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15 ***Attorneys for Defendant***

16 **IN THE SUPERIOR COURT**
17 **IN AND FOR THE COUNTY OF MARICOPA**

18 **STATE OF ARIZONA,**

19 Plaintiff,

20 vs.

21 **LESLIE ALLEN MERRITT, JR.,**

22 Defendant

) **CR2015-144211-001**
)
) **DEFENDANT’S MOTION TO**
) **SUPPLEMENT HIS MOTION FOR**
) **MODIFICATION OF RELEASE**
) **CONDITIONS AND SUPPLEMENT**
) **THERE TO**
) **Assigned to the Honorable Warren**
) **Granville**
) ***Originally filed Under Seal on***
) ***April 18, 2016***
)
) **ORAL ARGUMENT & EXPEDITED**
) **RULING REQUESTED**

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1 Defendant, through undersigned counsel, hereby seeks leave of Court
2 to supplement his Motion to Modify Release Conditions, filed under seal on
3 April 5, 2016, on grounds that since the filing of that Motion, new information
4 has come to light that will materially affect the Court's determination and the
5 weight of the evidence against the Defendant, as it relates to the least
6 onerous release conditions that should be imposed, in accordance with Rule
7 7.4, Arizona Rules of Criminal Procedure.

8 **Expert Opinion of L.H.**

9 The only evidence linking the Defendant to the crimes alleged in the
10 Indictment is the opinion of DPS Criminalist C.K. stating that the projectiles
11 recovered from the four shootings with which the Defendant is charged were
12 fired from Defendant's gun – notwithstanding the fact that the gun was in a
13 pawn shop and out of the Defendant's possession at the time of the fourth
14 shooting.

15 The State hired L.H. as an expert witness in the area of ballistics, and in
16 particular, tool mark comparisons. His pedigree and reputation as one of the
17 foremost international experts and his work may well be known to this Court
18 from prior dealings. Essentially, L.H. "double checked" C.K.'s work.

19 During the afternoon of April 15, 2016, the State disclosed L.H.'s written
20 opinion. In addition to comparing the projectiles recovered from the Victims'
21 vehicles to test bullets test fired from the Defendant's gun in a controlled
22 setting, L.H. also visited the Department of Public Safety Crime Lab on
23 February 29, 2016. The purpose of this visit was so that C.K. could
24 demonstrate for L.H. the physical areas of comparison on the various
25 projectiles which he used to formulate his opinions prior to the arrest of the
26 Defendant in September of 2015.

1 L.H.'s conclusion is as follows:

2 The four (4) evidence bullets, AF1, DW1, KG1 and KG2
3 could neither be excluded or identified as having been fired
4 in the Hi-Point C9 Pistol, Serial Number P1893054. The
5 areas demonstrated by C.K.on February 29th and illustrated
6 in the note packages in his various reports on these
7 shooting incidents, in the opinion of this examiner, were
8 insufficient to constitute an identification.

9 A copy of L.H.'s complete report is attached hereto as Exhibit 1 for the
10 Court's perusal.

11 **Expert Opinion of Erik Brown**

12 The defense engaged Erik Brown as an expert witness for the purpose
13 of, *inter alia*, examining the tire from Victim A.H.'s BMW to determine if any
14 trace evidence was present. A.H. repeatedly told detectives that the shooting
15 occurred on Sunday night, August 30, 2015 at about 9:30 p.m. Police and
16 prosecutors have ignored his assertions and, without any supporting evidence
17 whatsoever, alleged in the Indictment that the shooting occurred sometime
18 between August 22nd and August 27th, given that the Defendant's gun was in
19 pawn at the time A.H. told detectives the shooting occurred.

20 Defense expert John Daws, whose report is appended to the
21 Defendant's Motion to Modify Release Conditions has already opined to a
22 reasonable engineering certainty that the shooting occurred on August 30th as
23 A.H. reported. Daws opined that the tire would have lost pressure almost
24 immediately after being shot.

25 In light of the existence of high density lead deposits around the gouge
26 on the inside of A.H.'s tire, Brown has also concluded that the bullet which
perforated the sidewall made the gouge within a fraction of a second and,
accordingly, based upon yet another field of forensic science, the shooting

1 occurred on August 30th as reported by A.H. and when the Defendant's gun
2 was in pawn.¹ A copy of Brown's report is attached hereto as Exhibit 2.

