

**IN THE CIRCUIT COURT OF SEVIER COUNTY, ARKANSAS
NINTH WEST JUDICIAL DISTRICT**

STACEY EUGENE JOHNSON

PETITIONER

v.

CASE NO.: CR-93-54

STATE OF ARKANSAS

RESPONDENT

**MOTION FOR POST-CONVICTION DNA TESTING PURSUANT TO
ARKANSAS CODE ANNOTATED §§ 16-112-201, *ET SEQ* AND
REQUEST FOR HEARING**

Petitioner Stacey Eugene Johnson (“Mr. Johnson” or “Petitioner”), through undersigned counsel, respectfully petitions this Court for an order directing forensic DNA testing of biological evidence collected during the investigation of the murder and possible sexual assault of Carol Jean Heath pursuant to Arkansas’s Habeas Corpus – New Scientific Evidence Statute (the “Statute”) (codified at Ark. Code Ann. §§ 16-112-201, *et seq.*).

PRELIMINARY STATEMENT

For nearly a quarter of a century, Mr. Johnson has steadfastly asserted his innocence and denied any involvement in the 1993 rape and murder of Carol Jean Heath, even in the face of execution. Today, probative biological evidence currently in the custody and control of the Arkansas State Crime Laboratory (“ASCL”)¹ and the DeQueen Police Department (“DPD”) may now be able to provide—through the use of modern, cutting edge DNA testing technologies—irrefutable confirmation of the veracity of Mr. Johnson’s innocence claims.

¹ On April 7, 2017, ASCL’s assistant director informed counsel for Mr. Johnson that “several” items and files retained by the laboratory in this case are currently under ASCL’s custody and control since the initial testing was performed in 1993. (See Exhibit (“Exh.”) A).

The exonerating potential of DNA testing in this case must be considered in tandem with the problematic evidence used to convict Mr. Johnson in the first place; indeed, his conviction is undermined by questionable investigatory tactics and evidence, including: (1) the problematic identification provided by the traumatized six-year old daughter of the victim; (2) the lack of authoritative physical evidence connecting Mr. Johnson to the rape and murder of Carol Jean Heath; and (3) an alleged “confession” completely undocumented by police officers. Mr. Johnson’s conviction was once reversed by the Arkansas Supreme Court, and the results of his second trial were affirmed by the narrowest of margins. See Johnson v. State, 326 Ark. 430, 934 S.W.2d 179 (1996) [*Johnson I*]; Johnson v. State, 342 Ark. 186, 27 S.W.3d 405 (2000) [*Johnson II*] (three justices dissenting).

DNA testing is perfectly suited for cases like this one, where technology unavailable at the time of trial can conclusively establish the legitimacy of a Petitioner’s innocence claims and undermine questionable evidence used to convict. As the Supreme Court has recognized, “DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty . . . [t]he Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure.” Dist. Attorney’s Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 55, 129 S. Ct. 2308, 2312, 174 L. Ed. 2d 38 (2009). Given the State of Arkansas’ recognition of the potential of DNA testing in pursuing Mr. Johnson’s conviction, the reasons to utilize revolutionary scientific advances in forensic DNA technology to prove Mr. Johnson’s innocence today should be just as clear. In light of the recognized weaknesses in the State’s arguments to convict, Mr. Johnson’s consistent and repeated requests for post-conviction DNA

testing, and the irreversible finality of the scheduled execution date, the reasons for additional DNA testing given the facts of this case are even more compelling.

Accordingly, Mr. Johnson respectfully requests that this Court grant his application for post-conviction DNA testing.

PROCEDURAL HISTORY

The procedural history in this case clearly highlights (1) that Mr. Johnson's conviction does not stand on firm footing; and (2) that this motion is the culmination of Mr. Johnson's decades-long effort to prove his innocence through DNA testing and other methods.

Mr. Johnson was charged in Sevier County with the offense of capital murder in the April 1993 death of Carol Heath. The homicide was allegedly witnessed by Carol Heath's small daughter, Ashley. The child was found incompetent to testify at the first trial, but statements she was alleged to have made to the authorities were admitted into evidence. The State also relied on DNA results from testing various items of evidence which were associated with Mr. Johnson. Mr. Johnson was convicted and sentenced to death. The Arkansas Supreme Court reversed Mr. Johnson's conviction on direct appeal on the ground that certain utterances of the unavailable Ashley Heath were erroneously admitted in violation of Johnson's confrontation rights and the rules of evidence. Johnson v. State, 326 Ark. 430, 934 S.W.2d 179 (1996) [*Johnson I*].

On retrial, the State asserted that Ashley Heath had become competent. The defense sought her counseling records, but the circuit court sustained assertions of privilege made by her attorney ad litem and denied the defense access to many of the records, giving Mr. Johnson only those records created before the first trial and for which any alleged privilege had been already waived. The court denied access to all later records, including records of examination and counseling by the psychologist whose other records were provided. Those denied records were

later shown to be grossly impeaching of the child. Additional DNA evidence was also presented as well as a contradicted and unrecorded statement allegedly made by Johnson in which he supposedly confessed to this and other homicides. That statement had been excluded from the first trial. Mr. Johnson appealed his second conviction. On appeal, the conviction and death sentence were affirmed by a narrow 4-3 vote. However, the dissenters agreed that Mr. Johnson's rights were violated by the denial of access to the psychological records of Ashley Heath.

Johnson v. State, 342 Ark. 186, 27 S.W.3d 405 (2000) [*Johnson II*]. Certiorari was denied.

Johnson v. Arkansas, 532 U.S. 944, 121 S.Ct. 1408 (2001).

Mr. Johnson then filed a timely Rule 37 petition and a habeas corpus petition under Arkansas law permitting access to further DNA testing under Ark. Code Ann. 16-112-201 *et seq.* In the habeas corpus petition, Mr. Johnson noted that newly available STR technology superseded the capacities of those DNA technologies used at the time of his first two trials. The two petitions were joined for hearing, and the trial court denied both petitions.

On appeal, where the two petitions were joined as well, the Arkansas Supreme Court denied Rule 37 relief and most of the testing/retesting petition, but granted a small portion of the habeas for further testing. Johnson v. State, 356 Ark. 534, 157 S.W.3d 151 (2004) [*Johnson III*]. Certiorari was denied. Johnson v. Arkansas, 543 U.S. 932 125 S.Ct. 326 (2004). Despite the specific remand to conduct testing, the circuit court again denied testing. On appeal, the Arkansas Supreme Court affirmed the judgment below, incorrectly finding that the additional DNA testing previously ordered had been superseded by the results of testing done prior to the second trial. Johnson v. State, 366 Ark. 390 235 S.W.3d 872 [*Johnson IV*].

Mr. Johnson then filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Arkansas in which he renewed his request for DNA testing. The

petition was denied in 2007, and the United States Court of Appeals for the Eighth Circuit affirmed the denial of habeas relief. Johnson v. Norris, 537 F.3d 840 (8th Cir. 2008) [*Johnson I*]. Certiorari was denied. 555 U.S. 1182, 129 S.Ct. 1334 (2009).

Prior to filing this new motion for DNA testing, Mr. Johnson petitioned the Arkansas Supreme Court to recall its mandate or otherwise reinvest jurisdiction over his prior appeal from the denial of DNA testing resulting in the Supreme Court's opinion in *Johnson III and IV*. Mr. Johnson also asked for a stay of execution to facilitate the Supreme Court's consideration of the Petition. The Arkansas Supreme Court denied Mr. Johnson's Petition by summary order on April 6, 2017.

STATEMENT OF FACTS

The Crime

On April 1, 1993, Rose Cassady went to visit her friend Carole Jean Heath in DeQueen "right before dark"² to borrow her dryer. 11/18/1997 Tr.³ at 6. Ms. Heath was home with her two children, Ashley (aged 6) and Jonathan (aged 2). Id. The next morning, April 2, Ms. Cassady returned between 6:00 and 6:30 a.m. to borrow a sweater. Id. at 7. Ms. Heath did not answer Ms. Cassady's knock on the door. Id. at 8. Hearing Ms. Heath's alarm clock sound, Ms. Cassady opened the door and discovered Ms. Heath's nude body on the floor, in a pool of blood. Id. Ms. Cassady began screaming and went across the street to call the police. Id. at 9. When she returned to the house, she saw both children looking out the bedroom window and asked Ashley—who was in shock—to tell her what happened. The child allegedly replied: "a black man broke in last night." Id. at 10.

² Twilight on April 1, 1993 in DeQueen, Arkansas was at 7:03 p.m.

³ Citations to the trial transcript refer to Petitioner's November 1997 trial, which was tried by jury before the Honorable Ted C. Capeheart, Circuit Court Judge. All references to this trial transcript are hereinafter designated "____ Tr. at ____."

Police Sergeant Keith Tucker of the DPD arrived at the scene at 6:45 a.m., followed by Chief of Police James Smith, Arkansas State Police (“ASP”) officers Butch Godwin and Hayes McWhirter, and Jim Behling, a DPD investigator. Id. at 26, 31-32, 35. Ms. Heath’s body was on the living room floor, which “was in disarray.” Id. at 21, 32. Closer examination by Chief Smith revealed that Ms. Heath’s throat had been cut. Id. at 34. A t-shirt was “wadded up . . . and placed across her throat” and rigor had begun to set in her fingers and toes. Id. at 32, 34. Underneath Ms. Heath’s body, just above her hips, was a tissue paper. Id. at 60. Her underwear was found next to her right leg and a towel was found just above her head. Id. at 61.

Crime scene investigators bagged Ms. Heath’s hands and feet and wrapped her body in a green sheet for transportation to the ASCL. Id. at 61-62, 71. A single hair was found on Ms. Heath’s body and clumps of hair were found on the floor of her unkempt house on both sides of her body. Id. at 69, 132. In the bathroom sink was a douche bottle, a “Lifestyles” condom box, and a pair of cutoff jeans was on the floor in front of the toilet. Id. at 59, Exh. B. Police also discovered and photographed a cigarette butt on the master bedroom floor, but there is no record it was collected and sent to ASCL. Id. at 165-166; Exh C. There was no indication that there had been a forced entry. Id. at 158. Indeed, “whomever . . . entered that house did it voluntarily through the front door.” Id. at 170.

Officer Godwin took all of the evidence to ASCL for serology testing that same day. Id. at 139. Police also lifted eleven partial fingerprints from the scene along with a bloody print from the door knob to a linen closet in the bathroom. Id. at 92. The print on the linen closet was later determined to belong to Carol Heath. Id. at 93. None of the partial lifts were determined to be “of sufficient quality to make matches.” Id.

On April 5, 1993, Kenneth Bryan stopped at a roadside park about four miles south of DeQueen on his way back from hunting. Id. at 44-45. While walking through the woods, he saw a purse and various articles of clothing lying on the ground and in the bushes. Id. at 45. Mr. Bryan picked up the purse and found identifying information showing that the purse belonged to Carol Heath. Id. at 45. He put the purse in his truck and forgot about it until a few days later, when local newspapers reported that Ms. Heath had been murdered. Id. at 46. Mr. Bryan immediately called the sheriff's department and directed them to the areas where he had found the purse and clothing. Id. The police collected a "green pullover shirt," a white t-shirt, a towel, and a "sweater jacket," all of which had "a bunch" of blood on them.⁴ Id. at 81, 123. The items were laid out to dry, as the items were damp and wet. Id. at 83. During this process, on April 6, the state officers discovered "matches and [a] cigarette" in the pocket of the green shirt. Id. at 88, 141-142. Later inspection revealed hairs on the t-shirt, the green shirt, and the towel. Id. at 140. On April 7, Officer McWhirter took all of these items to the ASCL. 11/20/1997 Tr. at 79.

The Autopsy and Serological Testing

Dr. Frank Peretti, a forensic pathologist and medical examiner, conducted the autopsy on April 5, 1993. 11/19/1997 Tr. at 58. Ms. Heath had "cutting wounds of the neck, evidence of strangulation, [and] blunt force head injuries." Id. at 60; see also Exh. D at 8. Ms. Heath had several defensive wounds and injuries; specifically, cuts and bruising on her fingers, arms and legs. 11/19/1997 Tr. at 65; see also Exh. D at 2, 8. She also had bite marks on her left and right breasts. 11/19/1997 Tr. at 66; see also Exh. D at 7. Dr. Peretti concluded that the "blunt force injuries may have been sustained first," although the "cutting wound and the strangulation

⁴ The sweater jacket was later thrown away because it had begun to mold and blood found on the sweater "putrefied beyond what . . . would be used" for testing in the laboratory. 11/18/1997 Tr. at 91.

were . . . more lethal type injuries.” 11/19/1997 Tr. at 70. Peretti also noted that such blunt force could have been caused by fists. Id. at 61.

Ms. Heath also had “injuries consistent with sexual assault”; specifically, a “quarter inch linear abraded contusion” on her right labia. Id. at 68, 85. Dr. Peretti took a full rape kit from the victim’s body, including “vaginal, rectal and oral” swabs and smears. Id. at 69. He also took swabs of the bite marks, which later tested positive for amylase, a component of saliva, containing “B” and “H” blood group substances, which indicated that the donor was a “secretor.” Id.; Exh. D at 7. Ms. Heath had no alcohol or illegal drugs in her system. 11/19/2017 Tr. at 68; Exh. D at 1.

Dr. Peretti was unable to determine Ms. Heath’s exact time of death: “we know the person was last seen alive at a certain hour and is found dead . . . so we have a range, but I can’t tell you in that range . . . for example, did the person die at 10:50 a.m. in the morning. No one can tell you that unless you witness it.” Id. at 80. Based on the facts provided to him by the police, however, Dr. Peretti noted that within a reasonable degree of medical certainty, Ms. Heath died “eight to ten hours” prior to her body being discovered.

The ASCL performed serological testing on the vaginal, rectal and oral smears and swabs, the bite mark swabs, and on the green shirt to determine whether there was any genetic material on several items of probative evidence. 11/19/1997 Tr. at 93-96. No semen was detected on any of the genital or oral smears or swabs, but the victim’s blood was detected on the green shirt found at the second crime scene. Id. at 94-96. ASCL was unable to find enough genetic material to do any serology on the victim’s underwear, the tissue found under her body, or on the towel found at the scene. Id. at 112.

ASCL collected several hairs from the first and second crime scenes. Of those hairs, three “indicative of Negroid origin”⁵ were recovered: from the floor beside the victim’s body, from underneath the victim’s breast, and from the t-shirt found at the second crime scene. Id. at 123. Several Caucasian hairs—microscopically dissimilar from the victim’s—were found underneath the victim’s body, on a towel by the victim’s head, in the bags that were placed on the hands of the victim at the scene, and on the green shirt. Id. at 123-124. The only hairs sent on for DNA testing were either “Negroid” or “unidentifiable.” Id. at 127-128.

The Investigation of the Murder

Officer McWhirter immediately began “going from apartment to apartment and interviewing neighbors to see if they had seen anything.” 11/20/1997 Tr. at 76. No one had seen a black man entering or leaving Ms. Heath’s home. Id. at 195. During the afternoon of April 2, Officer McWhirter interviewed Ashley Heath, eight and a half hours after her mother’s body was discovered. Id. at 80-81. Among other things, Ashley allegedly told Officer McWhirter: “Mother and I were on the couch when someone knocked on the door. She got up and opened the door. Mother likes Branson. He [sic] work[s] at In Your Ear Video Center. The black male asked where Branson was.” Id. at 82. Ashley told the Officer the black male had “been over two other times” and noted “he had on a green shirt and sweater”⁶ and “said he just got out of jail.” Id. at 84. She further told the Officer that she hid when “I saw [her mother and the black male] fighting”, but that “[w]hile Mother was laying on the floor, the black male walked to the bathroom. We were hiding in the closet. I came out to go to the bathroom and the black male

⁵ While hair microscopy has been widely discredited as a forensic tool with regards to individualization (*i.e.* associating a particular hair with a particular person to the exclusion of all others), certain features of individual hairs do, in fact, have clear differentiating attributes. Hairs may be classified as human or non-human, and also “by . . . racial and somatic characteristics.” See Exh. E. This is relevant in the instant case as the victim’s hair was long, curly, and black and easily distinguished from shorter, lighter, or “coarser” hair.

⁶ It should be noted that the sweater later found in the woods “appeared to be” a woman’s sweater. 11/18/1997 Tr. at 129.

had a knife in his hand standing beside Mama. She was on the floor bleeding. After he left, I went in and saw mommy bleeding.” Id. Ashley also told the Officer that when the black male left, “he got into a brown truck . . . [that was] parked beside the house.” Id. Officer McWhirter then showed Ashley a photo array of seven black males. She picked Mr. Johnson’s photo from the array. Id. at 86. DPD issued a warrant for Mr. Johnson’s arrest for capital murder.

On April 14, 1993, Paul Paceco, a police officer with the Albuquerque Police Department, stopped a vehicle driven by Mr. Johnson. During the stop, Mr. Johnson provided Officer Paceco with a false name and was arrested for providing a false identity. As Officer Paceco transported Mr. Johnson to the jail, Mr. Johnson allegedly stated that he “killed somebody in Arkansas . . .” 11/19/1997 Tr. at 15. After running Mr. Johnson’s correct name, it was revealed that Johnson had outstanding warrants for capital murder, firearms and drugs. Mr. Paceco did not make any notes of the alleged confession in his write up of the traffic stop and his partner did not hear the “confession” at all. Id. at 22, 24, 45, 48. Officer Paceco also failed to inform Rick Foley, the homicide detective in the Albuquerque Police Department, that Stacy Johnson had allegedly made a confession to him, even though Detective Foley interviewed Mr. Johnson at length that same day. (Id. at 52-53; Exh. F at 1). When asked during the interview if he was “willing to talk to [the APD] at this time,” Mr. Johnson responded “I have nothing to hide.” (Exh. F at 2). At no time during his statement to Detective Foley did Mr. Johnson confess to killing Ms. Heath.

The Trial

Mr. Johnson was first tried in the Sevier Circuit Court. He was sentenced to death for the murder of Ms. Heath. Mr. Johnson immediately appealed his conviction. Mr. Johnson’s sentence was reversed in *Johnson I* on the grounds that the trial court had improperly admitted an

out-of-court statement allegedly made by Ashley (who had been found incompetent to testify) in which she claimed she had witnessed the murder of her mother and identified Mr. Johnson as the murderer. A retrial was held from November 18-21 in Pike County.

The Prosecution's Case

On retrial, the State once again asserted that Mr. Johnson was responsible for the murder and rape of Ms. Heath.

Ashley Heath was found competent to testify at the second trial and her testimony consisted almost entirely of one word answers. Ashley testified that having been “let in” by her mother, Mr. Johnson had come to the house on her sixth birthday and sat in the living room and talked with Ms. Heath. 11/18/1997 Tr. at 196, 199, 202. Ashley no longer knew whether or not “the black man” broke into her house, contrary to her definitive statement to Rose Cassady. *Id.* at 10, *compare with* 203. Further, Ashley no longer had any recollection as to the car the perpetrator was driving, even though she previously identified the perpetrator entering a brown truck parked alongside the house after the murder. *Id.* at 203.

Ashley's testimony conflicted with testimony provided by Carnelle Barnes, the psychologist who counseled her weekly for almost a year after the murder. When Dr. Barnes showed Ashley a photo line-up using the same photographs provided by Officer McWhirter and including Mr. Johnson, Ashley twice stated that “[t]he creep's not here because there's no green shirt.” 11/20/1997 Tr. at 106. Dr. Barnes also testified that Ashley “had many versions of this night [of the murder],” and allowed that overheard statements by family and friends “would certainly contaminate her memory.” *Id.* at 106, 108. Inconsistencies in Ashley's testimony were further underscored by the State's other witnesses who testified that Ms. Heath had never had any black men over to her house. 11/18/1997 Tr. at 215, 223, 228. Shawnda Helms testified Mr.

Johnson came to Ms. Heath's home on at least one occasion with her boyfriend, Branson Ramsey. Id. at 210. Ashley Heath also identified Mr. Johnson as a guest. Id. at 217.

The State also read into the record the testimony of Mr. Johnson's step-mother, Sharon. Id. at 233. While Ms. Johnson was unable to identify the white t-shirt as the one worn by Mr. Johnson on the day of the murder, she did testify that Stacey had told her he had found a place to stay "with a white girl with two little kids and she works at the bank." Id. at 239, 245. The latter testimony was "confirmed" by Steve Hill, a jailhouse informant, who claimed that Mr. Johnson told him he had met Ms. Heath through "a guy name[d] Branson" and they were "carrying on back and forth." Id. at 269. According to Hill, Mr. Johnson told him "he was going to see" Ms. Heath after he got out of prison. Id.

The State introduced the results of early-generation DNA testing performed at Cellmark, a private laboratory. Using RFLP testing, Cellmark revealed that "Stacey Johnson could not be the source of the DNA on that green shirt and Carol Heath could be a source of that DNA from the green shirt." 11/20/1997 Tr. at 16. Using DQ-Alpha testing—a slightly more advanced form of DNA technology—Cellmark determined that the DNA found in the breast swabs and on the white t-shirt also excluded Mr. Johnson. Id. at 24. Applying DQ-Alpha once again, Cellmark found that the three "Negroid" hairs collected from the scene as well as a cigarette butt allegedly found in the green shirt, were "consistent with Stacey Johnson."⁷ Id. at 28.

In closing, the State argued that Mr. Johnson left prison, murdered, and likely sexually assaulted Ms. Heath in alignment with his statements to Mr. Hill and Ashley's identification. 11/20/1997 Tr. at 153, 156. Noting that Carol Heath's blood was "all over those clothes" found at the second crime scene, the State argued the forensic evidence inculpated Mr. Johnson by

⁷ The State repeatedly requested additional DNA testing and resubmitted the cigarette for retesting "because of a new [DNA] testing procedure" that they believed would provide more definitive results. 11/18/1997 Tr. at 89-91.

showing that the saliva detected on the breast swab was “consistent with the blood type and being a secretor of which Mr. Johnson is.” Id. at 154. Most importantly, the State argued, the DNA on the cigarette butt found in the green shirt “matches Stacey Johnson.” Id. at 155. “[T]hey’re going to argue to you about odds, 720 million and 1, 280 million and 1,” the State asserted. “You know, the odd thing about that is we rely on that scientific procedure to save our lives and then we argue against it in criminal trials.” Id.

The Defense Case

For its part, the defense presented an alibi defense through witnesses and phone records. 11/20/2017 Tr. at 117-126. Through testimony and phone records, Mr. Johnson’s could fully account for his whereabouts eight to ten hours prior to Ms. Heath’s body being discovered. Additionally, unlike the “brown truck” identified by Ashley Heath as being the one the perpetrator was driving, Debra Johnson and disinterested witness Rebecca Tapia identified the car Mr. Johnson was driving the night of the murder as a “big car” and not a truck. 11/20/1997 Tr. at 119.

The defense also presented evidence implicating the victim’s boyfriend in the murder. Cordelia Vinyard testified that her divorce from ex-husband, Branson Ramsey⁸ (the boyfriend of Ms. Heath at the time of her death), became final on April 1, 1993, the same day Ms. Heath was likely murdered. 11/20/1997 Tr. at 136. Vinyard had been separated from Ramsey for at least a month because “my ex-husband come to the house that I was living at, carried me over the banister and slapped me . . .” Id. at 137. Indeed, Ramsey had abused Ms. Vinyard for four years and had demonstrated a clear pattern of violent mistreatment in the relationship that required Ms. Vinyard to obtain emergency custody of her children:

⁸ On information and belief, Mr. Ramsey died in 1998.

A [Ms. Vinyard]: I had—I had bruises on my back side where he kicked me. I had knots on my head where he hit my head up against the wall. I mean I fought back, but it did no good considering I don't weigh very much and I had a big man against me . . . He would punch me or slap me or kick me or bite me, just however he would.

Q: And where would he bite you?

A: He'd bite me on the upper torso, on my chest.

Q: On your chest? . . . Are you reluctant to say the exact word?

A: No. On my breast.

Id. at 137-38. (Emphasis added.) Despite the relationship between Ramsey and the victim (again, the only constant in the investigation of Ms. Heath's murder), despite his history of abusive relationships, and despite his propensity to bite women's breasts, police never questioned Ms. Vinyard and Ramsey⁹ was never investigated as a suspect. Id. at 138.

Mr. Johnson was found guilty of capital murder on November 21, 1997. He was sentenced to death and is currently scheduled to be executed on April 20, 2017.

ARGUMENT

The Arkansas General Assembly passed Act 1780 to address mounting concerns regarding persons who were jailed, and sometimes executed, for crimes they did not commit. See 2001 Ark. Acts 1780 (“[a]n Act to provide methods for preserving DNA and other scientific evidence and to provide a remedy for innocent persons who may be exonerated by this evidence.”); see also Echols v. State, 350 Ark. 42, 44, 84 S.W.3d 424, 426-7 (2002); Johnson v. State, 356 Ark. 534, 157 S.W.3d 151 (2004). The amendment was passed “to accommodate the advent of new technologies enhancing the ability to analyze scientific evidence” and further the “mission of the criminal justice system [which] is to punish the guilty and exonerate the innocent.” Act 1780, § 1.

⁹ It should be noted that Ashley told Dr. Barnes that she believed Branson Ramsey had been involved in the murder, and “she mentioned Branson Ramsey’s name on several occasions . . .” 11/20/1997 Tr. at 112.

Almost twenty-five years after the start of the Petitioner's first trial, the refined capacities of modern DNA testing can now be applied to the several items of probative, biological material recovered at the crime scenes in this case—including, but not limited to, hairs, vaginal, anal, and oral swabs taken from the victim's body, clothing worn and used by the perpetrator during the murder, and swabs taken from bite marks on the victim's breasts—and potentially prove Petitioner's innocence. A genetic profile obtained through this testing may "hit" to an as yet unknown assailant(s) through the CODIS DNA databank, conclusively identifying Carol Jean Heath's rapist and murderer. Given Petitioner's not guilty plea at two earlier trials, his decades long battle to prove his innocence, and the State's underwhelming case against Mr. Johnson, the remedy of DNA testing is particularly compelling in this instance.

Under the Act, an Arkansas petitioner may make a motion for forensic DNA testing if:

- (1) The specific evidence to be tested was secured as a result of the conviction of an offense's being challenged under § 16-112-201;
- (3) The specific evidence was previously subjected to testing and the person making a motion under this section requests testing that uses a new method or technology that is substantially more probative than the prior testing;
- (4) The specific evidence to be tested is in the possession of the state and has been subject to a chain of custody and retained under conditions sufficient to ensure that the evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed testing;
- (5) The proposed testing is reasonable in scope, utilizes scientifically sound methods, and is consistent with accepted forensic practices;
- (6) The person making a motion under this section identifies a theory of defense that:
 - (A) Is not inconsistent with an affirmative defense presented at the trial of the offense being challenged under § 16-112-201; and
 - (B) Would establish the actual innocence of the person in relation to the offense being challenged under § 16-112-201;
- (7) The identity of the perpetrator was at issue during the investigation or prosecution of the offense being challenged under § 16-112-201;

- (8) The proposed testing of the specific evidence may produce new material evidence that would:
 - (A) Support the theory of defense described in subdivision (6) of this section; and
 - (B) Raise a reasonable probability that the person making a motion under this section did not commit the offense;
- (9) The person making a motion under this section certifies that he or she will provide a deoxyribonucleic acid (DNA) or other sample or a fingerprint for comparison; and
- (10) The motion is made in a timely fashion subject to the following conditions . . .
 - (B) There shall be a rebuttable presumption against timeliness for any motion not made within thirty-six (36) months of the date of conviction. The presumption may be rebutted upon a showing
 - (iv) That a new method of technology that is substantially more probative than prior testing is available; or

As all of these criteria are satisfied here, Petitioner requests that his motion for post-conviction forensic DNA testing be granted.

I. PETITIONER IS ENTITLED TO DNA TESTING PURSUANT TO ARK. CODE ANN. §§ 16-112-201 *ET SEQ*

A. The Physical Evidence in This Case Was Secured as a Result of Petitioner's Conviction and the Proposed DNA Testing May Produce New Material Evidence That Would Raise a Reasonable Probability That Mr. Johnson is Innocent of Capital Murder

All of the evidence Petitioner seeks to submit to DNA testing was obtained during the police investigation of the murder and rape of Carol Jean Heath and during the course of her autopsy. All evidence collected from the crime scenes and her body was delivered to the ASCL by police officers and other agents of the State and sent on for additional DNA testing to Cellmark by representatives of ASCL. See 11/18/1997 Tr. at 139; 11/20/1997 Tr. at 79.

Specifically, Mr. Johnson seeks to test the following items:

- (1) Pair of Panties (GGG 7; Q 5)
- (2) Towel (From First Crime Scene: GGG 8; Q 6)
- (3) Douche Bottle (GGG 9)

- (4) Prophylactic Package (GGG 10)
- (5) Hair From the Floor by Victim (GGG 13)
- (6) Hair From Under the Victim (GGG 14)
- (7) Tissue Paper (GGG 15; Q 8)
- (8) Hair From Under the Victim (GGG 16)
- (9) Green Shirt (GGG 19; Q 17)
- (10) Hair From Green Shirt (GGG 20)
- (11) Cigarettes and Matches From Pocket of Green Shirt (GGG 21)
- (12) White T-Shirt (from Second Crime Scene: GGG 22; Q 18)
- (13) Hair From White T-Shirt (from Second Crime Scene: GGG 23)
- (14) Towel (From Second Crime Scene: GGG 24; Q 19)
- (15) Hair From Towel (From Second Crime Scene: GGG 25)
- (16) Victim's Purse and Contents (GGG 26)
- (17) Swabs (GGG 28-35; Q 21-28)
- (18) Right Hand Nail Clippings From Victim (ME 1)
- (19) Left Hand Nail Clippings From Victim (ME 2)
- (20) Combed Pubic Hair From Victim (ME 3)
- (21) Bags From Hands of Victim (ME 4)
- (22) White T-Shirt (From First Crime Scene: ME 5)
- (23) Vaginal Smears and Swabs (Q 1)
- (24) Rectal Smears and Swabs (Q 2)
- (25) Oral Smears and Swabs (Q 3)
- (26) Breast Swabs (Q 4)

See Exh. G. Each one of these items of evidence—if subjected to the requested DNA testing procedures detailed below—have the capacity to produce new material evidence that would substantiate Mr. Johnson's prior not guilty pleas by proving his actual innocence and raising a reasonable probability that Mr. Johnson is innocent of this crime.

In accordance with § 16-112-202(6)(B) & (8)(B), the Arkansas Supreme Court has held that DNA testing of evidence is authorized if testing or retesting can provide materially relevant evidence that will significantly advance the defendant's claim of innocence in light of all the evidence presented to the jury. Johnson v. State, 356 Ark. 534, 546, 157 S.W.3d 151, 161 (2004). Such evidence need not completely exonerate the defendant in order to be "materially relevant," but it must tend to significantly advance his claim of innocence. King v. State, 2013

Ark. 133, 4-5 (2013). The United States Supreme Court’s decision in Schlup v. Delo, 513 U.S. 298 (1996), is also instructive here. In Schlup, the Court held that a petitioner can demonstrate actual innocence by producing newly discovered evidence that makes it “more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt.” Id. at 327; accord, House v. Bell, 547 U.S. 518 (2006). Moreover, because a Schlup “claim involves evidence the trial jury did not have before it, the inquiry requires the . . . court to assess how reasonable jurors would react to the overall, newly supplemented record.” Id.

As described in more detail *infra*, DNA testing on the several items of probative evidence collected in this case could irrefutably establish Mr. Johnson’s innocence by excluding him as a possible perpetrator and naming the actual assailant in this vicious crime. Should any of these items of evidence that were central to the crime provide a CODIS eligible profile that “hits” to a readily identified individual, such information would certainly significantly advance Mr. Johnson’s innocence claim.

B. All of the Physical Evidence in This Case is Currently in the Possession of the State, Has Been Subject to a Chain of Custody and Retained Under Conditions Sufficient to Ensure that the Evidence has not Been Substituted, Contaminated, Tampered With, Replaced, or Altered in Any Respect Material to the Proposed DNA Testing

Vaginal, rectal and oral swabs, samples from the tissue, underpants, and towel found at the first crime scene as well as the green shirt and towel found at the second crime scene have been held by the ASCL since 1993, and at Cellmark since 1997, when the second trial began. (Exh. G). All of this evidence has been retained by ASCL without interruption under the laboratory’s mandatory conditions for safe-guarding biological evidence.¹⁰ There is no evidence

¹⁰ The purpose of DNA testing is not merely to obtain a profile, but to compare any male DNA profile found on the knife to the over 10 million profiles in the national and state DNA databases and see if the DNA matches a convicted and/or incarcerated offender. To this end, any possible handling by a prosecutor, law enforcement officer, or other governmental agent would be irrelevant. STR testing of probative evidence and a subsequent CODIS

demonstrating or reason to believe that the biological evidence has been in any way compromised.

