

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Richland County

J. Mark Hayes, II, Circuit Court Judge

---

**RECEIVED**

DEC 21 2015

**S.C. Supreme Court**

TREMAINE WRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000758

---

APPENDIX

---

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Appellate Defender

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

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ATTORNEYS FOR RESPONDENT

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250★

Mar 18 2008 9:11AM Trace Evidence SLED

p. 6

LD7-09678  
4

## ADDITIONAL NARRATIVE

|              |                               |       |           |                   |                     |       |            |
|--------------|-------------------------------|-------|-----------|-------------------|---------------------|-------|------------|
| Agency Name: | RICHLAND COUNTY SHERIFFS DEPT | ORI#: | SC0400000 | Report Date/Time: | 08/30/2007 04:12:00 | OCA#: | 0708279030 |
|--------------|-------------------------------|-------|-----------|-------------------|---------------------|-------|------------|

## THE VEHICLE.

DEP. GALINSKI SPOTTED THE SUSPECTS' VEHICLE ON THE [REDACTED], WHERE SUBJECTS WERE DETAINED. DEPUTIES WERE LATER NOTIFIED OF A VICTIM TRANSPORTED TO PROVIDENCE NE HOSPITAL WITH A GUNSHOT WOUND. M.D. SMITH RESPONDED TO HOSPITAL. R/O WAS DISPATCHED TO PROVIDENCE NE EMERGENCY ROOM IN REFERENCE TO A BLACK MALE THAT HAD BEEN SHOT IN THE LEFT LEG. THE SUBJECT DIED AS A RESULT OF THE GUNSHOT WOUND. DEP. SMITH TOOK THE BULLET FOR SAFEKEEPING. R/O ALSO TOOK ALL THE NAMES OF THE WITNESSES THAT WISHED TO COOPERATE. EVIDENCE TURNED IN TO THE EVIDENCE SECTION.

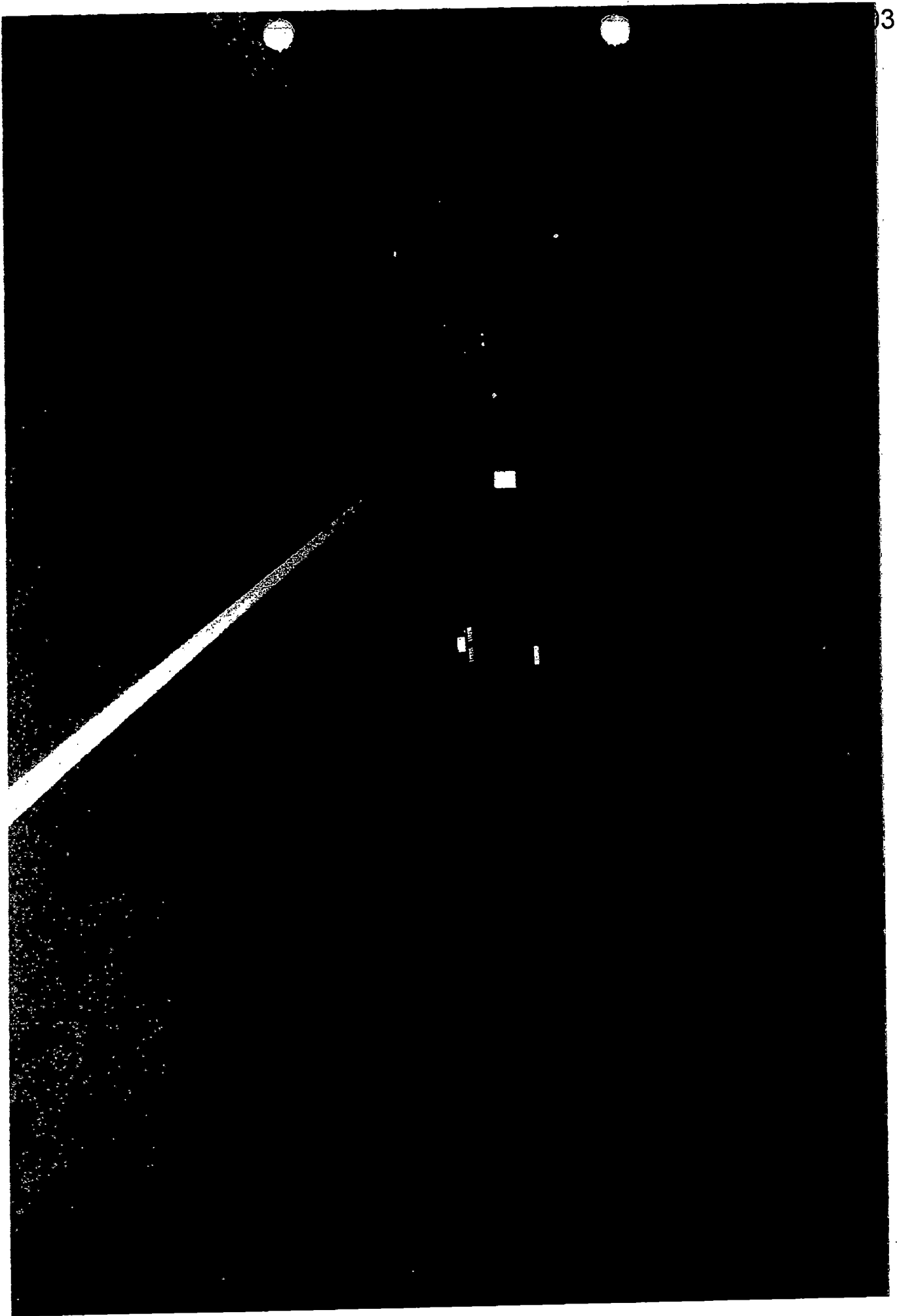
SUBJECT 1 WAS UNKNOWN BLACK MALE WITH DREADLOCKS.

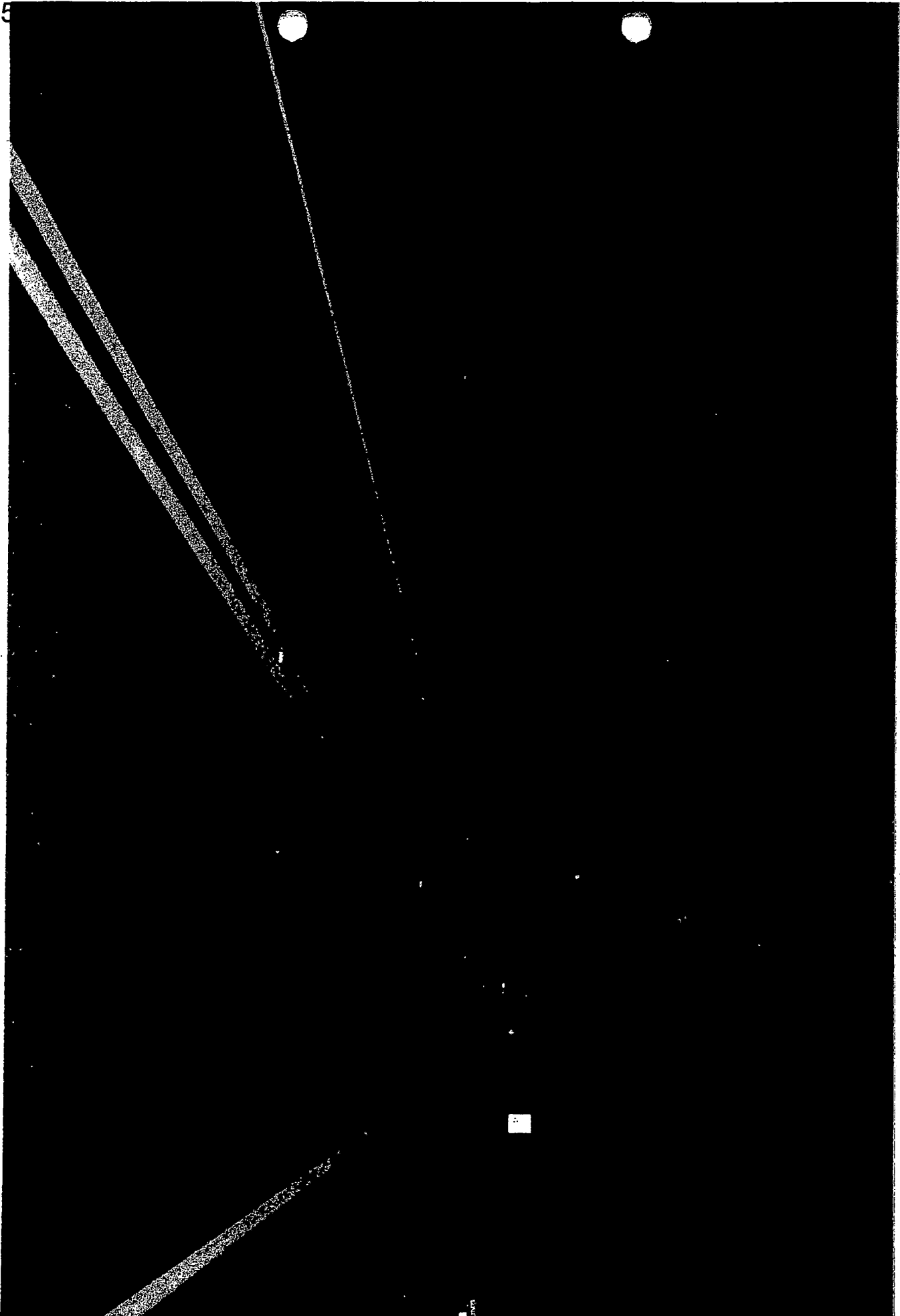
SUBJECT 2 WAS UNKNOWN BLACK MALE WITH CLOSE-CUT HAIRCUT WITH STRIPED SHIRT.



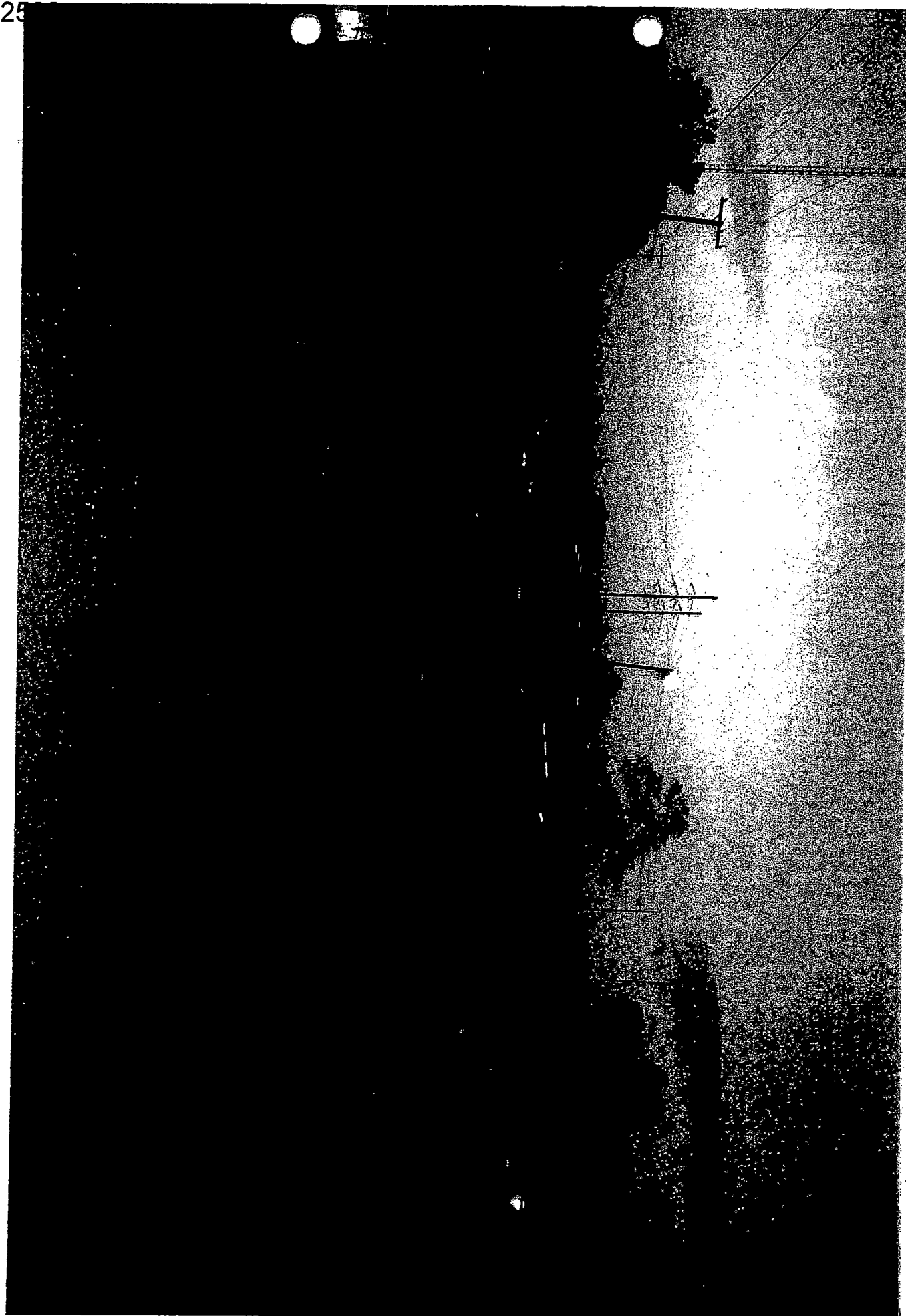
2502

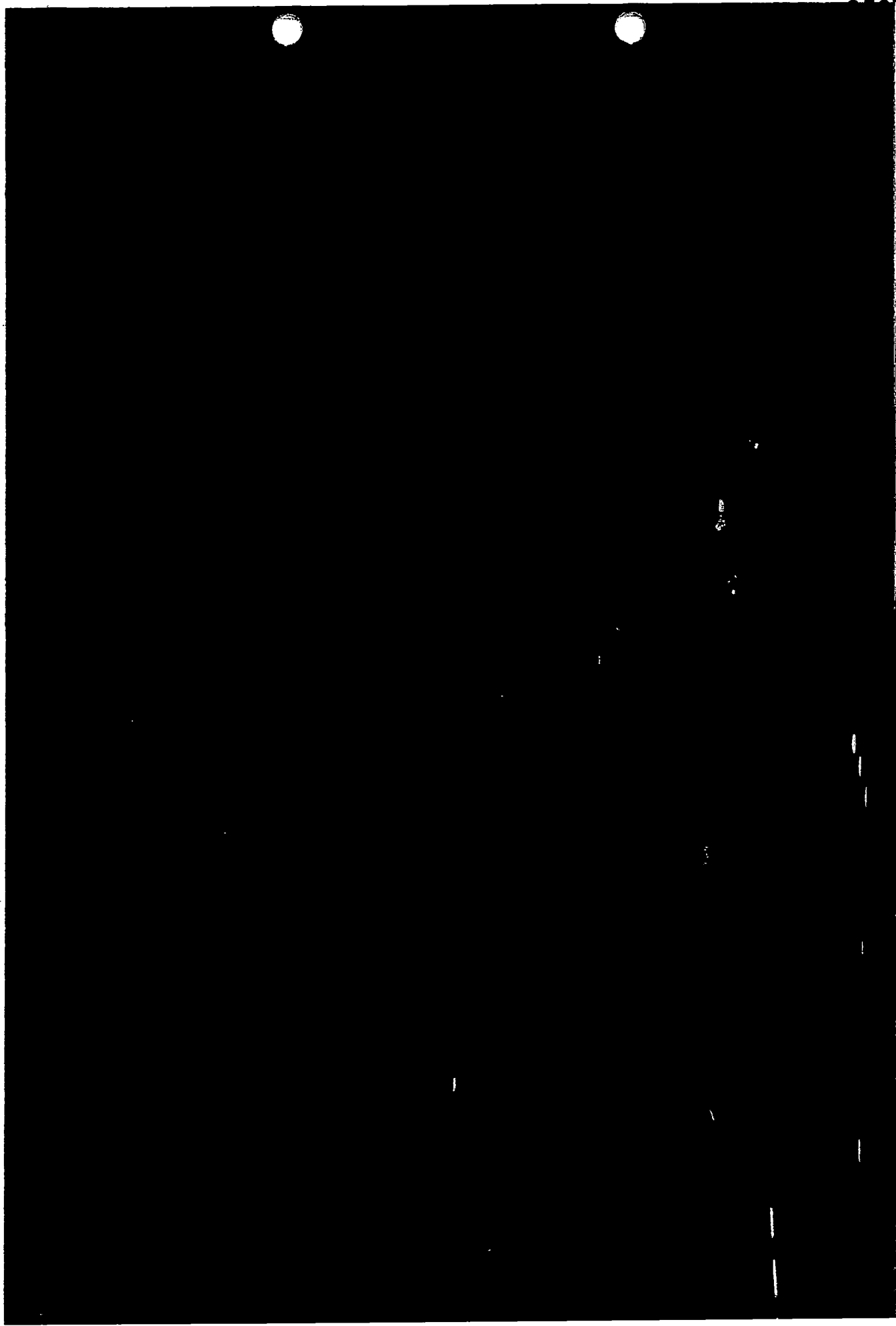
Exhibit C

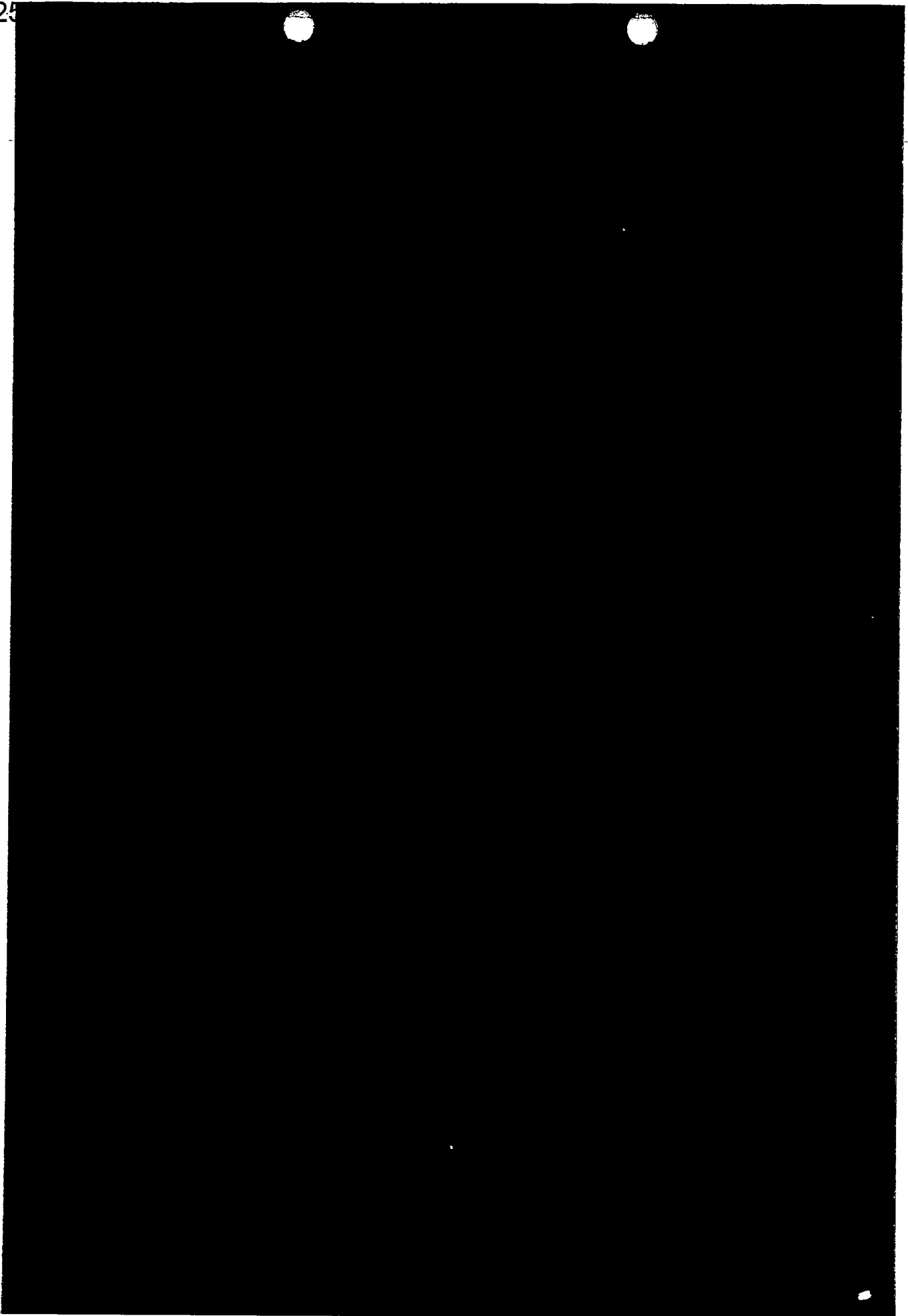




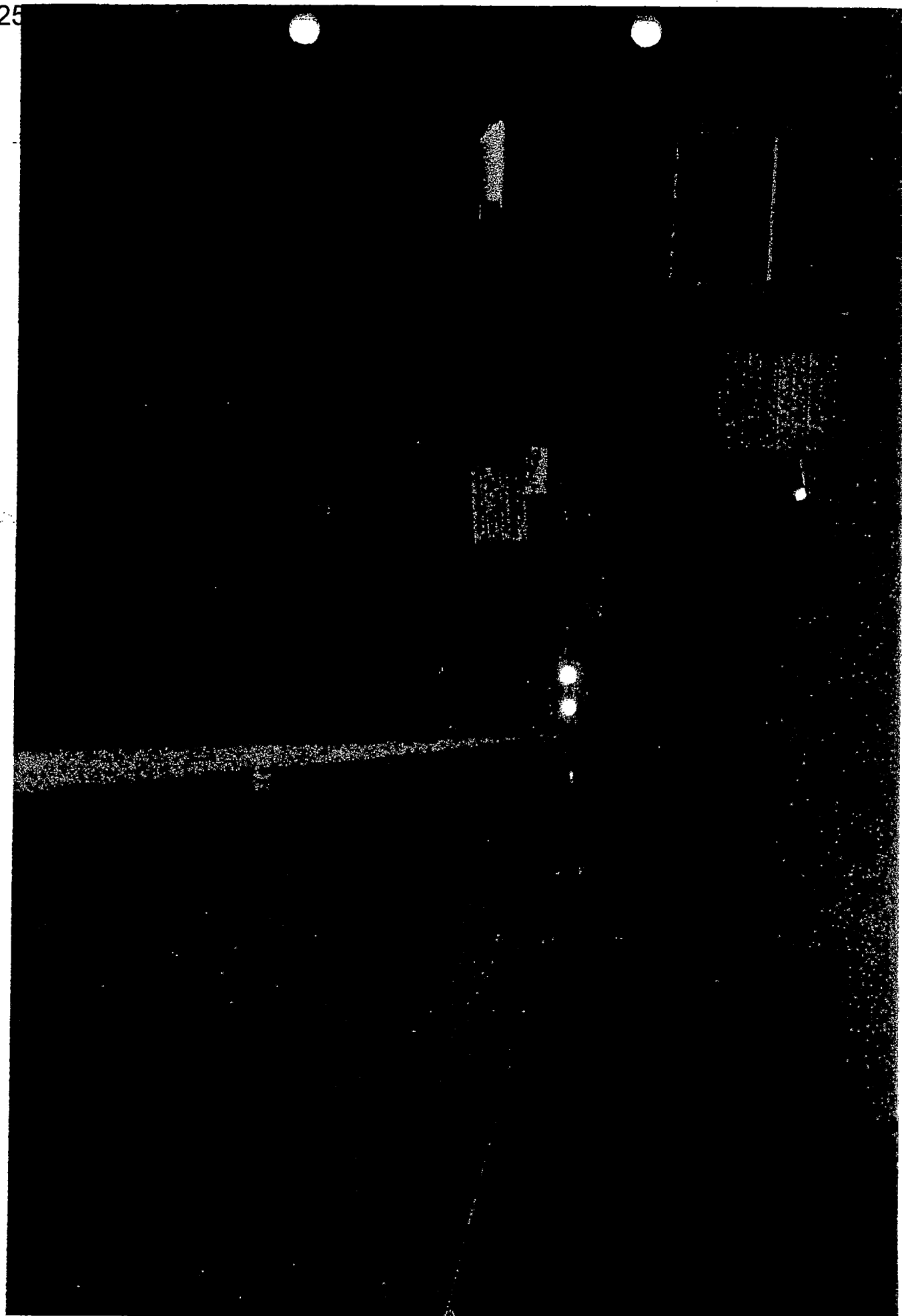
45  
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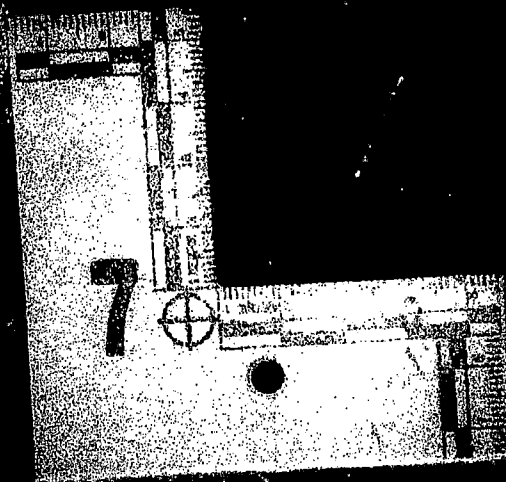


