

**CAPITAL CASE – EXECUTION SET FOR APRIL 20, 2017**  
**IN THE SUPREME COURT OF ARKANSAS**

STACEY EUGENE JOHNSON

APPELLANT/PETITIONER

VS.

CR-98-743  
CR-02-1362  
CR-05-1180

STATE OF ARKANSAS

APPELLEE/RESPONDENT

**MOTION FOR STAY OF EXECUTION AND FOR AN ORDER  
REMANDING FOR A HEARING ON PETITIONER’S MOTION FOR  
POSTCONVICTION DNA TESTING**

Appellant Stacey Eugene Johnson respectfully requests that this Court stay his execution—currently scheduled for on April 20, 2017—and order the circuit court of Sevier County to hold an evidentiary hearing on his meritorious Motion for Postconviction DNA Testing Pursuant to Arkansas Code Annotated §§ 16-112-201 et seq.

**I.**

**Introduction**

For nearly a quarter of a century, Mr. Johnson has steadfastly asserted his innocence and denied any involvement in the 1993 murder of Carol Jean Heath. He timely sought to prove his innocence through DNA testing soon after the Legislature enacted Arkansas’s postconviction DNA testing law. *See* §§ 16-112-201, *et seq.*; *Johnson v. State*, 157 S.W.3d 151 (Ark. 2004). The sensitivity and

discriminatory powers of forensic DNA technology have advanced exponentially since DNA testing was performed at the time of Mr. Johnson's trial and since this Court considered (and granted in part) Mr. Johnson's prior DNA motion.<sup>1</sup> *Johnson v. State*, 366 Ark. 390, 235 S.W.3d 872 (2006). Based on these qualitative changes in the capabilities of forensic DNA testing between 1997, 2002 and now, Mr. Johnson asks that DNA testing be conducted on crucial evidence including, but not limited to: the victim's rape kit, fingernail scrapings, several Caucasian hairs not matching the victim's, swabs taken of a bite mark found on the victim's breast, and clothing stained in the victim's blood found miles away from the crime scene. *See* R. 73-74 (Motion for Postconviction DNA Testing (the "Motion")).

The perpetrator in this case would have unquestionably left DNA on these items (and others identified in the Motion), and current forensic DNA technology is now capable of identifying the source of that DNA from microscopic amounts of biology left in the course of the crime. *See* Exhibit ("Exh.") 1 at ¶¶ 10-19 (Affidavit of Huma Nasir). Identifying a third party, such as the victim's boyfriend—whose long domestic assault history and violent tendencies *were never presented to the jury*—as the source of this DNA, would irrefutably incriminate the true murderer and exonerate Mr. Johnson.

---

<sup>1</sup> The Court subsequently held in 2006 that the evidence at issue had been retested with incrementally more advanced DNA technology in 1997 and no showing had been made at the time to justify another test. *See Johnson IV*, defined *infra*.

Mr. Johnson’s well-founded Motion was denied by the circuit court on April 17. In a written Order<sup>2</sup>, the circuit court based its decision to deny DNA testing on the following unsupported grounds: (a) the circuit court lacked jurisdiction over the Motion for Postconviction DNA testing; (b) the law of the case doctrine required the circuit court to deny the Motion; (c) the Motion was “presumptively untimely”; (d) chain of custody was not established; and (e) the results of his proposed testing would significantly advance his claim of actual innocence. The circuit court also expressly denied a hearing on Mr. Johnson’s Motion, finding that “the files and records of the proceeding conclusively demonstrate that the petitioner is entitled to no relief”. (R. 261).

Because Mr. Johnson has alleged facts—supported and accompanied by evidentiary proof—which entitle him not only to a grant of DNA testing, but also to a hearing under § 16-112-205 of the Arkansas Code Annotated §§ 16-112-201, et seq. (the “Statute”), this Court should stay Mr. Johnson’s execution, reverse the circuit court’s Order Denying DNA Testing, and remand the case for a hearing under the Statute. *See Carter v. State*, 2015 Ark. 57 (2015)<sup>3</sup>.

---

<sup>2</sup> A copy of the circuit court’s denying DNA testing is found at R. 261 and is attached as Exh. 2.

<sup>3</sup> For the Court’s convenience, *Carter v. State* is attached hereto as Exh. 3.

## II.

### Prior Proceedings

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 efforts to prove his innocence through DNA testing and other methods.

In 1993, Mr. Johnson was charged in Sevier County with capital murder in the murder of Carol Jean Heath. The homicide was allegedly witnessed by Ms. Heath's six-year old 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 nonetheless admitted into evidence. The State also selectively relied on DNA testing results from items of evidence associated with Mr. Johnson. Based on this testimony and the testing results, 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 in 1997, 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 Mr. Johnson in which he supposedly confessed to this and other homicides. That statement had been excluded from the first trial on the basis of surprise. Mr. Johnson appealed his second conviction. On appeal, the conviction and death sentence were affirmed by this Court in a narrow 4-3 vote. 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 DNA testing under the Statute. In the habeas petition, Mr. Johnson noted newly available STR technology that superseded the capacities of DNA technologies used during his first two trials. The petitions were joined for a hearing, and were both denied by the trial court.

On appeal, where the two petitions were also joined, 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 DNA 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 District Court declined to grant a certificate of appealability on the issue. 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 V*]. Certiorari was denied. *Johnson v. Arkansas*, 555 U.S. 1182, 129 S.Ct. 1334 (2009).

Since that time, Mr. Johnson has been a litigant in the lethal injection proceedings which have been in front of this Court in *Hobbs v. Jones*, 2012 Ark. 293, 412 S.W.3d 844; *Hobbs v. McGehee*, 2015 Ark. 116, 458 S.W.3d 707; and

*Kelley v. Johnson*, 2016 Ark. 268, 496 S.W.3d 346.

Prior to filing his recent Motion in the circuit court, Mr. Johnson petitioned this 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. This Court denied Mr. Johnson's Petition by summary order on April 6, 2017.

### **III.**

#### **A Stay of Execution Should Be Granted**

Because Mr. Johnson's appeal has substantial merit, this Court should stay his execution, hear his appeal, and order a hearing on the Motion. This case presents a situation not precisely congruent with the circumstances in which this Court has previously granted stays of execution. In *Kelley v. Griffen*, 2015 Ark. 375, 472 S.W.3d 135, the Court noted that it would grant a stay when a constitutional claim pending in a lower court "(1) only recently ripened; (2) is bona fide and not frivolous; and (3) cannot be resolved before the execution date." Mr. Johnson's case is now pending in this Court and, as discussed below, has ripened over the years, most recently, through the quantum leap in DNA testing technology that only came into wide use on January 1 of this year. *See* R. 211-14; attached hereto as Exh. 4. Mr. Johnson's case is certainly "bona fide" and cannot be

resolved before the execution date. However, although there is a constitutional component to the claim, this case presents disputed factual components where new scientific technologies may irrefutably and definitively resolve any doubt regarding Mr. Johnson's innocence. Under such circumstances a stay is warranted.