3 **Request for Relief**

4 The sole piece of evidence linking the Defendant to the crimes charged
5 has now disintegrated. Although there is no legal basis for the defense to
6 seek a dismissal of the case at this very moment, the reality is that there is no
7 legitimate basis for the prosecution of an innocent man to continue. While it
8 was hoped that the State would have acknowledged the significance of L.H.'s
9 opinion and dismissed this case, or at the very least, immediately asked the
10 Court to release the Defendant from custody, this has not happened.

11 The defense hereby asks this Court to accelerate the hearing on the
12 Defendant's release conditions to April 19, 2016 at 9:45 a.m. so that the Court
13 can consider all of the materials presented in the Motion to Modify Release
14 Conditions, as well as this Supplement, and order that the Defendant be
15 released from custody immediately.

16 Respectfully submitted this 18th day of April, 2016.

17
18 **/s/ Jason D. Lamm**

19 Jason D. Lamm
20 Attorney for Defendant

21 **/s/ Ulises Ferragut**

22 Ulises Ferragut
23 Attorney for Defendant
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¹ Notably, DPS never conducted this type of testing as part of its investigation.

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Original emailed for filing Under Seal with copy
provided electronically this same date to:

Ed Leiter
Vanessa Losicco
Deputy County Attorneys

By: /s/ Kathryn A. Miller

EXHIBIT “1”

ILLUSTRATED REPORT

of

April 14, 2016

in the matter of

State of Arizona v. Merritt

prepared for

**Vanessa Losicco
Deputy County Attorney
Special Crimes Unit
Fifth Floor
Maricopa County Attorney's Office
301 W. Jefferson
Phoenix, AZ 85003**

by

Criminalist/Firearms Examiner

Carefree, AZ

Case #16/01CR Illustrated Report of

INTRODUCTION

This writer was asked to examine the ballistics evidence in these multiple shooting incidents which occurred in the Phoenix area in the summer of 2015.

Pursuant to that request, the following items of evidence were obtained from DPS Detective at the Arizona Department of Public Safety Property Facility at 1:30pm on February 3, 2016:

[1] A sealed envelope marked "AZ1500010815 - - Item 4- -" found to contain a Hi-Point 9mm C9 pistol, serial number P1893054 with black Nylon holster. **Figure 1a** and **1b** provide two views of this pistol.

[2] A sealed envelope marked "AZ1500010815 - - 2/3/16 - -" found to contain individual manila packets of test-fired 9mm bullets of Federal, Winchester and Independence brands.

[3] A sealed envelope marked "AZ1500010702 - - AF1 - -" found to contain a slightly damaged, 9mm full metal-jacketed bullet.

[4] A sealed envelope marked "AZ1500010964 - - DW1 - -" found to contain a damaged, 9mm full metal-jacketed bullet.

[5] A sealed envelope marked "AZ1500010709 - - KG1 - -" found to contain a heavily damaged and flattened, 9mm full metal-jacketed bullet.

[6] A sealed envelope marked "AZ1500010709 - - KG2 - -" found to contain a heavily damaged, flattened and everted portion of a 9mm full metal-jacketed bullet.

PROCEDURE

The outer packaging of each of these items was photographed after which the contents were removed and photographed. Each of the bullets was weighed and the values recorded. [These will be reported later in this Report]

The item 1 Hi-Point C9 pistol was examined as to condition and ultimately test-fired using six (6) brands of ammunition as follows:

REMINGTON 115gr FMJ-RN

FEDERAL 115gr FMJ-RN

WINCHESTER 115gr FMJ-RN

FIOCCHI 115gr FMJ-RN

BLAZER BRASS 115gr TMJ-RN

WINCHESTER-NATO 124gr FMJ-RN

This was done for two reasons; (1) previous experience with these C9 pistols revealed that the deposition of striae suitable for identification purposes was very ammunition sensitive given the poor engagement between the lands in C9 barrels and bullets fired through them. (2) These bullets were compared among themselves and with the Independence brand DPS test-fired bullets in an effort to assess any changes in the bore of the evidence pistol that might have occurred with passage of time or further firings of this pistol.

