

Forensic Training & Consulting, LLC

1544 Valley Creek Rd.
Denton, Texas 76205

Ph: 940-383-8668
E-mail: xprtwit@aol.com

DRAFT

Jim Brown
Pegasus Investigations
PO Box 542
Quitman, Texas 75783

Re: State of Texas vs. Jason Thad Payne (FT&C Case #09-5912) – Preliminary Report

Introduction

This is the report of my preliminary findings in reference to my review of documents and physical evidence that have been received to date. Any additional examinations conducted or opinions formed will be the subject of supplemental reporting.

Background

Nicole Payne and her 16 year old son Taylor Wages were each reportedly found by Nicole's husband Jason Payne dead of a single gunshot wound to the head at their residence near Quitman, Texas around 9:00 a.m. on 12/11/2007, after Jason had returned home from taking their 5 year old son to school (a second child, a 2 year old daughter, was said to have accompanied them). Both shooting victims were found in their bedrooms, Nicole under the covers in bed and Taylor on top of the bed covers. Jason Payne reported the killings via a 911 call to Wood County authorities.

Sgt. Noel Martin of the Smith County Sheriff's Department was called in by Wood County authorities to do a crime scene reconstruction that included bloodstain pattern and trajectory analyses. In Sgt. Martin's reconstruction, his conclusion was based upon stippling pattern testing that he determined indicated "...a distance of 8 inches + or - 2 inches on a flat linen surface. Sgt. Martin concluded that the physical evidence indicated that the most probable scenario was that Taylor Wages had shot his mother in the head as she lay in bed and then gone into his bedroom where he sat down at the foot of the bed and shot himself in the head with the same weapon, a Winchester Model 94 30-30 carbine.

Wood County authorities subsequently retained Tom Bevel of Bevel, Gardner & Associates in Norman, Oklahoma to do another reconstruction. Although Mr. Bevel reported on 09/05/2008 that, with regard to Taylor Wages death, "It is possible to use his toe, but this requires the lever safety to be depressed at the same time the trigger is activated and this is highly improbable to accomplish at the same time" and "The trigger could be activated with the end of the left fingers and the correct trajectory through the head up to 8" from the end of muzzle to entry wound (sic)" that "The disparities in body temperatures and presence of gun powder and rigor in TAYLOR'S body compared to NICOLE'S body indicated that Taylor was dead before NICOLE was shot." Ultimately Mr. Bevel opines that "The best explanation to comport with all of the physical evidence is... JASON shot TAYLOR first and then shot NICOLE."

On 11/12/2008 Wood County authorities next retained Alliance Forensics (Richard Ernest) to conduct yet another reconstruction. Mr. Ernest reported "...given the physical dimensions of this rifle and it's (sic) operating characteristics it would be **all but impossible** (emphasis added) to shoot oneself with this particular rifle at a muzzle to target distance of 10 inches or greater."

The possible scenarios in this incident are:

1. Homicide (Nicole)/suicide (Taylor)
2. Double homicide (Jason being the perpetrator as charged)
3. Double homicide (person unknown)

I was retained by the defense to review the documentation and physical evidence and to carry out any appropriate testing in order to determine which, if any, of these scenarios is most probable in my opinion.

Documents reviewed

1. Autopsy reports on Nicole Payne and Taylor Wages
2. Wood County Sheriff's Office Offense Report
3. 2 CDs containing scene images
4. Photo copies of autopsy images
5. Report of Sgt. Noel Martin
6. Report of Tom Bevel
7. Report of Richard Ernest
8. Report of Texas Ranger Sgt. Philip Kemp
9. DNA report of Orchid Laboratory
10. Texas DPS Firearms Report (no analysis)
11. SWIFS Gun Shot Residue Analysis
12. Texas DPS Trace Evidence Report (no analysis)
13. Texas DPS Latent Report
14. Texas DPS Serology/DNA Report
15. Wood County Sheriff's Office Supplemental Reports

Evidence examined

Winchester Model 94 Lever Action 30-30 rifle, s/n 5016347

Observations/results

Reconstruction reports re Nicole Payne

There is no apparent dispute regarding the position of Nicole Payne when she was shot (i.e. in bed with the covers pulled up and her head on a pillow) by someone else. On the other hand, the question as to exactly who shot Nicole Payne lies at the heart of this case.

Reconstruction reports re Taylor Wages

The essence of the disparity in the conclusions proffered in the respective reports of Sgt. Martin, Mr. Bevel and Mr. Ernest center around the feasibility of suicide on the part of Taylor Wages. The decision as to whether suicide is more likely or less likely comes down in large part to the

interpretation of stippling test results conducted by the various parties and how that factors into a reconstruction of the shooting.

Upon discharge, burning and unburned gun powder particles emanate from the muzzle of a weapon along with carbonaceous material (i.e. "soot"). Gun powder particles, by virtue of their greater mass, are capable of traveling much farther than the smaller carbonaceous particles produced during complete oxidation of gun powder. The conglomerate of gun powder particles and carbonaceous particles exit the muzzle of the firearm in a conical distribution.

The impact and subsequent deposition of carbonaceous particles simply results in "visible soot" and is indicative of a "fairly close shot", the distance of which is approximated through test firing. Because of its smaller mass, visible soot disappears at muzzle to target distances well short of those at which gun powder particles can still strike and produce visible evidence of impact.