To this end, this Court should look to how our sister state Mississippi disposed of the parallel circumstances raised in *Manning v. State*, No. 95-DP-00066-SCT (May 2013). *See* Exhs. 5 and 6 (Orders staying execution and granting DNA testing). Indeed, in that case, the Court not only granted the stay of execution, but allowed the consideration of testing in the lower court. It should be noted that in his dissent to the stay order, Justice Randolph was critical of Manning, the petitioner, because he had not sought DNA testing earlier. *See* Exh. 6. In the instant case, of course, Johnson had sought DNA testing almost immediately after the DNA statute was passed but was denied by the circuit court and by this Court. His efforts to obtain DNA testing since that time have been constant.

#### IV.

### **Mr. Johnson’s Motion for Postconviction DNA Testing Should Be Remanded to the Circuit Court for a Hearing**

#### **A. The Circuit Court Had Jurisdiction to Consider Mr. Johnson’s Motion and the Law of the Case Doctrine is Inapplicable Here**

In its Order, the circuit court held that it is “both without jurisdiction and barred by the law of the case doctrine, to entertain [Mr. Johnson’s] successive petition for testing.” (R. 261). This holding is incorrect by the several clear provisions of the Statute indicating exactly the opposite.

First, the Statute states that any denial by the circuit court of DNA testing on grounds previously decided by this Court or the Court of Appeals would be permissive, not obligatory. § 16-112-205(d) (“The court *may* summarily deny a second or successive petition for similar relief on behalf of the same petition and *may* summarily deny a petition if the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.”). Accordingly, it is entirely within—and specifically designated to—the circuit’s power, to decide whether or not it will rule on a motion. Such a decision is most certainly not barred.

Second, the circuit court’s power to decide a DNA testing motion is further underscored by additional language in the Statute that places any request for DNA testing relief squarely within the jurisdiction of the court of conviction. *See* § 16-112-201(a) (“a person convicted of a crime may commence a proceeding to secure

relief by filing a petition *in the court in which the conviction was entered . . .*”).

Mr. Johnson’s Motion was filed in the Sevier County circuit court and thus that court must be empowered to hear and decided his case.

Third, by the plain terms of the Statute, Mr. Johnson is entitled to file successive petitions for DNA testing. *See* § 16-112-205(d) (“The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner. . . .”); *see also* § 16-112-202(3). Previously untested evidence can be the subject of a motion absent a *knowing failure* to request DNA testing of the evidence in a prior motion. §16-112-202(2). In light of the most recent quantum leaps recently revealed in forensic DNA testing, technological developments which clearly could not have been anticipated, much less waived, by the Appellant, a successive petition is necessary here.

As alleged in Mr. Johnson’s Motion, and proven by the affidavit of DNA expert Huma Nasir, today’s methods of forensic DNA testing are both new and substantially more probative than the prior testing utilized on the evidence in Mr. Johnson’s 1994 and 1997 trials. *See* § 16-112-202(2). As Ms. Nasir explains in her affidavit:

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.

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.

R. 180-81; see also Exh. 1 at ¶¶ 11, 17-19. Indeed, a huge advancement in DNA testing only became readily available on January 1, 2017 of this year. (R. 211-14). This advanced sensitivity allows current DNA tests to identify persons from truly microscopic samples of biology. (R. at 213). Because the forensic DNA testing capacities now available to produce quantifiably more probative results only became widely available in the past three months, Mr. Johnson could not have "knowingly" failed to request DNA testing on the untested evidence identified in the Motion.

The court's holding that it is unable to consider Mr. Johnson's motion—much less hold a hearing on it—because of the law of the case doctrine is without support under the instant circumstances. The doctrine arises primarily in the

contexts of second appeals and generally “precludes the trial court on remand from considering and deciding questions that were explicitly or implicitly determined on appeal.” *Ward v. State*, 338 Ark. 619, 623, 1 S.W.3d 1, 3 (1999). However, this is a flexible doctrine that both allows for the correction of error and does not apply where the subsequent determination depends on materially different facts. *Id.*

The facts that make the instant appeal necessary are materially different on their face. Prior to filing his DNA testing Motion in the circuit court, Mr. Johnson filed a Petition to Reinvest Jurisdiction to File Petition for Writ of Error Coram Nobis; Petition for Recall of Mandate; and Petition for Stay of Execution (“Petition”), which asked this Court to recall its mandate on his first motion for DNA testing and to allow DNA testing of many of the same items discussed in the Motion at issue in this Appeal. In summarily denying Mr. Johnson’s prior Petition, this Court did not expressly or implicitly adjudicate the merits of the requested DNA Testing under 16-112-202(2) & (3). The threshold question on which the Petition was denied was whether the Petition raised “extraordinary circumstances” that would merit reopening an appeal over a decade after it had been decided. *See Robbins v. State*, 114 S.W.3d 217, 222 (Ark. 2003).

This Court’s determination of that issue applies an entirely different legal standard and relies on a completely different factual record than the question now before the Court in reviewing the circuit court’s finding that Mr. Johnson’s Motion

and “the files and records of the proceeding conclusively demonstrate that the petitioner is entitled to no relief.” *See* § 16-112-205; *see also Carter*, 2015 Ark. at 6.

Although this Court has discretion to recall its mandate and reopen a prior DNA proceeding, that discretion is used sparingly and under extraordinary circumstances. *See Robbins v. State*, 353 Ark. 556, 564, 114 S.W.3d 217, 222 (2003). Where a remedy is available through a subsequent motion filed under § 16-112-202 in the circuit court, such a filing would constitute a procedurally proper request under the Statute that does not conflict with this Court’s prior findings. Indeed, the Statute clearly allows for successive DNA testing motions by a Petitioner even where “the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.” § 16-112-205(d).

Accordingly, neither the jurisdiction of the circuit court nor the law of the case doctrine can serve as an impediment to the circuit court’s consideration of Mr. Johnson’s Motion.

## **B. Timeliness**

The circuit court’s Order holds that Mr. Johnson’s Motion was “presumptively untimely.” (R. 261). This holding cannot stand. Even where a motion may be untimely, § 16-112-202(10)(B) clearly creates a “rebuttable presumption” against timeliness for requests for DNA testing made more than

three years after conviction. Notably, this Court has held that “the statute imposes no time limitation for rebutting a presumption against timeliness.” *Carter*, 2015 Ark. at 8. Put another way, the assertion of a “substantially more probative” technology is only used in comparison to the “DNA testing methods . . . available at the time of . . . trial,” not to when those testing technologies first came into existence. Here, a rebuttable presumption was alleged and proven by Petitioner. Mr. Johnson’s Motion clearly pled and demonstrated facts overcoming the presumption of untimeliness, and the circuit court erred in denying a hearing on this factor. *See Carter*, 2015 Ark. at 6-7.