The Independence brand of DPS test-fired bullets from Item 2 above were selected for study and subsequent comparisons to the evidence bullets in Items 3, 4, 5, and 6. This was done because these were the bullets deemed best for comparison purposes by the DPS Crime Laboratory examiner insofar as subsequent comparisons to the evidence bullets. These three test-fired bullets are shown in **Figure 2**. Examination of these bullets and the bore of the evidence C9 Hi-Point pistol revealed that the rifling characteristics consisted of three (3) lands and grooves with a left twist. **Figure 3** provides a diagram of this rifling system which is presently unique to the Hi-Point C9 pistols in 9mmL caliber since September of 2011 starting with C9 pistol serial number P1622200.

OBSERVATIONS and RESULTS

Hi-Point C9 pistol, serial number P1893054 was found to be in a like-new condition. The bore and the 3-left rifling showed no evidence of damage or corrosion.

continued - - - -

Examination of the six (6) brands of 9mm ammunition fired into, and recovered from a water recovery tank by this writer revealed that all six brands produced bullets whose bearing surfaces were only engraved by the driving edges of the lands. These striated areas only represented approximately 10% of the entire width of each of the three lands in the bore of this firearm. This is typical of the 3-left, Hi-Point C9 pistols and can make definitive associations between fired bullets and the firearm difficult to impossible. Such was the case with the evidence pistol in that only the Remington and Federal brands of ammunition possessed striated areas immediately adjacent to the driving edges of the lands which had sufficiently reproducible arrays of striae to allow for a positive association with the evidence pistol, item 1.

The three (3) Independence brand bullets produced by the DPS Crime Laboratory from item 4 Hi-Point pistol could also be matched between themselves under the optical comparison microscope. **Figure 4a** provides an example of one of these matching areas using the optical comparison microscope. **Figure 4b** provides another illustration of matching striae for two of the DPS-Independence brand test-fired bullets using the enhanced imaging capabilities of a digital scanning system.

The Remington and Federal brand test-fired bullets from the evidence pistol could be matched to the DPS-Independence brand bullets showing that the "settling-in" process which takes place with a new barrel had been established by the time the DPS test-fired bullets were produced.

THE EVIDENCE BULLETS

These bullets, their DPS case associations, their sources and their terminal weights are as follows:

BULLETS – WEIGHT in GRAINS DPS CASE NUMBER – VEHICLE SOURCE			
AF1	114.5-gr.	AZ1500010702	Bus (right side strike)
DW1	91.6-gr.	AZ1500010964	BMW L/F Tire/wheel
KG1 & KG2	114.5 & 83.9-gr.	AZ1500010709	Kia (two strikes, right side)

These bullets all suffered varying degrees of impact damage. Representative views are shown in **Figure 5** through **Figure 7**.

Each of these evidence bullets possessed surviving 3-left rifling engravings establishing them as having been fired in a post September 2011 Hi-Point C9 pistol.

The brand (manufacturer) of these bullets could *not* be established.

They were, however, all full metal, copper-jacketed bullets with lead cores and open bases.

Comparisons between each of these evidence bullets and the DPS Independence brand test-fired bullets were carried out by conventional optical microscopy and digital scanning with the *Evofinder* system.

These comparisons also include a visit to the DPS Central Crime Laboratory on February 29, 2016 where Mr. K set up and located representative areas of comparison between evidence bullets AF1, DW1 and KG2 versus test-fired Independence bullet 4C on the Leica FSC comparison microscope.

RESULTS of COMPARISONS

THE FOUR (4) EVIDENCE BULLETS, AF1, DW1, KG1 AND KG2 COULD NEITHER BE EXCLUDED OR IDENTIFIED AS HAVING BEEN FIRED IN THE HI-POINT C9 PISTOL, SERIAL NUMBER P1893054.

THE AREAS DEMONSTRATED BY MR. K ON FEBRUARY 29th AND ILLUSTRATED IN THE NOTE PACKAGES IN HIS VARIOUS REPORTS ON THESE SHOOTING INCIDENTS, IN THE OPINION OF THIS EXAMINER, WERE INSUFFICIENT TO CONSTITUTE AN IDENTIFICATION.