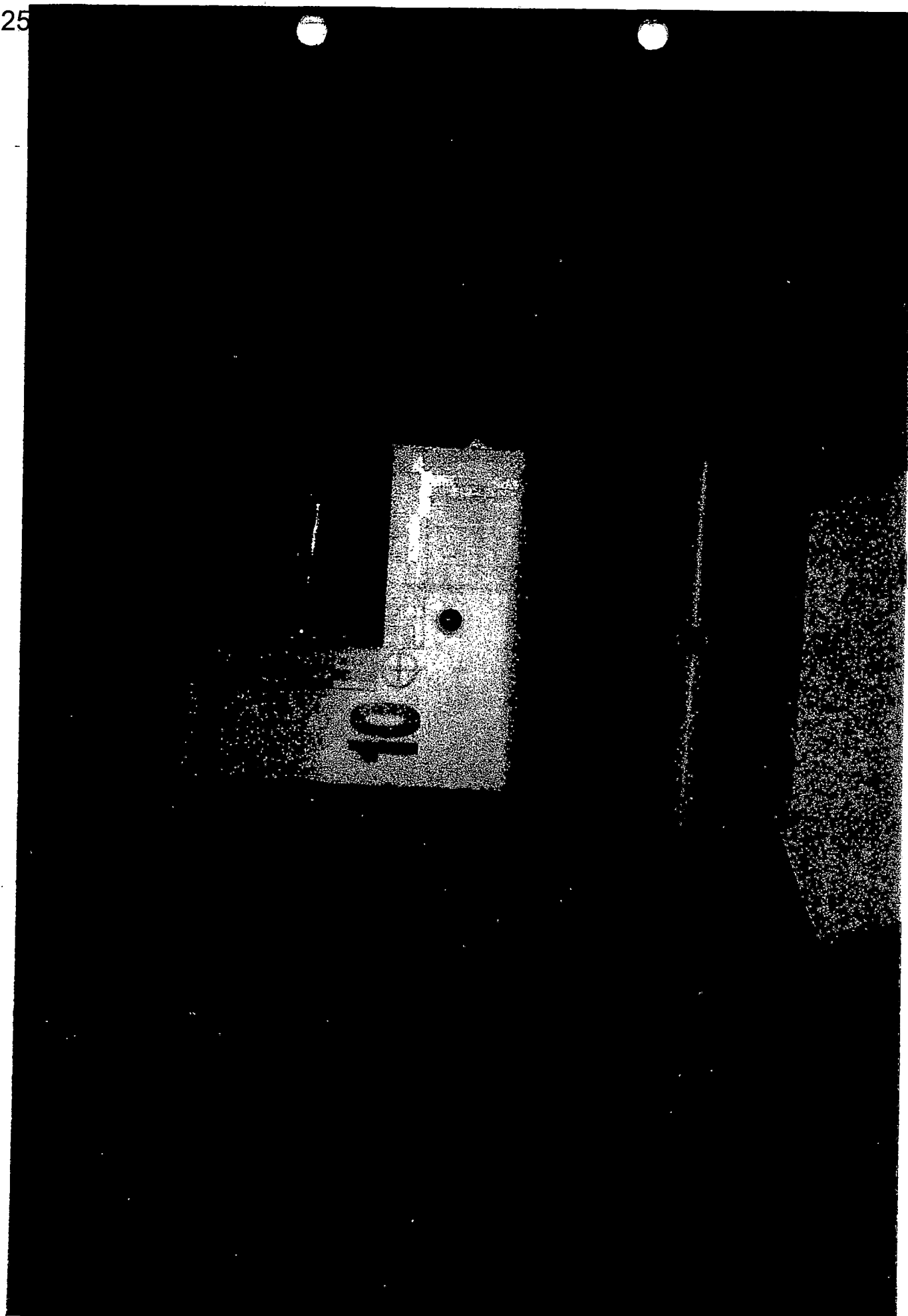


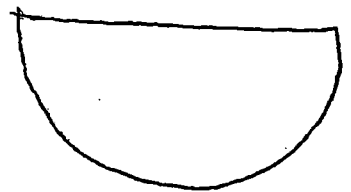
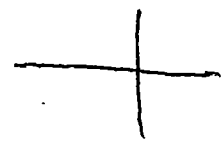
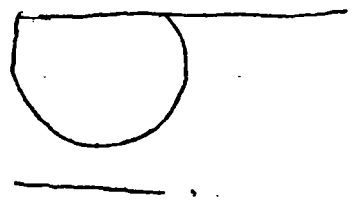
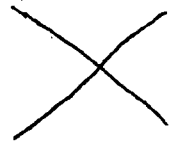
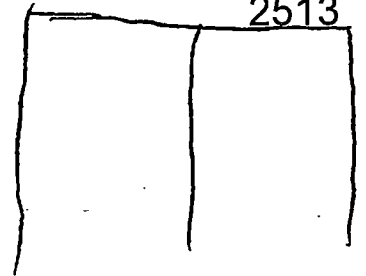


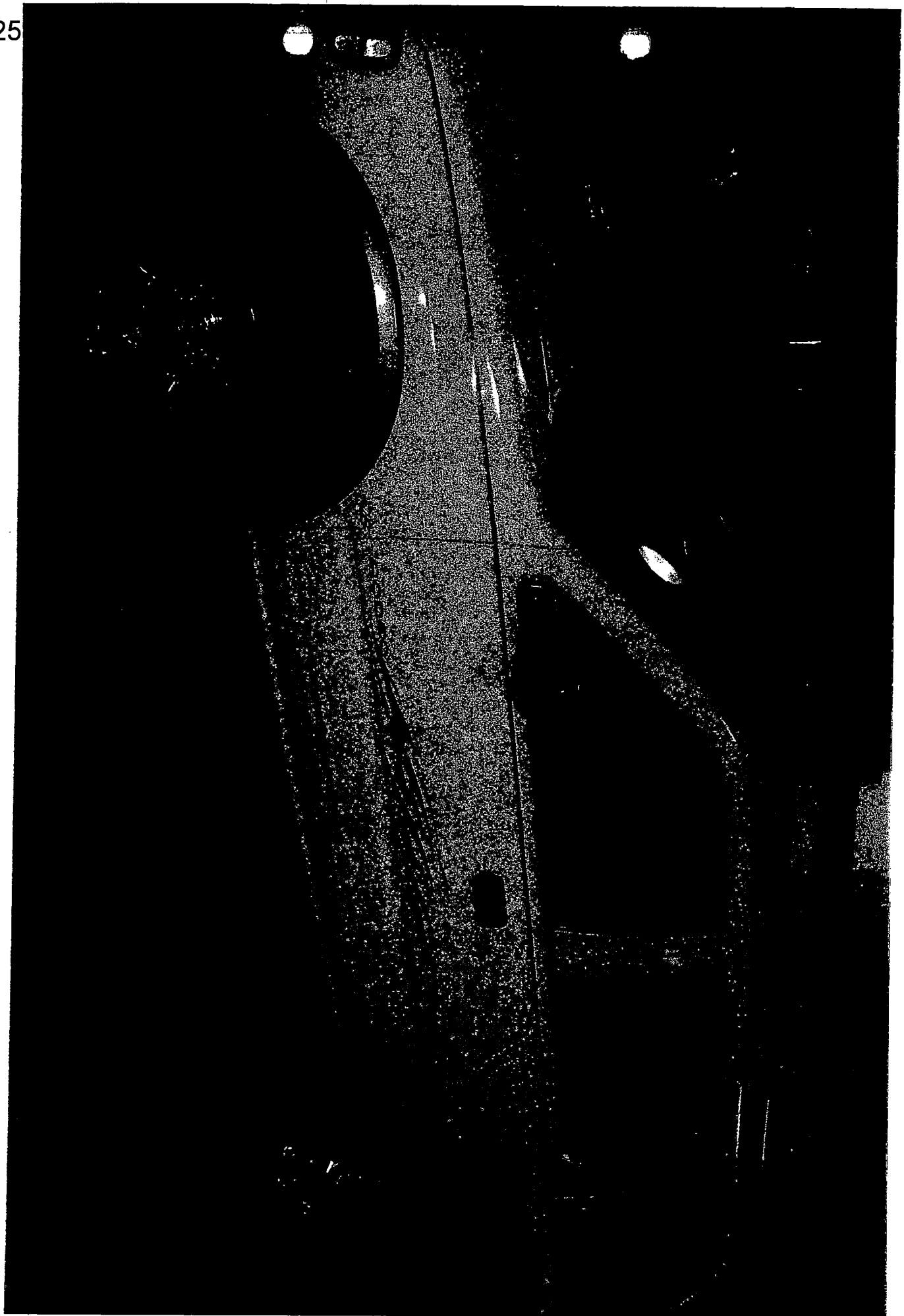


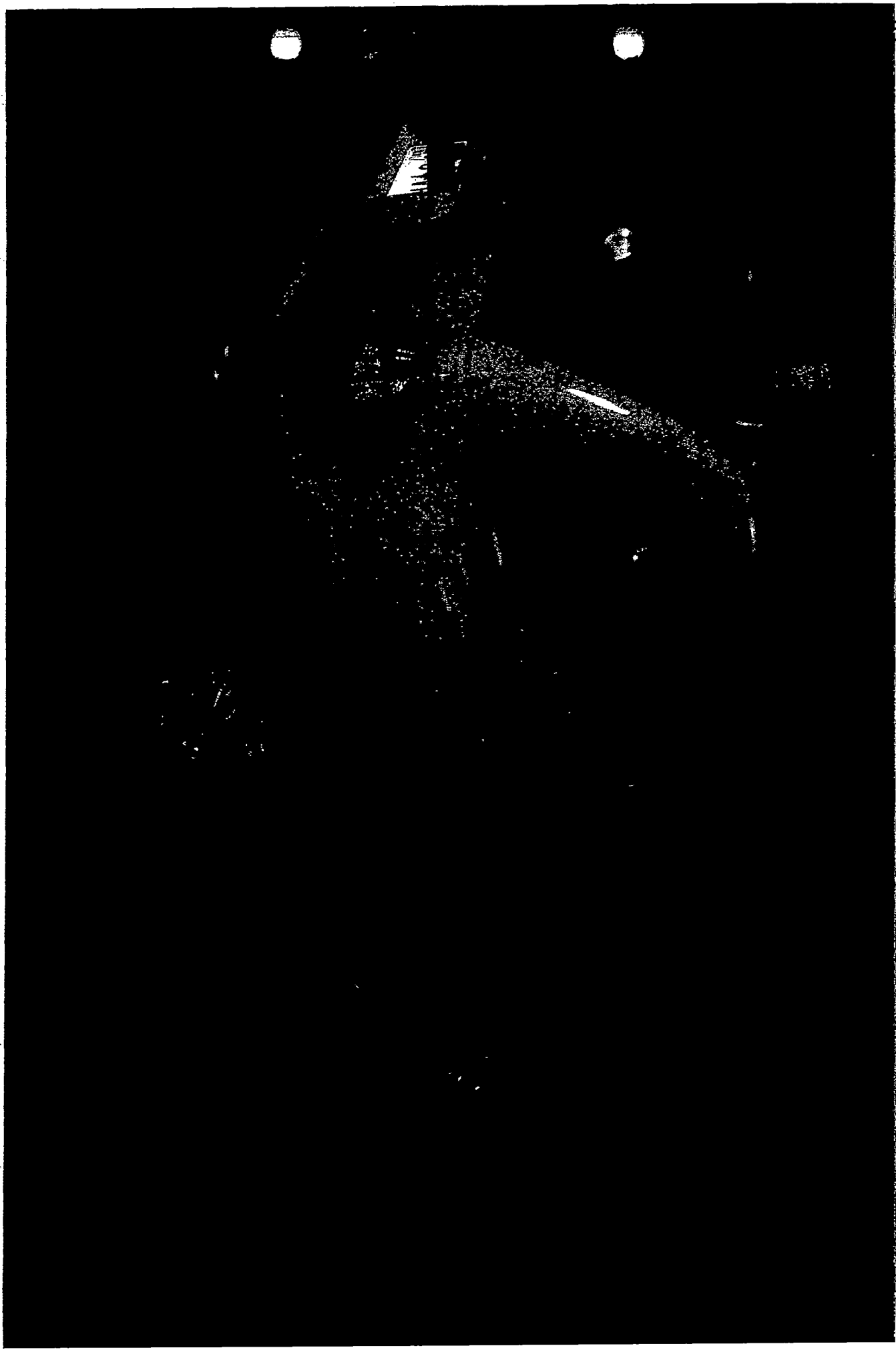


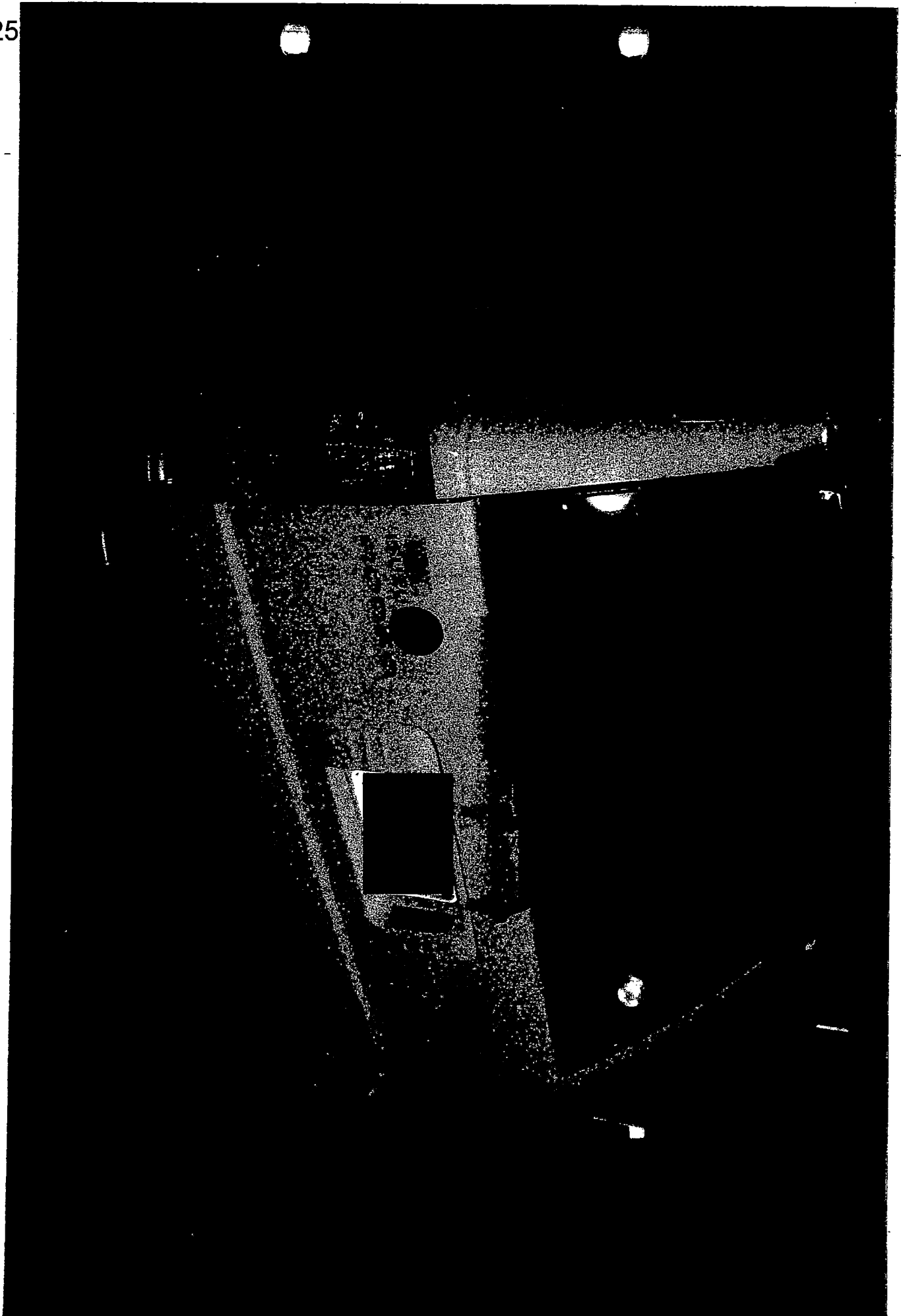




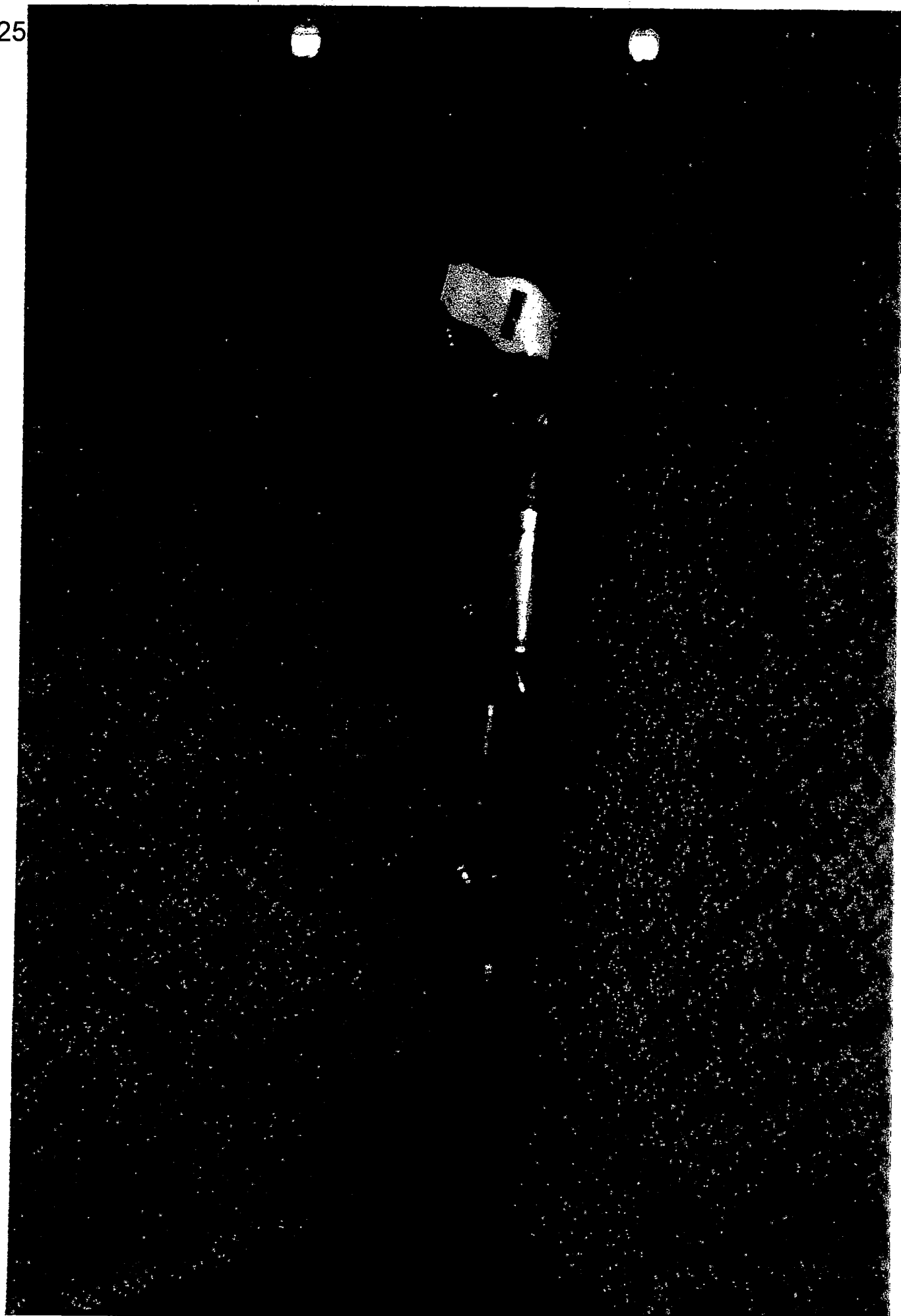












1016- - 25 - Q - And Investigator Collins, can you -- from the shell  
1159, Line 25

Ballistics Expert David Collins  
page 1 of 6

Exhibit E

State v. Tremaine Wray & Taurus Watts 10/12/09

160

1 casings that you found -- that were given to you in this  
2 case, could you please tell the jury your conclusions, once  
3 again, on the shell casings that you examined?

4 A All of the submitted cartridge cases that I examined,  
5 all 10 of them were fired by one gun, and the gun that fired  
6 them was most consistent with that being an M-11 style  
7 firearm.

8 Q So the three projectiles were fired from one gun?

9 A The three projectiles were fired from one gun, the 10  
10 cartridge cases were fired from one gun.

11 Q Can you say whether or not the projectiles were fired  
12 from the cartridge cases?

13 A In this particular case I could not do that  
14 determination unless I had that firearm submitted to me.

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P. 163, Lines 12-16

State v. Tremaine Wray &amp; Taurus Watts 10/12/09

163

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Q So the jackets and the fired bullet all come from one weapon, and the cartridges, shell casings that were found all came from one weapon, but we can't say it was the same weapon?

A That's correct.

