

February 2022
MPT-2
Item

State of Franklin v. Ford

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State of Franklin v. Ford

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**OFFICE OF THE PUBLIC DEFENDER FOR THE STATE OF FRANKLIN
COUNTY OF HAMILTON**
805 Second Avenue
Centralia, Franklin 33705

MEMORANDUM

To: Examinee
From: Lucas Pines, Deputy Public Defender
Date: February 22, 2022
Re: Motion to sever in *State v. Ford*, 2021 CF 336

Our office represents Sylvia Ford, who is charged with two drug-related offenses and one weapons charge. One of the drug offenses allegedly occurred in April 2021. The other drug offense and the weapons charge arise from a single traffic stop six months later, in October 2021. Ford has pleaded not guilty to all three charges.

The prosecution has grouped all three offenses in one indictment. Under Franklin law, if charges are contained in one indictment, they are tried together unless the court decides to sever the counts of the indictment and order a separate trial for each count. I am concerned that a joint trial of all three charges will greatly prejudice Ford's case on each charge. Accordingly, we will be filing a motion to sever the three offenses so that each will be tried separately. I have attached a draft of the motion to sever. As you know, the State of Franklin has adopted rules of criminal procedure and rules of evidence that are identical to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

I need you to prepare the argument section of the brief in support of the motion. In doing so, be sure to follow our office guidelines for drafting trial briefs.

**OFFICE OF THE PUBLIC DEFENDER FOR THE STATE OF FRANKLIN
COUNTY OF HAMILTON**

OFFICE MEMORANDUM

To: Assistant Public Defenders
From: Lucas Pines, Deputy Public Defender
Date: September 5, 2017
Re: Guidelines for Persuasive Briefs in Support of Trial Motions

All persuasive briefs in support of motions filed in trial court shall conform to the following guidelines:

Statement of the Case: [omitted]

Statement of Facts: [omitted]

Argument:

Analyze applicable legal authority and persuasively argue how both the facts and the law support our client's position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished. Do not reserve arguments for reply or supplemental briefing. While you want to make sure you raise every plausible issue, you should also be mindful that courts are not persuaded by exaggerated or unsupported arguments.

Organize the arguments into their major components and write carefully crafted subject headings that illustrate the arguments they cover. The argument headings should succinctly summarize the reasons the court should take the position we are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or statement of an abstract principle. For example, improper: "The motion to suppress should be denied." Proper: "Because the officer read the defendant his rights under *Miranda v. Arizona* and the defendant signed a statement waiving those rights, the motion to suppress should be denied."

Do not prepare a table of contents, a table of cases, or an index.

**OFFICE OF THE PUBLIC DEFENDER FOR THE STATE OF FRANKLIN
COUNTY OF HAMILTON**

FILE MEMORANDUM

From: Lucas Pines, Deputy Public Defender

Date: February 17, 2022

Re: State v. Ford, 2021 CF 336

Our client, Sylvia Ford, is charged with three felonies. All three charges are contained in one indictment, although the charges arise from events on two different occasions. I have attached a copy of the indictment as well as copies of the affidavits supporting the arrests in each incident. These affidavits better specify the events alleged by the prosecution. This memorandum includes information from my conversation with Ford about the allegations.

Events of April 17, 2021 (relating to the first charge)

The first charge arises from the alleged sale by Ford of 10 grams of cocaine on April 17, 2021. Ford told me that she was hanging out at her brother's apartment on Primrose Lane when a man she did not know knocked at the door. Ford answered the door, and her brother, who was standing next to her, gave the man a baggie containing some powder. The man then handed Ford some money. Ford said that as soon as the man left, she gave the money to her brother. She left the apartment soon afterward and heard nothing about the incident until she was arrested six months later.

Events of October 24, 2021 (relating to charges two and three)

Ford told me that on October 24, 2021, she was driving alone on Highway 30 when she was pulled over by a police officer. The officer stated that Ford had been swerving out of her lane and gave her a field sobriety test, which she failed. The officer arrested Ford for driving under the influence (DUI), handcuffed her, and locked her in the backseat of the police cruiser. Ford said that the officer then searched the car she had been driving. She later learned that the officer found marijuana, a small scale, and empty plastic baggies in the backseat of the car and a handgun in the trunk. The car is owned by James Litton, Ford's boyfriend. The handgun in the trunk is registered to Litton. Ford claims that none of the items (the scale, the baggies, the marijuana, or the handgun) belonged to her and that she did not know that they were in the car. She often borrowed Litton's car.