DISPOSITION of the EVIDENCE

All of the items of evidence listed on page 1 of this Report were returned to Detective at the DPS Property Facility on February 29, 2016.

Signed.

FIGURE 1a EVIDENCE C9 HI-POINT PISTOL



FIGURE 1b EVIDENCE C9 HI-POINT PISTOL



FIGURE 2

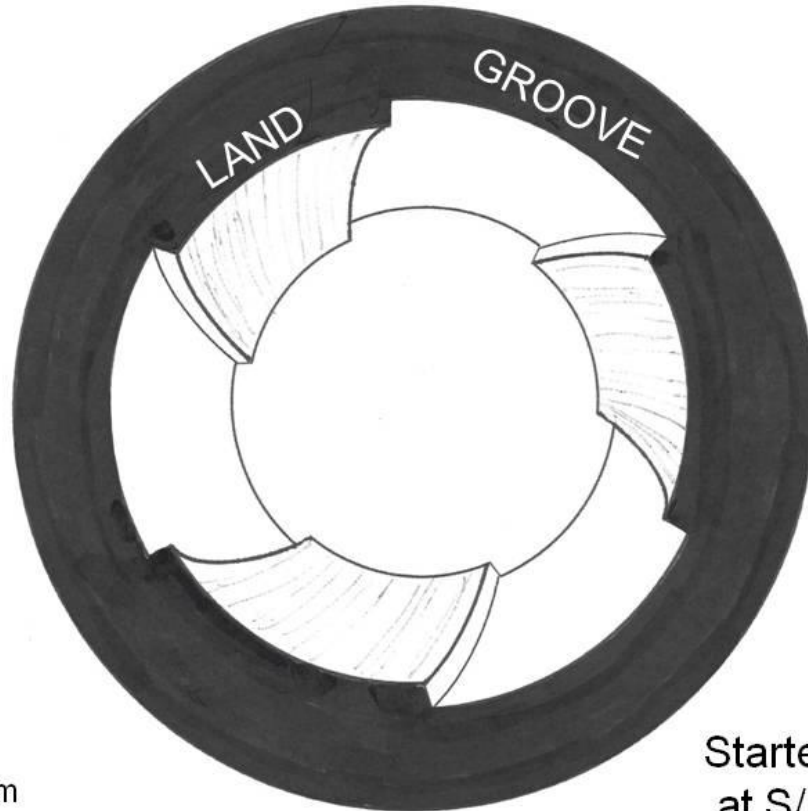


3 "INDEPENDENCE" 115gr. 9mm FMJ DPS TEST-FIRED BULLETS
Engraved 4A, 4B and 4C on their ogives