“To overcome the presumption against timeliness, a petitioner must establish, in the petition, one of the grounds listed in section 16–112–202(10)(B).” *Scott v. State*, 372 Ark. 587, 588, 279 S.W.3d 66, 68 (2008). The presumption is overcome where (a) a new method of technology that is substantially more probative than prior testing exists; (b) the motion is not based solely upon the person’s own assertion of innocence and a denial of the motion would result in a manifest injustice; and (c) of good cause. § 16-112-202(10)(B)(iii-v). Although Mr. Johnson need only satisfy one of these enumerated bases for rebuttal, all three bases are present here.

Mr. Johnson’s motion alleged that the current DNA technology he seeks to utilize is substantially more probative than prior testing. *See* § 16-112-202(10)(B)

(iv); Exh. 1 at ¶¶ 10-19. In addition to the Y-STR testing and mitochondrial DNA testing technologies which were not available *at the time the evidence was last tested*, Mr. Johnson seeks to use a advanced autosomal STR DNA testing kits including the new 23-loci kit that only became standardized on January 1, 2017, which tests for additional “genetic markers that could mean the difference between a case breakthrough and an inconclusive result.” (R. 212-213; Exh. 4). As Huma Nasir—a senior forensic analyst with fifteen years of DNA testing experience *at the same laboratory* that the State entrusted DNA testing in this case to in 1997—explained in her affidavit, “[t]he expansion of the number of loci tested also greatly enhances the sensitivity of DNA tests, especially on older and degraded samples . . . [b]y 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 results.”<sup>4</sup> Exh. 1 at ¶ 11. The issue is not whether some form of DNA testing “has been available” in the past, but whether “a new method of technology *that is substantially more probative than prior testing* is available . . .” now. § 16-112-202(10)(B)(iv). (emphasis added). The more probative nature of the technology requested here is undisputed.

---

<sup>4</sup> It cannot be emphasized enough that the upgrade to the new 23 marker DNA kits constitutes a dramatic change in forensic DNA technology. Indeed, the advancements required crime laboratories around the United States (and the world) to replace equipment, re-train veteran lab personnel and educate investigators as to evidence collection, to ensure that the laboratories remained cutting edge and, more importantly, qualified to upload results into the CODIS database. *See* Exh. 4.

The consistency of Mr. Johnson’s claim of innocence and the substantial merit to Mr. Johnson’s motion, when coupled with the weakness of the State’s case as repeatedly identified by this Court<sup>5</sup>, and the specter of Mr. Johnson’s execution for a crime that he potentially did not commit demonstrates that “the motion is not based solely upon the [Petitioner’s] own assertion of innocence and a denial of the motion would result in a manifest injustice.” § 16-112-202(10)(B)(iv). For essentially the same reasons, good cause is also shown. *See* § 16-112-202(10)(B)(v). In light of the instant circumstances and the irreversibility of execution, Mr. Johnson has certainly rebutted the presumption against timeliness.

### **C. Chain of Custody**

The Court further held that the Motion failed to establish “a chain of custody as required under the Statute.” (R. 261). This finding in particular strains credulity. Mr. Johnson presented in his Motion documentation from the Arkansas State Crime Laboratory indicating that it has—in a “retained pack”—several probative items of evidence within its custody and control, including the victim’s rape kit and a clipping from the shirt found miles from the crime scene with the victim’s blood on it. (R. 160). Mr. Johnson also presented documentation from the forensic laboratory that had conducted testing earlier in Mr. Johnson’s case noting that it was returning evidence to the DeQueen Police Department. (R. 161-

---

<sup>5</sup> *See Johnson I*, 934 S.W.2d at 184 (error not harmless); *Johnson III*, 157 S.W.3d at 164 (DNA testing could “significantly advance” claim of innocence).

63; R. 167).<sup>6</sup> As in *Carter*, “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 . . .” *Carter*, 2015 Ark. at 6. Such a chain must be established at a hearing.

Even without a hearing, however, Mr. Johnson has made a very strong showing with regard to the legitimacy of the chain of custody with regard to the evidence obtained during the investigation of the Carol Jean Heath’s murder. Explicit statutory requirements, in effect at the time of Mr. Johnson’s earlier motion and which the State does not dispute, state that “law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence . . . permanently.” §§ 12-12-104(a)-(b)(1)(A). In other words, if the DeQueen Police Department no longer has the items of evidence clearly returned to them, such actions would be in clear violation of Arkansas law.

Regardless, as has long been the rule in Arkansas, minor uncertainties in the proof of chain of custody do not render evidence inadmissible. See Gardner v. State, 296 Ark. 41, 754 S.W.2d 518 (1988); Rogers v. State, 258 Ark. 314, 524

---

<sup>6</sup> Ironically, the State strenuously *objected* to orders issued by the circuit court providing information regarding the existence and condition of the evidence.

S.W.2d 227 (1975). Indeed, “it is not necessary that every moment from the time the evidence comes into the possession of a law enforcement agency until it is introduced at trial be accounted for by every person who could have conceivably come in contact with the evidence during that period.” (citations omitted)

Munnerlyn v. State, 264 Ark. 928, 931, 576 S.W.2d 714, 716 (1979). Because Mr. Johnson has plead that the chain of custody regarding the evidence is undisturbed, this Court should remand the case for a hearing as it did in *Carter*.

**D. The Results of Mr. Johnson’s Proposed Testing Would Significantly Advance His Claim of Actual Innocence**

The finding that the proposed DNA testing would not significantly advance Mr. Johnson’s claim of innocence is entirely without factual support. This finding is disproved by a simple consideration of the facts of this case and the potential results that could be obtained from further DNA testing. This deeply probative evidence can now provide clear genetic information that could fully identify the name and identity of Carol Jean Heath’s murderer.

It must be repeatedly stated that the testing that was previously conducted in this case was conducted with the technology that was available at the time. Even though such results provided information, it is information that is now out of date and stale. Indeed, testing strategies that are now available were not even able to be considered in 1997, 2004, or even 2009. As noted by Ms. Nasir, in earlier times—given the limitations of the DNA technology—laboratories did not test on sexual

assault evidence unless sperm was visualized. Exh. 1 at ¶ 18. Today, forensic scientists can now test and obtain results where no biological material is visible. *Id.* at 19. Further, “touch DNA,” that is biological material deposited by handling, can now yield full DNA profiles. This sort of change is of fundamental importance in Mr. Johnson’s case and most certainly could produce material evidence of Mr. Johnson’s actual innocence.

