STATE OF WISCONSIN CIRCUIT COURT GRANT COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 09-CF-_____

GREGORY L. OTTERBECK,
Race/Gender: M/W,
DOB: 11/11/1954,
Oshkosh Correctional Institute,
P.O. Box 3310,
Oshkosh, WI 54903-3310,

Defendant.

CRIMINAL COMPLAINT

Complainant, Richard A. Luell, being duly sworn on oath, and based upon information and belief, states as follows:

COUNT 1: SECOND-DEGREE MURDER

On or about December 7, 1980, in the county of Grant, state of Wisconsin, the above-named defendant did cause the death of Thomasina Dunivant under circumstances in which his conduct imminently was dangerous to another and evinced a depraved mind regardless of human life contrary to Wis. Stat. § 940.02(1) (1979-1980).

Upon conviction, the defendant is guilty of a Class B Felony pursuant to Wis. Stat. §§ 940.02 and 939.50(3)(b) (1979-1980) is punishable by imprisonment not to exceed twenty years.

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (608) 723-2752 (TTY -- (608) 723-2045) AND ASK FOR THE GRANT COUNTY CIRCUIT COURT ADA COORDINATOR.

STATEMENT OF PROBABLE CAUSE

1. Your complainant, Rick Luell, is a special agent with the Wisconsin Division of Criminal Investigation (DCI) in the Wisconsin Department of Justice. Your complainant is familiar with the records and reports and files of DCI as it relates to the first degree sexual assault and first degree intentional homicide of Jodi Bausman from Grant County in 1981 as well as those of DCI regarding the death of Thomasina Dunivant. Your complainant is also familiar with the records and reports of the Grant County Sheriff's Department, a professional law enforcement organization constituting the sort of records your complainant has relied upon in the past and found to be truthful and accurate. Your complainant is also familiar with and relies upon the investigative records of Illinois law enforcement agencies that have been submitted to DCI regarding investigations by those Illinois agencies into the death of Dunivant, which records and reports are also of the sort that your complainant has relied upon in the past and found to be truthful and accurate. Based on all of the foregoing, your complainant is informed and believes as follows:

I. FACTS SUPPORTING A CONVICTION OF OTTERBECK FOR THE HOMICIDE OF THOMASINA DUNIVANT

A. Other Act Evidence

In order to understand the evidence supporting a conviction for homicide one must understand the historical significance of Otterbeck's party to the crime convictions for the first degree sexual assault and first degree intentional homicide of Jodi Bausman. Otterbeck, along with Randy Rhomberg and Michael Shaffer, encountered Bausman in a Dubuque, Iowa, bar on April 13, 1981. Bausman left the bar in a vehicle in which she was accompanied by Otterbeck, Rhomberg, Shaffer, and Robert Miller. They drove to the Stumpf Island cabin of Ronald Rhomberg (the uncle to Randy Rhomberg). The cabin is located on the Wisconsin side of the Mississippi River in Grant County, Wisconsin. Miller witnesses Rhomberg, Otterbeck,

and Shaffer restrain and forcibly sexually assault Bausman, by penis to vagina. After the sexual assault, Bausman threatened to complain to law enforcement and Rhomberg manually strangled Bausman. Miller was inconsistent between his initial statement to law enforcement and trial testimony as to whether Bausman was restrained by Otterbeck while being manually strangled by Rhomberg. At trial, Miller testified that Otterbeck stood by while Rhomberg strangled Bausman.

Subsequent forensic pathology supported a finding of strangulation being consistent with the manner of death, but could not be conclusive - due in large part to decomposition. Bausman was stuffed into an old non-functioning refrigerator. The refrigerator was tossed to the ground from the cabin, latch closed in some fashion, and loaded into a jon boat. The jon boat was motored into the adjoining Mississippi River which was experiencing high water and spring flooding. Otterbeck helped Rhomberg get the refrigerator out of the cabin and into the boat. Rhomberg was accompanied by Shaffer after pushing off in the jon boat. Bausman's body was later recovered from the river.

Otterbeck and his confederates were prosecuted by the Department of Justice and convicted in a joint trial largely upon the testimony of Miller. Miller was cross-examined by attorneys representing all three defendants. Otterbeck's convictions survived all post-conviction attacks and he remains imprisoned for those convictions - although he is eligible for parole.

B. Dunivant Circumstantial Homicide Evidence which Dovetails with the Bausman Sexual Assault and Homicide

1. Dunivant Homicide Background

Thomasina Dunivant was a 23-year-old black female who was a single mother living in the Rockford, Illinois, area who supported herself and her child by working as a prostitute. Dunivant was last seen by a fellow prostitute on the night of December 7, 1980, outside of the Esquire Room, a bar in East Dubuque. Dunivant's corpse was later recovered in a grassy ditch

in Grant County. The Stumpf Island cabin of Ronald Rhomberg is an easy drive from the Esquire Room and also a relatively short and easy drive from the highway roadside where Dunivant's body was located.

The circumstances in which Dunivant's corpse was located are consistent with her having been dumped from a vehicle. Her two shoes were found, one in each ditch, on both sides of the highway. She had abrasions consistent with gravel. Her buttocks were exposed and her underwear and nylons were on her legs but, not completely in place. Stains in her underwear reveal her DNA with a mixture of an unknown foreign DNA - but not that of Otterbeck as he was excluded as the source of the stain in the underwear. A mixture of DNA was found in a vaginal swab collected during the autopsy. The mixture of DNA was delineated as that of Dunivant and that of Otterbeck. The DNA match connecting Otterbeck's DNA to the vaginal swab is one person in 141,000 individuals as the probability of a randomly selected person being an unrelated individual contributor.

