should receive.

Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

The following are examples of instruments which may be deadly weapons: A pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling shot, metal knuckles, a razor, gasoline, a fire bomb or molotov cocktail, and lighter fluid. A gun may be a deadly weapon even if it is not operating.

Proximate cause, ladies and gentlemen, in this case are where a person inflicts a fatal injury on another person and that other person dies at a later time, you must be convinced beyond a reasonable doubt that the infliction of the injury was the proximate cause of the victim's death.

Proximate cause is the direct cause; it is the immediate cause; it is the efficient cause; it is that cause without which the death of the victim would not have resulted. There must be a chain of causation from the time of the injury inflicted by the Defendant until the time of the victim's death. Proximate cause does not necessarily mean that it occurred immediately prior to the death.

There may be more than one proximate cause. The acts of two or more persons may combine together to be a proximate cause of the death of a person. The Defendant's act may be regarded as the proximate cause if it is a contributing cause of the death of the victim. The fact that other causes also contributed to the death of the

victim does not relieve the Defendant from responsibility. The Defendant's act need not to be the sole cause of the death, but must be a proximate cause contributing to the death of the victim.

Now, the Defendant is charged with first degree burglary. The State must first prove beyond a reasonable doubt that the Defendant entered a dwelling without consent.

A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a swelling that has never been occupied cannot be considered a dwelling for purposes of burlgary. But a building is a dwelling even if the residents are temporarily absent from the building.

Now, in order to prove that the Defendant entered the dwelling, the State does not have to show that the Defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand or foot, or even an instrument, such as a hook or other instrument. In addition, the State does not have to prove that force was used to gain entry.

If a person enters a building by using deception, artifice, trick, or misrepresentation to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary.

On the other, if the Defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed.

Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove beyond a reasonable doubt that:

That when entering, while in the dwelling, or when fleeing:

(1) the Defendant or any accomplice was armed with a deadly weapon or explosive. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. A deadly weapon is as I have explained to you earlier in this charge, or

(2) the Defendant causes physical injury to a person who is not a participant in the crime; or

(3) the Defendant uses or threatens the use of a dangerous instrument; or

(4) the Defendant displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm.

The Defendant, ladies and gentlemen, is also charged with armed robbery. In order to prove this offense, the state must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person.

Property is in the presence of a person if it is within the person's reach, inspection, observation, or control so that the person could, if not overcome with violence or prevented by fear, keep possession of the property.

The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use. The slightest removal of the property or the complete possession of the property, even for an instant, by the Defendant is sufficient to show a taking and carrying away of the property.

The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

Finally, the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon is as I have explained to you earlier in this charge.

The Defendant, finally, ladies and gentlemen, is charged with possession of a weapon during the commission of, or attempt to commit, a violent crime. The State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime.

A firearm means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, is designed to, or may be readily converted to expel a projectile.

In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the Defendant guilty of either committing a violent crime or attempting to commit a violent crime.

Murder, first degree burglary, and armed robbery are all violent crimes.

The State must prove beyond a reasonable doubt that the weapon furthered, advanced, or helped in the commission of the crime.

Now, ladies and gentlemen, I am now drawing near the end of my charge and I want you to clearly understand that you are not partisans or advocates for the State of South Carolina or the Defendant. It is your duty by your joint deliberations, to determine the truth in this case, giving to the Defendant the benefit of every reasonable doubt on each and every issue. Then, to the facts which you determine to be true, you should take and apply the law which has been given to you by this Court and thus arrive at a verdict which speaks the truth in this case. In fact, the word "verdict", which has a Latin derivative, means "a true saying." Thus, when you have accomplished these responsibilities you will have satisfied your oath as jurors and you will have discharged your duty to this Court.

Now, once you retire to the jury room, ladies and gentlemen, the bailiff will give the verdict form to the forelady. When you, the jury, arrive at a verdict as to the offense, as to each offense charged in this case, the forelady will select the verdict as to the charge on the verdict form. If the State has failed to prove the guilt of the Defendant beyond a reasonable doubt, your verdict will be - "not guilty." Likewise, if the State has proven the guilt of the Defendant beyond a reasonable doubt, your verdict will be - "guilty." Once a decision has been made,

the forelady will check whichever choice is the verdict of the jury as to the charge.

The verdict, ladies and gentlemen, that you render in this case must be the verdict of each and every juror - it must be your unanimous verdict. All twelve jurors must agree on the verdict which you authorize the forelady to write for the jury.

Now, ladies and gentlemen, I want you to further understand that the order in which the choices of verdict appear on the verdict form are not suggestive of any verdict on the part of this Court. The verdict in this case is to be determined by you, the jury, not the Court.

Furthermore, ladies and gentlemen, please understand that even though I will give the verdict form to the forelady, it is not her verdict alone, it is the verdict of all twelve of you and I emphasize again that it must be your unanimous.

I am also going to give you a copy of these instructions in written form. During your deliberations, you may refer to the instructions to guide your decision-making. You must consider the instructions as a whole and not follow some and ignore others. Madam forelady, please return the instructions to the Court at the time your verdict is rendered.

I am now going to ask you all to retire to the jury room, but before I let you retire to the jury room, let me ask you these questions. Has everybody on the jury feeling okay? Is anybody not feeling well?

(Whereupon, there was no response from a juror indicating otherwise)

All right. Now, when you step to the jury room do not begin your deliberations at this time. The law requires that I consult with the attorneys to make sure that I have not left anything out of these instructions. And after I have spoken with the attorneys, the bailiff will bring in a copy of my instructions to you along with a verdict form and the items of evidence and instruct you to begin your deliberations. Now during your deliberations there will also be, should be pen and water in the jury room. Should you have any questions during your deliberations, Madam Forelady, it will be your responsibility to write that question out, sign and date, whatever the question is, knock on the door and let the bailiff that you have a question. Give it to him and he'll get it to me and I will answer it however the Court deems appropriate. All right.

Furthermore, once you all have reached a verdict as to each count you are sign and date the verdict form, Madam Forelady after you have selected the verdict, the unanimous verdict of the jury, knock on the door, let the bailiff

that you all have reached a verdict and we will get you back into the courtroom as quickly as possible.

At this time I am going to ask you to step to the jury room but do not, do not begin your deliberations until you're instructed to do so.

(Whereupon, the jury exist the courtroom at 12:27 p.m.)

THE COURT: Officer Hudson, are the clear?

OFFICERS HUDSON: Yes, they are.

THE COURT: Any objection or exception to the charge by the State?

MS. McDUFFIE: No, Your Honor.

THE COURT: Defense counsel?

MR. STRICKER: Your Honor, consistent with my objections in the pre-trial conference, I'd except to your charge on the felony murder and your charge on infer malice on the use of a deadly weapon.

THE COURT: So noted for the record -- so noted for the record. If the lawyers would come forward. Have you all looked at the items of evidence to make sure everything is there?

MS. McDUFFIE: Yes, Your Honor.

THE COURT: Mr. Strickler?

MR. STRICKER: We'll do that now, Your Honor.

(Whereupon, the attorneys are reviewing all documents

THE COURT: I will remind everyone in the court to keep your emotions in checks whatever the verdict may be. Failure to do so could result in your being held in contempt of court, a fine, resulting in a fine and/or a period of incarcerations. If you feel as though you can not keep your emotions in check now is your time to leave the courtroom. Bring the jury please, sir.

(Whereupon, the jury enters the courtroom at 4:06 p.m.)

THE CLERK: Madam Forelady, has the jury reached a verdict?

FORELADY: Yes, ma'am, we have.

THE COURT: You may publish the verdict.

THE CLERK: Thank you, Your Honor. This is the State of South Carolina, County of Kershaw. The State of South Carolina versus Frank Terrance Singleton, III, the Defendant on indictments 2012-GS-28-1459; 50; 51; and 52. As to the charge of murder of Mr. Robert Mackey, we the jury unanimously find the Defendant, Frank Terrance Singleton, III, guilty. As to the charge of armed robbery, we the jury unanimously find the Defendant, Frank Terrance Singleton, III, guilty. As to the charge of burglary first degree, we the jury unanimously find the Defendant, Frank Terrance Singleton, III, guilty. As to the charge of possession of a weapon during a commission of a violent

crime, we the jury unanimously find the Defendant, Frank Terrance Singleton, III, guilty. It is signed by Jennifer Tarkas and dated today as 9/11/14.

Madam Forelady, ladies and gentlemen of the jury if this is your verdict please signify by raising your right hand?

(Whereupon, all the jurors raises their right hands)

THE CLERK: Thank you.

THE COURT: Anything from the State at this time?

MS. McDUFFIE: No, Your Honor.

THE COURT: Anything from the Defense counsel?

MR. STRICKER: We'd asked to poll the jury, Your Honor.

THE COURT: Madam Clerk, poll the jury, please?

THE CLERK: Thank you, Your Honor. Number 78, Taylor R. Greer, was this your verdict?

JUROR NUMBER 78: Yes, ma'am.

THE CLERK: Is this still your verdict?

JUROR NUMBER 78: Yes, ma'am.

THE CLERK: Thank you. Number 157, Kay S. Rush, was this your verdict?

JUROR NUMBER 157: Yes, ma'am.

THE CLERK: Is this still your verdict?

JUROR NUMBER 157: Yes, ma'am.

THE CLERK: Thank you. Number 36, Christopher R.

THE COURT: Yes, ma'am. Mr. Strickler? Would you approach, please.

(Whereupon, a bench conference is held)

THE COURT: All right. Is the State ready to proceed?

MS. McDUFFIE: The State's ready, Your Honor.

THE COURT: All right.

MR. STRICKER: If I may, Your Honor. I'm sorry. Prior to stating the sentencing?