Ms. Heath had bite marks on her left and right breasts. At the time of Mr. Johnson’s original trials, swabs from those bite marks submitted for serological testing indicated the presence of amylase, the main component in saliva. That saliva could only have been left on Ms. Heath’s body by the perpetrator. In light of the State’s assertion of facts around Ms. Heath’s murder and alleged sexual assault, if that saliva matches to another man, it would be clear proof of actual innocence. The DNA testing done before the trials did not find Johnson’s DNA in the saliva. Although no one knows the degree of Branson Ramsey’s involvement with this crime—as he apparently was never interviewed by police despite his clear domestic violence history and the interesting timing of the receipt of his divorce papers—a match of the saliva, blood, or hairs to Mr. Ramsey would clearly illuminate a very different theory of guilt.

The perpetrator of Ms. Heath's murder was allegedly wearing a green shirt which was discovered miles away from her home with her blood on it.<sup>7</sup> The shirt could only have been moved by the perpetrator of Ms. Heath's murder. Testing of the actual shirt using the DNA technology available at the time did not provide the identity of its owner. That shirt has never been tested for "wearer DNA" using STR technology; that is, the skin cells that are shed and rubbed off from constant contact from a wearer on areas such as the armpits and neck. Such testing would clearly show the true ownership of the shirt and, in light of the victim's blood, who was wearing it at the time of Ms. Heath's murder.

The cigarette butt with what is alleged to be Johnson's DNA and allegedly found in a pocket of the shirt has a dubious provenance given the significant possibility of confusion of samples.<sup>8</sup> In addition to the year between the collection of this evidence and the sending to the DNA laboratory, it was conceded at trial by State Police Investigator Hayes McWhirter that there was an error on the submission sheet when the items were submitted after being held for that year.

---

<sup>7</sup> As discussed on p. 11 of Mr. Johnson's Motion, and as was the subject of Mr. Johnson's various appeals, Ashley Heath's testimony is seriously suspect in light of the conclusions of the various psychologists and her inability to remember important details about the crime. What is not in any doubt is that the green shirt, found miles away from the victim's home, had the victim's blood on it and thus had to have been removed from the home or worn by the perpetrator.

<sup>8</sup> A cigarette butt was discovered on the floor of Ms. Heath's home that was photographed by police but never listed in the items of evidence sent to the Arkansas State Crime Laboratory or by the private laboratory hired by the State to conduct additional testing. (R. 92).

R. 19 (discussing McWhirter's testimony); *see also* Petition at Exh. 4, pp. 1439-1463. Furthermore, there was a cigarette butt found at the scene which is not accounted for in the testing. (R. 92).

Several Caucasian hairs not matching Ms. Heath were found adjacent to her body, on shirts at the scene and at the second crime scene and, most importantly, in the bag placed over her hands by the DeQueen Police Department to protect evidence. Although hair microscopy is a questionable science that has been demonstrably shown to be unreliable, DNA testing, by contrast, could definitively determine the provenance of those hairs. This is particularly relevant in light of the multiple defensive wounds found all over Ms. Heath's body and the bloody palm print—matched to Ms. Heath—found on the linen closet in the bathroom, indicating that there was a great deal of violent interaction between Ms. Heath and her attacker before her death.

Each one of these items by themselves would be highly probative. Should multiple profiles be obtained from several items of evidence that indicate the same male, such a redundancy with regard to genetic information (particularly given that Mr. Johnson was convicted on far less probative evidence), would clearly demonstrate Mr. Johnson's innocence.<sup>9</sup>

---

<sup>9</sup> It is worth noting that as much as the State argues that the cigarette butt in the green shirt is probative, the matchbook that was allegedly found with it has not yet

Mr. Johnson was convicted on the discredited testimony of a traumatized six-year old girl and on DNA evidence linking his hair to Ms. Heath's home. As noted by this Court, the testimony of the child is questionable, to put it mildly. The hairs, however, are also of little probative value. The DNA results associating Mr. Johnson with hair found in Ms. Heath's home do not undermine Mr. Johnson's innocence claims.

The State's own witnesses—Ashley Heath and Shawnda Flowers—place Mr. Johnson in Ms. Heath's home on at least two occasions prior to the murder. *See* Trial Transcript 11/18/1997 at 210, 217. The State's witness—Steve Hill—testified that Mr. Johnson and Ms. Heath were “carrying on” prior to Mr. Johnson's arrest.<sup>10</sup> *Id.* at 269. The State's witness, Debra Johnson, Mr. Johnson's stepmother, also indicated that he had been in the home. *Id.* at 254-255. Rather than “explain away,” the State's own facts explain very clearly why his hair could have been found in the house. They do not, however, explain the several Caucasian hairs not matching Ms. Heath found on and around her body and on items found miles away from her home.

---

been submitted for testing. Further, the cigarette butt found on the floor of Ms. Heath's bedroom has never been accounted for.

<sup>10</sup> In light of the possibility of how such a relationship was (and is) perceived (no fewer than three witnesses strenuously stated that Ms. Heath had not had a relationship with a black man) it is unsurprising that Mr. Johnson would be less than eager to assert it at a later parole hearing.

**F. The Denial of DNA Testing Violates Mr. Johnson’s Constitutional Rights.**

Preventing Mr. Johnson from having the opportunity to conduct DNA testing on the requested items and prove his innocence claims violates the very notion of “fundamental fairness” and denies him of due process. As the State of Arkansas has created a clear statutory procedure through which convicted persons can obtain DNA testing and then utilize exculpatory results from that testing to prove their innocence, the processes employed by the State for obtaining access to DNA must remain fundamental fair. *See 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) (“DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty.”).

It is universally recognized both in the law and in scientific practice that the central strength of forensic DNA testing is its ability not just to exclude, but to actually identify the person whose biology is left at a crime scene. Chief Justice Roberts emphasized this point in the first sentence of Osborne: DNA testing has an unparalleled ability both to exonerate the wrongly convicted *and to identify the guilty*, thus recognizing the power and importance of DNA evidence on a criminal defendant’s legal case and his or her actual life. Osborne, 557 U.S. at 55 (emphasis added). Arkansas has employed a statutory scheme of procedures that allows defendants to secure a DNA testing relief to prove their innocence pursuant

to Act 1780, executive clemency and potentially other relief from their convictions based upon post-conviction exculpatory DNA evidence.

Mr. Johnson seeks DNA testing—which in this case would not only exonerate him, but save his life. One cannot imagine a more unfair result than denying a defendant facing execution, the opportunity to utilize these irrefutable forms of DNA proof establishing innocence based on new technologies that did not exist at the time of his trial, some of which only came into regular use on January 1 of this year.