The impact of gun powder particles can produce abrasions in human tissue that are manifested by red "marks". The impact of gun powder particles can also produce contusions in human skin, as well as imbedding between the epidermis and dermis (powder tattooing). Likewise, the hot/burning powder particles can burn the skin upon contact. Collectively, the visible effects are referred to as powder stippling.

The carrying out of stippling testing requires the use of the incident firearm, ammunition like that used in the incident, and a suitable substrate that will record both the deposition of soot and the impact of gunpowder particles such that stippling would be expected on human tissue. Over the last 20-30 years, several suitable media have been accepted for use in this testing by the firearms examiner community and have been reported in forensic literature. These materials include painted ceiling tile, foam board, and craft paper (polymeric sheet).

Sgt. Martin reportedly used both cotton twill and styrofoam in his testing, the latter of which would be expected to give a reasonable approximation of both soot deposition and stippling. Mr. Bevel reportedly used cotton twill only. It is not apparent from his report what substrate Mr. Ernest used.

Both Sgt. Martin and Mr. Bevel raise concerns in their reports about the "curvature of the human face" versus using a flat test substrate. These concerns are unwarranted given that the interpretation of stippling tests is based upon a combination of soot deposit appearance (or absence) and stippling pattern densities. The fact that not all the powder strikes the face, for example, does not significantly change the density of the stippling pattern produced by the powder that does. Similarly, any soot deposit present is a function of muzzle to target distance only.

The contours of the face do affect the overall shape of the visible soot that gets deposited as well as the distribution (i.e. locations) where stippling is found. The images that were received do not provide a clear view of the soot deposition. However, the autopsy report states "A thin layer of soot is **eccentrically** (emphasis added) deposited...". It can be seen in the images that stippling is present in areas, such as under the chin, that are consistent with the upward trajectory indicated by entry and exit wound locations.

The stippling testing carried out by this examiner involved the polymeric sheet known as craft paper as the substrate along with the incident weapon and ammunition like that reportedly used in the shootings (Remington 170 grain soft point). The results obtained were that the visible soot deposition, along with the diameter and density of the resultant indentations, is representative of

stippling. The indentations achieved through this type testing are illustrated in an accompanying image.

With cotton twill, unlike craft paper, foam board, painted ceiling tile, or Styrofoam, gun powder particles that strike with sufficient force to create stippling but bounce off cannot be considered. Likewise, particles that are not visible but could produce stippling cannot be evaluated. Finally, it stands to reason that the weave of cotton twill might tend to hold particles that might not adhere to other substrates, thus giving an unreliable representation. It is for these reasons that most firearms examiners do not use cotton twill for powder stippling determination on human tissue.

Powder stippling test results obtained by this examiner

The combination of the soot deposition described in the autopsy report and the stippling pattern (both visible in images and as described in the autopsy report) for the shot to the face of Taylor Wages was determined to be representative of a shot fired from the Winchester 30-30 rifle using Remington 170 grain soft point ammunition into craft paper at a distance between 4 inches and 10 inches (muzzle to target distance).

Results of rifle examination

The rifle was received in an unsealed evidence box. Most of the bloodstains visible in scene images were no longer present. Accordingly, reported bloodstains and their apparent significance cannot be evaluated beyond what is visible in the original scene photographs. The report of Sgt. Martin concerning bloodstains on the rifle appears to be an accurate assessment.

None of the 3 reports reviewed references any mechanical malfunctioning of the rifle during testing and none was encountered by this examiner. The rifle has a trigger stop mechanism that requires the breech to be fully closed in order to fire. This is accomplished by applying slight pressure through squeezing the finger lever. The trigger pull was determined to be approximately 3 1/3 pounds once the trigger stop is released. This is within the expected range for weapons of this type.

The Texas DPS Report of Latent Print Examination dated March 28, 2008 states that no "suitable" prints were developed on any of the evidence. This is presumed to indicate that no identifiable prints were found. However, according to Ranger Kemp's report (page 14, paragraph 4.2), Forensic Scientist Henson stated that no prints whatsoever were found and that indicates "...that someone possibly wiped the weapon down after the weapon was fired."

That revelation is particularly disturbing for a number of reasons:

1. An apparent smeared area is visible in a scene image at the line of demarcation of blood on the barrel.
2. No evidence of cyano acrylate (superglue) fuming or any other form of latent print processing was evident on any of the metal or wooden surfaces of the rifle.
3. No mention of any wipe patterns or photographic documentation thereof has been received.
4. The Texas DPS Laboratory Submission Form L-369051 dated as received 12/18/07 specifically requests that DNA testing be conducted on the rifle and ammunition components and yet the Serology/DNA Report dated February 05, 2008 states "No

serology/DNA analysis was requested on items 2-5" (the ammunition components) and makes no mention of the rifle.

5. The Orchid Report of Laboratory Examination dated October 27, 2008 lists a total of 6 submissions (suggestive of DNA swabs) all of which have the notation "NOT EXAMINED".

The questions begged by these various notations are:

1. Were DNA swabs, in fact taken from the rifle and if so, when and by whom?
2. Who made the decision not to do DNA testing on the rifle and associated ammunition components?
3. What procedure was used for testing the rifle and ammunition components for latent prints?
4. What is the basis for the purported statement regarding anticipated testimony as to "...someone possibly wiped the weapon down after the weapon was fired"?