THE COURT: Yes, sir.

MR. STRICKER: I need to, at this point, to move for a new trial from, Your Honor, referencing when previously stated the directed verdict motions. Without adding anything in addition to the basis as express there, other than to ask for additionally on the basis of my objections to your -- two objection to your charge to the jury which, obviously, came out on the directed verdict motions. So I'd ask that you go ahead and revisit your rulings in regard to my objections during the trial, my motions for directed verdict at the end of the State's case and at the end of Defense case. And upon revisiting I would ask that you direct a new trial, if granted in this case.

THE COURT: All right. Your previous objections

are so noted for the record and this Court's ruling as to those previous objections remain the same with regards -- what is the basis of your motion for a new trial? Insufficiency of the evidence?

MR. STRICKER: I would just ask that you revisit your rulings on the previous objections I made and to include the two objections to your charge to the jury and my motions for directed verdict. Reconsider your rulings and reverse your ---

THE COURT: Well, this Court stands by it's previous rulings but your objections are so noted for the record -- so noted.

MR. STRICKER: Thank you, sir.

THE COURT: Yes, sir. And your request for a new trial is hereby denied?

MR. STRICKER: Yes, sir. Thank you.

THE COURT: All right. Ms. McDuffie, I will be happy to hear from you.

MS. McDUFFIE: Thank you, Your Honor. May it please the Court? Your Honor, as you are aware Mr. Singleton has a prior conviction for murder. Two counts of kidnapping, armed robbery and burglary in the first degree. Those stem from March 12, 2014 convictions. Your Honor, I believe it was March 10th the State called the trial of those cases -- we called the case for trial. At that point

in time, Mr. Singleton pled guilty before the Honorable Judge Hood and was sentenced to fifty (50) years in prison. On April 7, 2014, the State served both Mr. Singleton and his attorney, Jason Kirincich, with the State's notice of intention to seek a sentence of life without parol upon conviction. And if I may approach and hand the original of that to, Your Honor.

THE COURT: All right. Anything further?

MS. McDUFFIE: In addition, Mr. Singleton still has pending in Kershaw County, possession of a stolen vehicle, conspiracy, kidnapping, burglary in the first degree, armed robbery, possession of a weapon during the commission of a violent crime, another kidnapping, armed robbery and assault and battery by a mob, thrird degree, Your Honor.

THE COURT: All right. Other than the convictions of March of this year which he pled guilty to, what other prior record, if any, does he have?

MS. McDUFFIE: Your Honor, I don't believe that Mr. Singleton had a prior record before those convictions. They may have been one or two magistrate level charges, Your Honor.

THE COURT: All right. Does the family of the victim, any of those wish to say anything, if so I will be

happy to hear from them? They can stand at the end of this table.

MS. CAMPBELL: Your Honor, I've spoken with the family and I think they understand basically what the parameters are with us going forward here. They just wanted to thank the Court for bringing and end to this long journey for them. I think that's it, Your Honor.

THE COURT: All right. Mr. Strickler, I'll be happy to hear from you, sir.

MR. STRICKER: Yes, sir, very briefly. Obviously, there's nothing I can say to that would have any affect in Your Honor, as far as litigating punishment because punishment is dictated by under the notice that you've been provided. I would just note that Frank's parents have been here during this trial. They had to leave -- both of them -- they work and they had to leave to work but there not here at this point in time. As was stated to you he pleaded guilty in the Spring. He has to me, consistently maintained he is innocence as to these charges and I say that just to say that's been his consistent position. I have counseled him regarding his rights to appeal just for the record and I'll take care of initiating that the first of next week. That's all I have to say, Your Honor.

Thank you.

THE COURT: Thank you, Mr. Strickler. Mr. Kirincich or Mr. Singleton, anyone of you wish to say anything?

MR. KIRINCICH: Nothing, Your Honor. I think Mr. Strickler has covered everything from our office.

THE COURT: Mr. Singleton, anything you wish to say, sir? You don't have to and certainly don't want you to say anything that could effect in any way?

MR. SINGLETON: No, sir.

THE COURT: Okay. Is there any argument that Defense counsel was not properly served with the State's notice of intent to seek life without parol pursuant to Section 17-25-45?

MR. STRICKLER: I'll let Mr. Kirincich respond to that for, Your Honor.

MR. KIRINCICH: Your Honor, we have no objection. I don't remember specifically who from the solicitor's office, I think it was Ms. McDuffie came to court as she said in April. I was present with Mr. Singleton. They brought him over from the Department of Corrections. He had just been notified by Judge Hood that he was pleading the month before to the most serious charges, and he knew what that would mean if he picked up any more, Your Honor, at this point, we do not have any objection.

THE COURT: All right. Well, I do find that the

Defendant pursuant to Section 17-25-45, which requires that the Defense counsel along with the Defendant be served with notice of intent by the State to seek life without parol, pursuant to the statute has been properly served up the Defendant and as his counsel.

Therefore, the Court has no alternative -- no alternative ---

MR. STRICKLER: Yes, sir.

SENTENCING:

THE COURT: --- but to abide by the statute. On indictment 2012-GS-28-1449, possession of a weapon during a commission of a violent crime, the Defendant is hereby sentenced to Department of Corrections for a period of five (5) years.

On indictment, 2012-GS-28-1450, armed robbery, the Defendant is hereby sentenced to the Department of Corrections for a period of thirty (30) years.

On 2012-GS-28-1451, burglary, I as well as 1452, the Defendant is hereby sentenced to the Department of Corrections for the balance of his natural life.

Each of them to be consecutive.

Anything further from the State?

MS. McDUFFIE: Your Honor, may we approach?

THE COURT: Yes.

(Whereupon, a bench conference is held)

THE COURT: On 2012-GS-28-1449, possession of a weapon, the Defendant is sentenced to one day. Given credit for one day.

Anything further from the State?

MS. McDUFFIE: No, sir, Your Honor.

THE COURT: Defense counsel?

MR. STRICKER: No, sir. Thank you.

THE COURT: Thank you. I will conclude this matter.

Whereupon, court adjourns at 4.38 p.m.)

-- Volume IV of IV --

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions

D. Craig Brown, Circuit Court Judge

Case Nos. 2012-GS28-1449, 2012-GS28-1450, 2012-GS28-1451, 2012-GS28-1452

The State,.....Respondent,

v.

Frank Terrance Singleton, III,.....Appellant.

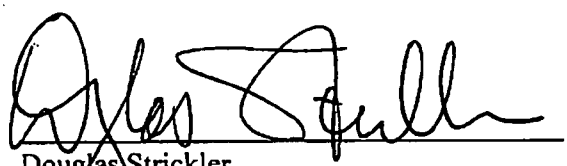
RECEIVED
SEP 22 2014
SC Court of Appeals

NOTICE OF APPEAL

Frank Terrance Singleton, III appeals his conviction and sentence in this case. The sentence was imposed by the Honorable D. Craig Brown on September 11, 2014.

2012-GS-28-1449 – Possession of a Weapon During a Crime of Violence – 1 day time served.
2012-GS-28-1450 – Armed Robbery – 30 years.
2012-GS-28-1451 – Burglary, 1st Degree – Life.
2012-GS-28-1452 – Murder – Life.
All sentences to run consecutive.

September 22, 2014



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Attorney for Appellant

Other Counsel of Record:
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions

D. Craig Brown, Circuit Court Judge

RECEIVED
SEP 22 2014
SC Court of Appeals

Case Nos. 2012-GS28-1449, 2012-GS28-1450, 2012-GS28-1451, 2012-GS28-1452

The State,.....Respondent,

v.

Frank Terrance Singleton, III,.....Appellant.

PROOF OF SERVICE

I hereby certify that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by delivering same this date to her office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201.

September 22, 2014

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Other Counsel of Record:
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Attorney for Respondent