FIGURE 3

HI-POINT C9 BARREL: 3 GROOVES – LEFT TWIST

VIEW DOWN the BORE



Diagram

3-LEFT
Started Sept. 2011
at S/N P1622200

FIGURE 4a

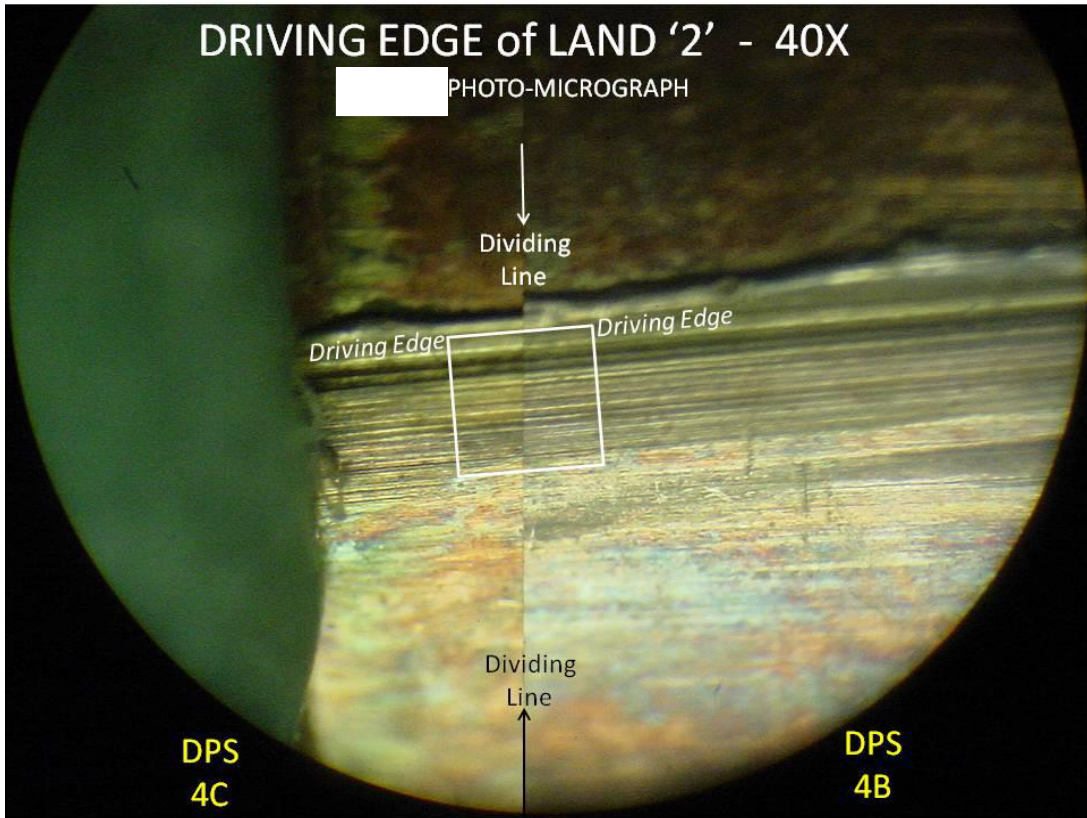
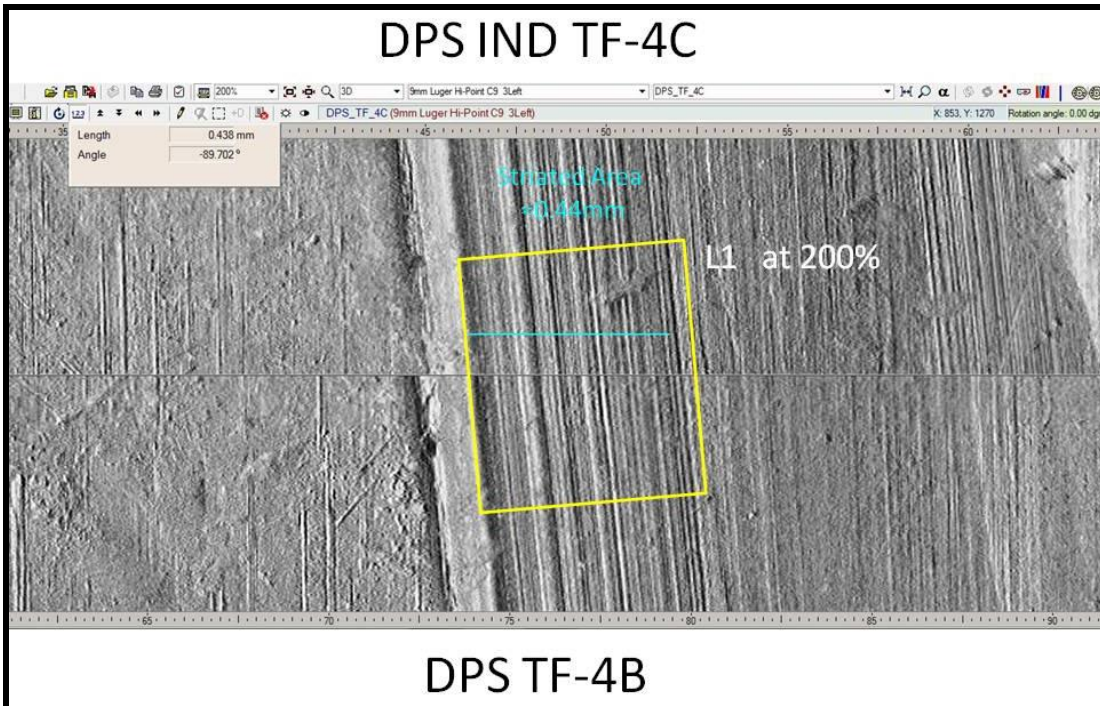