State v. Tremaine Wray & Taurus Watts 10/12/09

177

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Q Let me ask you this, from what I understand from what you just testified to, the seven of the cartridges that you found or came off the roadway and you determined coming from one weapon, marked Winchester 9 millimeter Luger, are the same bullets that we just looked at in Exhibit No. 120, coming out of the Isuzu?

A They are the same caliber and the same brand.

Q Well, and so is nothing different between the bullets that were found, the cartridges that were found out on the roadway and the ones that were found in the Isuzu; is that correct?

A That's correct.

Q The jacketed 9 millimeter Winchester Luger bullets?

A The -- those from the crime scene were the same caliber and type as those from the Isuzu. The projectiles, two of them may be, based on their construction with full metal jacket projectiles, which is also represented the type of bullet that was found -- the cartridges in the Isuzu.

R178, Lines 9-25.

State v. Tremaine Wray &amp; Taurus Watts 10/12/09

178

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Q Right. And the ammunition in 120 is head stamped and has the same characteristics as in Exhibit 121 and 122; correct?

A The three 9 millimeter cartridge cases that you indicated were taken from the Isuzu have the same head stamp, same brand, same caliber as seven of the fired cartridge cases that were recovered at the crime scene.

Q So the long and short of it is this, at the end of the day, Exhibit No. 120, which were the bullets that came out of the Isuzu are the same type of ammunition as far as characteristics are concerned and head stamp is concerned from seven of the cartridges that came off the road?

A That's correct.

25246 Ballistics Expert David Felling  
P. 179, Lines 1-7

State v. Tremaine Wray & Taurus Watts 10/12/09

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1 Q There are no differences between the ammunition of  
2 those seven fired cartridges and two of the bullets out of  
3 the Isuzu?

4 A No, physical characteristics that I could tell that  
5 were different between the ones from the crime scene, the  
6 seven ones from the crime scene and two of the ones from the  
7 Isuzu.

8 Q

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# Exhibit E

## Richland County Sheriffs Department Firearms Analysis Section

### Evidence Inventory / Packaging Worksheet

Submitting Agency: ☒ RCSDDate\*: 6/30/07Agency Case Number: 07062790-30☐ SUPPLEMENTAL # \_\_\_\_\_Examiner / Inventorying Individual Initials: m

All the evidence listed below was received in a SEALED condition, unless otherwise indicated in the "Comments" field.  
Unless otherwise indicated, the Items below were opened (unsealed) by the person initialing above, on the above date\*.

| Item Number | Description                                                                                                        | Comment(s) |
|-------------|--------------------------------------------------------------------------------------------------------------------|------------|
| 1           | ONE FIRED Bullet jacket ("X")                                                                                      |            |
| 2           | ONE FIRED Bullet Jacket ("I")                                                                                      |            |
| 3           | Seven fired 9mm Luger cc's (WIN.)<br>("2", "3", "5", "7", "10", "11", "13")<br>(Subitemized for exam - 3.1 to 3.7) |            |
| 4           | Three fired 9mm Luger cc's (R-P)<br>("1", "4", "6")<br>(Subitemized for exam - 4.1, 4.2, 4.3)                      |            |
| 5           | ONE FIRED Bullet - from<br>hospital                                                                                |            |
|             |                                                                                                                    |            |
|             |                                                                                                                    |            |
|             |                                                                                                                    |            |
|             |                                                                                                                    |            |

☐ Continued - Page \_\_\_\_\_ of \_\_\_\_\_ Pages

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## Richland County Sheriffs Department

## Firearms Analysis Section

## Projectile Worksheet

NOT for use with shotgun pellets / wads

|                    |                       |
|--------------------|-----------------------|
| RCSD CASE NUMBER   | 07062790-30           |
| Submitting Agency  | RCSD                  |
| Agency Case Number | (Same as RCSD Case #) |
| Assigned Examiner  | D. Collins            |

Date Exam Initiated: 6/30/2007

Item:

1

General Description: One fired bullet jacket fragment

## PHYSICAL CHARACTERISTICS

☐ NOT consistent with an ammunition componentCaliber Type: 9mm / 38\* Measured Diameter: --- inches ☒ Distortion ☒ Not measurable ☐ Not DeterminableSpecific Caliber: 9mm Luger\* (\*determined by comparison) ☐ Not DeterminedProjectile Weight(s): 8.4 grainsType, Composition, Features: One fired copper bullet jacket fragment - no cannelureBrand / Marketed As: --- ☒ Not DeterminedSource / Origin: ☐ Autopsy ☒ Scene - envelope marked "X"

## "AS RECEIVED" DATA / CONDITIONS

Condition as Received: Badly damaged☒ Distorted ☒ Abraded ☒ Torn ☐ Expanded ☐ "Riveted" ☒ Flattened ☐ Evidence of Ricochet ☐ Impression (fabric, etc)Trace Evidence Noted? ☒ No ☐ Yes - Describe: ---If Trace Evidence Collected, Describe Collection / Routing: ☒ N/A ---☒ Swabbed for DNA as a precaution - ☐ Chemically Treated by Examiner / Describe: ---

## GENERAL RIFLING CHARACTERISTICS (GRC)

☐ N/A - None Present or VisibleTotal # of L/G: 6 / Twist: Right ☐ ALL Visible ☐ Probable ☒ Calculated ☒ Partially Visible (LEA 4 / GEA 4)Type of Rifling: Conventional Note: Total # of L/G determined by comparison with Items 2 and 5Visible Rifling Characteristics: ☒ Well Engraved ☐ Poorly Engaged ☐ Slippage ☐ Misalignment ☒ DistortionOther: ---GRC Measurements ☒ NOT Measured (N/A or identified with a firearm)LEA Widths: --- to --- inches / GEA Widths: --- to --- inches☐ GRC Search parameters run at the above values, +/- --- inchesPossible Makes, Calibers, and/or Models of Firearms that could have fired this Item: ☐ See Attached GRC Printout(s)

\*SEE ITEM 5\*

GRC Measurements same as / consistent with Items 2, 5

## Examiner's Markings and Locations:

"07062790 I-1 DC"

☐ Ink ☒ Scribed ☐ Other / Notes: ---

| Photograph                                                                                                                       | Results / Notes                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> NOT Photographed<br> | Fired by the same gun that fired Items 2 and 5, based on matching individual identifying markings found in LEA. Markings that are present duplicate well. |

RCSD FAS 006 060107

## Richland County Sheriffs Department

## Firearms Analysis Section

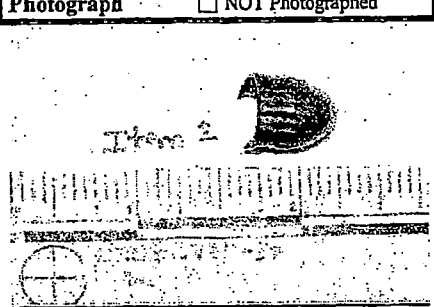
## Projectile Worksheet

NOT for use with shotgun pellets / wads

|                    |                       |
|--------------------|-----------------------|
| RCSD CASE NUMBER   | 07062790-30           |
| Submitting Agency  | RCSD                  |
| Agency Case Number | (Same as RCSD Case #) |
| Assigned Examiner  | - D. Collins -        |

Date Exam Initiated: 6/30/2007

Item: **2**General Description: One fired bullet jacket**PHYSICAL CHARACTERISTICS**☐ NOT consistent with an ammunition componentCaliber Type: 9mm / 38\* Measured Diameter: --- inches ☒ Distortion ☒ Not measurable ☐ Not DeterminableSpecific Caliber: 9mm Luger\* (\*determined by comparison) ☐ Not DeterminedProjectile Weight(s): 18.0 grainsType, Composition, Features: One fired copper bullet jacket - no cannelureBrand / Marketed As: --- ☒ Not DeterminedSource / Origin: ☐ Autopsy Scene - envelope marked "1 (India)"**"AS RECEIVED" DATA / CONDITIONS**Condition as Received: Damaged☒ Distorted ☐ Abraded ☒ Torn ☐ Expanded ☐ "Riveted" ☐ Flattened ☐ Evidence of Ricochet ☐ Impression (fabric, etc)Trace Evidence Noted? ☒ No ☐ Yes - Describe: ---If Trace Evidence Collected, Describe Collection / Routing: ☒ N/A ---☒ Swabbed for DNA as a precaution - ☐ Chemically Treated by Examiner / Describe: ---**GENERAL RIFLING CHARACTERISTICS (GRC)**☐ N/A - None Present or VisibleTotal # of L/G: 6 / Twist: Right ☐ ALL Visible ☐ Probable ☒ Calculated ☒ Partially Visible (LEA 5 / GEA 5)Type of Rifling: Conventional Note: Total # of L/G determined by comparison with Items 1 and 5Visible Rifling Characteristics: ☒ Well Engraved ☐ Poorly Engaged ☐ Slippage ☐ Misalignment ☒ DistortionOther: ---**GRC Measurements** ☒ NOT Measured (N/A or identified with a firearm)LEA Widths: --- to --- inches / GEA Widths: --- to --- inches☐ GRC Search parameters run at the above values, +/- --- inchesPossible Makes, Calibers, and/or Models of Firearms that could have fired this Item: ☐ See Attached GRC Printout(s)\*SEE ITEM 5\*GRC Measurements same as / consistent with Items 1, 5**Examiner's Markings and Locations:**"07062790 I-2 DC"☐ Ink ☒ Scribed ☐ Other / Notes: ---

| Photograph <input type="checkbox"/> NOT Photographed                                | Results / Notes                                                                                                                                           |
|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | Fired by the same gun that fired Items 1 and 5, based on matching individual identifying markings found in LEA. Markings that are present duplicate well. |

RCSD FAS 006 060107

**Richland County Sheriffs Department**  
**Firearms Analysis Section**  
**Cartridge / Cartridge Case Worksheet**

|                           |                       |
|---------------------------|-----------------------|
| <b>RCSD CASE NUMBER</b>   | 07062790-30           |
| <b>Submitting Agency</b>  | RCSD                  |
| <b>Agency Case Number</b> | (Same as RCSD Case #) |
| <b>Assigned Examiner</b>  | D. Collins            |

Date Exam Initiated: 6/30/07 ☐ Multiple Unfired Cartridges (Bulk / Boxed Ammunition)

Item(s): **3.1-3.7**

**General Description / Caliber:** Seven fired 9mm Luger caliber cartridge cases

Brand(s) and/or Headstamp: All headstamped "WIN 9mm LUGER" (Winchester / Winchester USA) ☐ Reload / Remanufactured

(Bulk Ammunition Only) Quantity: --- Box Markings / Description: ---

Recovery Location: Scene - envelopes marked "2", "3", "5", "7", "10", "11", and "13" - subitemized as Items 3.1 thru 3.7 (respectively) for the purposes of this examination.

**"AS RECEIVED" DATA / CONDITIONS**

Condition as Received: Good

Trace Evidence Noted? ☒ No ☐ Yes- Describe: ---

If Trace Evidence Collected, Describe Collection / Routing: ☒ N/A ---

Projectile Composition, Type, and Weight: ☒ N/A-Fired OR Determined by: ☐ Total Cartridge Wt. ☐ Disassembly ☐ NOMINAL

Cartridge Case Composition / Features: Brass / ---

Primer / Primer Sealant Type & Composition: Brass Primer

**Markings / Marking Characteristics**

Firing Pin Impression: ☐ N/A - UNFIRED ☐ Hemispherical ☐ Circle ☒ Rectangle ☐ Glock ☐ Other - ---  
☐ Firing Pin Drag ☒ FP Aperture Flow ("Donut") (☐ with Shear) - Other: Consistent with SWD (M-11) or similar

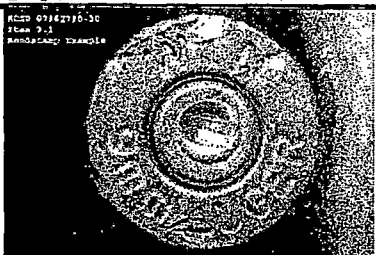
Breech Face Impression: ☐ N/A - UNFIRED ☐ Parallel ☐ Circular ☐ Arched ☒ Irregular ☐ Cross-Hatched ☐ Smooth  
☐ Other - ---

Other Marks Present and/or Analyzed: Ejector, chamber - used for ID efforts on some.

**Examiner's Markings and Locations:**

"07062790 1-3.1 DC" thru "... 3.7"

☐ Ink ☒ Scribed ☐ Other / Notes: ---

| Photographs                                                                                                                                                             | Results / Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <p>All fired by the same gun, based on firing pin and/or chamber marks (sparse markings)</p> <p>All fired by the same gun that fired Items 4.1-4.3 - based on matching chamber and ejector marks (differences in ammunition brands led to differing markings - sparse)</p> <p>ALL consistent with SWD "M-11" firearms, based on firing pin shape and FP aperture flowback.</p> <p>One Item 3 cartridge case (3.1) will be sent for NIBIN entry, although suitability for such entry is questionable due to faint and very small markings.</p> |

Form # FAS 004 060107  
 (Form Page 1 of 1)

**Richland County Sheriffs Department**  
**Firearms Analysis Section**  
**Cartridge / Cartridge Case Worksheet**

|                           |                              |
|---------------------------|------------------------------|
| <b>RCSD CASE NUMBER</b>   | <b>07062790-30</b>           |
| <b>Submitting Agency</b>  | <b>RCSD</b>                  |
| <b>Agency Case Number</b> | <b>(Same as RCSD Case #)</b> |
| <b>Assigned Examiner</b>  | <b>D. Collins</b>            |

Date Exam Initiated: 6/30/07 ☐ Multiple Unfired Cartridges (Bulk / Boxed Ammunition)

Item(s): **4.1 - 4.3**

**General Description / Caliber:** Three fired 9mm Luger caliber cartridge cases

Brand(s) and/or Headstamp: All headstamped "R-P 9mm LUGER" (Remington / Remington UMC) ☐ Reload / Remanufactured

(Bulk Ammunition Only) Quantity: --- Box Markings / Description: ---

Recovery Location: Scene - envelopes marked "1", "4", and "6" - subitemized (respectively) as Items 4.1 thru 4.3 for these examinations.

**"AS RECEIVED" DATA / CONDITIONS**

Condition as Received: Good

Trace Evidence Noted? ☒ No ☐ Yes- Describe: ---

If Trace Evidence Collected, Describe Collection / Routing: ☒ N/A ---

Projectile Composition, Type, and Weight: ☒ N/A-Fired OR Determined by: ☐ Total Cartridge Wt. ☐ Disassembly ☐ NOMINAL

Cartridge Case Composition / Features: Brass / ---

Primer / Primer Sealant Type & Composition: Nickel-Plated Primer

**Markings / Marking Characteristics**

Firing Pin Impression: ☐ N/A - UNFIRED ☐ Hemispherical ☐ Circle ☒ Rectangle ☐ Glock ☐ Other - ---

☐ Firing Pin Drag ☒ FP Aperture Flow ("Donut") (☐ with Shear) - Other: Consistent with SWD (M-11)

Breech Face Impression: ☐ N/A - UNFIRED ☐ Parallel ☐ Circular ☐ Arched ☒ Irregular ☐ Cross-Hatched ☐ Smooth

☐ Other - ---

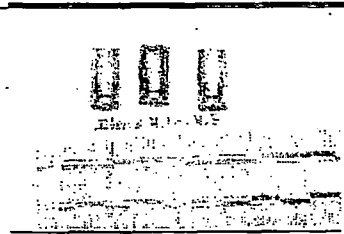
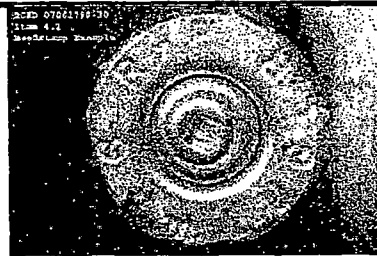
Other Marks Present and/or Analyzed: Ejector, chamber - used for ID efforts.

**Examiner's Markings and Locations:**

"07062790 I-4.1 DC" thru "... 4.3"

☐ Ink ☒ Scribed

☐ Other / Notes: ---

| Photographs                                                                         |                                                                                     | Results / Notes                                                                                                                                                        |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | All fired by the same gun, based on firing pin and/or chamber marks (sparse markings)                                                                                  |
|                                                                                     |                                                                                     | All fired by the same gun that fired Items 3.1-3.7 - based on matching chamber and ejector marks (differences in ammunition brands led to differing markings - sparse) |
|                                                                                     |                                                                                     | ALL consistent with SWD "M-11" firearms, based on firing pin shape and FP aperture flowback.                                                                           |

Form # FAS 004 060107  
 (Form Page 1 of 1)

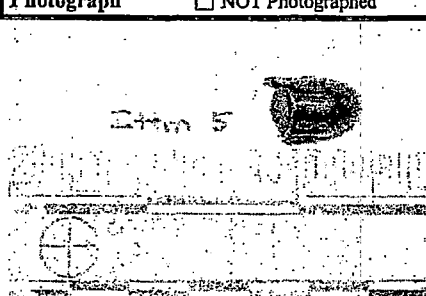
2530

**Richland County Sheriffs Department**  
**Firearms Analysis Section**  
**Projectile Worksheet**  
*NOT for use with shotgun pellets / wads*

|                    |                       |
|--------------------|-----------------------|
| RCSD CASE NUMBER   | 07062790-30           |
| Submitting Agency  | RCSD                  |
| Agency Case Number | (Same as RCSD Case #) |
| Assigned Examiner  | D. Collins            |

Date Exam Initiated: 6/30/2007

Item: **5**General Description: One fired bullet**PHYSICAL CHARACTERISTICS**☐ NOT consistent with an ammunition componentCaliber Type: 9mm / 38\* Measured Diameter: --- inches ☒ Distortion ☒ Not measurable ☐ Not DeterminableSpecific Caliber: 9mm Luger\* (\*determined by weight, type, design) ☐ Not DeterminedProjectile Weight(s): 109.2Type, Composition, Features: One fired copper jacketed FMJ bullet with no cannelure, exposed lead base (Consistent w/ 9mm L)Brand / Marketed As: --- ☒ Not DeterminedSource / Origin: ☐ Autopsy ☒ Recovered from pants leg of victim at hospital**"AS RECEIVED" DATA / CONDITIONS**Condition as Received: Damaged☒ Distorted ☐ Abraded ☒ Torn ☐ Expanded ☐ "Riveted" ☐ Flattened ☐ Evidence of Ricochet ☐ Impression (fabric, etc)Trace Evidence Noted? ☐ No ☒ Yes- Describe: Blood, tissueIf Trace Evidence Collected, Describe Collection / Routing: ☒ N/A Not Collected - from victim☐ Swabbed for DNA as a precaution - ☒ Chemically Treated by Examiner / Describe: Bleach soaked, then foaming disinfectant**GENERAL RIFLING CHARACTERISTICS (GRC)**☐ N/A - None Present or VisibleTotal # of L/G: 6 / Twist: Right ☐ ALL Visible ☐ Probable ☒ Calculated ☒ Partially Visible (LEA 5 / GEA 5)Type of Rifling: Conventional Note: Total # of L/G determined by GRC searchVisible Rifling Characteristics: ☒ Well Engraved ☐ Poorly Engaged ☐ Slippage ☐ Misalignment ☒ DistortionOther: ---**GRC Measurements** ☒ NOT Measured (N/A or identified with a firearm)LEA Widths: 0.077 to 0.080 inches / GEA Widths: 0.102 to 0.103 inches☒ GRC Search parameters run at the above values, +/- 0.003 inchesPossible Makes, Calibers, and/or Models of Firearms that could have fired this Item: ☒ See Attached GRC Printout(s)GRC Measurements same as / consistent with Items 2, 5**Examiner's Markings and Locations:**"07062790 I-5 DC"☐ Ink ☒ Scribed ☐ Other / Notes: ---

| Photograph <input type="checkbox"/> NOT Photographed                                | Results / Notes                                                                                                                                                  |
|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>Fired by the same gun that fired Items 1 and 2, based on matching individual identifying markings found in LEA. Markings that are present duplicate well.</p> |

RCSD FAS 006 060107

Exhibit

F

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Exhibit F

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- 12 Q When the police arrived did you make contact with them?
- 13 A Yes, I did.
- 14 Q And did you identify who you were?
- 15 A Yes.
- 16 Q Did you tell them you were the owner of this bar --
- 17 A Yes.
- 18 Q -- or the bartender, operator?
- 19 A Yes.
- 20 Q And did you provide descriptions of both vehicles to
- 21 law enforcement?
- 22 A No, because when the police officer came up he just
- 23 wanted to secure the -- what was going on, because he said
- 24 evidence might be tampered or cars ran over it, so he
- 25 stopped traffic on both sides.

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1 Q Okay.

2 A And had them go around. So he -- when he got out the  
3 car he just started handling that.

4 Q Okay.

5 A So by that time I walked back over to the business

6 Q And eventually did you make contact with an officer  
7 about what you had witnessed?

8 A Yes.

9 Q All right. And do you recall if that was a uniformed  
10 officer?

11 A No. The officer that I talked to Officer McRae.

12 Q Investigator McRae?

13 A Investigator McRae, yes.

14 Q Okay. And so the first time you explained what you  
15 observed was to Investigator McRae?

16 A Yes.

17 Q And the other officers ~~were~~ concerned with the crime  
18 scene?

19 A Right. Yes.

20 Q Did you provide descriptions of the car, however?

21 A No, because, like I said, when the first officer pulled  
22 up, he just wanted to secure the street. Looking for  
23 shells.

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9 Q Okay. Now, when the police arrived you didn't go to  
10 the police officer to tell him what you saw, did you?

11 A I went to the police officer, but he said that there  
12 was -- that there was -- somebody had got killed. I didn't  
13 know that. So it was like he wanted to secure the streets  
14 to check for shells.

15 Q Okay.

16 A So he was busy roping off the area. I told him I would  
17 be over at the business. And that's when I went in the  
18 office.

19 Q So when the officer arrived on the scene, you didn't  
20 tell him what you saw did you?

21 A I went to talk to him. He told me to step back --

22 Q Somebody got killed?

23 A Yeah, he told me that. I was like -- someone was shot,  
24 and I didn't know someone was shot. The officer told me  
25 that.

1 Q Okay. So then you went back in the business, right?

2 A Right. I told him I will be over here if he wanted to  
3 talk to me.

4 Q And the only person that you spoke with that night,  
5 well, actually that morning was Don McRae, right?

6 A Yes.

7 Q You didn't tell any uniformed officer what you saw that  
8 night? How many were there?

9 A I couldn't tell you.

10 Q Could you identify them as police officers because of  
11 their uniforms?

12 A Yes, I could.

13 Q Okay.

14 A Yes.

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# Exhibit G

Investigator Don McRae Testimony

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DON MCRAE - CROSS-EXAMINATION

BY MS. JOHNS:

Q Investigator McRae, you had already stated on the record, this is just to get us to the place where we are right now. You were the investigator on-call that night?

A I was.

Q And you got a call in the early morning hours that got you out of bed and you came to the crime scene; correct?

A Yes, ma'am.

Q Okay. And when you were called, do you know what time it was?

A In my case notes, I wrote 5:08.

Q Okay. And you were aware of an officer responding to the scene; is that right?

A An officer responding to the scene?

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1 Q A deputy, a first responder?