Cellmark analyst, Melisa Weber, confirmed at the trial that a package brought to court contained “a whole bunch of tubes” filled with DNA generated from the previous testing that “contain the material cuttings from which I extracted the DNA.” 11/20/1997 Tr. at 38-39. She noted that the tubes also contained samples that constituted “a future testing sampler meaning if another laboratory wanted some of the original evidence to test themselves, then some evidence is put inside before I tested it for anyone else to test, so there are some of those in here as well.” *Id.* at 39. These tubes, along with several hairs, the bite mark swabs, and other pieces of physical evidence, were likely all returned to the DPD by Cellmark and should have been safely kept within the DPD’s custody and control since Petitioner’s 1997 trial.¹¹ See Exhibit H at 3.

C. The Petitioner’s Proposed Testing of the Physical Evidence is Scientifically Sound, Consistent With Accepted Forensic Practices, Reasonable in Scope, and Includes New Forms of DNA Testing That Are Substantially More Probative Than Prior Testing Technologies, Thus Rebutting the Presumption Against Timeliness

As will be discussed *infra*, new forms of forensic DNA testing that did not exist and were entirely unavailable at the time of Petitioner’s first and second trials, and others that are substantially more probative than the DNA methods used at Mr. Johnson’s 1994 and 1997 trials can now be deployed to analyze the collected biological evidence.

upload of any DNA profile procured from that evidence has repeatedly been used by law enforcement in Arkansas, and throughout the country, to identify perpetrators of serious crimes (both new and “cold”), including sexual assaults, robberies and murders. *Clemons v. State*, 2010 Ark. 337, 369 S.W.3d 710 (five years after crime, evidence from stabbing murder was tested and pulled profile led to CODIS hit linking Appellant to crime); see also *State v. Armstrong*, 2013 Ohio 2618, 993 N.E.2d 836 (June 24, 2013) (DNA from knife discovered at crime scene led to hit in CODIS database).

¹¹ Counsel was unable to obtain an inventory from DPD of the evidence in their possession at the time of filing.

1. *The proposed DNA testing is scientifically sound and consistent with accepted forensic practices and the technology to be used is substantially more probative than the technologies used at Mr. Johnson's 1994 and 1997 trials.*

Forensic DNA testing methodologies have not been considered “novel science” in Arkansas since 1996 and have been admissible evidence since 1991. Moore v. State, 323 Ark. 529, 915 S.W.2d 284 (1996); Engram v. State, 341 Ark. 196, 15 S.W.3d 678 (2000); Whitfield v. State, 346 Ark. 43, 45, 56 S.W.3d 357, 358 (2001) (citing Prater v. State, 307 Ark. 180, 820 S.W.2d 429 (1991)). Indeed, today’s forensic DNA testing methodologies are inarguably more sensitive, discriminating, and accurate than almost any other form of evidentiary proof. See Maryland v. King, 133 U.S. 1958, 1964 (2013) (“The only difference between DNA analysis and fingerprint databases is the unparalleled accuracy DNA provides.”).¹²

At the time of Mr. Johnson’s 1994 trial, Cellmark Diagnostics performed RFLP, DQ-Alpha, and Polymarker testing. (See Exh. I at ¶ 9). Three years later, Cellmark performed additional testing using Geneprint STR DNA testing. Id. Short Tandem Repeat (“STR”) “increas[ed] exponentially the reliability of forensic identification over earlier techniques” and is “qualitatively different from all that preceded it.” Harvey v. Horan, 285 F.3d 298, 305, n.1 (4th Cir. 2002). STR testing fully replaced other DNA testing methods in the FBI crime laboratory and most other crime laboratories by 2000.¹³ Today, autosomal (non-sex determining) STR technology is the principal mechanism for obtaining DNA profiles in forensic laboratories

¹² The RFLP form of DNA testing used at the time of the Petitioner’s trial had extremely limited capabilities and is now obsolete within the forensic DNA context. “[T]he ability of laboratories to perform DNA typing methods has improved dramatically . . . due to rapid progress in the areas of biology, technology, and understanding of genetic theories. In addition, the power of discrimination for DNA tests has steadily increased in the late 1990s.” John M. Butler, *Forensic DNA Typing* 11-12 (2d Ed. 2005); see also Exh. I at ¶ 11.

¹³ Butler, *supra*, 11-12.

around the nation, and is essentially the gold standard of modern DNA testing.¹⁴ For a decade, the forensic science community used a minimum of thirteen genetic markers, referred to as the thirteen core CODIS (Combined DNA Index System) loci, when conducting forensic DNA testing.¹⁵

However, in the 20 years since that particular form of STR testing was performed, DNA technology has become “considerably more sensitive and sophisticated.” *Id.* at ¶ 10. The tests used at the time of Mr. Johnson’s prior trials only reported data from 3 genetic markers (called loci) in addition to the marker that identifies the sex of the contributors. *Id.* at ¶ 11. Current kits now test 23 loci. *Id.* On January 1, 2017, the National DNA Index System expanded to include these new 20 core loci at crime laboratories nationwide. The switch “adds seven new markers carefully selected over a years-long process—making more certain matches—and potentially solving more crimes of both the future and even the past.” (See Exhibit J; Exh. I at ¶ 11 (“By increasing the number of genetic loci tested from 3 in 1997 to 23 today, we greatly increase the likelihood of finding genetic material that will yield useful DNA results.”)). This quantum leap in DNA testing technology allows forensic scientists to differentiate between individuals with a radically high, never before seen level of discrimination.

2. *The requested STR DNA testing is reasonable in scope*

STR testing can generate a profile that is effectively unique; for example, the probability of a random, full profile STR-DNA match between two unrelated persons in the Caucasian

¹⁴ *Id.*

¹⁵ The Combined DNA Index System, or CODIS, is the FBI’s nationwide DNA database. The database contains DNA profiles collected by federal and state forensic laboratories. As of February 2017, CODIS contained approximately 12,772,888 offender profiles and 757,650 forensic profiles from crime scenes and produced over 365,634 profile “hits” assisting in more than 350,653 investigations. See Federal Bureau of Investigation, National DNA Index System Statistics, <http://www.fbi.gov/about-us/lab/codis/ndis-statistics>. Arkansas has its own CODIS compatible DNA database which has over 159,373 convicted offenders in the system which have aided in over 4,500 investigations. This constitutes an average of 15 hits a month in Arkansas due to CODIS. See Arkansas State Crime Lab, CODIS, <http://www.crimelab.arkansas.gov/sectionInfo/Pages/codis.aspx>.

population is conservatively estimated to be more than 1 in a trillion—far exceeding the size of the world’s entire population.¹⁶ Indeed, in 1997, the State in the instant case was confident enough in DNA’s forensic abilities to use it to “bolster” its case against the Petitioner. See Exhibit K. Since that time, the capacities of DNA forensic science have radically improved; new forms of testing, like mitochondrial DNA have been discovered, and STR technologies now has several sub-categories of highly refined testing methods, including Y-STR and MiniFiler testing, that are the appropriate forms of testing to be used on the types of evidence available for testing here.

a. Y-STR DNA testing

Y-STR testing uses the same STR methodology as autosomal STR testing, but exclusively targets genetic markers found on the Y chromosome—which is present only in males. Accordingly, Y-STR DNA testing can be particularly probative in cases like this one, where there may be multiple male donors in a given sample. Through Y-STR testing, male DNA will not be lost (or masked) by the female victim’s own genetic contribution. Y-STR testing thus allows for a more precise and accurate detection of multiple male DNA profiles in any given sample.¹⁷

b. MiniFiler DNA testing

A new “kit” for the analysis of autosomal STR loci, called AmpFISTER® MiniFiler™, was developed and made available for forensic use in early 2007. Mini-STR analysis can obtain

¹⁶ Butler, supra, at 505.

¹⁷ See, e.g., Sudhir K. Sinha et al., Utility of the Y-STR Typing Systems Y-PLEX™ 6 and Y-PLEX™ 5 in Forensic Casework and 11 Y-STR Haplotype Database for Three Major Population Groups in the United States, 49 J. Forensic Sci. 4 (July 2004); Mark A. Jobling & Peter Gil, Encoded Evidence: DNA in Forensic Analysis 5 Nat. Rev. Genetics 739, 746 (Oct. 2004).

results where traditional STR analysis has failed.¹⁸ Mini-STRs correspond to shorter sequences of DNA than those found in conventional autosomal STRs and are able to amplify smaller portions of DNA. MiniFiler can thus be used when STR testing is not possible due to degradation of the evidence; an indispensable attribute in cases such as this, where the evidence is more than 20 years old and where the perpetrator may have tried to flush his DNA from the body of the victim. Mini-STR testing has already served to exonerate at least one wrongfully convicted individual where traditional STR failed. In 1983, Rickey Johnson was convicted of rape. Initial STR DNA testing on the victim's vaginal swab yielded DNA markers from the assailant's spermatozoa at only 3 out of 15 loci due to the apparent degradation of the sample. When the sample was re-tested using Mini-STRs, however, an additional 8 loci were detected, resulting in a combined 11-loci profile suitable for comparison. Mr. Johnson's sample was tested, and he was conclusively excluded as the source of that DNA. The profile was entered into CODIS and "hit" to John Carnell McNeal, who was already in prison for an identical rape in the same apartment complex.¹⁹

c. Mitochondrial DNA Testing

Mitochondrial DNA testing ("mtDNA") analyzes DNA found in the cytoplasm of the cell; that is, the area that surrounds the nucleus. The mitochondrial genome, which is unchanged as it is passed from mother to child, is passed on to all the offspring of a mother and to those children's offspring. Mitochondrial DNA testing thus provides one particular advantage over STR testing; it can be compared to forensic samples that do not have the nucleated chromosomal information required for STR, and thus may be used on biology without nucleated cells,

¹⁸See P. Grubweiser et al., A New "Mini-STR Multiplex: Displaying Reduced Amplicon Lengths for the Analysis of Degraded DNA, 120 Int'l. J. Legal Med. 115 (2006).

¹⁹Vickie Welborn, Leesville Man Freed After Wrongful Conviction, Shreveport Times (Jan. 12, 2008). Based on these extraordinary results, Mr. Johnson was immediately freed from prison after 25 years of wrongful imprisonment.

including hair with no “root,” and bones.

Given the range of evidence collected in this case and the different forms of testing that would be required to obtain the most definitive results, the proposed testing is reasonable in scope and necessary to fully prove Mr. Johnson’s actual innocence claim. Accordingly, the presumption against timeliness is rebutted. See A.C.A. § 16-112-202(10)(B)(iv); Carter v. State, No. CR-13-359, 2015 Ark. 57, *7 (Ark. February 26, 2015) (slip opinion attached hereto as Exh. L).

D. The Petitioner’s Identity Was at Issue During the Investigation and Prosecution of Carol Jean Heath’s Rape and Murder

The identity of the perpetrator of Ms. Heath’s murder has always been at issue as the Petitioner has maintained his actual innocence of the crime since the time of his arrest, has consistently pled not guilty, and has strenuously litigated his innocence claim.

E. Petitioner Can Identify a Theory of Defense That is Not Inconsistent With His Defense at Trial and May be Able to Produce New Material Evidence Establishing His Actual Innocence

In light of his two decades old innocence claim, Petitioner can readily identify a theory of defense consistent with the “not guilty” plea presented at trial that could establish his actual innocence.

Prior DNA testing indicates that Ms. Heath’s blood was found on the items of clothing strewn in the woods. There is no rational explanation for how those clothes ended up miles from Mr. Heath’s home except that they were worn by the perpetrator of her murder and sexual assault and then discarded in flight from the crime. Here, one of the only constants in the murder investigation was the green shirt found at the second crime scene. That shirt was clearly worn by the perpetrator, and the victim’s blood was also found on it. 11/20/1997 Tr. at 40. Accordingly, testing of “wearer DNA” on the green shirt and the white t-shirt and on the hairs on both, could

identify the murderer either by matching a known suspect such as Branson or providing an STR profile that, when searched through the CODIS DNA database, identifies a heretofore unknown offender. See Exh. I at ¶ 25. Should no STR profile be possible, mitochondrial testing could similarly be associated with a known suspect like Branson even if such results could not be searched in the CODIS DNA database.

At trial, the State argued that Ms. Heath was, in fact, sexually assaulted. This assertion was supported by the testimony of the medical examiner who determined that the abrasion on Ms. Heath's labia was consistent with an assault. Testing of a variety of sexual assault evidence collected can both exclude Mr. Johnson and identify another man as the murderer. As part of hiding the signs of any assault, the State argued Mr. Johnson used the douche bottle to eliminate all traces of male DNA from the victim's vaginal vault. DNA testing on the bottle itself may reveal a male profile that excludes Mr. Johnson and matches either a known suspect like Branson or hits to an offender in the CODIS DNA database. See Exh. I at ¶ 21. The same is true for swabs taken from the bite marks on Ms. Heath's body that have already tested positive for amylase, indicating that saliva was left by the perpetrator.

Hairs found in the victim's hand, as well as on and near her body, especially where they are from the same male source as DNA from the sexual assault evidence, could now provide irrefutable evidence of innocence. Either through standard STR or mitochondrial testing, both methods could provide identifying information. This is particularly relevant here where several hairs were found at the crime scene and on the clearly probative clothing, identified as Caucasian hairs that did not match the victim, and were never sent for DNA testing. These items themselves could clearly provide a true perpetrator if subjected to testing. See Exh. I at ¶ 26.

Even absent a match to Branson or another known offender in the CODIS DNA database, if one or more of these profiles in any combination provide the same profile of an unknown or heretofore uninvestigated male—in tandem with the absence of Mr. Johnson’s DNA—such a redundancy would definitively point to an actual perpetrator and fully exonerate Mr. Johnson.²⁰

REQUEST FOR HEARING

Mr. Johnson respectfully requests that the Court schedule a hearing so that the Court can carefully consider expert and other evidence supporting this Motion for DNA testing. In Carter v. State, the Arkansas Supreme Court held that an evidentiary hearing is necessary where a person seeking post-conviction DNA testing alleges facts that entitle them to relief. See Carter, 2015 Ark. 57. In Carter, the movant alleged a proper chain of custody as to the items at issue in the case, but the State contested this element. The trial court summarily denied DNA testing based in part on a finding that Carter had failed to establish a proper chain of custody. The Supreme Court reversed this judgment, holding that the trial court should have afforded Carter a hearing to resolve this contested fact issue. See id. at *6. Just as in Carter, Mr. Johnson has alleged facts which establish his right to relief. Accordingly, this Court should schedule a hearing at which Mr. Johnson may present evidence to prove all of the facts alleged in this Motion.

²⁰ Mr. Johnson asserts that he was involved in a consensual relationship with Ms. Heath. Accordingly, the presence of his profile on certain items gathered from the crime scene could have an altogether benign reason for their appearance.

CONCLUSION

For all the aforementioned reasons, Petitioner's request that forensic DNA testing be performed on the several items of evidence collected in this case—with all costs to be paid for by the Innocence Project—should be granted.

WHEREFORE, The Petitioner states the following requests for relief:

1. An Order granting a hearing at which Mr. Johnson, through undersigned counsel, may fully present the evidence supporting this motion;
2. An Order releasing the already collected evidence to an accredited, CODIS-eligible, private DNA laboratory;
3. An Order compelling the State of Arkansas, the DeQueen Police Department, and the Arkansas State Police (1) to conduct an extensive and thorough search for any and all evidence relating to the Petitioner's case²¹, (2) to inventory all case related evidence still in existence (conducted in such a way to prevent contamination), and (3) to document all the steps and places searched, the results of that search and/or destruction documents detailing the explanation for the absence of any relevant evidence;
4. An Order compelling the State of Arkansas to properly preserve any additionally discovered physical evidence until further order from this Court and, if such evidence were to be discovered, to allow for an amended testing order to include additional DNA testing of any probative evidence;
5. An Order compelling the State of Arkansas, the DeQueen Police Department, and the Arkansas State Police to disclose and turn over all evidence accrued from any prior DNA testing or investigation in the Petitioner's case and all relevant documents, including and not

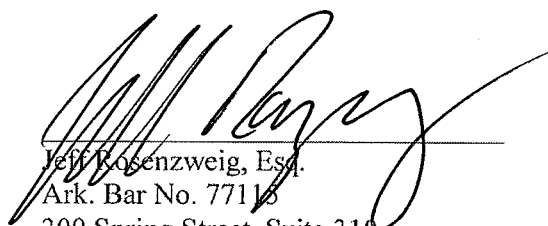
²¹ Petitioner is well aware of the limited time and resources available to law enforcement agencies. Accordingly, Petitioner would also pay for an agreed upon, qualified, third party to assist in such a search under the supervision of the aforementioned agencies.

limited to police reports, lab reports, photographs, trial exhibits, bench notes, *etc.* regarding the Petitioner's case;

6. An Order staying Mr. Johnson's scheduled execution to accommodate the Court's consideration of this motion and the requested DNA testing.

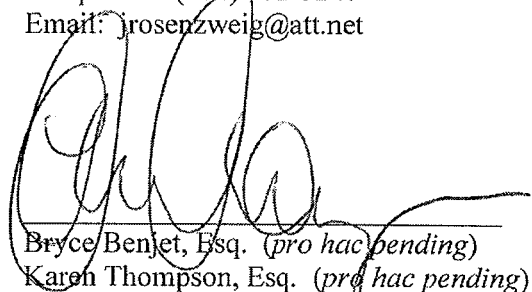
7. Any other Order that the Court deems necessary to adequately protect the Petitioner's state and federal constitutional rights.

Respectfully submitted this 13th day of April, 2017.



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Counsel for Petitioner Stacey Eugene Johnson

CERTIFICATE OF SERVICE

I, Jeff Rosenzweig, hereby certify that I have served a copy of the foregoing Motion on the below attorney for the State and on Petitioner, Stacey Eugene Johnson, by United States Postal Service on this 13th day of April, 2017.

Bryan L. Chesshir, Esq.
Prosecuting Attorney
122 Bishop St
Nashville, AR 71852



JEFF ROSENZWEIG, ESQ

EXHIBIT A



Karen Thompson <kthompson@innocenceproject.org>

Evidence Search

Gallagher, Rick <rick.gallagher@crimelab.arkansas.gov>
To: Karen Thompson <kthompson@innocenceproject.org>

Fri, Apr 7, 2017 at 11:00 AM

Ms. Thompson,

The Crime Laboratory has located several items that were retained as part of our usual laboratory practices. We have located our laboratory files. In order for you to discuss this case any further the laboratory will need a court order from a court of competent jurisdiction.

Rick Gallagher

Assistant Director

Arkansas State Crime Laboratory

501-683-6150 - Office

501-920-3470 - Cell

Rick.gallagher@crimelab.arkansas.gov

From: Karen Thompson [mailto:kthompson@innocenceproject.org]**Sent:** Thursday, April 06, 2017 1:44 PM**To:** Gallagher, Rick**Cc:** Edward Armstrong**Subject:** Evidence Search

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<https://mail.google.com/mail/u/1/?ui=2&ik=37343c89c9&view=pt&q=rick.gallagher%40crimelab.arkansas.gov&qs=true&search=query&msg=15b48edd71c573a...> 1/2

AFFIDAVIT OF HUMA NASIR, M.S.

I, Huma Nasir, declare, under penalty of perjury, that the following is true and correct:

1. My name is Huma Nasir. I am over the age of 18 and otherwise fully competent to give this statement.
2. I am a Senior Forensic DNA Analyst at Bode Cellmark Forensics (Bode).
3. Bode Cellmark Forensics ("Bode") is a private accredited laboratory that specializes in forensic DNA testing. Bode conducts DNA testing for law enforcement and other government agencies as well as private clients.
4. Bode's accreditations include the American Society of Crime Lab Directors/Laboratory Accreditation Board (ASCLD/LAB-International), the Texas Department of Public Safety, Maryland State Department of Health and Human Hygiene, and the New York State Department of Health. Our analysts routinely undergo proficiency testing in accordance with these accreditations.
5. For over 20 years, Bode has successfully obtained DNA profiles from forensic evidence in thousands of cases, including pre-trial and post-conviction homicide cases, decades-old "cold" cases, and cases where other laboratories consumed substantial portions of the evidence through attempted serology and/or DNA analysis. I have personally performed DNA testing and/or analysis for thousands of cases, both pre-trial and post-conviction.
6. I have been doing forensic DNA analysis for almost fifteen years. I began my career at a private forensic lab, ReliaGene Technologies, and I was employed there from February 2001 until December 2007. I then joined the Orchid Cellmark lab, which through several mergers has become part of Bode. I have served as a technical leader at the lab, and in this role I was responsible for technical management of the laboratory. This included

technical problem solving of analytical methods; method evaluation and proposing new or modified analytical procedures to be used by the laboratory; assisting with the oversight of training, quality assurance, and proficiency testing in the laboratory; and ensuring that casework is processed in an accurate and timely manner. I have provided expert testimony as a Forensic DNA Analyst in over 100 cases and have been admitted as an expert witness in jurisdictions across the country. .

7. I earned a Bachelors of Science in Biological Sciences from the University of New Orleans in 2000 and a Masters of Science in Pharmaceutical Sciences with a concentration in Forensic DNA and Serology from the University of Florida. I have co-authored four articles relating to forensic STR testing and three of these articles published in the Journal of Forensic Science. A copy of my curriculum vitae detailing my experience and credentials is attached hereto as Exhibit A.
8. I submit this Affidavit to advise the Court of the capabilities of Bode, about which I have personal knowledge, to obtain new and relevant information from evidence gathered in the investigation of the murder of Carol Heath and the prosecution and conviction of Stacey Johnson. In preparing this affidavit, I discussed the facts of the case with Innocence Project Staff Attorney Bryce Benjet and was provided with (1) a police report describing the crime scene; (2) reports from the Arkansas Crime Lab which list the evidence submitted and describe forensic analysis performed on the evidence; (3) the report of the autopsy of Carol Heath; (4) reports from 1994 of DNA testing performed by Cellmark Diagnostics; (5) a report from 1997 of DNA testing by Cellmark Diagnostics; (6) a report from 1997 by a consulting expert evaluating the DNA testing performed by Cellmark Diagnostics; and (7) various photographs of the crime scene and evidence

discussed in this affidavit. This information is sufficient for me to reach the conclusions offered in this Affidavit and all opinions offered in this Affidavit are to a reasonable degree of scientific certainty.

9. In 1994, Cellmark Diagnostics performed RFLP, DQ Alpha, and Polymarker testing on some of the evidence in this case. The reports of this DNA testing are attached as Exhibit B. In 1997, Cellmark Diagnostics performed additional DNA testing on the remaining extracts from the testing reported in 1994 using the Geneprint STR DNA testing kit. The report of this testing is attached as Exhibit C.

Advancements in DNA Technology

10. Modern DNA technology utilized by Bode is considerably more sensitive and sophisticated than the testing available in 1994 and 1997 when Mr. Reed's trial took place and in 2002 when additional DNA testing was requested by Mr. Stacey. Current DNA technology can develop full or partial genetic profiles where DNA methods in use in 1994, 1997, and 2002 could not. Current DNA technology is sensitive enough to identify an individual's unique DNA profile from a microscopic amount of biological material previously undetected using older methods. Current technology is also designed to develop DNA profiles from poorly preserved or decades-old degraded samples that were unsuitable for testing using the testing techniques available 15 years ago. Likewise, advancements in DNA technology have allowed us to obtain genetic profiles despite the presence of chemicals that in the past would inhibit the DNA amplification process. This provides a much greater chance at obtaining results from certain types of clothing or leather which contain chemicals that inhibit DNA amplification.

11. The RFLP, DQ Alpha, and Polymarker technology used in this case are outmoded types of DNA testing. Forensic scientists no longer use these types of tests, and the results of such testing are generally not useful for comparison to the results of modern technology. Cellmark Diagnostics also performed very early generation STR testing in 1997 with the Geneprint STR DNA testing kit. However, this test only reported data from 3 markers (locations on the gene also known as “loci”) in addition to Amelogenin which identifies the sex of contributors. Current STR test kits now test 23 loci. This expansion of the number of loci tested provides exponentially greater discriminatory power, allowing forensic scientists virtual certainty as to the identity of a source of DNA. The expansion of the number of loci tested also greatly enhances the sensitivity of DNA tests, especially on older and degraded samples. This is because DNA breaks down over time in an irregular fashion. Bacteria may consume the genetic material at some loci, but not others in a sample. Generally the larger genes degrade more quickly than the smaller ones. By increasing the number of genetic loci tested from 3 in 1997 to 23 today, we greatly increase the likelihood of finding genetic material that will yield useful DNA results.
12. Y-STR testing, which first became available for forensic use in 2000 and was not yet widely available in 2002, is more likely to obtain probative results where the evidentiary items contain a mixture of male and female DNA. Y-STR technology is similar to other DNA testing with one major difference: the STR regions targeted for identification are all located on the Y-chromosome, which is exclusive to males. By targeting only male DNA and “ignoring” the female DNA, Y-STR testing can help identify the male DNA present in a mixed sample such as a rape kit or handled clothing from a crime victim. Y-STR technology is especially valuable where the evidence contains a large amount of female DNA and a very small amount of male DNA because

standard DNA techniques will might amplify the female DNA in a manner that renders the male portion of the sample undetectable.

13. "Mini-STR" testing, which is designed to focus on portions of the DNA that break down over time, can also reveal a DNA profile that may not be obtainable through traditional STR testing. Mini-STR technology is particularly suitable for the small or degraded samples that are common when testing evidence collected more than ten years earlier. This technology was not available for forensic use until 2007.
14. Bode also performs mitochondrial DNA testing and analysis. Mitochondrial DNA is present in the mitochondria of every cell in the human body. Mitochondria are usually present in large numbers in human cells. In the event that a biological sample is particularly degraded, it is possible that mitochondrial DNA can be successfully analyzed even if standard DNA techniques (such as STR, discussed above) have failed or cannot be used. Mitochondrial DNA analysis is also recommended when testing hair which does not contain a root and therefore cannot be tested through conventional STR analysis.
15. The processes used in performing DNA testing have also evolved over the past 15 years, making it more likely that results can be obtained from small, degraded, or inhibited samples. First, the DNA extraction techniques have improved. We now use a robotic extraction method in conjunction with an additional reagent "carrier RNA". Extraction is the process by which the genetic material is separated out from the sample of the evidence. Published validation research on this extraction method shows that it removes potential PCR inhibitors better than older extraction procedures and increases the yield of DNA extracted from a forensic sample.
16. In the past 15 years, we have also improved our ability to concentrate samples where there is only a small amount of genetic material. The concentration methods (Amicon

filters or drying down samples using Vacufuge) help concentrate the genetic material that has been extracted, which improves our ability to obtain useful DNA profiles even from samples that may contain only a few skin cells. Likewise, where prior testing of small amounts of material only yielded a partial profile, using the Amicon filter to concentrate a sample can allow us to obtain a more complete DNA profile suitable for comparison.

17. With these considerable advances in sensitivity, we have also improved our sampling techniques. The best example of this is the use of scraping/swabbing method. Scraping is done by taking a sterile scalpel or other sharp blade and removing the top layer of a sample—usually cloth to dislodge cells that may be embedded in the fabric. These dislodged cells can then be collected using a sterile swab and tested. We have found that this method provides more material than the sampling techniques that forensic DNA scientists may have used in 2002 on similar items.
18. The advancements in the sensitivity of forensic DNA testing over the past 15 years have changed the way forensic investigators utilize DNA testing. In 2002 and before, it was common for investigators and DNA scientists to test only those samples with visible stains or those otherwise known to contain biological material such as cigarette butts that are repeatedly placed in a person's mouth. For example, forensic DNA labs did not routinely perform DNA testing on sexual assault evidence unless sperm was visualized.
19. By contrast, forensic scientists now collect and test samples from items where no biological material is visible. In addition to searching for blood, semen, or saliva, we now sample items that were only touched or handled by the perpetrator of a crime to test "touch DNA". These items may include clothing, ligatures, the inside of pockets, and the surface of objects carried by the perpetrator. Published literature, confirmed by my

experience in the lab, has shown that cells transferred from a person's hands onto an object they touch can be collected, tested using current methods and yield a DNA profile.

Recommendations for DNA testing

20. From my review of the documentation discussed in paragraph 8, it is my professional opinion that DNA testing on the evidence in this case is capable of yielding scientifically valid results that can identify the person who raped and murdered Carol Heath. Specifically I recommend that DNA testing be performed on the following evidence:
21. **Sexual Assault Evidence.** I understand from my review of the materials provided that the victim was likely raped in the course of the murder. However, it was also believed by police that the murderer could have worn a condom and may have rinsed the victim's vaginal cavity with a douche bottle. Serology reports from the Arkansas Crime Lab state that no sperm was found on any of the evidence. Due to the limited sensitivity of DNA tests fifteen years ago or earlier, forensic scientists likely would not recommend DNA testing of sexual assault evidence where semen was not detected through presumptive tests or microscopic examination. That is no longer the case. Serology literature explains that the average ejaculation contains tens to hundreds of millions of sperm cells. Where current technology only requires a few cells to generate a DNA profile, it is possible to obtain results from extremely diluted or low level samples where sperm cells were not previously visualized or presumptive testing did not indicate the presence of semen. Y-STR technology is especially helpful in this regard because it targets and amplifies only male DNA. Therefore, DNA results can be obtained from mixed samples where the victim's DNA would otherwise prevent detection of a small amount of male DNA. DNA

testing can be performed on the following items which may identify the person who raped and murdered Ms. Heath:

- Vaginal swabs and smears were collected from the victim. Although semen was not detected by the Arkansas Crime Lab in 1993, current DNA technology is capable of yielding a DNA profile from even a few sperm cells that may not have been identified using the methods available in 1993. Alternatively, a male DNA profile can be obtained from non-sperm cells such as epithelial cells that may be present in the sample.
- Breast swabs were collected, and a presumptive test for amylase indicated the presence of saliva. Although DNA testing performed in 1994 identified only the victim's profile, trace amounts of other DNA were detected in 1997 that did not meet the labs interpretation guidelines. Especially, where there is some indication from the 1997 testing of a second contributor to the DNA on the breast swab, modern DNA technologies such as Y-STR testing are capable of yielding DNA profiles from this mixed sample that could not have been obtained in 1997 or even in 2002. This additional DNA profile may have come from epithelial cells present in the perpetrator's saliva.¹
- A Douche bottle was collected from the victim's sink and was believed to have been used by the murderer to rinse the victim's vaginal cavity after a sexual encounter. Therefore the bottle should be tested because seminal fluid (if present) could be transferred onto the end of the bottle if it was inserted into the vaginal cavity. If the perpetrator wore a condom, it is possible to find male DNA from

¹ Epithelial cells are skin cells that also make up the lining of the mouth, nose, vaginal and rectal cavities and the urethra.

contact from other parts of his body. Epithelial cells (touch DNA) could also have been transferred onto the bottle from the perpetrator's hands.

- Tissue Paper was found under the victim and was believed by law enforcement to have been used to wipe her genital area. The tissue could have collected seminal fluid that may have been rinsed out of the victim's vaginal cavity. Epithelial cells could also have been transferred from the perpetrator's hands onto the tissue.
- The victim's underwear was found beside her right thigh according to a police report. It is possible that the victim's underwear was removed by the perpetrator during the assault, providing the opportunity for his DNA to be transferred onto the waistband (or other parts) of the underwear. Therefore, I recommend testing the waistband for male epithelial cells. The crotch area of the underwear can also be tested for the possible presence of seminal fluid since the circumstances of how and when the underwear was removed are unknown.
- Pubic hair combings were collected from the victim. Pubic hair combings in sexual assault cases can provide relevant DNA evidence either because the perpetrator's own hair may be located among them or because semen from the assault may be transferred on the hair. If root material is not present on these hairs, mitochondrial DNA testing can be performed to possibly identify hairs not from the victim and can be compared to the victim, Mr. Stacey and known eliminations samples to determine their relevance. Furthermore, I recommend that the hairs be washed to collect any seminal fluid that may have attached to the hairs.

