

Smith County Sheriff's Office
Investigative Supplement Report

Forensic Services

Case# 2007-26545

Date: 07/20/2009

Reporting: Noel Martin

December 11, 2007 I assisted the Wood County Sheriff's Department at the request of Texas Ranger Philip Kemp with a death investigation involving the shooting deaths of two individuals identified as Austin Wages and Nichole Payne. I conducted a bloodstain pattern analysis at the scene. The victims Austin Wages and Nichole Payne were found deceased at their home by Jason Payne, Nichole's Husband and Austin's Stepfather. I prepared and submitted a case report, reporting the findings of the bloodstain analysis.

In June of 2008 I was asked by the Wood County District Attorney's Office to conduct a crime scene reconstruction of this case. I was asked to review all the evidence, case reports, photographs, lab reports and autopsy reports in an attempt to determine what occurred at the scene.

As a result of that request, I requested all the evidence including police reports, interviews scientific testing results conducted by crime labs and any other information related to the investigation. I reviewed all the reports provided to me. I received these from DA's investigator Jerry Hirsch. In late June or early July 2008 I contacted Jerry Hirsch and told him that I had reviewed most of the evidence in the case and was of the opinion that this case was a murder suicide. Jerry Hirsch requested that I meet with him, District Attorney Jim Wheeler and case Investigator Wood County Sheriff's Deputy Miles Tucker. Jerry told me during that phone call that Investigator Tucker was

about to obtain an arrest warrant for Jason Payne for the Murders of Austin and Nichole. A date and time was set for a meeting on the following day.

On the day following my phone conversation with Inv. Hirsch I attended a meeting at the Wood County Court House in Quitman Texas to discuss my preliminary findings concerning this case. I explained the evidence that I had reviewed to District Attorney Jim Wheeler, Assist District Attorney Brandon Bade, Wood County District Attorney Investigator Jerry Hirsch and Wood County Sheriff's Investigator Miles Tucker. This meeting lasted for approximately two hours. I explained the bloodstain evidence and my findings. I explained to the attendees of that meeting that in my opinion Austin's died as a result of a self-inflected gunshot wound and Nichole died as a result of a gunshot wound at the hands of another individual, most likely Austin. It was my understanding at that meeting that day that everyone was in agreement with the findings as explained. I was told that the case would be closed. I advised that a report of my findings would be prepared when all the forensic testing was complete.

On July 31, 2008, I received e-mail from Tom Bevel who was requesting information on this case because the Wood County Sheriff's Department to had retained him to do a crime scene analysis. As a result of that e-mail I contacted Tom Bevel by phone and briefly discussed the case. I told Mr. Bevel if he had any other questions concerning this case to contact me anytime. No other contact with Mr. Bevel occurred.

A couple months later I learned that Jason Payne had been arrested charged with the murders of Austin and Nichole. At that time I had not received any other information nor had I been contacted concerning any new evidence in this case.

The next contact I had in this matter was with Jerry Hirsch who requested that I examine the rifle recovered at the crime scene. Jerry Hirsch brought the rifle and copy of Tom Bevel's report to me at the Smith County Sheriff's Office and it was examined. I reviewed Mr. Bevel's report and examined the rifle to determine if the rifle could be fired by an individual at the suspected distance based of

the stippling and trajectory angle observed in the injuries sustained by Austin. I was easily able to dry fire the rifle at the distance and angle consistent with the findings describe in reports. I was also able to dry fire the rifle by using my sock covered foot. I also had another Detective smaller in size than myself attempt the same. He was also able to dry fire the rifle with the same results. I told Investigator Hirsch that my opinion was unchanged. I also learned that other forensic test results had returned namely gunshot residue testing. I was unaware that these reports were completed.

In April 2009 I was contacted by Jim Brown an Investigator hired by Defense Attorney Larry King inquiring about my involvement with case. I told Jim Brown that I had conducted a bloodstain pattern analysis at the scene and that I had reviewed case reports and crime scene photographs. I told Jim Brown that the evidence I reviewed in this case was consistent with a murder suicide and that Austin in my opinion had died as a result of a self-inflected gunshot wound and that Nichole had died as a result of a gunshot wound from another individual most-likely Austin. I ask Jim Brown if Mr. King would provide copies of the forensic test reports and other case reports that I had not yet received and he stated that they would.