At the time of Ford's arrest for DUI on October 24, the officer discovered the outstanding warrant for the April 2021 drug transaction. The officer also learned of a 2015 conviction for assault with intent to commit murder, which is a felony. Because a convicted felon is not permitted to possess a handgun, Ford was charged with being a felon in possession of a firearm. She was also charged with possession of the marijuana in the car. Based on the quantity of the marijuana and the fact that the officer found the scale and baggies along with the drugs, Ford was charged with possession of marijuana with intent to distribute. Baggies and scales are typically used in the packaging and sale of drugs. Although Ford was arrested for the DUI, the prosecution has decided not to proceed on the DUI charge, and it was not included in the indictment.

Reasons for Motion to Sever

Ford is very worried that the jury will hold it against her that she has previously been convicted of assault with intent to commit murder. I agree. I informed her that the 2015 felony conviction would very likely be introduced in a trial on the weapons charge because it is that conviction that makes it illegal for her to possess a handgun. I told her that, assuming we can sever the cases, we would do whatever we could to prevent the prior felony conviction from being introduced in either of the drug cases.

I contacted the prosecutor's office and offered, for purposes of the trial, to stipulate to the fact that Ford has a prior felony conviction without naming the felony. The prosecutor was unwilling to enter into the stipulation and insisted that, as part of his trial presentation on the weapons charge, he intends to introduce Ford's prior conviction for assault with intent to commit murder. The prosecutor will also argue that the presence of the gun in the car proves intent to sell the marijuana found in the car. This reinforces our need to sever the weapons charge from the two drug charges.

Ford told me that she wants to testify in her own defense. Indeed, she wants to tell the jury about both incidents, and her testimony will therefore encompass the facts surrounding all three charges that are included in the indictment. Because she is charged with being a felon in possession of a firearm, the prior assault conviction will be introduced as evidence in the gun case whether she testifies or not.

In the drug cases, however, the prior assault conviction would not be potentially admissible unless Ford chooses to testify. If the drug charges are severed from the felon-

in-possession charge, the prior assault conviction would not be admissible as substantive evidence in the drug cases. If Ford chooses to testify in the trial of the drug charges, the prosecution could try to impeach her credibility with the prior assault conviction. The introduction of the assault conviction in the drug cases would severely prejudice her defense in those cases.

Whether Ford testifies or not, we need to sever each of these offenses from the others. It would be highly prejudicial for the jury to hear about all these charges in one trial. Hearing about two drug offenses in one trial might make the jury more willing to convict Ford on either charge or both charges. And it would be very prejudicial for the jury to hear about Ford's 2015 conviction for assault with intent to commit murder when the jurors consider whether she is guilty of the drug charges.

**IN THE CRIMINAL COURT FOR HAMILTON COUNTY
STATE OF FRANKLIN**

INDICTMENT

COUNT 1

The Grand Jurors of Hamilton County, Franklin, duly empaneled and sworn, upon their oath, present that on the 17th day of April 2021, in Hamilton County, Franklin, Sylvia Ruth Ford knowingly sold 10 grams of a substance containing cocaine, a controlled substance, a felony in violation of Franklin Crim. Code § 39 and against the peace and dignity of the State of Franklin.

COUNT 2

The Grand Jurors of Hamilton County, Franklin, duly empaneled and sworn, upon their oath, present that on the 24th day of October 2021, in Hamilton County, Franklin, Sylvia Ruth Ford knowingly possessed with the intent to sell four kilograms of marijuana, a controlled substance, a felony in violation of Franklin Crim. Code § 39 and against the peace and dignity of the State of Franklin.

COUNT 3

The Grand Jurors of Hamilton County, Franklin, duly empaneled and sworn, upon their oath, present that on the 24th day of October 2021, in Hamilton County, Franklin, Sylvia Ruth Ford, having previously been convicted of the felony of assault with intent to commit murder, knowingly possessed a handgun, a felony in violation of Franklin Crim. Code § 55 and against the peace and dignity of the State of Franklin.

A TRUE BILL

Date: December 28, 2021



SILAS JONES
DISTRICT ATTORNEY



VICTORIA GARCIA
GRAND JURY FOREPERSON

AFFIDAVIT IN SUPPORT OF ARREST

STATE OF FRANKLIN)
COUNTY OF HAMILTON)

Officer Kevin Diaz, first being duly sworn, states:

I am an officer in the Franklin City Police Department. On April 17, 2021, a confidential informant advised me of ongoing drug activity at 224 Primrose Lane, Apt. 5, in Franklin City, Franklin. My partner and I arranged to meet with the confidential informant on the 100 block of Primrose Lane. When we met with the informant, we searched him for contraband (none was found) and took all personal money from his person.