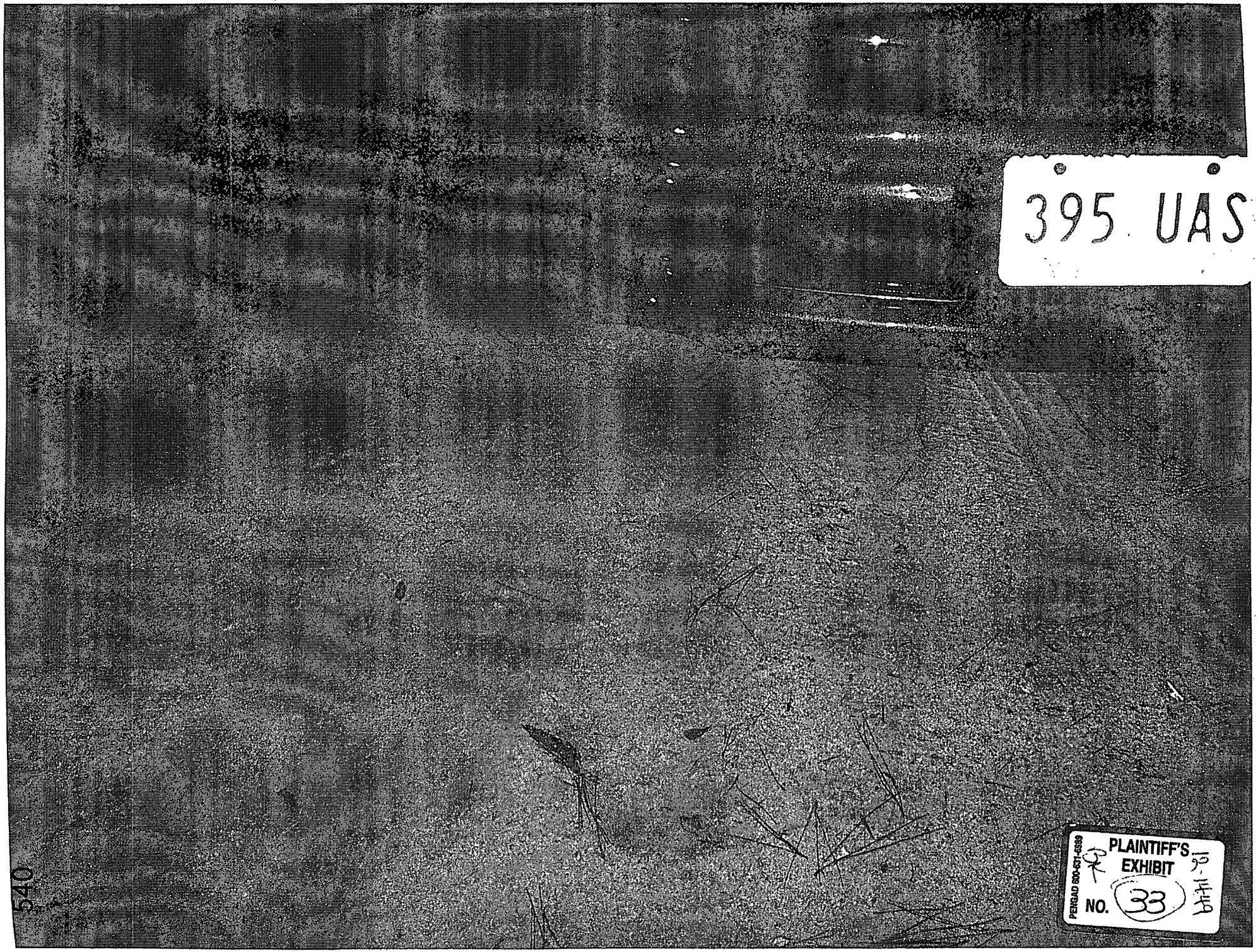
538

PLAINTIFF'S EXHIBIT NO. 14

PENRAD 800-631-6999

17-449


538
SHARP
CYBER-GEL
CYBER-GEL
BOSS
AUDIO SYSTEMS
PLAINTIFF'S
EXHIBIT
NO. 17
PENGAD 800-631-6989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12-1459
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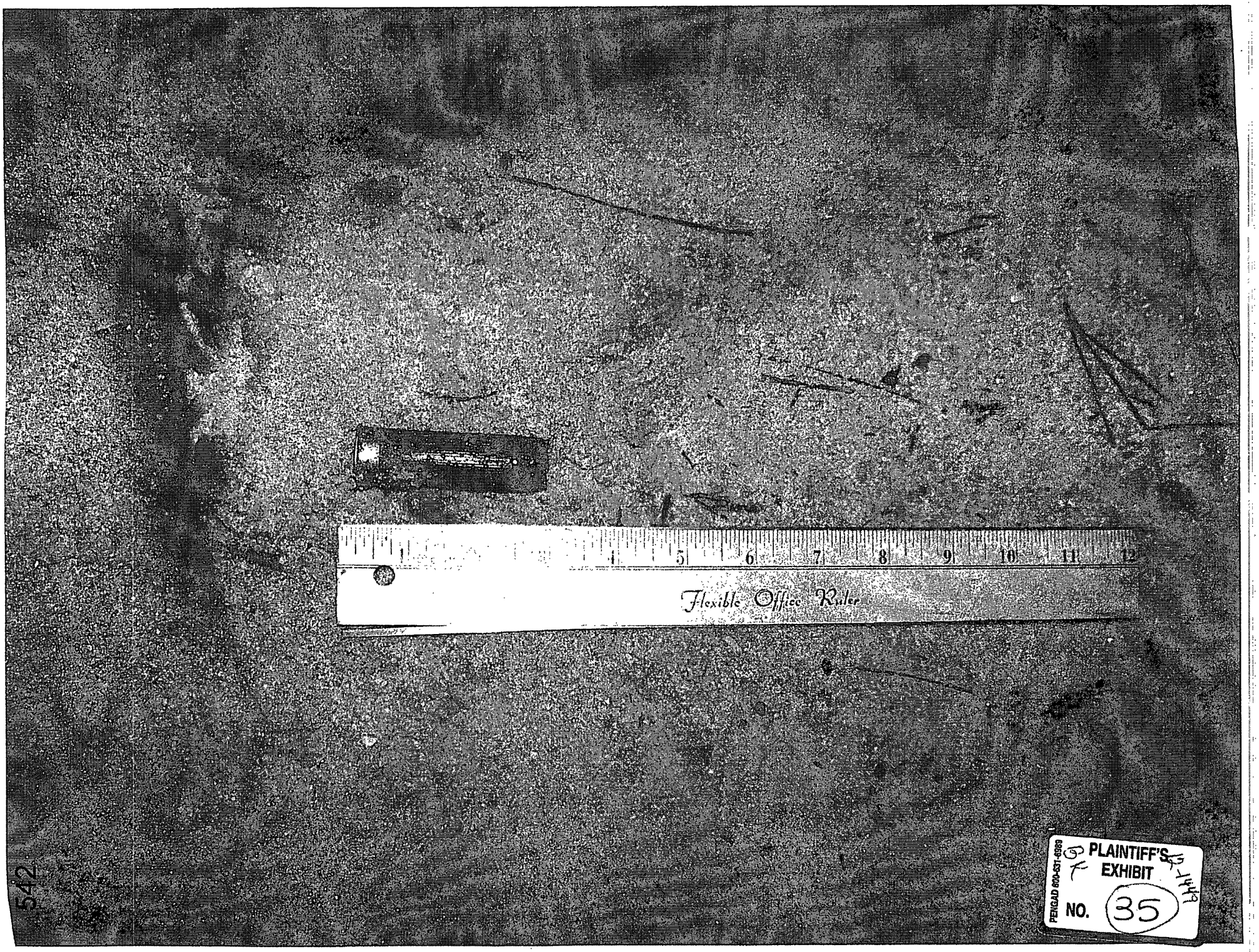
12-1444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PLAINTIFF'S EXHIBIT
NO. 35
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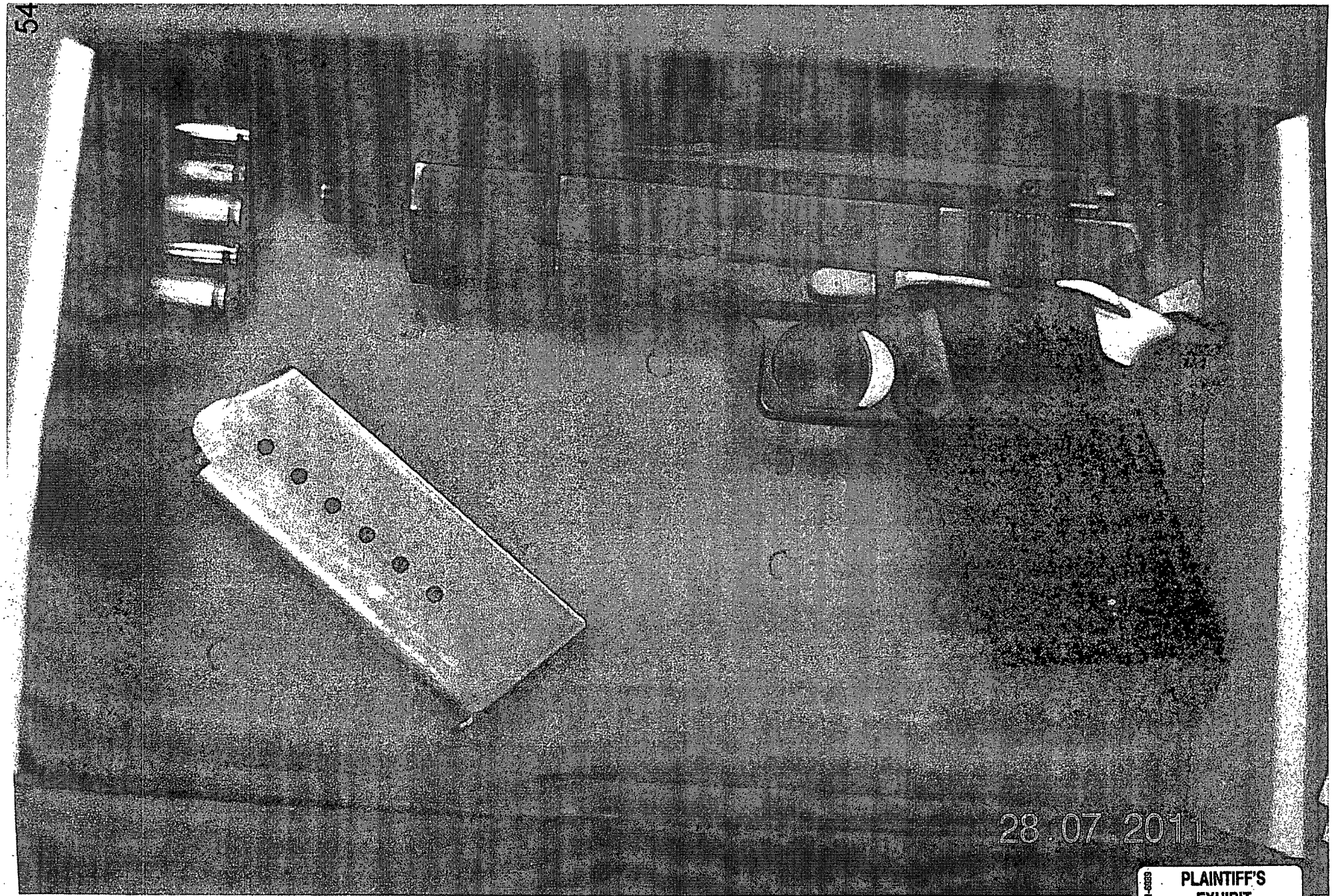