On April 20 2009, I received a fax from Jim Brown that included, a report concerning firearms testing from Richard Ernest, a gunshot residue report completed by the Southwestern Institute of Forensic Sciences, and Latent Print reports from the Texas Department of Public Safety. I also asked Jim if he received any other forensic reports to please forward them to me. I told Jim that I needed all of this information to complete my crime scene reconstruction report.

On July 17, 2009, I contacted Jim Brown and ask if other forensic testing was done in this case and ask if he had the results of the DNA profiles from the swabs collected by the Texas Department of Public Safety. Jim stated that he had received reports from Orchid Cellmark from testing on the clothing recovered from the washer and dryer. Jim stated that no blood or DNA profiles were obtained from that clothing. I was unaware that these items were ever submitted.

On July 18, 2009, after receiving all the case reports on the forensic testing I was able to begin the process of writing my final report.

I. **A crime scene reconstruction:** is the study and analysis of all the evidence to determine what most likely occurred at the scene of crime. Crime scene reconstructions are based on the study and analysis of all the known information and facts supported by evidence. The scene analysis is broken into individual events and event segments these events and event segments are studied and analyzed using scientific method and deductive reasoning. Investigative questions are posed then explained or not explained based on known facts, these include, physical evidence, scientific testing, witness accounts, and the training and experience of the analyst. A crime scene reconstruction must be done at the conclusion of the investigation and after all forensic testing is done and their results known. To attempt a reconstruction without all the known evidence processed and those results known would be premature and could lead to erroneous conclusions.

II. **Investigative Questions.**

- o *Did Austin shoot Nichole then himself?*
- o *Did an unknown individual shoot Austin then Nichole?*
- o *Did an unknown individual shoot Nichole then Austin?*
- o *Did Jason Payne shoot Nichole then Austin?*
- o *Did Jason Payne shoot Austin then Nichole?*

III. **Evidence and Facts.**

1. Nichole Payne had a gunshot wound to the back of the head that was clearly not self-inflected.
2. The wound is described in the autopsy report as being a contact or near contact wound to the back of the head, back to front and upward.
3. Nichole Payne was shot in the head while sleeping in her bed.
4. A bloodstain analysis on spatter patterns and trajectory analysis of the bullets flight based on a bullet hole located on the West wall in that room are consistent with that scenario

(see bloodstain report). The probable point of origin for the spatter patterns analyzed was consistent with the victim's injury location as it appeared in the crime scene photographs.

5. The earlier stages of livor-mortis and discoloration associated with decomposition are visible in the fingertips of Nichole Payne in the crime scene photographs.
6. Wood County Sheriff's Office reports filed by deputies indicate that the odor of gunpowder was present in the room where Nichole Payne was found.
7. Tissue consistent in appearance with brain matter was observed on the floor and on the surface of the bed.
8. Large saturation bloodstains and bloodspatter were present in Nichole's room, on the walls, bed and floor.
9. Nichole was covered with bedding to the neck.
10. Several areas of the bedding were saturated with blood.
11. Wood County Sheriff's Office reports state that Nichole was warm to the touch.
12. A defect described as a hole through the wall is located on the West wall in Nichole's room and is consistent with a bullet hole.
13. Trajectory rods and a laser were used to determine the bullet's trajectory.
14. The Trajectory of the bullet was from east to west across the bed with an exit to the exterior of the dwelling.
15. There is no sign of a struggle reported or seen in the room where Nichole was found and no defensive wounds were found on her body during autopsy.
16. A search of the yard where the bullet might have struck the ground was conducted with the aid of a metal detector; no bullet was recovered.
17. Austin Wages was found in his room with a gunshot wound to the face left of the mouth. The wound track according to the autopsy was from left to right, front to back and upward.
18. Gunshot residue patterns commonly known as stippling are visible on Austin's Face confined to the left side of the face.