**IV.**

**Conclusion and Prayer**

WHEREFORE, this Court should grant a stay of execution, and, after considering full briefing from the parties, remand for a hearing on Mr. Johnson's Motion for Postconviction DNA testing.

Respectfully submitted this 18th day of April, 2017.

---

Jeff Rosenzweig, Esq.  
Ark. Bar No. 77115  
300 Spring Street, Suite 310  
Little Rock, AR 72201  
Telephone: (501) 372-5247  
Email: jrosenzweig@att.net

Bryce Benjet, Esq. (*pro hac pending*)  
Karen Thompson, Esq. (*pro hac pending*)  
THE INNOCENCE PROJECT  
40 Worth Street, Suite 701  
New York City, NY 10013  
Telephone: (212) 364-5347  
Email: bbenjet@innocenceproject.org,  
kthompson@innocenceproject.org

*Counsel for Petitioner Stacey Eugene  
Johnson*

# **EXHIBIT 1**

**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 outdated 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

081

- 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.<sup>1</sup>
- 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

---

<sup>1</sup> 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.

**CODIS DNA Database**

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

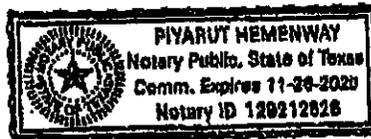
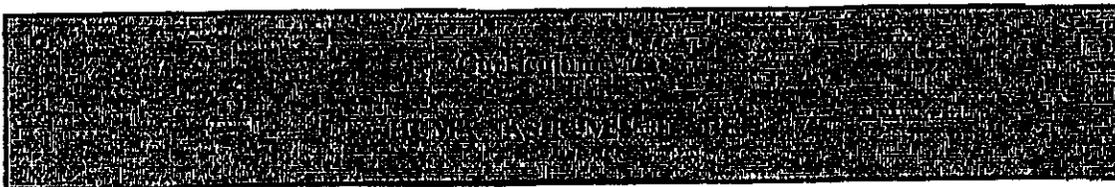
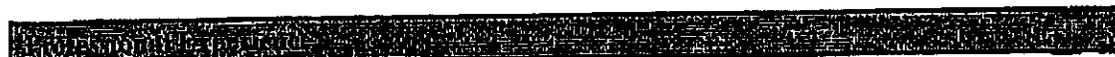


Exhibit A



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

B.S. University of New Orleans 2000  
Biological Sciences



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>	Orohid Cellmark, Inc. Dallas, TX
-----------------	---	-------------------------------------

Curriculum Vitae  
Huma Nash, M.S.  
Page 1 of 7  
Revised 2016

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
-------------	--------------------------------	---

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
------------------	-------------------------------	---

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

Curriculum Vitae  
Huma Nasir, M.S.  
Page 2 of 7  
Revised 2016

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-PI.FX™ 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.

**Professional Experience**

- 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

**Professional Training**

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

**Professional Memberships**

Molecular Biology Fellow - American Board of Criminalistics (ABC)

**Professional Organizations**

American Academy of Forensic Sciences (AAFS)

**Professional Testimony**

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

Curriculum Vitae  
Huma Nash, M.S.  
Page 3 of 7  
Revised 2016

- [REDACTED]
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.

[REDACTED]

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

- [REDACTED]
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. 29<sup>th</sup> Annual Meeting NEAFS 2003, Pittsfield, MA. European Academy of Forensic Science Triennial Meeting 2003, Istanbul, Turkey. 14<sup>th</sup> International Symposium on Human Identification 2003, Phoenix, AZ. American Academy of Forensic Sciences 56<sup>th</sup> Annual Scientific Meeting 2004, Dallas, TX.

Curriculum Vitae  
Hama Nasir, M.S.  
Page 4 of 7  
Revised 2016

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. 16<sup>th</sup> 9Meeting of the International Association of Forensic Sciences 2002, Edited by E. Baccino, pp. 21-24, Monduzzi Editore.

### Curriculum Vitae

- Feb 2016      **Attended the American Academy of Forensic Sciences 68<sup>th</sup> Annual Scientific Meeting in Las Vegas, NV**
- July 2015      **Attended the AFDA Summer Meeting in Dallas, TX**
- Sept 2014      **Attended ISHI - 25<sup>th</sup> 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.**

Curriculum Vitae  
Huma Nasir, M.S.  
Page 5 of 7  
Revised 2016

- July 2012 Attended webinar titled "PowerPlex Y23 Detscriminating Power in Stringent Endogamous and Consanguineous Situations" by Promega at Cellmark.
- February 2012 Attended the American Academy of Forensic Sciences 64<sup>th</sup> 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 AFDA 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

Curriculum Vitae  
Huma Nasir, M.S.  
Page 6 of 7  
Revised 2016

- September 2006 *3<sup>rd</sup> 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 *57<sup>th</sup> Annual Meeting of the American Academy of Forensic Sciences (AAFS).* New Orleans, LA.
- December 2004 *GeneMapper™ ID Training* by Dr. Laura Post from Applied Biosystems. New Orleans, LA
- December 2004 *1<sup>st</sup> 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 Genotyping development and validation of Y-Plex™5 and of Y-Plex™6 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

**Exhibit B**

**ZENECA**REPORT OF LABORATORY EXAMINATION  
January 19, 1994**CELLMARK**  
DIAGNOSTICSInvestigator Jim Behling  
DeQueen Police Department  
220 North Second Street  
DeQueen, AR 71832Cellmark Diagnostics  
20271 Goldenrod Lane  
Germentown, Maryland 20878  
Telephone (301) 428-4980  
800-USA-LABS  
Fax (301) 428-4877Re: 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 $\alpha$  using the AmpliType™ HLA DQ $\alpha$  Forensic DNA Amplification and Typing Kit. The DQ $\alpha$  types detected for each sample are listed below:

<u>SAMPLE</u>	<u>DQ<math>\alpha</math> 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%

[ 28

A business of ZENECA Specialties.  
A business unit of ZENECA, Inc.

Report for F93138/  
January 19, 1994  
Page Two

<u>SAMPLE</u>	<u>DQ<math>\alpha</math> 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 $\alpha$  type was obtained from these shafts.

In addition to the 1.2,4 DQ $\alpha$  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 $\alpha$  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 $\alpha$  Forensic DNA Amplification and Typing Kit.

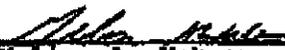
#### CONCLUSION:

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 $\alpha$  type is approximately 21 percent.