2 A There would have probably been several deputies  
3 responding to that scene.

4 Q Okay, and you mentioned one of those deputies as being  
5 Deputy W. Gregory; is that correct?

6 A Correct.

7 Q And you know that Deputy W. Gregory had responded to  
8 this particular scene; is that right?

9 A He is the one that did one of the initial incident  
10 reports. That's correct.

11 Q He did respond to the call, in fact, his call numbers  
12 are on the 911 transcript; is it not?

13 A I would need to see the transcript to be able to verify  
14 that and know what his call sign was.

15 Q Do you know what his call sign was?

16 A No, ma'am, I would not.

17 Q You were aware, based on you preparation for this case  
18 that Deputy Gregory arrived at 4:15 a.m.; correct?

19 A According to the initial incident report that Deputy  
20 Gregory wrote. Yes, his time of arrival was 4:15.

21 Q And the dispatch time was 4:12 a.m.; right?

22 A That's correct.

23 Q Okay. And it being that Deputy Gregory is one of the  
24 first responders, I know that there are many out there?

25 A Yes, ma'am.

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1 Q But he did memorialize himself being there; isn't that  
2 right?

3 A By him submitting this incident report, yes, he -- I  
4 mean, I'm not disputing the fact that Deputy Gregory was or  
5 was not there.

6 Q Okay. And you have the benefit of looking at his  
7 incident report; right?

8 A I did. I have it in front of me.

9 Q And from that incident report we've learned that he  
10 spoke with people that were at the scene?

11 A Correct.

12 Q And when he spoke to people at the scene he initially  
13 stated there was a subject that was involved in a shooting;  
14 isn't that right?

15 A A subject. Yeah, I -- read plural.

16 Q Okay. Well, let me show you this. Okay, suspects,  
17 excuse me.

18 A Well, if you look at Page 1, under subject No. 1, you  
19 will see that there was a subject listed in that, and if you  
20 look at Page 2, there's an unknown subject, Subject No. 2.

21 Q Subjects. Excuse me. Subjects.

22 A Yes. Subjects.

23 Q Okay, and in the description of Subject No. 1, it says  
24 dread locks in hair; correct?

25 A Correct.

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1 Q And throughout the body of his incident report, his  
2 states that the suspects with plural s, left the scene. Do  
3 you agree with that?

4 A Yes.

5 Q And a few minutes later a complaint states that a white  
6 vehicle SUV with the suspects in it began shooting?

7 A That is Mr. Gregory's comments within the case of his  
8 initial -- and I emphasize the word, initial -- incident  
9 report.

10 Q Okay. But it does say that; right?

11 A Yes.

12 Q Okay. The suspects then began shooting towards the --

13 MS. SHIPLEY: Objection. She's reading from the  
14 transcript or the report. She should pose a question.

15 MS. JOHNS: I'll pose a question, Your Honor.

16 THE COURT: Thank you.

17 BY MS. JOHNS:

18 Q Your review of the report states that suspects left in  
19 car; right?

20 A Correct.

21 Q And later returned; is that right?

22 A I don't think it says and later returned.

23 Q Okay. Would you agree it says the suspects left the  
24 location?

25 A Yes.

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 Q And after a few minutes -- and a few minutes later --  
2 excuse me --

3 MS. SHIPLEY: Your Honor, I'm going to object under  
4 hearsay. We don't know what information is being -- where  
5 this information is coming from.

6 MS. JOHNS: I'll withdraw the question, Your Honor.  
7 Let me rephrase.

8 THE COURT: Okay. Thank you.

9 BY MS. JOHNS:

10 Q You had information that the suspects left the scene  
11 and returned later; correct?

12 A I don't -- no.

13 Q No?

14 A No.

15 Q Okay, well, I'm going to let you look at this. This is  
16 from your investigation; is it not?

17 A It is.

18 Q Gregory's incident report. Just look at that and tell  
19 me if it says the suspects left?

20 A It does say they left. It says the suspects left.

21 Q Okay.

22 A Yes.

23 Q And then returned later and began shooting at the club?

24 A I think you're taking it out of context a little bit,  
25 counselor. I don't know if I'm allowed to read what's in

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 this report?

2 THE COURT: You need to just answer what her  
3 question is.

4 MR. MCRAE: Okay.

5 A Nowhere in this report do I read that that car left and  
6 came back.

7 BY MS. JOHNS:

8 Q I'm not asking you about the car. I'm saying the  
9 suspects. It states that the suspects left.

10 A Yes.

11 Q And later returned?

12 A It does not state that.

13 Q Let me see. Oh. The suspects left; would you agree  
14 with that?

15 A Yes.

16 Q And a few minutes later --

17 A Yes?

18 Q -- the complainant states that the white SUV --

19 MS. SHIPLEY: Objection.

20 Q -- with the suspects in it.

21 MS. SHIPLEY: This is not evidence in the record  
22 that's inconsistent to --

23 THE COURT: You all approach and let me see that.  
24 (Off the record bench conference with counsel and the  
25 Court.)

1 THE COURT: Objection sustained.

2 BY MS. JOHNS:

3 Q Investigator McRae?

4 A Yes, ma'am.

5 Q You relied upon this incident report did you not, to  
6 initiate this investigation?

7 A Relied. I used it in my investigation. Yes. I would  
8 not use the term, rely.

9 Q You used it?

10 A It was a tool of the investigation.

11 Q Correct. So it was a tool --

12 A Yes.

13 Q -- used in your investigation?

14 A Correct.

15 Q And based on the information you began looking for a  
16 white SUV; isn't that right?

17 A I began looking for a white SUV, no, ma'am.

18 Q Your department began looking for a white SUV; is that  
19 correct?

20 A Yes.

21 Q And based on is, as you used it for a tool, you know  
22 that the white SUV began shooting towards the club; isn't  
23 that right?

24 A That is what is stated in the report. I cannot state  
25 that is fact or not. As a matter of fact, my investigation

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 revealed that that did not occur.

2 Q Okay, but you did use it as a tool, did you not?

3 A I did.

4 Q And it is from a deputy in your department; correct.

5 A It's an initial incident report, we relied basically --

6 Q I didn't ask you if you relied basically --

7 MS. SHIPLEY: Your Honor --

8 THE COURT: Answer the question and then --

9 MR. MCRAE: Yes, ma'am.

10 A Yes. I used it as a tool in my investigation.

11 BY MS. SHIPLEY:

12 Q And using it as a tool it contains certain information;  
13 would you agree with that?

14 A It does contain information.

15 Q One of it being that the first suspect had dread locks  
16 in his hair?

17 A One of the suspects in this vehicle, yes.

18 Q And it states Suspect No. 1, dread locks in hair; isn't  
19 that right?

20 A That was inside this particular vehicle, yes.

21 Q Okay. Does it say what vehicle it was?

22 A It states a white vehicle, SUV.

23 Q Is that listed as an SUV vehicle?

24 A Listed as a vehicle --

25 Q Yes, sir. On Page 2, where it says vehicle, gun, etc.

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 Is it listed as a vehicle?

2 A No.

3 Q Okay. So it's not listed as a vehicle.

4 A (No response.)

5 Q It's not listed as a vehicle; isn't that correct, on  
6 this form.

7 A In the narrative it's listed as a white vehicle. The  
8 officer did not list that vehicle in on Page 2, which is not  
9 required.

10 Q Okay. Not required. So you knew there was a white  
11 vehicle involved; fair to say?

12 A Involved with --

13 Q A shooting?

14 A -- the incident, yes.

15 Q And you do know that this information that you use as a  
16 tool indicates that the vehicle was possible a white Nissan  
17 with a black stripe; correct?

18 A Yes.

19 Q And it states that a Suspect No. 2, fired over the top  
20 of the vehicle.

21 MS. SHIPLEY: Objection. Hearsay, again.

22 MS. JOHNS: I'll rephrase the question, Your Honor.

23 THE COURT: Thank you.

24 BY MS. JOHNS:

25 Q Information that you did not rely upon but used as a

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1 tool, based on that information that you received there was  
2 information that somebody shot over the top of a white  
3 vehicle; right?

4 A According to this initial incident report, yes.

5 Q Now, that was at 4:15 a.m.; right?

6 A That is the time that Deputy Gregory arrived. It was  
7 sometime between 4:15 his time of arrival and 6:30 a.m., his  
8 time of departure.

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BY MS. JOHNS:

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Q And whose incident report is that?

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A Weldon Gregory.

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BY MS. SHIPLEY:

Q Now, as to the initial incident report that was referred to by Ms. Johns on cross-examination is that accurate?

A The initial incident report authored by whom?

Q Gregory Weldon?

A It has some accuracies in it, however total accuracy no.

Q Okay. What is the purpose of a criminal investigation?

A To determine the truth.

Q And did your investigation that revealed facts that were different from the initial report?

A Yes, we did.

Q And did anywhere in that initial report does it indicate that they returned to the scene?

A No.

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 BY MS. JOHNS:

2 Q You said that the initial incident report by the deputy  
3 arriving first on the scene is incorrect?

4 A I didn't say it was incorrect. I said it contained  
5 some information that proved not to be true, though our  
6 course of our investigation.

7 Q Proven not to be true for Ricky Jacobs?

8 A Through the course of our investigation it was proven  
9 to be not true.

10 Q Was it proven to be inconsistent; is that right?

11 A Inconsistent. Okay.

12 Q And that's inconsistent with what Ricky Jacobs told  
13 you?

14 A I'm sorry?

15 Q And that would be inconsistent with what Ricky Jacobs  
16 told you?

17 A Portions of this incident report, yes, ma'am.

18 Q Okay. So the purpose of the investigation is to  
19 determine the truth?

20 A Yes.

21 Q And the truth is determined by you?

22 A Through our investigation, yes.

23 Q So then there's no purpose in this jury, right?

24

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Exhibit

H

1 analyze?

2 A We look at the information sheet that I talked about a  
3 little while ago that talks about the incident time and time  
4 of collection. We look at that on a GSR kit. But we also,  
5 sometimes, look at the incident report to gather information  
6 from that. Especially when inanimate objects are involved.

7 Q And, in this case, did you have access to the initial,  
8 police report issued in this case?

9 A Yes, ma'am, I did.

10 Q And can you please refer to it?

11 A Yes, ma'am.

12 Q And tell the jury in your initial report that you were  
13 given, who is the complainant on that?

14 A The listed complainant is Deputy Galinski.

15 Q And did you have any conversations with Deputy Galinski  
16 prior to analyzing the evidence?

17 A No, ma'am, I did not.

18 Q And are you aware of whether or not he even went to the  
19 crime scene in this case?

20 A No, ma'am, I am not.

21 Q And in that report, what does it appear that it lists  
22 Deputy Galinski reporting?

23 A He is listed at the top of this or towards the top of  
24 this page as being the complainant.

25 Q Do you see the name Ricky Jacobs anywhere on there?

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1 A No, ma'am, I do not.

2 Q And, again, how many pages is the initial report?

3 A The initial report -- what I have is two pages.

4 Q And in the report what is the description of the  
5 vehicle?

6 A The description of the vehicle is -- complainant  
7 described the vehicle as possibly being a white Nissan --

8 MS. JOHNS: Your Honor, I object to him reading  
9 from it. It's not in evidence.

10 MS. SHIPLEY: Your Honor, inadmissible evidence.

11 such as hearsay is admissible under Rule 703.

12 THE COURT: To the extent that he's relying on the  
13 information that he's --

14 MS. SHIPLEY: And I can lay a foundation, Your  
15 Honor.

16 THE COURT: Okay.

17 BY MS. SHIPLEY:

18 Q Please proceed?

19 A Complainant described the vehicle as being a white  
20 Nissan with black stripe down the side.

21 Q Okay. And is there any mention of a tan 1999 Chevy  
22 Suburban anywhere in this initial report?

23 A No, ma'am, there is not.

24 Q And based on that, tell the jurors what, if anything  
25 you did to analyze the gunshot residue kit from the 1999

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Exhibit I

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Tremaine Rashon Wray, Appellant.

Appellate Case No. 2009-145346

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Appeal From Richland County  
J. Michelle Childs, Circuit Court Judge

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Unpublished Opinion No. 2012-UP-477  
Heard June 6, 2012 – Filed August 8, 2012

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**AFFIRMED**

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Appellate Defenders Elizabeth Anne Franklin-Best and  
Dayne C. Phillips, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior Assistant  
Deputy Attorney General Salley W. Elliott, Assistant  
Attorney General Alphonso Simon, Jr., and Solicitor  
Warren B. Giese, all of Columbia, for Respondent.

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Falsely established independent corroboration

a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). According to the affidavit, (1) several witnesses saw the vehicle to be searched leaving the crime scene and identified it as the vehicle from which several rounds were fired and (2) a witness identified both the driver and the passenger in the vehicle and stated that the gunfire that struck the victim came from the vehicle at the incident location.

None of the witnesses were confidential informants; therefore, evidence of past reliability was not necessary. See *State v. Driggers*, 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996). (Moreover, law enforcement personnel located the vehicle at the residence of the individual identified by the witness as the driver, thus independently corroborating the witness's account.) See *State v. Bellamy*, 336 S.C. 140, 145, 519 S.E.2d 347, 349 (1999) (upholding a finding that a search warrant

was based on probable cause even though the informant's reliability was suspect and citing, among other reasons, that weapons described by the informant matched those that had been stolen from the police department just days earlier). Finally, although the affidavit did not include the names of the witnesses, it noted that the witness who identified the occupants of the vehicle had also given a separate statement to law enforcement. See *Gates*, 462 U.S. at 241-42 ("[A]n affidavit relying on hearsay 'is not deemed to be insufficient on that score, so long as a substantial basis for crediting the hearsay is presented.'" (quoting *Jones v. United States*, 362 U.S. 257, 269 (1960))).

2. Wray next complains that the trial judge should have granted his motion for a mistrial because of two inflammatory and leading questions that the solicitor asked a witness for the State. We disagree.

The witness had previously been in a relationship with one of the men socializing with the victim on the night of his death. She was at the club that night. There, she ran into her former boyfriend and was introduced to others in his party. When she went to the bar by herself, an unknown man, whom she knew only as "T-something," made unwanted advances toward her. The witness then proceeded to the dance floor, where her former boyfriend approached her and stood behind her. Shortly thereafter, the man known as "T-something" resumed making advances toward the witness despite her attempt to discourage him, prompting her former boyfriend to throw a drink on him. A fight erupted inside the club, which led to the victim's death and resulted in Wray's conviction. The witness gave a description of "T-something" and testified that he was definitely not Taurus Watts, with whom she was acquainted through family members.

testimony. Moreover, the inflammatory insinuations in the solicitor's questions were not referred to again during the six and one-half days of trial that followed the witness's appearance. Finally, neither the questions at issue nor any answers that the witness gave implicated either defendant in the victim's murder. Considering all these circumstances, we hold the trial judge's remedial measures were sufficient to cure any prejudice from the solicitor's questions; therefore, the case for mistrial presented here was not one of such manifest necessity that warrants reversal of the trial judge's refusal to invoke this drastic measure. *See State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999) ("A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons."); *id.* (stating that a mistrial should not be ordered in every case in which incompetent evidence is received and that "the trial judge should exhaust other methods to cure possible prejudice before aborting a trial").

3. Finally, Wray maintains the circuit judge originally scheduled to preside at the trial erred in granting the State's motion to continue the case to investigate recently obtained information about where the murder weapon could be found. Wray argues the State, in moving for a continuance, failed to comply with Rule 7 of the South Carolina Rules of Criminal Procedure and this error was compounded by the court's excusing the State from compliance with this rule. We disagree.

A trial judge's decision to grant a continuance will not be reversed absent a clear showing of an abuse of discretion. *State v. Galimore*, 396 S.C. 471, 477, 721 S.E.2d 475, 478 (Ct. App. 2012). Here, as required by Rule 7, the State's motion was made in writing and filed with the clerk of court. Rule 7(a), SCRCrimP. The motion also included a showing of good and sufficient legal cause to postpone the trial, namely the existence of newly discovered information that, notwithstanding diligent efforts by law enforcement, could not be fully investigated before the scheduled trial. Furthermore, contrary to Wray's argument at trial, the requirement that the State present testimony to support its motion applies only when the continuance is sought because of the absence of a witness. Rule 7(b), SCRCrimP. In this case, the State requested a continuance to investigate a new lead about the location of the missing murder weapon, not because a witness failed to appear. Based on these circumstances, we hold the grant of the State's motion to continue the case was within the trial judge's discretion.

**AFFIRMED.**

**WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.**

Exhibit J

Deputy Ryan Galinski Testimony

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1 up, is that correct, when you were on scene you did a hand  
2 written report; is that correct?

3 A I don't recall doing a handwritten report. It's  
4 possible I did. I just don't recall.

5 Q Let me just hand this up to see if it refreshes your  
6 memory?

7 A Sure.

8 Q I want to see if you can ID the handwriting there?

9 A That's not my handwriting.

10 Q So that's a handwritten report from another officer; is  
11 that correct?

12 A That's correct.

13 Q Now, I believe we were here for the video. There was a  
14 BOLO for the vehicle we just discussed, the white SUV with  
15 black pinstripping, that was described as a Nissan  
16 Pathfinder, even though it ended up being an Isuzu Rodeo; is  
17 that correct?

18 A Correct.

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Q Okay. And with regard to your involvement in this case, you did not go to the crime scene, right?

A I did not go to the crime scene.

Q Okay. And so you don't have any personal knowledge of what happened on the crime scene, correct?

A Just what was relayed to me over the radio and over my phone with phone conversations with other officers at the crime scene.

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Q Okay. Now, you had an opportunity to fill out an incident report in this case, didn't you?

A I filled out a supplemental report. I didn't fill out an incident report.

Q Okay. I'm going to show you this and see if this is the report that is submitted by you?

A This is not the incident report that I submitted. No.

Q Okay. What name is at the bottom?

A My name is listed at the bottom.

Q Okay. Do you know who submitted that report, then?

A We have Corporal Gore is listed on it, and then the follow up investigation by Officer -- Investigator McRae.

Q Okay. So that Officer Gore is the approving officer, is that right?

A Correct.

V61,3

State v. Tremaine Wray and Taurus Watts 10/7/09

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1 Q Okay. And it lists on there the reporting officer as  
2 Ryan Galinski, right?

3 A That's correct.

4 Q And that would be you, right?

5 A That is correct.

6 Q Okay. So you generated that report?

7 A I did not.

8 Q You did not. And do you know whether or not Officer  
9 Gore generated that report?

10 A I have no knowledge of who generated it. I couldn't  
11 tell you.

12 Q All right? So this is not familiar to you then?

13 A That's correct.

14 Q Now, your supplemental report, let me show this to you  
15 to see if this is actually your report or somebody else's  
16 report? I was under the impression the incident report, the  
17 initial incident report was yours with your name on it. Is  
18 that familiar to you?

19 A This is my supplemental report. Both of these sheets  
20 are.

21 Q And it would be supplemental to what, sir?

22 A The incident report.

23 Q Okay. Where is your incident report?

24 A I don't have an incident report. I was not the first  
25 officer on the scene. Generally, the first officer on the

Exhibit

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Trans. Vol. 6

V2564 GSR Expert Michael Moskal

p. 69, Lines 6-8, Line 25

State v. Tremaine Wray & Taurus Watts 10/12/09

69

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A My conclusion is that what I have here is consistent  
with a weapon having been fired in that driver's area of the  
car.

Q

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Q: Now, the fact that you did not locate antimony or

P.70, Lines 1-2.

State v. Tremaine Wray & Taurus Watts 10/12/09

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barium, does that change your conclusions in any way?

2 A No, ma'am

Vol 2566 GSK Expert Michael Morica

P.72 Lines 10-15,

State v. Tremaine Wray & Taurus Watts 10/12/09

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A My conclusion, based on everything I found here is that

a weapon was fired in the vicinity of that passenger area?

Q Which area?

A The driver's side area.

Q Okay.

A The driver's side.

State v. Tremaine Wray & Taurus Watts 10/12/09

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A My results, my conclusion, I believe, is what she referred to when she asked was that consistent with a weapon being fired from the passenger seat -- or from the driver's seat and I said yes. Now, if I had found barium and antimony I would be more conclusive in the fact that I had actually found gunshot residue.

Q

A It's a little stronger, but it still indicates to me that a weapon was fired in that area, yes.

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State v. Tremaine Wray & Taurus Watts 10/12/09

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A No. ma'am, but what I have here is consistent in the  
entirety of the case around the Chevy Suburban is consistent  
with a gunshot being fired in that vicinity.

State v. Tremaine Wray &amp; Taurus Watts 10/12/09

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A No, but based on the size of these particles, and the quantities and where they are, it's more consistent with a weapon being fired in that driver's seat than anything else?

A Based on my data to me, I have enough data to say that a weapon was fired in that area.

Q That a weapon was fired in that area?

A Yes, ma'am.

2016 GSK Expert Michael Mosker)

P.129 Lines 18-20.

State v. Tremaine Wray & Taurus Watts 10/12/09

129

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A I cannot tell you 100 percent where it came from, but

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based on my experience with thousands of GSR kits, I can

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tell you that is it consistent with a weapon being fired.

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P.134 Lines 20-21.

State v. Tremaine Wray &amp; Taurus Watts 10/12/09

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A Based on my conclusions a weapon was fired in the  
vicinity of the driver's seat in the Chevy Suburban.

Vol 2572 GSR Expert Michael Moskat

P.135 Lines 1-7,

State v. Tremaine Wray & Taurus Watts 10/12/09

135

1 Q Isn't it true that your finding is actually consistent  
2 with a weapon being fired in that area; is that correct?

A It's consistent with, yes, sir.

4 Q You just said that your finding is a weapon was fired  
5 in that area. You can't say that can you?

6 A I'm sorry. It is consistent with, in my opinion it  
7 happened, yes, sir.

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Q And finally you testified that your decisions on  
testing were not based on a witness account. You testified

Exhibit L

|    | State v. Tremaine Wray and Taurus Watts 10/6/09             | Vol. 2<br>49 |
|----|-------------------------------------------------------------|--------------|
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| 19 | You will hear from Michael Moskal, as well, a trace         |              |
| 20 | expert in gunshot residue at SLED. He will tell you how the |              |
| 21 | defendant's car was positive for gunshot residue.           |              |
| 22 |                                                             |              |
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So if officers are going to treat it like a crime scene, you think they are going to let a tow truck driver get inside? Let's say the tow truck driver did get inside -- well, the only reason the tow truck driver would get inside the car is to change the gear to neutral, perhaps. I'm not familiar with it. Use your common sense. But you'd have to open the door, get inside, put his hands on the gear shift, put it in neutral. Then he would be done and he'd shut the door, right? Well, why do we have GSR on the driver's side rear door frame? There's no reason for a tow truck driver to get in the back seat of

Please  
type Lines-  
3-24.

State v. Tremaine Wray & Taurus Watts 10/14/09

53

1 a car when he's going to tow it. There's no reason for  
2 that.

3 Well, ladies and gentlemen, remember I asked Agent  
4 Moskal, is it consistent and possible when you are firing a  
5 firearm out of a moving vehicle, outside a window, for GSR  
6 to come back to the backseat, and he said, yes. That's how  
7 it got there.

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10  
11 You ask yourself if Agent  
12 Moskal was lying or telling the truth about his findings.  
13 And his ultimate conclusion, ladies and gentlemen, is that  
14 the evidence is most consistent with a firearm being fired  
15 from the driver's side area.

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19 and that corroborates Ricky  
20 Jacobs, as well. Forensic evidence does not lie.