19. Bloodstains located on Austin's clothing, spatter on the bed and passive blood flow on the surface of the bed are consistent with Austin having been in seated position on the bed near the footboard, at the time he received the gunshot wound.
20. No signs of a struggle or fight were present in his room or any other room of the dwelling when examined in person or in any of the photographs.
21. No signs of livor-mortis are visible on the exposed skin of Austin Wages in any of the crime scene photographs viewed.
22. Investigative reports from the Wood County Sheriff's Office state that a 30/30 shell casing was located on the floor in Austin's bedroom in the general area west of his feet.
23. A 30/30 shell casing was located in the chamber of the 30/30 rifle.
24. A bullet with base was recovered from floor east of twin bed. 30/30 caliber it measured a diameter of .308.
25. Austin had socks on his feet, no shoes.
26. Austin was fully dressed.
27. Large saturation bloodstains were visible on the surface of Austin's bed consistent with his position.
28. I did not observe anything that would indicate that he was moved or his body was positioned after blood loss occurred.
29. Bloodstains on Austin's right hand are not consistent with the patterns that appear on the bed these stains are consistent with the patterns and voids on the rifle barrel and the right hand having been grasping the barrel when it discharged causing blood shed.
30. Bloodstains on the 30/30 rifle are visible near the muzzle and down the barrel from the muzzle.
31. Blood still in a liquid state between the tubular magazine and the barrel just below the front sight is visible in the crime scene photographs.

32. Blood flow patterns located on the barrel of the 30/30 rifle are downward toward the stock and consistent with the rifle being pointed upward when blood was deposited on the barrel.
33. An area devoid of blood in an area where blood should have been is visible just below the front sight on the top side of the barrel on the 30/30 rifle.
34. Smudges consistent fingerprints are visible on the barrel of the 30/30 rifle just below the front sight in the same area where the void is located.
35. No signs of staging were observed at the scene or in any of the crime scene photographs.
36. Blue Star processing showed no latent blood on the carpet of Austin's bedroom other than atomized stains below the side bar of the bed frame below Austin's position.
37. Blue Star processing showed numerous tiny circular stains on the carpet at the edge of the bed in the area where Austin's body was found.
38. No stippling, gunshot residue or defensive wounds were observed on Austin's hands in the crime scene photographs and no such injuries were noted in the autopsy report.
39. The 30/30 rifle was positioned between Austin's legs in an upright position at an angle near or greater than 45 degree.
40. The rifle was resting on the outer side of Austin's left hand.
41. No blood is visible on Austin's left hand.
42. A single circular stain bloodstain is visible on Austin's right hand that is consistent in size, shape and appearance with spatter commonly found with a gunshot wound event.
43. A small blood pool was located on the carpet at the foot of the bed consistent with free falling blood and blood dripping into blood forming a small drip type pattern on the floor.
44. Bloodstains consistent with spatter were observed on the interior sides of frame supports at the foot and on the West side of the bed from the foot board, under and around Austin's legs.
45. No suicide note was located at the scene.

46. Jason Payne had no visible blood on his clothing or shoe's that is mentioned in any case reports or depicted in any photograph.

47. A gunshot residue test was performed on Jason Payne.

48. Clothing was located in the washer.

49. Clothing was located in the dryer.

50. A white washcloth located in Jason Payne's Vehicle had a small contact transfer bloodstain on its surface. It appeared to be the size of a quarter.

III. Key Indicators of Suicide:

- Occurred at home in personal surroundings.
- Weapon was found at the scene.
- Weapon belonged to the family or victim.
- Normal body position at the time of the shooting.
- No Defensive wounds.
- No torn or displaced clothing.
- No signs of staging.
- No signs of a struggle at the scene.
- Trajectory is consistent with the body position.
- Barrel of firearm was held by the strong hand.
- Back spatter on the clothing consistent with the victim's position.
- Blood on the victim's hand that is consistent with having been caused by a back spatter event as a result of being self-inflected.
- Contact or near contact gunshot wound.
- No physical evidence that would tend to lead to another shooter.