  
Charlotte J. Word, Ph.D.  
Molecular Geneticist

  
Melissa A. Weber  
Staff Molecular Biologist

**ZENECA**

REPORT OF LABORATORY EXAMINATION  
April 15, 1994

**CELLMARK**  
DIAGNOSTICS

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

Cellmark Diagnostics  
20271 Goldenrod Lane  
Germantown, Maryland 20878  
Telephone (301) 428-4980  
800-USA-LABS  
Fax (301) 428-4877

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:

A business of ZENECA Specialist.  
A business unit of ZENECA Inc.

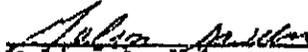
Report for F931380  
April 15, 1994  
Page Two

Population data base

Caucasian  
African American  
Western Hispanic

Frequency

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

  
\_\_\_\_\_  
Melissa A. Weber  
Staff Molecular Biologist

  
\_\_\_\_\_  
Charlotte J. Word, Ph.D.  
Molecular Geneticist

**ZENECA**REPORT OF LABORATORY EXAMINATION  
April 15, 1994**CELLMARK**  
DIAGNOSTICS

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

Cellmark Diagnostics  
20271 Goldenrod Lane  
Germantown, Maryland 20878  
Telephone (301) 428-4880  
800-USA-LABS  
Fax (301) 428-4877

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

<u>ID#</u>	<u>Description</u>
	One purple top tube of blood labelled "...Stacy Johnson"

December 17, 1993

Q18	Material labelled "...white t-shirt..."
X1	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 $\alpha$ , the LDL receptor (LDLR), glycophorin A (GYFA), hemoglobin G gammaglobulin (HBGG), D7S8, and group specific component (GC) using the AmpliType<sup>TM</sup> HLA DQ $\alpha$  Forensic DNA Amplification and Typing Kit and the AmpliType<sup>®</sup> PM PCR Amplification and Typing Kit. The types detected for each sample are listed below:

Report for F93138  
 April 15, 1994  
 Page Two

SAMPLE	DQ $\alpha$	TYPES DETECTED				
		LDLR	GYPA	HBBG	D7S8	GC
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

SAMPLE	DQ $\alpha$	GENOTYPES				
		LDLR	GYPA	HBBG	D7S8	GC
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:

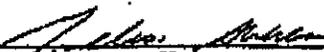
Population data base

Caucasian  
 African American  
 Hispanic

Frequency

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

  
 Charlotte J. Word, Ph.D.  
 Molecular Geneticist

  
 Melissa A. Weber  
 Staff Molecular Biologist

**ZENECA**

REPORT OF LABORATORY EXAMINATION  
February 18, 1994

**CELLMARK**  
DIAGNOSTICS

Investigator Jim Bahling  
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 DQA as stated in the Report of Laboratory Examination dated January 19, 1994. The types detected for each sample are listed below:

SAMPLE	DQA	TYPES DETECTED				
		LDLR	GYPA	HBGG	D7S8	GC
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

Report for F93138A  
February 18, 1994  
Page Two

SAMPLE	DOA	LDLR	GYPA	HBGG	D7S8	GC
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

SAMPLE	DOA	GENOTYPES				
		LDLR	GYPA	HBGG	D7S8	GC
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:

Population data base	Frequency
Caucasian	1 in 330,000
African American	1 in 250
Hispanic	1 in 25,000

  
\_\_\_\_\_  
Lisa Forman, Ph.D.  
Population Geneticist

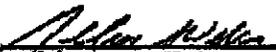
  
\_\_\_\_\_  
Malina A. Weber  
Staff Molecular Biologist

Exhibit C

**CELLMARK**  
**DIAGNOSTICS**

20271 Goldenrod Lane • Germantown, Maryland 20876

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

Facsimile: (301) 428-4877

**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 "F931380-01a..." (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 "F931380-03a..." (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 "F931380-06a..." (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)

Report for F931380  
 May 21, 1997  
 Page Two

Liquid in tube labelled "F931380-07a..." (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), respectively<sup>1</sup>.

The types detected for each sample are listed below:

#### ALLELES DETECTED

Sample	CSF1PO	TPOX	TH01	X,Y
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 MEG-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 <sup>†</sup>
Stacy Johnson	13,14	9,11	7	X Y

<sup>1</sup> In addition to the types listed above, faint results were obtained. These results are likely due to technical artifacts.

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

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

Report for F931380  
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<sup>®</sup> 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 DQA/DQA1 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:

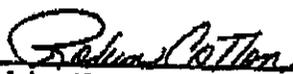
Report for F931380  
May 21, 1997  
Page Four

Population data base

Caucasian  
African American  
Hispanic

Frequency

1 in 57 billion  
1 in 3.6 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 2**

IN THE CIRCUIT COURT OF SEVIER COUNTY, ARKANSAS

STACEY EUGENE JOHNSON

PETITIONER

v.

NO. CR-93-54

STATE OF ARKANSAS

RESPONDENT

ORDER

Now before the Court is Petitioner's Motion For Post-Conviction DNA testing pursuant to Arkansas Code Annotated §§ 16-112-201, *ET SEQ* and Request For Hearing. Johnson has already been provided testing under this statute. *See Johnson v. State*, 366 Ark. 390, 235 S.W.3d 872 (2006). Johnson's request for additional testing is presumptively untimely under Arkansas Code Annotated §16-112-202(10). In addition, on April 6, 2017, the Arkansas Supreme Court declined to recall its mandate and remand this case, No. CR-93-54, to this court for additional testing of the items sought to be tested in Johnson's motion filed before this court on April 13, 2017. Thus, the court believes it is both without jurisdiction and barred by the law of the case doctrine, to entertain this successive petition for testing. Johnson, moreover, has not established a chain of custody as required under the statute. Finally, Johnson has not established that the results of his proposed testing would significantly advance his claim of actual innocence, as required under the statute. For these reasons, Petitioner's motion is denied in its entirety. Because "the petition and the files and records of the proceeding conclusively demonstrate that the petitioner is entitled to no relief," Ark. Code Ann. § 16-112-205(a) (Repl. 2006), his request for an evidentiary hearing is denied.

IT IS SO ORDERED THIS 17 DAY OF APRIL, 2017.

  
CHARLES YEARGAN  
CIRCUIT JUDGE

2017 APR 17 P 2:55  
SEVIER COUNTY, AR  
KATHY SMITH, CIRCUIT CLERK

## **EXHIBIT 3**

EXHIBITION

Cite as 2015 Ark. 57

**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.<sup>1</sup>

<sup>1</sup>Detective 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,

SLIP OPINION

Cite as 2015 Ark. 57

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.<sup>2</sup>

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.

<sup>2</sup>*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).

SLIP OPINION

Cite as 2015 Ark. 57

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., Paulkau 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).