Vol.2

State v. Tremaine Wray and Taurus Watts 10/6/09 Vol.2

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Your Honor, they were seeking forensic evidence related to the shooting, which included GSR, which was collected in this case, and which turned out to be positive.

Vol. 2

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Vol. 2

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their word, is likely that evidence of this shooting would be found in this vehicle whether it be gunshot residue or ballistics. And in this case there was gunshot residue.

In this case, Your Honor, you've heard testimony from Ricky Jacobs that he is familiar with the people that frequent his night club and that he was familiar with the first name of one of the perpetrators and had seen the other one before, however, he couldn't recall his name right at the time. And he did provide his name in a written statement and he signed it, to law enforcement, which was therefore -- relied upon for probable cause in the

State v. Tremaine Wray & Taurus Watts 10/12/09

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And so Your Honor, this is corroborating evidence. It is extremely probative to the state's case.

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THE COURT: Does he take it further to say the type of gun and --

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MS. SHIPLEY: No. He can't identify what type of gun, he can't identify who fired the gun.

19

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THE COURT: It's just a matter that a gun was --

21

MS. SHIPLEY: Was fired from inside the car.

22

THE COURT: Okay. Wait, say that last part?

23

MS. SHIPLEY: That a firearm -- consistent with a firearm being fired from within the car.

24

25

THE COURT: Okay. Now, tell me about the from

State v. Tremaine Wray & Taurus Watts 10/12/09

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1 within the car, part, though?

2 MS. SHIPLEY: Because when you have gunshot residue  
3 inside the driver's area --

4  
5 MS. SHIPLEY: -- that's consistent when someone  
6 has fired a gun from that area.

7 THE COURT: Okay.  
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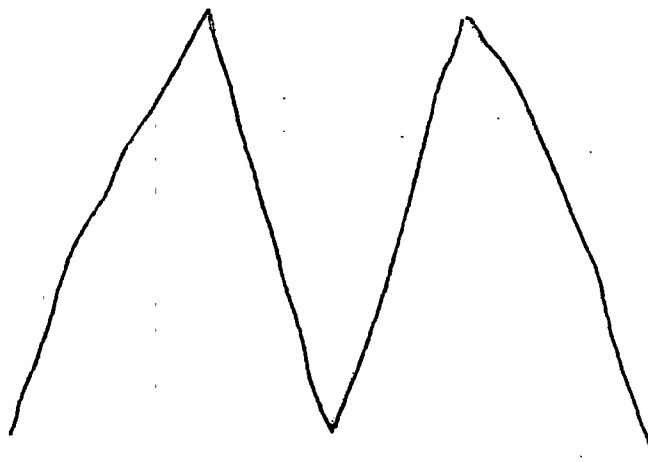
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Under the theory of hand of one, hand of all, they are both guilty of murder whether the defendant Watts handed the gun to Tremaine Wray and had him fire where the gunshot residue is or whether he leaned over himself while Mr. Wray was busy driving the vehicle. Regardless they were aiding and abetting one another. Either Wray was driving while the shots were fired or Watts provided him the firearm to conclude or to commit the act and spray the parking lot with bullets. The testimony has been consistent that only one shot was fired from the Rodeo up in the air, and multiple shots were fired out of the tan Suburban. Gunshot residue evidence corroborates that and supports that.

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Exhibit



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1 MR. BAX: Your Honor, if I may before they bring  
2 the jurors out?

3 THE COURT: Yes. You-all always do that to me.

4 MR. BAX: I know. It just crossed my mind -- I  
5 apologize.

6 THE COURT: Hurry and catch them.

7 MR. BAX: I apologize. My fault. I'll catch them,  
8 Your Honor.

9 THE COURT: Okay.

10 MR. BAX: The state's next witness, which I  
11 believe, is Michael Moskal with the state law enforcement  
12 division.

13 THE COURT: Yes.

14 MR. BAX: The defense would have a matter of law  
15 outside the presence of the jury. Maybe we should handle  
16 that before we bring them out?

17 THE COURT: Okay.

18 MR. BAX: And that way we can save a little bit of  
19 time. I apologize for that. If that's their first  
20 witness. If it's not, then we can move on.

21 MS. SHIPLEY: It is our first witness.

22 THE COURT: Okay. Go ahead. I'm ready.

23 MR. BAX: Your Honor, at this time the defense  
24 would object to the admission of the gunshot residue  
25 evidence that Mr. Moskal will be testifying to. The

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1 objection would be based on Rule 403, Your Honor, and it  
2 maybe that the solicitor wants to put Mr. Moskal up for a  
3 Proffer, but generally the reason why, Your Honor, is based  
4 on a number of cases. State v. Council at 515 S.E. 2d, 508.  
5 Also, State verses Ramsey at <sup>550</sup> ~~515~~ S.E. 2d at 294 and I have  
6 the cite here for that, the general ruling is that even if a  
7 particular kind of scientific evidence is considered to be  
8 reliable under Rule 702, the Court must still make a  
9 determination if its probative value is outweighed by its  
10 prejudicial effect under Rule 403. And in this particular  
11 case, Your Honor, I'll allow state to request proffer it  
12 they would like. The results of the gunshot residue test of  
13 the 1999 Chevy Suburban, and that's how it's listed here in  
14 the report, is actually not that any gunshot residue was  
15 found, only that round lead particles, as it says here, are  
16 one of the components of gunshot residue was found. So  
17 basically the test was negative. It's not what it says, but  
18 the SLED protocols, you have to find three elements in  
19 presence in order for gunshot to be considered gunshot  
20 residue. That's lead, particularly rounded lead particles,  
21 the elements of barium and antimonium. In this case, by his  
22 own results, there were insufficient amounts of barium or  
23 antimony found, in fact, practically none. That's why the  
24 results do not say GSR found. The test here, I think, is  
25 specifically under 403, that the potential for prejudicial

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1 effect, as well as the --

2 THE COURT: Back me up one second.

3 MR. BAX: Yes, ma'am.

4 THE COURT: What is it that you anticipate that he  
5 is going to opine as an expert?

6 MR. BAX: I anticipate that he is going to opine  
7 that there was a number of rounded lead particles found in  
8 -- through his examination of the tab taken by the CSI that  
9 we've already heard from in this trial, that some rounded  
10 lead particles were found and that those rounded lead  
11 particles are indicative of gunshots being fired in and  
12 around these inanimate objects that was collected from the  
13 steering wheel, the door, so on and so forth, because  
14 rounded lead means that that lead was molten at some point.  
15 However, by their own protocols gunshot residue cannot be  
16 indicated by a tester unless all three elements are present,  
17 and --

18 THE COURT: Okay.

19 MR. BAX: -- and they aren't present here.

20 THE COURT: Okay. So -- Okay, if you say that he  
21 is going to opine that there's rounded lead particles found,  
22 that is separate and apart from finding gunshot residue; is  
23 that -- I guess, Ms. Shipley, we should go to you to see  
24 what you tend to offer of the expert.

25 MS. SHIPLEY: Thank Your Honor.

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1 First of all, I'd like to cite State verses Gary White.  
2 That's one recent case where Judge Barber actually tried  
3 that case and allowed a Don Tracker to testify as to his  
4 opinion under Rule 702. And so I don't have the cite with  
5 me, Your Honor, but it is a recent case decided where if  
6 there's any expertise, training experience --

7 THE COURT: Right.

8 MS. SHIPLEY: -- to assist the trier of fact, then  
9 it is admissible.

10 THE COURT: Okay, but I guess what I -- we all  
11 understand expert testimony. What I'm trying to get at is  
12 what are you trying to offer him for?

13 MS. SHIPLEY: Your Honor, he's an expert in gunshot  
14 residue analysis --

15 THE COURT: Okay. Even if he's an expert in that  
16 he will be limited to what -- did he do this test?

17 MS. SHIPLEY: Yes, ma'am, he did everything --

18 THE COURT: So the testimony would be limited to  
19 whatever the findings were?

20 MS. SHIPLEY: Correct. And he --

21 THE COURT: Testify --

22 MS. SHIPLEY: He will testify that he found, on  
23 several locations, inside of the 1999 Chevy Suburban --

24 THE COURT: Okay, go head.

25 MS. SHIPLEY: -- he will testify that in several

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locations, concentrated in the driver's side of the Chevy Suburban that he found round lead particles, which in his expert opinion is a component of gunshot residue and is consistent with someone firing a firearm within the driver's side of the car.

THE COURT: Okay. Then if he's limited to what he actually found. I mean, he can't say he found gunshot residue. He has to be limited to what was actually found, then why couldn't you just cross him on that issue.

MS. SHIPLEY: Exactly.

MR. BAX: Well, Your Honor --

THE COURT: He can't -- only confirm what he found.

MR. BAX: Well, Your Honor, as I've said, in this particular situation I'm not intending on arguing right now under 702 that gunshot residue is not reliable, but don't hold me to that. I'm intending to argue that in other cases.

THE COURT: Okay.

MR. BAX: One thing, there's a lot of literature coming out of the American Academy of Forensic Sciences in particular, a lot of these things, especially when you use words, it's consistent with, are misleading to the jury. There's a CSI effect in what they hear is forensic evidence of higher probative value than what is actually presented. That's what they interpret because you've got someone with

State v. Tremaine Wray & Taurus Watts 10/12/09

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1 the onus, the mantel of expert, who stands up before them  
2 and says he found this.

3 THE COURT: If he says consistent with, as an  
4 expert, if that is what his terminology is, and that is a  
5 scientific terminology, then what is wrong with that. I  
6 mean, you still have the ability to cross him. He can't  
7 give us something false, and he cannot speculate. And he  
8 cannot, you know, make interpretation of things he doesn't  
9 have within his expertise, and he's limited to whatever he  
10 actually found.

11 MS. SHIPLEY: Exactly.

12 THE COURT: He's not going to be speculating and  
13 all of that.

14 MS. SHIPLEY: Everything that Mr. Bax is raising is  
15 perfect cross-examination questions.

16 MR. BAX: Your Honor, and I'm going to pass up a  
17 recent case Justice Beatty offered, State verses Jones.  
18 And, of course, some of this is vanity on my part because I  
19 tried this case. I think it is particularly probative in  
20 that -- now, in this particular case Justice Beatty and the  
21 Court as a whole found the science is unreliable, however,  
22 one of the things they specifically talked about in this  
23 case was the test, in this case, this was barefoot insole  
24 impression evidence, that, at best, even if you stripped  
25 away any of the non-applicable statistical analysis that

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1 they did in that particular case, the best that they could  
2 say is consistent with. And the Court takes specific issue  
3 with that because of the fact that you get someone up there  
4 and they discuss that, that is an expert and they go through  
5 a curriculum vitae, and they're given the power to give  
6 their opinion to a jury and yet the best they can do is  
7 consistent with, which leave a large window open. And in  
8 that particular situation they have ruled in State verses  
9 Jones that it is not admissible, both because of the fact  
10 that it didn't -- 702, but also because it does not pass the  
11 403 balancing test. They discuss the balancing test on Page  
12 14, Footnote 6, and I apologize first and foremost, there's  
13 no numbered pages on this. This was the copy that was sent  
14 to me after the case was decided, PDF from the appellate  
15 defender.

16 THE COURT: But they're saying barefoot impression  
17 analysis in some instances was not yet a reliable science.

18 MR. BAX: Well, they determined later on that it  
19 will not become that way. In fact, based on the Court's  
20 ruling and the concurring opinion it says it will not be  
21 admissible at any further trials, Justice Pleicones says  
22 that.

23 THE COURT: But we're not tampering on something  
24 that is new and novel, though?

25 MR. BAX: That is correct, and what I wanted to

## Defense objection to GSR evidence and GSR Expert Testimony

State v. Tremaine Wray &amp; Taurus Watts 10/12/09

12

1 point out to you was the fact that on the 403 balance test  
2 the problem is when all they can say is, number one, all I  
3 found was one out of three, and number two, it's only  
4 consistent with. They cannot say anything more definitive  
5 than that, then it's not probative to this jury. All it is  
6 is misleading and prejudicial. We can stipulate that there  
7 was no GSR found in either one of the vehicles in this case.  
8 Basically, what they're going to take -- where no GSR was  
9 found and they are going to turn it into something more than  
10 that.

11 MS. SHIPLEY: Your Honor, barefoot impressions  
12 verses gunshot residue analysis that has been tried and  
13 tested in the courts of this state. There's a huge  
14 difference, Your Honor. There is scientific reliable that  
15 this SLED agent will testify to about how he performed his  
16 analysis in a chemical laboratory. That there are protocols  
17 that he must follow. How he analyzed each item of evidence  
18 to make sure the instruments of evidence were used properly.

19 Your Honor in State v. Jones -- or Council, it cites  
20 that the technique must be published and peer reviewed.  
21 Your Honor, his testimony will be that he doesn't issue a  
22 report until the peer review. (That the method that has been  
23 applied to this type of evidence.) This is been a recognized  
24 science in criminal courts for a while, a long time, and  
25 that the methods be consistent with recognized scientific

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1 laws and proceedings. Again, Your Honor, there is a special  
2 laboratory at SLED for gunshot analysis. It's so  
3 specialized that -- Richland County Sheriff's Department  
4 doesn't even have a lab. They send everything that deals  
5 with GSR to SLED.

6 So Your Honor, there is a big difference between a  
7 barefoot impression verses a recognized field of science as  
8 gunshot residue analysis.

9 Now, the next problem that Mr. Bax is arguing is  
10 probative verses prejudicial effect. The testimony has been  
11 from the beginning of this trial that shots were fired from  
12 a vehicle traveling down Hardscrabble Road.

13 We have an eye-witness that says that it was coming out of  
14 the driver's side. We have other eye-witnesses that were  
15 taking cover said, at least two of them, Lamont Goodwine,  
16 James Lamont Goodwine and Stephanie Boston, that the shots  
17 were coming from the road. All of this testimony is  
18 necessary and probative for this jury to understand what the  
19 scientific findings were when the car was analyzed. And so  
20 the state submits that the probative effects certainly  
21 outweighs any prejudicial effect to the defense. They have  
22 the opportunity to cross-examine this expert witness and go  
23 into the fact that only lead was found and whether or not  
24 barium or antimonium was found. That's for them to cross-  
25 examine this witness, but for Your Honor to exclude the

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1 entire testimony and his opinion that would say that this is  
2 more consistent with a firearm being fired from this  
3 vehicle. That is not prejudicial to the defense in any way.

4 THE COURT: Okay. Anything further?

5 MR. BAX: Yes. Two things, Your Honor. Number  
6 one, peer review and the scientific method, checking, that's  
7 happened in gunshot residue is as to a full result. There's  
8 not science out there that says, well, if all you find is  
9 one component you can come into court and talk about that  
10 because of scientific reliability. That's not what the peer  
11 review is about. The protocols from their own lab manual  
12 gives -- you have to find all three, and that is what the  
13 scientific review is across the board, that if -- in order  
14 to have a reliable result, in order to have something that  
15 is considered reliable science. you have to have all three  
16 of the elements. And there is no peer review out there that  
17 says, well, you find one, that's good enough, go on into  
18 court and testify as to it. There's nothing like that. For  
19 example, two things in addition. The FBI is not even doing  
20 this anymore, Your Honor. They're not even doing gunshot  
21 residue at all any more because of the fact that they have  
22 so many reliability problems, and they have so many  
23 credibility problems, and because it's not probative. On  
24 top of that, Your Honor, in this particular case the expert  
25 didn't even test it the first time around because of

State v. Tremaine Wray & Taurus Watts 10/12/09

15

1 secondary transfer. And what he will testify to, I would  
2 presume, is that whatever results he gets from an inanimate  
3 object, he cannot tell the difference about how it got  
4 there. So its probative value goes down and down and down.

5 You've only got one of the three elements here, not all  
6 three. You've got an inanimate object where you cannot tell  
7 when it was deposited, no way scientifically for them to  
8 know when it was deposited there. It can be there  
9 theoretically indefinitely. You only can have -- inanimate  
10 objects you don't have anybody -- you don't have it coming  
11 off of anybody's hands or clothing. So the probative value  
12 in this particular case goes down. and if you look at all  
13 those factors, in fact, they didn't even test the first time  
14 around because of his belief that its secondary transfer.

15 So I think that this really, all it is is there to  
16 bolster the state's case.

17 THE COURT: We're saying two different things. One  
18 is whether tied to gunshot residue, but the second thing  
19 that you're pointing out is the inanimate object as to where  
20 it came from.

21 MS. SHIPLEY: Your Honor, these are perfect  
22 questions that Mr. Bax can raise in his cross-examination.  
23 It's -- this is not going towards admissibility or not. He  
24 can -- and first of all, the timing. This should have been  
25 raised in pre-trial, but -- so that we would have an

State v. Tremaine Wray & Taurus Watts 10/12/09

16

1 opportunity to go into the further.

2 But, Your Honor, according to the report, and according  
3 to my expert, when there is one of three particles present  
4 he is allowed to give an opinion about that. It's got to be  
5 a round particle of lead for him to give an opinion that it  
6 is consistent with a firearm being fired from within the  
7 vehicle.

8 THE COURT: And when you say one of three, he's  
9 basing his ability to testify on what, then?

10 MS. SHIPLEY: Your Honor, his training -- he is  
11 prepared to testify the fact that he found one -- in one of  
12 the samples.

13 THE COURT: You're saying that that's  
14 scientific technology that --

15 MS. SHIPLEY: Yes, ma'am.

16 THE COURT: -- that allows one out of three?

17 MS. SHIPLEY: Yes, ma'am. That -- he said that --

18 THE COURT: Okay.

19 MS. SHIPLEY: -- out of --

20 THE COURT: And you're saying his field allows him  
21 to do that?

22 MS. SHIPLEY: Yes, he is permitted to come into a  
23 court of law and tell, swear under oath, that it is  
24 consistent with a firearm being fired from within --  
25 wherever the area it may be found. That he doesn't need all

State v. Tremaine Wray & Taurus Watts 10/12/09

17

1 three. He can rely on one of the three as long as that  
2 particle is round.

3 THE COURT: And we're not talking about him  
4 identifying anybody --

5 MS. SHIPLEY: No, ma'am.

6 THE COURT: -- just whether or not this comes from  
7 gunfire?

8 MS. SHIPLEY: Yes, ma'am.

9 THE COURT: And Your Honor, at the beginning of  
10 this trial there was witness testimony that the shots were  
11 fired -- through Mr. Jacobs -- that it was fired from the  
12 driver's side of the 1999 Chevy Suburban. From Stephanie  
13 Boston and James Lamont Goodwine that shots came from the  
14 road. And so Your Honor, this is corroborating evidence. It  
15 is extremely probative to the state's case.

16 THE COURT: Does he take it further to say the type  
17 of gun and --

18 MS. SHIPLEY: No. He can't identify what type of  
19 gun, he can't identify who fired the gun.

20 THE COURT: It's just a matter that a gun was --

21 MS. SHIPLEY: Was fired from inside the car.

22 THE COURT: Okay. Wait, say that last part?

23 MS. SHIPLEY: That a firearm -- consistent with a  
24 firearm being fired from within the car.

25 THE COURT: Okay. Now, tell me about the from

State v. Tremaine Wray & Taurus Watts 10/12/09

18

1 within the car, part, though?

*I +s not gunshot residue*

2 MS. SHIPLEY: Because when you have gunshot residue  
3 inside the driver's area --

4 THE COURT: Oh, I see what you're saying.

5 MS. SHIPLEY: -- that's consistent when someone  
6 has fired a gun from that area.

7 THE COURT: Okay.

8 MS. SHIPLEY: And also as to whether or not you can  
9 date it, that's a perfect question for Mr. Bax to ask on  
10 cross-examination. It's still extremely probative to the  
11 state's case, and any probative value certainly outweighs  
12 any prejudicial effect that the defense may argue.

13 THE COURT: Okay, any final remarks?

*second objection*  
14 MR. BAX: Yes. Two final remarks, Your Honor, and  
15 I'll make it brief. Number one, they can certainly proffer,  
16 if they would like, as I said, before, but Your Honor,  
17 there's nothing in the field that says if you find round  
18 lead particles. There's nothing in the field that says  
19 that. And number two, there is absolute -- I would  
20 certainly object if this expert is -- attempts to get on the  
21 stand and say that this is consistent with a gun being fired  
22 inside of the car, because there is absolutely no way to  
23 tell if a round lead particle on an inanimate object got  
24 there by direct deposit or secondary transfer and you cannot  
25 tell the difference. You cannot.

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19

1 MS. SHIPLEY: The issue that they're raising about  
2 the secondary transfer. It came out, I think through Anna  
3 Elsey that she called him and said, hey, why didn't you  
4 analyze the 1999 GSR kit for the Chevy Suburban, and he was  
5 relying on the initial police report that only mentioned the  
6 Isuzu -- a white Nissan Pathfinder Isuzu Rodeo, and in that  
7 case the evidence was that someone fired a shot from outside  
8 the vehicle. So in his opinion, he assumed since there's no  
9 mention of a '99 Suburban in the report that it must have  
10 been some sort of secondary transfer situation, and they  
11 don't analyze that. They don't -- it's not probative,  
12 however, when she advised by the crime scene investigator,  
13 no, it was after this initial police report further  
14 investigation was done and it revealed that this is actually  
15 the vehicle where the shots came from. That is was fired  
16 from the driver's side. And based on that updated  
17 information he then goes and proceeds to analyze the Chevy  
18 Suburban, the 1999 Chevy Suburban, and that's how we get to  
19 this point.

20 THE COURT: I'm going to allow it in.

21 MS. SHIPLEY: Thank you.

22 THE COURT: All right. Jurors, please.

23 (Jury in at 10:08 a.m.)

24 THE BAILIFF: The jury's all present, Your Honor.

25 THE COURT: Thank you. Good morning ladies and

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Exhibit

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## Questions Related to Gunshot Residue Analysis

State's Expert (Michael Moskal)

### General Questions

What is gunshot residue?

Gunshot residue (GSR) is a mixture of gunprimer and gunpowder originally enclosed with the bullet in an unfired cartridge. It is composed of various inorganic salts (lead styphnate, barium nitrate, and antimony sulfide) and organic compounds containing nitro groups (eg. nitrocellulose, nitroglycerine, etc.).

With respect to GSR, what happens when a gun is fired?

When a weapon is fired, the gunprimer and gunpowder ignite, burn, emit gases, and propel the bullet from the chamber. Burned and unburned residues remaining from the primer and powder are then deposited on anything that is relatively close to the gun, including the hands of a shooter, gloves of a shooter, shirt of a victim, hair of a victim, etc.

What is the purpose of collecting GSR samples from an individual's hands?

To determine whether the individual fired a weapon or handled a dirty weapon.

When you perform the lab test for GSR, what are you actually looking for?

The presence of 3 metals.....lead (Pb), barium (Ba), antimony (Sb).

Is it necessary that all three metals be present to suggest that an individual fired a weapon?

Yes

Why?

Because these metals can originate from other items in the environment. (example: lead is in solder and batteries, barium is in paint and cosmetics, antimony is in batteries, brake pads, ball bearings, etc.)

★ If you only detect lead (Pb), can you say definitively that the lead originated from gunshot residue?

No. It is a component of GSR, but it can originate from other sources.

★ So, if you find only lead (without barium and antimony), you don't know that the lead necessarily came from gunshot residue?

No.

If an individual has not fired a weapon and has not recently washed his or her hands, would you expect to find at least some low level of antimony and/or lead and/or barium?