IV. Forensic Testing and Other Considerations

- 3
1. The rifle was tested to determine if the trigger and lever could be manipulated causing the rifle to dry fire while holding it in a position consistent with the distance that would cause the stippling patterns seen on Austin. The results of that test were the rifle could be operated in manner causing it to fire at a distance that would create the stippling pattern seen on Austin Wages maintaining the same angle as that of the wound track. This test was done in a seated position and the muzzle of the rifle was held with the right hand and the trigger pulled with the left.
 2. The rifle was tested to determine a maximum distance from muzzle to target in which the trigger and lever could be manipulated causing the rifle to dry fire. The results of that test were the rifle could be operated in manner causing it to fire at a distance greater than needed to produce the stippling pattern seen on Austin Wages maintaining the same angle as that of the wound track. This test was done in a seated position and the muzzle of the rifle was held with the right hand and the trigger pulled with the foot.
 3. Gunshot residue was located on Austin Wage's right hand no stippling was present.
 4. No Gunshot residue was located on Jason Payne.
 5. The rifle produces stippling patterns consistent with the patterns found on Austin's Face at a distance of 8 inches + or - 2 inches on a flat linen surface.
 6. Stippling Pattern testing is marginal at best to many unknowns exist to duplicate gunshot residue patterns with any degree of exact accuracy. The only thing that can be learned from such testing is the firearm will deposit gunshot residue out to an approximate distance.

Considerations as pertaining to GSR testing:

- 3
- a. The surface used in the test firing was not consistent with human skin, the testing was not conducted on a surface that was consistent with a human face and head containing the same angles and curvatures as a human face?
 - b. The powder charge and condition of the cartridge that was fired causing Austin's injuries is unknown.

c. The angle of the target in relation to the muzzle of the firearm could also produce different patterns types and sizes.

7. The absence of identifiable fingerprints is not uncommon on firearms.
8. No blood was detected on the clothing recovered from the washer and dryer.
9. The bloodstain on the washcloth was identified to Nichole Payne.
10. No physical evidence exists in the reports reviewed listing , blood, hairs, fibers, fingerprints or DNA that would indicate a third party was involved or that Jason Payne fired the rounds that killed Austin and Nichole or was near a firearm when it was fired, touched the firearm or cartridges, or was near a blood source when spatter was produced no DNA, trace or hairs were found indicating at Jason Payne had recently touched or handled any of the evidence collected.
11. Ranger Philip Kemp was contacted and asked about the Rigor-Mortis issue with Austin Wage's. Kemp stated that Austin was not in Rigor Mortis when he viewed the body.
12. The smell of gunpowder indicates nothing other that a smell consistent with gunpowder was in the room. I saw no reports of testing that was done to determine how long a gunpowder smell would remain in that room after that 30/30 rifle was fired.
13. Blood and brain matter often emit a metallic odor when present in such amounts as seen in this case.

V. Possible Scenarios:

A) Austin Wages and Nichole Payne were shot by an unknown person.

There is no evidence that was provided to me as of this report that would indicate an unidentified person was involved in the deaths of Nichole Payne and Austin Wages. No forced entry was discovered into the home. Nothing was missing and the home was not ransacked. The family owned the firearm used. No signs of struggle or attempt to flee from a shooter were observed in Austin's

room. Austin based on his position would have seen the a shooter and a normal reaction when a person is fear from being shot a close range is to flee or place the hands between them and the muzzle of the weapon. If the hands were raised in this manner the same stippling should be present on the hands as what appeared on the face. GSR testing was positive on Austin's hands if he did not fire the rifle his hands would have be near the muzzle when it discharged. The evidence also indicates that Austin was in seated position when the rifle discharged. Bloodspatter located on Austin's hands places his hands near the wound when bleeding and this bleeding based on the type of stains observed is consistent with projected blood of type associated with the initial back spatter from a gunshot wound. Stains on the jeans located on the right leg are also consistent with projected blood. This would place the wound above jeans when occurring. The stains were circular in appearance suggesting that the wound was at or near 90 degrees to the leg when occurring. The absence of projected blood on the carpeted floor in front of Austin would also be consistent with the wound being at or near 90 degrees to the right leg. Projected bloodstains then appear on the surface of the bed with rearward movement, consistent with the blood source traveling across the mattress. Large saturation bloodstains are present on the surface of the mattress consistent with Austin's position on the bed. The most likely explanation for the blood loss seen here is Austin's head was in a downward tilted position at the time of blood loss which contained the projected to his right leg and the surface of the mattress to Austin's right with movement to the East as Austin fell backward. This would also be consistent with the trajectory of the round through the head and the blood flow observed on the rifle barrel near the muzzle. Austin's hand being on the barrel near the muzzle at the time the shot was fired would explain the positive GSR to the right hand and the void that was located on the barrel of the rifle just below the front sight. For another individual to activate the trigger and safety that low to the floor below Austin's head and the floor would be extremely awkward and for Austin to remain in that position without some type of effort to escape or shield his face from gunfire is unlikely. For a shooter to be in that position and not receive bloodspatter on his and GRS on his clothing is also unlikely. When considering the possibility that

Austin grabbed the barrel of the firearm to keep from being shot, I would expect to see both hands gripping the barrel to force it away. Blood and GRS were only found on the right hand.