The confidential informant was fitted with electronic video and audio recording devices so that I could monitor and record the events. He was issued previously photocopied money with a face value of \$100 with which to "buy" drugs. He was then instructed to go to 224 Primrose Lane, Apt. 5, and to purchase \$100 worth of cocaine. We observed the confidential informant go directly to the apartment, knock, and enter. He spoke with two persons while in the apartment: an unidentified man and a woman later identified as Sylvia Ford. Ms. Ford opened the door to the apartment, and in her presence, the unidentified man gave the confidential informant a plastic baggie containing a powdered substance. The confidential informant gave Ms. Ford the previously photocopied \$100. When the confidential informant returned to where I was stationed, he gave me the baggie containing the powdered substance. That substance was later tested and identified as containing cocaine.

Dated: May 12, 2021

Kevin Diaz
Kevin Diaz

Signed before me on this 12th day of May, 2021

Jane Mirren
Jane Mirren
Notary Public

AFFIDAVIT IN SUPPORT OF ARREST

STATE OF FRANKLIN)
COUNTY OF HAMILTON)

Officer Amanda Carter, first being duly sworn, states:

I am an officer in the Franklin City Police Department. On October 24, 2021, while on a routine patrol, I observed a car, Franklin license plate 224NGZ, swerving in and out of traffic. I followed the car and turned on my lights and siren. The car pulled over and stopped. I parked my police cruiser behind the car and approached the car. The driver gave me her driver's license, which identified her as Sylvia Ford. I conducted a field sobriety test and Ms. Ford failed the test. I placed her under arrest for driving under the influence, placed her in handcuffs, and locked her in the backseat of my cruiser. After calling for backup, I searched Ms. Ford's car. In the backseat of the car, I found four kilograms of marijuana, empty plastic baggies, and a small scale. In the trunk of the car, I found a handgun. I later learned that the handgun was registered to James Litton and that the car was also registered to Mr. Litton.

After placing Ms. Ford under arrest, I learned that there was an outstanding warrant for her arrest for sale of cocaine arising from an incident on April 17, 2021. I also learned that she has a prior conviction for assault with intent to commit murder, a felony.

Dated: October 25, 2021

Amanda Carter
Amanda Carter

Signed before me on this 25th day of October, 2021

Jane Mirren
Jane Mirren
Notary Public

STATE OF FRANKLIN

DISTRICT COURT OF HAMILTON COUNTY

STATE OF FRANKLIN,)	
)	
Plaintiff,)	
v.)	Case No. 2021 CF 336
)	
SYLVIA RUTH FORD,)	
)	
Defendant.)	

MOTION TO SEVER OFFENSES

Pursuant to Rules 8 and 14 of the Franklin Rules of Criminal Procedure, defendant Sylvia Ruth Ford moves this court to sever the offenses charged in this case and to order a separate trial upon each offense for the following reasons.

Defendant is charged in Count I with the sale of 10 grams of cocaine, in Count II with possession with intent to sell marijuana, and in Count III with being a felon in possession of a firearm. Counts I and II are separate and distinct incidents alleged to have occurred approximately six months apart. Count III involves alleged conduct that is separate and distinct from the conduct alleged in Counts I and II.

Pursuant to Franklin Rule of Criminal Procedure 8, joinder of these three offenses in a single trial is improper.

Moreover, pursuant to Franklin Rule of Criminal Procedure 14, defendant will be prejudiced by the trial of any of these three offenses with any of the others. Accordingly, defendant has an absolute right to severance of the offenses.

Defendant moves the court to hold a separate trial for each of the offenses charged in the indictment. Defendant submits the following brief in support of this motion.

Lucas Pines

Lucas Pines
Attorney for defendant Sylvia Ruth Ford

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FRANKLIN RULES OF CRIMINAL PROCEDURE

Rule 8. Joinder of Offenses or Defendants

(a) Joinder of Offenses. The indictment or information may charge a defendant in separate counts with two or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

* * *

Rule 14. Relief from Prejudicial Joinder

(a) Relief. If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

FRANKLIN RULES OF EVIDENCE

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

* * *

Rule 404(b). Other Crimes, Wrongs, or Acts

(1) Prohibited Uses. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

State v. Sayers
Franklin Court of Appeal (2013)

Defendant Jenna Sayers appeals her conviction by challenging the trial court's denial of her motion to sever two charges against her that were joined into a single indictment. Count 1 of the indictment charged her with robbing a convenience store in Lynbrook, Franklin, on July 4, 2012. Count 2 charged her with attempted robbery of an individual in Franklin State Park on May 12, 2010. She was convicted of both counts by a jury. We reverse.