Clearly, the most reliable means of establishing who might have fired the rifle lies with "touch DNA" testing as was appropriately requested by Wood County authorities of the Texas Department of Public Safety. Exactly what transpired pursuant to that request and how latent print testing factors into the lack of DNA testing remains to be determined.

Reenactment

The reenactment subject, at 5'2" and with 24 1/4" arms (deceased was stated to be 5'10" with 26" arms as measured from arm pit to tip of middle finger), was able to hold the barrel in her right hand (at the approximate location of blood demarcation seen in the attached scene photo) and use her socked left or right foot to depress the lever and trigger causing the hammer to fall. In repeated tests, this was found to be best accomplished by first bringing pressure to bear on the lever such that the trigger stop pin is released, then applying pressure to the trigger with the big toe. While this does require an understanding of the mechanical operation of the safety system, it was represented to this examiner that the deceased (Taylor Wages) had such knowledge.

It was also possible for the re-enactor to reach the trigger and lever and simulate firing with the left hand. In this orientation, the muzzle to left corner of the mouth distance was approximately 6" (see image).

The above-described manipulations do require some physical coordination in order to produce hammer fall (i.e. firing) but is certainly not overly difficult to accomplish. There has been no information received that suggests that Taylor Wages would be physically incapable of carrying out the required manipulations.

Separate tests were carried out firing the rifle with the foot while wearing socks of different thicknesses. It was noted that the thicker the sock, the more pronounced the crease in the sock between the big toe and the second toe that results from pressing against the lever. Also, any subsequent movement of the foot/toes against the lever make the crease disappear. No lasting crease was produced for the thick, tenacious socks consistent in

appearance with that worn by Taylor Wages, even without movement of the foot/toes (see image).

First Officers' observations

The first officers at the scene (per Officer William Miles Tucker's Offense Report) reported finding the female victim covered with a bed spread, "very warm to the touch" and there being "the strong odor of gun powder in the air", while the male victim being on top of the bed (not covered), "cold and rigor had set in", and "did not notice the smell of gunpowder in the air".

As stated in Sgt. Martin's report, the perceived body temperature differences could easily be explained by the difference in covering of the bodies. Anyone who has touched their own exposed arm lying outside bed covers knows it can feel quite cold to the touch on a cool morning. Likewise, a body under bed covers could be expected to feel warm to the touch for some time following death. The only reliable measure of algor mortis (body temperature) comes from liver temperature as stated by Mr. Bevel in his report.

The reference to rigor mortis in Taylor Wages was refuted by Ranger Kemp according to Sgt. Martin's report. Sgt. Martin references the possibility of cadaveric spasm (the instantaneous onset of rigor mortis), however that seems to not be a consideration in light of Ranger Kemp's reported statements that rigor was not apparent.

With regard to the "strong odor of gun powder" or lack thereof, Sgt. Martin also correctly pointed out that the odor of blood/tissue can sometimes be mistaken for gun powder. The difference in quantity and distribution of blood/tissue around the 2 gunshot victims could account for odor perception differences.

Another consideration has to do with how airtight a room is when a weapon is discharged within it, particularly a rifle. Taylor Wages' room was a converted garage and was clearly not well insulated and airtight (scene photos show a non-insulated, metal garage door) as the bedroom where Nicole Payne was shot. In this examiners' experience, the odor of gunpowder can persist for a considerable time following discharge in a closed, relatively airtight room.

The first officers at the scene further noted that there was clothing in both the washer and the dryer. Subsequent testing reportedly failed to reveal the presence of blood on any of the clothing.

Sgt. Martin conducted area of origin testing for the blood spatter in the bedroom where Nicole Payne's body was found. The results were consistent with her head being on a pillow when shot.

Sgt. Martin reported no signs of struggle anywhere in the house and no indication of forceful entry.

A fired 30-30 cartridge case was found on the floor in Taylor Wages' room. This is consistent with Nicole Payne having been shot first and the rifle then being reloaded by operating the lever action while in Taylor Wages' room. It is inconsistent with someone other than Taylor Wages going into Taylor Wages' room and reloading in the midst of a confrontation with a wide-awake Taylor Wages.

In a supplemental report, Wood County Sheriff's Deputy Miles Tucker reported being advised of two possible "empty graves" on adjacent property. No further investigative information was received. If these were graves prepared in advance for the burying of Taylor and Nicole by Jason Payne, the obvious question is why did he call 911 and report the deaths?

Other considerations

Gunshot residue (primer residue) testing was positive on Taylor Wages (1 particle – back of left hand) and Nicole Payne (2 particles – back of left hand) but negative on Jason Payne.

A line of demarcation for bloodstains on the rifle barrel indicates that a hand was placed around the barrel at the time of blood deposition. Bloodstains on Taylor Wages' right hand are partially visible in the scene images and reported by Sgt. Martin. No bloodstains are visible in the scene photographs in which the back of Taylor Wages' left hand is partially visible.

The eccentric soot deposition described in the autopsy report and the stippling pattern that is visible in the images received is consistent with a down to up shot. A down to up shot is inconsistent with anything other than a self-inflicted shot given the position Taylor Wages was in when shot (i.e. seated on the bed).