B) Jason Payne shot Austin then Nichole with a time lapse between the killings as indicated by Wood County Sheriff's Office Reports and Staged evidence and the scene to suggest murder suicide.

Gunshot residue tests on Jason's hands were negative. No visible blood was seen on Jason's clothing. No latent prints were developed on items of evidence that would have been handled by Jason if he shot both victims'. I have seen no reports that indicate blood on any clothing worn by or suspected to have been worn by Jason Payne. Clothing removed from the washer and dryer was tested for Blood and DNA and nothing was found according to information that I received from defense investigator Jim Brown. The washcloth discovered in the truck had a small contact transfer bloodstain on its surface. The blood was tested and returned to Nichole Payne. Jim Brown stated to me in a phone call that he had interviewed persons unidentified to me, and was told Nichole Payne had stuck a fishhook in her hand days before her death and used a washcloth to clean the blood. A photograph of the stain on the washcloth was shown to me by Miles Tucker the stain is consistent with that explanation.

If Austin were in the early stages of Rigor Mortis as stated in reports when the deputies arrived it would indicate that he was deceased for quite some time inside the home. This would place Austin's time of death at least 3 hours prior to being checked by deputies. This would have been prior to 6:00-am according to case reports. Austin when discovered was fully dressed. Deputies indicate in case reports that Austin was cold to the touch and Nichole was warm to the touch. Nichole was covered with heavy bedding and Austin was not. I did not observe any lividity in areas that should have displayed at the least discoloration of the skin on Austin Wages. Texas Ranger Philip Kemp when contacted by me and asked about the state of Rigor in Austin he stated that Austin was not in Rigor Mortis.

Livor-Mortis starts 20 minutes to 3 hours after death and is fixed in 4 to 5 hours. Rigor Mortis begins to manifest after about 3 hours after death and last for approximately 72 hours.

Bloodstains located on Austin's right hand and the void and flow patterns observed on the rifle barrel are consistent with Austin having held the rifle by the barrel at the time he was struck by the bullet causing spatter and projected blood. This is also consistent with the positive GSR findings.

Bloodstain on Austin's clothing, bloodstains on the bed and floor indicate that Austin was in a seated position when shot. The wound track through the head was left to right, front to back and upward. No projected blood was located on the floor in front of Austin's body. That would be consistent with Austin's head and the wound facing downward toward the mattress when blood loss occurred. No stippling was visible on Austin's hands. A normal reaction if being threatened with a firearm is to put the hands up to protect the face. If Austin was shot by another individual the rifle would have been below Austin's face at a distance to cause the stippling at least 8 inches as stated by Mr. Bevel at the time it was fired. Blood flow on the rifle barrel indicates that it was pointed muzzle up and stock down. This would be an awkward position for a shooter or awkwardly held when fired. Awkward positions could be explained if a struggle for the firearm was prior to its firing. I saw no evidence that would indicate that.

If Nichole were shot shortly before the deputies arrived, Jason would have had to shot Austin in the same manner as described in paragraph A sometime in the early morning or late night prior to December 11, 2007, with no one in the house being alarmed by the report of a high powered rifle. Under this Scenario he would have had to wait for a period of time then get the other children ready for school with Austin in the other room deceased, leave the home with Austin's body visible where anyone could find it, including Nichole sleeping in another room. Jason would have had to secure or hide the rifle without being seen. Return home retrieve the rifle and shoot Nichole without disturbing the bloodstains that would have already been on the rifle the same stains that appear somewhat liquid in the photographs, cleaned up, stage the scene to make it appear like a murder suicide without making any mistakes while keeping a small child occupied then calling the Sheriff's Department to Report the shootings. Or put the children in the truck go back inside. Retrieve the rifle shoot Nichole without being heard with the children outside inside the vehicle or out from the home. Drive the children to school wait approximately one hour then

contact the Sheriff's Office. The chances of an individual staging Bloodspatter or controlling Bloodspatter to appear in the manner in which they appear in this scene is highly improbable.