It is highly consistent circumstantial evidence that Dunivant's last customer was Otterbeck, who ejaculated in her vagina and left his semen in her vagina. Evidence from the forensic autopsy is consistent with a mechanism of death as manual strangulation, particularly from bruising to the clavicular region and lower neck; and petechiae of the scalp. Also present was laryngeal hemorrhages of mid-neck, contusions to chest and lung and lacerations and contusions to her head. Also of note in her clothing disarray is the fact that her brassiere and blouse are not in place and her breasts were exposed. Dunivant's state of partial undress is consistent either with a sexual assault or a consensual sexual act of prostitution immediately followed by a violent homicidal assault.

One could reasonably infer that the DNA from one of Dunivant's prior consensual sexual partners/customers would have the opportunity to leak from her vagina into her underwear after having a chance to dress herself after the sexual act of penile/vaginal intercourse. Given her

state of undress as well as the absence of any Otterbeck's DNA in Dunivant's underwear, the facts would support an inference that the homicide occurred before Dunivant would have had an opportunity to dress herself after the penile/vaginal sexual intercourse with Otterbeck.

Therefore, it is a reasonable inference from the circumstantial evidence that the last person to have penile/vaginal sexual intercourse with Dunivant is also the person who manually strangled her. Also given the manner in which Bausman was murdered after being sexually assaulted and the fact that Rhomberg was a known friend and associate of Otterbeck and the fact that the Bausman homicide occurred after the Dunivant homicide, it is certainly plausible that Otterbeck had an opportunity to tell Rhomberg how he strangled Dunivant after having had sex with her (whether consensual or nonconsensual) and for Rhomberg to have followed Otterbeck's suit with Bausman - including disposal of the body in a remote location from the place in which the homicide occurred.

There are a number of points of evidence that support the Dunivant homicide having occurred at the Ronald Rhomberg cabin. First, Otterbeck had access to the Ronald Rhomberg cabin and permission to use the Ronald Rhomberg cabin. We know that not only from the testimony of Miller from the Bausman homicide incident, but also from the transcribed interview of Ronald Rhomberg with law enforcement and a prosecutor in which Ronald Rhomberg indicated that Otterbeck was someone who helped Ronald Rhomberg doing chores around and improvements to the Stumpf Island cabin and as a result had the permission of Ronald Rhomberg to use the cabin, which was ordinarily unlocked - but if locked, the key was kept in a location known to Otterbeck. Otterbeck also testified he was free to use the cabin any time. Dunivant's purse was located, after her disappearance, approximately 500 yards downstream from the Ronald Rhomberg cabin. Ronald Rhomberg recalled that bedding from one of the pull-out couches located within the Rhomberg cabin was missing at a time subsequent to the death of Dunivant but before the sexual assault and homicide of Bausman. This could be consistent with

someone wanting to destroy evidence that might be apparent or consistent with a sexual assault and/or homicide.

2. Otterbeck's Incriminating Statements

Otterbeck's sister, Debra, ran a restaurant with another woman - Frommelt. Frommelt did not come forward immediately and when she did, made an "anonymous" report (in which she gave her name but asked to remain anonymous). Frommelt subsequently gave an interview with law enforcement and related the following information which she stated she learned from what she observed and from what she heard from Debra. At approximately 4:30 a.m., Otterbeck came into the restaurant and looked half-drunk. After Otterbeck finished talking with his sister and left the restaurant, Debra seemed upset and asked to be able to talk to Frommelt. Debra tells Frommelt that her brother said he killed a woman, it was an accident, and he did not mean to. That he was with a black girl, they were going to have sex, she decided not to have sex, and started to scream, he covered her mouth until she was no longer breathing, and then he dumped her body in a ditch in Wisconsin.

Debra, when spoke to, claims that she cannot recall whether her brother ever had such a conversation with her as Frommelt describes and cannot recall whether she ever had a conversation with Frommelt as Frommelt describes.

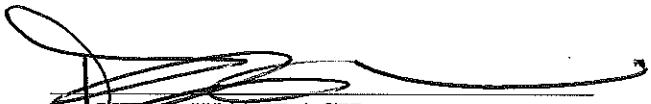
Otterbeck also told Shaffer that he, Otterbeck, had killed a black girl. Not surprisingly, and similar to the situation with Debra, Shaffer has informed Special Agent Luell and Grant County Investigator Klaas that he does not recall whether he ever had such a conversation with Otterbeck. Shaffer, not unlike Debra, unburdened himself of Otterbeck's revelation by talking to another person. Thomas J. Weidenbacher has consistently said as recently as 2008 that Shaffer told him, Weidenbacher, that Otterbeck told Shaffer that Otterbeck had killed a black

girl. Weidenbacher has testified previously that he has know Otterbeck since Weidenbacher was nine-years-old and that he has known Shaffer his whole life as he and Shaffer are related.

Dated this 13th day of August, 2009.

RICHARD A. LUELL
Special Agent
Wisconsin Department of Justice
Division of Criminal Investigation

Subscribed and sworn to before me and approved for filing this 13th day of August, 2009.



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