In a telephone conversation with Sgt. Martin on 12/06/2009, he advised that the Wood County Sheriff's Office had told him that they found the exited bullet fragment on the floor between the wall and bed where Taylor Wages was found. He further advised that a sheet that had been hanging on the wall that may have been impacted by the bullet fragment had been removed by Wood County investigators prior to his arrival.

Opinion

It is unfortunate that the DNA testing of the rifle and ammunition that was requested by Wood County Sheriff's Office was not carried out. The results of that testing might have provided additional useful information in this case.

In order to be able to render a final opinion in this matter, it will be necessary to have access to the bed clothes and the sheet that reportedly hung on the wall behind the bed in Taylor Wages' room. It will also be necessary to see autopsy photographs that clearly show the entry wound to Taylor Wages and the reported soot deposits. It will also be

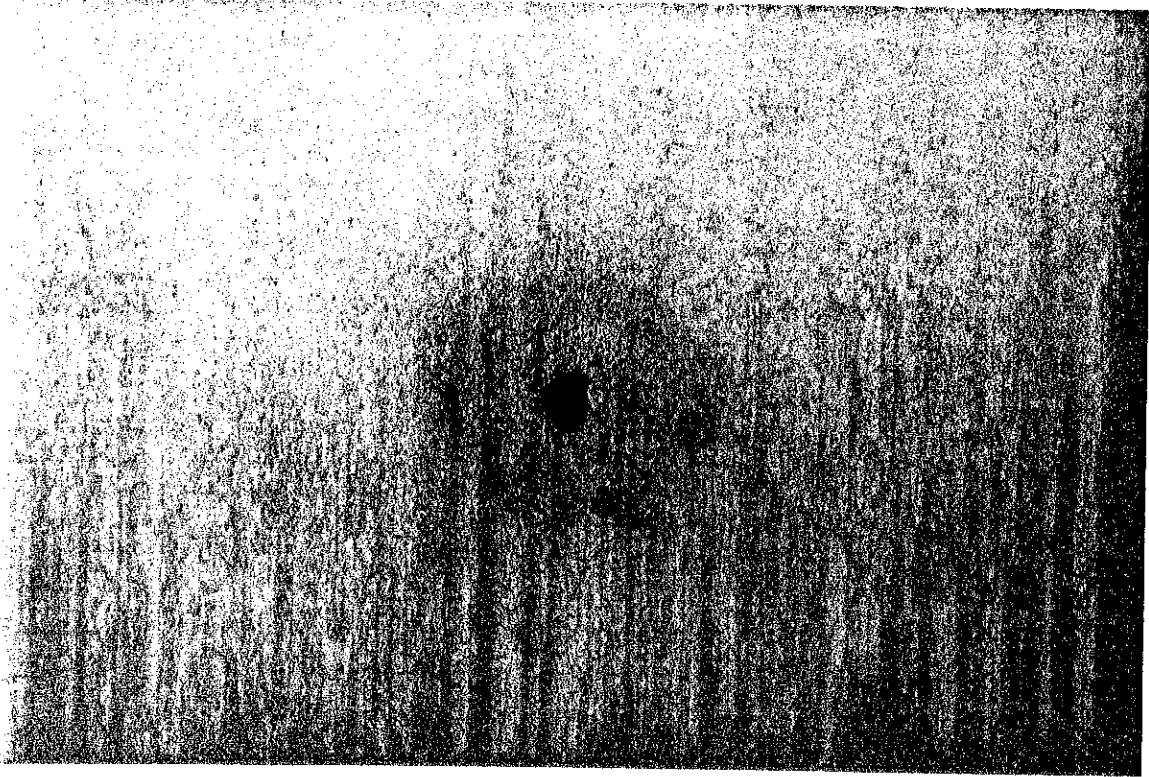
necessary to see photographs of the backs and palms of both of Taylor Wages' hands prior to any cleanup or other disturbance.

However, based upon the documentation and physical evidence that is currently available, the most likely scenario for the shootings is that Taylor Wages shot Nicole Payne as she lay in bed, then went to his bedroom, ejected the fired cartridge case, sat on the bed and shot himself in the face at a muzzle to target distance of between 4 and 10 inches by either using one of his feet or by reaching down with his left hand, depressing the finger lever and releasing the trigger stop then pressing the trigger.

