

STATE OF MARYLAND

VS.

JAMES KULBICKI

\* IN THE CIRCUIT COURT  
 \* FOR BALTIMORE COUNTY  
 \* CASE NO. K93000530

\* \* \* \* \*

**STATE'S SUPPLEMENT TO POST  
 HEARING MEMORANDUM**

Now comes the State of Maryland by Scott D. Shellenberger, State's Attorney for Baltimore County and S. Ann Brobst, Assistant State's Attorney for Baltimore County, and says:

Petitioner repeatedly alleged "actual innocence" during the post conviction hearing in the above case. The State contends that "actual innocence" does not constitute a ground for post conviction relief. Nonetheless in order to rebut this claim, the State has had the bone fragments recovered from Petitioner's truck analyzed for DNA. We have attached the resulting report from Orchid Cellmark as Appendix A. That analysis concluded that the bone fragments in Petitioner's truck were from the deceased victim, Gena Nueslein.

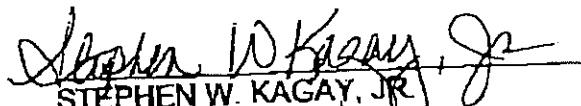
RESPECTFULLY SUBMITTED,

*Scott D. Shellenberger*

SCOTT D. SHELLENBERGER  
 STATE'S ATTORNEY FOR  
 BALTIMORE COUNTY

*S. Ann Brobst*


S. ANN BROBST  
 ASSISTANT STATE'S ATTORNEY  
 FOR BALTIMORE COUNTY

  
 STEPHEN W. KAGAY, JR.  
 ASSISTANT STATE'S ATTORNEY  
 FOR BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 10<sup>TH</sup> day of September, 2007, the above State's Supplement to Post Hearing Memorandum was sent faxed to:

Suzanne Drouet  
 Michelle Nethercott  
 Assistant Public Defender  
 201 East Baltimore Street, Suite 1600  
 Baltimore, Maryland 21202-1808

  
 S. ANN BROBST  
 ASSISTANT STATE'S ATTORNEY  
 FOR BALTIMORE COUNTY  
 COUNTY COURTS BUILDING  
 401 BOSLEY AVENUE  
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 (410) 887-6610



ORCHID  
CELLMARK

13988 Diplomat Drive - Suite 100 - Dallas, TX 75234 - 214.271.8400 - 1.800.752.2774 - 214.271.8322 fax

Appendix A

**Report of Laboratory Examination**  
September 5, 2007

Laura Pawlowski  
Baltimore County Police Department  
700 E. Joppa Road  
Towson, MD 21286-5501

**SUBJECT:** Gina Nuislein

**ORCHID CELLMARK NO:** M07-0021  
**AGENCY CASE NO:** 93-010-0301

**EXHIBITS**

Client Item	OC Item	Received	Item Description	Screened	PCR
95-010-0301/28-054	M07-0021-01	8/22/2007	0.5mL microcentrifuge tubes : #1, #2 and #3 bone	N	N
93-010-0301/28-054	M07-0021-02	8/22/2007	0.5mL microcentrifuge tube: Lead	N	N
93-010-0301/28-055.1	M07-0021-03	8/22/2007	Blood Cards - Gina Nuislein	N	Y
95-010-0301/28-057	M07-0021-04	8/22/2007	Extract : Bone Fragments, Neat	N	N
93-010-0301/28-057	M07-0021-05	8/22/2007	Extract : Bone Fragments, Diluted	N	Y
95-010-0301/28-058	NOT EXAMINED	8/22/2007	Slide : possible bone matter	N	N
93-010-0301/28-057	NOT EXAMINED	8/22/2007	Microcentrifuge Tube	N	N
93-010-0301/28-057	NOT EXAMINED	8/22/2007	Microcentrifuge Tube	N	N
93-010-0301/28-057	NOT EXAMINED	8/22/2007	Microcentrifuge Tube	N	N
93-010-0301/28-057	NOT EXAMINED	8/22/2007	Microcentrifuge Tube	N	N
93-010-0301/28-057	NOT EXAMINED	8/22/2007	Microcentrifuge Tube	N	N

**RESULTS**

DNA testing using the polymerase chain reaction (PCR) and the AmpFISTR Profiler Plus™ and AmpFISTR COfiler™ Amplification Kits was performed on the indicated exhibits. The loci tested and the results obtained for each tested sample are listed in Table 1 and Table 2. This report supplements Cellmark Diagnostics Case Report Number F951243 dated August 17, 1995.