Pursuant to Rule 8(a) of the Franklin Rules of Criminal Procedure, two or more offenses may be charged in the same indictment if they are of the same or similar character, are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan. The defendant bears the burden of establishing the impropriety of the joinder. In deciding whether charges have been improperly joined, the trial court should generally limit itself to those facts contained in the indictment. If, however, the indictment does not provide sufficient facts to clarify the connection between the counts, the trial court may look to other documentary evidence in the case such as affidavits in support of arrests or affidavits in support of search warrants.

In this case, the trial court looked only at the indictment and found that, because the two charges both involve robbery, they were properly joined. When determining whether charges were improperly joined, this court reviews the decision of the trial court *de novo*.

Simply because the two charges have "robbery" in their titles is not a sufficient basis on which to join the charges in a single indictment. One charge is the robbery of a convenience store, while the other is the attempted robbery of a hiker in a state park. Further, the alleged crimes occurred two years apart.

Had the trial court reviewed the affidavits in support of the arrests in this case or other similar documentary evidence, it might have found some basis to support its finding that the acts were of the same character or were part of a transaction or scheme. See FR. R. CRIM. PROC. 8(a). But based on the record before us, there is no support for the trial court's conclusion that the charges warranted joinder under Rule 8(a).

Reversed, and remanded for new trials.

State v. Ritter
Franklin Court of Appeal (2005)

Timothy Ritter appeals from his conviction on two felony counts of possession of heroin with intent to sell. The first count charged him with possession with intent to sell heroin on September 19, 2003. The second count charged him with possession with intent to sell heroin on January 3, 2004. He raises two issues on appeal: (1) the trial court erred in failing to sever the counts for trial, and (2) the trial court erred in admitting evidence that Ritter was in possession of a weapon at the time of the second charged crime. We affirm.

Severance issue

Importantly, Ritter does not claim that the two counts of the indictment were improperly joined under Rule 8(a) of the Franklin Rules of Criminal Procedure. Rather, he argues that, pursuant to Rule 14, the trial court should have severed the counts for trial because he was prejudiced by the lawful joinder. There are generally three kinds of prejudice that may occur if separate offenses, particularly those that are merely of similar character and do not arise out of a single transaction, are joined.

First, the defendant could be prejudiced because the jury could consider the defendant a bad person and find him guilty of all offenses simply because he is charged with more than one offense. While this is clearly prejudicial, it is rarely a sufficient basis on which to justify severance.

Second, prejudice may occur if proof of the defendant's commission of one of the illegal acts would not otherwise have been admissible in the trial for the other offense. In other words, prejudice may occur when evidence that the defendant is guilty of one offense is used to convict him of another offense even though the evidence would have been inadmissible at a separate trial.

Third, prejudice may result if the defendant wishes to testify in his own defense on one charge but not on another. Severance of counts is warranted when a defendant has made a convincing showing that he has both important testimony to give concerning one count and a strong need to refrain from testifying on the other.

In this case, Ritter claims that evidence of each of the charged offenses would not have been admissible in the trial of the other. Rule 404(b) of the Franklin Rules of

Evidence allows admission of other acts if introduced for a purpose other than to prove "propensity." Permissible purposes for admission of "other acts" evidence include proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

If Ritter had been tried separately on the two charges of selling heroin, evidence of the other heroin sale would have been admissible in each trial. Ritter sold heroin in the same area, from the same vehicle, in the same period of time. This demonstrates a common scheme or plan. See Rule 8(a). Each act of possession with intent to sell would be admissible in the trial of the other alleged offense, not because it shows Ritter's character to sell heroin, but because it shows that all his actions were part of a single plan to sell heroin in the same midtown neighborhood.

Next Ritter claims that, even if allowed by Rule 404(b), evidence of either drug sale would have been excluded under Rule 403. He is correct that, even if allowed by Rule 404(b), evidence of other acts may still be excluded if the prejudicial effects of admission substantially outweigh the probative value of the evidence under Rule 403.