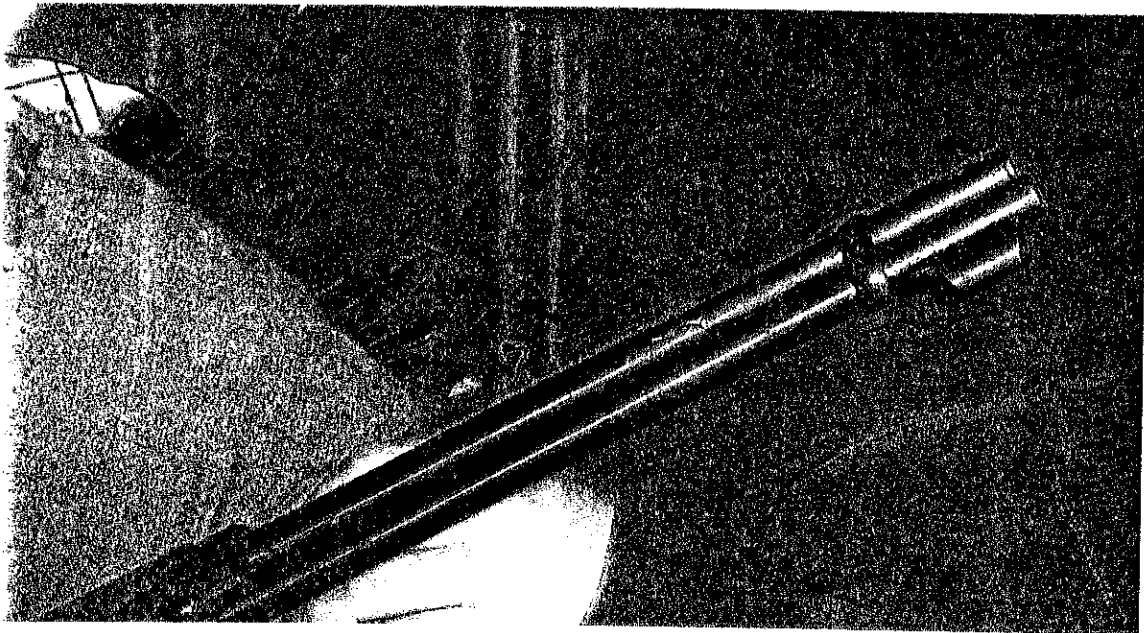
Edward E. Hueske, Forensic Scientist

B. Max Courtney, Forensic Scientist
Peer Reviewer

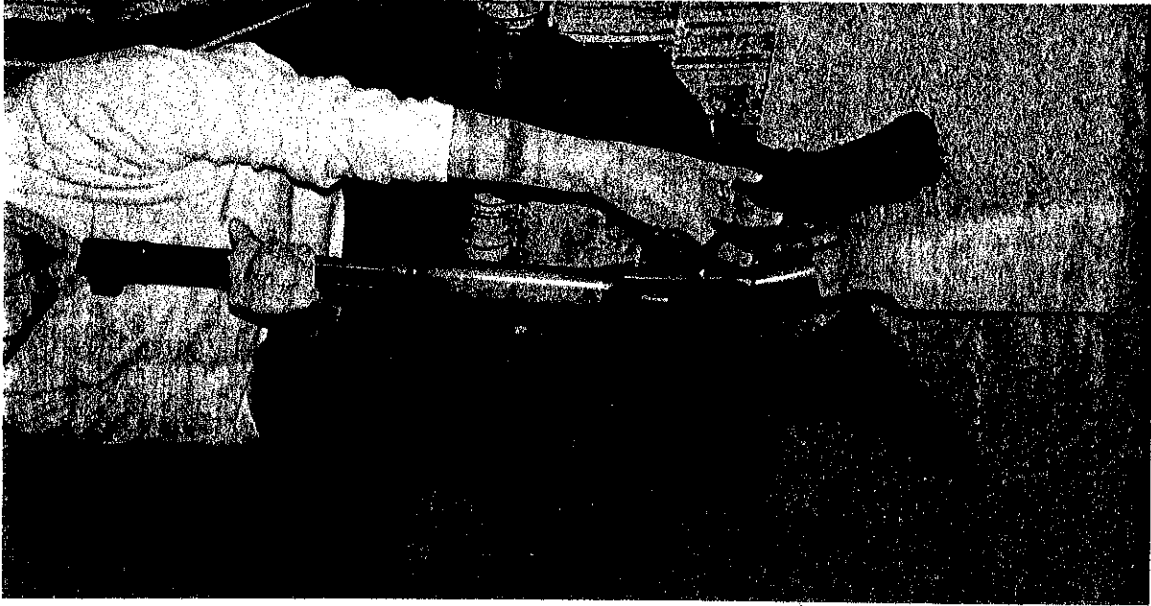
Note: the opinions expressed herein are based upon the information that was available at the time of this writing. Should new or different information be forthcoming, the right to modify these opinions is hereby reserved.