Cite as 2015 Ark. 57

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).<sup>3</sup> Carter alleged in his petition that the Little Rock Police Department recovered the knife

---

<sup>3</sup>The 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).

MAY 11 2015

Cite as 2015 Ark. 57

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

## SLIP OPINION

Cite as 2015 Ark. 57

at least three occasions since 2002.<sup>14</sup> 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.

---

<sup>14</sup>There is no evidence in the record to support this finding.

SLIP OPINION

Cite as 2015 Ark. 57

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*,

## MOTION

Cite as 2015 Ark. 57

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

SUPERSEDED

Cite as 2015 Ark. 57

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.

# **EXHIBIT 4**

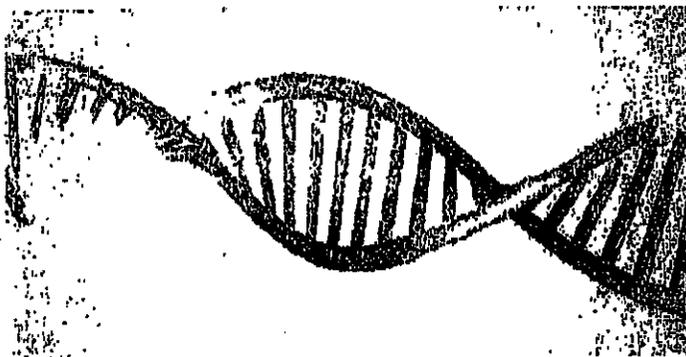
4/12/2017

DNA Core Loci Expanding in Two Weeks

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 >

4/13/2017

DNA Core Loci Expanding In Two Weeks

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.

4/12/2017

DNA Core Loci Expanding in Two Weeks

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 interests, 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.

## RELATED READS



9/11 First Responders with

<https://www.forensicmag.com/news/2017/12/the-core-loci-expanding-two-weeks>

34

4/12/2017

DNA Core Lool Expanding In Two Weeks

# PTSD Have More Cognitive Problems, Early Dementia

## EQUIPMENT



**FBI is Reviewing  
Terrorism-related  
Tips**



**DNA Collection  
Device**



**FBI Chief Comey:  
"We Have Never  
Had Absolute  
Privacy"**

1 Comment Forensic Magazine

Login

Recommend Share

Sort by Best



Join the discussion...



John Marshall Butler • 4 months ago

For the full original story from which this article is based, see <https://www.nsl.gov/news-e...>

Reply Share

Subscribe Add Disqus to your site Add Disqus Add Privacy

# **EXHIBIT 5**

**FILED**

**JUL 25 2013**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

Serial: 184876

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2013-DR-00491-SCT**

***WILLIE JEROME MANNING A/K/A FLY***

***v.***

***STATE OF MISSISSIPPI***

**ORDER**

This matter is before the Court en banc on Manning's Motion to Set Aside Convictions, Second Motion for Leave to File Successive Petition for Post-Conviction Relief and Motion in the Alternative for Other Forms of Relief, filed on May 6, 2013, and Manning's Supplements to the Second Motion, filed on May 6<sup>th</sup>, May 7<sup>th</sup> and May 21<sup>st</sup>. Also before the Court is the State's Motion to Strike and various responses and rebuttals, filed by both parties.

After due consideration, we find that the Second Motion for Leave to File Successive Petition for Post-Conviction Relief, as supplemented, should be granted, in part, to the extent that Manning is granted leave to proceed in the circuit court with

his request for DNA testing and fingerprint comparison, within 60 days of the date of the issuance of this Court's mandate.

We further find that Manning's Motion to Set Aside Convictions and Manning's request for hearings on the purported newly-discovered evidence, as set forth in the recent letters from the U.S. Department of Justice regarding the reliability of expert testimony, should be denied.

IT IS THEREFORE ORDERED that the Second Motion for Leave to File Successive Petition for Post-Conviction Relief, as supplemented, is hereby granted, in part, to the extent that Manning is granted leave to proceed in the circuit court with his request for DNA testing and fingerprint comparison. Manning's petition for relief shall be filed in the circuit court within 60 days of the date of the issuance of this Court's mandate. The circuit court shall proceed forthwith under Section 99-39-11 of the Mississippi Code.

IT IS FURTHER ORDERED that the Second Motion for Leave to File Successive Petition for Post-Conviction Relief, as supplemented, is hereby denied in all other respects.

IT IS FURTHER ORDERED that the Motion to Set Aside Convictions is hereby denied.

IT IS FURTHER ORDERED that the Motion to Strike filed by the State of Mississippi is hereby denied.

IT IS FURTHER ORDERED that this Order be published. The Clerk of the Court shall spread this Order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of the *Southern Reporter, Third Series (Mississippi Edition)*.

SO ORDERED, this the <sup>rd</sup> 23 day of July, 2013.



ANN H. LAMAR, JUSTICE  
FOR THE COURT

TO DENY PETITIONER'S MOTION TO SET ASIDE CONVICTIONS: ALL JUSTICES.

TO GRANT LEAVE TO PROCEED ON THE REQUEST FOR DNA TESTING AND FINGERPRINT COMPARISON: ALL JUSTICES.

TO DENY THE REQUEST FOR HEARINGS ON THE RELIABILITY OF EXPERT TESTIMONY REGARDING BALLISTICS ANALYSIS: WALLER, C.J., RANDOLPH, P.J., LAMAR, PIERCE AND COLEMAN, JJ.

TO GRANT THE REQUEST FOR HEARINGS ON THE RELIABILITY OF EXPERT TESTIMONY REGARDING BALLISTICS ANALYSIS: DICKINSON, P.J., KITCHENS, CHANDLER AND KING, JJ.

TO DENY THE REQUEST FOR HEARINGS ON THE RELIABILITY OF EXPERT TESTIMONY REGARDING HAIR ANALYSIS: WALLER, C.J., RANDOLPH, P.J., LAMAR, PIERCE AND COLEMAN, JJ.

TO GRANT THE REQUEST FOR HEARINGS ON THE RELIABILITY OF EXPERT TESTIMONY REGARDING HAIR ANALYSIS: DICKINSON, P.J., KITCHENS, CHANDLER AND KING, JJ.

# **EXHIBIT 6**

Serial: 184079

IN THE SUPREME COURT OF MISSISSIPPI

No. 95-DP-00066-SCT

*WILLIE JEROME MANNING A/K/A "FLY"*

v.

*STATE OF MISSISSIPPI*

**FILED**

MAY 07 2013

SUPREME COURT CLERK

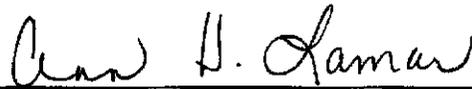
ORDER

This matter is before the Court en banc on the Motion to Stay Execution and Set Aside Convictions, Second Motion for Leave to File Successive Petition for Post-Conviction Relief, and Motion in the Alternative for Other Forms of Relief filed by Willie Jerome Manning. Also before the Court is the Response filed by the State of Mississippi, the Reply filed by Manning, the Supplement to the Motion filed by Manning, and the Supplement to the Response filed by the State of Mississippi.