B Controlling the victim and subsequent spatter created by a gunshot wound is bordering on impossible.

C) Austin Wages shot his mother then shot himself.

Gunshot residue was present on the back of Austin's right hand. Bloodstains were present on Austin's right that are not consistent with the with having occurred at the same time as the bloodstain patterns that appear on the bedding of the twin bed under Austin's right hand. A small circular bloodstain is visible on Austin's right that is consistent in appearance with the type of spatter that occurs with a gunshot wound. Blood is present on the barrel of the 30/30 rifle. This blood displays flow consistent with the rifle being pointed upward when it came in contact with the barrel. An area of the barrel of the 30/30 just below the front sight is consistent in appearance with

D area devoid of blood where blood should have been. Smudges are visible in that area on the surface of the barrel that is consistent with a fingerprint. A 30/30-shell casing was found on the floor of Austin's room just west of his feet. Austin was fully dressed. Bloodspatter patterns on the surface of the bed and bed frame are consistent with Austin having been on the bed when he received the injury that produced blood loss. A bullet was located on the floor of Austin's room east of Austin's body. Austin was facing west with his back to the East. Bloodstains observed on Austin's blue jeans indicate that he was in a seated position when blood loss started. Projected bloodstain patterns on the surface of the bed are consistent with Austin after receiving the gunshot wound, falling backward and ending at the location shown in the scene photographs. Testing conducted by Tom Bevel indicates that it was possible for Austin to shot himself with the 30/30 rifle. No signs of cleanup or staging of evidence was observed in Austin's room or in any other area observed. No stippling injuries were observed on Austin's hands and none were indicated in the autopsy report. The location of the rifle, bloodstains on the rifle, the trajectory of the bullet, the bloodstain patterns on the bed, the lack of projected beyond the bed, visible bloodstains on Austin's hand and clothing are

all consistent with a self-inflicted gunshot wound. The range of fire is not a contact wound. Based on working numerous other cases involving self-inflicted gunshot wounds with long guns and other types of firearms a non-contact wound is not uncommon.

The trajectory is not consistent with someone else having shot Austin, the position of the rifle at the time it discharged although not impossible would be certainly awkward for someone else to achieve and discharge a rifle. The lack of any attempt by Austin to prevent being shot at close range from an awkward position is inconsistent with someone else shooting him. Austin would have had to just sit there and allow himself to be shot without any attempt at self-preservation or flight. If Austin was in rigor when discovered he would have been deceased for several hours prior to discovery. No discoloration was observed that normally occurs with individuals who have been deceased several hours. No signs of lividity were observed in any of the scene photographs. The pupils of the eyes were clear. No officers made reference to detecting any smells of decomposition or blood yet a notation of gunpowder smells were. I find it odd for a 16 year old to be fully dressed in the early morning hours that indicate he was up and dressed at or before 6 am on a school day at the latest for rigor to be present. Ranger Philip Kemp stated in a phone conversation concerning the rigor that Austin was not in rigor when he was at the scene. Victim's that suffer extreme and sudden trauma often display characteristics as a result of that trauma that are consistent with rigor. Being cold to the touch has no bearing on determining the time of someone's death its simple means that, the area of the skin was cold to the individual when touched. No physical evidence that I'm aware of has been found or exists that would indicate that Jason Payne shot anyone. No physical evidence that I'm aware of has been found or exists that would indicate that an unknown individual shot Austin Wages.

The evidence in this case in my opinion based on everything provided to me for review is consistent with Austin Wages having died as a result of a self-inflicted gunshot wound.

The evidence shows that Nichole Payne died as a result of being shot by another individual. It is likely that the 30/30 rifle was used in both shootings no evidence was found that would indicate

another weapon was used. The rifle was in Austin's possession when found. No evidence exists that

I've reviewed would indicate that Jason Payne shot Nichole.

VI. Conclusion:

The evidence provided to me as of this report indicates that Austin Wages death is the result of a self-inflicted gunshot wound to the face. Nichole Payne was shot by another individual and the evidence indicates that Austin Wages was most likely the shooter. If other evidence other than what was reviewed becomes available it will be considered and the weight of that evidence may or may not change this or some part of this conclusion.

Attachments:

Reference Photographs

Unresolved Issues

Noel Martin

07/27/2009