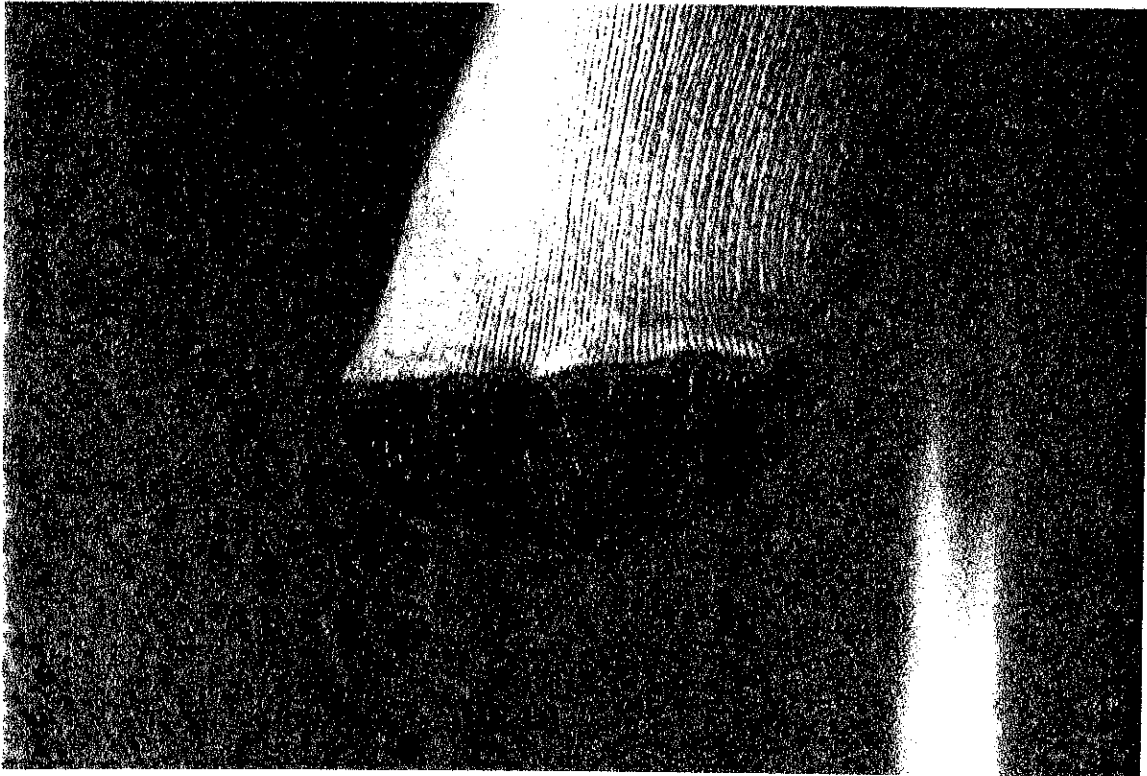
Indentations produced in polymeric test sheet representative of stippling in human tissue



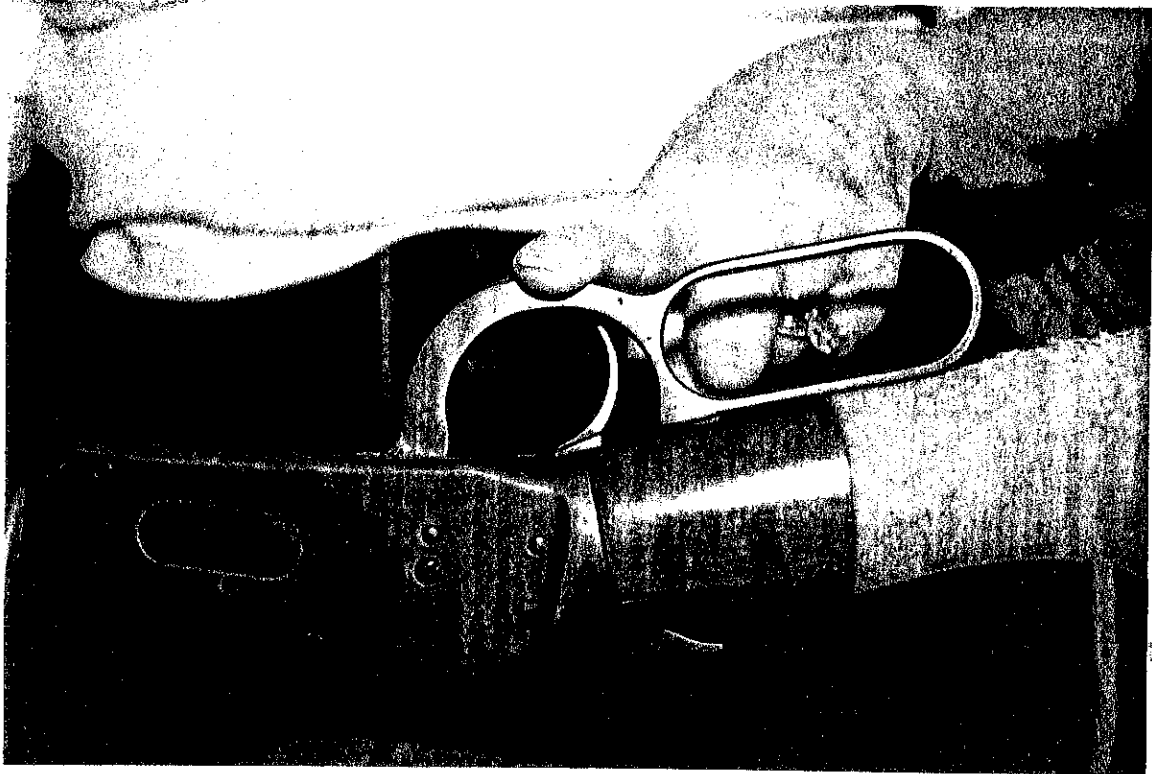
Line of demarcation of bloodstain on rifle barrel and associated smudge



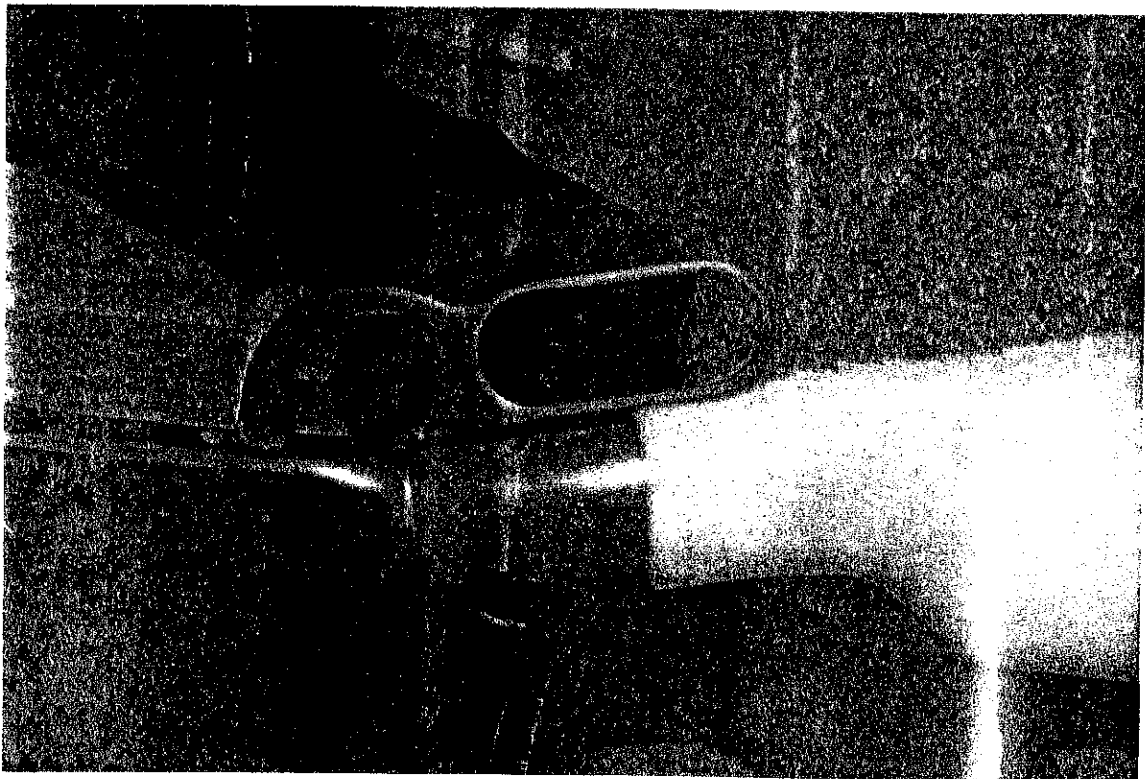
Use of fingers to depress lever and trigger (muzzle to left side of mouth approx. 4")



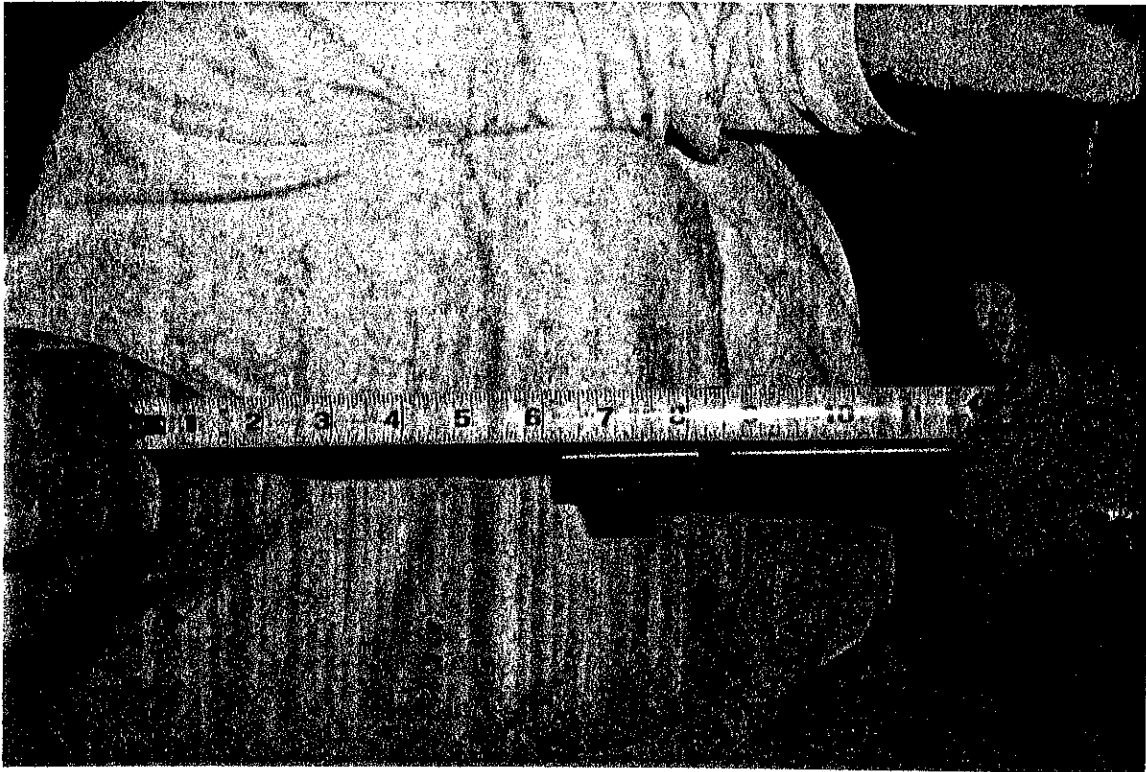
Heavy tennis-type sock immediately following dry firing



Lever being depressed with one finger to release trigger stop



Socked foot depressing lever to release trigger stop with toe on trigger ready to fire



Muzzle to left side of mouth distance using foot to fire (stand-in is 5'2" with 24 ¼ "arms)

Wood County Sheriffs Dept.
Attention: Sheriff Dwayne Daughtry
Quitman, Texas

December 12, 2007

This is a request under the **Texas Open Records Act**, chapter 552 of the Government Code (formerly V.T.C.S. article 6252) as well as Article I, Sec 8 of the Texas Constitution, the First Amendment to the United States Constitution, the common law of the State of Texas and any statute providing for public access to government information:

KLTV is requesting the 911 call made in reference to a shooting at 1146 Highway 37 the morning of December 11th, 2007.