But this argument is unavailing. In this case, the probative value of the two drug sales is relatively high, precisely because they permit an inference of a single plan to sell drugs. To be sure, telling the jury about another drug offense in a case involving a similar offense would prejudice the defense. But that prejudice is not the kind of "unfair prejudice" covered by Rule 403, nor would it substantially outweigh the probative value of evidence of a common plan.

Evidence of possession of a weapon

Ritter also claims that the trial court erred in admitting proof, over Ritter's objection, that he possessed a gun during the January 3rd incident. The issue is whether the gun was introduced for a permitted use under 404(b)(2) rather than simply to show Ritter's propensity to carry weapons, a use that is prohibited under 404(b)(1). Ritter is charged with possession of heroin with intent to sell. Carrying a weapon is highly correlated with the intent to sell drugs, similar to the possession of baggies or scales. Thus evidence of Ritter's possession of a gun is relevant to an issue other than propensity to carry a weapon; it also goes to his intent to sell drugs. The state is taxed with proving the

defendant's intent by proof beyond a reasonable doubt. The evidence is thus admissible under Rule 404(b).

Finally, we consider Rule 403. Is the probative value of the evidence of the gun, in this case to show that Ritter had the intent to sell heroin, substantially outweighed by the danger of the unfair prejudices listed in Rule 403? To be sure, Ritter was prejudiced by the introduction of the gun, but we cannot say that the evidence unfairly prejudiced him in the jury's deliberation. The judge gave a limiting instruction that the jury could consider the gun only for the purpose of determining Ritter's intent to sell heroin. We therefore find that the probative value of that evidence was not substantially outweighed by the danger of unfair prejudice.

In conclusion, evidence of each heroin sale would have been admissible in a trial involving the other transaction. Joinder of the two counts did not create sufficient prejudice to warrant severance under Rule 14 of the Rules of Criminal Procedure. Furthermore, introduction of the gun was relevant to an issue in the case, and its probative value was not substantially outweighed by the danger of unfair prejudice.

Affirmed.

State v. Pierce
Franklin Court of Appeal (2011)

Noah Pierce appeals from his convictions for violation of an order of protection and for being in possession of a firearm while under a separate order of protection. The only issue we address on appeal is whether the trial court erred in denying his motion to sever the charges for trial pursuant to Rule 14 of the Franklin Rules of Criminal Procedure. We review the denial of a Rule 14 severance under an abuse of discretion standard.

In 2009, Pierce was under an order of protection enjoining him from having contact with his former girlfriend, Norah Lynn, after he had threatened her (the Lynn Order). Pierce was subsequently arrested for violating the Lynn Order. The allegation underlying the arrest was that he texted Lynn and threatened her on March 10, 2009. The Lynn Order expired on January 31, 2010.

On April 12, 2010, based on proof that Pierce had threatened his ex-wife, Julia Stein, an order of protection was issued enjoining Pierce from having any contact with Stein (the Stein Order). On December 6, 2010, while he was under the Stein Order, Pierce was searched while entering a bar and a handgun was found on his person. Possession of a firearm while under an order of protection is a felony under Franklin law.

Pierce was subsequently charged in a single indictment. Count 1 alleged that he violated the Lynn Order on March 10, 2009, by texting and threatening Lynn. Count 2 alleged that he was in possession of a firearm on December 6, 2010, while under the Stein Order. Pierce moved to sever the charges based on the prejudice caused by a joint trial. The trial court denied the motion, finding that while the charges were similar, the prejudice caused to Pierce was not sufficient to require severance.

Pierce based his motion to sever on the ground that, had the two cases been tried separately, evidence of the Stein Order would not have been admissible in the trial on the charge of violating the Lynn Order under Franklin Rule of Evidence 403. In essence, Pierce's argument is that he was on trial for one violation of an order of protection and one violation of the weapons laws. Evidence of the existence of the Stein Order was extremely prejudicial to his trial on the violation of the Lynn Order. We agree.

Were it not for the joinder of the offenses in one indictment, the jury charged with determining whether Pierce had violated the Lynn Order would have had no reason to

know about the 2010 Stein Order (forbidding him to have contact with his ex-wife). The Stein Order was not relevant to any issue in the trial of the violation of the Lynn Order. Pierce was prejudiced by the introduction of this evidence. When a jury learns of a separate offense committed by a defendant, the jury can be tempted to infer the worst about that defendant.

Reversed and remanded.

NOTES

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MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

Do not include your actual name anywhere in the work product required by the task memorandum.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.