Yes, because these metals are present (in low levels) in the environment.

★ When all three metals are detected, is it important that they are present in elevated levels?

Yes.

Why?

Because high or elevated levels are more consistent with someone having fired a weapon. Low levels of the metals are more consistent with the residue coming from other environmental factors.

What would be considered an elevated level for lead?

200 parts per billion (ppb)

What would be considered an elevated level for barium?

200 ppb

What would be considered an elevated level for antimony?

20 ppb

### Time of Collection

Is it important that the GSR samples be collected within a certain time frame?

Yes

**Why?**

Because the GSR can be wiped away or worn off gradually over time from normal daily activity.

**What is the time frame within which the samples should be taken?**

Approximately 6 hours

**Were the samples from the individuals taken within 6 hours in this case?**

Yes, according to the GSR collection sheets.

**If the GSR particles can be worn off gradually from daily activity, could low levels of GSR or low levels of lead indicate that the individual fired a gun more than 6 hours before the time of collection?**

Yes, that's one possibility.

**If an individual washes his or her hands, is the GSR material washed away?**

Yes. The GSR would most likely be completely gone, and the quantities of metals detected would be zero. Not even low levels would be present.

**If EMS uses an alcohol swab or inserts an IV into a patient's hand, could this affect the level of GSR on the hand?**

Yes. Any activity or handling of the hand can reduce the levels of GSR. If the hand were swabbed with alcohol, it could actually remove the GSR.

**Can the presence of blood on the hands affect the GSR levels?**

Yes. Blood is composed mostly of water, so the GSR particles can be washed away to some degree if blood is present.

### **Transfer of GSR**

**Is it possible to transfer GSR from one hand to another or from one object to another?**

Yes.

If someone picks up or handles a dirty/fired weapon, would you expect to detect GSR on the individual's hand(s)?

Yes, the levels would be similar to that expected on a shooter's hands, but it would only be detected on the palm(s) of the hand(s).

★ Can GSR be transferred onto and from inanimate objects such as a steering wheel or gear shift?

Yes. GSR can be transferred from one object to another via intermediate objects. This is called secondary transfer.

If a law enforcement officer handles a fired weapon or even his or her own issued service weapon, is it possible for the officer to contaminate the hands of an individual while collecting GSR samples or to transfer GSR to a vehicle they are processing?

An officer should wash his or her hands before collecting GSR samples. Also, it is good practice to wear protective gloves while collecting samples to prevent contamination.

Subjects' Hands (Earl Green and Lether Landrum)

Based on the analysis of the subjects' hands in this case, are the levels of lead positive or negative?

Negative

Barium?

Negative

Antimony?

Negative

Is there any indication that either of these individuals fired a weapon?

No

Was a GSR test performed on the hands of Wray?

No

Why not?

Because he was not considered a suspect or was not detained until sometime later. It was too late to perform a GSR test.



So there is no evidence that Wray fired a weapon on the night of the incident?

No

Vehicle (Suburban)

Were GSR samples collected from a 1999 Suburban?

Yes

What was found on these samples?

Round lead particles.

(According to the report, round lead particles were found. Based on the raw data, lead, barium, and antimony were found. There are many particles present.)



Do you know for a fact that these lead particles are from GSR, since lead is present in other common objects?

Yes, I am sure that the lead found is from GSR because the lead particles are round and spherical as from a molten source.



Do you have any way of knowing WHEN the lead particles were deposited in the vehicle?

No

How long will lead or any metal from GSR remain on an inanimate object?

Indefinitely. It will remain until it is washed off.



So the lead in the vehicle could have been deposited sometime before the incident or after the incident before the samples were collected?

Yes

Do you know when the vehicle was last washed before the incident?

No



How long before the incident could the lead particles have been there?

Indefinitely

\* Do you know that the lead found in the vehicle was deposited by Wray?

No

\* Could the lead have been deposited by someone else?

Yes, possibly

There is no way to determine who deposited the lead, is there?

\* Only someone who had access to the vehicle.

Did police officers have access to the vehicle?

Did the police process the vehicle at some point?

Did the police officers remove their weapons before entering the vehicle?



Could the lead in the vehicle be from secondary transfer and not necessarily from a weapon being fired inside the vehicle? Trans, Vol. 6, p. 65 Lines 22-25.

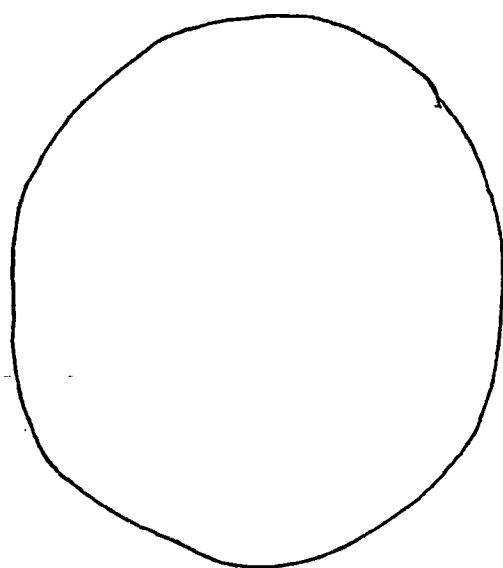
Yes

You don't know how or when the lead was deposited in the vehicle, do you?

No

*Handwritten notes:*  
... the lead was deposited in the vehicle ...  
... the lead was deposited in the vehicle ...  
... the lead was deposited in the vehicle ...

Exhibit



State v. Tremaine Wray & Taurus Watts 10/12/09

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16 A Okay. Item 11, the Isuzu Rodeo?

17 Q Yes. How did you phrase your report?

18 A I phrased my findings as the samples collected from the  
19 Isuzu Rodeo, no gunshot residue was found.

20 Q Now, did you have an opportunity to review all your  
21 bench notes and your reports in preparation for trial?

22 A Yes, ma'am, I did.

23 Q And did you make a correction as to the 2001 Isuzu  
24 Rodeo terminology?

25 A Yes, ma'am, I did.

State v. Tremaine Wray & Taurus Watts 10/12/09

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1 Q Okay, explain that for the jury?

2 A The result I put on the Rodeo on the first time, on the  
3 March 4 report, stated no gunshot residue found. In our  
4 lab, we recognize that as being a result of taking it to the  
5 microscope and actually looking at the round particles, and  
6 looking to see if it contains all three of them. In looking  
7 back through the report, I had not actually taken it to the  
8 microscope. All I had done was gotten the swabs. So the  
9 report should have gone out the quantities found did not  
10 indicate gunshot residue, because all I had looked at was  
11 the quantity of those three elements.

12 Q Just so the jury is clear. The initial report says,  
13 what?

14 A The initial reports says no gunshot residue found.

15 Q And because you were -- because the cotton swabs did  
16 not meet the threshold you then did what?

17 A Once I knew -- once I realized it had been an  
18 inappropriate response on there, I started the procedures  
19 for writing a corrected report.

20

21

22 Q And what is the date of your corrected report?

23 A The date of my corrected report is October 2, 2009

24 Q And the way it should have been phrased in your March  
25 2008 report was quantities of metals found do not indicate

State v. Tremaine Wray & Taurus Watts 10/12/09

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1 the presence of gunshot residue?

2 A Yes, ma'am. Actually, the word is detected, but yes,  
3 ma'am.

4  
5  
6  
7 Q Still consistent with a negative result. And did that  
8 in any way alter, change in your answer, conclusion, effect  
9 in any way your conclusions as to the 1999 Chevy Suburban?

10 A Not at all with the Chevy Suburban, no, ma'am.

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Exhibit P1

## STATE OF SOUTH CAROLINA}

## AFFIDAVIT

COUNTY OF RICHLAND }

Personally appeared before me, one Inv. D. McRae who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

## DESCRIPTION OF PROPERTY SOUGHT

Any forensic evidence related to the murder of Dumuria Johnson Such evidence would include, but is not limited to blood, hair, fibers, fingerprints, etc... Any and all potential relevant evidence which would aid in the investigation of the murder outlined in the attached affidavit.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

1999 GMC Suburban SUV, [REDACTED] Tan in Color, VIN [REDACTED] Registered to one Nellie Walker Wray, [REDACTED], Columbia, SC 29223.

REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 6-30-2007 at approximately 0410 hrs Dumuria Johnson was fatally shot at H&J Club 2820 Handscrabble Road, Columbia, SC 29223.

Witnesses did identify the above listed vehicle leaving the incident location and firing several shots from this vehicle. One of these rounds from this vehicle did mortally wounded Dumuria Johnson.

A witness identified the driver and passenger in the vehicle as subjects leaving the incident location and has provided law enforcement with a statement stating that the gunfire that struck the victim came from this vehicle at the incident location.

The vehicle was spotted by investigators at the residence of one of the suspects identified by witnesses as the driver of the vehicle tha fired the shots at the incident location.

Sworn to and Subscribed before me

this 1 day of July, 2007)

Signature of Judge

(L.S.)

Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

07042790-30 JZ

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STATE OF SOUTH CAROLINA

County of Richland

---

SEARCH WARRANT

---

1999 GMC Suburban SC Tag [REDACTED]

VIN: [REDACTED]

Date July 1, 2007

Officer Inv. Don McRae

*[Handwritten Signature]*  
*July 1, 2007*

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

## SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY  
OF \_\_\_\_\_:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

1999 GMC Suburban SUV, SC Tag [REDACTED], Tan in Color, VIN [REDACTED]. Registered to one Nellie Walker Wray, [REDACTED], Columbia, SC 29223

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

## DESCRIPTION OF PROPERTY

Any forensic evidence related to the murder of Dumuria Johnson Such evidence would include, but is not limited to blood, hair, fibers, fingerprints, etc... Any and all potential relevant evidence which would aid in the investigation of the murder outlined in the attached affidavit.

This Search Warrant shall not be valid for more than ten days from the date of issuance.  
A written inventory of all property seized pursuant to this Search Warrant shall be made to

Dutch Fork Magistrate

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.

July 1, 2007

[Signature] (S.S.)  
Signature of Judge

## RETURN

I received the attached Search Warrant JUNE 2, 2007, and have executed it as follows:  
 On JUNE 2, 2007 at 1000 o'clock A M, I searched  
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with THE VEHICLE  
 Name of person searched or "at the place of search" with.  
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

PHOTOGRAPHS etc  
SWAGS etc  
FINGERPRINTS / PAMPHLETS etc  
Trace (SR) etc  
MUG CAN (EMPTY) etc  
CIGARETTE BUTTS etc  
Black. Head Bag etc

This inventory was made in the presence of Sgt. Ahmad Campos

AND

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 6th

day of July, 2007

[Signature] (L.S.)  
 Signature of Judge

[Signature]  
 (Signature of Officer Executing Warrant)

1:30 PM

10/10/07  
[Signature]

Exhibit

P2

STATE OF SOUTH CAROLINA}

AFFIDAVIT

COUNTY OF RICHLAND }

Personally appeared before me, one Inv. D. McRae who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

## DESCRIPTION OF PROPERTY SOUGHT

9 MM Caliber Firearm9 MM ammunitionAny and all magazines for a 9 MM caliber firearmAny paperwork associated with a 9 MM caliber firearm

Any forensic evidence related to the murder of Dumuria Johnson. Such evidence would include, but is not limited to blood, hair, fibers, fingerprints, etc...Any potential relevant evidence which would aid in the investigation of the murder and aggravated assault outlined in the attached affidavit.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

[REDACTED], Columbia, SC described a single story dwelling with light tan brick structure with green in color shutters. There is a front porch attached to the front of the dwelling with green iron fencing around the porch. There is a black mailbox in a brick masonry structure in the front yard. There is a green sign with white numbers [REDACTED] on the left side of the mailbox structure. Any and all outbuildings, storage sheds, and all vehicles at [REDACTED], Columbia, SC.

REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 6-30-07 at approximately 0410 hrs Dumuria Johnson was fatally shot at 2820 Hardscrabble Road, Columbia, SC 29223.

Witnesses did identify Tremaine Wray as the driver of the suspect vehicle that was identified by witnesses as the vehicle that the shots were fired from. One of the rounds fired from this vehicle struck the victim, Dumuria Wray. This round resulted in the death of Mr. Johnson. The suspect was picked from a six-picture photo line-up. Witnesses have name Tremaine Wray in sworn statements.

Tremaine Wray does reside at the above listed location and investigators believe that the weapon used is at this residence

Investigators have seen a Tan in color Suburban parked at the residence which is the same type and color vehicle witnesses have described as the suspect vehicle that the shots were fired from. This vehicle is a 1999 tan in color

Sworn to and Subscribed before me }

this 1 day of July, 2007 }

[Signature] (L.S.)  
Signature of Judge

3:30 PM

[Signature]  
Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

## AFFIDAVIT

suburban which is registered to a Nellie Walker Wray of [REDACTED], Columbia, SC according to current DMV records

Tremaine Wray used the above listed address on his last booking photo at Alvin S. Glenn Detention Center and also lists this address on his South Carolina Drivers License and is the current address listed on S.C. DMV records.

Shell casings found at the scene were 9MM.

Sworn to and Subscribed before me }

this 1 day of July, 2007 }

Signature of Judge

(L.S.) }

3:30pm

Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

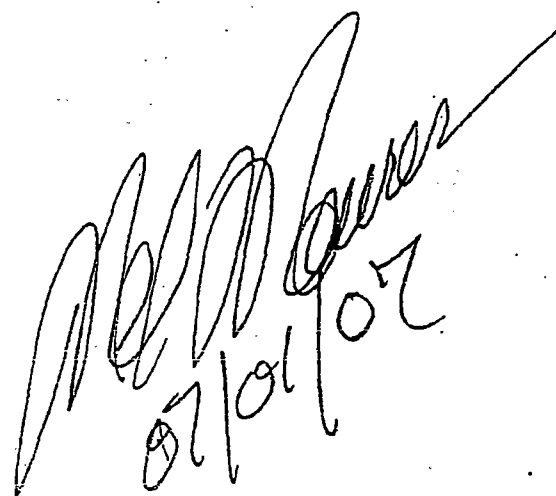
## STATE OF SOUTH CAROLINA

County of Richland

---

SEARCH WARRANT

---

  
Columbia, SC 29223Date July 1, 2007Officer Inv. Don McRae  
07/01/07

STATE OF SOUTH CAROLINA}

## SEARCH WARRANT

COUNTY OF RICHLAND }

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF \_\_\_\_\_:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

\_\_\_\_\_, Columbia, SC described a single story dwelling with light tan brick structure with green in color shutters. There is a front porch attached to the front of the dwelling with green iron fencing around the porch. There is a black mailbox in a brick masonry structure in the front yard. There is a green sign with white numbers \_\_\_\_\_ on the left side of the mailbox structure. Any and all outbuildings, storage sheds, and all vehicles at Briercliff Drive, Columbia, SC.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

## DESCRIPTION OF PROPERTY

9 MM Caliber Firearm9 MM ammunitionAny and all magazines for a 9 MM caliber firearmAny paperwork associated with a 9 MM caliber firearm

Any forensic evidence related to the murder of Dumuria Johnson. Such evidence would include, but is not limited to blood, hair, fibers, fingerprints, etc...Any potential relevant evidence which would aid in the investigation of the murder and aggravated assault outlined in the attached affidavit.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Dick Fork Magistrate

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.  
July 1, 2007

[Signature] (L.S.)  
Signature of Judge

## RETURN

I received the attached Search Warrant 7/1, 2007, and have executed it as follows:  
 On 7/1, 2007 at 6:20 o'clock P M, I searched  
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with BELLE WILAY  
 Name of person searched or "at the place of search" with.  
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

① DOUBLE BARREL SHOTGUN FOUND IN CLOSET OF LAST BEDROOM  
 OF LEFT-BENSON

② SPENT REMINGTON EXPRESS CARTRIDGE FOUND IN DRESSER IN  
 LAST BEDROOM OF LEFT-BENSON

③ SPENT AMERICAN 45 AUC. CARTRIDGE, ④ SPENT 44 S&W CARTRIDGES,

⑤ SPENT 22 CARTRIDGES FOUND IN PLASTIC BAG ON TABLE IN  
 LAST BEDROOM OF LEFT-BENSON

ENC 7-21-07

This inventory was made in the presence of DET. G. GALLEGOS, DET. J. CATANO, CPL. R. GERRA.  
 AND DET. MCCLANIS

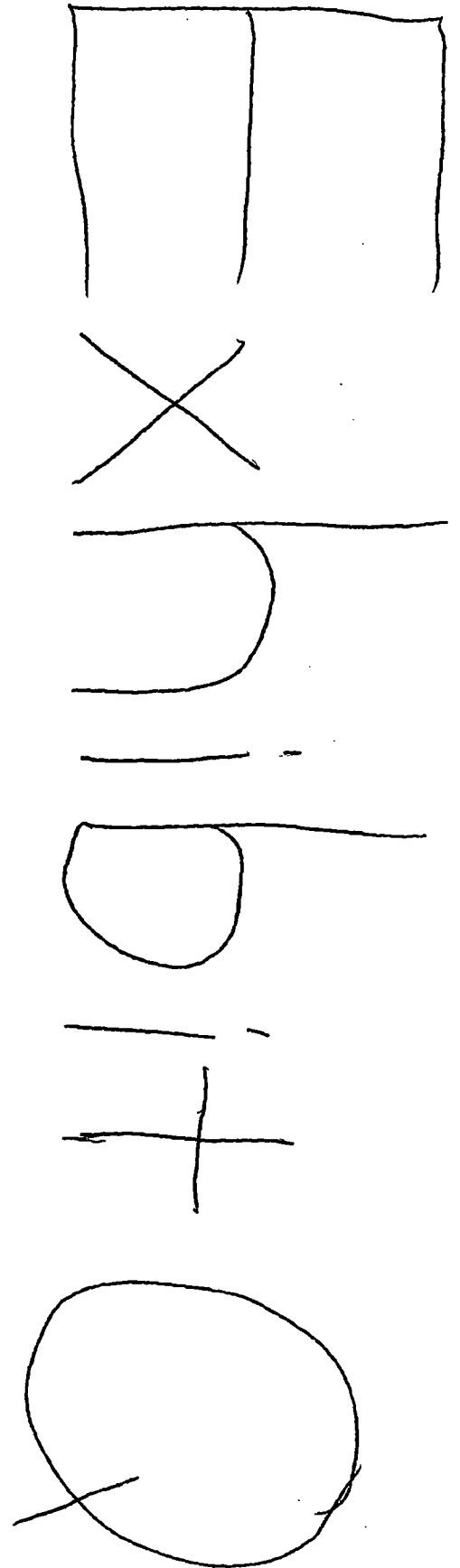
I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 5th  
 day of July, 2007

[Signature] }  
 Signature of Judge (L.S.)

[Signature]  
 (Signature of Officer Executing Warrant)

12:40 PM



J-557781

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD 0706279030

against

Tremaine R Wray

Address:

Columbia, SC 29203-9533

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: [REDACTED] Weight: 178

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Don Mcrae - 1202

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to

defendant

on

Tremaine Wray

7-1-07

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

Richland General Sessions  
1701 Main Street  
P O Box 192  
Columbia, SC 29202

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT

Richland Bond Court

Personally appeared before me the affiant Don Mcrae

being duly sworn deposes and says that defendant Tremaine R Wray

did within this county and state on or about 06/30/2007

violate the criminal law

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 6/30/07 while at 2820 Hardscrabble Road in the Dentsville Magisterial District of Richland County, one Tremaine W did commit the crime of Murder because he did willfully, unlawfully, feloniously, with malice aforethought, while armed with deadly weapon, a firearm, did shoot and mortally wound one Dumuria Johnson without just cause or provocation and the said Dumuria Johnson did die of such mortal wound on June 30, 2007. The def. has been picked in a six photo line-up and has been implicated in sworn statements by a witness at the incident location. Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address

Columbia, SC 29223-

Affiant's Telephone

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe

on or about 6/30/2007 defendant Tremaine R Wray

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court ) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution soon thereafter as is practicable  
Sworn to and subscribed before me

on 07/01/2007

Judge's Address 1400 Huger Street

Columbia, SC 29210-

Judge's Telephone (803)576-2540

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Cl

Judge Code: 5463

## Cover Letter

Tremaine Wray #337442  
4460 Broad River Road  
Columbia, S.C. 29210

Dear Honorable Jeanette W. McBride,  
This is the Applicant's Notice and Motion 59(e),  
under South Carolina Rules Of Civil Procedure  
asking Post Conviction Relief court to alter or  
amend the judgment and make specific findings  
of fact and conclusions of law and rule on the  
issues / arguments. I am requesting a clocked/dated  
certified stamped copy to be returned to the  
Applicant.

SI Tremaine Wray  
Tremaine Wray #337442  
4460 Broad River Road  
Columbia, S.C. 29210

Sworn before me this day 10th of February, 2015

Notary Public Susan H. Dye

Expires \_\_\_\_\_  
My Commission Expires  
March 5, 2018

2-9-2015

State of South Carolina  
 County Of Richland  
 Tremaine Wray #337442  
 Applicant  
 v.  
 State of South Carolina  
 Respondant

In The Court Of Common Pleas

Case No.: 2012-CP-40-07909

NOTICE AND MOTION 59

2015 MAR -2 PM 1:01  
 JEANETTE M. MCBRIDE  
 C.C.P. & G.S.

RICHLAND COUNTY  
 FILED

NOW COMES the Applicant Tremaine Wray #337442 who motions under Rule 59(e), South Carolina Rules Of Civil Procedure, asking Post Conviction Relief court to alter or amend the judgment and make specific findings of fact and conclusions of law and rule on the issues/arguments. See Marlar v. State (S.C. 2007) 375 S.C. 407, 653 S.E. 2d 266. Criminal Law ~~to~~ 1044.1(1), See Grant v. South Carolina Coastal Council (S.C. 1995) 319 S.C. 348, 461 S.E. 2d 388, also See Smith v. State (S.C. App. 2012) 404 S.C. 493, 745 S.E. 2d 378. Criminal Law ~~to~~ 1042.7(2).

The Applicant had, in his original, and amended application, a total of twenty-two (22) issues: (Sixteen (16) Ineffective Assistance of Trial Counsel; One (1) Denial of Due Process right to a fair trial in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendment to the United States and South Carolina Constitution, Laws and Statutes, due to Prosecutorial Misconduct, in failing to correct knowingly False or Perjured testimony and elicit the truth; One (1) Solicitor's Office Brady violation; Four (4) Ineffective Assistance of Appellate Counsel).

The Applicant had a evidentiary hearing before Judge Hayes, II on Post Conviction Relief and there were Fifteen (15) grounds that was presented to the PCR court pursuant to S.C. Code of Law Ann. §17-27-80; §17-27-90.

Sworn before me this day 10th of February, 2015.