- An empty condom box was found in the victim's sink next to the douche bottle and was believed to have been handled by the perpetrator. In handling the box, epithelial cells could be transferred from the perpetrator onto the box and this box can be tested for "touch DNA".
22. **Bloody Towel.** A bloody towel was found just above the victim's head and was presumably used by the perpetrator to wipe blood. In handling the towel or wiping off blood, the perpetrator would also transfer epithelial cells onto the towel which could be detected through DNA testing. It is also possible in a stabbing case such as this that the perpetrator might have cut himself. This would provide the opportunity for the perpetrator to transfer his own blood on the towel which could be detected through DNA testing.
23. **Fingernail Clippings.** The victim's hands were bagged at the scene and fingernail clippings were taken at autopsy despite the absence of visible blood or tissue. The Autopsy report states that there was evidence of strangulation and defensive wounds consistent with a struggle. Under these circumstances, fingernail clippings are taken because victims can scratch their attackers either during a struggle or while they are being strangled. Although this evidence was not tested at the time of trial (or even in 2002) because there was no apparent tissue present, current DNA technology can detect DNA from epithelial cells that could have been transferred even if the perpetrator sustained no visible injury.
24. **Victims' T-Shirt.** The victim was found with her T-shirt on, pulled up, and bite marks were identified on her breasts. If the victim was bitten through her shirt, the perpetrator would have transferred epithelial cells with his saliva on the shirt in the area around her

breasts. If the shirt was touched, handled or pulled up, epithelial cells from the perpetrator could be transferred onto the shirt.

25. **Perpetrator's Shirts and Victim's Purse.** The victim's purse and two blood stained shirts (a white shirt and a green shirt) were found in a location some distance from the crime scene. DNA testing at the time of Mr. Johnson's trial indicated that the blood on the shirts came from the victim. No other DNA profile was obtained to identify the person who was wearing the shirt. Testing of the white shirt, however, indicated some DNA from an additional contributor that was detected below the laboratory's reporting guidelines. Current DNA testing is capable of generating a DNA profile from epithelial cells left by the person who wore the shirt. Therefore I recommend testing areas of the shirt most likely to come into contact with the wearer's skin such as the collar of the green shirt and the collar and arm pits of the white t-shirt. Likewise, the perpetrator could have carried the victim's purse from the crime scene to the location where it was found. This would provide the opportunity for the perpetrator to transfer his epithelial cells onto the purse that could be detected by sampling and testing the handles of the purse.
26. **Hair Evidence.** Hair evidence was collected from the crime scene and the shirts found with the victim's purse. Because hairs are shed and easily transferred, any hairs collected from the items described above could also be DNA tested. If the hairs have root material, autosomal DNA testing methods like STR and Y-STR testing can be performed. If the hairs do not have roots, they can be subjected to mitochondrial DNA testing.

27. Modern STR DNA testing has the capacity to generate DNA profiles that can be uploaded into the CODIS DNA database. This is a database consisting of over 11 million DNA profiles from convicted offenders as well as other profiles from forensic evidence in unsolved cases. CODIS is now a standard tool in using forensic DNA testing to solve crimes and in post-conviction DNA testing cases. Specifically, Bode has the capability (working in conjunction with an authorized government lab) to have DNA profiles from evidence uploaded to the CODIS database. Review, upload and search of these evidentiary profiles into the CODIS database may result in associating a profile with a convicted offender.

One to One Comparisons

28. DNA profiles using all of the technologies describe in this affidavit can also be compared against other profiles using the same type of test. Depending on the amount of data obtained and the technology used, these comparisons can have very significant statistical weight. One to One comparisons are used either to associate a crime scene DNA profile with or exclude a crime scene DNA profile from a known person or another unidentified profile.

Condition of the Evidence and Suitability for Testing

29. DNA testing is common in decades old cases where the evidence may not have been stored with the care one would expect in anticipation of DNA testing. The routine handling of the evidence during forensic investigation and trial and even the potential for contamination in storage does not render the evidence unsuitable for testing. One of the unique aspects of DNA evidence is its ability to identify with great certainty the individual whose DNA is found on an item of evidence. This can be done either through

comparison to known individuals or through the use of the CODIS DNA database containing over 11 million offender profiles. Even where evidence is handled by investigators, lawyers or other court personnel or is stored in a manner that does not necessarily guard against contamination, probative results can be obtained through the elimination of innocent contributors, the identification of a known suspect's DNA through one-to-one comparison, or through an identification of a known offender in the CODIS database.

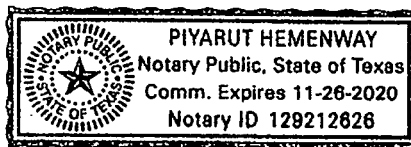
30. I attest, under penalty of perjury, that the foregoing facts are true and accurate to the best of my knowledge, information and belief.
31. I reserve the right to change my opinions if new information becomes available.

Huma Nasir
HUMA NASIR, MS, F-ABC

Sworn before me this

12 day of April, 2017

Piyarut Hemenway
Notary Public



Curriculum Vitae

HUMA NASIR, M.S., F-ABC

Education

M.S. University of Florida 2006
Pharmaceutical Sciences with concentration in Forensic Serology and DNA

B.S. University of New Orleans 2000
Biological Sciences

Professional Experience

Jun 2016 – Present	<i>Senior Forensic DNA Analyst</i>	Bode Cellmark Forensics, VA
Jan 2016 – Jun 2016	<i>Forensic DNA Consultant</i>	Dallas, TX
July 2014 – Dec 2015	<i>Technical Leader Assistant Technical Director Senior Forensic DNA Analyst</i>	Cellmark Forensics, Inc. Dallas, TX
3/5/13 – July 2014	<i>Technical Leader Supervisor, Forensics Senior Forensic DNA Analyst</i>	Cellmark Forensics, Inc. Dallas, TX

Responsible for technical management of the laboratory, including technical problem solving of analytical methods. Responsible for method evaluation and proposing new or modified analytical procedures to be used by the laboratory. Responsible for assisting with the oversight of training, quality assurance, and proficiency testing in the laboratory. Responsible for ensuring that casework is processed in an accurate and timely manner. Duties include case reviews, expert witness testimony as a court qualified expert, and client contact. Possesses in-depth expertise with all forensic DNA testing methodologies in use at the lab including autosomal STRs, Mini-STRs, Y-STRs and mitochondrial DNA testing.

7/9/12 – 3/4/13	<i>Technical Leader, mtDNA and Y-STRs Supervisor, Forensics Forensic DNA Analyst IV</i>	Orchid Cellmark, Inc. Dallas, TX
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12/1/11 – 7/9/12	<i>Supervisor, Forensics Forensic DNA Analyst IV</i>	Orchid Cellmark, Inc. Dallas, TX
4/1/11 – 11/31/11	<i>Forensic DNA Analyst IV Team Leader</i>	Orchid Cellmark, Inc. Dallas, TX
1/1/2008 – 3/31/11	<i>Forensic DNA Analyst III Team Leader</i>	Orchid Cellmark, Inc. Dallas, TX
2006 – 12/2007	<i>Forensic DNA Analyst III Team Leader</i>	ReliaGene Technologies, Inc. New Orleans, LA

Conduct scientific analysis on multiple forms of biological evidence on forensic casework utilizing PCR based DNA analysis following standard operating procedures for forensic DNA testing. Systems used on a routine basis include Profiler Plus™, COfiler™, Identifiler™, Identifiler Plus™, PowerPlex 16 HS™, Y-STR, MiniSTR, and Mitochondrial DNA analysis using the ABI 310, 3100 and 3130 Genetic Analyzers and the ABI 377 DNA Sequencer platforms. Responsible for processing casework in an accurate and timely manner. Prepare, write, and sign case reports, and available as an expert in Molecular Biology and Forensic DNA analysis for court testimony. Routinely communicate directly with clients regarding various aspects of their case, from evidence collection to trial preparation. Available to less senior laboratory personnel as a resource for training, technical advice, problem solving, and questions.

2005 – 2006	<i>Forensic DNA Analyst II</i>	ReliaGene Technologies, Inc. New Orleans, LA
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Conduct scientific analysis on multiple forms of biological evidence on forensic casework utilizing PCR based DNA analysis following standard operating procedures for forensic DNA testing. Systems used on a routine basis include Profiler Plus™, COfiler™, Identifiler™, and Y-STR, using the ABI 310 and 3100 Genetic Analyzer. Responsible for processing casework in an accurate and timely manner. Prepare, write, and sign case reports, and available as an expert in Molecular Biology and Forensic DNA analysis for court testimony. Routinely communicate directly with clients regarding various aspects of their case, from evidence collection to trial preparation.

June 2003 – 2005	<i>Forensic DNA Analyst I</i>	ReliaGene Technologies, Inc. New Orleans, LA
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Responsible for processing casework in an accurate and timely manner for the areas in which they have satisfactorily completed training and competency tests. NOTE: this analyst has satisfactorily completed all training and competency tests and has developed expertise in analysis of forensic samples including mixed stain samples. Available to provide court testimony. Assist Senior Forensic Scientists with the maintenance of training, QA/QC, safety measures, and proficiency testing in the laboratory. Responsible for remaining up-to-date with current methods

and procedures in the laboratory.

March 2001 – May 2003 *Associate Scientist I*

ReliaGene Technologies, Inc.
New Orleans, LA

Processed samples for CODIS upload. Assisted in development and production of Y-PLEX™ 5 and Y-PLEX™ 12 amplification kits, which consists of a primer mix, allelic ladder and controls, used for Y-STR analysis. HIV Genotyping, DNA sequencing to determine patient's drug resistance profile.

Forensic Laboratory Experience		Qualified
• DNA Extractions (PCR-STR)	Single Source Stains	2001
• PCR Amplification		2001
• PCR Analysis and Interpretation		2001
• Paternity Testing		2003
• DNA Extractions (PCR-STR)	Mixed Stains	2003
• Forensic Biology Screening		2003
• Forensic Case Reporting		2003
• Y-STR Experience		2002
• Mini STR Experience		2007
• Mitochondrial DNA Experience		2007

Level of Training Completed

Forensic Casework Analyst Qualified – 2003
Forensic Cases Processed / Analyzed – More than 3000

Certifications

Molecular Biology Fellow - American Board of Criminalistics (ABC)

Memberships

American Academy of Forensic Sciences (AAFS)

Expert Witness Testimony & Depositions

Testified over 100 times as an Expert in Molecular Biology and/or Forensic DNA Analysis in 20 different states.

Publications

1. Shewale, J.G., **Nasir, H.**, Schneida, E., Gross, A.M., Budowle, B. and Sinha, S.K. 2004. Y-Chromosome STR system, Y-PLEX™ 12, for forensic casework: Development and validation. J. Forensic Sci. 49: 1278 - 1290.
2. Sinha, S.K., Budowle, B., Chakraborty, R., Paunovic, A., Guidry, R.D., Larsen C., Lal, A., Shaffer, M., Pineda, G., Sinha S.K., Schneida, E., **Nasir, H.** and Shewale, J.G. 2004. Utility of the Y-STR typing system Y-PLEX™ 6 and Y-PLEX™ 5 in forensic casework and 11 Y-STR haplotype database for three major population groups in the United States. J. Forensic Sci. 49: 691-700.
3. Sinha, S.K., **Nasir, H.**, Gross, A.M., Budowle, B. and Shewale, J.G. 2003. Development and validation of the Y-PLEX™5, a Y-chromosome STR genotyping system, for forensic casework. J. Forensic Sci. 48: 985-1000.
4. Shewale, J.G., **Nasir, H.** and Sinha S.K. 2003. Variation in migration of the DNA fragments labeled with fluorescent dyes on the 310 Genetic Analyzer and its implication in the genotyping. The Journal of the Association of Genetic Technologists. 29: 60-64.

Presentations

Presented “Challenges in Casework using the *AmpFlSTR® Minifiler™* PCR Amplification Kit” at Southwestern Association of Forensic Scientists Annual Meeting in Austin, Texas. October 11, 2007.

Abstracts

1. Orchid Cellmark’s Osteo-Pure™ Bone Extraction Procedure Captures Degraded DNA to Improve STR Results.C.B. Smitherman, **H. Nasir**, W.L. Hoffman, R.W. Staub, and S.K. Sinha. Promega Meeting, 2010.
2. Shewale, J.G., **Nasir, H.**, Schneida, E., and Sinha, S.K., 2003. Development and Validation of a Y-Chromosome STR Genotyping System, Y-PLEX™ 12, for Forensic Casework. 29th Annual Meeting NEAFS 2003, Pittsfield, MA. European Academy of Forensic Science Triennial Meeting 2003, Istanbul, Turkey. 14th International Symposium on Human Identification 2003, Phoenix, AZ. American Academy of Forensic Sciences 56th Annual Scientific Meeting 2004, Dallas, TX.

3. Sudhir K. Sinha, PhD, Amrita Lal, MSFS, Chris Larson, BS, Alison Flemming, BA, **Huma Nasir, BS**, Elaine Schneida, BS, and Jaiprakash Shewale, PhD. Validation and Forensic Casework Applications of the Y-STR Genotyping Systems Y-PLEX™ 6 and Y-PLEX™ 5. Annual meeting of the American Academy of Forensic Sciences 2003, Chicago, IL.
4. Sinha, S.K., **Nasir, H.**, Schneida, E. and Shewale, J.G. Y-Chromosome Specific STR Analysis Using Y-PLEX™6 and Y-PLEX™5 Amplification Kits. FASEB Meeting 2002, New Orleans, LA.
5. Sinha, S., **Nasir, H.**, Schneida, E. and Shewale J. Y-Chromosome specific STR analysis using a combination of Y-PLEX™6 and Y-PLEX™5 amplification kits. Proc. 16th 9Meeting of the International Association of Forensic Sciences 2002, Edited by E. Baccino, pp. 21-24, Monduzzi Editore.

Continuing Education	
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Feb 2016	Attended the American Academy of Forensic Sciences 68 th Annual Scientific Meeting in Las Vegas, NV
July 2015	Attended the AFDAA Summer Meeting in Dallas, TX
Sept 2014	Attended ISHI – 25th International Symposium on Human Identification presented by Promega in Phoenix, AZ
August 2014	Attended DNA Analyst Webinar Series: Validation Concepts and Resources (Part I) provided by NIST.
May 2014	Attended DNA Analyst Webinar Series: Probabilistic Genotyping & Software Programs (Part I) provided by NIST.
April 2014	Attended webinar titled “ Getting the Most out of Your EZ1 ” presented by Dr. Mark Guillianio at Cellmark Forensics.
June 2013	Attended seminar titled “ A Review of PCR Inhibition and Its Implications for Human Identity Testing ” presented by Dr. Joe Warren at Cellmark Forensics.
May 2013	Attended “ A DNA Revolution – Next Generation Technologies ” workshop at presented by UNT Center for Human Identification in Ft. Worth, TX.
April 2013	Attended DNA Mixture Interpretation Workshop & Webcast presented by NIST
January 2013	Attended seminar titled “ Calculating Statistics in Questioned Paternity Cases ” given by Dr. Laura Gahn at Cellmark Forensics.

- July 2012 Attended webinar titled “**PowerPlex Y23 Deiscriminating Power in Stringent Endogamous and Consanguineous Situations**” by Promega at Cellmark.
- February 2012 Attended the **American Academy of Forensic Sciences** 64th Annual Meeting in Atlanta, GA.
- December 2011 Completed the **FBI’s Quality Assurance Standards Auditor Training**
- October 2011 Attended **NFSTC: DNA Mixture Interpretation Workshop** in Houston, TX
- July 2010 Attended the **AFDAA Summer Meeting** in Austin, TX
- April 2010 Attended the “**Excelling as a Highly Effective Team Leader**” Seminar presented by Dale Liu, MSc., in Dallas, TX
- December 2009 Attended “*Stochastic Threshold*” talk presented by Dr. Rick Staub at Orchid Cellmark. Dallas, TX.
- September 2009 Attended “*Considerations for the Analysis of Low-Level Forensic Samples*” talk presented by Dr. Rick Staub at Orchid Cellmark.
- July 2009 Attended Applied Biosystems HID University’s seminar “*Future Trends in Forensic DNA Technology*” presented by Lisa M. Calandro in Austin, TX.
- February 2009 Attended “*Fundamentals of Capillary Electrophoresis & Maintenance and Troubleshooting of 3100-3130xl Platforms*” talk presented by Dr. Aaron LeFebvre at Orchid Cellmark. Dallas, TX.
- December 2008 Attended the seminar “*Statistical Analysis of Forensic DNA Evidence*” presented by Dr. George Carmody at Orchid Cellmark, Dallas, TX.
- October 2007 *Southwestern Association of Forensic Scientists Meeting.* Austin, TX.
- August 2007 *Applied Biosystems HID University: Troubleshooting Amplification and Electrophoresis*, Maurice Padilla, Field Application Specialist
- April 2007 *Profiling of Degraded and Low Amounts of DNA*, Forensic Institute’s Human Identification e-Symposium 2007
- April 2007 *Human Identification DNA Stream*, Forensic Institute’s Human Identification e-Symposium 2006

- September 2006 ***3rd Louisiana's Annual DNA Scientific meeting.*** Baton Rouge, LA
- February 2006 ***Fundamentals of Statistical Analysis*** workshop presented by Dr. Charles Brenner. New Orleans, LA
- February 2005 ***57th Annual Meeting of the American Academy of Forensic Sciences (AAFS).*** New Orleans, LA.
- December 2004 ***GeneMapperTM ID Training*** by Dr. Laura Post from Applied Biosystems. New Orleans, LA
- December 2004 ***1st Louisiana's Annual DNA Scientific meeting.*** Baton Rouge, LA
- December 2004 ***"A New Approach to Differential Extraction"*** lecture by Curtis Knox from Promega. New Orleans, LA
- Sept. 2004 ***Fundamentals Of Real Time PCR*** at ReliaGene Technologies, New Orleans, LA
- October 2003 ***Mathematical Foundation of the Evaluation of DNA Evidence*** lecture by Dr. Charles Brenner, New Orleans, LA
- September. 2003 ***Y-12 Analysis*** by Dr. Jai Shewale at ReliaGene Technologies Laboratory, New Orleans, LA
- June 2003 ***Understanding DNA Extraction and PCR Amplification*** by Dr. Sudhir Sinha at ReliaGene Technologies Laboratory, New Orleans, LA
- November 2002 ***SINE based PCR for the identification of species-specific DNA*** by Dr. Mark Batzer at ReliaGene Technologies Laboratory, New Orleans, LA
- November 2002 ***Y-STR Geneotyping development and validation of Y-PlexTM5 and of Y-PlexTM6 in forensic casework*** by Dr. Jai Shewale at ReliaGene Technologies Laboratory, New Orleans, LA
- November 2002 ***Statistical considerations in forensic and paternity casework*** lecture by Dr. Sudhir Sinha, New Orleans, LA
- September 2002 ***DNA Extraction, Polymerase Chain Reaction (PCR) and DNA Sequencing, techniques used in HIV Genotyping*** by Dr. Jai Shewale at ReliaGene Technologies Laboratory, New Orleans, LA
- August 2001 ***Introduction to PCR Testing*** seminar by Dr. Sudhir Sinha, New Orleans, LA

Investigator Jim Behling
DeQueen Police Department
220 North Second Street
DeQueen, AR 71832

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20271 Goldenrod Lane
Germantown, Maryland 20876
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Fax (301) 428-4877

Re: AR State Crime Lab Case No. 93-04321
AR State Police Case No. 89-413-93
Cellmark Case No. F931380

EXHIBITS:

The following items were received for analysis on the corresponding dates:

December 2, 1993

ID#**Description**

One purple top tube of blood labelled "...Stacy Johnson"

December 17, 1993

K1	Blood swatch labelled "...Carol Heath..."
GGG23	Two hairs mounted on slide labelled "...GGG23..."
ME6	One hair mounted on slide labelled "...ME6..."
GGG13	One hair mounted on slide labelled "...GGG13..."
GGG16	Two hairs mounted on slide labelled "...GGG16..."
GGG14	One hair mounted on slide labelled "...GGG14..."

RESULTS:

DNA isolated from each of the two mounted hairs labelled GGG16, the mounted hair labelled ME6, the mounted hair labelled GGG13, the blood labelled Stacy Johnson, and the blood swatch labelled Carol Heath was amplified using the polymerase chain reaction (PCR) and typed for DQ α using the AmpliType™ HLA DQ α Forensic DNA Amplification and Typing Kit. The DQ α types detected for each sample are listed below:

<u>SAMPLE</u>	<u>DQα TYPE</u>	<u>ESTIMATED FREQUENCY IN POPULATION</u>
hair #1 from GGG16-root	1.2,4	21%
hair #2 from GGG16-root	1.2,4	21%

<u>SAMPLE</u>	<u>DQα TYPE</u>	<u>ESTIMATED FREQUENCY IN POPULATION</u>
hair from ME6- root	1.2,4	21%
hair from ME6- shaft	1.2,4*	21%
hair from GGG13- root	1.2,4	21%
Stacy Johnson	1.2,4	21%
Carol Heath	1.1,1.2	12%

*The hair shaft was used as a control.

A portion of the hair shaft adjacent to the root for the mounted hair labelled GGG13, and each of the two mounted hairs labelled GGG16 was also tested as a control. No DQ α type was obtained from these shafts.

In addition to the 1.2,4 DQ α type detected for the root from each of the two hairs labelled GGG16, the root from the hair labelled GGG13, and the root for the hair labelled ME6, DQ α results were obtained which were too faint for interpretation. These results may be due to technical artifacts.

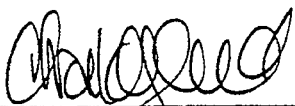
No polymerase chain reaction (PCR) products were obtained when an extract from each of the two mounted hairs labelled GGG23 or the mounted hair labelled GGG14 was amplified using the AmpliType™ HLA DQ α Forensic DNA Amplification and Typing Kit.

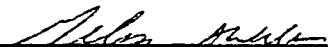
CONCLUSION:

No conclusion can be made concerning the two hairs labelled GGG23 or the hair labelled GGG14.

Carol Heath is excluded as the source of the DNA obtained from each of the two hairs labelled GGG16, the hair labelled ME6, and the hair labelled GGG13.

Stacy Johnson cannot be excluded as the source of the DNA obtained from each of the two hairs labelled GGG16, the hair labelled ME6, or the hair labelled GGG13. The frequency of the 1.2,4 DQ α type is approximately 21 percent.


Charlotte J. Word, Ph.D.
Molecular Geneticist


Melisa A. Weber
Staff Molecular Biologist

Investigator Jim Behling
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Re: Cellmark Case No. F931380
AR State Police No. 89-413-93
AR State Crime Laboratory No. 93-04321

EXHIBITS:

The following items were received for analysis on the corresponding dates:

December 2, 1993

One purple top tube of blood labelled "...Stacy Johnson"

December 17, 1993

<u>ID#</u>	<u>Description</u>
K1	Blood swatch labelled "...Carol Heath..."
Q17	Stained material labelled "...green shirt..."

RESULTS:

DNA was extracted and DNA banding patterns were obtained from the items listed above using the restriction enzyme HinfI and the five single-locus probes MS1 (D1S7), MS31 (D7S21), MS43 (D12S11), g3 (D7S22), and YNH24 (D2S44).


The DNA banding pattern obtained from the green shirt (item Q17) matches the DNA banding pattern obtained from the blood swatch labelled Carol Heath (item K1).

CONCLUSION:

Using the five single-locus probes sequentially, the approximate frequencies in the Caucasian, African American, and Western Hispanic populations of the DNA banding pattern obtained from the green shirt and the blood swatch labelled Carol Heath are as follows:

Population data base


Caucasian
African American
Western Hispanic



Melisa A. Weber
Staff Molecular Biologist

Frequency

1 in 380 million
1 in 6.4 billion
1 in 390 million



Charlotte J. Word, Ph.D.
Molecular Geneticist

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Re: Cellmark Case No. F931380
AR State Police No. 89-413-93
AR State Crime Laboratory No. 93-04321

EXHIBITS:

The following items were received for analysis on the corresponding dates:

December 2, 1993

ID#**Description**

One purple top tube of blood labelled "...Stacy Johnson"

December 17, 1993

Q18	Material labelled "...white t-shirt..."
K1	Blood swatch labelled "...Carol Heath..."
Q4	Two swabs labelled "...breast swabs"

RESULTS:

The DNA obtained from the white t-shirt was degraded and unsuitable for restriction fragment length polymorphism (RFLP) testing.

An insufficient amount of high molecular weight DNA was obtained from the breast swabs to continue restriction fragment length polymorphism (RFLP) testing.

DNA was isolated from the items listed above. DNA from each of the items was amplified using the polymerase chain reaction (PCR) and typed for HLA DQ α , the LDL receptor (LDLR), glycophorin A (GYPA), hemoglobin G gammaglobulin (HBGG), D7S8, and group specific component (GC) using the AmpliType™ HLA DQ α Forensic DNA Amplification and Typing Kit and the AmpliType® PM PCR Amplification and Typing Kit. The types detected for each sample are listed below:

TYPES DETECTED

<u>SAMPLE</u>	<u>DQα</u>	<u>LDLR</u>	<u>GYPA</u>	<u>HBGG</u>	<u>D7S8</u>	<u>GC</u>
white t-shirt	1.1,1.2	A*	A B	B*	B*	A C*
breast swabs	1.1,1.2	A*	A B	B*	B*	A C*
Carol Heath	1.1,1.2	A	A B	B	B	A C
Stacy Johnson	1.2,4	B	A B	A C	A	B

GENOTYPES

<u>SAMPLE</u>	<u>DQα</u>	<u>LDLR</u>	<u>GYPA</u>	<u>HBGG</u>	<u>D7S8</u>	<u>GC</u>
Carol Heath	1.1,1.2	AA	AB	BB	BB	AC
Stacy Johnson	1.2,4	BB	AB	AC	AA	BB

*In addition to the types listed above, results were obtained that were too faint for interpretation. These results may be due to the presence of DNA from more than one individual or technical artifacts.

CONCLUSION:

Stacy Johnson is excluded as a source of the DNA obtained from the breast swabs.

Carol Heath cannot be excluded as a source of the DNA obtained from the breast swabs.

Stacy Johnson is excluded as a source of the DNA obtained from the white t-shirt.

Carol Heath cannot be excluded as a source of the DNA obtained from the white t-shirt. The approximate frequencies in the Caucasian, African American, and Hispanic populations of the types obtained from the material labelled white t-shirt and the blood swatch labelled Carol Heath are as follows:

Population data base

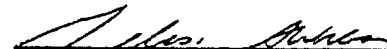
Caucasian
 African American
 Hispanic

Frequency

1 in 12,000
 1 in 470,000
 1 in 28,000



Charlotte J. Word, Ph.D.
 Molecular Geneticist



Melisa A. Weber
 Staff Molecular Biologist

Investigator Jim Behling
DeQueen Police Department
220 North Second Street
DeQueen, AR 71832

Cellmark Diagnostics
20271 Goldenrod Lane
Germantown, Maryland 20876
Telephone (301) 428-4980
800-USA-LABS
Fax (301) 428-4877

Re: AR State Crime Lab Case No. 93-04321
AR State Police Case No. 89-413-93
Cellmark Case No. F931380

EXHIBITS:

The following items were received for analysis on the corresponding dates:

December 2, 1993

ID#**Description**

One purple top tube of blood labelled "...Stacy Johnson"

December 17, 1993

ME6	One hair mounted on slide labelled "...ME6..."
GGG13	One hair mounted on slide labelled "...GGG13..."
GGG16	Two hairs mounted on slide labelled "...GGG16..."

RESULTS:

DNA was isolated from the items listed above. DNA from each of the items was amplified using the polymerase chain reaction (PCR) and typed for the LDL receptor (LDLR), glycephorin A (GYPA), human gammaglobulin (HBGG), D7S8, and group specific component (GC) using the AmpliType® PM PCR Amplification and Typing Kit. These samples were also previously typed for HLA DQα as stated in the Report of Laboratory Examination dated January 19, 1994. The types detected for each sample are listed below:

TYPES DETECTED

<u>SAMPLE</u>	<u>DQα</u>	<u>LDLR</u>	<u>GYPA</u>	<u>HBGG</u>	<u>D7S8</u>	<u>GC</u>
hair #1 from GGG16-root	1.2,4	B	A B	A C	A	B
hair #2 from GGG16-root	1.2,4	B	A B	A C	A	B

<u>SAMPLE</u>	<u>DOα</u>	<u>LDLR</u>	<u>GYPA</u>	<u>HBGG</u>	<u>D7S8</u>	<u>GC</u>
hair from ME6-root	1.2,4	B	A B	A C	A	B
hair from GGG13-root*	1.2,4	B	A B	A C	A	B
Stacy Johnson	1.2,4	B	A B	A C	A	B

<u>GENOTYPES</u>						
<u>SAMPLE</u>	<u>DOα</u>	<u>LDLR</u>	<u>GYPA</u>	<u>HBGG</u>	<u>D7S8</u>	<u>GC</u>
Stacy Johnson	1.2,4	BB	AB	AC	AA	BB

*In addition to the types listed above, results were obtained that were too faint for interpretation. These results may be due to the presence of DNA from more than one individual or technical artifacts.

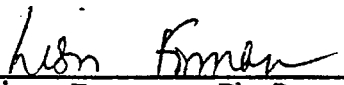
A portion of the hair shaft adjacent to the root for the mounted hair labelled ME6 and the mounted hairs labelled GGG16 was used as a control. Results were obtained from these shafts which were too faint for interpretation.

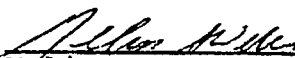
A portion of the hair shaft adjacent to the root for the mounted hair labelled GGG13 was also tested as a control. No results were obtained from this shaft.

CONCLUSION:

Stacy Johnson cannot be excluded as the source of the DNA obtained from each of the two hairs labelled GGG16, the hair labelled ME6, or the hair labelled GGG13. The approximate frequencies in the Caucasian, African American, and Hispanic populations of the types obtained from the blood labelled Stacy Johnson and the two hairs labelled GGG16, the hair labelled ME6, and the hair labelled GGG13 are as follows:

<u>Population data base</u>	<u>Frequency</u>
Caucasian	1 in 330,000
African American	1 in 250
Hispanic	1 in 25,000


 Lisa Forman, Ph.D.
 Population Geneticist


 Melissa A. Weber
 Staff Molecular Biologist



P.O. Box 529
DE QUEEN, AR 71832
(501) 584-3838

Randell J. Wright
DEPUTY PROSECUTING ATTORNEY

SEVIER COUNTY
NINTH JUDICIAL DISTRICT - WEST

May 28, 1997

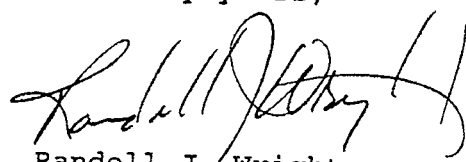
Mr. Mickey Buchanan
Attorney at Law
P.O. Box 669
Ashdown, AR 71822

RE: State v. Stacey Johnson
Sevier County CR-93-54

Dear Mickey:

Please find enclosed copy of letter dated May 21, 1997 from
Cellmark Diagnostics concerning the above captioned case.

Sincerely yours,


Randell J. Wright

RJW/gr
Enc.

SEVIER COUNTY, ARK.
FILED AT 2:00 O'CLOCK P. M.
On the 28 day of May 19 97
Leola Ferguson, Clerk

REPORT OF LABORATORY EXAMINATION

May 21, 1997

Mr. Tom Cooper
Attorney at Law
9th Judicial West
P.O. Box 214
Ashdown, AR 71822

Re: Cellmark Case No. F931380

EXHIBITS:

Items of evidence were received for analysis for the above-referenced case on April 4, 1997. Polymerase chain reaction (PCR) testing was performed on the items listed below:

- Liquid in tube labelled "F931380-01..." (containing extracted DNA from the root of the hair labelled GGG13 previously submitted on December 17, 1993)
- Liquid in tube labelled "F931380-01s..." (containing an extract from the shaft of the hair labelled GGG13 previously submitted on December 17, 1993)
- Liquid in tube labelled "F931380-03..." (containing extracted DNA from the root of the hair labelled ME6 previously submitted on December 17, 1993)
- Liquid in tube labelled "F931380-03s..." (containing an extract from the shaft of the hair labelled ME6 previously submitted on December 17, 1993)
- Liquid in tube labelled "F931380-06..." (containing extracted DNA from the root of a hair labelled GGG16 previously submitted on December 17, 1993)
- Liquid in tube labelled "F931380-06s..." (containing an extract from the shaft of a hair labelled GGG16 previously submitted on December 17, 1993)
- Liquid in tube labelled "F931380-07..." (containing extracted DNA from the root of a hair labelled GGG16 previously submitted on December 17, 1993)

Liquid in tube labelled "F931380-07s..." (containing an extract from the shaft of a hair labelled GGG16 previously submitted on December 17, 1993)

Liquid in a tube labelled "F931380 12" (containing extracted DNA from a cigarette butt previously submitted on May 16, 1994)

Liquid in a tube labelled "F931380 09" (containing extracted DNA from the tube of blood labelled Stacy Johnson previously submitted on December 2, 1993)

RESULTS:

The extracts contained in each of the tubes listed above were amplified using the PCR and typed for the short tandem repeat (STR) loci HUMCSF1PO, HUMTPOX and HUMTH01 and for gender (X,Y) using the GenePrint™ STR Multiplex System and the GenePrint™ Sex Determination System (Amelogenin), respectively¹.