FIGURE 4b



Note: The 0.44mm width of the striated area represents approximately 10% of the full width of the land

FIGURE 5

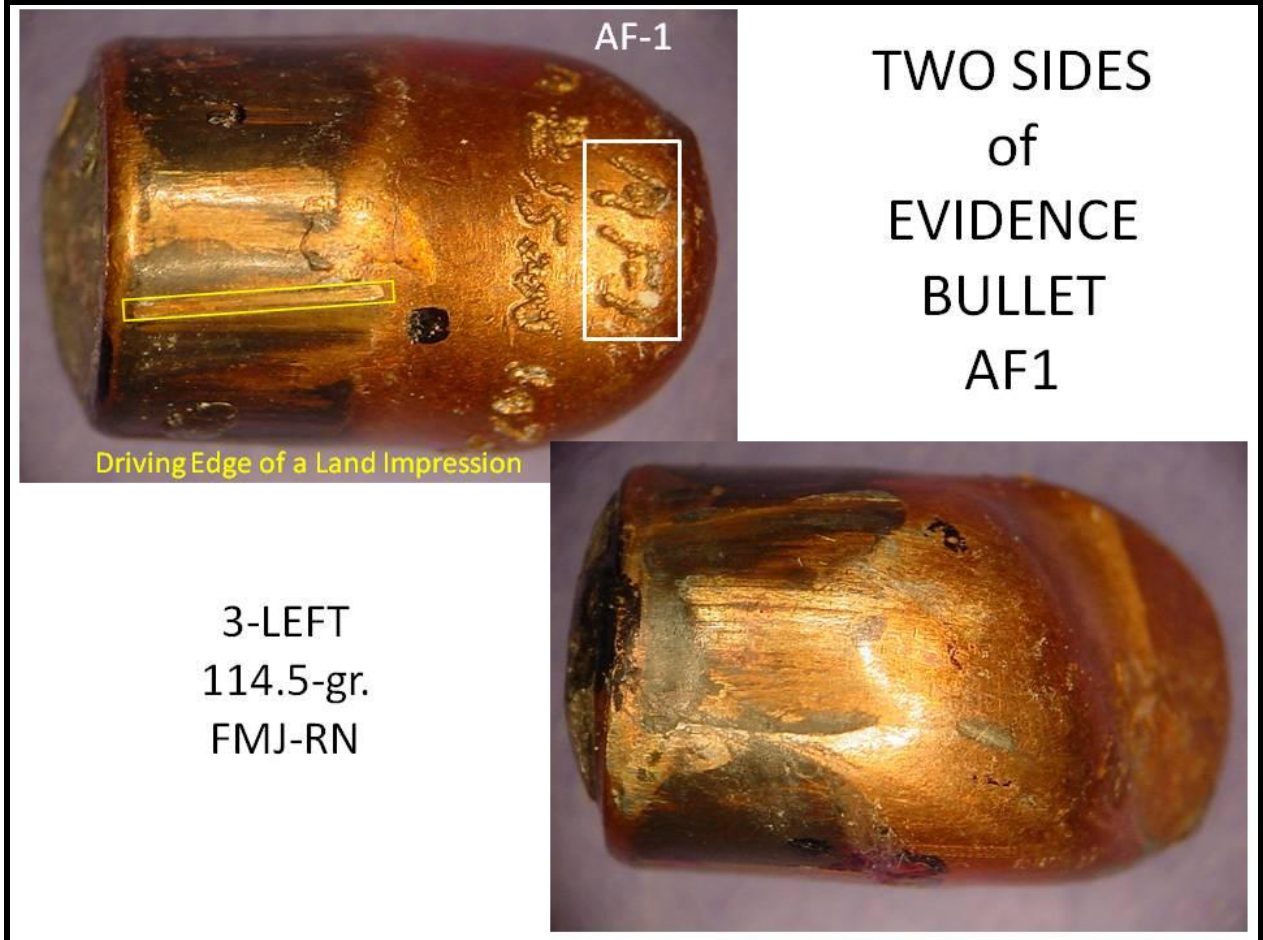
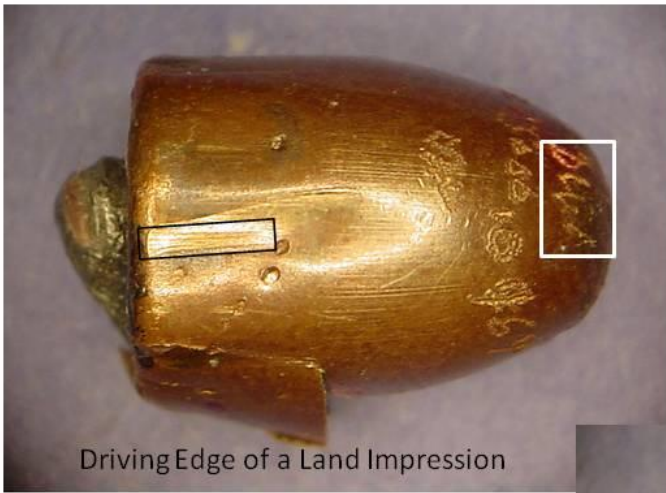


FIGURE 6



Driving Edge of a Land Impression

TWO SIDES
of
EVIDENCE
BULLET
DW1

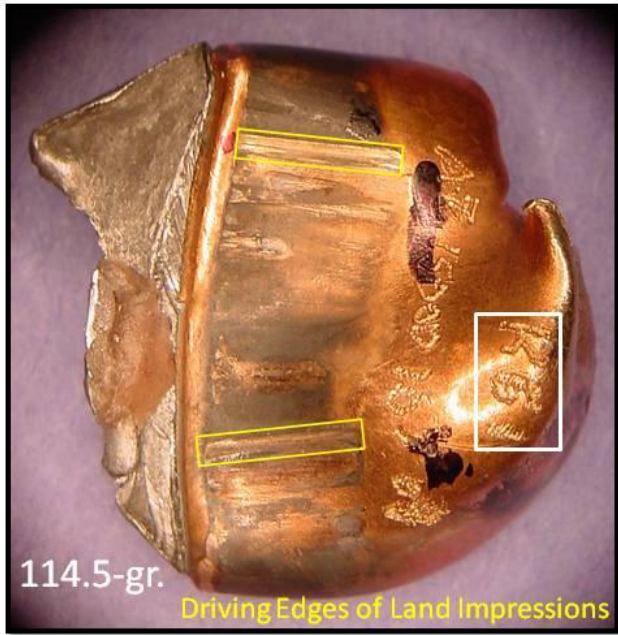
3-LEFT
91.6-gr.
FMJ-RN



Ricochet Damage

FIGURE 7

**EVIDENCE BULLET
KG1**



**EVIDENCE BULLET
KG2**



EXHIBIT “2”



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April 14, 2016

To Whom it May Concern:

I have been retained in the matter of State v. Merritt to review materials relevant to a shooting investigation. Specifically I have reviewed police reports, scene photographs, and the laboratory analysis data.

On March 15, 2016 I was asked to examine a tire that was discovered to have projectile fragments located inside.

Chemical tests for copper were negative on the outside of the sidewall defect. Chemical tests for lead were negative on the inside of the sidewall defect. Negative chemical tests for abrasion ring residues is not uncommon when investigating shot tires.

Chemical testing for the inside of the tire surface were positive for lead using standard sodium rhodizonate testing, and confirmed using hydrochloric acid.

The inside of the tire showed a gouge on the inside of the tread. The lead pattern around the gouge is conical shaped, represented by a two dimensional "V" pattern, extending from one side of the gouge away from the sidewall defect. The combination of the gouge, the dense lead deposition, the recognizable pattern, and directionality of the pattern all show that the inside of the tire was struck by a high speed lead containing projectile consistent with the bullet lead core later recovered separately from the bullet jacket.

This demonstrates the inner gouge and the patterned lead deposit occurred at the time the projectile was fired and struck the sidewall, and not at some later point.

Erik W. Brown, Criminalist