If you have any questions about the nature or scope of this request, please call me at the phone number listed below. If you determine that all or *some portion* of the information requested is excepted from required disclosure, I request that you provide me with the portions of the requested information that are public and reasonably segregable from that which you believe is excepted. If any records are in active use or in storage, please certify this fact in writing and set a date and hour within reasonable time when the records will be available, as required by section 552.221 of the Act.

If you determine that all or some of the information requested is excepted from required public disclosure under a particular exception, I request that you advise me as to which exceptions you believe apply. If you rely on previous determination, please advise me of the of the applicable court decision or Attorney General's opinion. If there is no such determination, please advise me of the request for such an opinion, as required under section 552.301 of the Act, and a dated copy of your letter to the Attorney General. I call your attention to section 552.353 of the Act, which provides penalties for a failure to release public records.

I am prepared to pay reasonable costs for copying, within the guidelines set by sections 552.261, 552.262, 552.263, 552.267, 552.268 and 552.269.

I appreciate your attention.

Sincerely,

Dave Goldman
News Assignments Manager
KLTV - Channel 7
105 West Ferguson
Tyler, Texas 75702
903-510-7777
dgoldman@kltv.com

Debbie Foster

From: Debbie Foster
Sent: Wednesday, December 12, 2007 3:45 PM
To: 'Goldman, David'
Subject: RE: FOI 911 call request

Mr. Goldman,

I spoke with District Attorney Jim Wheeler and he advised me that the case is under official investigation and current or pending criminal prosecution by the District Attorney's Office. These records are being held from release under the law enforcement exception 552.108 to the Texas Open Records Act because release of these records could hinder the investigation and prosecution of the case.

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if the release of the information would interfere with the detection, investigation, or prosecution of a crime.

Jim Wheeler, District Attorney 903-763-4515

Thank you,
Debbie Foster

From: Goldman, David [mailto:dgoldman@kltv.com]
Sent: Wednesday, December 12, 2007 3:17 PM
To: Debbie Foster
Subject: FOI 911 call request

Thanks, Debbie

I have attached KLTV's FOI request for the 911 call.

Let me know if you have any questions.

Dave

Dave Goldman
KLTV Assignments Manager
Tyler, Texas
903.510.7750

12/12/2007



12/12/2007

Alice Tomerlin

From: Alice Tomerlin
Sent: Wednesday, February 13, 2008 9:32 AM
To: 'Sarah Hawthorne'
Subject: RE: Small Claims Court??

Miss Hawthorne,

I appreciate your concern over obtaining certain property, but I'm not an attorney and cannot advise you as to how to obtain this property. I can tell you that my small claims and justice courts have a jurisdiction level up to \$10,000. I would suggest that you seek the advice of an attorney as to how to proceed with your claim.

Hon. Alice Tomerlin
Justice of the Peace, Pct. 1
Wood County, Texas
903-763-2713
903-763-4246 Fax
atomerlin@co.wood.tx.us

-----Original Message-----

From: Sarah Hawthorne [mailto:hawthorne04@gmail.com]
Sent: Monday, February 11, 2008 1:43 PM
To: Alice Tomerlin
Subject: Small Claims Court??

I am not sure I have the right place. My name is Sarah Hawthorne and I was in business with my sister-in-law Nichole Payne who was murdered in Quitman back in Dec. Right after the murder her husband (Jason Payne) was being somewhat nice and had promised to give us the property that I am now having to fight for. I am not sure how to proceed with trying to obtain the property. Any help you could offer would be very much appreciated. I reside in Nacogdoches county.

Thank you for your time - Sarah Hawthorne 936-615-4411 cell or 936-569-8177 or email would be fine.

Chase Hudson
Greale w/State officers
A-1 Bail Bonds
or A + 1

01-04818

Sheriff Dwaine Daugherty releases the following for the Press:

On Tuesday, December 11, 2007 at approximately 9am deputies answered a 911 call at 1146 Hwy 37 which is just north of Quitman. The caller advised there were two people who had been shot. One female was identified as Nicole Payne, 35 and there was a juvenile male found, identification is pending death notification. Investigators and the Texas Rangers are investigating the shootings.

Sheriff Dwaine Daugherty releases the following for the Press:

On Tuesday, December 11, 2007 at approximately 9am deputies answered a 911 call at 1146 Hwy 37 which is just north of Quitman. The caller advised there were two people who had been shot. One female was identified as Nicole Payne, 35 and there was juvenile male identification is pending death notification. Investigators and the Texas Rangers are investigating the shootings.