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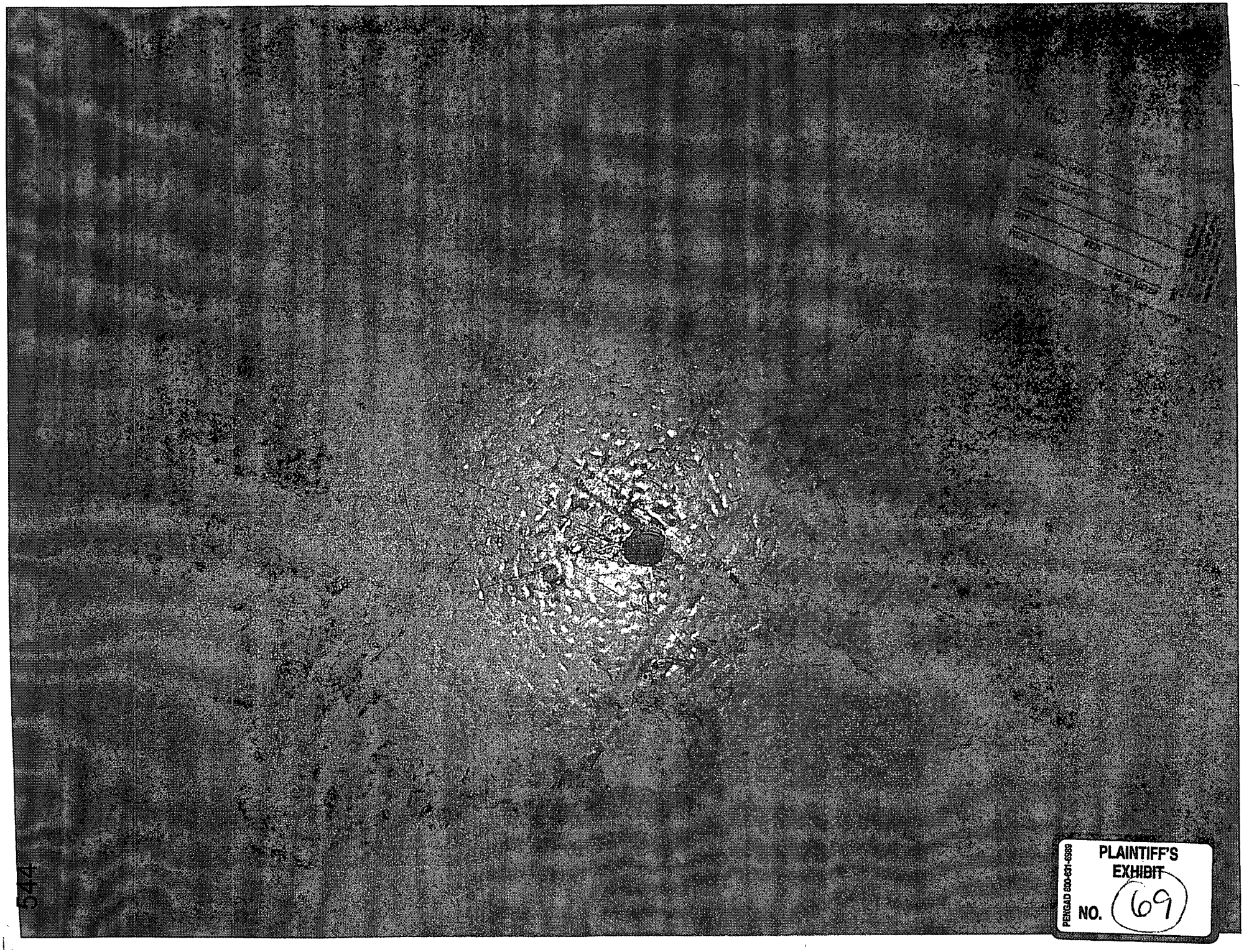

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PLAINTIFF'S EXHIBIT NO. 69

PENGAD 800-631-6989

5

29.07.2011

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT NO. 77

546

HOSPITAL CHAIN OF EVIDENCE FORM
(FORM A-72-PD 03/93)

Complaint Number _____

HOSPITAL : CMC ✓ Mercy _____ Presbyterian _____ Other _____

University _____ Mercy South _____

Name of Victim: Robert L Mackey Date: 11/14/08 Time Removed: 2125

Where incident occurred: Lancaster SC.

TYPE OF EVIDENCE: (Describe in Detail)

Bullet ✓ Clothing _____ Other _____

Chain of Custody
(Order of Persons Who Handled Evidence)

Hospital Personnel: Dr Arny → 11/14/08 2125

Name Alfie White ST Date 11/14/08 Time 2025

Name Catherine Williams RN Date 11/14/08 Time 2131

Name Ann Towell, RN Date 11/14/08 Time 2232

Name Melanie Stone, R Date 11/15/08 Time 0700

Name _____ Date _____ Time _____

When evidence is ready for pick-up, call Felony Investigations' Supervisor at 336-2311 or 336-2376.

Police Department Use Only

Police Officer Taking Custody of Evidence:

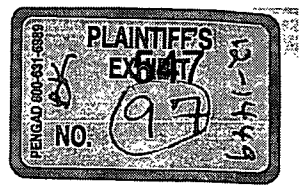
Name Inv. J.D. Jones Rank Inv. Code Number _____

Date 11-16-08 Time 10:17 AM

Date and Time Turned into Property Control:
Date _____ Time _____

81000-29265
C000531-23-25
MACKEY,ROBERT L
ATT PHY: 99940 CMC,TRAUMA SERVICE
11/14/08 DOB 02/01/74 M 34Y

Case # _____



William M Smith
Name of Person Giving Statment

132-76-3154
Social Security Number

Trenton SCDC
Address

11:20 am 8-2-11
Current Time and Date

City, State, and Zip Code

4-5-90
Date of Birth / Age

—
Phone Number Home / Work / Cell

W.S I am currently serving a sentence for twelve years for accessory to murder. I go by Will, Little Will, and Ill Will. In November of 2008, Sticky asked me to help him do a robbery. Sticky was talking to a white girl I think she was the girlfriend of the guy we was going to rob. He lived up near Kershaw. Sticky was fucking with the girl and the girl was fucking with the guy we was going to rob. He said it was going to be sweet. They had already been up there and scoped it out. We met over at Steeplechase at Trim's apartment. I don't know his name but Trim works at the hospital. I rode to Trim's with Rashad Halley in a gray Grand Marquis. When I got there the day we did the robbery, Sticky was at Trim's, I think Trim was there, Randy Lewis, Me'Me' - his real name is Frank, and Roach was there - he's from New York or somewhere, and W.S

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this date.

William Smith
Signature of Person Giving Statement

S/A M. Lee Black
Witness of Signature

Pages 1 of 3 Pages

[illegible]
Witness of Signature

White: Original Yellow: Officer Pink: Victim

Statement Form, Part 2

Diablo was there. Sticky made up some reason why he couldn't go, he was too old or something, plus he was talking to the girl so that she wouldn't know. We used Rashad's car. I drove the car. It had problem's with the transmission and you had to raise the hood and put the starter wire on the battery. It was me, Me'Me', Randy Lewis, Roach, and Diablo. It was during the daytime when we drove up there. Randy was telling me where to go, I don't know if he had been up there or not. He told me where to park on the dirt road near a four wheeler trail. I turned around and popped the hood. We all got out. I had the shotgun, it was a pump all black it was a Mossberg and it belonged to Me'Me'. Diablo had a .22 revolver. I think it may have been a 9 shot, chrome with a white pearl handle. Me'Me' had a Grizzly .45 The barrell stuck out the end of the gun just a little bit. Randy and Roach didn't have a gun. We went through the woods and came up to this abandoned trailer that was right beside the dude's house. There was a dip and you could see up under the trailer. Me'Me' slid the window up and we all went inside the empty mobile home. We stayed in there for awhile watching cars come and go. There was alot of traffic so we knew the information was good. It was kinda getting late and we saw a car leave. We went out the back door of the empty trailer and we ran up to dude's house. Me'Me' kicked the door in, I was in the door right behind Me'Me' when we went in. Diablo was right behind me and Randy and Roach were behind me. The dude was sitting at the bar in his house on a stool and his two kids were sitting there with him it was a boy and a girl. When we come in the house I slipped cause it was wet. Me'Me' tackled the dude out of the stool and started hitting dude in the head with his .45. Diablo ran over and shot him in the leg with his .22 revolver. Diablo grabbed the little girl and picked her up and put the gun to her head and told dude to give it up or he would shoot the girl. Me'Me' was still hitting him in the head. Finally Dude said it was in the closet on the top shelf. Me, Roach, and Randy found the safe in the bottom of the closet. There was two rifles in the bedroom. Me'Me' brought the dude into the bedroom and asked him what was in the safe. He said there wasn't nothing but papers in the safe. He said that w

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this date.