Notary Public Susan H. Dye

Expires \_\_\_\_\_  
 My Commission Expires  
 March 5, 2018

S/ Tremaine Wray  
 Tremaine Wray #337442  
 4460 Broad River Road  
 Columbia, S.C. 29210

2-9-2015

State of South Carolina

County of Richland

Tremaine Wray, 337442

Applicant

State of South Carolina

Respondant

In The Court Of Common Pleas

Case No.: 2012-CP-40-07909

## Proof Of Service

I Tremaine Wray #337442 hereby certify that a True Copy of a Notice and Motion 59(e) by serving a True Copy to all Parties by placing a Copy in the United States Mail addressed below:

The Honorable Jeanette W. McBride  
Clerk Of Court  
Richland County  
P.O. Box 2766  
Columbia, S.C. 29202-2766

RICHLAND COUNTY  
FILED  
2015 MAR -2 PM 1:01  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Sworn before me this day 10th of February, 2015

Notary Public

Judson H. Drye

Expires

My Commission Expires  
March 5, 2019

S/ Tremaine Wray  
Tremaine Wray #337442  
4460 Broad River Road  
Columbia, S.C. 29210

2-9-2015

State of South Carolina  
County Of Richland  
Tremaine Wray #337442

Applicant

State Of South Carolina  
Respondant

In The Court Of Common Pleas

Case No.: 2012-CP-40-07909

## Proof Of Service

I Tremaine Wray #337442 hereby certify that a True Copy of a Notice and Motion 59(e) by serving a True Copy to all Parties by placing a Copy in the United States Mail addressed below:

The Honorable J. Mark Hayes, II  
Circuit Court Judge  
180 Magnolia Street  
Spartanburg, S.C. 29306

RICHLAND COUNTY  
FILED  
2015 MAR -2 PM 1:01  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Sworn before me this day 10th of February, 2015.

Notary Public Susan H. Drye

Expires \_\_\_\_\_ My Commission Expires  
March 5, 2018

SI Tremaine Wray  
Tremaine Wray #337442  
4460 Broad River Road  
Columbia, S.C. 29210

2-9-2015

State of South Carolina  
 County Of Richland  
 Tremaine Wray #337442  
 Applicant

In The Court Of Common Pleas  
 Case No.: 2012-CP-07909

# Proof Of Service

State Of South Carolina  
 Respondant

I Tremaine Wray #337442 hereby certify that a True Copy of a Notice and Motion 59(e) by serving a True Copy to all Parties by placing a Copy in the United States Mail addressed below:

Assistant Attorney General Megan E. Harrigan  
 Office of the Attorney General  
 P.O. Box 11549  
 Columbia, S.C. 29211

RICHLAND COUNTY  
 FILED  
 2015 MAR -2 PM 1:01  
 JEANETTE W. McBRIDE  
 C.C.P. & G.S.

Sworn before me this day 10th of February, 2015

Notary Public Susan H. Dwyer

Expires \_\_\_\_\_

My Commission Expires  
 March 5, 2018

S/Tremaine Wray  
 Tremaine Wray #337442  
 4460 Broad River Road  
 Columbia, S.C. 29210

- I. See the following grounds that was raised, but was not ruled upon by the PCR Judge:
- II. See the following PCR court's general rulings which lacked specific findings of fact and conclusions of law; and does not address the specific argument raised:
- III. See the following grounds that the Applicant did not raise nor argued at the PCR hearing, but was ruled upon and denied by the PCR court:

## I. Grounds that were raised at the hearing, but not ruled upon by PCR court.

[1] Applicant was denied his right to a fair trial, and was deprived of liberty without Due Process in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes, due to Prosecutorial Misconduct, by prosecuting authorities knowing presentation of false or Perjured material testimony and when it failed to correct Ricky Jacobs (the State's Sole Star Eyewitness) false or perjured testimony while testifying against the Applicant, and not eliciting the truth which requires that his conviction and sentence be vacated and be granted a new trial.

Applicant testified that the State's Sole Key Eyewitness (Ricky Jacobs) testimony was that he saw gunfire coming from the Applicant's Tan Suburban, toward the club/carwash. Ricky Jacobs testified that after the shots were fired from the Tan Suburban, the passenger in the White SUV fired, one shot, straight up in the air. This is also the same version that Ricky Jacobs told Investigator Don McRae when Investigator McRae interviewed Ricky Jacobs at the scene approximately 1 hr. 30 mins. after Officer Ray Weldon Gregory originally interviewed Ricky Jacobs at the scene prior to Investigator Don McRae's arrival to the scene.

Applicant contends that Ricky Jacobs, who appeared as the State's Sole Eyewitness against him, **falsely testified:**

- 1) that he had not spoken to anyone other than Investigator McRae about what he had witnessed.
- 2) that when the Police initially arrived he did not tell any Uniformed Officer what he saw. (See Tr. Vol. 3, p. 53, Lines 6-13; p. 121, Lines 9-14.)

- 3) that he did not provide descriptions of any vehicles to this Officer. (See Tr. Vol. 3, p. 52, Lines 20-25, p. 53, Lines 20-23.)
- 4) that he did not provide descriptions of any Suspects to this Officer.
- 5) that when the Police first arrived, the Responding Officer only focused on securing the crime scene and refused to speak with him, by repeatedly instructing him to step back. (See Tr. Vol. 3, p. 52, Lines 22-25, p. 53, Lines 2-3, Lines 21-23; p. 121, Lines 9-25.)
- 6) that the first time he explained what he observed was to Investigator McRae. (See Tr. Vol. 3, p. 53, Lines 14-16.)
- 7) that the only person that he spoke with that night/morning was Investigator McRae. (See Tr. Vol. 3, p. 122, Lines 4-6.)

The State's Case rested on the eyewitness testimony of Ricky Jacobs.

The Applicant contends that reversal was required because the State's 'primary' witness (their Sole Star Eyewitness) testified falsely, that he had not made any statements other than his one and only statement to Investigator Don McRae that was disclosed to the defense, but in fact, the witness had made a prior inconsistent statement that was not disclosed to the defense and the Solicitor failed to correct this false testimony.

This false evidence not only bore upon this witness' credibility, it bore directly upon the defendant's guilt.

See Napue v. People of State of Ill. 360 U.S. 264, 79 S.Ct. 1173

(holding, The prosecution's knowing use of false evidence violates due process, regardless of whether the evidence goes to a substantive issue or merely to the witness' credibility. It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.). See also, Tapia v. Tansy, 926 F.2d 1554, 1563.

The Applicant contends that the Solicitor's Office capitalized on this false or perjured testimony and thought it important to highlight and establish to the jury during closing arguments that "Ricky Jacobs didn't call 911 because he was making sure his customers were safe. That he did not talk to any Responding Officers because they were busy securing the crime scene. That the first and only time he explained what he witnessed was to Investigator McRae when he arrived to the scene." (See Tr. Vol. 8, p. 46, Lines 2-5.)

see U.S.v. Salameh, 152 F.3d 88 (Due process bars a prosecutor from making use of false evidence, and a conviction may not stand if such evidence could in any reasonable likelihood have affected the judgment of the jury. U.S.C.A. Const. Amend. 5, 14.)

The Applicant presented direct testimony at his PCR hearing from Officer Ray Weldon Gregory. Officer Gregory testified that he was the First Officer to arrive to the scene. He also testified that he is the Reporting Officer who authored the anonymous Handwritten Incident Report, in which he authenticated through his PCR testimony. He also testified that he did interview "The Bar Owner (Ricky Jacobs)" as to what he eyewitnessed and Ricky Jacobs provided him with this statement at the scene, which is contained in his Police Report. Officer Gregory's PCR testimony and his Handwritten Police Report confirmed and established proof that:

- 1) Ricky Jacobs did in fact speak to someone else other than Investigator McRae about what he had witnessed.
- 2) that when the Police initially arrived, he did in fact tell this Uniformed Officer what he saw.
- 3) that he did provide descriptions of the vehicle to this Officer which was an White (SUV), possibly a nissan.
- 4) that he did in fact provide descriptions of two suspects to this Officer, and these suspects were a completely different set of suspects, whom Ricky Jacobs had originally identified to this Officer as doing this shooting.
- 5) that the first time he explained what he observed was actually to this Officer Ray Weldon Gregory, and not to Investigator McRae as he falsely testified to on the stand.
- 6) that Investigator McRae was not the only person that he spoke with that night/morning, as he falsely testified to on the stand. He actually spoke to Officer Ray Weldon Gregory, approximately 1 hr. 30 min. before he spoke with Investigator McRae.
- 7) that he never mentioned or described a Tan or Champagne Colored Suburban (SUV) at all, in his original version that he had given to this Officer while he was explaining what he saw.
- 8) that he never implicated nor described neither Mr. Wray nor Mr. Watts at all, in his Original Statement to Officer Gregory, as the Suspects who began shooting toward the Club/Carwash, even though he stated —

In his testimony that he had known Mr. Wray and Mr. Watts for years.

9) that Ricky Jacobs had in fact changed the direction of the shots from this White vehicle as initially being "fired over the top of the vehicle, towards the club", to "this White vehicle firing one shot, straight up in the air", which is the version that he told Investigator McRae and is the only version that he testified to.

10) that Ricky Jacobs had actually given an initial statement to Officer Ray Weldon Gregory at the scene, and then later had given a second statement to Investigator Don McRae, which manifested that he had actually given two different, contradicting versions of the shooting to two different Officers.

11) that Ricky Jacobs had made a prior inconsistent statement that was not disclosed to the defense and the Solicitor failed to correct this false testimony.

See RIDDLE v. OZMINT, Opinion No. 26153, May 22, 2006 - Supreme Court, 369 S.C. 39, 631 S.E.2d 70 (May 22, 2006)

(holding, State was obligated to correct (Key Witness') false testimony in capital murder trial that he had not spoken to anyone other than that police officer to whom he had given initial statement, when solicitor knew that (Key Witness') had given second statement to police...)

(the issue is not why (Key Witness') failed to tell the truth; rather, it is why the solicitor, who knew (Key Witness') testimony to be false, failed to correct it.), (Reversal required because "[t]he failure to correct false evidence is as reprehensible as its 'presentation.'"), See also 110K2036 K. Duty to correct false or perjured testimony. Formerly 110K706(2) S.C. 2006.

See the relevant parts of Ricky Jacobs knowingly false/perjured, material testimony on Direct Examination:

See Vol. 3, p. 52, Lines 12-13, 20-25, p. 53, Lines 1-3.

See Tr. Vol. 3, p. 53, Lines 6-13, 14-19, 20-23.

See the relevant parts of Ricky Jacobs knowingly false/perjured, material testimony on Cross Examination:

See Tr. Vol. 3, p. 121, Lines 9-25.

See Tr. Vol. 3, p. 122, Lines 4-6.

Due Process is violated when prosecutor, although not soliciting false evidence from government witness allows it to stand uncorrected when it appears, —

and this principle applies even though testimony goes only to credibility of the witness. U.S.C.A. Const. Amend. 5, 14. People of the Territory of Guan v. Paloma, 115 S.Ct. 750.

Again, the issue is not why Ricky Jacobs failed to tell the truth: rather, it is why the Solicitor, who knew Ricky Jacobs testimony to be false, failed to correct it.

Due to the Solicitor's Office Prosecutorial Misconduct, violating the Applicant's Due Process Rights when it failed to correct misstatements made by Ricky Jacobs while testifying against the Applicant, the Applicant's conviction and sentence shall be overturned and vacated, and the Applicant should be granted a new trial.

[2] Applicant was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to object to the State using the fruits of the search to bolster their argument for finding of probable cause and to show pre-existing probable cause.

The State during the Applicant's Motion To Suppress Hearing argued detailed information that was not revealed to the Magistrate and also used the fruits of the search to bolster their argument for a finding of probable cause.

(See Tr. Vol. 2, p. 11, Lines 8-10: "Your Honor, they were seeking forensic evidence related to the shooting, which included GSR, which was collected in this case, and which turned out to be positive.")

(See Tr. Vol. 2, p. 12, Lines 5-8: "and their word is likely that evidence of this shooting would be found in this vehicle whether it be gunshot residue or ballistics. And in this case, there was gunshot residue.")

See United States v. Taylor, 931 F. Supp. at 1447 states, It is also elementary that the facts necessary to demonstrate probable cause are frozen to the time before or at the time of the prospective search. It also states: Searches and Seizures Key #40.1. Fruits of search cannot

be used to bolster argument for finding of probable cause, and it is generally not permissible for prosecuting authority to use fruits of search to show pre-existing probable cause. The argument regarding the fruits of the search is largely irrelevant to the issue of probable cause, and therefore Trial Counsel was deficient for failing to object to the State using the fruits of the search to bolster their argument for finding of probable cause. Trial Counsel failure to object, prejudiced the Applicant, because it resulted in the Applicant losing his argument to suppress the fruits of the search, which led to the State's presentation of confusing, misleading, representations of Gunshot Residue forensic evidence to the Judge and to the jury in which they used in their decisions and deliberations to convict the Applicant because it established false corroborating proof that a weapon was fired from the Applicant's Tan Suburban which denied the Applicant a fair trial and Applicant seeks that his conviction and sentence be vacated and he be granted a new trial.

[3] Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to object to, and challenge the alternate theory of "the hand of one is the hand of all" under accomplice liability, being charged to the Jury as an alternate basis for conviction in this First Degree Murder Case.

The State put forth no evidence to show or establish the Applicant's participation in the death of the victim. The only evidence the State presented was that the Applicant drove his vehicle on the night of the incident.

There was no evidence whatsoever that the Applicant had ever fired a weapon nor ever had a gun or weapon in his possession, at all, on the night of the incident.

The theory that was alleged in the Applicant's indictment was that the Applicant did, feloniously, willfully and with malice aforethought, kill the victim by means of a gunshot wound and that the said victim died as a proximate result thereof, all in violation of SC Code of Laws §16-3-10. The theory that was

alleged in the Applicant's codefendant indictment was that the Applicant's codefendant did, feloniously, willfully and with malice aforethought, kill the victim by means of a gunshot wound and —

that the said victim died as a proximate result thereof, all in violation of SC Code of Laws §16-3-10. To admit evidence under the "hand of one, the hand of all theory", the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. (See State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981), Criminal Law §427(2))

There was insufficient evidence that the Applicant personally committed the crime or that the Applicant, through a common design aided or assisted in the commission of the crime through some overt act, under the accomplice liability theory. (See State v. Ward 374 S.C. 606, 649 S.E.2d 145 (2007))

### Concerns Related to Proving the Identity of the Principal

There was insufficient evidence of my codefendant's guilt for first degree murder. The State did not present any direct or substantial circumstantial evidence to reasonably prove which codefendant harmed the victim. (See State v. Lane, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013); holding, "the state has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes".)

Using the analysis of the Supreme Court in State v. Hepburn, Op. No. 27336 (S.C. Sup. Ct. filed Dec. 11, 2013) (Shearouse Adv. Sh. No. 52 at 40), holding "While undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two [co defendants] inflicted the victim's injuries, but not Appellant harmed victim. The State did not put forward sufficient direct or circumstantial evidence of Appellant's guilt") See also Lewis, 403 S.C. at 354-56, 743 S.E.2d at 129 (reversing the defendant's conviction the State failed to offer any direct evidence or substantial circumstantial evidence of the defendant's guilt and the defendant's involvement amounted to mere presence at the scene.)

Mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to make a defendant a participant in a crime. The State would have to prove beyond a reasonable doubt that the defendant was present and aided or assisted or participated in the commission of the crime and was not just simply present while a crime was being committed and had knowledge that a crime was being committed. Evidence of mere presence at the scene of the crime, and —

nothing more to show participation of a defendant in the illegal act, is insufficient to support a conviction. (See Shirley v. State 304 S.E.2d 468 (1983); Huncke v. State 137 Ga. App. 299, 300, 223 S.E.2d 492 (1976).

Mr. Swerling's failure to object and challenge "The hand of one, hand of all" theory of Accomplice Liability; being charged to the Jury, prejudiced the Applicant because the evidence presented does not support the charge and therefore the Jury should not have been able to convict the Applicant under this theory, in which they did.

It also prejudiced the Applicant because the State never showed either one of the codefendants participation in the crime and never established a principal, in order to allow the Jury to determine whether or not the other codefendant aided and abetted the principal.

The State presented to the Court during the Applicant's Directed Verdict motion and to the Jury during closing argument another **double theory** stating "Under the hand of one, hand of all, they are both guilty of murder, whether the defendant Watts handed the gun to Tremaine Wray and had him fire where the gunshot residue is **or** whether he leaned over himself while Mr. Wray was busy driving the vehicle. Regardless they were aiding and abetting one another. Either Wray was driving while the shots were fired or Watts provided him the firearm to conclude **or** to commit the act and spray the parking lot with bullets." (See Tr. Vol. 7, p. 184, Lines 13-24.)

"So you can, just right off the bat, you know that Watts was seen with an ... weapon getting into the passenger side and you know that Wray is driving. As he drives he's assisting in letting Watts spray the parking lot. **Or** you may find that Watts handed Wray the firearm and in handing him he assisting, aiding, abetting him in completing this crime." (See Tr. Vol. 8, p. 18, Lines 22-25; p. 19, Lines 1-3.)

Under the charge in this case, the Jury, faced with a difficult factual question as to the identity of the principal, could have resolved the issue by convicting both defendants to insure a conviction of the principal. The charge must clearly explain to the jury that this is not permissible. (See State v. Leonard 355 S.E.2d 270, 292 S.C. 133). Applicant seeks that his conviction and sentence be vacated and he be granted a new trial.

[4] Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Swerling's failure to request a hearing, pursuant to **Frank's Hearing**, by making a substantial preliminary showing that false statements knowingly and intentionally, or with reckless disregard for the truth was included by the Affiant (Investigator Don McRae) in the Affidavits In Support Of The Search Warrants. In both Affidavits In Support Of The Search Warrants for the Applicants Vehicle and Home, the Affiant (Don McRae) used False statements in both Affidavit by using the term "witnesses" which falsely establishes that several witnesses or more than one witness: identified the alleged vehicle; identified the Applicant as the driver of that vehicle; and have named the Applicant in sworn statements.

These witnesses do not exist. There was only one sole alleged witness in the entire case who claimed to have eyewitnessed the crime. Trial Counsel knew this information. Trial Counsel did not request a Frank's Hearing, but instead, during the Suppression Hearing, argued the fact that the Affidavit referred to witnesses but none of those witnesses were identified, nor was the witnesses reliability established or the underlying basis for how those witnesses knew the information. (See Argument, Tr. Vol. 1, pgs. 150-168, and Tr. Vol. 2, pgs. 6-33). Trial Counsel should have requested a Frank's Hearing, to establish to the Court that the Affiant intentionally and knowingly included false statements in the Affidavit to establish probable cause to the magistrate, and with the Affidavit's false material set to one side, the Affidavit's remaining content is insufficient to establish probable cause. Trial Counsel's failure to request a Frank's Hearing and argue these facts to the court prejudiced me for these reasons: (It prejudiced me because the fruits of the search would have been suppressed, and the jury would not have been presented the misleading and prejudicial testimony of the State's Expert Witness, pertaining to the Gunshot Residue evidence that was used to assist the jury in their decisions and deliberations to come back with a verdict against me.) (It also prejudiced me in my Direct Appeal in that it was part of the facts and circumstances in the Court of Appeals Opinion to Affirm the Trial Judge's admission of the evidence, and also to Affirm my conviction.)

(See Court of Appeals Per Curiam: "According to the Affidavit, (1) Several witnesses saw the vehicle to be searched leaving the crime scene and identified it as the vehicle from which several rounds were fired." "None of the witnesses were confidential informants", Finally, although the Affidavit did not include the names of the witnesses, it noted that the witness who identified the occupants of the vehicle had also given a separate statement to law enforcement.) (This is the result of the 'irrelevant' argument by Mr. Swerling that "the Affidavit referred to witnesses but none of those witnesses were identified, nor was the witnesses reliability established or the underlying basis for how those witnesses knew the information.") (That's because those "witnesses does not exist). Affiant knew when these false statements were made, that he did not have reasonable grounds for believing them because those witnesses did not exist. The false statements in the Affidavit for my vehicle were, "Witnesses did identify the above listed vehicle leaving the incident location and firing several shots from this vehicle." "The vehicle was spotted by Investigators at the residence of one of the suspects identified by witnesses as the driver of the vehicle that fired the shots at the incident location." (See Affidavit For Vehicle)

The false statements in the Affidavit for my home were: "Witnesses did identify Tremaine Wray as the driver of the suspect vehicle that was identified by witnesses as the vehicle that the shots were fired from." "Witnesses have named Tremaine Wray in sworn statements." "Investigators have seen a Tan in color Suburban parked at the residence which is the same type and color vehicle witnesses have described as the suspect vehicle that the shots were fired from." (See Affidavit for Applicant's Home).

When read in context with the remainder of each Affidavit, these false statements provide false corroborating evidence of information and conclusions. These knowingly false statements made by the Affiant misled the Magistrate in his evaluation to believe that similar or identical information was obtained by independent sources. ("These Witnesses"). Also these false statements made by Affiant, misled the Magistrate in his evaluation to believe that the informers conclusions were corroborated and that the informers information was corroborated. These false corroborations were part of the Magistrate's determination of the sufficiency of the Affidavit for Search Warrant and a finding of probable cause. —

(See United States v. Spach, 518 F.2d at 866; Searches And Seizures 3.6 (3) addresses two types of corroborating evidence; it states; In determining sufficiency of Affidavit for search warrant, there are two types of corroborating evidence, the first is corroboration of an informer's conclusions; the second is corroboration of information provided by an informer, the distinction is rarely clear-cut and the same information may be corroborating in both senses, (nevertheless the distinction is useful for analysis). It also states, "There are two types of corroborating evidence. The first type of corroboration is based on the premise that when similar or identical information is obtained from independent sources, each supports the other, and it is more likely that the conclusions are true than if the information is only provided by one source". (See statements of each and every witness in Motion Of Discovery and See Trial Transcript Testimony of each and every witness as proof that there was no other witness to corroborate the one and only sole witness Ricky Jacobs information or conclusions). Applicant seeks that his conviction and sentence be vacated and he be granted a new trial.

[5] Applicant was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution Laws and Statutes by Mr. Jack B. Swerling and Mr. Arie Bax failure to object to the Prosecutor's and the assistant Solicitor's improper comments, remarks, and arguments that the Applicant's Tan Suburban was Positive for Gunshot Residue which so infected the Applicant's trial with unfairness that it made the resulting conviction a denial of Due Process, due to Prosecutorial Misconduct. The prosecution's improper comments, remarks, and arguments pertaining to my Tan Suburban being Positive for Gunshot were presented throughout my entire trial. (See Tr. Vol 2, p. 49, Lines 19-21; "State's Opening Arguments to the Jury": "You will hear from Michael Moskal as well, a trace —

2636  
expert in Gunshot Residue at SLED. He will tell you how the Defendant's car was Positive for Gunshot Residue." (State's Closing Arguments: See Tr. Vol. 8, P. 52, Lines 23-24, "Well, why do we have Gunshot Residue on the driver's side rear door frame?"; See Vol. 8, p. 53, Lines 3-7, "Well, Ladies and Gentlemen, remember I asked Agent Moskal, is it consistent and is it possible when you are firing a firearm out of a moving vehicle, outside a window, for Gunshot Residue to come back to the back seat, and he said, yes. That's how it got there."; See Tr. Vol. 8, p. 53, Lines 11-15, and 19-20, "You ask yourself if Agent Moskal was lying or telling the truth about his findings. And his ultimate conclusion, Ladies and Gentlemen, is that the evidence is most consistent with a firearm being fired from the driver's side area." "And that corroborates Ricky Jacobs as well. Forensic Evidence does not lie."