The types detected for each sample are listed below:

ALLELES DETECTED

<u>Sample</u>	<u>CSF1PO</u>	<u>TPOX</u>	<u>TH01</u>	<u>X.Y</u>
hair #1 from GGG16-root	13,14	9,11*	7*	X Y
hair #2 from GGG16-root	13,14	9,11*	7*	X Y
hair from ME6-root	13,14	9,11*	7*	X Y
hair from GGG13-root	13,14*	9,11*	7*	X Y
cigarette butt	13,14	9,11*	7	X Y†
Stacy Johnson	13,14	9,11	7	X Y

* In addition to the types listed above, faint results were obtained. These results are likely due to technical artifacts.

† It may not be possible to determine whether DNA from a female is present when DNA from a male is detected.

¹ This test is performed pursuant to licensing arrangements with Roche Molecular Systems, Inc. and the Perkin Elmer Corporation.

May 21, 1997

Page Three

A portion of the hair shaft adjacent to the root for each of the two hairs labelled GGG16 and the hair labelled GGG13 were also tested as controls. No results were obtained from these shafts.

A portion of the shaft adjacent to the root for the hair labelled ME6 was also tested as a control. Faint results were obtained from this shaft.

The reagent blank control previously processed with the cigarette butt was negative when amplified and typed using the AmpliType[®] PM+DQA1 PCR Amplification and Typing Kit. It was consumed during the PM+DQA1 testing; therefore, this reagent blank control could not be repeated with the STR testing.

CONCLUSIONS:

The DNA from each of the two hairs labelled GGG16, the hair labelled ME6, the hair labelled GGG13 and the cigarette butt contains DNA from a male. Stacy Johnson cannot be excluded as the source of the DNA obtained from each of the two hairs labelled GGG16, the hair labelled ME6, the hair labelled GGG13 or the cigarette butt.

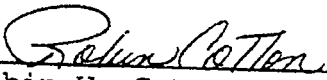
Using the LDLR, GYPA, HBGG, D7S8 and GC types reported for the hairs in the Report of Laboratory Examination dated February 18, 1994, the LDLR, GYPA, HBGG, D7S8 and GC types reported for the cigarette butt in the Report of Laboratory Examination dated June 1, 1994, the DQA1/DQA2 types reported in the Report of Laboratory Examination dated April 10, 1997, and the CSF1PO, TPOX and TH01 types reported above, the approximate frequencies in the Caucasian, African American and Hispanic populations of the types obtained from the two hairs labelled GGG16, the hair labelled ME6, the hair labelled GGG13, the cigarette butt and the tube of blood labelled Stacy Johnson are as follows:

Population data base

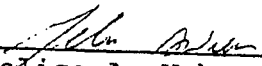
Caucasian
African American
Hispanic

Frequency

1 in 57 billion
1 in 3.8 million
1 in 22 billion



Robin W. Cotton, Ph.D.
Laboratory Director



Melisa A. Weber
Senior Molecular Biologist

cc: Mr. Randell Wright
Attorney at Law
P.O. Box 529
DeQueen, AR 71832

Lt. Jim Behling
DeQueen Police Department
220 North 2nd Street
DeQueen, AR 71832

EXHIBIT B

△-7777

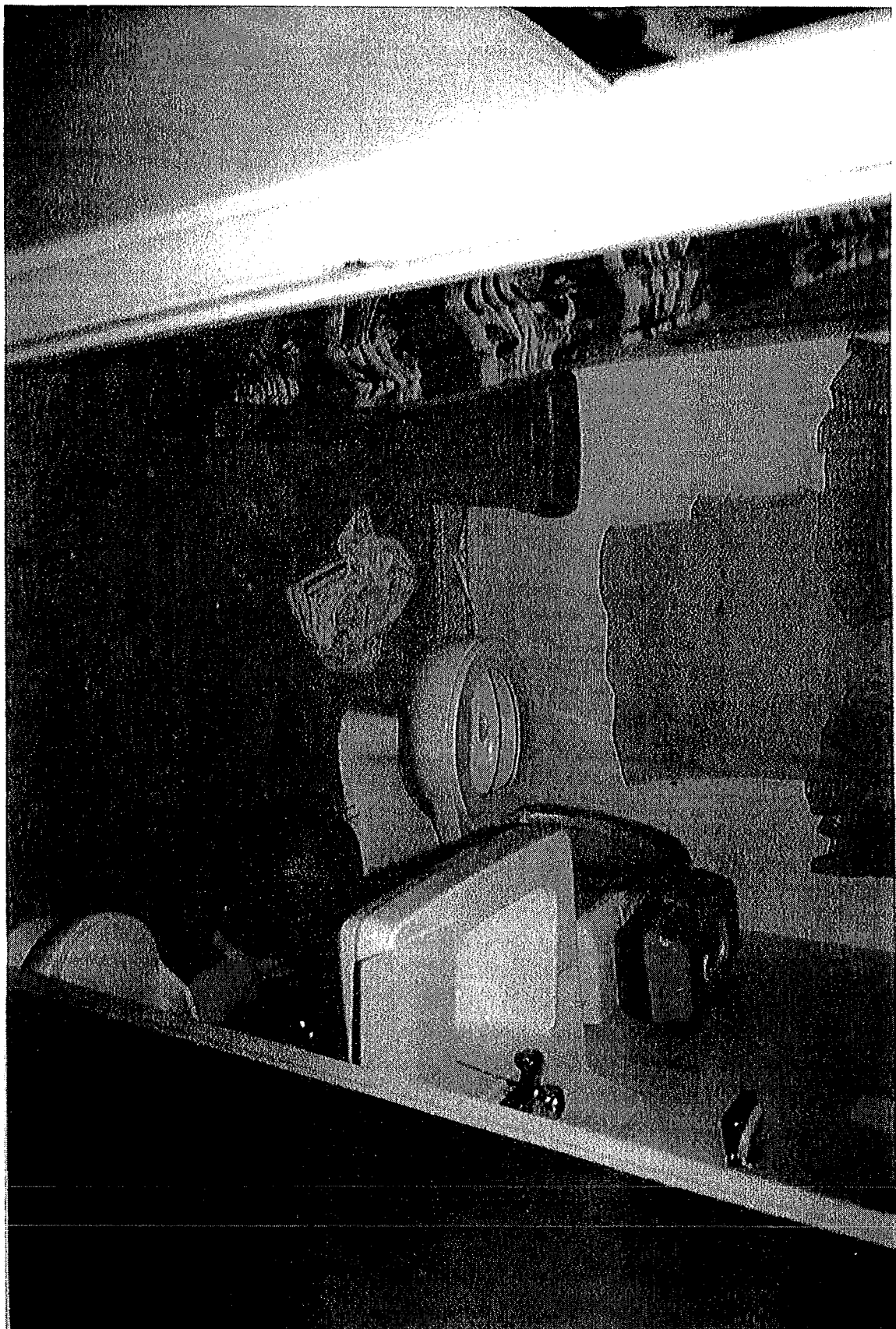


EXHIBIT C

A-ccc

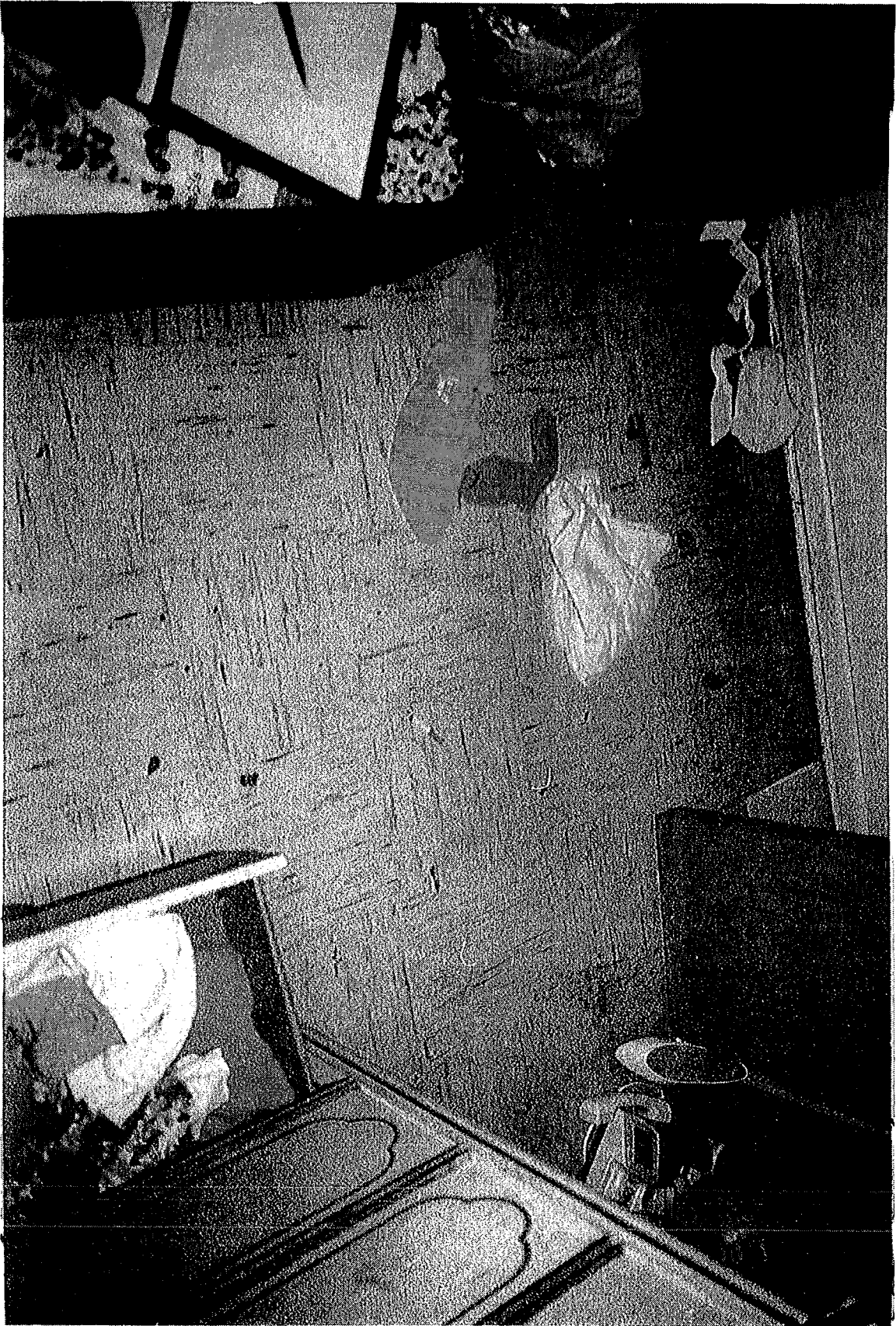


EXHIBIT D

ARKANSAS STATE CRIME LABORATORY



MEDICAL EXAMINER DIVISION

Case No.: ME-232-93

Date of Examination: April 5, 1993

Name: HEATH, Carol Jean

Age: 25 years

Race: White

Sex: Female

Place of Death: 1011 E. Vandervoort, #104, DeQueen, AR

County: Sevier

CONCLUSIONS

CAUSE OF DEATH: Cutting Wound of the Neck, Strangulation, and Blunt Force Head Injuries.

MANNER OF DEATH: Homicide.

LABORATORY RESULTS

TOXICOLOGY:

Ethyl Alcohol: Blood - None detected.

Acid and Neutral Drugs: Blood Guaiifenesin - 29 ug/ml; No other drugs detected in Blood or Urine.

Basic Drugs: No drugs detected in Blood or Urine.

Cannabinoids: Urine - None detected.


SEROLOGY:

Blood Type: O+

Vagina, rectal and oral smears and swabs: No semen.

Breast swabs: Amylase, a component of saliva
"B" and "H" blood group substances


Frank O. Peretti, M.D.*
Associate Medical Examiner


William Q. Sturner, M.D.
Chief Medical Examiner

* Pathologist of Record

07-13-93/tjg

8 Page Report/Page 1

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NAME: HEATH, Carol Jean

DATE: 4-5-93

NO: ME-232-93

EXTERNAL DESCRIPTION: The body was that of a well developed, well nourished, extremely pale white female, partly clad in a markedly blood-soiled T-shirt which was pulled up to the level of the breasts. The body weighed 112 pounds, was 60 1/2 inches in height and appeared compatible with the reported age of 25 years. The body was cold. Rigor was present and fixed to an equal degree in all extremities. Lividity was present, minimal and fixed on the posterior surface of the body except in areas exposed to pressure. The hands and feet of the decedent were bagged. There were multiple traumatic injuries situated on the body and are described further below in detail. Facies had dried blood splatters. The scalp hair was black, wavy to curly, 12-18 inches in length. The irides were brown. The corneae were clear. The sclerae and conjunctivae contained multiple petechial hemorrhages and are described further below in detail. The teeth were natural and in fair condition. A right upper lateral incisor was remotely missing. Injuries of the neck and chest are described further below. Dried blood splatters were present on the front of the chest and abdomen. Striae were present on the front of the abdomen with an 8-inch remote surgical incision. The vagina showed injuries as described below. The upper and lower extremities were unremarkable, except for the injuries described further below. The feet were bagged. Removal of the bags showed the feet to be clean, with no blood-soiling. The toenails were painted with chipped polish. The hands were bagged and were blood-soiled. The fingernails were short, intact, and there was no evidence of breakage or foreign material under the nail beds or in the hands. No tattoos, needle tracks or wrist scars were noted. Injuries are described below. Posterior torso showed no injuries. A 2 X 5 inch yellow tan pressure abrasion was present on the sacral region. The anus was slightly dilated and showed no evidence of injury. Skin tags were present. There was no evidence of medical attention.

NAME: HEATH, Carol Jean

DATE: 4-5-93

NO: ME-232-93

DESCRIPTION OF INJURIES:Head Injuries:

Multiple dried splatters of blood were present on the facies. The anteroposterior surfaces of the right ear were contused and edematous. A 3/4 inch blue-red contusion was present on the right cheek. A 1/4 inch abrasion was present below the right eye. A 1/4 inch abrasion was present on the lateral aspect of the upper bridge of the nose. Blood was present in the nares. The mucosal surfaces of the lips showed multiple superficial cuts measuring from 1/16 to 1/8 inch with multiple petechial hemorrhages involving the gums. Bite marks of the lateral margins of the tongue were present. The frenulum was intact. Situated slightly adjacent to the midline of the mandible was a 3/4 by 3/4 inch ovoid abrasion. Extending from this abrasion was a 3 1/4 by 1/2 inch interrupted abrasion. Multiple confluent red purple ovoid contusions were present on the right cheek. A 3/4 inch abrasion was present on the upper aspect of the left cheek region. A 3/4 inch dried lacerated contusion was present on the left eyebrow, and a 1/2 inch abrasion was situated immediately adjacent to the midline of the forehead on the left side.

Subsequent autopsy of the head showed a 4 inch parietal occipital contusion. The left temporal muscle was contused. There were no fractures noted to the calvarium or base of the skull. A 4 inch contusion involved the left occipital scalp region. There was focal subarachnoid hemorrhage involving the left temporal lobe of the brain.

Evidence of Strangulation:

Multiple petechial hemorrhages were present over the entire facies. Petechial hemorrhages involved the sclerae and conjunctivae. Petechial hemorrhages were also present on the right side of the neck. Situated under the right mandible and extending onto the right cheek was a 4 by 1 inch red contusion. Above the thyroid eminence were three yellow abrasions measuring respectively 1/2 by 1/2 inch, 3/4 by 1/2 inch, and 1/4 by 1/4 inch. The hyoid bone and larynx were intact. Multiple petechial hemorrhages were present on the epiglottic and laryngeal mucosa. Hemorrhage was present at the base of the tongue. Petechial hemorrhages were present on the pleura and epicardium. Bite marks were present on the lateral margins of the tongue.

Cutting Wound of Neck:

Situated on the front of the neck, below the thyroid eminence, was a 4 by 2 inch gaping cutting wound with sharp margins. At the right side of the wound were three trailing extension cuts measuring respectively 1 1/4 inch, 1/2 inch and 2 inches. Situated at the superior margin of the left side of the wound was a 1/2 inch cut. Situated below the wound on the left were two abrasions measuring respectively 3/4 inch.

Subsequent autopsy demonstrated complete transection of all three layers of the strap muscles of both right and left sides of the neck, the trachea, both right and left carotid arteries and jugular veins, thyroid gland, and esophagus. A cut measuring 3/4 inch and up to 1/4 inch in depth, involved the cervical vertebrae at C-4. There was extensive hemorrhage in the soft tissues underlying the cutting wound. An abundant amount of aspirated blood extended from the trachea into the bronchi and then into the pulmonary parenchyma forming the characteristic leopard spot appearance.

Chest Injuries:

Situated on the front of the upper left chest wall below the left clavicle was a 1 inch red contusion and a 3/4 inch contusion with three overlying abrasions measuring from 1/16 to 1/8 inch. A bite mark surrounded the right nipple. A 1/4 by 1/4 inch yellow abrasion was present on the left areola.

Subsequent autopsy of the chest demonstrated hemorrhage in the underlying soft tissues. There were no rib fractures or other injuries noted to the chest.

Vaginal Injuries:

The pubic hair was partially shaved. No foreign material was noted. The right labia minora showed a 1 1/4 inch linear abraded contusion. The vaginal mucosa was intact, was minimally hyperemic. There were no tears noted. There were no injuries noted to the anus.

Lower Extremity Injuries:

Dried blood splatters were present on the legs. Three purple contusions measuring approximately 3/4 inch each were present on the anterior surface of the right leg.

Situated on the left lateral aspect of the left eye was a 5 by 2 inch semi-lunar area of linear dried blood.

NAME: HEATH, Carol Jean

DATE: 4-5-93

NO: ME-232-93

Injuries of Right Arm and Hand:

A 1/16 inch cut was present on the anterior surface of the middle finger.

Injuries of Left Arm and Hand:

A 1/2 by 1/2 inch contusion was present on the anterior surface of the left wrist. A 1/8 inch cut was present on the anterior surface of the left thumb. A 1/16 inch abrasion was present on the anterior surface of the left middle finger. A 1/8 inch cut was present on the left thenar eminence. A 1 inch red contusion is present on the anterior surface of the forearm.

Back Injuries:

A 2 by 2 inch yellow tan pressure abrasion was present on the midline of the sacral spine.

INTERNAL EXAMINATION

BODY CAVITIES: The body was opened by the usual thoraco-abdominal incision and the chest plate was removed. No adhesions or abnormal collections of fluid were present in any of the body cavities. All body organs were present in normal anatomical position and showed diffuse pallor. The subcutaneous fat layer of the abdominal wall was 1 inch thick. There was no internal evidence of penetrating injury to the thoraco-abdominal region.

HEAD: (CENTRAL NERVOUS SYSTEM) Injuries to the head were previously described. Sections through the cerebral hemispheres, brain stem and cerebellum revealed no nontraumatic lesions. The spinal cord was not examined. The brain weighed 1210 grams.

NECK: Injuries to the neck were previously described. No other abnormalities were noted.

CARDIOVASCULAR SYSTEM: The pericardial surfaces were smooth, glistening and unremarkable; the pericardial sac was free of significant fluid or adhesions. The coronary arteries arose normally, followed the usual distribution and were widely patent, without evidence of significant atherosclerosis or thrombosis. The chambers and valves exhibited the usual size-position relationship and were unremarkable. The myocardium was dark red-brown, firm and unremarkable; the atrial and ventricular septa were intact. The aorta and its major branches arose normally, followed the usual course and were widely patent, free of significant atherosclerosis and other abnormality. The vena cava and its major tributaries returned to the heart in the usual distribution and were free of thrombi. The heart weighed 290 grams.

RESPIRATORY SYSTEM: The upper and lower airways contained abundant amount of semi-clotted blood, which extended into the terminal bronchi. The mucosal surfaces were smooth and glistening with scattered petechiae. The pulmonary parenchyma was devoid of fluid. Abundant amounts of aspirated blood was present. The pulmonary arteries were normally developed, patent and without thrombus or embolus. The right lung weighed 295 grams; the left 290 grams.

LIVER AND BILIARY SYSTEM: The hepatic capsule was smooth, glistening and intact, covering a diffusely pale parenchyma. No focal lesions or injuries were noted. The gallbladder contained a few ml of green, mucoid bile. The mucosa was velvety and unremarkable. The extrahepatic biliary tree was patent, without evidence of calculi. The liver weighed 1080 grams.

ALIMENTARY TRACT: Multiple bite marks of the tongue were previously described. The esophagus was lined by gray-white, smooth mucosa. The gastric mucosa was arranged in the usual rugal folds and the lumen contained 6 ounces of tan liquid. The small and large bowel were unremarkable. The pancreas had a normal pink-tan lobulated appearance and the ducts were patent. The appendix was present.

GENITOURINARY SYSTEM: The renal capsules were smooth and thin, semi-transparent and stripped with ease from the underlying smooth, red-brown cortical surface. The cortex was extremely pale. The calyces, pelves and ureters were unremarkable. The urinary bladder contained a few ml of yellow urine. The mucosa was gray-tan and smooth. The uterus, fallopian tubes and ovaries were unremarkable. There was no evidence of pregnancy. Injuries to the vagina were previously described. The right kidney weighed 80 grams; the left 90 grams.

RETICULOENDOTHELIAL SYSTEM: The spleen had a smooth, intact capsule covering red-purple, moderately firm parenchyma; the lymphoid follicles were unremarkable. The regional lymph nodes appeared normal. The spleen weighed 190 grams.

ENDOCRINE SYSTEM: The pituitary, thyroid and adrenal glands were unremarkable.

MUSCULOSKELETAL SYSTEM: Muscle development was normal. No atraumatic bone or joint abnormalities were noted.

NAME: HEATH, Carol Jean

DATE: 4-5-93

NO: ME-232-93

PATHOLOGIC DIAGNOSES:

Cutting wound of neck, strangulation, and blunt force head injuries.

- I. Cutting wound of neck.
 - a. Large gaping cutting wound to the front of neck with tailing cuts.
 - b. Complete transection of the strap muscles, carotid arteries, jugular veins, bilateral, thyroid gland, esophagus, trachea.
 - c. Aspiration of blood, extensive.
- II. Large 3/4 inch cutting wound involving cervical vertebrae at C-4.
- III. Strangulation
 - a. Multiple petechial hemorrhages involving the facies, conjunctivae, sclerae and pleural surfaces.
 - b. Abrasions and contusions involving neck.
- IV. Blunt force head injuries.
 - a. Multiple facial abrasions, contusions and lacerations.
 - b. Multifocal subgaleal contusions with edema and left temporalis muscle hemorrhage.
 - c. Subarachnoid hemorrhage involving the left temporal scalp.
- V. Bite marks of breasts.
- VI. Abrasion and contusion involving right labia minora.
- VII. Multiple contusions, abrasions, and laceration involving the chest, upper and lower extremities.
- VIII. No evidence of pregnancy.
- IX. No evidence of disease.

TOXICOLOGY:

- Ethyl Alcohol: Blood - None detected.
- Acid and Neutral Drugs: Blood Guafenesin - 29 ug/ml; No other drugs detected in Blood or Urine.
- Basic Drugs: No drugs detected in Blood or Urine.
- Cannabinoids: Urine - None detected.

SEROLOGY:

- Blood Type: O+
- Vagina, rectal and oral smears and swabs: No semen.
- Breast swabs: Amylase, a component of saliva.
- "B" and "H" blood group substances

NAME: HEATH, Carol Jean

DATE: 4-5-93

NO: ME-232-93

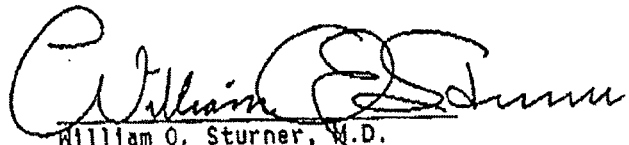
OPINION:

This 25-year-old white female, Carol Jean Heath, died of cutting wound of the neck, strangulation, and blunt force head injuries. The cutting wound of the neck involved major vessels and structures of the neck which resulted in exsanguination and aspiration of blood into the lungs. There were multiple petechial hemorrhages involving the facies, sclerae and conjunctivae and contusions (bruises) and abrasions (scrapes) involving the neck region. In addition, there were multiple abrasions, contusions and lacerations involving the facies and scalp. Subarachnoid hemorrhage of the brain was also present. Multiple defense type wounds were present on the extremities. The vagina showed an abrasion/contusion. Spermatozoa were not detected in the oral, anal and vaginal swabs. A bite mark was present on the right breast.

Investigation and circumstances of death revealed that the decedent was found in the living room area of her house next to the couch. The decedent was found by a person picking her up for work. A towel was found beside the victim's head, along with a pair of panties. No alcohol was detected in the body fluids. Gualfenesin, an expectorant, was detected in the blood.

MANNER OF DEATH: Homicide.


Frank J. Peletti, M.D.*
Associate Medical Examiner


William Q. Sturmer, M.D.
Chief Medical Examiner

* Pathologist of Record

EXHIBIT E

Forensic Human Hair Examination Guidelines

Scientific Working Group on Materials Analysis (SWGMA^T)

April 2005

1. Introduction

Hair examinations and comparisons, as generally conducted by forensic scientists, often provide important investigative and associative information. Human and animal hairs have been used in forensic investigations for over a century. Reports abound in the literature concerning the use of human and animal hairs encountered in forensic casework. These guidelines represent a recommended procedure for the forensic examination, identification, and comparison of human hair.

Hairs are readily available for transfer, easily transferred, and resilient. Hair examination may be used for associative and investigative purposes and to provide information for crime scene reconstruction.

The ability to perform a forensic microscopical hair comparison is dependent on a number of factors. These factors include the following:

- Whether an appropriate known hair sample is representative.
- The range of features exhibited by the known hairs.
- The condition of the questioned hair.
- The training and experience of the hair examiner.
- The usage of the appropriate equipment and methodology.

DNA analysis can be performed on hair but should be performed only after an initial microscopical assessment. A full and detailed microscopical comparison with possible known sources of hair should be done prior to DNA analysis. Microscopical comparisons cannot always be done after DNA analysis, which is destructive to at least a portion of the hair. DNA analysis should always be considered in those cases when the source of a hair is crucial to an investigation.

2. Referenced Documents

2.1. Scientific Working Group on Materials Analysis. Trace evidence quality assurance guidelines, *Forensic Science Communications* [Online]. (January 2000). Available: www.fbi.gov/hq/lab/fsc/backissu/jan2000/swgmat.htm.

2.2. Scientific Working Group on Materials Analysis. Trace evidence recovery guidelines, *Forensic Science Communications* [Online]. (October 1999). Available: www.fbi.gov/hq/lab/fsc/backissu/oct1999/trace.htm.

3. Terminology

The terms in this section are defined by how they are used in forensic hair examinations.

12. Other Analytical Techniques

Other analyses may be performed on hairs that have been chemically altered or have trace materials on the surface, such as dyed hairs or hair care products. These techniques are beyond the scope of these guidelines because they are not used widely.

13. Documentation

The examiner's notes should accurately reflect macroscopical and microscopical observations and results that lead to the examiner's conclusions. They should identify the questioned hairs, including the associated and eliminated questioned hair specimens. Notes should be taken contemporaneously with the examination.

Photographs can be used to assist in documenting the following:

- Presence of significant hair characteristics.
- Presence and condition of a root that will be used for nuclear DNA analysis.
- Presence of other significant trace evidence on a hair before it is removed.

Photography is strongly recommended for hairs that will be submitted for DNA analysis because the hairs will be altered or consumed in analysis.

14. Conclusions

The following conclusions may be reached as a result of a microscopical hair examination. Many factors may strengthen or weaken a conclusion. The magnitude and significance of any factor can determine what conclusion is formed. The examiner should consider what meaning could be attached to an exclusion or nonexclusion based on the known case circumstances.

Probabilities and population statistics should not be used to interpret microscopical hair comparisons. Databases from which population statistics can be generated, as in DNA analysis, are not practical or realistic.

14.1. Identification of a Hair, Racial Group, Somatic Origin, and Other Features

An item can be identified as a human hair. It may also be classified by its racial and somatic characteristics. Other features may be identified that could assist in an investigation. (See Section 10.)

14.2. Dissimilarity

If significant differences exist in the macroscopic and/or microscopic characteristics exhibited by the questioned and known hairs, the questioned hairs cannot be associated with the source of the known hairs.

The following circumstances may add weight to a conclusion of dissimilarity:

- Known and questioned hairs exhibit gross differences (e.g., racial, color, diameter, chemical treatment).
- Adequate known samples are available.
- Known hair has little intrasample variation.

The following circumstances may weaken a conclusion of dissimilarity:

- Known and questioned hairs exhibit some similarities and no gross differences.
- Inadequate known samples.
- Inadequate questioned hairs.
- Known hair has large intrasample variation.

14.3. Similarity

In order to conclude that two hair samples could share a common origin, it must be determined that there are no significant macroscopic or microscopical differences. It is important to determine what differences are significant because no two hairs are exactly the same in every detail (identical). It must be determined that the characteristics exhibited by the questioned sample fit in the range of characteristics present in the other sample (typically the known sample). The ideal situation is to find one or more hairs in the known sample that correspond in all respects (no significant differences) with the questioned hair.

Microscopical examination of hair does not lead to unique identification of the donor. Therefore, when a hair examiner gives an opinion that a questioned hair is similar to a known hair sample, an attempt must be made to interpret the significance and weight that should be attached to this opinion.

The presence of some types of hair characteristics may add weight to a conclusion of similarity. Examples include the following:

- Presence of similar dyes or hair cosmetics.
- Presence of unusual hair characteristics, such as natural red hair color or hair abnormalities.
- Presence of similar hair damage.

Other hair characteristics may weaken a conclusion of similarity. Some examples include the following:

- Hairs are featureless and lack pigmentation characteristics.
- Hairs are too dark to see many of the microscopical hair characteristics.
- Hairs are very short in length, limiting the number of characteristics that can be used for comparison.
- Known hair sample has a large intrasample variation.

14.4. Inconclusive

The results of a microscopical hair comparison can be inconclusive. Situations when an inconclusive result may be reached include but are not limited to the following:

- An inadequate known hair sample.
- Questioned and known hair samples that exhibit similarities and unexplained dissimilarities.
- Hairs that do not exhibit sufficient distinguishing microscopical characteristics (e.g., broken, fragmented, too short, colorless, opaque).
- A significant lapse of time exists between the collection of the known sample and when the questioned hair was shed.

14.5 Reference

Gaudette, B. D. Evidential value of hair examination. In: *Forensic Examination of Hair*. Taylor and Francis, London, 1999, pp. 243-257.

15. Report Writing, Review, and Testimony

15.1. Report Writing

Refer to the Scientific Working Group on Materials Analysis *Trace Evidence Quality Assurance Guidelines*, Analytical Procedures Section, available at www.fbi.gov/hq/lab/fsc/backissu/jan2000/swgmat.htm. In addition, the hair examiner's report may include the following:

- An attempt to express the significance of the finding in relation to case circumstances.
- Qualifying statements that further describe the strengths and limitations of the evidence.
- Requests for additional known samples.
- A recommendation that DNA analysis be performed.

15.2. Technical and Administrative Review

Refer to the Scientific Working Group on Materials Analysis *Trace Evidence Quality Assurance Guidelines*, Analytical Procedures Section, available at www.fbi.gov/hq/lab/fsc/backissu/jan2000/swgmat.htm.

15.3. Court Testimony

15.3.1. General acceptance

Microscopical comparisons of human hairs have been used and generally accepted for over a century. The techniques are not novel, and the literature dealing with human hair characteristics and the reliability of the forensic hair comparison is extensive. Hair comparisons depend on the judgment and experience of the hair examiner. This comes from scientific education, training, professional associations, practice, and experience. Professional standards for the practice of forensic hair comparisons have been proffered through international cooperation and symposia.

The forensic science community has generally accepted DNA analysis of hair and other biological materials.

15.3.2. Content

Good court testimony usually requires educating the prosecutor and defense during pretrial conference(s) so that the record is clear regarding the use, reliability, and evidential value of forensic hair examinations. Topics to be discussed and prepared for trial testimony should include the following:

- Qualifying the expert witness.
- Chain of custody.
- Whether demonstrative evidence or visual aids are needed.
- What can be determined from a hair examination.
- Why hair examinations and comparisons are done.
- How hair examinations and comparisons are done.

EXHIBIT F

ALBUQUERQUE POLICE DEPARTMENT
Albuquerque, New Mexico.