William Smith
Signature of Person Giving Statement

S/A McPeak
Witness of Signature

Pages 2 of 3 Pages

Witness of Signature

White: Original Yellow: Officer Pink: Victim

WS he didn't have the key to it. Then were in the bedroom and we hear a knock at the door. I opened the door with one hand and I had the shotgun in the other. There was a white dude at the door. He stood there and kept saying "I aint seen nothing". Me'Me' came outside and told the dude to get in the house. White dude started backing up. Me'Me' started hitting him in the head with the .45. Diablo was outside too. Roach and Randy were inside with the guy we was robbing but they didn't have a gun. Dude we was robbing came running out the door started tussling with Diablo. I heard the .22 go off. Then the dude started tussling with Me'Me' and he shot the dude with the .45. When that happened the dude started running. I yelled and said, "Don't run!" But he kept running so I fired a shot to scare him with the shotgun but he didn't stop. I didn't shoot at him. I started to run and then Me'Me' said let's get the safe. We went in the house and got the safe and started back toward the car. Me'Me' was trying to carry the safe holding the .45. I remember the white dude tearing out of there with his truck. As we were going to the car I told Me'Me' to let me hold the .45. I was trying to unload it and it went off. It was aimed at the ground. We threw everything in the trunk except for the .45 and we left out. We went back toward Dusty Road. We passed three or four police cars on the way back to Camden. We went back to Staple chase. Somebody knew a white guy, I think he lived off of Red Hill Road, that had a blow torch. We all went out there, Sticky and Rashed went with us. It was a white dude, his wife came out there with him. Dude said all he needed was a sledge hammer. He opened the safe and there wasn't nothing but papers in there. All we got out of there, out of the house, was about 7 grams that I grabbed off the countertop in the house. I know that Diablo dropped his gun in the woods. I gave the shotgun back to Me'Me'. We left the safe back at the white dude's house. I heard later on that they dude was robbed was in Charlotte in ICU. I didn't know that he died. We split the 7 grams of weed between us. W-S

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this date.

William Smith
Signature of Person Giving Statement

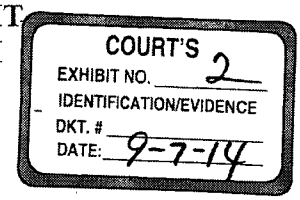
SIA M. Lee Black
Witness of Signature

Pages 3 of 3 Pages

W. Grant
Witness of Signature

White: Original Yellow: Officer Pink: Victim

STATE OF SOUTH CAROLINA) **COUNTY OF KERSHAW)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant numbers: M099810 - 813** **Indictment numbers: 2012-GS28-1449 - 1452**
The State of South Carolina,) **)** **vs.)** **)** **Frank Terrance Singleton, III)** **Defendant.)**	**MOTION IN LIMINE TO LIMIT CONCLUSIONS OF FIREARM EXAMINER**



MOTION IN LIMINE TO LIMIT CONCLUSIONS OF FIREARM EXAMINER

Defendant respectfully moves this Court to limit the firearm identification testimony the government intends to elicit, pursuant to the Due Process Clause of the Fifth and Fourteenth Amendment, Rule 702 of the South Carolina Rules of Evidence, *State v. White*, 382 S.C. 265 (2009), *State v. Jones*, 343 S.C. 562 (2001), and *State v. Council*, 335 S.C. 1 (1999).

"In considering the admissibility of scientific evidence under the *Jones* standard, the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *State v. Council*, 335 S.C. 1.

SLED Firearms Examiner Suzann Cromer concluded that Items 1 [bullet jacket], and 7 [cartridge case] were fired in/from the 2 [.45 caliber semiautomatic pistol].

The defense objects to this language because it communicates to the fact finder a proposition not generally accepted in the relevant scientific community: that the examiner was able to determine based on a single side-by-side comparison that the bullet at issue was fired from one particular firearm, to the exclusion of all others. The defense seeks to limit the examiner's testimony to a more scientifically acceptable association of "cannot exclude," *i.e.* that based on his examination, the examiner cannot exclude the possibility that the evidence bullet was fired from the recovered revolver.

This Motion explains why the proposition that one particular firearm can be singled out based on markings observed on a bullet is controversial in the relevant scientific community, why identification opinions – to any degree of certainty – are not generally accepted and thus violate *Counsel/Jones*, and why the defense's proposed limitation on Mr. Collins's testimony is generally accepted.

I. The debate in the relevant scientific community over matching marks on spent ammunition to a particular firearm

There has been a dramatic change in the longstanding – and previously unchallenged – acceptance of firearm-related toolmark (FATM) identification.[1] Scientists and experts in the relevant community have examined the subjective identification "method" typically used by firearms examiners and their resulting claims of individuality and found both wholly lacking in scientific rigor. The current state of scientific research in the field of firearms comparison is presented in a recent, peer-reviewed report produced by a committee of "members of the forensic science community, legal community, and a diverse group of scientists" who were selected by the National Research Council[2] to assess the state of forensic science. *Strengthening Forensic Science in the United States: A Path Forward,* Committee on Identifying the Needs of the Forensic Sciences Community, National Research Council [hereinafter NRC Forensic Science Report] (Feb. 2009).

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[1] Of course, the Court must consider "the consistency of the method with recognized scientific laws and procedures." *State v. Council*, 335 S.C. 1 (1999). The fact that firearms testimony has been admitted in the past with certain specific conclusions does not moot this issue. If anything, it makes the issue all the more salient. *See* Judge N. Gertner, *Commentary on The Need for a Research Culture in the Forensic Sciences*, 58 U.C.L.A. L. Rev. 789, 790 (2011) (describing the "vicious cycle" of courts admitting firearms identifications and other forensic methodologies criticized in the NRC Forensic Science Report "without limitation and without challenge over the decades, creat[ing] a disincentive for advocates to challenge it" and calling on courts to finally "address the deficiencies in the forensic sciences").

[2] The National Research Council is the National Academy of Sciences' operating agency.

In particular, the findings and conclusions of the NRC Forensic Science Report, along with the studies cited therein, describe a lack of general acceptance in the scientific community for (1) the fundamental assumptions of "uniqueness" and "reproducibility" of toolmarks produced by firearms; and (2) the subjective methodology for identifying so-called "individual" characteristics and (3) declaring a "match" to a particular firearm with "certainty." *See* NRC Forensic Science Report at 150-55. After researching the issue extensively, the NRC committee concluded that these assumptions and methodologies are not currently supported by science.

A. The fundamental assumptions of uniqueness and reproducibility in FATM analysis lack empirical support.

When firearms examiners identify toolmarks on bullets or cartridge casings to a particular firearm, they make two fundamental assumptions. First, firearm examiners assume that toolmarks consistently "reproduce" on bullets and cartridge cases fired from the same gun. Second, they assume that these toolmarks are "unique" to that particular gun. These assumptions form the foundations upon which the discipline of firearms and toolmark examination is based. If toolmarks do not reproduce from one firing to the next, there is no basis to believe that firearms examiners can draw a conclusion about the source of marks by comparing bullets and cartridge casings found at a crime scene with exemplars produced during later "test" firings. If the toolmarks left by a firearm are not unique to that particular firearm, there is no basis to conclude that bullets or cartridge casings were fired from a particular gun based on toolmarks.

The community of FATM practitioners has ignored those in their own circles who have expressed concern that "[a]s the techniques of firearms manufacture have evolved, following mostly commercial rather than forensic arguments, this hypothesis [of uniqueness] needs to be verified on a regular basis." M.S. Bonfanti & J. De Kinder, *The Influence of Manufacturing Processes on the Identification of Bullets and Cartridge Cases - A Review of the Literature*, 39

Sci. & Justice 4 (1999). In other words, because the aim of firearm manufacturers is to make as many firearms as similar as possible, and because techniques of mass production have facilitated this goal, the assumption of uniqueness needs to be verified on a continuing basis as manufacturing techniques change. As the NRC makes clear, this hypothesis has not been verified on an initial basis, much less a recurring basis.

After reviewing the literature offered by firearms examiners in support of these fundamental assumptions, the NRC concluded that "the scientific knowledge base for toolmark and firearms analysis is fairly limited." NRC Forensic Science Report at 155. Specifically, the NRC found that the "validity of the fundamental assumptions of uniqueness and reproducibility of firearms-related toolmarks has not yet been fully demonstrated." NRC Forensic Science Report at 154.[3] In other words, the NRC found that the fundamental assumptions underlying the firearm comparison discipline have not been shown to be scientifically sound. Even if one were to assume that there is some validity to the proposition that marks left by a firearm are reproducible – that "firearms-related toolmarks are not completely random and volatile; one can find similar marks on bullets and cartridge cases from the same gun" – the NRC was very clear that reproducibility alone is not sufficient to make the leap from a set of marks on a bullet to one particular firearm. *Id.*[4]

This is because, as the NRC discovered, there is currently no scientific basis for the firearm examiner's assumption of uniqueness. The NRC was unequivocal that a "significant amount of research would be needed" not only to "determine the degree to which firearms-

[3] Quoting NRC, *Ballistic Imaging* (2008) at 3. *Ballistic Imaging* was produced by a group of twenty-two scientists with training and experience in areas of materials science, metallurgy, statistics, laboratory procedures and protocols, and computer science, in consultation with firearms examiners themselves. While the committee was not charged with examining the reliability of firearms identification as a discipline, it had to examine the discipline in order to determine the feasibility and utility of a national ballistics imaging database.

[4] Quoting NRC, *Ballistic Imaging* (2008) at 3.

related toolmarks are unique" but even just to "characterize the probability of uniqueness." *Id.* at 154. *See also 'Badly Fragmented' Forensic Science System Needs Overhaul; Evidence To Support Reliability Of Many Techniques Is Lacking*,[5] National Research Council (2009) ("for many other forensic disciplines – such as fingerprint and toolmark analysis – no studies have been conducted of large populations to determine how many sources might share the same or similar features").

The NRC was critical of the smattering of "studies" that do exist, disapproving of their "heavy reliance on the subjective findings of examiners rather than on the rigorous quantification and analysis of sources of variability [in the production of tool marks]." NRC Forensic Science Report at 155. This is unacceptable to the broader scientific community, which demands that theoretical assumptions be validated through empirical research before they can be relied upon with any confidence in application. *See id.* at 112 (describing the essential processes of hypothesis testing, methodical data collection, and developing limits of uncertainty). And yet, firearms examiners not only rely upon these assumptions with confidence, they rely upon them with an unfounded "certainty."

B. FATM practitioners' subjective and unvalidated methodology is not generally accepted to produce reliable results

Even assuming that firearms produce unique markings on cartridge casings and bullets, scientists do not accept that the Association of Firearm and Toolmark Examiners' (AFTE's) amorphous standards – despite being "the best guidance available for the field of toolmark identification"[6] – can be used to reliably distinguish unique from non-unique markings and use

[5] *Available at* http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12589 (last visited July 29, 2014).

[6] NRC Forensic Science Report at 155.

those markings to narrow the pool of potential sources down to one particular firearm. The NRC examined the AFTE "methodology," which is the organization that has provided Mr. Collins with significant training:

> AFTE has adopted a theory of identification, but it does not provide a specific protocol. It says that an examiner may offer an opinion that a specific tool or firearm was the source of a specific set of toolmarks or a bullet striation pattern when "sufficient agreement" exists in the pattern of two sets of marks. It defines agreement as significant "when it exceeds the best agreement demonstrated between tool marks known to have been produced by different tools and is consistent with the agreement demonstrated by tool marks known to have been produced by the same tool." The meaning of "exceeds the best agreement" and "consistent with" are not specified, and the examiner is expected to draw on his or her own experience.[7]

As the NRC points out, AFTE's guidance does not provide a coherent methodology at all, but rather leaves it to the examiner to make a "subjective decision based on unarticulated standards." *Id.* at 153-55. The AFTE theory asks the firearms examiner to think back to the closest known non-match that he can remember, and see if the correlation he currently sees under the microscope is better than the one in his mind's eye. If so, it is appropriate to opine that the marks came from one specific firearm. That's it. That's the *entirety* of the guidance provided under the AFTE theory of identification. Perhaps not surprisingly even to the layperson, the scientific community finds this "lack of a precisely defined process" to be a "fundamental problem with toolmark and firearm analysis." *Id.* at 155.

What vague guidance the AFTE theory does provide is, as described, extremely general in nature. The AFTE theory "does not even consider, let alone address, questions regarding variability" of marks from one type of firearm (and manufacturing method) to the next. *Id.* Thus, the AFTE theory provides no guidance – not even vague guidance – on the number or quality of

[7] NRC Forensic Science Report at 155; *see also id.* at 153 (quoting Theory of identification, range of striae comparison reports and modified glossary definitions—An AFTE Criteria for Identification Committee report. 1992. AFTE J. 24:336-340).

marks an examiner should look for on an older firearm crafted by hand versus a model mass-produced via the different techniques of broaching, swaging or hammer-forging. "Because not enough is known about the variabilities among individual tools and guns" – a problem that goes back to the untested assumption of uniqueness – "we are not able to specify how many points of similarity are necessary for a given level of confidence in the result." NRC Forensic Science Report at 154; *see also United States v. Glynn*, 578 F.Supp.2d 567, 574 (S.D.N.Y. Sept. 22, 2008) (commenting that FATM "lacks defining standards to a degree that exceeds most other kinds of forensic expertise," and noting that unlike fingerprint analysis, FATM analysis fails to employ a minimum point standard).

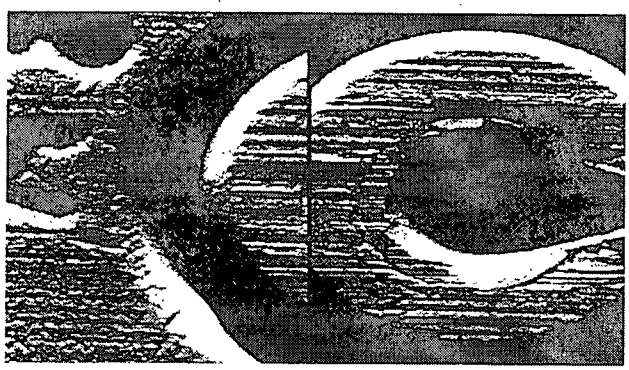
For example, for a firearms examiner to allege that markings left on a bullet or cartirdge case came from a particular gun, he must have distinguished "individual" markings from all non-individual markings, including subclass markings, and also must have found enough of these "individual" markings to warrant excluding all other firearms.[8] Subclass markings resemble individual markings – indeed, they are created in the same fashion, by imperfections in the firearms manufacturing process – but unlike "individual" markings, they will be transferred to

[8] Firearms examiners classify markings (or characteristics) on bullets and cartridge cases into three categories:

- Class characteristics are deliberately imparted and are shared by all firearms of the same make and model, and potentially firearms of different make. Examples include caliber, direction of rifling ("twist"), number and size of lands and grooves, and shape of firing pin impression. Class characteristics can be objectively measured and can be used to "narrow[] the pool of tools that may have left a distinctive mark." *See* NRC Forensic Science Report at 154.
- Subclass characteristics, as the name implies, are common to a particular "subclass" of firearms – typically, one or more production runs of a particular make and model of firearm – and are imparted by accident, as a result of irregularities in the specific tools used to create all of the firearms in the run. AFTE theory does not provide guidance or standards for identifying subclass markings or for distinguishing subclass markings from individual markings. *See* NRC, *Ballistic Imaging*.
- Individual characteristics are those markings that firearms examiners believe result from irregularities in the machining process and/or imperfections that emerge during the subsequent use of a firearm. Although the determination that a marking as "individual" is completely subjective in nature, firearms examiners treat the markings so labeled an individualized signature of a particular gun. *See* Gerald Burrard, *The Identification of Firearms and Forensic Ballistics* 138 (1968).

bullets and cartridge casings fired from *any* firearm manufactured in the same lot (*i.e.* produced by the same tool).[9]

Examples of problematic subclass characteristics (*i.e.* markings that may appear to be unique but are actually common to a specific make and model of gun) are rife in the literature[10] and are publicly acknowledged to present serious problems for the possibility of making correct identifications.[11] Nevertheless, the AFTE method fails to provide any standards for recognizing or otherwise dealing with subclass markings. "Because not enough is known about the variabilities among individual tools and guns,"[12] and because the AFTE theory offers no standards to guide the analysis, "subclass characteristics that could easily be mistaken for individual characteristics, and might lead an examiner to make a false positive identification" are a serious problem.[13] *See, e.g,* Figure 1, *infra*.



[9] A single lot or production run can result in "thousands of weapons . . . whose barrels contain identical or very similar imperfections and produce similar markings on the bullets fired through them." W.F. Rowe, *Statistics in Forensic Ballistics*, *in* The Use of Statistics in Forensic Science (1991) at 172.

[10] *See, e.g.,* Patrick D. Ball, *Toolmarks Which May Lead to False Conclusions*, 32(3) AFTE J. 292 (2000); Evan Thompson, *False Breech Face ID'S*, 28(2) AFTE J. 95 (1996); Richard K. Maruoka, *Guilty Before the Crime? The Potential for a Possible Misidentification or Elimination*, 26(3) AFTE J. 206 (1994); Richard K. Maruoka, *Guilty Before the Crime II?*, 27(1) AFTE J. 20 (1995); *see also* M.S. Bonfanti & J. De Kinder, *The Influence of Manufacturing Processes on the Identification of Bullets and Cartridge Cases - A Review of the Literature*, 39 Sci. & Justice 3, 5 (1999) (reporting that for some handguns "a correct identification of the firearm on the basis of the breech face and firing pin impression, turned out to be hardly possible" and for different guns "it was impossible to identify the tool which generated the subclass characteristics").

[11] *See, e.g.,* Gene C. Rivera, *Subclass Characteristics in Smith & Wesson SW40VE Sigma Pistols*; 39(3) AFTE J. 247 (2007).

[12] NRC Forensic Science Report at 154.

[13] *See* Rivera, *supra* n. 18, at 247.

Figure 1. Microscopic, side-by-side comparison of breechface of two cartridge cases fired from ***two different*** S&W pistols, showing "an alarming example of subclass characteristics that could be mistaken for individual characteristics". *From* Rivera, *supra*, at 247, 251.

This problem is compounded by the fact that firearm comparisons are conducted in a "show-up" fashion, where the bullet or cartridge case collected from the scene is compared side-by-side against test fire(s) from the suspect firearm and no other firearm.[14] The examiner testifies with such certainty that markings can be traced back to one particular firearm, without even firing other firearms of the same make and model to rule out the possibility that other firearms might produce similar marks. As one court recently noted, "the 'science' of matching toolmarks to shell casings and ***excluding all other items but the one tested*** as having made those marks is not without its critics"—leading the court to predict that that FATM identification evidence might not "even be admissible" at trial.[15,16]

Not only does the AFTE method fail to provide a defined process (or standards) for firearms examiners to follow, worse, what guidance it does provide has not been submitted to "any meaningful scientific validation, determination of error rates, or reliability testing to explain the limits of the discipline." NRC Forensic Science Report at 107-08 (referring to firearms comparison). Before scientists put a methodology to use, they conduct validation testing to

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[14] *See United States v. Taylor*, 633 F.Supp.2d 1170, 1178 (D.N.M. 2009) (finding that FATM examiners' "method of testing is, in effect, an evidentiary show-up, not what scientists would regard as a blind test.").

[15] *United States v. Lape*, 2010 WL 909756 at *4 (S.D. Ohio Mar. 11, 2010) (emphasis added). This dubious practice and the arguments set forth by its critics (*i.e.* the NRC committee) led the *Lape* court to find that despite a FATM match "there is no clear and convincing evidence that [defendant] committed the crime" and thus to order the defendant's pretrial release. *Lape*, 2010 WL 909756 at *4.

[16] Further, this "show-up" style of comparison not only fails to control for, but actually heightens the already considerable chance of interpretational bias inherent in FATM examinations. *See* NRC Forensic Science Report at 8 n. 8, 124. Firearm examiners are often given contextual information about the case and the evidence before they perform their examinations, and no standard operating procedure exists to prohibit or limit the amount of contextual information an examiner has during the examination procedure. Unfortunately, it is in the fields most at risk of bias effects that the least efforts have been made to understand these "effects and methods for minimizing them." NRC Forensic Science Report at 124.

establish whether or not the methodology reliably and consistently produces the purported results. Validation testing also allows scientists to determine the degree of certainty associated with a methodology, *i.e.* the degree of certainty with which a firearms examiner may match markings to one particular firearm, assuming the methodology is executed correctly.

Due to these limitations on – and the lack of testing of – their methodology, firearms examiners have not demonstrated that they can reliably identify a particular firearm, nor what would be required to reliably identify a particular firearm. In the wake of the NRC's report, even the president of the American Academy of Forensic Sciences – the most comprehensive and respected of the forensic science organizations (and the organization that publishes the Journal of Forensic Sciences) – agreed that "[t]ool mark analysis . . . can be subject to validation but nevertheless appear[s] never to have been studied for this purpose."[17] Because the AFTE theory has not been validated, there is no way to assess its "reliability, repeatability, or the number of correlations needed to achieve a given degree of confidence" in a "match." NRC Forensic Science Report at 155.

C. Experientially-based statements of "certainty" where there is no way to assess the "reliability, repeatability, or the number of correlations needed to achieve a given degree of confidence" in a "match" are contrary to science.

Firearms examinations involve the comparison of patterns under a microscope, in the absence of "precisely specified, and scientifically justified, series of steps that lead to results with well-characterized confidence limits." *Id.* at 155. When "sufficient agreement" in patterns is observed – an undefined and subjective standard that finds its only meaning in an individual examiner's training and experience – the examiner makes the long leap from matching patterns

[17] Thomas Bohan, *President's Editorial: Strengthening Forensic Science: A Way Station on the Journey to Justice*, 55(1) J. For. Sci. 2010 at 7.

to the conclusion that these patterns came from one particular firearm. It is this leap of faith, without articulable standards, objective matching criteria, or knowledge of frequencies of occurrence, that is the greatest source of controversy in the scientific community.

The gaping hole in the FATM discipline's knowledge base puts individual examiners in the position of drawing conclusions based on a shifting, subjective "I know it when I see it" standard that varies from one examiner to the next, as opposed to the kind of validated, objective benchmarks implied by their claims of "certainty." The NRC found unacceptable the fact that, "despite the lack of a statistical foundation, examiners make probabilistic claims ***based on their experience***."[18] Claims to any degree of certainty are "probabilistic claims," whether they are "to a practical certainty" or "to a reasonable degree of certainty." Certainty is certainty. It has a meaning in science.[19] Without a "statistical framework that allows quantification of these claims" and an estimation of the probability of a random match, matching marks on bullets and cartridge cases to a particular firearm to any degree of certainty is scientifically unacceptable. *See* NRC Forensic Science Report at 154, 189.[20]

Given these critiques, there is no serious question that there is a debate in the relevant scientific community over the scientific limitations on the firearm and toolmark discipline. On

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[18] NRC Forensic Science Report at 189. The NRC found that it has not yet been demonstrated that examiners can reliably and consistently match markings left on a bullet or cartridge casing to a particular firearm. Note that the NRC specifically finds "matching" and "individualization" to be equivalent terms. *Id.*

[19] *See, e.g.*, Champod & Evett, 51 J. Forensic Identification at 111 (explaining that one type of "certainty is no different from any other kind of certainty").

[20] Acknowledging the probabilistic nature of forensic "identity" claims, courts have incorporated this critical component into the rule governing the admissibility of DNA "match" evidence. *Porter*, 618 A.2d at 640 (holding that DNA evidence must be accompanied by a generally accepted statistic expression of the likelihood of a coincidental match). Now that FATM analysis is finally getting the attention from the scientific community that was granted years ago to forensic DNA analysis, the consensus is that firearms identification testimony should not be admitted in the absence of a generally accepted statistical expression or acknowledgement of the probability of a coincidental or random match. It is important to note that such a statistical framework is not an impossible task; in fact, as the NRC points out, "[r]ecent research has attempted to develop a statistical foundation for assessing the likelihood that more than one tool could have made specific marks by assessing consecutive matching striae, but this approach is used in a minority of cases." See NRC Forensic Science Report at 154 n. 63. For now, however, there is no scientific basis for statistical claims of matches to an absolute, "reasonable degree" or "practical" certainty.

one side of the divide stand independent scientists – experts in the scientific method, proper experimental design, measurements of certainty, metal-to-metal interactions, and the manufacturing processes employed in firearm production – as well as forensic practitioners and heads of forensic laboratories. After reviewing the firearm and toolmark methodology and supporting literature, they found that the method has not been validated – that the reliability and accuracy of the method is unknown. They found that there is no basis in science for identifying a particular source without matching criteria or objective standards of any sort.

On the other side stand forensic firearm examiners, beholden to the continued public trust in their discipline for their bread and butter. As Judge Edwards, co-Chair of the Committee that drafted the report, has pointed out, they have not "meaningfully refuted" the NRC's findings regarding their discipline.[21] Rather, they continue to assert that theirs is a reliable methodology because no one has proven that it is not, and that the only limitation on their discipline is a "practical" one, because "one cannot rule out the theoretical, infinitesimal possibility" of a coincidental match. Clearly, the two sides are diametrically opposed.

II. The government's proposal – that firearms examiners can testify to a conclusion that a bullet or cartridge came from a particular gun – is not generally accepted in the scientific community

The government arrives at its proposed language not by considering what constitutes common ground among a consensus of scientists, but rather by ignoring every single scientist who has spoken on the subject, including the National Research Council, and wholeheartedly crediting the say-so of firearms examiners. This is inappropriate.

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[21] *See* Harry T. Edwards, *The National Academy of Sciences Report on Forensic Sciences: What It Means for the Bench and Bar* at 3 (May 6, 2010), available at http://www.cadc.uscourts.gov/internet/home.nsf/AttachmentsByTitle/NAS+Report+on+Forensic+Science/$FILE/Edwards,+The+NAS+Report+on+Forensic+Science.pdf.

The NRC was adamant that "[f]orensic science reports, and any courtroom testimony stemming from them, must include clear characterizations of the limitations of the analyses." *NRC Forensic Science Report* at 186. As the NRC found, the lack of a defined and validated methodology with specific matching criteria prevent a firearms examiner from identifying a particular gun as the source of marks on a piece of ammunition – to any degree of certainty – with demonstrable reliability. *Id.* at 7; 153-55.

The NRC concluded that the firearm identification process (and any conclusions that flow from it) does not adhere to the scientific method, and has not been shown to be reliable. The validity of the field's underlying assumptions has not been demonstrated. "A significant amount of research would be needed to scientifically determine the degree to which firearms-related toolmarks are unique or even to quantitatively characterize the probability of uniqueness." NRC Forensic Science Report at 154. In other words, firearm examiners have not come close to characterizing the chance of a coincidental match.

When considering the *Council* factors for the admission of scientific evidence, the Court must consider the "quality control procedures used to ensure reliability" as well as "the consistency of the method with recognized scientific laws and procedures." *Council*. Upon review of the "publications and peer review of the technique" cited in this memorandum, the conclusion of Mr. Collins that the bullets and catridge cases were fired from the pistol in question should be inadmissible and the court should limit Mr. Collins testimony to only that information that can withstand scrutiny under the *Council* factors.

III. The defense proposal – that the firearms examiner cannot reliably testify to a stronger association than "cannot exclude" – is appropriate and generally accepted

The defense has never suggested that admission of firearms testimony is an all or nothing proposition. The NRC report acknowledges that, "although some techniques may be too

imprecise to permit accurate identification of a specific individual, they may still provide useful and accurate information about questions of classification." NRC Forensic Science Report at 8. With respect to firearms identification in particular, the NRC report notes that, while firearms examiners have not demonstrated that they can reliably conclude that a piece of ammunition was fired from a certain *individual* firearm, firearms examiners may have a valid basis for concluding that the ammunition was fired from a certain *class* of firearms. *Id.* at 154 ("Because not enough is known about the variabilities among individual tools and guns, we are not able to specify how many points of similarity are necessary for a given level of confidence in the result. . . . The committee agrees that class characteristics are helpful in narrowing the pool of tools that may have left a distinctive mark.").

Legal scholars have discussed how the generally accepted state of this pattern matching discipline might be translated into accurate and appropriate courtroom testimony. Michael Saks, co-editor of MODERN SCIENTIFIC EVIDENCE, along with Jonathan Koehler, a law school professor who holds a doctorate in Research Methodology, have suggested that examiners be honest about the limitations on defining the "the pool of tools that may have left a distinctive mark," NRC Forensic Science Report at 154:

> Examiners could explain that, in finding that two patterns match, they have placed the suspect object or person in a pool of one or more objects that match the evidentiary marks. The strength of the likelihood that the known object or person shares a common source with the questioned object or person depends upon the size of the pool. No scientific justification exists for assuming that the size of the pool is 1. And, for most areas of criminalistics (other than DNA...), there are no empirically grounded estimates of how large such pools might be. Experts should not substitute their intuition or judgment in an effort to fill these knowledge gaps. The speculation of an examiner about the size of those pools is not scientific evidence. It is, simply, speculation.

Michael J. Saks and Jonathan J. Koehler, "The Individualization Fallacy in Forensic Science Evidence", 6(1) Vanderbilt L. Rev. at 4.

Applied to the current state of the firearm and toolmark discipline, the smallest "pool of tools" that scientific studies currently support is those firearms that share class-based characteristics. Thus, a "scientifically acceptable reporting, at this stage of firearms/toolmarks practice development" would be that a particular class of firearms cannot be excluded as the source of a particular fired bullet or cartridge case. Not only does this language accurately reflect the generally accepted state of the firearms comparison discipline, it also encourages firearm examiners to take it upon themselves to make their examinations more scientific.

Not only does "cannot exclude" reflect the consensus opinion of the relevant scientific community, further, the language is embraced by forensic practitioners as an accurate and appropriate substitute for the word "match," which is misleading.[22] Even in DNA analysis, the only forensic discipline that "has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between an evidentiary sample and a

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[22] For example, a recent FBI Laboratory article published in the Journal of Forensic Science regarding the "semantics" of forensic conclusions addresses "the need to properly convey evidentiary weight." Bruce Budowle et al., *A Perspective on Errors, Bias, and Interpretation in the Forensic Sciences and Direction for Continuing Advancement*, J. of Forensic Sciences, Vol. 54, Issue 4, 798-809 (2009). The article was co-authored by a number of FBI analysts, including Stephen Bunch, former Chief of the FBI Firearms Unit and affiant for the government in many cases involving firearm comparisons.

Mr. Bunch and his FBI co-authors were explicit that an examiner's testimony should clearly communicate the limitations of the analysis. *Id.* at 804. Indeed, the FBI publication concludes that: "in lieu of a quantitative approach, it is imperative that the weight of the evidence be explained qualitatively ***so that fact finders or other scientists can appreciate the limitations of the analysis and comparison***." *Id.* at 804 (emphasis added). Specifically, the FBI authors concluded that:

> [W]hen terms such as "association" or "match" are used in a qualitative statement they may convey to some people stronger significance than other terms such as "failure to exclude." . . . . Others may find the current terminology reasonable and acceptable. Because there may be an unintended contribution to bias (***i.e., conveying more strength than intended***) existing terminology should be reviewed for best practices in report writing. Regardless, as suggested above, when such terms are used they should be fully described in the case report so that the meaning of the terms, such as "association" or "match," are understood in context. ***An alternative approach is to use instead the term "failure to exclude," which may seem to some more acceptable.***

Id. at 804 (emphasis added); *see also id.* at 798 ("Forensic methods typically identify relevant features, make comparisons, and exclude or ***fail to exclude***."). The article notes that, consistent with the state of the firearms and toolmark discipline, "[t]he identification and comparison of features and the resulting interpretation of exclusion, ***failure to exclude***, or inconclusive can be made without quantification." *Id.* at 804 (emphasis added).

specific individual or source,"[23] some analysts consistently limit their testimony to "cannot exclude" to avoid improper inferences.[24] Even those laboratories that will attribute DNA to a particular person will only do so when the chance of a coincidental match is less likely than 1 in 6 trillion; otherwise, "cannot exclude" is considered appropriate language.[25] Given "cannot exclude" is considered accurate and appropriate language to characterize a DNA "match" where there is but a 1 in 5.99 trillion probability that someone else would share the same DNA attributes, it is a more than generous representation of the probative value of a firearms "match," where the probability of a coincidental match is unknown.[26] *See* NRC Forensic Science Report at 154 ("A significant amount of research would be needed to scientifically determine the degree to which firearms-related toolmarks are unique or even to quantitatively characterize the probability of uniqueness.").

CONCLUSION

The NRC report bemoans the fact that, despite the paucity of scientific research supporting the validity and reliability of pattern-matching forensic evidence, courts are reluctant to exclude or limit such evidence because of its lengthy historical pedigree and its prevalence in criminal investigation. NRC Forensic Science Report at 110 ("The principal difficulty, it appears, is that many [forensic science] techniques have been relied on for so long that courts might be reluctant to rethink their role the trial process. . . . In many forensic areas, effectively no

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[23] NRC Forensic Science Report at 100.

[24] For example, a Canadian crime laboratory limits its characterizations to "cannot exclude" in all cases, no matter how vanishingly small the chance of a coincidental match. *See* Memorandum from R.J. Prime, Director of The Centre of Forensic Sciences for the province of Ontario to Crown attorneys for the province, cited by Koehler, J.J., Saks, M.J., "Individualization Claims in Forensic Science: Still Unwarranted," 7(4) Brooklyn LR (2010) ("the term 'match' will no longer be used in the conclusions of CFS DNA reports, in an effort to more clearly link the conclusion drawn from an analysis to its purpose").

[25] *See, e.g.*, 208 Interpretation Protocol, FBI DNAUI STR Protocol Manual at 29, 48.

[26] Other forensic disciplines, such as hair and fiber analysis, also limit their conclusions to "cannot exclude" or similar language.

research exists to support the practice."[27]). As the NRC report warns, if courts continue to ignore the lack of true science in the forensic sciences, they risk not only false convictions of innocent defendants, but the loss of public confidence in the criminal justice system. NRC Forensic Science Report at 4, 12.

The NRC report reflects the scientific community's most recent and comprehensive study of the forensic sciences in the United States. The report makes clear that, although the current state of the science may permit firearms examiners to conclude that a piece of ammunition was fired from a certain *class* of firearms, more rigorous scientific research and objective protocols are needed before firearms examiners can conclude to any degree of certainty that a piece of ammunition was fired from a certain *individual* firearm. Accordingly, this Court should hold that, until the "pattern-matching" methodology used by firearms examiners is validated by the scientific community, *Council and Jones* preclude the admission of expert testimony concluding that marks on a bullet or casing were left by a particular firearm.

Douglas S. Strickler
Circuit Public Defender
Fifth Circuit Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Camden, South Carolina
This 8th day of September, 2014

[27] Alteration and omission in original (quoting 1 Faigman et al., *supra*, § 1:1, at 5, 9); *id.* at 109 ("There is no evident reason why rigorous, systematic research would be infeasible. However, some courts appear to be loath to insist on such research as a condition of admitting forensic science evidence in criminal cases, perhaps because to do so would likely demand more by way of validation than the disciplines can presently offer." (alterations and internal quotation marks omitted)).

799

WITNESSES

(S) J Dill – Kershaw County Sheriff

ARREST WARRANT NUMBER

M099810

ACTION OF GRAND JURY

TRUE BILL

William Morris

Foreperson of Grand Jury

Date: OCT 17 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-28-1449

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

K96

THE STATE
vs.

Frank Terrance Singleton III

Indictment for
WEAPON-POSS DURING COMM VIO CRIME

SC Code: **16-23-0490**
CDR Code: **0549**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2012 OCT 17 PM 4:11
JOYCE MCDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 17, 2012, the Grand Jurors of Kershaw County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Frank Terrance Singleton III did in Kershaw County, on or about November 14, 2008, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

569

WITNESSES

(S) J Dill – Kershaw County Sheriff

ARREST WARRANT NUMBER

M099811

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: AUG 20 2014

VERDICT

Foreperson of Petit Jury

AMENDED

DOCKET NO. 2012-GS-28-1450

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

K96 OCTOBER TERM 2012

THE STATE
vs.

Frank Terrance Singleton III

Indictment for
ARMED ROBBERY

SC Code: **16-11-0330(A)**
CDR Code: **0139**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2014 AUG 20 PM 2:46
JOYCE MCDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 17, 2012, the Grand Jurors of Kershaw County present upon their oath:

ARMED ROBBERY

That Frank Terrance Singleton III did in Kershaw County on or about November 14, 2008, commit robbery by feloniously taking from the person or presence of ROBERT LEWIS MACKEY, by means of force or intimidation, goods or monies of ROBERT LEWIS MACKEY, such goods or monies being described as firearm and/or safe and/or personal property, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

571

WITNESSES

(S) J Dill – Kershaw County Sheriff

ARREST WARRANT NUMBER

M099812

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: AUG 20 2014

VERDICT

Foreperson of Petit Jury

Date:

AMENDED

DOCKET NO. 2012-GS-28-1451

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

K96

THE STATE
vs.

Frank Terrance Singleton III

Indictment for
BURGLARY 1ST DEGREE

SC Code: **16-11-0311**
CDR Code: **0079**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2014 AUG 20 PM 2:46
JOYCE MCDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) **INDICTMENT**
COUNTY OF KERSHAW)

At a Court of General Sessions, convened on OCTOBER 17, 2012, the Grand Jurors of Kershaw County present upon their oath:

BURGLARY, 1ST DEGREE

That Frank Terrance Singleton III did in Kershaw County on or about November 14, 2008, enter the dwelling of Robert Mackey, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime did cause injury to a nonparticipant in the crime and/or was armed or became armed with a deadly weapon and/or used or threatened the use of a dangerous instrumentality and/or displayed what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, in violation of Section 16-11-0311(A), 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.

DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA)
) **INDICTMENT**
COUNTY OF KERSHAW)

At a Court of General Sessions, convened on OCTOBER 17, 2012, the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Frank Terrance Singleton III did in Kershaw County, on or about November 14, 2008, willfully, feloniously, and intentionally kill the victim, ROBERT LEWIS MACKEY, with malice aforethought, either express or implied, by means of gunshot wound, and the victim did die as a proximate result thereof on or about JANUARY 24, 2009, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended

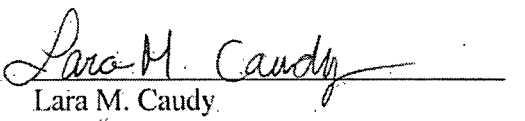
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 18th, 2015



Lara M. Caudy
Appellate Defender

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ATTORNEY FOR APPELLANT

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