**CONCLUSIONS**

M07-0021-05.01.1

In the absence of an identical twin, the DNA profile obtained from the extract of the bone fragments is identified as originating from Gina Nuislein (03.01.1).

M07-0021

1 of 1

A reagent blank is generated during the DNA extraction process to monitor for the presence of contamination. In this case, a reagent blank control for the extract of the bone fragments (04.01.1 and 05.01.1) was deemed acceptable using a previous amplification technology (Cellmark Diagnostics case file for P951243). This reagent blank control was unavailable for testing using AmpFISTR Profiler Plus™ and AmpFISTR COfiler™ Amplification Kits.

**STATISTICAL ANALYSIS**

Samples compared: Extract of bone fragments (05.01.1)  
Victim standard, Gina Nuislein (03.01.1)

The estimated frequency of occurrence of this genetic profile at 13 loci in five North American populations is:

POPULATION DATABASE	FREQUENCY
Black	1 in 115.4 quintillion unrelated individuals
Caucasian	1 in 3,470 quintillion unrelated individuals
Southwest Hispanic	1 in 36.58 quintillion unrelated individuals
Southeast Hispanic	1 in 1,536 quintillion unrelated individuals
General Asian	1 in 23.14 quintillion unrelated individuals

**DISPOSITION**

In the absence of specific instruction, evidence will be returned to the submitting agency by Federal Express or another appropriate carrier.

**TECHNICAL REVIEW**

The results described in this report have been reviewed by the individuals below.

Reviewer: W. Kuperus  
Wanda Kuperus, Ph.D. / Associate Laboratory Director

Reviewer: Rick W. Staub  
Rick W. Staub, Ph.D. / Laboratory Director

Procedures used in the analysis of this case adhere to the standards adopted by the DNA Advisory Board. Orchid Cellmark is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. This test is performed pursuant to licensing arrangements with Roche Molecular Systems, Inc. and Applied Biosystems. The results in this report relate only to the items tested.

September 5, 2007



ORCHID  
CELLMARK

Accredited by the American Society of Crime Laboratory Directors / Laboratory Accreditation Board  
Dallas, TX - Nashville, TN

# Report of Laboratory Examination

Criminal Courtmark- Dallas

9/5/2007

ORCHID CELLMARK NO: M07-0021  
 AGENCY CASE NO: 93-010-0301

Table 1  
 Profiler Plus

Sample Name	D3S1358	VWA	FGA	AMEL	D8S1179	D21S11	D18S51	D5S818	D13S317	17RB20
Orin Nuclein M07-0021-03.01.1 93-010-0301	15, 17	15, 18	19, 21	X	10	28, 32.2	12, 13	12, 13	12, 14	8, 12
Extract M07-0021-03.01.1 93-010-0301	15, 17	15, 18	19, 24	X	10	28, 32.2	12, 13	12, 13	12, 14	8, 12

X = Female

The results listed in the table do not depict intensity differences.

# Report of Laboratory Examination

Orsted Cellmark - Dates

9/5/2007

ORCHID CELLMARK NO: M07-0021  
AGENCY CASE NO: 93-010-0301

Table 1  
Cables

Sample Name	D391338	D16509	ANIEL	TH01	TPOX	C581P0	D78810
Gina Nardelli M07-0021-03.01.1 93-010-0301	15, 17	12, 13	X	8, 9	10, 12	11, 12	8, 12
Extract M07-0021-03.01.1 93-010-0301	15, 17	12, 13	X	8, 9	10, 12	11, 12	8, 12

X = Female

The results listed in the table do not depict totality of differences.