INTERVIEW: ADVISE OF RIGHTS
YOUR CONSTITUTIONAL RIGHTS

Suspect's Name: STACY JOHNSON

Crime: HOMICIDE

Victims: _____

Date of Offense: _____

Before we ask you any questions, you must understand your Constitutional Rights.

1. I am a member of the Albuquerque Police Department and our Department is investigating (crime) HOMICIDE which occurred at _____ day of _____ on the _____ A. M. - P. M. at approximately _____

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer present with you while we ask you questions.

If you cannot afford a lawyer, one will be appointed at no cost to you before we ask you any questions, if that is your desire.

If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering my questions at any time. You also have the right to stop answering my questions at any time until you talk to a lawyer.

I have been advised of and understand my Constitutional Rights.

I have read and understand my Constitutional Rights.

WITNESSED: [Signature]

SIGNED: [Signature]

WAIVER OF RIGHTS

I have read this statement of my rights and understand what my Constitutional Rights are. (I have been advised of and understand my Constitutional Rights in this matter).

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

TIME: 6:25

DATE: 4-14-97

SIGNED: [Signature]

Person Being Interviewed

I have read and explained the above statement to suspect

Suspect refuses to sign any portion of this advisement form.

INTERVIEW
DETECTIVE RICK FOLEY
STACY EUGENE JOHNSON

(TAPE ONE OF TWO)

FOLEY: This is Detective Foley with the Albuquerque with the Albuquerque Police Department. Today's date is April 14, 1993. The time is approximately 2122 hours. Presently at the Albuquerque Police Department. Also present with me is Stacy Johnson. Stacy, you understand that we transported you from the Detention Center. You had requested to talk to me, is that correct?

JOHNSON: Yes.

FOLEY: Okay. And before we go any further, you understand that right now you're being charged with a, I guess a warrant for your arrest for murder out of Arkansas, do you understand that?

JOHNSON: Yes, I do know.

FOLEY: Okay. Before we go any further, let me just go ahead and advise you of your rights. You have the right to remain silent. Matter of fact, why don't you uh, as I'm reading it off, if you could just follow with me as I'm reading it so you know what I'm reading. It says you have the right to remain silent. Anything you saw can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer present with you while we ask you questions. If you cannot afford a lawyer, one will be appointed at no cost to you before we ask you any questions, if that is your desire. If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering my questions at any time. You will also have the right to stop answering my questions at any time until you talk to a lawyer. It says I have been advised of and understand my Constitutional Rights. I have read and understand my Constitutional Rights. Do you understand your Constitutional Rights?

JOHNSON: Yes.

FOLEY: Then you just sign right there. Signing, it's just saying that you do, in fact, understand what you just read (INAUDIBLE). Okay. I'll read you the second part. It says I have read this statement of my

rights and understand what my Constitutional Rights are. I have been advised of and understand my Constitutional Rights in this matter. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me. Do you understand these two paragraphs?

JOHNSON: Yes.

FOLEY: Okay. Are you willing to talk to us at this time?

JOHNSON: I have nothing to hide.

FOLEY: Okay. I need you to sign right there. Let's, let's start off with uh, Arkansas. What can you tell me about Arkansas?

JOHNSON: About Arkansas? I went to my father's funeral.

FOLEY: When was this?

JOHNSON: It was in January. It was in January. I had gotten a call from...

FOLEY: January of what year?

JOHNSON: It was this...

FOLEY: This year?

JOHNSON: This year, January.

FOLEY: And your father's name?

JOHNSON: Was Burrell Eugene Johnson.

FOLEY: Where were you before you went to the funeral?

JOHNSON: I was here in Albuquerque.

FOLEY: Okay. And where was the funeral at?

JOHNSON: It was in Arkansas.

FOLEY: Where in Arkansas?

JOHNSON: De Queen, Arkansas.

FOLEY: I'm sorry, where?

JOHNSON: De Queen, Arkansas.

FOLEY: How do you spell that?

JOHNSON: D-E Q-U-E-E-N.

FOLEY: Okay. And, okay. You went down to your father's funeral.

JOHNSON: Yes.

FOLEY: Okay.

JOHNSON: Uh, before the funeral and everything, I was at the apartment at Annette's, well, before all of this was started, and I had got a call from Maui.

FOLEY: Okay. Go ahead.

JOHNSON: Who had told me he was gonna give me a demonstration. And at the time, I didn't, I didn't, you know, I didn't, you know, I didn't feel anything towards, you know, what he had meant by that, or anything. Nothing at all towards that. And later after that, my mother, I'd say that it was close to maybe a week or so, my mother called Annette, and she told Annette that my father was dead, that he had had a heart attack.

FOLEY: Okay.

JOHNSON: From there, where he told me that, you know, I didn't, I really didn't know how to respond to it. Do you know what I mean? I didn't, I didn't know how to react to, you know, them telling me that.

FOLEY: Okay.

JOHNSON: So I went to Arkansas, which I did, I went down to Arkansas, you know, to try to find out what happened with everything. When I got to Arkansas, I found out that my father had died of a heart attack, but the only thing about his dying of a heart attack, everyone had saw my father. They had, people said, you know, my father was fine, he was in good health, everything. There's officers that were there that told me that, you know, they had spoke to my father, you know the day before all of this happened and everything the day before all of this had occurred, and he was okay. He was fine. And then apparently he died from a heart attack in his sleep.

FOLEY: Okay.

JOHNSON: You know, there was no, nothing done about it. Do

you know what I mean? There was no, what do you call it? Investigation of it, or whatever. He just apparently died in his sleep.

FOLEY: Okay.

JOHNSON: Do you understand?

FOLEY: Uh-huh.

JOHNSON: I know that this dude killed my father. I know.

FOLEY: Okay. Are you talking about Maui?

JOHNSON: Yes.

FOLEY: Okay.

JOHNSON: I know he did. There was no if, ands, or but about it. I know for a fact that he did it. I know.

FOLEY: Okay.

JOHNSON: After that, after the funeral, I was there. And me and my cousin, we were together.

FOLEY: What's your cousin's name?

JOHNSON: Ralph Collins.

FOLEY: Ralph Collins?

JOHNSON: Ralph Collins.

FOLEY: Okay.

JOHNSON: I had got a call while I was there in Arkansas, I had got a call. And the person that I had got a call from, he had, the person had told me, he said, the exact thing that he said on the call is, "Do you want another demonstration?" And that's what made me know that it was Maui that had did this to my father.

FOLEY: Okay. Who was this person?

JOHNSON: Ralph Collins.

FOLEY: No, who was the one that told you?

JOHNSON: Maui. The person that told me, I don't know exactly who it was that told me i, but I have, you know, I know what he looks like, and I have heard his voice.

FOLEY: Okay.

JOHNSON: I know this.

FOLEY: Okay. He asked you, "Do you want another demonstration?"

JOHNSON: That's what he asked me.

FOLEY: Okay.

JOHNSON: Did I want another demonstration.

FOLEY: And then what?

JOHNSON: And then I asked him, I asked him on the phone, I said, "Are you the cause of my father being dead?," and he laughed and hung up the phone.

FOLEY: Okay.

JOHNSON: While I was in Arkansas, I was pulled over for possession of a firearm, which me and my cousin, Ralph, Ralph Collins, we had went to Broken Bow, Oklahoma. It was me, Ralph...

FOLEY: You went to where?

JOHNSON: To Broken Bow, Oklahoma.

FOLEY: Broken Bow?

JOHNSON: Oklahoma, to see my sister.

FOLEY: What's your sister's name?

JOHNSON: Lashon Johnson.

FOLEY: Was this before you were pulled over?

JOHNSON: Um, yes. This is what happened.

FOLEY: Was this after the funeral?

JOHNSON: Uh, well yes, this was after the funeral. Everything that had happened that caused me to get arrested and everything.

FOLEY: Okay. After the funeral, you and Ralph went to Broken Bow, Oklahoma.

JOHNSON: This, this was after my father had been, after my father had been buried.

FOLEY: Okay.

JOHNSON: After my father had been buried and everything like that, I stayed in Arkansas.

FOLEY: Okay.

JOHNSON: Which I went I hadn't stayed in Arkansas.

FOLEY: Okay.

JOHNSON: But the way that I had got arrested and everything while I was there, okay, me, Ralph, and it was two more guys that went to Broken Bow, they went over there.

FOLEY: Who, who were the other two guys?

JOHNSON: Uh, one of them's name was Zoma.

FOLEY: Zuma?

JOHNSON: Zoma. And the other one, I don't even, I don't even remember his name. But anyway, we went to Broken Bow, Oklahoma, to see my sister.

FOLEY: Okay.

JOHNSON: We went up there to Broken Bow, we visited with my sister for awhile. After that, we decided to go to Idabel, Oklahoma, so Ralph could see his girlfriend.

FOLEY: You decided to go to where?

JOHNSON: Idabel, Oklahoma.

FOLEY: Idabel?

JOHNSON: Idabel. It's not far from Broken Bow.

FOLEY: To see who?

JOHNSON: We went up there to see Ralph's girlfriend.

FOLEY: Okay.

JOHNSON: And he was supposed to introduce me to some people (INAUDIBLE) stuff up there.

FOLEY: Okay.

JOHNSON: We went to Idabel. While we were in Idabel, we met some women and (INAUDIBLE) over there in Idabel, Oklahoma.

FOLEY: Okay.

JOHNSON: We stayed over there 'til, it was, I know it was close to at least 4:00 in the morning.

FOLEY: Okay.

JOHNSON: About, we left about 4:00, 4:15, coming back to De Queen, Arkansas.

FOLEY: Okay.

JOHNSON: When we got to De Queen, Arkansas, I dropped off the two guys and another guy at Zoma's house.

FOLEY: Okay.

JOHNSON: Ralph had told me that he had to go to work the next morning. So I took him home and I had dropped him off. And then I went home to the apartment where I was staying with my step-mother, and I went to sleep.

FOLEY: Okay.

JOHNSON: Alright. The next day when I woke up, I might as well say this evening when I had woke up.

FOLEY: Okay.

JOHNSON: When I woke up, I went out to the car. When I went out to the car, I got in the car, I went to the store. I went to the store to get cigarettes and gas, when I had went to the store. I realized when I got to the store, I didn't bring my wallet with me, but I had enough money to get cigarettes with me, which was money that was in the ashtray of the car. When I, do you want me to wait, or...?

FOLEY: No, go ahead.

JOHNSON: Okay. When I was getting money out of the ashtray of the car, I noticed a firearm that was in my car...

FOLEY: Okay.

JOHNSON: ...that was left inside of the car. It was on the floor of the car. I picked the firearm up and I noticed the firearm, it belonged to Ralph. That's who the firearm belonged to.

FOLEY: How do you know this?

JOHNSON: Because Ralph was the, I had seen Ralph earlier, like I'd say maybe to a week earlier with the same firearm

that was in my car.

FOLEY: Okay.

JOHNSON: I knew it was his firearm. So instead of going into the store, I decided to go find Ralph and give him his firearm. So I picked the firearm up, I unloaded the firearm, I put the shells in my pocket, and I put the firearm in the seat of the car, on the passenger seat.

FOLEY: Okay.

JOHNSON: I knew Ralph Collins. He stayed across from my Uncle JoJo in Horacio, Arkansas, which is like seventeen or eighteen miles from De Queen.

FOLEY: Okay.

JOHNSON: So I drove to Horacio, looking for Ralph. I went across to the house where he was staying at, and he was not there. After that, I went across to my Uncle JoJo's house, looking for him. I talked to my Uncle JoJo, and then Ralph was not there, Ralph was at work. That's what they told me. Well, he told me that Ralph was working in De Queen, and that he lived in De Queen.

FOLEY: Okay.

JOHNSON: At Diane Brown's house. So from there, I stayed out there for awhile. I visited with them for, it was at least two hours, two or three hours at the most.

FOLEY: Okay.

JOHNSON: From there, I drove back to De Queen, Arkansas, and I went to Diane's house. When I went to Diane's house, I knocked on the door and wasn't anyone there, no one was there. From there I went to Zoma's, looking for Ralph. Well, when I had got out at Ralph's house, I had took the gun out. I had took the gun out of the car.

FOLEY: Okay.

JOHNSON: And I had put the gun on me and I had it in my possession...

FOLEY: Okay.

JOHNSON: ...at the time. When I went up there to look for him, like I said, no one was there. I had put the gun in my back pocket. It was unloaded and

everything. I had put it in my back pocket. I got back into the car. I went to Zoma's, looking for Ralph. He said Ralph was not there. No one told me that Ralph worked.

FOLEY: Okay.

JOHNSON: Alright. From there, I noticed I was running out of gas. From there, I went back to the apartment, I got my wallet. And then once I had my wallet, I went to the store. While I was at the store, I purchased gas and cigarettes.

FOLEY: Okay.

JOHNSON: After I had got my cigarettes, there was two people that I noticed at the store, Billy Willis and this other guy that was there, and there was another guy that had been shooting pool at a place called In Your Ear in Arkansas, that I had noticed before. They asked me, when I had got gas and everything else and I was coming out, they asked me what I was gonna do, just like that. I said, "Nothing much." And so I pulled over there where they were, I got out of the car, and I was standing there talking to them. At which time, while we were standing there it had started to rain. When it started to rain, I put my jacket on, which I had my jacket in the back of the car. We were standing out there talking. And the guy had asked me, he said, he said, "You wanna go shoot some pool?" I said, you know, "Sure." I don't mind going to shoot pool or anything like that. But I told him, I said, "Afterwards, I need to find my cousin." He said, "Okay, so let's go shoot some pool." So we left from the store, which was, it was a Circle K, no, it was a 7-11 store that's on the corner at the four, it's a four-way section.

FOLEY: Okay.

JOHNSON: We left from there and we drove over to the In Your Ear, it's a pool hall. While we were at In Your Ear playing, I had totally forgot about the gun in my pocket.

FOLEY: Okay.

JOHNSON: In my back pocket. It was a little .38, just a small .38 that you can hold in your hand.

FOLEY: Okay.

JOHNSON: Okay. We were in there shooting pool at In Your Ear. When we were in there shooting pool, the guy that was

waiting to shoot next, because there were like people standing around, he told me, he said, "Stacy," he said, "you have a gun in your pocket." And that's when I snapped I had the gun in my pocket. So I took the gun out of my back pants pocket and I put it in my jacket pocket, in my right hand jacket pocket.

FOLEY: Okay.

JOHNSON: I kept shooting pool. And about fifteen or twenty minutes later, I was, we were shooting the last game because I had totally got, I said, "After this game, I gotta go." He said, "Okay." We were shooting pool, at which time two officers came in and they asked, they told me they wanted to speak to me. And so we went outdoors. Officer Bailey and another officer, after we had went outdoors, they asked me do I have a firearm on me. They said that they had heard I had a firearm. I told them, I said, "Yes." I said, "I have a firearm on me." At which time, I took the firearm out of my right hand jacket pocket and I handed it to them. And I told him that the shells were in the left hand pocket. And at that time, I was arrested.

FOLEY: Okay.

JOHNSON: And I was locked up for possession of a firearm, felony possession of a firearm.

FOLEY: Okay.

JOHNSON: That's what I was locked up for. During the time I was in jail, I had tried to bond out several times, but my bond was too high, so I could not bond out. When they lowered my bond, they lowered my bond to, what was it? Twenty five, \$2,500 dollars, which was \$250 to get out.

FOLEY: Okay.

JOHNSON: I had called several times up here to find out, you know, what was happening and everything else with me. During that time, I had received a letter while I was in jail. The letter that I received, it was wrote from a chick.

FOLEY: It was what?

JOHNSON: It was wrote from a lady, a girl.

FOLEY: How do you know that?

JOHNSON: I know her name was Layla. She told me in the letter

that I, she told me that once I get out, I was supposed to be set up for a hit that was in Arkansas, just like that. She told me that Maui, she had overheard Maui discussing it. Do you know what I mean? That I was supposed to be set up for a hit.

FOLEY: Okay.

JOHNSON: I didn't know what kind of hit it was. I didn't know anything about it. You know, at the time, I thought it was bullshit, to be honest with you, you know. I know that he had done this to my father and it, it bothers, it bothered me. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: Because I know she, from what she told me, that he wanted to get back at me. He wanted his shit back.

FOLEY: Okay.

JOHNSON: That's what she had told me, that he wanted his shit back.

FOLEY: Okay.

JOHNSON: After I had bonded out, that same night that I had bonded out, I drove, after I had got bonded out that day, the bondsman drove me to the apartment, because we were looking for my step-mother, she wasn't there. And then he drove me to Horacio, Arkansas, and he was not there. My mom, my uncles, no one was there, so he drove me back up to the apartment. We got back to the apartment in De Queen, my step-mother was there...

FOLEY: Okay.

JOHNSON: ...at the time. When we got there, my step-mom was there, and it was a car that I, I had recognized. I had saw this car several times. You know, there was no if, ands, or buts. I had saw the car several times. There was no license plate on the car...

FOLEY: Okay.

JOHNSON: ...at all. The car is a blue Fiero. It's a blue Fiero with chrome lines on it. The windows are tinted black. The car belongs to one of Maui's friends, that he drives it. I saw the car here in Albuquerque. I saw it in different places. When I stayed in Carlsbad, New Mexico, I saw it there.

FOLEY: Okay.

JOHNSON: And I know that Maui, he's the type of person that, you know, he's the type of person that no matter where you are, he'll find you.

FOLEY: Okay.

JOHNSON: He will find you. All I know is the night I had got out, that I had got out of all of this, a lady by the name of Laura Carbonatto, who is here in Albuquerque, New Mexico.

FOLEY: Laura who?

JOHNSON: Carbonatto.

FOLEY: Okay.

JOHNSON: She bonded me out. When she bonded me out from the jail, when I had got bonded out, after I had, you know, looked, searched for my mom and everything like that, once I found my step-mother and everything, me, and my step-mother, we went to the hospital. No, at first we went to, yes, went to the hospital, looking for my Aunt Debra, because I was trying to get my car back. My Aunt Debra wasn't working in Horacio that day, she had went to Texarkana to work, so we...

FOLEY: Go ahead.

JOHNSON: So we had drove from there to Horacio, Arkansas. When we were going to Arkansas, a blue car was, it was still following, it followed us to De Queen Hospital, and then it followed us to Arkansas.

FOLEY: Okay.

JOHNSON: The whole time. We went to Arkansas. There was no on there but Andre, my cousin.

FOLEY: Okay.

JOHNSON: Andre, when we went to, we had went there looking for Uncle JoJo, my uncle.

FOLEY: Okay.

JOHNSON: After that, me and my step-mother, we drove back to De Queen, Arkansas. Once we got back to De Queen, Arkansas, the same car that had followed us parked across the street. Because there's, my mom, she lives on like a corner apartment from where my father was renting.

FOLEY: Uh-huh.

JOHNSON: He was running renting out an apartment complex. The same blue car parked on the opposite side of the street.

FOLEY: Okay.

JOHNSON: I could see the car. I couldn't see who was in the car, but I knew who the car belonged to.

FOLEY: Okay.

JOHNSON: Okay. After that, I had called Laura. I called Laura Carbonatto and I asked her would she send me some money so I could leave.

FOLEY: Laura's from Albuquerque?

JOHNSON: She's from Albuquerque. I had asked Laura to send me money so I could leave.

FOLEY: Okay.

JOHNSON: Because my court date was on the 16th. My intentions were to go, I was gonna come to Albuquerque.

FOLEY: The 16th of January?

JOHNSON: Uh-huh.

FOLEY: Okay.

JOHNSON: My intentions were I was gonna come to Albuquerque. And then before the 16th, I was gonna go back to my court date. Me and Laura both were gonna come back. We were gonna drive to my court date.

FOLEY: Okay.

JOHNSON: Once she told me, she sent me the money and everything like that. After she had sent me the money, I went to Levan's, house, Levan Smith. And at this time, it was, it wasn't really dark, it was like evening time.

FOLEY: Okay.

JOHNSON: I went to Levan Smith and I was talking to him. I stayed there talking to him awhile and stuff. And after that, I had asked him that day what he was gonna do and he told me that he was gonna cut wood that day, the same day. And so I told him, from there I said I was going to my Uncle JoJo's house,

and then I was going back up to De Queen, just like that. Alright. He told me, "Okay." I told him, "I'll see you later." So I left from there. I went by my Uncle JoJo's house. Andre was gone, so it wasn't, there was no one there. I went up to my Aunt Irene's house, which is right by my Uncle JoJo's. (INAUDIBLE) just a little bit up ways from there. When I got out at my Aunt Irene's house, when I got out of the car, the blue car that was following me passed by.

FOLEY: Okay.

JOHNSON: When the blue car passed by, the dude that I had saw with Maui that's always with him.

FOLEY: Uh-huh.

JOHNSON: He has dreads and everything. He was in the car. The window was just partially down, enough where I could see him.

FOLEY: Okay.

JOHNSON: At the time I entered the house, I talked to my Aunt Irene and everything like that. I saw the car pass. It passed the house and it looked like it was gone, I thought it was gone. After that, I knew I was gonna leave. I knew that I wasn't gonna stay in Arkansas. From there, I went back to De Queen to get my stuff together, all of my clothes, everything. I got all of my clothes together. I had loaded my clothes up in the car. From there, I drove back to, I didn't see the blue car no, from Aunt Irene's house back to De Queen, Arkansas, to the mo, well, not to the motel, but to the, it's shaped sort of like a little motel thing, but it's an apartment complex. From there all the way back to the apartment complex, I didn't see the blue car at all.

FOLEY: Okay.

JOHNSON: I didn't know where it was, and I was looking for it. The first thing I done when I got there, I loaded all of my clothes together.

FOLEY: You say you were looking for him and that you were trying to keep an eye out to see if you...

JOHNSON: I was trying to keep an eye out to see where the person was.

FOLEY: Okay.

JOHNSON: Where he was at.

FOLEY: Alright.

JOHNSON: Because I wanted to know where he was at.

FOLEY: Okay.

JOHNSON: From there, I picked up all of my clothes. Once I had all of my clothes, I talked to my step-mother for awhile and I left. I went back to Horacio. I went to Horacio. There's a field. Levan, he owns like horses and stuff. I had went out there to talk to him. When I went out there to talk to him, on the way down I could see the car none. I didn't see it following me, because I was looking in the rearview mirror. I didn't see it in front of me on any side roads or anything.

FOLEY: Okay.

JOHNSON: After I went out there talking to him, that day, like I say, he was supposed to cut wood, but the saw wasn't working, his saw wasn't. So I got out, I parked behind it. I got out of the car and I went over and I talked to him. I sat in his truck and we sat there and talked and everything. We discussed all of this stuff, you know, me with the gun and everything like that. What I was gonna do with my life and everything like that. We discussed Laura Carbonatto, 'cause me and Laura, we had been going out. We had, this was during the time that me and Annette had broke up. Me and Laura had been going out. And so we discussed it and everything like that. And I had asked him could I use his phone. So, 'cause when I had called Laura to tell you to send me money, she wanted to know how much money that I would need. So I had went back and I had used Levan Smith's telephone. When we were going by, I had went out first. I pulled off the field first and went to turn. When I went to turn, the blue car was sitting back off in, alright, from his field you come down, and then you go downhill and come up. There's another street that goes up this way, and then there's like a dirt road. When I come out, the blue car was sitting, it was sitting right there where I could see it.

FOLEY: Okay.

JOHNSON: I could, you know, immediately see where it was at. And the person that was sitting there, I don't know whether he was watching or what he was doing, but the window was still part way down. From there, I drove

straight to Levan's house, I used his phone, I called Laura. I told Laura to send me money to Arkansas so I could leave. And she wanted to know how much money I would need. And while I was talking to Levan Smith, I asked him how much would I need, and it was sort of like arguing between, \$100, \$80, or \$60. Do you know what I mean? Did not know what I took for me to leave. She asked me did I have identification or anything like that on me. And I told Laura, I said, "No, I don't have identification at all." She said, "Well, how am I supposed to send the money to you?" Because she had (INAUDIBLE) thing if you don't have identification. And they said they didn't do that anymore.

FOLEY: Okay.

JOHNSON: So from there, Levan Smith, I had asked him if she sent the money in his name, since he had identification, could he get it for me, and he had told me yes, just like that. So Laura sent the money to Western Union at a Piggly Wiggly in De Queen, Arkansas. Once she had sent the money to me, once she sent the money down there to me, I stayed at Levan Smith's. You know, I would get up and I would look out the window to see, you know, if I could see the car. If I could see it or anything else, but I couldn't see anything. I would look out, go outdoors and I'd look, and the car wouldn't be there. Because I had parked my car on the side of his house.

FOLEY: It would or wouldn't be there?

JOHNSON: It wouldn't be there.

FOLEY: Okay.

JOHNSON: I looked and I would not see the car or nothing, you know, but it had made me nervous because I know him, I know the people that he deal with.

FOLEY: Okay.

JOHNSON: Do you know what I mean? I know the things that happen and everything. So from there, Levan Smith told me he would. So we sat there and we talked and we waited. It was dark. It was about, I don't even know what time it was. It was, but it was dark.

FOLEY: Hold on a second.

JOHNSON: Okay.

FOLEY: Let me turn the tape over.

(END OF SIDE ONE, TAPE ONE)

(SIDE TWO, TAPE ONE)

FOLEY: Okay. We're back on tape. Go ahead.

JOHNSON: Okay. From Levan Smith's house, we left to go get the money that Laura had sent to me, because I didn't have my identification. We drove to Piggly Wiggly to get the money. When we drove to Piggly Wiggly, the car, on the way to Piggly Wiggly, I was following him, I didn't see the car or anything. Once I had saw the car, the car was behind me. The vehicle was behind me. The vehicle followed us to Piggly Wiggly. When Levan Smith parked, I parked up close to him on the side. Once he had got out, then I got out. We went into Piggly Wiggly and we waited until the money had been sent, because the money had been sent but he had to get the money. Once he got the money, he had told me that he would draw me a map. He would draw me a map of how, you know, how to leave and everything else like that. I told him okay. I told him I was gonna go and gas up my car, and I was gonna get some cigarettes, and then I was gonna be at his house to get the thing, to get the map and everything he was gonna show me.

FOLEY: Okay.

JOHNSON: From there, from right there, after he had left and I had left, when I went back out, the first thing I done automatically was look. I was trying to get, I got the key in my car, I got in my car, and the first thing I done was look around to see if anyone was there, anyone whatsoever was there.

FOLEY: Okay.

JOHNSON: From there, I drove on, I was going on the outskirts of De Queen. On the outskirts of De Queen at the light, there's like a little light. It's sort of like a four-way. It's like two lights that cross over, and then there's a little store on the side. I filled up with gas at that little store.

FOLEY: Okay.

JOHNSON: Once I filled up with gas at the store, I got a pack of cigarettes and I was gone, I left instantly. I drove straight into Horacio. Before I got to Horacio, my car was running hot. I went into a store, there's like a little 7-11 as soon as you're coming into Horacio. My car was running hot. There

was a lady in there. I can't remember her name, but she was working that night that I, the night that I came into the store, she was working. Because I asked her did she have some kind of little thing where I could put water in my car. She gave me a little jug and she showed me where the water hydrant was. I, you know, I went out there, I put water in my car. I went back inside, I bought a thing of ice cream, like a little sandwich, and thing of Gatorade, and that was it. From there, I got into the car and I started driving. Once I started driving, I noticed a Bronco. There was a Bronco that did not move until I passed by it. The Bronco moved afterwards. And then there was a blue car. They were, the Bronco was parked first at the corner of town there you have to turn to go to Levan Smith's house. Right there on the corner where you turn.

FOLEY: Uh-huh.

JOHNSON: The Bronco was parked there. The Bronco was brown and it had tinted windows. The windows were tinted. It was parked there. Once I turned, I noticed the Bronco instantly, because once I had passed by it, the lights came on and they come out, it came out, following me. I went up through the hill, before I got to the hill, there's another road that goes to a park. Before I got to the hill, alright, when you come down the curb, you turn. And the road is there and the reflection from my lights hit the blue car. The blue car was sitting there.

FOLEY: Okay.

JOHNSON: It was, it was sitting right there. From that point, I drove. I was, I'm not gonna lie, I was speeding.

FOLEY: Okay.

JOHNSON: I was driving at least 80, 85 miles an hour. I got to Levan Smith's house. I left the motor of the car running, I left it running. I went in there, I called Laura, and I told Laura I was leaving now, that I had stopped by Levan Smith's, that I was leaving right now. Levan had made me a map on a piece of paper...

FOLEY: Okay.

JOHNSON: ...of how, you know the quickest way to get there and everything else. From there, after he had done that, you know, we just said goodbye and everything. I told him, I said, "I'll see you on the 16th." He said, "Okay." He said, "Come down here and get that

taken of." He said, "Once you get that taken care of, maybe we'll go out and do something, go to Texarkana or something." I said, "Okay." From there, I took off. I left from his house and I took the quickest way out. The blue car followed me until, the way, the way I got away from the blue car and the Bronco that was behind it, there was a train. After going towards Foreman, Arkansas.

FOLEY: Going towards where?

JOHNSON: Going toward Foreman, Arkansas. That's on the way out.

FOLEY: Okay.

JOHNSON: After you're going towards Foreman, there's a train track there. There was a train that was coming. The train was like, you know how they have the little flashing lights on it?

FOLEY: Uh-huh.

JOHNSON: And the lights on the train be going around, around the white light, or whatever?

FOLEY: Uh-huh.

JOHNSON: The train was close.

FOLEY: Okay.

JOHNSON: I sped up and went through. I went completely through the little, what do you call them?

FOLEY: The tracks?

JOHNSON: Yeah.

FOLEY: Okay.

JOHNSON: They had the little things where they let people know.

FOLEY: Okay.

JOHNSON: I drove through it, and the train, it barely missed my car. It missed the car, but it barely missed the car. I drove through. At that point in time, the blue car was there and the Bronco was there. It was right there. I drove completely through Foreman, which isn't that far from there.

FOLEY: Okay.

JOHNSON: Once I got to Foreman, I already knew the cutoff I had to take and everything. I took the cutoff and that was it, I was gone. I completely, I left. I didn't see the blue car anymore or anything until here about a week ago when I got shot at.

FOLEY: Okay.

JOHNSON: And that was it. The next thing I know, I called, after I had left from there and I got here to Albuquerque...

FOLEY: Uh-huh.

JOHNSON: ...I drove, I drove the whole day. Well, I left at night. I drove that night and that day. It was like late in the evening. It was close to like, it was real close to night when I got to Albuquerque, because I drove straight through.

FOLEY: Okay.

JOHNSON: Completely through. I didn't stop at night to rest or anything. I just drove completely through. Once I got here in Albuquerque, I drove to Laura's. I drove to Laura's. I was at Laura's. And I figured you know, he didn't know where I was at. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: I figured he didn't know where I was at or anything like that. Because when I first got here, I was paranoid, I was real paranoid. I did not go right away to see my, you know, at the time, me and Annette, we were not really, we had been into a fight. Do you know what I mean? We were not really in the point to getting back together.

FOLEY: Okay.

JOHNSON: And I didn't wanna take no chance on something happening to my little girl.

FOLEY: Okay.

JOHNSON: So I stayed at Laura's. I stayed at Laura's house. And it was like, I just stayed inside, that was it. I would stay in and stay inside the whole time. I don't know how he found me, or anything that was here. All I know is I called my mother, I had called my mom to see how my mom was doing. To tell my mom I had got out and everything like that. When I called

my mom, my mom had asked me, she said, "What have you done?" And I, you know, I asked her, "What do you mean, what have I done?" And she told me, she said, "The cops came here today and they were looking for you." And I asked my mom, I said, "What do you mean they're looking for me?" Just like that. And my mom told me, she said, "They want you for murder." And to me, it was a shock. Do you know what I mean? Because I didn't know what she was talking about. And I asked my mother, I said, "Who am I supposed to murder?" Just like that.

FOLEY: Uh-huh.

JOHNSON: She said, "I don't know." She said, "The cops came here looking for you, and they want you for murder." Just like that. "And to turn yourself in." I didn't know who I was supposed to have beat up and killed, or anything. But I know I didn't kill anyone and I was not gonna turn myself in, because I know him. I know what happens. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: I know the things that happen. So I hung up the phone and I sat there. I just sat in the house and I was talking to Laura. Later on that night, about, I'd say, later on that night, it was close to, I know it was close to 10:00, it was real close to 10:00, the phone rang. The phone rang. Laura answered the phone. When Laura answered the phone, someone asked to speak to me, and Laura told the person that I was not there, I did not live there, and she hung up the phone. The person called back and asked to speak with me. Said they knew I was there. I went to the phone, I picked up the phone, I said, "Hello?" Just like that. And it was Maui's voice. He told me, he said, 'cause he, he speaks with sort of like a slang, a Jamaican slang. Do you know what I mean? The Rasta.

FOLEY: Okay.

