



# Maricopa County Attorney

BILL MONTGOMERY

November 28, 2012

TO: The Association of Firearm and Tool Mark Examiners' SWGGUN  
FROM: Vince Imbordino, Deputy Maricopa County Attorney, Phoenix, AZ

RE: State of Arizona v. William Wayne Macumber  
Hearing, Board of Executive Clemency  
Phoenix, Arizona  
March 19, 2012

## Synopsis

William Wayne Macumber was convicted by a jury of two counts of First Degree Murder in 1974. The murders had occurred in 1962. A new trial was granted on appeal, and Defendant was again convicted in 1976. A portion of the physical evidence linking Defendant to the murders involved shell casings located at the scene of the murders. The two victims had been shot to death by their assailant. Many years later a .45 semi-automatic was found in Defendant's possession which was identified as the murder weapon. This identification was based upon an examination performed at the FBI crime laboratory by Robert Sibert. The identification was unusual in this case in that it was based on the ejector marks on the fired cartridges from the scene and test-fired cartridges from Macumber's pistol. The other relevant sources of toolmarks (the slide, firing pin and barrel) appeared to have been replaced between the time of the crime and the seizure of the pistol but the ejector was overlooked in this process. Mr. Sibert later testified in both trials. His testimony and identification of the Macumber pistol as the murder weapon was not challenged by any opposing firearms expert in either trial although the defense, prior to the second trial, had the ballistics evidence re-examined by another member of the Association of Firearms and Toolmark Identification. From the absence of this examiner at the second trial, one can reasonably conclude that the firearms expert hired by the defense agreed with Mr. Sibert's identification.

The Defendant was sentenced to life in prison. Based upon then existing Arizona law, a life sentence did not allow for release unless the Board of Executive Clemency first recommended commuting the sentence and the Governor agreed. Pursuant to this statutory scheme, Defendant petitioned the Board for a commutation of his sentence. In support of the request for commutation, Defendant claimed he was actually innocent. He claimed many things in support of his innocence claim, but in part he argued that the original ballistics identification was flawed and presented affidavits from three alleged experts in support of these claims. The focus of the attack on the identification was the alleged unreliability of firearms identification procedures and testimony based upon the NAS report.

The State presented an expert witness, Lucien Haag, of many years experience and who had personal familiarity with the Macumber case. Deputy Maricopa County Attorney, Vince Imbordino, called Mr.

Haag to testify at the hearing. Mr. Haag also presented several Powerpoint presentations to the Board to illustrate the general procedures associated with firearms identification and one that specifically addressed the unique markings that can be generated by the ejector in a Government Model .45Automatic such as the one seized from Mr. Macumber.

After hearing the testimony of Mr. Haag and considering the documentary evidence as well as testimony from various witnesses for Mr. Macumber, the Arizona Board of Executive Clemency denied the request for commutation. While no formal opinion was issued, it was apparent the firearms identification testimony was persuasive.

By way of a postscript, during the preparations for the March 2012 Clemency hearing it was learned that the physical evidence and trial exhibits had been destroyed. The same was true for Mr. Sibert's report, bench notes and photographs of his comparisons in this case.

This rendered the chances of a successful prosecution in any third retrial remote if not impossible.

Affidavit of John Nixon (Pet.)

Affidavit of Professor Michael J. Saks (Pet.)

Affidavit of William A. Tobin (Pet.)

Signed,