After due consideration, the Court finds that the Motion to Stay Execution should be granted until further Order of this Court.

IT IS THEREFORE ORDERED that the Motion to Stay Execution filed by Willie Jerome Manning is hereby granted pending further Order of this Court.

SO ORDERED, this the 7<sup>th</sup> day of May, 2013.



ANN H. LAMAR, JUSTICE  
FOR THE COURT

TO GRANT: WALLER, C.J., DICKINSON, P.J., LAMAR, KITCHENS, CHANDLER, PIERCE, KING AND COLEMAN, JJ.

RANDOLPH, PRESIDING JUSTICE, OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT.

IN THE SUPREME COURT OF MISSISSIPPI

No. 95-DP-00066-SCT

*WILLIE JEROME MANNING A/K/A "FLY"*

v.

*STATE OF MISSISSIPPI*

**RANDOLPH, P.J., OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:**

- ¶1. Before the Court en banc is the "Motion to Stay Execution and Set Aside Convictions, Second Motion for Leave to File Successive Petition for Post-Conviction Relief, and Motion in the Alternative for Other Forms of Relief" filed by Willie Jerome Manning. Also before the Court is Manning's Supplement to his motion, the Response filed by the State of Mississippi, the State's Supplement to its Response, and Manning's Reply to the State's Response.
- ¶2. I would deny relief, for Manning has wholly and completely failed to comply with statutory requirements and the precedent of this Court. "Mississippi Code Section 99-39-9(e) (Rev. 2007) requires that an application for post-conviction collateral relief be supported by the affidavits of witnesses who will prove the petitioner's claims." *Brown v. State*, 88 So. 3d 726, 733 (Miss. 2012).
- ¶3. Letters submitted by petitioner from the Department of Justice have unsigned reports attached from a Microscopic Hair Comparison Analysis Review Team Laboratory Division (FBI), without identifying the authority, credentials, qualifications, name, or title of any member of the team. The letters challenge not only former FBI experts in hair, but also ballistics. Our established law and justice require more.

¶4. The petitioner has had access to the hair and other forensic evidence since April 26, 1994. (R. 335). The petitioner even was granted his own ballistics expert, Richard D. Carter, at taxpayer expense on August 24, 1994. (R. 368). However, petitioner elected not to call Carter at trial.

¶5. Hair and ballistics issues from petitioner's violent crimes committed twenty years ago have been included in a long string of litigation in State and Federal Courts. This is not the first time petitioner has raised these issues. Our predecessors on this very Court rejected the hair issue on direct appeal, stating that Blythe "did not claim that the hair matched that of the defendant." Blythe only testified that the hair came from a member of the black race. He also admitted that his expertise could not produce absolute certainty. *Manning v. State*, 726 So. 2d 1152, 1180-81 (Miss. 1998).

¶6. After relief was denied on direct appeal, petitioner filed for post-conviction relief in this Court in 2001.<sup>1</sup> At that time, petitioner neither sought DNA testing nor raised hair or ballistics issues as a basis for relief.<sup>2</sup>

¶7. In his federal habeas action, the same issues were raised and rejected. Former United States District Court Judge Allen Pepper (now deceased) wrote that "[a]t trial expert testimony was given only that the hair found in Miller's car exhibited characteristics associated with the African-Americans." *Manning v. Epps*, 2008 WL 4516386 (N.D. Miss 2008). Judge Pepper continued, "[e]ven if DNA testing could conclusively prove that it was

---

<sup>1</sup>Post-conviction relief was denied in 2006.

<sup>2</sup>This Court was granting DNA requests as early as 2002 – seven years before the post-conviction relief statute was amended.

not Petitioner's hair that was found in the vehicle, those results would not impeach the testimony given at trial, much less exonerated Petitioner." This issue has been fully litigated.

¶8. Only after exhaustion of all appeals, federal and state, has this series of eleventh-hour applications been made. "[A] defendant should not be allowed to take a gambler's risk and complain only if the cards [fall] the wrong way." *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 86, 129 S. Ct. 2308, 2330, 174 L. Ed. 2d 38 (2009) (Alito, J., concurring) (citation omitted).

¶9. One of the Department of Justice's letters contains specific statements that are contrary to prior Department of Justice publications. The letter asserts that "[m]itochondrial DNA testing became routine after December 31, 1999." A Department of Justice article published in July 1999 belies this assertion. The July article states unequivocally that testing began in 1992, and that evidentiary sampling began in 1996. As of April 1999, mtDNA analyses had been admitted in criminal proceedings in the following states: Alabama, Arkansas, Florida, Indiana, Illinois, Maryland, Michigan, New Mexico, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Washington.<sup>3</sup>

¶10. The letter also states that the Department of Justice is "assist[ing] [the Innocence Project and the National Association of Criminal Defense Lawyers] in their evaluations." "The Innocence Project supports a moratorium on capital punishment."<sup>4</sup> The "NACDL has

---

<sup>3</sup>Alice R. Isenberg and Jodi M. Moore, *Mitochondrial DNA Analysis at the FBI Laboratory*, 1 Forensic Science Communications (July 1999), <http://www.fbi.gov/about-us/lab/forensic-science-communications/fsc/july1999/dnalist.htm> (last visited May 7, 2013).

<sup>4</sup>[http://www.innocenceproject.org/Content/The\\_Death\\_Penalty.php](http://www.innocenceproject.org/Content/The_Death_Penalty.php) (Last visited May 7, 2013).

been an outspoken critic of the death penalty system.”<sup>5</sup> Of critical concern is the language contained in the first FBI report stating that, “[g]iven the abbreviated time frame for review, the FBI requests the Innocence Project (IP) to advise as to whether or not they agree with the FBI’s conclusions as soon as possible.” Although the connectivity and expediency by which this review was accomplished is mind boggling, I should not be surprised, given that the families of victims of the clandestine ‘Fast and Furious’ gun running operation can’t get the Department of Justice to identify the decision makers (whose actions resulted in the death of a border agent and many others) after years of inquiry, and that this is the same Department of Justice that grants and enforces *Miranda* warnings to foreign enemy combatants.

¶11. There exists a host of other legal and factual issues, but time allocated to write is so compressed due to last minute filings, and I shall more fully address these deficiencies when the opportunity presents itself.

---

<sup>5</sup><http://www.nacdl.org/criminal-defense/death-penalty/>. (Last visited May 7, 2013).