JOHNSON: And he told me, his exact words, he said, "Man," he said, "You can run but you can't hide, Man." He said, "By now, I hope you know you're wanted for murder." And you know, I was on the phone and I asked him, I said, "Man," I said, "What the fuck do you want from me?" I said, "You killed my dad, I know you did. I know you killed my dad." I said, "Now you're telling me I'm wanted for murder." I asked him, I said, "What the fuck do you want from me?" And he told me, he said, "You fucked up." He said, "You wanted to play like this." He said,

"We're gonna play my way, by my rules."

FOLEY: Okay.

JOHNSON: That was his exact words. "We're gonna play my way, by my rules." And I told him, I said, "Man, I don't have nothing of yours or anything." He told me, he said, "You can't go to the cops." He said, "Because the cops are looking for you." He said, "The cops are looking for you for murder."

FOLEY: Okay.

JOHNSON: Just like that. At that time, I knew I was wanted for something. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: He told me, he said, "The first time I see you on the street," he said, "I've got a surprise for you." Just like that. And I told him, I said, "Well, since you know where I am, Mr. Bad Ass," I said, "Why don't you come here and get me?" Just like that. And he told me, he said, "You know that it's not my style." He said, "But I do got a surprise for you." And he hung up the phone.

FOLEY: Okay.

JOHNSON: From that point on, there were several anonymous calls come in. Because Laura, she has it hooked up to her phone where if anonymous calls and stuff like that come in, it says anonymous call. She has the little...

FOLEY: Does she have Caller ID?

JOHNSON: Um, I think that's what it is. A little bitty box with a flashing red light.

FOLEY: It tells you what numbers are on?

JOHNSON: Um, yeah.

FOLEY: Okay.

JOHNSON: There was several times after that, that it would be an anonymous call.

FOLEY: Okay.

JOHNSON: And she would just, you know, she's get on the phone, "Hello? Hello?" And Laura, she has a temper, she'll go off. She will go off about it. And, I mean,

we'll be sitting there in the room watching TV, and you could look and you could see it said anonymous call.

FOLEY: Okay.

JOHNSON: It had the thing where it said anonymous call on it. One of the anonymous calls, I had picked up the phone. Once I picked up the phone, I asked him, I said, "Look man," I said, "What the fuck do you want?" I said, "You know, why don't we go head up and do this?" Just like that. And he told me, he said, "Your clock is ticking." And he hung up. Several times after that, calls will come through on Laura's phone and she would pick it up and you could hear a little clock, like someone holding a clock or a watch that just ticked in the, you know, ticked in the phone. Like a little ticking sound into the phone.

FOLEY: Okay.

JOHNSON: And, you know, it was like, it went on for like a night, and then in the morning, that day when we had got up in the morning, a call came and it was an anonymous call. And once I picked up the, I picked up the phone and I said, "Motherfucker, you just don't give up, do you?" And the person told me, they said, "Your car is in the garage." That's what the person told me. "Your car is in the garage."

FOLEY: Okay.

JOHNSON: And said, "We know where you are." And you know, I don't know how I was followed there, how I was followed there at all. I don't remember seeing anyone that saw the car, when I put the car in the garage. I don't remember seeing anyone...

FOLEY: Okay.

JOHNSON: ...at all. All I know is about two weeks, I'd say maybe, well after all that had happened, the calls had stopped. They completely had stopped. And you know, I was worried that something, if it didn't happen to me, it was gonna happen to my family, to Annette and Akisha.

FOLEY: Okay.

JOHNSON: So one night I left at night and I went over there to see how they were, you know. Nothing had happened to them or anything. And so I kind of started feeling, you know, like, you know, something sooner or later

we'll be sitting there in the room watching TV, and you could look and you could see it said anonymous call.

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FOLEY: Okay.

JOHNSON: So one night I left at night and I went over there to see how they were, you know. Nothing had happened to them or anything. And so I kind of started feeling, you know, like, you know, something sooner or later

is gonna happen to me. I knew, at this time, that I was wanted for murder. And to be honest with you, I don't know who I'm supposedly killed. I've been trying to find out at the police station who it is that I supposedly killed.

FOLEY: Okay.

JOHNSON: I don't know I supposedly killed, who this person is, or why, or none of that. All I know is I went to Back Streets one night. I went to Back Streets to see Eric, which is a friend of mine. I went to see Eric. I did not make it to Back Streets. I got shot at before I got to Back Streets. I got shot at going to Back Streets on Juan Tabo. That was enough for me to turn around and go back. That was it. I turned around and I went back. I went back and it was like, I went back, I told Laura when I got back, I said, "Laura," I said, you know, I said, "I'm wanted for murder." And, you know, she didn't believe it. She was like, you know, she was like, "Right, Jovan." You know, "Right." Because a lot of people call me, you know, I have different nicknames, and stuff like that. And she said, "Murder?" She said, "Who are you supposed to have killed?" And I said, "I don't know." She thought it was funny. I said, "Laura", I said, "that's what they told me, that I'm wanted for murder. And I just got shot at." Do you know what I mean? She didn't believe me. She was like, "I don't think so." She said, "Somebody's just fucking with your head." That was her exact words. "Someone's fucking with your head."

FOLEY: Okay.

JOHNSON: "Don't believe that shit." I told her, I said, "My mother told me. My mama would not lie to me. She said, "Do you think your mama would just tell you that to fuck with your head?" I was like, "No, she wouldn't tell me that just to fuck with my head." And now I'm here. I'm here. You know, there's a charge on me for murder.

FOLEY: Uh-huh.

JOHNSON: And, you know, I know the God's honest truth, man. If I go back, I'm gonna die, I'm gonna.

FOLEY: Okay.

JOHNSON: Plain and simple. I know if I go back to that state, that I'm gonna die. You know, I don't know who it is I supposedly killed.

FOLEY: Let me ask you some questions. First of all, how did you meet up with this Maui guy?

JOHNSON: I met Maui in Kingston, Jamaica.

FOLEY: Is that where he's from?

JOHNSON: I know he's from Jamaica. I don't know...

FOLEY: Kingston?

JOHNSON: Kingston, Jamaica.

FOLEY: What's his last name?

JOHNSON: Zimbado, Zimbada, Zimbada, Zimbada.

FOLEY: How old is he?

JOHNSON: He's about thirty-eight, at least thirty-eight. Somewhere in there.

FOLEY: And he goes by "Q"?

JOHNSON: He goes by "Q". Everyone calls him "Q", "GQ". That's what they call him. He's goes by "Q". Some people call him "GQ". Some people call him Maui.

FOLEY: Where does he live now? Where is he at?

JOHNSON: He's, I know he's in Albuquerque. He is here in Albuquerque.

FOLEY: Do you know where?

JOHNSON: Usually.

FOLEY: Where does he hang out?

JOHNSON: Usually he hangs, he, I know he has a lot of people that sell uh, what is it, Simbull, this park down here.

FOLEY: Trumbull Park?

JOHNSON: Yeah, Trumbull.

FOLEY: Okay.

JOHNSON: He has a lot of people that sell for him there. I know he has people that sell for him on Broadway. Do you know where Broadway...

FOLEY: Uh-huh.

JOHNSON: Where the sticks...

FOLEY: At the corners?

JOHNSON: Uh-huh. He has people that work the corners that sell there. And there's a place called the Legion or Legion or something like that. The Legion. I think it's the Legion. It's on Broadway. It's across from....

FOLEY: Across from the Paloma?

JOHNSON: Yeah.

FOLEY: Okay.

JOHNSON: It's a little place there. There's like, I know of three, at least three dudes that you could say that do his little dirty shit for him. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: You know, it's like, I don't know what the deal is, but it's sort of like what they, you know, what he tells them, they do.

FOLEY: Well, who are these three guys?

JOHNSON: One dude, they call him Stick. All I know is Stick.

FOLEY: Okay.

JOHNSON: The other dude, they call him Dee Dog.

FOLEY: They call him what?

JOHNSON: Dee Dog. He's supposedly a Crip, or something like that.

FOLEY: Okay.

JOHNSON: There's another one they call Boo.

FOLEY: Boo?

JOHNSON: Boo.

FOLEY: Okay.

JOHNSON: And then there's a guy named Rodney that's there. He's a real, to be honest with you, he's just a real huge person, he is, he's big. He's at least, I don't

know, like he's about 6'9". I'd say he weighs somewhere between 210, 220, in that range.

FOLEY: Okay.

JOHNSON: In that area. And it's like...

FOLEY: Have you seen Maui here?

JOHNSON: Have I, I have seen him here. I saw him here.

FOLEY: What kind of car was he driving here in Albuquerque?

JOHNSON: When I saw him here, he was in a white, what was it? It was a new car, one of the new cars. It was a white two-door, I think it was, it has like a little cat symbol on it. It had like a little cat symbol that was on it.

FOLEY: Okay.

JOHNSON: A little gold uh, what is it? A Cougar. I think it's a Cougar. It has a little cat symbol or whatever it is on it.

FOLEY: Okay.

JOHNSON: He was in that when I saw him.

FOLEY: Okay. Let me back up for a minute. When, how long ago did you meet him in Kingston?

JOHNSON: The first time I met him I was young. I'd say I was about maybe seventeen. Sixteen or seventeen when I first met him.

FOLEY: Okay.

JOHNSON: That's the first time I had met him.

FOLEY: That was in Kingston.

JOHNSON: That was in Kingston, Jamaica.

FOLEY: When did you meet up with him again?

JOHNSON: When I met him in Kingston, you know, at the time when I met him, you know, he seemed, he seemed like he was real cool to me. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: I was new there. I didn't know anyone or anything. And it was like, me and Maui, we hung out together.

Do you know what I mean? It was like, he was like cool. I mean, we're talking about a guy that, you know, he used to throw like parties and stuff on boats. We'd go out on boats and stuff, cruise, you know, cruise around. It was like, this dude never ran out of money or nothing. Do you know what I mean? He knew everybody and everything. It was like, I was new there. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: And he was the type of person that it was like, wherever he'd go he'd get respect, you know. It was like, at the time, I thought it was like, you know, at the time it was just, you know, (INAUDIBLE) as they say. Do you know what I mean? It was like, this dude is cool, you know. He acts cool. He talks cool. Shit like that. And then he started talk, you know, he just started talking to me. We just started kicking it, that was it. And I had, at the time I was staying in a motel, when I was staying there. And he told, you know, he told me, he asked me where was I staying at and everything else. And I told him where I was staying, he said, "Well man," he said, "look." He said, "Check this out." He said, "I run like a little corporation. Do you know what I mean?" He said, "You don't ask no questions. You work for me." He said, "We can get you out of the motel room," he said, "and we can set you up." You know.

FOLEY: Set you up selling?

JOHNSON: At the time, I didn't know what it was.

FOLEY: Okay.

JOHNSON: Do you know what I mean? He told me, "We can set you up." Just like that. And I had asked him, I said, "Doing what?" He said, "Just working for me." He said, "All you have to do is just drive a car." He said, "Drive one car here, drop it off, pick up another one, and come back." He said, "Is that so hard?" And at the time, it was like, "Hell, no." Do you know what I mean? Sixteen years old in Kingston, Jamaica, that's no problem. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: He took me to a chick's house, what was her name? Cassandra, Cassandra Moore. It was Cassandra Moore, was her name. He took me to a chick, her name was Cassandra Moore. She was about maybe twenty-four or twenty-five years old.

FOLEY: Okay.

JOHNSON: She was, you know, she seemed cool, you know. He introduced her to who I was and everything like that. I remember his exact words, he said, "This guy is young to Kingston." He said, "He don't know nobody. He's gonna be working with me." Just like that. He said, "We're just gonna, you know, make sure everything with him is cool and everything else." She had a room where I stayed, everything. you know, I stayed there. It was like, he came back. I remember that day, that same day I had got pulled over. 'Cause you know, I was using, I was driving her car. She told me, she said, "Well, here. There's a store right down the street, everything." I remember that same day I had got pulled over. The same day I got pulled over, a cop asked me, the cop that was there. At that time, I did not know, but the cop that had asked me, he said, "Do you know Maui such and such?" And I said, "No, I don't know who he is at all." Just like that. Because he had told me, he said, "Any time you get pulled over, you don't know who I am." That's what he told me. He said, "People that work for me keep their mouth shut." When the cop asked me did I know who he was, I told him, I said, "No, I don't know, you know, I never heard of the dude." I said, "I just come over here to see someone (INAUDIBLE)." The cop asked me questions and stuff like that. I didn't know anything. When I got back to the apartment, went to the house where she was at, he was there, him and a bunch of more people. As soon as, as soon as I walked in, the only thing he told me, he says, "Congratulations." He said, "You passed the little test." And I just kind of like, "What kind of test are you talking about?" Do you know what I mean? I didn't know what, at the time, he was talking about. And he told me, he said, "When the cop stopped you," he said, "you didn't tell him shit." He said, "You could have told him where I was and everything," he said, "but you didn't tell him nothing." The same cop that had stopped me, come back over there while they were there and came in, and that's when it, you know, at the time it just tripped me totally the fuck out (?). Do you know what I mean? Because here's the cop that stopped me that was asking all kinds of questions about him. Do you know what I'm saying? That was asking questions about him, and they're sitting here laughing and talking about it.

FOLEY: Okay.

JOHNSON: Do you know what I mean? And I didn't think anything of it. The way I found out about what he was doing

was through Cassandra. She had told me, she said, "Do you know what you'll be driving back and forth?" And I was like, "No," I said, "I'll just drive a car over there, that's it. Drive another one back over here and I'll get paid for it." You know, \$500 just to drive one car over here and come back in another one. Do you know what I mean? That was nothing. You know, you think about it, at the time, \$500 just to do that. It was nothing at all. It was like, "Hey, I can do this. This is no problem." When the shit started getting fucked up, it's when I noticed, when I started opening the trunks and (INAUDIBLE) what was in them.

FOLEY: And what was that?

JOHNSON: When I started, when I started opening the trunks, and stuff like that, the first time I opened the trunk, it was wrapped, everything was wrapped up like in foil. It was like in foil with like tape on it, and shit like that. You know, that was it. It was just a trunk-load of the shit. And I was supposed to drive. And I was like curious of what it was, and it turned out to be heroin.

FOLEY: Okay.

JOHNSON: That's the first time. After that, it was cocaine. I started, you know, going back and forth. And it's like, it seemed to me like (INAUDIBLE), you know, once I started getting older and stuff like that, hanging around with him, you know, after making money, I would come over here. You know, I could fly back over here, everything was cool. I didn't have to have no passport. I didn't have to have shit. I didn't have to have anything, man. I could just, boom, get on a plane. You know, I'm back over here (INAUDIBLE) Los Angeles, California. And Los Angeles, I got to know Los Angeles. I got to know a lot of people there, and everything else. And you know, at the time, it seemed like it was cool. You know, I knew people there. I used to go to Los Angeles, San Bernardino. I used to go down into Las Vegas, Nevada. And it was just like, it was really nothing. I'd go see my mom. I stayed with my mom, and stuff like that. I mean, you know, he told me, you know, "When I want you, I'll call you." That's what he told me. He had my mom's number. He had everything. Do you know what I mean?

FOLEY: Let me ask you this. What did you do to him to where he wanted to give you a demonstration on where he said that you fucked up?

JOHNSON: Where I fucked up is the last time that I (INAUDIBLE) for him.

FOLEY: And what did you do?

JOHNSON: The last time, it was right after I got out of prison here, right after I got out of here at Los Lunas Correctional Facility.

FOLEY: When was that?

JOHNSON: It was in, I'm not sure when the date is. I think it's June 17th, June or September. Somewhere in there. I can't remember the exact date.

FOLEY: Of last year? What were you in custody for?

JOHNSON: Violation of parole.

FOLEY: What were you on parole for?

JOHNSON: Conspiracy.

FOLEY: Conspiracy of what?

JOHNSON: I was with a guy that had sold to someone, and I was with him when he came out and got into the car with me.

FOLEY: Okay.

JOHNSON: We drove off...

FOLEY: Okay.

JOHNSON: ...and they got me with conspiracy of it.

FOLEY: Okay.

JOHNSON: Several times while I was in prison, you know, I had (INAUDIBLE), you know, I didn't have to worry about money or my (INAUDIBLE). I didn't have to worry about anything I wanted. Do you know what I mean? There was no problem. Because, you know, it was like, hey, me and Maui, we were cool, we were tight, we were close. And I had knew different people, and stuff like that. Do you know what I mean? So I didn't have to worry about wanting anything while I was doing time.

FOLEY: Okay. And then what did you do when you came out that you screwed up?

JOHNSON: When I came out, Maui had told me, he said, "Man," he

said, "when you get out..." Just like that. He said, "As soon as you get to Albuquerque bus station..." Just like that. He said, "When you get to the bus station," he said, "from the bus station," he said, "I want you to do something for me." He said, "When you get to the bus station they'll be somebody there for you." Just like that. And I told him, I said, "Okay, you know, cool. No problem." I said, "Where am I to go to?" And he told me, he said, "Go to Phoenix." He said, "Phoenix (INAUDIBLE)." Just like that. And he told me, he said, "Don't fuck me around." He said, "Don't fuck up." Just like that. And I was like, "Man..."

(END OF SIDE TWO, TAPE ONE)

(SIDE ONE, TAPE TWO)

FOLEY: This is Detective Foley. We're back on tape. Tape #2. The time is 2231 hours. Also in the room now is Detective Dan Torgrimson and Detective Robert Tanuz, of the Albuquerque Police Department's Gang Unit.

UNKNOWN: (INAUDIBLE).

FOLEY: Thank you, sir. Just a couple of more questions on, on this other stuff in Arkansas, Stacy. The time that this was happening, what car were you driving?

JOHNSON: At the time it was happening, I was driving a Monte Carlo.

FOLEY: What color was it?

JOHNSON: It was a grey Monte Carlo.

FOLEY: And whose car is it?

JOHNSON: Uh, my father left the car to me.

FOLEY: Okay. And where is this Monte Carlo now?

JOHNSON: The Monte Carlo is at Laura (INAUDIBLE)'s.

FOLEY: Where does she live?

JOHNSON: uh, 5433 Lewis Ct.

FOLEY: 5430 Lewis?

JOHNSON: 5433.

FOLEY: Lewis Ct.?

JOHNSON: Uh-huh.

FOLEY: Where's that at?

JOHNSON: Um, in Paradise Hills.

FOLEY: Okay. Let me just, let me go over this briefly on everything we've talked to. Okay. We were, you were just getting ready to tell me about Maui had told you to go to the bus station...

JOHNSON: I was...

FOLEY: ...and do something for him.

JOHNSON: Yes, sir. From the bus station, I was supposed to drive a Nissan. It was a blue Nissan.

FOLEY: Okay.

JOHNSON: It was a, I can't remember the model or the year, I can't remember the year, but I remember the Nissan. I was supposed to drive the Nissan to Van Buren, the corner of Van Buren and Broadway.

FOLEY: Okay.

JOHNSON: At that, there's a phone thing. I was supposed to drive it there. I had a number to call. Once I was supposed to get there, I was supposed to call the number and wait 'til my ride get here, which he told me it would be a 280ZX, a red 280ZX. Once I was there, I was supposed to give the keys to him, the guy in the 280ZX.

FOLEY: Okay.

JOHNSON: And someone was supposed to drive the Nissan off, and I was supposed to ride with the guy in the 280ZX...

FOLEY: Okay.

JOHNSON: ...back to the bus station. And he told me, he said, "You'll be paid at the bus station." I wanted to know what I was carrying in the Nissan. And he told me, he said, he said, "You're job is to drive it." He said, "You drive it. Don't worry about what's in the back of it." He said, "As long as it gets there," he said, "that's what matters."

FOLEY: Okay.

you're supposed to go through
o. I wanted to know what
because I had just got out.
an? I'd done parole time and
ght with anything.

all. I got out. There was a
When I got out and took the

El Paso?

a Nissan to El Paso. I was
i El Paso into Arizona.

he back?

There was a black tarp on the
aps on it. It has snaps all
nce I got into there, you have
the little border thing, or

were just flagging people on.
here, I was flagged on, I went
into El Paso, I pulled over
to know what the hell was in
t the hell am I carrying?

was cocaine. The whole back of
me. That's all that was in it.
it was two automatic weapons,
at were in like, they were in
r whatever.

o. r object. A little, it was
e a case, like a, it had like a

big ass, it was like long. One of the uh, what do you call them? The things that you, yeah, that...

TORGRIMSON: Missile launchers?

JOHNSON: Whatever it is. It was like long and it was in a case.

FOLEY: Alright. Then what did you do?

JOHNSON: What did I do? The money that he had gave me to go to Arizona...

FOLEY: How much did he give you?

JOHNSON: To get to Arizona, I had \$600.

FOLEY: Okay.

JOHNSON: He told me, he said, "Here's a little bit of it." He said, "you will get the rest of it once everything is taken care of."

FOLEY: Okay.

JOHNSON: I took the \$600 and I left.

TORGRIMSON: What did you do with the truck?

JOHNSON: I left the truck. I left the truck. That was it.

TORGRIMSON: In El Paso?

JOHNSON: In El Paso.

TORGRIMSON: At a pay phone.

JOHNSON: I didn't leave it at a pay phone. When I pulled over on the street, I pulled over in the town. It was by, I can't remember. It was some street. You know, as you go into, it's the first, once you get off the road, the freeway, you go down like a little hill thing, there's like a gas station here, there's like a little store over here and another little place.

TORGRIMSON: (INAUDIBLE).

JOHNSON: On the concrete in between the store is where I (INAUDIBLE) and I saw it, and I left it right there. From there, I went, I went across the border, which I went over there and partied. And from there, I come back. I came to Albuquerque. At that time, when I come back to Albuquerque, I

came back here and there was a chick at the time that I was seeing here, and that was it.

FOLEY: Who was that?

JOHNSON: I just kicked it here. Her name is Lisa.

FOLEY: Lisa who?

JOHNSON: Lisa Valenzuela. She's a Spanish chick. She was living here at the time. And I just, that was it, I kicked it. I didn't go to Phoenix or anything.

FOLEY: Did you ever talk to Maui about it?

JOHNSON: I never talked to Maui about it anymore.

FOLEY: Did you take any of the dope?

JOHNSON: I didn't take any of the dope or anything that was in there. I left it like it was. I just took the cash that I had on me.

FOLEY: And the next time you talked to him is when he called up and said that he was gonna make an example?

JOHNSON: No, I had saw him. I had got threats from him...

FOLEY: Uh-huh.

JOHNSON: ...before that. Asking me where is his shit. You know, he asked me, "Where is my fuckin' shit, man?" You know, he'd tell me, "Motherfucker, I used to be cool with you, you know. I've done you like family. I treated you like my fuckin' brother, and you get out and you fuckin' leave my shit." you know, he would tell me shit like, you know, "What the fuck am I gonna have to do? Am I gonna have to prove a point, such and such, to you?" You know, tell me, "I'm gonna fuck you up if I don't get my shit back."

FOLEY: Uh-huh.

JOHNSON: And it was like, I told him, you know, I said, "Man," I said, "Fuck you." I said, "I'm not worried about you." I said, "Fuck you," plain and simple. I didn't know at the time, I knew what he could do. Do you know what I'm saying? But I was like, you know, fuck him. You know, I told him, I said, "Man, I'm not gonna be carrying this fuckin' shit, you know, through different states. I get fuckin' pulled over, I'm a fuckin' guinea pig. You

know, I've got all this fuckin' shit on me. I'm gonna go and do time, where you mother fuckers are gonna be out there eating and shit, kicking back, laughing about the fuckin' shit." I told, I said, "Fuck that." And he told me, he said, "Man, you are family." He talks with like a slang.

FOLEY: Uh-huh.

JOHNSON: It's sort of like a, you know, deep Jamaican voice. He said, "You're family, man." He said, "Ain't nothing like that gonna happen to you." He said, "You're not gonna get caught. Everything is set up." And I told him, I said, "Man, fuck it." He wanted to know where the truck was at. I told him, I said, "I left the truck behind a store, right next to a concrete wall." And that was it. I told him, I said, "I left it." He said, "I'm gonna fuck you up." He said, "If I don't..." He said, "I'm gonna fuck you up personally." He said, "If I don't get a chance to..." He said, "You're fuckin' history, man." That's what he told me. He said, "You're history." He said, "You go to the fuckin' joint, you're history." And after that, I said, "Fuck it," you know?

FOLEY: What...

JOHNSON: I'm not, you know, every since then, I've been keeping, before all this shit happened, I was keeping just a low profile. I had got out of the, you know, I had got out of prison. And it was like, that was it. I get out of prison, I mean, I had said fuck it, man. I won't even sweat it. Do you know what I mean? He didn't know, at the time, where Laura lived. He didn't know, at the time, where my fiancée and my little girl was.

FOLEY: You don't know who, who got killed up in Arkansas?

JOHNSON: I don't know who it is.

FOLEY: You didn't hear?

JOHNSON: All I know is I'm wanted for murder. My mom told me that the cops were looking for me for murder.

FOLEY: She didn't tell you who you were supposed to have murdered, or...?

JOHNSON: Nah-uh. I done heard I supposedly killed a dude. I heard I supposedly killed a chick. I don't know who the hell I supposedly done killed. All I know is, man, if I go back, I'm dying. Do you know what

I'm saying?

FOLEY: Okay. And...

JOHNSON: It's plain and simple.

FOLEY: Do you know where Maui is staying here in Albuquerque?

JOHNSON: I don't know where he's staying here, man.

FOLEY: Okay.

JOHNSON: The dude....

FOLEY: You said that there's, there's some guys that are selling for him or that hang out with him. One's name is Stick?

JOHNSON: There's Stick, Boo...

FOLEY: Stick is a Black guy?

JOHNSON: Stick's a Black guy.

FOLEY: And (INAUDIBLE).

JOHNSON: (INAUDIBLE) and Boo claim themselves as Crips.

FOLEY: And then Rodney?

JOHNSON: Rodney? He drives a red sports car. It's like, it's dropped real low to the ground. It's read. It's got tinted windows. It's like a four-door, a four-door car. He knows constantly where he's at, all the time.

FOLEY: And you said that Rodney's about 6'9"?

JOHNSON: Rodney, he's, he's tall.

TORGRIMSON: Rodney drive's a red sports car?

JOHNSON: He drives a red sports car.

TANUZ: Are you sure it's Rodney and not Willie?

JOHNSON: It's Rodney.

TANUZ: Rodney.

TORGRIMSON: He's 6'9"?

JOHNSON: He's like 6'9", weighs like two, probably around

250, somewhere in there. He's heavy. He's a heavy-set dude.

FOLEY: Okay.

TORGRIMSON: Stick, (INAUDIBLE), Boo.

JOHNSON: Boo is, he hangs around with a bunch of people. He hangs around with a guy named Kevin. I don't know what his name, Kevin something. And a chick named Pam uh, damn, I can't think of her name. I can't think of her last name for shit, man. But he calls, he thinks he's a Crip or whatever. Do you know what I mean?

TORGRIMSON: Who is?

JOHNSON: Boo.

TORGRIMSON: Sixties?

JOHNSON: Huh? Insane Sixties.

TORGRIMSON: Insane Sixties.

JOHNSON: And Kevin is in, supposedly in Insane Sixties, too. I've got a feeling that Boo shot at me, I don't know why. But I got shot at on my way to (INAUDIBLE) to meet Eric.

FOLEY: Okay.

JOHNSON: You know, and it's like, ever since then, you know, he's been, I know he looks or me. Do you know what I mean? I know he looks for me. He's been trying to find out where the hell I was.

FOLEY: Who, Maui?

JOHNSON: Maui has been looking for me. But he didn't know anything until all of this came up with my father. Do you know what I mean? He didn't know where my father lived at or anything.

FOLEY: Okay.

JOHNSON: I don't know how he find out where my dad lived. All I know now is my father's dead. I've got a dead father. I'm accused of murder, murdering someone. I don't know if you knew it or not...

TORGRIMSON: You're dad?

JOHNSON: Huh?

TORGRIMSON: You're dad?

JOHNSON: Nah-uh. It's supposed to be someone. I don't know if you know it or not, but murder is some heavy shit, man. It's some serious shit.

TORGRIMSON: Homicide?

JOHNSON: I don't know, I don't...

TORGRIMSON: Yeah.

JOHNSON: Yeah, you know.

TORGRIMSON: Okay. It don't get, it don't get much worse than that, man.

FOLEY: Let me ask you this. The officer that you talked to, Pacheco, he had also mentioned that you knew these people or Maui or somebody involved in some other homicides here in Albuquerque.

JOHNSON: There's killings that are done. I know of two killings that were done here over drugs. I don't know the names of the people that got killed, but I know two people got shot that I know did (INAUDIBLE).

FOLEY: Okay. And when or where was this?

JOHNSON: One of them is Boo that fired a firearm. It was over a crack cocaine sell.

TORGRIMSON: Tell me about the homicide. Who did he kill? Where? Not who, but, how did it happen, do you know any details?

JOHNSON: All I know is he, all I know is he shot someone.

TORGRIMSON: That's it?

JOHNSON: That was it. The other dude here got his throat cut, I know that. I know that much. And the dude that cut his throat, he goes by the name of Iron Mike. I don't know, that's all I know. They call him Iron Mike.

FOLEY: You don't know when these happened?

JOHNSON: I don't know when they happened.

TANUZ: Is Iron Mike a White dude or Black dude, Spanish guy, or what?

JOHNSON: He's a Black dude. He's a Black guy. He's a real big Black dude. All I know is one dude got shot by Boo, which he was shot and killed, which happened over cocaine. That's what happened. Apparently, from what I understand, this dude took some stuff off of (INAUDIBLE). He took some stuff, you know, coke, rock cocaine and shit, off of (INAUDIBLE). And they were looking for him, and Boo found him. The dude I know was, he was shot, he was killed. The other dude, I don't know who he is, or anything like that, but Iron Mike cut his throat. I don't know what happened with it or anything, I don't know.

TORGRIMSON: Iron Mike cut somebody's throat?

JOHNSON: I know what much for a fact.

TORGRIMSON: You don't know who he cut?

JOHNSON: I don't know the dude's name or anything like that, but I know, you know, Iron Mike is the type of person that he'll kill, you know, it's no problem, he'll kill you, man. That's straight up.

TORGRIMSON: Who is Iron Mike?

JOHNSON: Iron Mike is a Black dude.

TORGRIMSON: Is he from here?

JOHNSON: Yeah, he's from here in Albuquerque.

TORGRIMSON: He (INAUDIBLE) out at the sticks, or what?

JOHNSON: Yeah. He's usually in the Elks or the Paloma or the Legion.

FOLEY: Has Maui ever been arrested?

JOHNSON: Has Maui?

FOLEY: Yeah.

JOHNSON: Everything he gets into, he gets out of. Everything. That's why I'm, that's why I'm, that's what I'm saying, man. I supposedly done killed somebody. I don't know who the hell I done killed. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: All I know is if I go back, man, I'm dying. Do you

know what I'm saying? I know this. I ain't ready to die. I got a, I got a little girl, sixteen and a half months old, man. I wanna watch her grow up. Do you know what I'm saying? At the time I was doing this shit, it was fast money, it was women and cars. It was like, it was fun. Do you know what I mean? It was like, you ain't gotta do nothing but drive one vehicle here and another vehicle there and boom, you're getting money. It seemed like the money kept getting, it was just more and more money. Do you know what I'm saying? It was like, if I had a problem with somebody or something like that, if I got pulled over or something, it was like, I had numbers to call to where money wasn't any problem. You know, I could like call a number, get a certain amount of money or whatever. You know, that was no problem. As far as I needed money or something, when I was staying here with my fiancée, Annette, I used to leave, man, and I wouldn't have to do nothing but go, I'd have to go down to the store and call, man, and boom, I'd have money, you know? It was like, but all I would ever have to do is, you know, when he'd call me, tell me, you know, "Go here, drive this, drive that," that's all I ever had to do. I just had to drive a vehicle. Do you know what I mean? But now, you know, I know for a fact. Do you know what I'm saying? I know for a fact that he wants me dead, man. And you know, I don't want, I know if he can't get to me, he'll (INAUDIBLE) my family. Do you know what I'm saying? I know this, I know now that I'm wanted for murder.

FOLEY: But he thinks you ripped him off.

JOHNSON: Yeah.

TORGRIMSON: You knew that going into it. When you left that truck there, you knew what was gonna happen.

JOHNSON: Yeah.

TORGRIMSON: If you were playing this game, right?

JOHNSON: When I left it...

TORGRIMSON: For all these months, when you left, walked away from that truck, you knew exactly what you were doing. Exactly what the repercussions of that was.

JOHNSON: But I didn't think it would get as serious as it got, man. I didn't. I knew, you know, there was gonna be some shit behind it. Do you know what I'm saying?

TORGRIMSON: Yeah.

JOHNSON: But man, I had started driving the truck and I didn't wanna, I didn't wanna drive it no more.