The Prosecutor also argued these false forensic evidence results to the Trial Court Judge to prevail in their argument against the Defense in our Motion To Suppress Hearing. (See Tr. Vol. 2, p. 11, Lines 8-10, "Your Honor, they were seeking forensic evidence related to the shooting, which included Gunshot Residue, which was collected in this case, and which turned out to be Positive."; See Tr. Vol. 2, p. 12, Lines 5-8, "Their word is likely that evidence of the shooting would be found in this vehicle whether it be Gunshot Residue or ballistics. And in this case, there was Gunshot Residue.").

The Prosecutor also argued these false forensic evidence results to prevail in their arguments against the Defense's Objection to the admission of the Gunshot Residue evidence that their Expert Witness SLED Agent Mr. Moskal, would be testifying to. (See Tr. Vol. 6, p. 17, Lines 14-25, P. 18, Lines 1-7, "Ms. Shipley: And so your Honor, this is corroborating evidence. It is extremely probative to the State's Case." The Court: "Does he take it further to say the type of gun and ---" Ms. Shipley: "No. He can't identify what type of gun, he can't identify who fired the gun." The Court: "It's just a matter that a gun was ---" Ms. Shipley: "Was fired from inside the car." The Court: "Okay. Wait, say the last part?" Ms. Shipley: "That a firearm --- consistent with a firearm being fired from within the car." The Court: "Okay. Now, tell me about the from within the car, part, though?"  
★ Ms. Shipley: "Because when you have Gunshot Residue inside the driver's area ---" The Court: "Oh, I see what you're saying." Ms. Shipley: "--- that's consistent when someone has fired a gun from that area." ★  
The Prosecutor also argued these false forensic evidence results to the Judge in their arguments against me, in my Motion For A

Directed Verdict, and also to support their hand of one, hand of all theory, and to falsely corroborate their key Eyewitness Ricky Jacobs Statement and Testimony. (See Tr. Vol. 7, p. 184, Lines 13-18, "Under the theory of hand of one, hand of all, they are both guilty of Murder whether the Defendant Watts handed the gun to Tremaine Wray and had him fire where the Gunshot Residue is or whether he leaned over himself while Mr. Wray was busy driving the vehicle."); (See Tr. Vol. 7, p. 184, Lines 21-24, "The testimony has been consistent that only one shot was fired from the Rodeo up in the air, and multiple shots were fired out of the Tan Suburban. Gunshot Residue Evidence corroborates that and supports that.").

The State should have never been allowed to falsely argue and present to the Trial Court Judge and to the Jury that my vehicle was Positive for Gunshot Residue.

In order to report an actual finding of Gunshot Residue, you must have a finding of all three (3) of the required elements present at one time which are Lead, Barium, and Antimony, SLED protocol requires all three (3) elements to be present in round particles in order to report a finding of Gunshot Residue. According to the State's SLED Agent, they only submitted particle lifts to SLED for testing. The results of the test for my vehicle was that sixteen (16) round lead particles were found, which is only one (1) component of the three (3) required components. (When testing Particle Lifts for Gunshot Residue, SLED takes the Particle Lifts to the microscope and actually look at the round particles to see if it contains all three (3) of the required components. If the round particles do not contain all three (3) components of Gunshot Residue together, The results of the test that's reported is No Gunshot Residue Found. See Tr. Vol. 6, p. 79, Lines 17-25, p. 80, Lines 1-11.). This should have been the same exact result reported for my vehicle, because the round lead particles in my vehicle did not contain all three (3) of the required components, not even two (2) out of the three (3) required components, so clearly Lead, which is only one (1) component is most certainly not a Positive Result, it is a Negative Result. Both Trial Counsels failure to object, extremely prejudiced the Applicant because there was No Gunshot Residue found in my Tan Suburban, at all, to establish that a gun or weapon was fired from the Applicant's Tan Suburban, which was exactly what the Prosecution falsely presented and established to the Judge and the Jury which denied me a fair trial. Applicant seeks that his conviction and sentence be vacated and he be granted a new trial.

[6] Applicant was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Both Trial Counsels failure to object to misleading and prejudicial statements during the State's GSR expert witness testimony while giving his opinion and conclusion from the actual Forensic Evidence results.

Both Trial Counsels did not object when the expert witness, during his testimony, stated repeatedly that his findings were consistent with a weapon having been fired in the drivers side area of my vehicle and that his conclusion is that a weapon was fired from my Vehicle<sup>1</sup>, in giving his opinion and conclusion, which prejudiced me and denied me a fair trial because it confused and mislead the jury into

believing that a gun or weapon was fired from my vehicle and the jury used this Expert's Opinion and Conclusions in their decisions and deliberations to come back with a verdict against me.

Expert Moskal could not even reach that opinion because the results of his report does not meet the protocol or threshold, that is required for him to reach, in order to be able to give an opinion or conclusion of a weapon being fired from my vehicle. His opinion also bolstered the State's Key Eyewitness credibility. Gunshot Residue can not be indicated by a tester unless all three (3) of the required components (which is Lead, Barium, and Antimonium) are present at one time. SLED has a threshold where if there is a certain amount of those three (3) components together, that it is consistent with or indicative of a weapon having been fired or somebody

handling or being in the vicinity of a weapon when it was fired. (See Tr. Vol. 6, p. 38, Lines 11-15). According to State's GSR Expert, it is necessary that all three (3) components be present to suggest that an individual fired a weapon, because when all three (3) components are detected, it is important that they are present in elevated or high levels, because

high or elevated levels of these components are more consistent with someone having fired a weapon, and low levels of the three (3) components are more consistent with the residue coming from other environmental factors. But only one (1) out of the three (3) required elements

were found in Low Levels in my vehicle, which was Lead. During Mr. Bax objection to the admission of the GSR evidence that the Expert Witness would be testifying to, Mr. Bax, specifically stated to the Trial Court Judge that "I would certainly object if this expert is --- attempts to get on the stand and say that this is consistent with a gun being fired inside of the car, because there is absolutely no way to tell if a round lead particle on an inanimate object got there by direct deposit or secondary transfer and you ---

cannot tell the difference. You cannot." (See Tr. Vol. 6, p. 18) But during the testimony Both Mr. Bax and Mr. Swerling failed to object to the Expert Witness, any of the times he stated (repeatedly) in giving his opinion and conclusion, that one (1) out of the three (3) required components of Gunshot Residue was consistent with a gun or weapon having been fired from the driver's side area of the Tan Suburban and **primarily** that **a weapon was fired** from the drivers side area of my vehicle.

**Footnote 1:** In the PCR Court's final order, it recites the PCR testimony of the Applicant's Trial Counsel Mr. Arie Bax: He testified that he moved to suppress testimony regarding gunshot residue because the State's expert did not find gunshot residue and could not **conclusively state that a gun was fired in Applicant's car.** (See Final Order, p. 16 of 39)

[Because only round lead particles were found, but not the remaining two components of gunshot residue (barium and antimony), any testimony that his conclusion is that a weapon was fired from my vehicle was confusing and misleading to the jury.]

He (Mr. Bax) testified that her Honor did limit Moskal's testimony somewhat, ruling that he could only testify that round lead particles were found and the significance of this finding, but not that gunshot residue was found in the car or that a weapon was **definitively fired from the car.** (See Final Order, p. 17 of 39). He (Mr. Bax) testified that Moskal never testified that gunshot residue was found and was very careful to testify within the trial court's parameters. [He did not testify within the trial courts parameters. See Tr. Vol. 6, p. 72, Lines 7-15; Tr. Vol. 6, p. 97, Lines 16-20; Tr. Vol. 6, p. 126, Lines 8-13; Tr. Vol. 6, p. 134, Lines 18-21]. He (Mr. Bax) testified that he was able to get Moskal to admit that: ... he could not conclusively state that gunshot residue was found; the two other components of gunshot residue has not been found; he could not **conclusively state that a weapon had been fired in the car, ...** (See Final Order, p. 17 of 39) [But Mr. Moskal did conclusively state that a weapon had been (was) fired in the car. See Tr. Vol. 6, p. 72, Lines 7-15; Tr. Vol. 6, p. 97, Lines 16-20; Tr. Vol. 6, p. 126, Lines 8-13; Tr. Vol. 6, p. 134, Lines 18-21].

Ms. Shipley (Direct Examination)

Tr. Vol. 6, p. 72, Lines 7-15

Q: All right, and just last time, your final conclusion. Is it consistent or inconsistent for these round lead particles -- what is your conclusion?

A: My conclusion, based on everything I found here is that a weapon was fired in the vicinity of that passenger area?

Q: Which area?

A: The driver's side area.

Q: Okay.

A: The driver's side.

Mr. Bax (Cross Examination)

Tr. Vol. 6, p. 97, Lines 16-20

Q: So your words here today are more conclusive, and that doesn't mean to you a different result, when you say more conclusive that doesn't mean to you a different result?

A: It's a little stronger, but it still indicates to me that a weapon was fired in that area, yes.

Ms. Johns (Cross Examination)

Tr. Vol. 6, p. 126, Lines 8-13

Q: And you have no independent knowledge when, if ever, a gun was ever fired?

A: Based on my data to me, I have enough data to say that a weapon was fired in that area.

Q: That a weapon was fired in that area?

A: Yes, ma'am.

Ms. Shipley (Redirect Examination)

Tr. Vol. 6, p. 134, Lines 18-21

Q: And what is your conclusion based on your findings from your scientific examinations?

A: Based on my conclusions a weapon was fired in the vicinity of the driver's seat in the Chevy Suburban.

The report does not accurately reflect the State's Expert Witness Opinion nor his Conclusions, regarding the results of these tests. See Rules of Criminal Procedures. Under Rule 6, Section (a), Report of Chemical Analysis, Section (c)... he or she conducted the test or tests shown on the report using procedures approved —

by SLED and that the report accurately reflects his or her opinion regarding the results of those test.

There is no way to tie the round lead particles to the actual crime, and there is no way to tie the round lead particles to the actual time of the event. Both Trial Counsel's failure to object, gave the Jury the false impression that a weapon was fired from my vehicle when there was no evidence to support this conclusion which extremely prejudiced me, and also allowed the State to manipulate the facts of the Gunshot Residue Tests results to the Trial Court and to the Jury, by allowing the State to falsely argue and present to the Trial Judge and to the Jury that my vehicle tested Positive for Gunshot Residue, when in fact it was Negative for Gunshot Residue, which also prejudiced me and denied me a fair trial. The Applicant seeks that his conviction and sentence be vacated and he granted a new trial.

[7] Applicant was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution by Mr. Jack Swerling's failure to request a Franks Hearing to make a substantial preliminary showing that the Affiant deliberately omitted facts with intent to make, or in reckless disregard of whether they thereby made, the Affidavit for Search Warrant and Arrest Warrant misleading and if omitted information

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would have been included in Affidavit, the information would render Affidavit insufficient to support finding of probable cause. Affiant omitted facts in search warrant affidavit which were material to finding of probable cause and these omitted facts misled the issuing Judge in making a probable cause determination in that the information omitted was that this same exact sole witness who information was used to establish probable cause in both Affidavits for my vehicle and home, gave completely contradicting information that directly defeats probable cause for my vehicle, home, and arrest, to Police Officer Ray Weldon Gregory which was his first/ original version of the shooting

and different in that this witness (Ricky Jacobs), identified and described other suspects as the suspects that attempted to enter the club, and that he told suspects he was closed. That one of those suspects made a comment to the effect, "I've got something for you." He identifies a different vehicle. He identifies a White Vehicle (SUV) with the suspects in it, shooting towards the club. This witness, Ricky Jacobs, identifies Subject Number 1, as having Dredlocks in his hair, and identifies Subject Number 2, as having a Close Haircut with a stripped shirt. This witness, Ricky Jacobs, States that Subject Number 2 fired over the top of the vehicle. This information was corroborated by Police Officers who responded to a shots fired called and spotted the subject vehicle that fit the description of the vehicle leaving the crime scene of shots fired where one person was injured on Hardscrabble Road. When Police Officers pulled over the White in color SUV vehicle, the driver was a Black Male with dreds in his hair and the passenger was a Black Male with short hair and was wearing a yellow shirt with stripes. The Police Officers ordered the driver and passenger out of the vehicle and detained them; while a thorough search of the vehicle was made for a gun. The passenger was found to be sitting on several rounds of ammunition when he was removed from the vehicle. (See Officer Ray Weldon Gregory's Handwritten Police Report, Deputy Ryan Galinski Supplemental Report, and 911 call Log transcripts). The shell casings found in this vehicle matched the shell casings and the projectiles found in the roadway at the scene of the murder. (See Ballistics Expert.

David Collins testimony, Tr. Vol. 6, p. 177; Tr. Vol. 6, p. 178; Tr. Vol. 6, p. 179.)

These omitted facts would have cast doubt upon existence of probable cause, if this information were included. Mr. Swerling's failure to challenge omitted evidence by the police, prejudice me and it resulted in the warrant not being voided and the fruits of the search not being excluded or suppressed, in which I did not receive a fair trial. If Mr. Swerling would have challenged the omitted information by the Police, this may have entitled me to an evidentiary Hearing on Motion to suppress to challenge the validity of search warrant on grounds of material omissions so that I could make a substantial showing that the Affiant intentionally or recklessly omitted facts required to prevent technically true statements in Affidavit from being misleading. By Inv. Don McRae reporting less than the total story: Inv. Don McRae manipulated the inferences that the Magistrate would have drawn, which allowed the Judge to be misled in such a manner that could strip the probable cause requirement of all real meaning. See United States v. Stanert, 762 F.2d at 781, 776, Miller v. Prince George's Cnty., Md., 475 F.3d 627, 628 (4th Cir. 2007), U.S. v. Colkley, 899 F.2d at 297 (4th Cir. 1990). Applicant seeks that his conviction and sentence be overturned and vacated and granted a new trial.

State of South Carolina  
County of Richland  
Tremaine Wray, #337442  
Plaintiff,

v.

State of South Carolina  
Defendant

IN THE COURT OF COMMON PLEAS  
Case No.: 2012-CP-40-07909

Motion For Injunctive Relief To Consider  
Plaintiff Pro-Se 59(e) Motion Pursuant To  
Rule 65(b) SCRPC

FILED  
RICHLAND COUNTY  
MAR 16 AM 9:48  
JANETTE W. MCBRIDE  
C.C.P. & G.S.

Pursuant to Rule 65(b), SCRPC, Plaintiff Tremaine Wray #337442 moves (Pro Se) for The Honorable J. Mark Hayes, II to consider his Rule 59(e) Motion To Alter Or Amend Judgment that he submitted (Pro Se) instead of considering the 59(e) Motion To Alter Or Amend Judgment / Reconsider, that Ms. Amy A. Kirby and Ms. Rebecca A. Roser submitted. The Plaintiff Tremaine Wray #337442 signed a consent form to the withdrawal of his attorney Marshall Coleman Newton from this matter and agreed that she does not represent him any longer, dated 1-30-2015. (See Exhibit 2). The Plaintiff requested Ms. Marshall Coleman Newton to submit a Rule 59(e) to Alter or Amend Judgment to preserve for appellate review his issues that was raised to the Honorable J. Mark Hayes, II, but not ruled on by The Honorable J. Mark Hayes, II. Ms. Marshall C. Newton interpreted it as a request to file a 59(e) motion asking The Honorable J. Mark Hayes II to reconsider his ruling and enclosed a consent form to her withdrawing as his attorney if he insist on filing his 59(e) Motion and that he will have to perfect his appeal on his own. (See Exhibit 1), (See Exhibit 3). (Exhibit 4(a)), (Exhibit 4(b))

Sworn before me this day 11th of March, 2015.

Notary Debra N. Drye

Expires \_\_\_\_\_  
My Commission Expires  
March 5, 2018

S/ Tremaine Wray

Tremaine Wray #337442  
B. R. C. I.

4460 Broad River Road  
Columbia, SC 29210

SCANNED

State of South Carolina  
County Of Richland  
Tremaine Wray, #337442

Plaintiff

v.

State of South Carolina  
Defendant

IN THE COURT OF COMMON PLEAS  
Case No.: 2012-CP-40-07909

# Proof Of Service

I Tremaine Wray #337442 hereby certify that a True Copy of the above mention motion for injunctive relief have been served to the following people:

Megan E. Harrigan  
J. Clayton Mitchell  
South Carolina Attorney General's Office  
Rembert C. Dennis Building  
1000 Assembly St.  
Columbia, S.C. 29201

The Honorable J. Mark Hayes, II  
Circuit Court Judge  
180 Magnolia Street  
Spartanburg, S.C. 29306

cc. Megan E. Harrigan  
cc. Hon. J. Mark Hayes, II  
cc. Hon. Jeanette W. McBride  
cc. Hon. Daniel E. Shearouse

The Honorable Jeanette W. McBride  
Clerk Of Court  
Richland County  
P.O. Box 2766  
Columbia, S.C. 29202-2766

The Honorable Daniel E. Shearouse  
Clerk's Office - Supreme Court  
Supreme Court Bldg., Box 11330  
Columbia, S.C. 29211.

RICHLAND COUNTY  
FILED

2015 MAR 16 AM 9:48

JEANETTE W. MCBRIDE  
C.P. & G.S.

Sworn before me this day 11th of March, 2015

Notary

Susan W. Frye

Expires

My Commission Expires  
March 5, 2018

S/ Tremaine Wray  
Tremaine Wray #337442  
B.R.C.I.  
4460 Broad River Road  
Columbia, S.C. 29210

  
ROBINSON MCFADDEN  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.  
COLUMBIA, SOUTH CAROLINA

January 27, 2015

Tremaine R. Wray  
Broad River Correctional Institution ID #337442  
4460 Broad River Road  
Columbia, SC 29210

Marshall Coleman Newton  
1901 MAIN STREET, SUITE 12C  
POST OFFICE BOX 94  
COLUMBIA, SOUTH CAROLINA 2920

P  
(803) 779-8900 | (803) 227-1124 direct

FA.  
(803) 744-158

mnewton@robinsonlaw.com

Re: Tremaine R. Wray v. State of South Carolina

Tremaine:

I received your letter requesting that I file a Rule 59(e) motion on your behalf asking Judge Hayes to reconsider his ruling. Such a motion has to be filed within ten days of receiving the written order from the judge, and I have not received it yet. However, there are no grounds in this case for a Rule 59(e) motion. I have reviewed the Assistant Attorney General's proposed order, and though I do not agree with the findings, it does address the merits of your case. Judge Hayes paid careful attention to your case and familiarized himself with the extensive record. He asked measured questions and spent a considerable amount of time with the issues. Therefore I am not comfortable filing a Rule 59(e) motion because I do not think there is any merit to such a motion.

The Rules of Professional Conduct, Rule 1.16, state that I can withdraw from representing a client if the client "insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement." Therefore, if you insist on a 59(e) motion, I will ask to be relieved from representing you, and you will have to perfect your appeal without my assistance. To that end, I am enclosing a consent to my withdrawing as your attorney. If you decide you have to file a Rule 59(e) motion, please let me know and also sign the enclosed consent form. I am sending a self addressed envelope for you to return it if you decide to do so.

Please let me know as soon as possible whether you are going to insist on a 59(e) motion so I will know what to file. We will have strict deadlines once we receive the signed order, so do contact me soon.

Sincerely,



Marshall Newton

LMCN



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

January 30, 2015

Tremaine R. Wray  
Broad River Correctional Institution ID #337442  
4460 Broad River Road  
Columbia, SC 29210

**Marshall Coleman Newton**  
1901 MAIN STREET, SUITE 120C  
POST OFFICE BOX 944  
COLUMBIA, SOUTH CAROLINA 29202

PH  
(803) 779-8900 | (803) 227-1124 *direct*

FAX  
(803) 744-1583

mnewton@robinsonlaw.com

**Re: Tremaine R. Wray v. State of South Carolina**

Tremaine:

I spoke to your grandmother and wanted to write to you to clarify that the reason I may ask to be relieved as your attorney is if you insist that I file a motion that has no merit. We do not have the final order from Judge Hayes yet, but if we receive it and there is no reason to file a 59(e) motion, then I will advise you not to file one. If you insist despite my advice, I may ask to not represent you anymore. My job as your attorney is to do everything I can that is in your best interest. Filing an appeal of your PCR is in your best interest. Filing a 59(e) motion that has no merit is not in your best interest. You do not file a 59(e) motion just because you don't agree with the order—that is what the appeal is for. As an attorney, I make that decision and give you the advice.

I had intended to file a notice of appeal after receiving the order. After that you would be assigned an appellate lawyer who would be able to help you with your appeal, and you should have some good issues for it.

I am enclosing a copy of the Assistant Attorney General's Proposed Order which she sent to the judge. She drafted it based on the judge's ruling as set forth in his email. I will send you a copy of the signed order once I receive it. **If you are going to insist that I file a 59(e) motion even if I advise you not to, please sign that consent to be relieved and return it to me as soon as possible.**

Sincerely,

Marshall Newton

LMCN

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tremaine Wray, #337442,

Plaintiff,

v.

State of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2012-CP-40-07909

I, Tremaine Wray, #337442, hereby consent to the withdrawal of my attorney Marshall Coleman Newton from this matter and agree that she does not represent me any longer. She will not have any further participation in this case.

Tremaine Wray #337442  
Tremaine Wray, #337442

1 -30 -2015  
Date

ROBINSON MCFADDEN  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, McFADDEN & MOORE, P.C.  
COLUMBIA, SOUTH CAROLINA

Rebecca Roser

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

March 6, 2015

(803) 779-8900 | (803) 227-1129 **PH**  
*direct*

FAX  
(803) 771-9411

rroser@robinsonlaw.com

Mr. Tremaine R. Wray  
Broad River Correctional Institution ID #337442  
4460 Broad River Road  
Columbia, SC 29210

**Re: Tremaine R. Wray v. State of South Carolina**

Mr. Wray:

I work with Marshall Coleman, the attorney who handled your PCR. Today, our office received a call from Tammy Downs requesting information about your case. I am not sure if you authorized her to contact us on your behalf, but am not comfortable sharing information about your case with anyone other than you (or those whom you have authorized). She is free to search the public records and obtain information that way.

We received your consent to withdraw. However, it is not just a client's consent that is required to relieve an attorney of his or her duties and representation; once an attorney is on record for a client (which we are in this case), a judge must approve and sign an order relieving an attorney from a case. Prior to providing your consent to relieve Ms. Newton from this matter, you requested we file a motion to alter or amend the judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Once we received the order denying your PCR, the Rules provide that motion must be filed within 10 days. Therefore, in the interest of time and pursuant to your wishes, we filed the Rule 59(e) motion and have not filed a motion to withdraw as counsel. While I suspect the Rule 59(e) motion will be denied, I do not think a judge would relieve us from representation at this late stage of this phase.

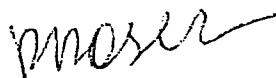
The next phase will be the appeal. After the Rule 59(e) motion is ruled upon, we will file the notice of appeal and forward the same to the Commission on Indigent Defense, which will take over representing you for the appellate phase.

We previously sent copies of the order, the Rule 59(e) motion, and the return filed by the State. I have enclosed another copy since Tammy Downs expressed that you were confused as to what had been done on your case. I have also included a copy of your consent to Ms. Newton being relieved as your attorney (which has not been filed).

Tremaine Wray  
March 6, 2015  
Page 2

If you have any questions or need anything further, please contact Amy Kirby. Otherwise, I will let you know once we receive a hearing date or ruling on the Rule 59(e) motion.

Sincerely,

A handwritten signature in black ink, appearing to read "Roser", with a long horizontal flourish extending to the right.

Rebecca Roser

RAR/aak

Enclosures