TORGRIMSON: That's good.

JOHNSON: Do you know what I mean? I saw what was in it. If I would have got pulled over, man, I would have got some serious fuckin' time.

TORGRIMSON: Uh-huh.

JOHNSON: I had just got out of the joint, had been out of the joint for one day, and it was like fast money, boom. I had \$600 cash here. I was supposed to drive a truck from this bus station to Phoenix, to Van Buren and Broadway on the corner, and that's it. I'd wait for somebody. That's a long ass stretch, man. That's a long fuckin' stretch. I have no driver's license, no identification, no shit on me. Do you know what I'm saying? All I knew at the time I was driving a truck.

TORGRIMSON: Okay.

JOHNSON: I wanted to see what the hell is in this truck. I get out and look in this truck and I find out what's in it, it's like fuck it, I'm not gonna drive the truck. Do you know what I mean?

TORGRIMSON: Yeah.

JOHNSON: Plain and simple. you know, what I'm I gonna do with cocaine? There ain't nothing to put the shit in. Do you know what I mean? I'm not gonna walk around with all this shit in the truck, you know, in the back of the truck. There was nothing to do with it. So I said fuck it, man. I left the truck there. Plain and simple. I left the truck. I went over into Juarez. I was over there fucking around shit from there. (INAUDIBLE). That was it. And now he wants, you know, he wants me to pay for the shit. Do you know what I mean? I don't know how much money, you know, just, he fuckin' wants from me. Do you know what I'm saying? He just told me he wants his shit. You know, we're talking about a truck full of fuckin' cocaine, two guns, and one of them little funny things, man. Do you know what I'm saying? And he wants his shit back. Like if I know where the fuck the shit is. I don't know where the shit is.

FOLEY: Did he ever get the truck back?

JOHNSON: I don't know if he's got the truck back or what. All he, all he'd be saying is he wants he shit. If he don't get his shit, he's gonna fuck me up. He said, "When I find out, I'm gonna fuck you up." He said, "I'm gonna make a fuckin' example out of you." That's what the fuck he tells me.

FOLEY: Let me ask you this. When you found out, when your mom told you that the police were looking for you, how come you didn't turn yourself in so you could explain all this to them?

JOHNSON: Why?

FOLEY: Yeah.

JOHNSON: The first time I was ever in Jamaica, a cop, I told you a cop pulled me over.

FOLEY: Uh-huh.

JOHNSON: Asking me questions about him. Do you know what I mean? I didn't tell him shit. This was a cop. He was dressed in a cop uniform.

FOLEY: Uh-huh..

JOHNSON: Every damn thing. He was a cop. Do you know what I mean? Asking me questions about him. I didn't tell him shit. When I get back, there was a house full of people and he comes up to me and tells me, "Congratulations." Five or ten minutes later, the cop comes in the house, in the same damn house.

FOLEY: Yeah, but that's Jamaica. I'm talking about here.

JOHNSON: Man, I wasn't gonna take no chance. I'm not, you know, I was not gonna take no chance for it. I know I haven't killed anyone. Do you know what I mean?

FOLEY: Uh-huh.

JOHNSON: I know I have not killed anyone, whatsoever. And I'm like this, I'm not gonna lie to you, man. Me, depending on what, you know, it's like a fight or something like that. You know, I (INAUDIBLE). I have never been in anything, man, that has gotten, gotten me anything. I've been in prison one time in my whole life. One time. And I was only there for a real short time, and that was it. Do you know what I mean? Do you honestly think I would go

down to a police department and turn myself in for murder? Would you turn yourself in if you were looking at murder and you were me?

TORGRIMSON: If I didn't do it.

JOHNSON: But still, whether you done it or not, man.

TORGRIMSON: Well, that's, you know, (INAUDIBLE). That's your choice. (INAUDIBLE).

JOHNSON: Yeah. And now I'm locked out.

TORGRIMSON: How long have you been in Albuquerque?

JOHNSON: I've been in Albuquerque at least two or three years.

TORGRIMSON: Two or three years?

JOHNSON: Two or three years at the most.

TORGRIMSON: Were you involved (INAUDIBLE) setting up the houses. Put the (INAUDIBLE) selling marijuana?

JOHNSON: I know about the houses. I know about the houses that get set up. You know, people that get set up. People that fuck up, is that way they put it. You know, there is more Jamaicans that are coming here, man. There's, there's gonna be a whole lot more that are coming right here. They're gonna be right here.

TORGRIMSON: Why?

JOHNSON: Huh?

TORGRIMSON: Why are they coming to Albuquerque?

JOHNSON: They're coming to Albuquerque.

TORGRIMSON: Why?

JOHNSON: There's a lot of them coming over here because they like it over here. You know, look, I'm being honest with you and I'm being straight with you. You know, I'm not gonna sit here and bullshit you. And I'm not gonna sit here and fuck around with you. Do you know what I mean? Because, you know, it's wasting, you know, it's wasting your time, it's wasting mine. Do you know what I mean? But I'm telling you what I know. From what I know about Albuquerque, it's cocaine, man. Do you know what I mean? Who got the power, who got the money,

who can do what. The (INAUDIBLE), I don't know if you know or not, the last time they were here, they had the power and the money here. There was a shoot-out that was on Broadway. If you, if you were here then.

TORGRIMSON: How long ago?

JOHNSON: It's been, it hasn't been too long. I'd say about two, two years, six months, at the most. Something like that.

TORGRIMSON: Okay. (INAUDIBLE) shoot-out (INAUDIBLE). There's shoot-outs on Broadway a couple of times a year.

JOHNSON: But you know, Jamaicans...

TORGRIMSON: Why did they leave?

JOHNSON: Why did they leave?

TORGRIMSON: Jamaicans have no control over Albuquerque trade at all.

JOHNSON: I know. Jamaicans...

TORGRIMSON: Just because of one, one shoot-out that they leave?

JOHNSON: One shoot-out is not the cause of it. Several of them left and several of them didn't leave. There's still Jamaicans that are right here in Albuquerque.

TORGRIMSON: Yeah, but as far as I know, not that (INAUDIBLE) in the cocaine trade. They're setting up dealers and setting up houses for marijuana.

JOHNSON: There's some here for cocaine. They're right here for cocaine. You know, I'm not calling you a liar, or nothing like that. Do you know what I mean?

TORGRIMSON: Yeah.

JOHNSON: But you know, you got to realize, you know...

TORGRIMSON: I don't know everything, man. Believe me, I don't know everything.

JOHNSON: You know, you're a cop.

TORGRIMSON: If I don't know it, you educate me.

JOHNSON: You know, you're a cop. I'm not a cop. What do you think the possibility of me finding out more

than you are?

TORGRIMSON: Oh, more, a lot more.

JOHNSON: A whole lot more.

TORGRIMSON: Sure.

JOHNSON: Just like here, man...

TORGRIMSON: Let's finish up Rick's business and we can just talk off tape.

FOLEY: I'm gonna go ahead and conclude the interview. The time is approximately 2255 hours.

CZ

EXHIBIT G

STATE CRIME LABORATORY

P.O. BOX 5274
Number 3 Natural Resources Drive
Little Rock, Arkansas 72215

RECEIVED

Story Services
27-6747

REPORT OF LABORATORY ANALYSIS MAY 18 90

Medical Examiner
227-5936

Investigating Office/Agency/Address

Inv. Butch Godwin
Arkansas State Police
3 Natural Resources Dr
Little Rock, AR 72215

LABORATORY DIV
ARKANSAS STATE POLICE
LABORATORY CASE NUMBER
89-413-93
LITTLE ROCK, AR 72215

Page 1 of 3

Date Received in Lab: 04/05/93

How Evidence Received: M E / Kenny Milton

Agency Case Number: 89-413-93

Suspect(s):
Stacy Eugene Johnson

Victim(s):
Carol Jean Heath

Date of Report: 05/07/93

PRELIMINARY REPORT:

ITEMS SUBMITTED FOR EXAMINATION BY ASP 4-5-93:

GGG6: Four (4) plastic drinking cups
GGG7: One (1) pair of panties
GGG8: One (1) towel
GGG9: One (1) pair of blue jeans
GGG12: a: One (1) blue blanket
b: One (1) flat white sheet with a printed pattern
c: One (1) bed spread with "Strawberry Shortcake"
d: One (1) tan pillow slip
e: One (1) white, blue and orange striped pillow slip
f: One (1) white fitted sheet with a printed pattern
g: One (1) orange and blue pillow slip
h: One (1) white, blue and orange striped pillow slip
GGG13: Hair from the floor by the victim
GGG14: Hair from under the victim
GGG15: Tissue paper
GGG16: Hair from under the victim

ITEMS SUBMITTED FOR EXAMINATION BY THE MEDICAL EXAMINER'S OFFICE 4-5-93:

ME1: Right hand nail clippings from the victim
ME2: Left hand nail clippings from the victim
ME3: Combed pubic hair from the victim
ME4: Bags from the hands of the victim

ITEMS SUBMITTED FOR EXAMINATION BY ARKANSAS STATE POLICE 4-7-93:

GGG19: One (1) green shirt
GGG20: Hair from the green shirt
GGG21: One (1) white T-shirt

STATE CRIME LABORATORY

P.O. BOX 5274
Number 3 Natural Resources Drive
Little Rock, Arkansas 72215

atory Services
227-5747

REPORT OF LABORATORY ANALYSIS

MAY 18 90

Medical Examiner
227-5936

Investigating Officer/Agency/Address

Inv. Butch Godwin
Arkansas State Police
3 Natural Resources Dr
Little Rock, AR 72215

Laboratory Case Number: 89-413-93

Date Received in Lab: 04/05/93

How Evidence Received: M E / Kenny Milton

Agency Case Number: 89-413-93

Page 2 of 3

Suspect(s):
Stacy Eugene Johnson

Victim(s):
Carol Jean Heath

Date of Report: 05/07/93

ITEMS SUBMITTED FOR EXAMINATION BY ARKANSAS STATE POLICE 4-7-93 (CONTINUED):

GGG23: Hair from white T-shirt
GGG24: One (1) towel
GGG25: Hair from the towel.

ITEMS SUBMITTED FOR EXAMINATION BY THE MEDICAL EXAMINER'S OFFICE 4-8-93:

ME5: One (1) white T-shirt from the victim
ME6: One (1) green sheet
ME7: Pulled head hair from the victim
ME8: Pulled pubic hair from the victim

RESULTS OF ANALYSIS:

Hair and fiber comparisons were conducted on the above items.

Hairs, microscopically similar to the victim's head hair (ME7), were recovered from ME5, ME6, GGG8, GGG12, GGG13, GGG16, GGG19, GGG20, GGG23, and GGG25. These hairs are consistent with having originated from the same person as the known sample (ME7).

Hair, microscopically similar to the victim's pubic hair (ME8), were recovered from ME3, and GGG16. These hairs are consistent with having originated from the same person as the known sample (ME8).

Hair indicative of Negroid origin was recovered from GGG13, GGG14, and GGG23.

Hairs indicative of Caucasian origin, but microscopically dissimilar to the victim's hair samples (ME7 and ME8), were recovered from ME4, ME5, ME6, GGG6, GGG8, GGG11, GGG12, GGG15, GGG16, GGG19, GGG20, GGG22, and GGG24. These hairs are not consistent with having originated from the same person as the known samples (ME7 and ME8).

4/6/17 2³⁰ pm

Asked by Asst Dir Rick Goughen
to Search for any evidence retained
by the lab pertaining to 1993-WV-04521

~~Homicide~~: VICT: Carol Jean Heath

Worked by Jane Parsons (Serology)

- in retained pack:

Q1 vaginal swabs

Q2 rectal swabs

Q3 Oral swabs

Q5 Blood from underpants (GGG-7)

Q8 blood from tissue paper (GGG-15)

Q6 blood n.t.c. (towel GGG-8)

Q12 20 blood from green shirt (GGG-19)

Q19-B Blood from towel (GGG-24)

Also 2 empty env's labeled Q4 bottom on swab cutting
and "stick upon which cutting was dried" from
breast swabs

Q4, Q17-18, and Q1 Blood spl have *'s by them
and are not in pack. Most likely items sent
to Cellmark. (Case # F931380)

Scott Shucro

CELLMARK DIAGNOSTICS
Forensic Case Form
Confidential Information

Cellmark Case # <u>F931380</u>			
Submitter Case #			
Submittor <u>Jim Behling</u>			
Address <u>DeQueen Police Dept.</u> <u>P.O. Box 730</u>			
City <u>De Queen</u>	State <u>AR</u>	Zip Code <u>71832</u>	Telephone
Comments:			

EVIDENCE RECEIVED			
ID #	ACC #	Description	Date Rec'd/Init
		<u>One sealed box containing</u>	<u>7-797</u>
		<u>- 5 unsealed envelopes, unopened</u>	
		<u>- opaque bag containing residue (38) tubes including:</u>	
		<u>- liquid in tube labelled "F931380-01..."</u>	
		<u>- liquid in tube labelled "F931380-01a..."</u>	
		<u>- liquid in tube labelled "F931380-03..."</u>	
		<u>- liquid in tube labelled "F931380-03a..."</u>	
		<u>- liquid in tube labelled "F931380-06..."</u>	
		<u>- liquid in tube labelled "F931380-06a..."</u>	
		<u>- liquid in tube labelled "F931380-07..."</u>	
		<u>- liquid in tube labelled "F931380-07a..."</u>	
		<u>- liquid in tube labelled "F931380-12..."</u>	
		<u>- liquid in tube labelled "F931380-09..."</u>	
		<u>- tube labelled "F931380-09a..."</u>	
		<u>- 3 conical tubes containing amplification tubes in</u>	
		<u>opaque bags (not opened in general accession area)</u>	

Storage	Date/Init
<u>Tubes stored -20° at time -70°</u>	<u>no 4-497</u>
<u>envelopes 4°C</u>	<u>no 4-497</u>

CUSTODY

Received By	Released By	Date	Time
<u>John Smith</u>	<u>UPS Next Day 12 722 696 0150000262</u>	<u>4-497</u>	<u>10:45</u>
<u>F931380 41700300 1981</u>	<u>John Smith</u>	<u>7-797</u>	<u>3:15</u>

WHITE - Cellmark Diagnostics YELLOW - Evidence Receipt PINK - Evidence Return

Cellmark Case #		F931380	
Submitter Case #			
Submitter		Lt. Jim Gehling	
Address		DeWen Police Dept 200 N. 2nd St	
City	DeWen	State	AK
Zip Code	71832	Telephone	
Comments:			
EVIDENCE RECEIVED			
ID #	ACC #	Description	Date Rec'd/Init
		One sealed box containing	
14		- sealed plastic labelled "...cigarette butt, green shirt..." containing cigarette butt and match book in sealed plastic bag labelled "...green shirt"	7797 jst
15		- ^{bag} sealed plastic labelled "...Johnson..." containing sealed blood draw kit containing 2 purple latex tubes of blood, each labelled "Steve Johnson..."	7797 jst

Date/tnlt

42

md 52097

Received By	Released By	Date	Time
<i>[Signature]</i>	UPS Mt Day 7226960100001252	5-20-97	1:10
Rel by 4/20 0300 1984	<i>[Signature]</i>	7-19-97	3:15

WHITE - Cellmark Diagnostics YELLOW - Evidence Receipt PINK - Evidence Return

Forensic Case Form
Confidential Information

Storage	Date/Init
40c	ma 10/1/97

Received By	Released By	Date	Time
<i>[Signature]</i> Feb Ex 4170 0301 0360	FEB Ex 3688 226290 <i>[Signature]</i>	10/1/97 11/29/97	10:05 2:50

WHITE - Cellmark Diagnostics YELLOW - Evidence Receipt PINK - Evidence Return

EXHIBIT H

CELLMARK
DIAGNOSTICS

20271 Goldenrod Lane · Germantown, Maryland 20876

Telephone: (301) 428-4980 (800) USA-LABS

Administration Fax: (301) 428-4877

Laboratory Fax: (301) 428-7946

October 30, 1997

Tom Cooper, Esq.
Prosecuting Attorney
Sevier County Prosecutor's Office
Ninth West Judicial District
P.O. Box 214
Ashdown, AR 71822

Re: Cellmark Case No. F931380

Dear Mr. Cooper:

Pursuant to your facsimile, dated October 14, 1997, and your telephone conversation with Charlotte Word, requesting discovery of certain documents pertaining to the above-referenced case, please find enclosed the following responses, listed below by item numbers as they appear in the letter.

2A, B, C:

- Note: A copy of the case folder contents was provided to Mr. Randall J. Wright on July 26, 1994. Photographs of the PCR test strips and a copy of the slot blot film(s) were included in the case folder contents.
- Note: Two sets of copies of the original autoradiographs in the above-referenced case were provided to Mr. Randall J. Wright on July 26, 1994.
- Note: An additional copy of the previously provided case folder contents in the above-referenced case can be provided at a cost of \$0.25 per page, \$10.00 per Polaroid print copy and \$25.00 per film copy.
- Note: A copy of the case folder contents in the above-referenced case generated since July 24, 1994, will be provided at no charge. Polaroid photographs of the PCR test strips, two sets of copies of the original STR and D1S80 films, and one copy of the slot blot film(s) will be included in the case folder.

Tom Cooper, Esq.
Response to Request for Discovery, Cellmark Case No. F931380
October 30, 1997
Page 2

2D.

- Note: Copies of the Standard Operating Procedures (SOP) Manuals in use at the time of analysis in the above-referenced case were provided to Mr. Randall J. Wright on July 20, 1994.
- Note: Additional copies of the 1994 RFLP and 1994 PCR Standard Operating Procedures (SOP) Manuals can be provided as part of our Supplementary Discovery Package at a cost of \$100.00.
- Note: A copy of the 1997 PCR Standard Operating Procedures (SOP) Manual can be provided as part of our Supplementary Discovery Package at a cost of \$50.00.
- Note: Copies of RFLP and/or PCR Standard Operating Procedures (SOP) Manuals for other years can be provided at a cost of \$50.00 each.

2E.

- Note: No document exists at Cellmark Diagnostics in the form requested.
- Note: Portions of this request require clarification and testimony. Any instances of contamination that occur during casework testing are documented in the case folder contents. Due to Cellmark Diagnostics' requirement to maintain client privilege, no cases can be provided other than the above-referenced case.
- Note: Refer to response to item 2D, above (Standard Operating Procedures Manuals).

2F.

- Note: Refer to response to items 2A,B,C, (case folder contents) and 2D (Standard Operating Procedures Manuals), above.
- Note: Documentation regarding the collection, handling, shipping and processing of samples consists of 12 pages and can be provided at a cost of \$0.25 per page.

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Response to Request for Discovery, Cellmark Case No. F931380
October 30, 1997
Page 3

2G.

Note: All evidence has been returned to the DeQueen Police Department except for the recent submission.

2H.

Note: Refer to response to item 2D, above (Standard Operating Procedures Manuals).

Note: This request requires testimony.

2I.

Note: Refer to response to items 2A,B,C, above (case folder contents).

2J.

Note: Refer to response to item 2D, above (Standard Operating Procedures Manuals).

Note: This request requires testimony.

2K.

Note: A partial list of RFLP references and scientific articles consists of 11 pages and can be provided at cost of \$0.25 per page.

Note: A copy of the Caucasian data base genotype and allele frequencies for the single-locus probes MS1 (D1S7), MS31 (D7S21), MS43 (D12S11), g3 (D7S22), and YNH24 (D2S44), dated August 22, 1991, was provided to Mr. Randall J. Wright on July 26, 1994.

Note: A copy of the Western Hispanic data base genotype and allele frequencies for the single-locus probes MS1 (D1S7), MS31 (D7S21), MS43 (D12S11), g3 (D7S22), and YNH24 (D2S44), dated August 21, 1991, was provided to Mr. Randall J. Wright on July 26, 1994.

Note: Copy of the African American data base genotype and allele frequencies for the single-locus probes MS1 (D1S7), MS31 (D7S21), MS43

Tom Cooper, Esq.
Response to Request for Discovery, Cellmark Case No. F931380
October 30, 1997
Page 4

(D12811), g3 (D7S22), and YNH24 (D2S44), dated October 3, 1991, was provided to Mr. Randall J. Wright on July 26, 1994.

Note: A memorandum from Dr. Lisa Forman to Dr. Daniel D. Garner, dated July 10, 1989, entitled, "Population Databases", consists of 3 pages and was provided to Mr. Randall J. Wright on July 26, 1994.

Note: Copies of correspondence and invoices relating to the source or origin of samples in databases used by Cellmark Diagnostics consists of 4 pages and can be provided at a cost of \$0.25 per page.

Note: Three 20cm vs. 15cm data tables for the databases consist of 3 pages and can be provided at a cost of \$0.25/page.

Note: For information regarding verification of statistical independence, linkage equilibrium, and Wahlund effect, please refer to Weir, B.S. Independence of VNTR alleles defined as floating bins. *Am. J. Hum. Genet.* 51:992-997.

Note: A partial list of PCR references and scientific articles consists of 5 pages and can be provided at cost of \$0.25 per page.

Note: Copies of the PCR genotype frequencies are included in the PCR Standard Operating Procedures (SOP) Manual. Refer to response to item D, above.

Note: A copy of the PCR databases produced by Cellmark Diagnostics for the Caucasian and African American populations can be provided as part of the Supplementary Discovery Package. Data for the Hispanic population database can be provided by Dr. Rebecca Reynolds, Roche Molecular Systems, Alameda, California.

Note: A memorandum from the Ph.D. Staff to the Forensic Staff, dated June 10, 1997, entitled, "The PCR Databases" consists of 2 pages and can be provided at a cost of \$0.25 per page.

Note: Documentation relating to the source or origin of samples in the PCR databases for Caucasians and African Americans can be provided at a cost of \$0.25 per page.

Note: Documentation from B.S. Weir, dated June 1, 1997, entitled, "Genotype Frequencies in the Cellmark Databases: PM, DQA1 and STR Data",

Tom Cooper, Esq.
Response to Request for Discovery, Cellmark Case No. F931380
October 30, 1997
Page 5

consists of 24 pages and can be provided at a cost of \$0.25 per page.

Note: A memorandum from Dr. Lisa Forman to Dr. Robin Cotton, dated January 28, 1997, entitled, "D1S80 Database" consists of 1 page and can be provided at a cost of \$0.25 per page.

Note: A list of abstracts of presentations of research studies conducted by Cellmark Diagnostics regarding DNA analysis consists of 5 pages and can be provided at a cost of \$0.25 per page.

Note: Documentation (raw data) regarding the DQA1 and PM databases for Caucasians and African Americans consists of 129 pages and 72 photographs of PCR test strips and can be provided at a cost of \$0.25 per page and \$2.00 per Polaroid copy.

Note: Documentation (raw data) regarding the STR databases for Caucasians and African Americans consists of 85 pages, 5 photographs, and 15 STR films and can be provided at a cost of \$0.25 per page, \$2.00 per Polaroid copy and \$25.00 per film copy.

Note: Documentation regarding the databases can be made available for review at Cellmark Diagnostics at a time mutually agreeable to defense experts and Cellmark scientists for a fee of \$200.00 per hour, payable in advance.

2L.

Note: There are no such studies known to Cellmark Diagnostics.

2M.

Note: A partial list of RFLP references and scientific articles consists of 11 pages and can be provided at cost of \$0.25 per page.

Note: A partial list of PCR references and scientific articles consists of 5 pages and can be provided at cost of \$0.25 per page.

2N.

1.

Note: Refer to response to item 2M, above.

Tom Cooper, Esq.
Response to Request for Discovery, Cellmark Case No. F931380
October 30, 1997
Page 6

- Note: A list of abstracts of presentations of research studies conducted by Cellmark Diagnostics regarding DNA analysis consists of 5 pages and can be provided at a cost of \$0.25 per page.
- Note: Refer to Dr. Charlotte J. Word's and Dr. Robin W. Cotton's curriculum vitae for additional references and/or abstracts. These can be provided upon request.
- Note: Copies of specific abstracts and/or posters can be provided at a cost of \$0.25 per page, \$5.00 per photographic print, \$2.00 per Polaroid copy, and \$25.00 per autoradiograph.

2, 3, 4.

- Note: When a paper is submitted to a journal for publication or an abstract is submitted for a meeting, it becomes confidential between the journal editors or meeting organizers and the scientists. They are not available for any review. No documents exist at Cellmark Diagnostics regarding journals' responses.
- Note: No such lists or comments exist.

20.

- Note: A memorandum from Linda A. Danielsen to Daniel D. Garner, Ph.D. and Robin W. Cotton, Ph.D., dated June 30, 1997, entitled "Laboratory RFLP and PCR Proficiency Test Summaries (1988 through 1996)" consists of 20 pages and can be provided at a cost of \$0.25 per page.
- Note: Copies of the proficiency test results for the Cellmark scientists directly involved in the analysis and interpretation of the above-referenced case were provided to Mr. Randall J. Wright on July 26, 1994. This would include all proficiency test summaries completed before July of 1994 for Melisa Weber, Dr. Charlotte Word, and Dr. Lisa Forman.
- Note: Copies of the RFLP and PCR proficiency test results for Dr. Charlotte Word, Dr. Robin Cotton, Dr. Lisa Forman and Melisa A. Weber consists of approximately 350 pages and can be provided at a cost of \$0.25 per page. It is estimated that it will take approximately 1½ hour at \$150.00 per hour to assemble these materials. The total cost for providing these materials will be approximately \$300.00.

Tom Cooper, Esq.
Response to Request for Discovery, Cellmark Case No. F931380
October 30, 1997
Page 7

Note: Documentation regarding proficiency testing can be made available for review at Cellmark Diagnostics at a time mutually agreeable to defense experts and Cellmark scientists for a fee of \$200.00 per hour, payable in advance.

2P.

Note: Refer to response to items 2A,B,C, above (case folder contents).

Note: Curricula vitae for Melisa A. Weber, Dr. Robin W. Cotton and Dr. Charlotte J. Word can be provided at no charge.

Note: Dr. Lisa Forman is no longer employed at Cellmark Diagnostics. She can be reached at : NIJ, Office of Science and Technology, 810 7th St., N.W., Washington D.C. 20531.

Please forward copies of this communication to the Court and to counsel at the earliest opportunity. We wish to insure that all parties are aware of Cellmark's responsiveness to the Order of the Court in a timely manner. If you have any questions or need additional information, please call the scientists involved in the above-referenced case (800-872-5227) or me at 301-515-6157.

These materials and/or responses are being provided on behalf of the Laboratory Director, Robin W. Cotton, Ph.D.

Thank you.

Sincerely,



Linda A. Daniels
Discovery Coordinator

Enclosures

cc: Melisa A. Weber/casefile

DISCOVERY SERVICES

Standard Discovery Package.....No Charge

Standard Letter in Response to Discovery Request
1 Copy of the Entire Case Folder Contents
2 Sets of Duplicates of All Case Autoradiographs
1 Curriculum Vitae for Each Scientist Involved in the Case

Supplementary Discovery Package.....\$50.00

Standard Letter in Response to Discovery Request
1 Copy of the Entire Case Folder Contents
2 Sets of Duplicates of All Case Autoradiographs
1 Curriculum Vitae for Each Scientist Involved in the Case
1 Copy of the Standard Operating Procedures (SOP) Manual**
1 Set of Population Data Bases Applicable to the Case

** Price includes SOP for either RFLP or PCR procedure (all applicable volumes included). The price for SOP manuals for both procedures is \$100.00.

Customized Discovery Package.....(See Below)

Processing Time.....\$150/hour

(Includes time to prepare written response to discovery request, collecting and duplicating documents and materials, and other response processing activities)

Supplementary Discovery Package.....\$50.00

Fees for All Additional Materials

Autoradiographs.....\$25.00/film
Photocopies.....\$0.25/page
Polaroid Photographs.....\$2.00/photo
Polaroid Photographs (8x10)..... \$10.00/photo
Photographic Prints..... \$5.00/photo
Thermal Prints.....\$10.00/print
Computer disks.....\$80.00/disk

♦ All discovery fees are payable in advance unless other invoicing arrangements were previously approved.

♦ All shipping at Cellmark's expense will only be by 2nd day courier delivery. Priority courier delivery is available only when the client provides its courier account number for direct billing.

CELLMARK DIAGNOSTICS
202TH GOLDENROD LANE STE 120
GERMANTOWN MD 20876
(301)428-4880

SHIP DATE: 30OCT97
ACC # 10515112

ACTUAL NET: 1 LBS MAX-WT

TO: TOM COOPER, ESQ.
SEVIER COUNTY PROSECUTOR'S OFFICE
NINTH WEST JUDICIAL DISTRICT
P.O. BOX 214
ASHDOWN AR 71822

4170 0300 9459 FedEx

4170 0300 9459 Form 0201

REF: DIS

STANDARD OVERNIGHT FRI

cod # 0042958 30OCT97

FEDEx LETTER

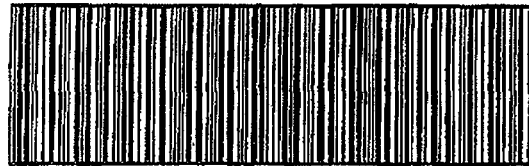
SHV

Deliver by:

TRK 4170 0300 9459 Form 0201 31OCT97

71822-AR-US

XC TXK



#147624 Form 077 G.S.I. 5/97

EXHIBIT I

AFFIDAVIT OF HUMA NASIR, M.S.

I, Huma Nasir, declare, under penalty of perjury, that the following is true and correct:

1. My name is Huma Nasir. I am over the age of 18 and otherwise fully competent to give this statement.
2. I am a Senior Forensic DNA Analyst at Bode Cellmark Forensics (Bode).
3. Bode Cellmark Forensics ("Bode") is a private accredited laboratory that specializes in forensic DNA testing. Bode conducts DNA testing for law enforcement and other government agencies as well as private clients.
4. Bode's accreditations include the American Society of Crime Lab Directors/Laboratory Accreditation Board (ASCLD/LAB-International), the Texas Department of Public Safety, Maryland State Department of Health and Human Hygiene, and the New York State Department of Health. Our analysts routinely undergo proficiency testing in accordance with these accreditations.
5. For over 20 years, Bode has successfully obtained DNA profiles from forensic evidence in thousands of cases, including pre-trial and post-conviction homicide cases, decades-old "cold" cases, and cases where other laboratories consumed substantial portions of the evidence through attempted serology and/or DNA analysis. I have personally performed DNA testing and/or analysis for thousands of cases, both pre-trial and post-conviction.
6. I have been doing forensic DNA analysis for almost fifteen years. I began my career at a private forensic lab, ReliaGene Technologies, and I was employed there from February 2001 until December 2007. I then joined the Orchid Cellmark lab, which through several mergers has become part of Bode. I have served as a technical leader at the lab, and in this role I was responsible for technical management of the laboratory. This included

technical problem solving of analytical methods; method evaluation and proposing new or modified analytical procedures to be used by the laboratory; assisting with the oversight of training, quality assurance, and proficiency testing in the laboratory; and ensuring that casework is processed in an accurate and timely manner. I have provided expert testimony as a Forensic DNA Analyst in over 100 cases and have been admitted as an expert witness in jurisdictions across the country. .

7. I earned a Bachelors of Science in Biological Sciences from the University of New Orleans in 2000 and a Masters of Science in Pharmaceutical Sciences with a concentration in Forensic DNA and Serology from the University of Florida. I have co-authored four articles relating to forensic STR testing and three of these articles published in the Journal of Forensic Science. A copy of my curriculum vitae detailing my experience and credentials is attached hereto as Exhibit A.
8. I submit this Affidavit to advise the Court of the capabilities of Bode, about which I have personal knowledge, to obtain new and relevant information from evidence gathered in the investigation of the murder of Carol Heath and the prosecution and conviction of Stacey Johnson. In preparing this affidavit, I discussed the facts of the case with Innocence Project Staff Attorney Bryce Benjet and was provided with (1) a police report describing the crime scene; (2) reports from the Arkansas Crime Lab which list the evidence submitted and describe forensic analysis performed on the evidence; (3) the report of the autopsy of Carol Heath; (4) reports from 1994 of DNA testing performed by Cellmark Diagnostics; (5) a report from 1997 of DNA testing by Cellmark Diagnostics; (6) a report from 1997 by a consulting expert evaluating the DNA testing performed by Cellmark Diagnostics; and (7) various photographs of the crime scene and evidence

discussed in this affidavit. This information is sufficient for me to reach the conclusions offered in this Affidavit and all opinions offered in this Affidavit are to a reasonable degree of scientific certainty.

9. In 1994, Cellmark Diagnostics performed RFLP, DQ Alpha, and Polymarker testing on some of the evidence in this case. The reports of this DNA testing are attached as Exhibit B. In 1997, Cellmark Diagnostics performed additional DNA testing on the remaining extracts from the testing reported in 1994 using the Geneprint STR DNA testing kit. The report of this testing is attached as Exhibit C.

Advancements in DNA Technology

10. Modern DNA technology utilized by Bode is considerably more sensitive and sophisticated than the testing available in 1994 and 1997 when Mr. Reed's trial took place and in 2002 when additional DNA testing was requested by Mr. Stacey. Current DNA technology can develop full or partial genetic profiles where DNA methods in use in 1994, 1997, and 2002 could not. Current DNA technology is sensitive enough to identify an individual's unique DNA profile from a microscopic amount of biological material previously undetected using older methods. Current technology is also designed to develop DNA profiles from poorly preserved or decades-old degraded samples that were unsuitable for testing using the testing techniques available 15 years ago. Likewise, advancements in DNA technology have allowed us to obtain genetic profiles despite the presence of chemicals that in the past would inhibit the DNA amplification process. This provides a much greater chance at obtaining results from certain types of clothing or leather which contain chemicals that inhibit DNA amplification.

11. The RFLP, DQ Alpha, and Polymarker technology used in this case are outmoded types of DNA testing. Forensic scientists no longer use these types of tests, and the results of such testing are generally not useful for comparison to the results of modern technology. Cellmark Diagnostics also performed very early generation STR testing in 1997 with the Geneprint STR DNA testing kit. However, this test only reported data from 3 markers (locations on the gene also known as "loci") in addition to Amelogenin which identifies the sex of contributors. Current STR test kits now test 23 loci. This expansion of the number of loci tested provides exponentially greater discriminatory power, allowing forensic scientists virtual certainty as to the identity of a source of DNA. The expansion of the number of loci tested also greatly enhances the sensitivity of DNA tests, especially on older and degraded samples. This is because DNA breaks down over time in an irregular fashion. Bacteria may consume the genetic material at some loci, but not others in a sample. Generally the larger genes degrade more quickly than the smaller ones. By increasing the number of genetic loci tested from 3 in 1997 to 23 today, we greatly increase the likelihood of finding genetic material that will yield useful DNA results.
12. Y-STR testing, which first became available for forensic use in 2000 and was not yet widely available in 2002, is more likely to obtain probative results where the evidentiary items contain a mixture of male and female DNA. Y-STR technology is similar to other DNA testing with one major difference: the STR regions targeted for identification are all located on the Y-chromosome, which is exclusive to males. By targeting only male DNA and "ignoring" the female DNA, Y-STR testing can help identify the male DNA present in a mixed sample such as a rape kit or handled clothing from a crime victim. Y-STR technology is especially valuable where the evidence contains a large amount of female DNA and a very small amount of male DNA because

standard DNA techniques will might amplify the female DNA in a manner that renders the male portion of the sample undetectable.

13. “Mini-STR” testing, which is designed to focus on portions of the DNA that break down over time, can also reveal a DNA profile that may not be obtainable through traditional STR testing. Mini-STR technology is particularly suitable for the small or degraded samples that are common when testing evidence collected more than ten years earlier. This technology was not available for forensic use until 2007.
14. Bode also performs mitochondrial DNA testing and analysis. Mitochondrial DNA is present in the mitochondria of every cell in the human body. Mitochondria are usually present in large numbers in human cells. In the event that a biological sample is particularly degraded, it is possible that mitochondrial DNA can be successfully analyzed even if standard DNA techniques (such as STR, discussed above) have failed or cannot be used. Mitochondrial DNA analysis is also recommended when testing hair which does not contain a root and therefore cannot be tested through conventional STR analysis.
15. The processes used in performing DNA testing have also evolved over the past 15 years, making it more likely that results can be obtained from small, degraded, or inhibited samples. First, the DNA extraction techniques have improved. We now use a robotic extraction method in conjunction with an additional reagent “carrier RNA”. Extraction is the process by which the genetic material is separated out from the sample of the evidence. Published validation research on this extraction method shows that it removes potential PCR inhibitors better than older extraction procedures and increases the yield of DNA extracted from a forensic sample.
16. In the past 15 years, we have also improved our ability to concentrate samples where there is only a small amount of genetic material. The concentration methods (Amicon

filters or drying down samples using Vacufuge) help concentrate the genetic material that has been extracted, which improves our ability to obtain useful DNA profiles even from samples that may contain only a few skin cells. Likewise, where prior testing of small amounts of material only yielded a partial profile, using the Amicon filter to concentrate a sample can allow us to obtain a more complete DNA profile suitable for comparison.

17. With these considerable advances in sensitivity, we have also improved our sampling techniques. The best example of this is the use of scraping/swabbing method. Scraping is done by taking a sterile scalpel or other sharp blade and removing the top layer of a sample—usually cloth to dislodge cells that may be embedded in the fabric. These dislodged cells can then be collected using a sterile swab and tested. We have found that this method provides more material than the sampling techniques that forensic DNA scientists may have used in 2002 on similar items.
18. The advancements in the sensitivity of forensic DNA testing over the past 15 years have changed the way forensic investigators utilize DNA testing. In 2002 and before, it was common for investigators and DNA scientists to test only those samples with visible stains or those otherwise known to contain biological material such as cigarette butts that are repeatedly placed in a person's mouth. For example, forensic DNA labs did not routinely perform DNA testing on sexual assault evidence unless sperm was visualized.
19. By contrast, forensic scientists now collect and test samples from items where no biological material is visible. In addition to searching for blood, semen, or saliva, we now sample items that were only touched or handled by the perpetrator of a crime to test "touch DNA". These items may include clothing, ligatures, the inside of pockets, and the surface of objects carried by the perpetrator. Published literature, confirmed by my

experience in the lab, has shown that cells transferred from a person's hands onto an object they touch can be collected, tested using current methods and yield a DNA profile.

Recommendations for DNA testing

20. From my review of the documentation discussed in paragraph 8, it is my professional opinion that DNA testing on the evidence in this case is capable of yielding scientifically valid results that can identify the person who raped and murdered Carol Heath. Specifically I recommend that DNA testing be performed on the following evidence:
21. **Sexual Assault Evidence.** I understand from my review of the materials provided that the victim was likely raped in the course of the murder. However, it was also believed by police that the murderer could have worn a condom and may have rinsed the victim's vaginal cavity with a douche bottle. Serology reports from the Arkansas Crime Lab state that no sperm was found on any of the evidence. Due to the limited sensitivity of DNA tests fifteen years ago or earlier, forensic scientists likely would not recommend DNA testing of sexual assault evidence where semen was not detected through presumptive tests or microscopic examination. That is no longer the case. Serology literature explains that the average ejaculation contains tens to hundreds of millions of sperm cells. Where current technology only requires a few cells to generate a DNA profile, it is possible to obtain results from extremely diluted or low level samples where sperm cells were not previously visualized or presumptive testing did not indicate the presence of semen. Y-STR technology is especially helpful in this regard because it targets and amplifies only male DNA. Therefore, DNA results can be obtained from mixed samples where the victim's DNA would otherwise prevent detection of a small amount of male DNA. DNA

testing can be performed on the following items which may identify the person who raped and murdered Ms. Heath:

- Vaginal swabs and smears were collected from the victim. Although semen was not detected by the Arkansas Crime Lab in 1993, current DNA technology is capable of yielding a DNA profile from even a few sperm cells that may not have been identified using the methods available in 1993. Alternatively, a male DNA profile can be obtained from non-sperm cells such as epithelial cells that may be present in the sample.
- Breast swabs were collected, and a presumptive test for amylase indicated the presence of saliva. Although DNA testing performed in 1994 identified only the victim's profile, trace amounts of other DNA were detected in 1997 that did not meet the labs interpretation guidelines. Especially, where there is some indication from the 1997 testing of a second contributor to the DNA on the breast swab, modern DNA technologies such as Y-STR testing are capable of yielding DNA profiles from this mixed sample that could not have been obtained in 1997 or even in 2002. This additional DNA profile may have come from epithelial cells present in the perpetrator's saliva.¹
- A Douche bottle was collected from the victim's sink and was believed to have been used by the murderer to rinse the victim's vaginal cavity after a sexual encounter. Therefore the bottle should be tested because seminal fluid (if present) could be transferred onto the end of the bottle if it was inserted into the vaginal cavity. If the perpetrator wore a condom, it is possible to find male DNA from

¹ Epithelial cells are skin cells that also make up the lining of the mouth, nose, vaginal and rectal cavities and the urethra.

contact from other parts of his body. Epithelial cells (touch DNA) could also have been transferred onto the bottle from the perpetrator's hands.

- Tissue Paper was found under the victim and was believed by law enforcement to have been used to wipe her genital area. The tissue could have collected seminal fluid that may have been rinsed out of the victim's vaginal cavity. Epithelial cells could also have been transferred from the perpetrator's hands onto the tissue.
- The victim's underwear was found beside her right thigh according to a police report. It is possible that the victim's underwear was removed by the perpetrator during the assault, providing the opportunity for his DNA to be transferred onto the waistband (or other parts) of the underwear. Therefore, I recommend testing the waistband for male epithelial cells. The crotch area of the underwear can also be tested for the possible presence of seminal fluid since the circumstances of how and when the underwear was removed are unknown.
- Pubic hair combings were collected from the victim. Pubic hair combings in sexual assault cases can provide relevant DNA evidence either because the perpetrator's own hair may be located among them or because semen from the assault may be transferred on the hair. If root material is not present on these hairs, mitochondrial DNA testing can be performed to possibly identify hairs not from the victim and can be compared to the victim, Mr. Stacey and known eliminations samples to determine their relevance. Furthermore, I recommend that the hairs be washed to collect any seminal fluid that may have attached to the hairs.

- An empty condom box was found in the victim's sink next to the douche bottle and was believed to have been handled by the perpetrator. In handling the box, epithelial cells could be transferred from the perpetrator onto the box and this box can be tested for "touch DNA".
22. **Bloody Towel.** A bloody towel was found just above the victim's head and was presumably used by the perpetrator to wipe blood. In handling the towel or wiping off blood, the perpetrator would also transfer epithelial cells onto the towel which could be detected through DNA testing. It is also possible in a stabbing case such as this that the perpetrator might have cut himself. This would provide the opportunity for the perpetrator to transfer his own blood on the towel which could be detected through DNA testing.
23. **Fingernail Clippings.** The victim's hands were bagged at the scene and fingernail clippings were taken at autopsy despite the absence of visible blood or tissue. The Autopsy report states that there was evidence of strangulation and defensive wounds consistent with a struggle. Under these circumstances, fingernail clippings are taken because victims can scratch their attackers either during a struggle or while they are being strangled. Although this evidence was not tested at the time of trial (or even in 2002) because there was no apparent tissue present, current DNA technology can detect DNA from epithelial cells that could have been transferred even if the perpetrator sustained no visible injury.
24. **Victims' T-Shirt.** The victim was found with her T-shirt on, pulled up, and bite marks were identified on her breasts. If the victim was bitten through her shirt, the perpetrator would have transferred epithelial cells with his saliva on the shirt in the area around her

breasts. If the shirt was touched, handled or pulled up, epithelial cells from the perpetrator could be transferred onto the shirt.

25. **Perpetrator's Shirts and Victim's Purse.** The victim's purse and two blood stained shirts (a white shirt and a green shirt) were found in a location some distance from the crime scene. DNA testing at the time of Mr. Johnson's trial indicated that the blood on the shirts came from the victim. No other DNA profile was obtained to identify the person who was wearing the shirt. Testing of the white shirt, however, indicated some DNA from an additional contributor that was detected below the laboratory's reporting guidelines. Current DNA testing is capable of generating a DNA profile from epithelial cells left by the person who wore the shirt. Therefore I recommend testing areas of the shirt most likely to come into contact with the wearer's skin such as the collar of the green shirt and the collar and arm pits of the white t-shirt. Likewise, the perpetrator could have carried the victim's purse from the crime scene to the location where it was found. This would provide the opportunity for the perpetrator to transfer his epithelial cells onto the purse that could be detected by sampling and testing the handles of the purse.
26. **Hair Evidence.** Hair evidence was collected from the crime scene and the shirts found with the victim's purse. Because hairs are shed and easily transferred, any hairs collected from the items described above could also be DNA tested. If the hairs have root material, autosomal DNA testing methods like STR and Y-STR testing can be performed. If the hairs do not have roots, they can be subjected to mitochondrial DNA testing.

27. Modern STR DNA testing has the capacity to generate DNA profiles that can be uploaded into the CODIS DNA database. This is a database consisting of over 11 million DNA profiles from convicted offenders as well as other profiles from forensic evidence in unsolved cases. CODIS is now a standard tool in using forensic DNA testing to solve crimes and in post-conviction DNA testing cases. Specifically, Bode has the capability (working in conjunction with an authorized government lab) to have DNA profiles from evidence uploaded to the CODIS database. Review, upload and search of these evidentiary profiles into the CODIS database may result in associating a profile with a convicted offender.

One to One Comparisons

28. DNA profiles using all of the technologies describe in this affidavit can also be compared against other profiles using the same type of test. Depending on the amount of data obtained and the technology used, these comparisons can have very significant statistical weight. One to One comparisons are used either to associate a crime scene DNA profile with or exclude a crime scene DNA profile from a known person or another unidentified profile.

Condition of the Evidence and Suitability for Testing

29. DNA testing is common in decades old cases where the evidence may not have been stored with the care one would expect in anticipation of DNA testing. The routine handling of the evidence during forensic investigation and trial and even the potential for contamination in storage does not render the evidence unsuitable for testing. One of the unique aspects of DNA evidence is its ability to identify with great certainty the individual whose DNA is found on an item of evidence. This can be done either through

comparison to known individuals or through the use of the CODIS DNA database containing over 11 million offender profiles. Even where evidence is handled by investigators, lawyers or other court personnel or is stored in a manner that does not necessarily guard against contamination, probative results can be obtained through the elimination of innocent contributors, the identification of a known suspect's DNA through one-to-one comparison, or through an identification of a known offender in the CODIS database.

30. I attest, under penalty of perjury, that the foregoing facts are true and accurate to the best of my knowledge, information and belief.
31. I reserve the right to change my opinions if new information becomes available.

Huma Nasir
HUMA NASIR, MS, F-ABC

Sworn before me this

12 day of April, 2017

Piyarut Hemenway
Notary Public

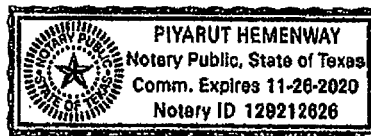
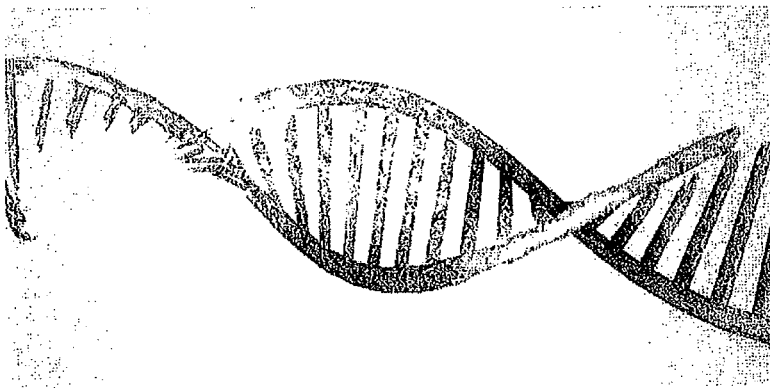


EXHIBIT J

DNA

DNA Core Loci Expanding in Two Weeks

Thu, 12/15/2016 - 4:44pm 1 Comment by Seth Augenstein - Senior Science Writer - @SethAugenstein



DNA has been the "gold standard" in forensic science for two decades. It could get even better – in two weeks.

The National DNA Index System, which relies on a core group of 13 loci, or genetic markers, will expand on Jan. 1 to 20 loci.

The switch adds seven new markers that were carefully selected over a years-long process – making more certain matches – and potentially solving more crimes of both the future – and even the past.



Seth
Augenstein
Senior

Science Writer

@SethAugenstein

Full Bio >

A whirlwind of preparations, capping years of incremental changes, is currently underway at more than 200 crime laboratories nationwide.

The preparations involve replacing equipment, re-training even veteran lab personnel, and educating investigators and others about how the new take on DNA, said Mike Coble, a research geneticist at the National Institute of Standards and Technology.

"It's a huge task," said Coble, in an interview with *Forensic Magazine*. "There's a lot of training going on right now, even as we speak, with it two weeks away."

The deeper dive into the genetic markers were orchestrated in part by Coble and his colleagues at NIST, along with the Federal Bureau of Investigation, which runs the NDIS.

The increased number of loci became a matter of statistical necessity. Beginning in the 1990s, convicted criminals and missing persons were continually added to the database. Roughly 16 million profiles are now within the NDIS. But like a city might eventually need to add a new area code to accommodate a growing population, more markers needed to be added to assure specificity in identification, NIST said. (To date, there has only been a single reported false DNA match – a hit in the United Kingdom in 1999, when they were using only six loci, among a mere 660,000 people in their database. But even that had a 1-in-37-million random match probability).

The new seven markers also add weight and breadth to forensic science, however.

Beginning in 2004, Coble and the NIST team looked at adding more markers. From a grouping of 1,000, they eventually settled on three mini markers that are part of the new seven. These three are especially hardy, and are liable to stay more intact even as the rest of the DNA degrades. In fact, many of the markers were first assessed during the long years of identifying victims of the 9/11 terror attacks, especially at the World Trade Center, where fires burned for months, damaging the trove of genetic evidence.

But the three loci they found also show distinct variability – meaning they more effectively identify people.

"We were looking for markers that were short and that showed a lot of variability," Coble said. "If half the population has the same number of repeats, it won't be very good for telling people apart."

The loci have to be identifiers – but not genes that could lead to classification based on appearance or medical conditions, according to officials.

"We've intentionally chosen markers that don't tell you anything about how a person looks or behaves," said Doug Hares, a biologist at the FBI who manages NDIS. "And they have no predictive value of inters, of medical conditions."

Some kits already have incorporated additional loci. But still, the bump up to 20 genetic markers could mean the difference between a case breakthrough and an inconclusive result. Coble explained how a certain DNA kit could produce only five markers below 200 base pairs – which would equal a 1-in-10,000 likelihood. However, once that same sample is incorporated into the new 20-loci system, that likelihood increases to 1 in 100 million.

Coble explained that many labs have undertaken complete upgrades to their DNA analysis equipment to meet the FBI guidelines; some few have asked for extension to meet the new requirements.

But the long-term preparation has positioned most crime laboratories well, said Hares, of the FBI.

"We've been working for years to make sure that this transition goes smoothly," said Hares.

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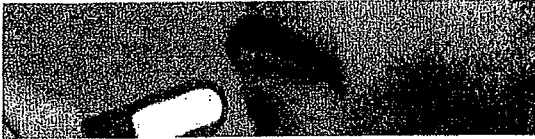
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EXHIBIT K



STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant
Attorney General

October 3, 1994

Telephone:
(501) 682-2007

Dr. Charlotte Word
Ms. Melisa Weber
CELLMARK DIAGNOSTICS
20271 Goldenrod Lane
Germantown, Maryland 20876

RE: State of Arkansas vs. Stacey Johnson

Dear Charlotte and Melisa:

Before moving on to other things I wanted to let you know how much I appreciate your assistance in the Johnson case. I don't know if I told you or not but I noticed when both of you were being cross-examined and Ms. Jones asked argumentative questions many of the jurors shook their heads already knowing the answers.

Mark Crew testified on Thursday but his testimony did nothing to question the results of the test. The defense wanted the "4" results more specific yet never carried out the tests to do so. Moreover, none of Cellmark's test results excluded Stacey Johnson as the person at Carol Heath's home.

The trial really came together and I believe the scientific evidence gave us another aggravating circumstance. (At least one is required for imposition of the death penalty if it outweighs mitigating circumstances.)

A bloody fingerprint of Carol Heath was found on a linen closet door and as you may know, towels were found with blood. Essentially, Johnson was admitted into the home where he talked with Heath for a time. He then beat her up, she submitted to the sex (her children were in the house) then he strangled her and slashed her throat. The douche bottle and condom package in the sink indicate Johnson wanted to erase any traces of his presence.

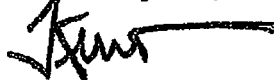
Dr. Charlotte Word
Ms. Melisa Weber
Page two
October 3, 1994

The jury was out a couple of hours on guilt and an hour on punishment. The jury found no mitigating circumstances and all three aggravating circumstances: Johnson had a prior violent felony (sexual assault), Johnson killed Heath to prevent his arrest on his sexual assault of her; and, the murder was especially cruel in light of her being in the position of contemplating what might ultimately happen to her and her children.

The evidence against Johnson was overwhelming. The weight of the scientific evidence mounted, all confirming the testimony of lay witnesses.

Your help is greatly appreciated. Please don't hesitate to call me if I can be of any assistance to you.

Best regards,



KENT G. HOLT
Assistant Attorney General

KGH:jt

EXHIBIT L

SUPREME COURT OF ARKANSAS

No. CR-13-359

SANDERS M. CARTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 26, 2015

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-1987-63]

HONORABLE HERBERT THOMAS
WRIGHT, JR., JUDGE

REVERSED AND REMANDED.

JIM HANNAH, Chief Justice

Appellant, Sanders M. Carter, appeals from the circuit court's denial of his motion for postconviction forensic DNA testing pursuant to Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). We reverse and remand for an evidentiary hearing.

The following facts, except where supplemented in footnote 1, were recited by this court on direct appeal:

On November 18, 1986, a criminal committed the felonies of rape and aggravated robbery of the prosecutrix and the burglary of her home. During the forty to forty-five minute ordeal, the criminal, who had entered the home through a kitchen window off a deck, threatened to kill the prosecutrix with a knife, and also told her that if she called the police he would come back at a later time and slit her throat. In spite of his threat, she called the police, reported the crimes, and gave a description of the criminal.¹

¹Detective Ronnie Smith of the Little Rock Police Department responded to the scene on November 18, 1986, and he testified that, while there, he recovered a knife that was lying in the grass on the north side of the victim's home. The knife was admitted into evidence at trial and identified by the victim as the knife used by Carter during the rape,

One night about a month and one-half later, on January 4, 1987, she heard someone on the deck and saw a man pass by the window. She called the police and they immediately caught the appellant on the deck. Later that day, and again at trial, she identified the appellant as the person who had committed the earlier rape, aggravated robbery, and burglary. The appellant was charged with those three felonies and was also charged with the later attempted burglary. The attempted burglary charge was severed and later dismissed.

Carter v. State, 295 Ark. 218, 220, 748 S.W.2d 127, 127 (1988). On June 3, 1987, Carter was convicted of rape, aggravated robbery with a deadly weapon, and burglary. For his convictions, Carter was sentenced as a habitual offender to consecutive terms of imprisonment totaling life plus forty years. This court affirmed on direct appeal. *See id.*, 748 S.W.2d at 127. Carter subsequently filed numerous unsuccessful petitions for postconviction relief.²

On May 16, 2012, Carter filed a motion for postconviction forensic DNA testing and requested that he be allowed to conduct DNA testing of so-called “touch DNA” purportedly

aggravated robbery, and burglary.

²*See Carter v. State*, CR-87-209, 1989 WL 121061 (Ark. Oct. 16, 1989) (unpublished per curiam) (rejecting petition to pursue Rule 37 relief in circuit court); *Carter v. State*, CR-90-187, 1990 WL 175927 (Ark. Nov. 5, 1990) (unpublished per curiam) (dismissing appeal of circuit court’s order denying habeas corpus relief); *Carter v. State*, CR-03-148, 2004 WL 309063 (Ark. Feb. 19, 2004) (unpublished per curiam) (affirming circuit court’s denial of petition for further scientific testing of evidence collected at the crime scene because the evidence either no longer existed or could not be located); *Carter v. Norris*, 367 Ark. 360, 240 S.W.3d 124 (2006) (per curiam) (affirming circuit court’s denial of petition for habeas corpus relief); *Carter v. State*, 2010 Ark. 29 (per curiam) (affirming circuit court’s denial of successive petition for further scientific testing of hairs collected at the crime scene because Carter did not offer a factual basis for his claim that the evidence was available with an unbroken chain of custody); *Carter v. State*, 2011 Ark. 481 (per curiam) (denying petition to reinvest jurisdiction in the circuit court to consider a petition for writ of error coram nobis).

located on the handle of the knife that was admitted into evidence at trial and identified by the victim as the knife Carter used during the rape, aggravated robbery, and burglary. Carter alleged that DNA testing of the knife could produce evidence materially relevant to his assertion of actual innocence. The State responded that Carter was not entitled to relief because he failed to satisfy the statutory requirements for postconviction DNA testing.

The circuit court denied the motion without a hearing and ruled that Carter was entitled to no relief because he (1) failed to satisfy the chain-of-custody requirements of section 16-112-202(4), (2) failed to satisfy the timeliness requirement of section 16-112-202(10), and (3) failed to demonstrate that he should be permitted to file a subsequent petition for postconviction relief. Carter appeals.

In appeals of postconviction proceedings, we will not reverse a circuit court's decision granting or denying postconviction relief unless it is clearly erroneous. *E.g., Paukau v. State*, 2013 Ark. 162, at 5. A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.* The same standard of review applies when a circuit court denies DNA testing under Arkansas Code Annotated sections 16-122-201 to-208. *Id.* Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response, promptly determine the issues, make findings of fact and conclusions of law, and either deny the petition or enter an order granting the appropriate relief. Ark. Code Ann. § 16-122-205(a).

Except when direct appeal is available, a person convicted of a crime may make a motion for the performance of . . . DNA testing, or other tests which may become available through advances in technology to demonstrate the person's actual innocence if a number of requirements are satisfied. See Ark. Code Ann. § 16-122-202. The statutory requirements at issue in this case are chain of custody and timeliness.

I. Chain of Custody

Section 16-112-202(4) requires demonstration that "[t]he specific evidence to be tested is in the possession of the state and has been subject to a chain of custody and retained under conditions sufficient to ensure that the evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed testing." The statute has three components: the requirement that the specific evidence to be tested is in the possession of the State, the requirement of chain of custody, and the requirement that there has been no alteration of evidence material to DNA testing. See *United States v. Fasano*, 577 F.3d 572, 576 (5th Cir. 2009) (construing chain-of-custody requirements under 18 U.S.C. § 3600(a)(4) of the Innocence Protection Act of 2004).³ Carter alleged in his petition that the Little Rock Police Department recovered the knife

³The Innocence Protection Act of 2004, codified at 18 U.S.C. § 3600, "allows federal prisoners to move for court-ordered DNA testing under certain specified conditions." See *Dist. Atty's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 63 (2009). An applicant seeking DNA testing under the Innocence Protection Act must demonstrate, inter alia, that "[t]he specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing." 18 U.S.C. § 3600(a)(4).

from the scene and sent it to the Arkansas State Crime Laboratory, which then returned it to the Little Rock Police Department. Carter further alleged that the knife was admitted into evidence as Exhibit 6 at his trial and then delivered to this court's office of the clerk in 1987 when the record was lodged in his direct appeal. Finally, Carter alleged that in August 2011, he confirmed through a telephone conversation with a clerk's office employee that the clerk's office was still in possession of the knife.

The State responded that Carter failed to satisfy the chain-of-custody requirements because the knife was "introduced at trial as an exhibit and therefore could have been and was held by any number of people, including the prosecutor, detective, judge, bailiff, court reporter, and jurors, who did not wear gloves," and because the knife "was sent with the trial transcript to the Arkansas Supreme Court where it was held in a manila envelope which became torn at some point." In addition, the State averred that the knife "was . . . sent to the prosecutor's office when it requested the transcript in this matter, thereby showing that anyone who viewed the transcript in this matter or handled the transcript could have touched the knife."

In its order denying relief, the circuit court found that the knife had been delivered to this court's office of the clerk when the record was lodged in Carter's direct appeal on December 1, 1987, and that the transcript has been available for checkout. Further, the circuit court found that the records of the clerk's office "reflect that the appellate transcript, including the knife, has been checked out and removed from the custody of that office on

at least three occasions since 2002.”⁴ Accordingly, the circuit court ruled that Carter had failed to meet the chain-of-custody requirements of section 16-112-202(4).

We conclude that the circuit court erred in failing to hold an evidentiary hearing to determine whether Carter satisfied the chain-of-custody requirements of section 16-112-202(4). Carter alleged in his petition that the knife was in the possession of the State, that the knife had been subject to a chain of custody, and that the knife had been retained under sufficient conditions. The State agreed that the knife was in the possession of the State, but it maintained that the chain of custody had been compromised because the knife “could have been and was held by any number of people.” As Carter points out, the State presented no documentation to support its claim that a break in the chain of custody had occurred and it presented no evidence to support its claim that the knife had not been retained under conditions sufficient to ensure that it had not been contaminated, tampered with, or altered in any respect material to the proposed testing. In addition, because no hearing was held, Carter had no opportunity to disprove the State’s claim that a break in the chain of custody had occurred, and he had no opportunity to present evidence regarding the ability—via modern DNA testing procedures—to obtain probative results from the evidence despite the conditions of retention. We hold that, under the facts of this case, the dispute over chain-of-custody requirements must be resolved in an evidentiary hearing.

II. *Timeliness*

A motion for postconviction DNA testing must be made in a timely fashion. Ark.

⁴There is no evidence in the record to support this finding.

Code Ann. § 16-122-202(10). There is a rebuttable presumption against timeliness for testing if the motion is not made within thirty-six months of the conviction. *Id.* § 16-122-202(10)(B). The presumption may be rebutted upon a showing (1) that the movant was or is incompetent and the incompetence substantially contributed to the delay in the motion for a test, (2) that the evidence to be tested is newly discovered evidence, (3) that the motion is not based solely upon the movant's own assertion of innocence and a denial of the motion would result in a manifest injustice, (4) that a new method of technology that is substantially more probative than prior testing is available; (5) or good cause. *Id.* § 16-122-202(10)(B)(i)-(v).

Carter was convicted in 1987, and he filed his motion in 2012. A rebuttable presumption therefore arose that the motion was untimely filed. The circuit court found that Carter's request for DNA testing was untimely because he had known about the existence of the knife since June 3, 1987, when it was admitted into evidence at his trial.

To rebut a presumption against untimeliness, a petitioner need only satisfy one of the enumerated bases for rebuttal. Here, Carter rebutted the presumption against untimeliness by showing that a new method of technology that is substantially more probative than prior testing is available. *See* Ark. Code Ann. § 16-122-202(10)(B)(iv). Carter was convicted in 1987, and in a previous petition, he presented evidence that DNA testing was unavailable at the Arkansas State Crime Laboratory at that time. *See Carter v. State*, CR-03-148, 2004 WL 309063, at *1 (Ark. Feb. 19, 2004) (unpublished per curiam). This court has observed that DNA profiles have been admissible evidence in Arkansas since 1991. *See Whitfield v. State*,

346 Ark. 43, 45, 56 S.W.3d 357, 358 (2001) (citing *Prater v. State*, 307 Ark. 180, 820 S.W.2d 429 (1991)). Carter asserts that, because no DNA testing methods were available at the time of his trial, today's DNA testing methods are, by definition, substantially more probative.

The State contends that, even accepting Carter's representations regarding the availability of STR testing in Arkansas—1996—and Y-STR testing—2007—his motion still fails to overcome the presumption of untimeliness because he could have verified the knife's location at any time after those dates by a simple phone call to the clerk of this court and petitioned to have the knife tested using those technologies. We disagree. Despite the State's assertion to the contrary, the statute imposes no time limitation for rebutting a presumption against timeliness. See Ark. Code Ann. § 16-112-202(10)(B). We hold that the circuit court erred in finding that Carter failed to meet the timeliness requirement of section 16-112-202(10).

III. *Successive Petition*

Carter contends that the circuit court abused its discretion in failing to permit him to file a subsequent petition under section 16-112-205(d), which states that the "court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition if the issues raised in it have previously been decided by . . . the Arkansas Supreme Court in the same case." The State correctly points out that the circuit court did not "summarily deny" Carter's motion because it considered and ruled on his arguments regarding the chain of custody and timeliness. To the extent that the circuit court ruled that Carter was not entitled to seek postconviction forensic DNA

testing because his motion in this case amounted to a successive petition for similar relief, we disagree. Carter's previous petitions did not request the use of the DNA technologies at issue here, specifically STR and Y-STR testing.

Because the files and records in this case do not conclusively show that no relief was warranted, we reverse the circuit court's denial of Carter's motion for postconviction forensic DNA testing, and we remand to the circuit court to conduct a hearing on the motion. In holding a hearing on the motion, the circuit court can consider the issues discussed in this appeal and determine whether each of the other statutory requirements have been met such that testing shall be ordered.

Reversed and remanded.

Karen Thompson, The Innocence Project, for appellant.

Dustin McDaniel, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellee.