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No. SCPW-24-0000537

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII POLICE DEPARTMENT,
COUNTY OF HAWAII,

Petitioner,

v.

THE HONORABLE PETER K. KUBOTA,
Judge of the Circuit Court of the Third
Circuit, State of Hawai'i,

Respondent.

ORIGINAL PROCEEDINGS

No. 3CSP-23-0000003

No. 3CSP-23-0000017

(Special Proceedings)

CIRCUIT COURT OF THE THIRD CIRCUIT,
STATE OF HAWAII

The Honorable Peter K. Kubota

**RESPONDENT ALBERT IAN
SCHWEITZER'S ANSWER TO HAWAII
COUNTY POLICE DEPARTMENT'S
WRIT OF MANDAMUS; DECLARATION
OF WILLIAM A. HARRISON; EXHIBITS
"A-B;" CERTIFICATE OF SERVICE**

**RESPONDENT ALBERT IAN SCHWEITZER'S ANSWER TO HAWAI'I POLICE
DEPARTMENT'S WRIT OF MANDAMUS**

I. Relevant Facts

The Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to HRS Chapter 661B details all relevant facts that led to the court granting the relief requested. See Exhibit "A" attached.

II. Argument

The writ of mandamus sought by the Hawai'i County Police Department ("HCPD") is predicated on a fundamental misinterpretation of the Uniform Information Practices Act ("UIPA"). HCPD argues that UIPA compels it to withhold records requested through a discovery subpoena, even though UIPA has no bearing on discovery processes.

UIPA is not a confidentiality law designed to obstruct the discovery process. Rather, it is a public records law intended to ensure transparency in government operations. The misapplication of UIPA in this context threatens to undermine fundamental principles of fairness and justice upon which the legal system rests.

In any event, HCPD has failed to establish a "clear and indisputable right to relief," and its argument lacks both legal and factual support. Accordingly, Respondent Albert Ian Schweitzer respectfully requests that the Court deny HCPD's petition for a writ of mandamus.

A. UIPA is Not a Shield Against Discovery

HCPD's argument that UIPA requires it to withhold records in response to a subpoena is not only incorrect but also dangerously misleading. UIPA was enacted to facilitate public access to government records, subject to certain exceptions. It was never intended to override the rules governing discovery in litigation. This Court has already rejected the notion that UIPA mandates nondisclosure of records simply because they fall within one of its exceptions. *SHOPO v. City &*

County of Honolulu, 149 Hawai`i 492, 508-09 (2021). In *SHOPO*, this Court clearly explained that nondisclosure under UIPA is only mandatory where another law independently requires it.

Id. UIPA does not, and should not, conflict with a government agency’s discovery obligations.

Discovery is governed by the Hawai`i Rules of Civil Procedure (HRCPP), which establish a framework for the exchange of information between parties in a lawsuit. The purpose of discovery is to ensure that all parties have access to the evidence necessary to pursue or defend against claims in Court. It is a critical component of the judicial process that promotes fairness, transparency, and the resolution of disputes on their merits.

HCPD’s interpretation of UIPA as a tool to avoid its discovery obligations is fundamentally flawed. If accepted, this interpretation would create an unprecedented and unjustified privilege for government agencies, allowing them to withhold crucial information from litigants simply by invoking UIPA. Such an outcome would severely disrupt the balance of power in litigation, placing governmental entities above the law and depriving other parties of their right to a fair discovery process.

Furthermore, the Office of Information Practices (OIP), has explicitly rejected the conflation of UIPA with discovery standards. In Op. No. F20-04, the OIP clarified that “[d]iscovery of records in the course of litigation is a separate and distinct process from access to government records under UIPA, and different standards apply.” HCPD’s attempt to conflate these two distinct processes not only misrepresents the law but also threatens to erode the foundational principles of the judicial system.

B. Government Agencies Do Not Have Special Privileges in Litigation Discovery

The Hawai`i Rules of Evidence (HRE) define the privileges that may be asserted to withhold information. These rules apply equally to all parties, whether governmental or non-

governmental. Under HRE 501, no person or entity has a privilege to refuse to disclose information unless such a privilege is expressly provided by law. UIPA does not create such a privilege.

HCPD's argument that UIPA grants it a special privilege to withhold records during litigation is not supported by any legal precedent or statutory authority. In fact, the very notion that a government agency could unilaterally withhold records in litigation, without regard to their relevance or necessity, is antithetical to the principles of justice and fairness. If HCPD's interpretation were accepted, it would create a dangerous precedent, allowing government agencies to evade accountability and transparency by simply invoking UIPA.

Such an interpretation would lead to absurd and unjust outcomes. For example, in cases of medical malpractice, employment retaliation, or breach of contract, a government agency could withhold personnel files, medical records, or other critical information simply because it falls within a UIPA exception. This would place government agencies above the law, allowing them to act with impunity while denying other litigants access to the evidence they need to pursue their claims.

UIPA was never intended to create a shield for government agencies in litigation. Its purpose is to promote transparency and accountability in government operations by providing the public with access to government records. The discovery process, on the other hand, is designed to ensure that all parties in litigation have access to the evidence necessary to resolve disputes fairly and justly. These two processes serve different purposes and are governed by different rules. Conflating them, as HCPD attempts to do, would undermine both UIPA and the judicial process.

C. Conclusory Assertions of Ongoing Investigation Do Not Justify Withholding Records

HCPD's claim that disclosure of the requested records would harm an ongoing criminal investigation is unsupported by any specific evidence or factual detail. The declaration provided by HCPD Captain Amon-Wilkins is conclusory and fails to meet the standards required to justify withholding records under UIPA or any other legal framework.

In *Grube v. Trader*, this Court emphasized the importance of detailed and specific findings to support claims that disclosure of information would harm an ongoing investigation. *Grube v. Trader*, 142 Hawai'i 412, 426 & n.18 (2018), The Court made it clear that judges should not simply defer to vague and unsupported assertions by law enforcement officials. Instead, the Court must require concrete evidence that disclosure would pose a real and substantial threat to the investigation. *Id.*

HCPD has failed to provide such evidence in this case. The declaration from Captain Amon-Wilkins merely asserts, without any supporting detail, that disclosure could result in the loss of witness testimony, tampering with witnesses, or the destruction of evidence. These assertions are speculative and lack the specificity required to justify withholding records. This conclusory claim cannot overcome the presumption in favor of disclosure, particularly in the context of litigation where the need for transparency and fairness is paramount.

Even if UIPA standards were applicable in this case, which they are not, HCPD's conclusory assertions would still be insufficient to justify withholding the requested records. UIPA requires an agency to provide facts demonstrating that an investigation is actively in progress and that the information being withheld would provide new information that could harm the investigation. HCPD has failed to meet this standard, providing only vague and unsupported claims that do not rise to the level required by law.

Importantly, the subject of HCPD’s alleged “ongoing criminal investigation” is now deceased, and—HCPD has yet to explain what criminal charges it could possibly bring against a deceased suspect.

D. The Inconsistent Behavior of HCPD Undermines Its Claims

HCPD’s inconsistent behavior further undermines its argument for withholding records. While HCPD claims that disclosure would harm an ongoing investigation, it has simultaneously made public statements about the investigation that reveal key details and potentially prejudice the investigation.

At his July 29, 2024 press conference, the Chief of Police publicly discussed the investigation, including the identification of Albert Lauro Jr. through DNA testing, the nature of the evidence linking him to the crime, and the ongoing investigation of the Schweitzer brothers. These public statements directly contradict HCPD’s claim that the investigation is too sensitive to allow for the disclosure of records. If HCPD truly believed that disclosure would harm the investigation, it would not have publicly revealed such critical information. See Lawson Dec. ¶ 6 and Exhibit B.

This inconsistent behavior suggests that HCPD’s true motivation for withholding records is not to protect the integrity of the investigation but rather to shield itself from scrutiny and accountability. By selectively disclosing information that supports its narrative while withholding information that could exonerate the Respondent, HCPD is attempting to manipulate the judicial process and deprive the Respondent of records that are highly relevant to his claim of actual innocence.

Such behavior is not only legally indefensible but also ethically troubling. The justice system relies on the principle that all parties are entitled to a fair proceeding, which includes the

right to access evidence that may exonerate them. HCPD's actions, in this case, undermine that principle and threaten to erode public trust in the judicial system.

As Judge Kubota's August 15, 2024 order states, the Innocence Projects warned the prosecution on July 2nd, and thereafter, that they should get an arrest and search warrant to prevent Lauro, Jr. from fleeing, destroying evidence, or killing himself. The attorneys for the Schweitzer brothers were very clear and emphatic about the suicide danger and the need to do a search of his devices, cars, and home for evidence. The prosecution and the Hilo Police Department ignored our advice on best practices, ignored the state's highest-ranking law enforcement official, the Attorney General, and knowingly and intentionally created a substantial risk that Lauro, Jr. would flee, destroy evidence, and, as tragically occurred, commit suicide. All to this was done to "save face," as counsel for Respondent argued before the trial court.

HCPD should be equitably estopped from opposing the court's order. This is not simply a matter of "unclean hands." Under these circumstances, it's fair to say that the HCPD has blood on its hands.

E. *Brady v. Maryland* and Special Responsibilities of Prosecutors-HRPC 3.8

Respondent agrees with Judge Kubota's August 15, 2024 order that *Brady v. Maryland*, 373 U.S. 83 (1963) may not technically but it considered "principles of due process and good faith obligations of Law Enforcement are applicable and enforceable in this HRS Chapter 661B case." *Brady v. Maryland*, 373 U.S. 83 (1963); Judge Kubota's August 15, 2024, Court Order, Dkt.# 205. This Court should affirm Judge Kubota's finding, especially in light of the state's ongoing attempts to impede Respondent's efforts to prove his actual innocence. As Judge Kubota said, "justice delayed is justice denied."

Brady was decided well before the development of the technology that has been used to free the wrongfully convicted. But the essence of *Brady* speaks to the state's obligation to disclose exculpatory information in an adversarial proceeding. To the extent that the state now seeks to block Respondent's efforts to prove his actual innocence, it is fundamentally unjust for the state to do so by intentional withholding evidence that is overwhelmingly exculpatory and probative of Respondent's actual innocence. Most concerning is the state's insistence that it is withholding this information pursuant to an ongoing investigation into a suspect who is now deceased. Other than delay, there is plainly no basis for the state to withhold evidence that will demonstrate Respondent's actual innocence and allow him to seek the relief to which he is entitled.

Further, the Hawai'i Rules of Professional Conduct Rule 3.8 states in part that:

A public prosecutor or other government lawyer shall:

(c) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall

(1) promptly disclose that evidence to an appropriate court or authority; and

(2) if the conviction was obtained in the State of Hawai'i, promptly disclose that evidence to the defendant and the office of the public defender, unless a court orders otherwise.

Comment 1 to HRPC 3.8 is also instructive:

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations ...and that special precautions are taken to prevent **and to rectify** the conviction of innocent persons...knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4 of these rules. (emphasis added).

Here, "special precautions" must be taken to rectify Respondent's conviction because the state has already exonerated and freed Respondent. HRS Chapter 661B has

no teeth if the state can simultaneously claim that a person who has been exonerated cannot pursue relief under the statute because the state is withholding the evidence he needs to prove his actual innocence.

Respondent, through counsel, argues that Respondent has a legal right under the circumstances of this case to review exculpatory evidence *and* that prosecutors in this case have an ethical duty to promptly disclose exculpatory evidence. If there is ambiguity or uncertainty in applicable law, Respondent believes now would be a good time for this Court to make clear that there is both an ethical and legal duty on the state to disclose exculpatory evidence on claims of actual innocence, as in this case. ¹

III. CONCLUSION

Respondent Albert Ian Schweitzer respectfully requests that the Court deny HCPD's petition for a writ of mandamus. UIPA does not provide a basis for withholding records in response to a litigation subpoena, and HCPD has failed to demonstrate a clear and indisputable right to relief.

Dated: Honolulu, Hawai'i, August 15, 2024

Respectfully submitted,

/s/ William A. Harrison
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Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

¹ For a more extensive discussion on why counsel for Respondent holds fast to the belief that “Brady Orders” are constitutionally compelled when coupled with HRPC 3.8, *See* Barry Scheck, *The Integrity of Our Convictions: Holding Stakeholders Accountable in An Era of Criminal Justice Reform*, 48 Geo. L.J. Ann. Rev. Crim. Proc. (2019).

No. SCPW-24-0000537

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII POLICE DEPARTMENT,
COUNTY OF HAWAII,

Petitioner,

and

THE HONORABLE PETER K. KUBOTA,
Judge of the Circuit Court of the Third
Circuit, State of Hawai'i,

Respondent.

ORIGINAL PROCEEDINGS

No. 3CSP-23-0000003

No. 3CSP-23-0000017

(Special Proceedings)

CIRCUIT COURT OF THE THIRD CIRCUIT,
STATE OF HAWAII

The Honorable Peter K. Kubota

**DECLARATION OF WILLIAM A.
HARRISON**

DECLARATION OF WILLIAM A. HARRISON

I, William A. Harrison, hereby declare as follows:

1. I make this declaration based on my personal knowledge, and if called to testify, I could and would do so competently as follows:

2. I am a founding member of the Hawai`i Innocence Project and have been a volunteer attorney for the Hawai`i Innocence Project since its inception in 2005.

3. I have been co-counsel on the Ian Schweitzer case since 2005.

4. Attached hereto as Exhibit A is a true and accurate copy of the Motion to Compel we filed on behalf of the Schweitzer brothers, Ian and Shawn on July 28, 2024.

5. Attached hereto as Exhibit B is the declaration of Hawai`i Innocence Project Co-Director, Kenneth L. Lawson.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief

Executed this 16th day of August, 2024, in Honolulu, Hawai`i.



WILLIAM A. HARRISON

EXHIBIT “A”

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//



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAII

ALBERT IAN SCHWEITZER, SHAWN
SCHWEITZER,

Petitioners,

vs.

STATE OF HAWAII,

Respondent.

Case No. 3CSP-23-0000003; 3CSP-23-
0000017

(Prior Case no: 3PC-99-0000147)

MOTION TO PRESERVE EVIDENCE
AND COMPEL DISCOVERY RE: JOINT
PETITION FOR RELIEF PURSUANT TO
H.R.S. CHAPTER 661B;
MEMORANDUM IN SUPPORT;
DECLARATION OF COUNSEL;
EXHIBITS "1"- "11"; NOTICE OF
HEARING; CERTIFICATE OF SERVICE

MOTION HEARING

Date: July 30, 2024

Time: 8:30 AM

Judge: Honorable Peter K. Kubota

MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION
FOR RELIEF PURSUANT TO HRS CHAPTER 661B

Petitioners ALBERT IAN SCHWEITZER ("Ian Schweitzer") by and through his attorneys, JENNIFER BROWN and WILLIAM HARRISON of the Hawai'i Innocence Project and BARRY SCHECK of the Innocence Project (admitted *pro hac vice*), and SHAWN SCHWEITZER by and through his attorneys KEITH SHIGATOMI, and RAQUEL BARILLA of The Innocence Center (admitted *pro hac vice*) hereby moves this Court for an Order to compel the HAWAII COUNTY PROSECUTING ATTORNEY and the HAWAII COUNTY POLICE DEPARTMENT to preserve all evidence obtained in its investigation of the Dana Ireland murder and Case no. 3PC-99-0000147 and any and all evidence obtained post-conviction in relation to Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 from the time of the Dana Ireland murder on December 24, 1991, through the present, as well as any evidence that may be

obtained in the future in relation to the Dana Ireland murder and Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 after a hearing on this Motion scheduled for July 30, 2024.

Furthermore, Petitioners hereby moves this Court for an Order to compel the HAWAI'I COUNTY PROSECUTING ATTORNEY and the HAWAI'I COUNTY POLICE DEPARTMENT to produce all evidence in their possession in relation to the Dana Ireland murder investigation and Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 from the time of the Dana Ireland murder on December 24, 1991, through the present, as well as any evidence that may be obtained in the future in relation to the Dana Ireland murder and Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 after a hearing on this Motion scheduled for July 30, 2024.

This Motion is made pursuant to H.R.S. §844D-126, H.R.P.P. Rule 40(g), H.R.C.P. 37(a) and is supported by all of the records and files before this court, the attached Memorandum in Support of this Motion, the Declaration of Counsel, the attached Exhibits "1"- "11", and any other evidence to be produced for the Motion hearing scheduled to be heard on July 30, 2024.

RELEVANT PROCEDURAL BACKGROUND IN SUPPORT OF THIS MOTION

1. On December 24, 1991, someone (referred to as "Unknown Male #1")¹ kidnapped and sexually assaulted Dana Ireland ("Ms. Ireland") and left her badly injured on a fishing trail.

¹ *The identity of Unknown Male #1 is no longer "unknown."* The post-conviction investigative efforts of the Petitioners have led to the parties identification of Unknown Male #1's, which was confirmed first through abandoned DNA collection tested with results provided to the parties on July 1, 2024 and then further confirmed through the DNA testing of a buccal swab of Unknown Male #1's DNA on July 24, 2024. Petitioners will continue to refer to him as Unknown Male #1 in this Motion where applicable and now "Known Male #1" thereafter were applicable. See attached Exhibits "5" and "11".

Due to her injuries, Ms. Ireland died on December 25, 1991. Dkt. 3, Joint Stipulated Facts (“JSF”)² filed January 23, 2023, at ¶ 2.

2. Years later, on October 9, 1997, Albert Ian Schweitzer (“Ian”) and Shawn Schweitzer (“Shawn”) were indicted for Ms. Ireland’s rape, kidnap, and murder.³ However, based on DNA results, the Hawai‘i County Prosecutor’s Office dismissed all charges against Ian and Shawn on October 20, 1998. JSF at ¶ 8.

3. In May of 1999, the Prosecution secured a reindictment of Ian and Shawn, based on the false and incentivized statements of a jailhouse informant. JSF at ¶ 9.

4. On February 16, 2000, a jury found Ian guilty of Second-Degree Murder, Kidnapping, and Sexual Assault in the First Degree. Ian was sentenced to a term of: (1) life imprisonment with the possibility of parole for the Second-Degree Murder, (2) 20 years in prison for Kidnapping, and (3) 20 years in prison for Sexual Assault in the First Degree, all terms to run consecutively. JSF at ¶ 13. On May 9, 2000, Shawn pled guilty to manslaughter and kidnapping (by omission) related to Dana Ireland and was sentenced to one year in jail with credit for time served and five years of probation. JSF at ¶ 14.

5. The Hawai‘i Supreme Court affirmed Ian’s conviction. *State v. Schweitzer*, 103 Hawaii 400 (2004).

6. Ian filed an initial Petition to Vacate, Set Aside or Correct Judgment or to Release Petition pursuant to Hawai‘i Rule Penal Procedure Rule 40 on February 3, 2017, and filed

² The statement of facts comes from the parties agreed upon Joint Stipulated Facts filed on January 23, 2023. All internal citations in the Joint Stipulate Facts have been omitted in this document.

amended petitions on February 7, 2017, and January 16, 2018. (Case no. 3PRI71-000002). JSF at ¶ 15.

7. In May 2019, Hawai‘i Innocence Project and the Innocence Project entered into a cooperation agreement with the Hawai‘i County Prosecutors to reinvestigate the Dana Ireland murder based on Ian’s claim of being innocent and wrongfully convicted of Ms. Ireland’s murder.

8. On January 23, 2023, Ian filed another H.R.P.P. Rule 40 Petition asserting his actual innocence and pointing to new DNA evidence implicating Unknown Male #1 whose DNA was found on all relevant tested physical evidence, new bite mark evidence, and newly presented tire tread evidence.

9. Hawai‘i County Prosecutors did not dispute this new evidence and at an evidentiary hearing on January 24, 2023, the Court vacated Ian’s convictions based on this new evidence and dismissed the charges against him under 3PC-99-0000147.

10. On April 6, 2023, Shawn filed a H.R.P.P. Rule 40 Petition for Post-Conviction Relief.

11. On October 20, 2023, this Court issued its Finding of Facts and Conclusion of Law vacating Ian’s in 3CSP-23-0000003, pursuant to H.R.P.P. Rule 40 (d), finding that the evidence presented post-conviction that “[t]his Court further concludes that the new DNA and bitemark evidence, newly discovered tire tread evidence, and the recent recantation of Shawn conclusively proves that in a new trial a jury would likely reach a verdict of acquittal.” FOFCL ¶

6.

12. After further briefing, the Hawai‘i County Prosecutor’s Office dismissed all charges against Shawn on October 23, 2023, for the same reasons it vacated Ian’s convictions on January 24, 2023.

13. Since both Ian and Shawn’s convictions have been vacated, both parties have brought a Petition for Relief and Compensation pursuant to HRS § 661B-1, which is currently before this Court. (Dkt. 127) and scheduled for a hearing on July 30, 2024.

RELEVANT FACTUAL BACKGROUND IN SUPPORT OF THIS MOTION

Post-conviction Investigation Conducted by the Petitioners Led to the Identity of Unknown Male #1 Whose DNA was Found on All Relevant Evidence is Ms. Ireland’s Murder

14. On or about February 7, 2024, Petitioners’ counsel, Barry Scheck, contacted Steve Kramer (“Kramer”) from Indago Solutions⁴ to assist Petitioners in identifying Unknown Male #1, whose DNA was recovered on all relevant crime scene evidence collected by the Hawai‘i County Police Department on or around December 24, 1991, the date of Ms. Ireland’s murder.

15. Kramer is a retired FBI attorney and federal prosecutor who led the genetic genealogy team that solved the Golden State Killer case in 2018. Kramer co-founded the FBI Forensic Genetic Genealogy (“FGG”) team which now has over 200 FBI members nationwide and his efforts have helped to solve hundreds of FGG cases. Kramer started Indago Solutions using software that allowed them to automate the FGG method to quickly solve criminal cases with DNA. Kramer agreed to assist Petitioners in the investigation of Unknown Male #1 who was responsible for Ms. Ireland’s murder.

16. On or about February 26, 2024, Kramer notified Petitioners’ Counsel that Indago Solutions had identified a person who they believed could be Unknown Male #1 in Ms. Ireland’s

⁴ <https://www.indago.ai/>

case. Kramer advised that the suspected person was likely Unknown Male #1 based on his genetics, ancestry, age, and address history, among other factors.

17. Specifically, Kramer advised Petitioners' Counsel that in 1991, the suspect he believed was Unknown Male #1, lived less than two miles from where Ms. Ireland's body was located on the Wa'a Wa'a fishing trail. Furthermore, the Facebook social media accounts of the suspect he believed was Unknown Male #1, suggested that he was an avid shore fisherman and likely familiar with the fishing trail in Wa'a Wa'a where Ms. Ireland's body was found. Additionally, the suspect he believed was Unknown Male #1, would have been in his mid-20s at the time of the crime with a small stature and build that would make it likely that the Jimmy-Z's t-shirt would have been an appropriate size.⁵

18. The suspect he believed was Unknown Male #1's Facebook page also showed that he likely owned or had access to a pickup truck in the early 1990s, which was consistent with what witnesses reported seeing at the bicycle collision site and the Wa'a Wa'a fishing trail. As this Court has already determined in vacating Petitioners' convictions for Ms. Ireland's murder, Ian's Volkswagen Bug did not leave the tire tread tracks at the bicycle collision site or the Wa'a Wa'a fishing trail, as previously argued by the State during their trials. It was most likely that a

⁵ The Jimmy-Z's t-shirt was found at the fishing trail in Wa'a Wa'a fishing trail. At the time that Petitioners' were charged with Ms. Ireland's murder, the State presented trial testimony that Co-Defendant Frank Pauline had worn this t-shirt when he committed Ms. Ireland's murder. JSF at ¶ 10. However, because this t-shirt was soaked in Ms. Ireland's blood, DNA testing at the time of the trials was not advanced enough to elicit DNA results of who owned and wore the t-shirt at the time of Ms. Ireland's murder. JSF at ¶ 12. Post-conviction DNA testing conducted FACL on behalf of the Petitioners, which was presented as new evidence in Petitioners' H.R.P.P. Rule 40 Petitions, showed that Unknown Male #1 had left his semen on the t-shirt as well as was the habitual wearer of the t-shirt. JSF at ¶ 16. This new DNA evidence on the t-shirt was one of reasons that this Court vacated the Petitioners' convictions for Ms. Ireland's murder, demonstrates their actual innocence, and implicates Unknown Male #1 as being responsible for Ms. Ireland's murder. FOF at ¶ 37, Dkt. 117.

truck or van was involved in Ms. Ireland's murder, a vehicle that the suspect Kramer identified as likely Unknown Male #1 appears to have owned at the time of Ms. Ireland's murder and further evidenced by the fact that the suspect identified as Unknown Male #1 likely lived at or near and likely frequented to fish. *See* JSF at ¶¶ 24-30.

19. In addition, Kramer advised that the DNA retrieved from semen found on Ms. Ireland and other crime scene evidence indicated that Unknown Male #1 was likely to be a male with 80% Filipino ancestry, which was consistent with the suspect that Kramer identified as Unknown Male #1, because his ancestry indicates that he had three Filipino grandparents.

20. Upon learning of this critical investigatory lead, Petitioners' Counsel informed Kramer that he should advise the FBI of his findings, and Kramer contacted the FBI's genetic genealogy team to follow up on the FGG information and independently review Indago's results.

21. A few weeks later, Kramer advised Petitioners' Counsel that the FBI had confirmed Indago's results (the suspect that Kramer had identified as likely being Unknown Male #1) and that they would be working with the Hawai'i County Police Department ("HCPD") to obtain an abandoned DNA sample from suspected Unknown Male #1, who still resided on Hawai'i Island and still lived in an area in proximity to the crime scenes. This suspected Unknown Male #1's abandoned DNA sample would be compared against the DNA found on the crime scene evidence in Ms. Ireland's murder to confirm whether or not he was Unknown Male #1.

22. The Forensic Analytical Crime Lab (FACL) had been retained by the Innocence Project to do post-conviction DNA testing in this case. Their work led to the convictions being vacated. When the Hawai'i County Prosecuting Attorney's Office ("HCPA") informed the Petitioners' Counsel that the HCPD wanted the evidence returned to them, Scheck informed

prosecutors and the court that petitioners would do so but wanted notice and opportunity to be heard on any additional DNA testing on the evidence. The HCPA subsequently gave notice that they were no longer going abide by the Discovery and Cooperation Agreement between the parties because they wanted the continuing investigation to be “cleaner.” *See* Petitioners’ Exhibit “1”, Discovery and Cooperation Agreement between Petitioners Counsel and HCPA; *see also* Petitioners’ Exhibit “2”, Letter from HCPA requesting to dissolve Discovery and Cooperation Agreement between Petitioners Counsel and HCPA and Exhibit

23. The Hilo police department then asked FACL to do additional DNA testing on the Ireland case. On April 16, 2024, Petitioner told FACL they could not do so because Petitioners believed the Hilo Police department had a conflict of interest and did not trust them. FACL agreed not to do testing on the case. Prosecutors finally agreed to a proposal that the results of any testing performed by FACL in the Ireland case had to be communicated at the same time to petitioners and the prosecution. *See* Petitioners’ Exhibit “3”, Email from FACL regarding evidence; *see also* Petitioners’ Exhibit “4”, Email to FACL regarding preservation of evidence.

24. On July 1, 2024, Forensic Analytical Crime Lab (“FACL”) notified Petitioners’ Counsel that the abandoned DNA from the suspected Unknown Male #1 matched the Unknown Male #1’s DNA from relevant evidence collected from the crime scene. FACL also sent this information to the HCPA. Exhibit “5”, email from FACL to parties regarding results of the abandoned DNA collection of suspected Unknown Male #1.

25. At a July 2, 2024, confidential status conference with this Court, Petitioners’ Counsel, over the objection of HCPAs Shannon Kagawa and Michael Kagami, requested the Court order that the HCPD and the HCPA follow best practices when investigating suspected Unknown Male #1’s involvement in Ms. Ireland’s murder. Specifically, Petitioners’ Counsel

requested that the HCPD and the HCPA record any search or interrogation of now identified Unknown Male #1, that any warrant go through this Court, and also requested that the Hawai'i FBI assist in the investigation. The HCPA Michael Kagami, although he agreed recording everything is the best practice, denied having the ability to instruct the HCPD on how to conduct their investigation. *See* Exhibit "6", email to HCPA regarding best practices to adhere to regarding suspected Unknown Male #1.

26. During the July 2, 2024, confidential status conference, Petitioners' Counsel informed this Court that the Petitioners' legal team had intentionally shielded themselves from knowing the name of suspected Unknown Male #1.

27. At a July 2, 2024, confidential status conference with this Court, Schweitzers' Counsel informed the Court of the developments regarding the identity of suspected Unknown Male #1 and asked HCPAs Shannon Kagawa and Mike Kagami to assure us best practices that would be followed in the arrest of Unknown Male #1, the search of his home, and any interviews conducted by law enforcement. We specifically asked that the search and arrest be led by the Hawai'i FBI agent who had assisted Detective Morimoto in doing the covert collection, or at the very least that she would be consulted and present. We specifically emphasized that we thought the HCPD had a conflict of interest and that in addition to the assistance of the Hawai'i FBI agent the Attorney General's office should be involved to assure the fairness and independence of the final stage of the investigation of Unknown Male #1. We requested that the search and any interview be videotaped, and no leading questions be asked on inducements offered to Unknown Male #1 to incriminate petitioners. We explicitly warned, based on advice from Stephen Kramer and Petitioners' Counsel, Mr. Scheck's personal knowledge of how arrests and searches are done in these situations that all efforts be made to isolate Unknown Male #1 from close associates so

that they could be separately interviewed, and measures be taken to prevent him from fleeing, destroying evidence, or committing suicide.

28. HCPA Mike Kagami said that he thought our suggestions were “good ideas,” but the prosecutors had no authority to tell HCPD what to do. HCPA Shannon Kagawa agreed. Petitioners counsel expressed frustration and astonishment at that answer, given the conflict-of-interest issues, and told them they were leaving us no choice and we would have to reach out to the United States Attorney’s office and/or the Attorney General’s office if they would not stipulate to getting the police department to abide by best practices. We also told the prosecutors and the court that we had honored HCPA Shannon Kagawa’s request not to tell our clients that Unknown Male #1 had been identified or his name. Indeed, we told everyone that as of that date we deliberately had asked Kramer not to provide the name of Unknown Male #1. *See* Petitioners’ Exhibit “7”, email to HCPA regarding Stipulation.

29. On July 8, 2024, Petitioners’ Counsel learned someone leaked to the media information that that Unknown Male #1 had been identified. We immediately notified HCPA Shannon Kagawa about the leak, and she confirmed that she had also been approached by the media to confirm that rumor. Petitioners’ Counsel became increasingly concerned that the identity of Unknown Male #1 could be released to the public before the HCPD and or the Hawai‘i FBI could obtain a warrant for Unknown Male #1’s arrest. *See* Petitioners’ Exhibit “8”, letter to HCPA regarding the leak to the media.

30. On July 9, 2024, Petitioners’ Counsel Keith Shigetomi talked to HCPA Kagami about our concerns about the leak. HCPA Kagami said he would follow up on this. On this same day, Hawai‘i Innocence Project Co-Directors Rick Fried and Kenneth Lawson, concerned about the conflict of interest, reached out to United States Attorney Clare Connors to request that the

federal government take over the investigation. She responded via e-mail saying her first Assistant, Larry Tong, would be in touch.

31. On July 10, 2024, Kenneth Lawson called Assistant US Attorney Larry Tong. Tong was aware a Hawai'i FBI agent had been assisting HCPD in their investigation into suspected Unknown Male #1 and were confident that Hawai'i FBI agent's participation would prevent any improprieties from occurring and would report any misconduct by HCPD. Tong told Lawson, because of this, his office will not get involved in the investigation at this time. He recommended we call the Attorney General's Office to discuss our concerns.

32. On July 11, 2024, Schweitzers' legal team sent a detailed letter to prosecutors Kagawa and Kagami memorializing what happened in the July 2, 2024, conference with the Court. Exhibit "8". At that conference, we reiterated the guidelines we wanted the HCPA's office to follow since Unknown Male #1 had been identified. Specifically, we noted:

- a. Preserve all police reports, notes, and any other documentary evidence (including audio and visual evidence) generated at any point in time during the Dana Ireland murder investigation in the past or moving forward;
- b. Preserve all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding the same generated at any point in time during the investigation in the past or moving forward;
- c. Preserve all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding Unknown Male #1 including any evidence obtained prior to and during the process of identifying Unknown Male #1 during the Dana Ireland murder investigation in the past or moving forward;

- d. Video tape the execution of any search warrant on the home or other property of Unknown Male #1, use body cam video at his arrest, and videotape any interrogation from Miranda warnings to the end of interview and videotape any subsequent interviews;
- e. Preserve a chain of custody for all evidence; and,
- f. Document and preserve all communications of any kind between members of law enforcement, communications with witnesses, potential suspects, and anyone contacted as part of the investigation.

See Exhibit "8".

33. In that letter, we also outlined very specifically why we thought the HCPD and the HCPA office had an actual or apparent conflict of interest in conducting the investigation of suspected Unknown Male #1. Exhibit "8". Specifically, we made the following points:

- a. First, since the hearings that resulted in the convictions of Petitioners being vacated, HCPD issued statements reflecting their belief that Unknown Male #1 was a "fourth perpetrator" in Ms. Ireland's murder along with the Schweitzer brothers and Frank Pauline. This statement demonstrates that despite the Petitioners' exonerations, which were reached during our Discovery and Cooperation Agreement (Ex. "1") with HCPA, HCPD is in stark disagreement with HCPA and holding fast to the unproven belief that not only were Petitioners' and Defendant Frank Pauline involved in Ms. Ireland's murder, that there was also another "fourth perpetrator" (presumably Unknown Male #1) responsible for the crime. HCPD held steadfast to this mistaken belief and going as far as to make public statements to the press continuing to incriminate the Schweitzers and Frank

Pauline and support their “fourth person” theory despite our clients’ their exonerations.

- b. Second, Lincoln Ashida, who was one of the HCPAs in the Petitioners’ criminal trials decades ago, recently told Hawai‘i News Now that despite Ian’s exoneration ““another trial, prosecution and conviction is possible’ against Schweitzer based upon other admissible and incriminating evidence.” In response to Shawn’s exoneration, Ashida gave a statement to Honolulu Civil Beat, that “we stand by every fact that is already in the record, that has not been altered or changed for the past 23 years.” Ashida further doubled down on the correctness of the convictions stating “[t]here” is no evidence to substantiate allegations against any of the prosecutors or investigators who worked on these cases.”
- c. Third, based on the evidence gathered in our Discovery and Cooperation Agreement (Ex. “1”) and the documents provided by the HCPA indicate there is substantial evidence that Ashida made a materially false representation to the court and the public at the allocution to buttress a weak case based on jailhouse informant testimony and undermined by rounds DNA testing excluding the Petitioners. Mr. Ashida had close working relationships with a number of former colleagues in HCPA as well as HCPD. As we all know, Petitioner Shawn ultimately passed a polygraph administered by a respected polygrapher during our reinvestigation, which was recorded and contains a full set of charts. COL, Dkt. 117 at ¶ 6.
- d. Lastly, given the undisputed DNA results and the fact that suspected Unknown Male #1 has been identified, there is good reason to believe that HCPD gave

Pauline information to convict the Petitioners, a fact that Pauline testified to at his trial. Similarly, there is reason to believe that HCPD, Mr. Ashida, or others gave jailhouse informants John Gonsalves and Michael Ortiz information in an effort to convict the Petitioners. The circumstances leading to their involvement in the Petitioners' convictions could reveal serious constitutional and civil rights violations as well as potential criminal conduct. Our goal in relaying the information to HCPA was not to make any accusations against their current office, but to highlight the fact that there is indeed a past and very present threat of more false information getting leaked or fed to suspected Unknown Male #1 in HCPD's investigation, especially if influenced by any parties that had prior involvement in the wrongful convictions of Petitioners. *See* Exhibit "8".

34. On July 15, 2024, at 10:00 a.m., Petitioners' Counsel and HCPA's Kagawa and Kagami had a video conference to meet and confer on the issues outlined in the July 11, 2024, letter. Exhibit "8". Petitioners' Counsel reiterated our concerns and requested the Hawai'i FBI agent lead the investigation into suspected Unknown Male #1 and that they work with the Attorney General's Office. HCPA Kagami said he would call the Attorney General's office to discuss our request and concerns.

35. In an effort to protect the integrity of the investigation, on July 15, 2024, Petitioners' Counsel sent an email to Attorney General Lopez and Criminal Justice Division Administrator Goto, expressing a desire to have them involved in the investigation to ensure the investigators followed best practices. We copied prosecutors HCPA Kagawa and Kagami on the email. *See* Exhibit "9", email to the Attorney General.

36. On July 19, 2024, in response to our July 15, 2024, e-mail, Anne Lopez sent Petitioner's counsel a letter stating:

"I share the Hawaii Innocence Project's desire to see that the collection and preservation of statements and evidence in furtherance of the investigation of Unknown Male #1, be handled with all possible diligence and fairness. Pursuant to your request that the Department of the Attorney General intervene in the investigation into Unknown Male #1, I have contacted Hawaii County Police to make sure they are aware of your specific concerns and proposals. Based on my discussions, I am assured that the Hawaii County Police Department is capable of handling the investigation of Unknown Male #1, and that they are committed to doing so in a thorough and impartial manner." *See* Exhibit "10".

37. On July 19, 2024, on the same day the Attorney General's office sent the above letter (referenced as Exhibit "10"), unbeknownst to Petitioners' Counsel at the time, HCPD collected DNA via buccal swabs from suspected Unknown Male #1 and sent it to FACL to be compared to the abandoned DNA sample of the suspected Unknown Male #1 that had already been collected and submitted for DNA testing on July 1, 2024. The FACL received the reference sample of suspected Unknown Male #1 on the buccal swabs on July 23, 2024, and conducted DNA testing on this sample.

38. On July 24, 2024, FACL sent Petitioners' Counsel a report confirming that suspected Unknown Male #1's DNA matches the prior surreptitious sample, and all DNA evidence collected and tested from the crime scene evidence for Ms. Ireland's murder. *See* Exhibit "11", original filed under seal and redacted report filed publicly. Petitioners' counsel was deeply disturbed that it appears from this report that when HCPD Detective Moromoto took the swab, suspected Unknown Male #1 was not in the custody of HCPD nor were his premises searched.

39. Upon learning of these DNA results that now identified Unknown Male #1 as being responsible for Ms. Ireland's murder, Petitioners' Counsel requested an immediate

confidential chambers conference with this Court which was held on July 25, 2024. Petitioners' Counsel again asked the HCPA's Shannon Kagawa and Michael Kagami to notify us and this Court if Unknown Male #1 (hereafter referred to as "Known Male #1) was arrested and in custody of the HCPD, and HCPA's Kagawa and Kagami refused to answer Petitioners' Counsels questions, stating that it was an ongoing investigation.

Now Known Male #1 is Presumed Dead by Suicide After his DNA Sample was Taken by HCPD and Before he was Brought to Justice for Ms. Ireland's Murder

40. On July 26, 2024, Kenneth Lawson, Co-Director of the Hawai'i Innocence Project, contacted the Honolulu Medical Examiner's office to determine if Known Male #1 was still alive, as there was no record of Known Male #1's arrest in any public database. Lawson was referred to the Medical Examiner's office in Hilo, which then confirmed that Known Male #1 was in their morgue and had died by an apparent suicide on July 23, 2024.

41. On July 26, 2024, Petitioners' Counsel requested an emergency chambers conference to inform this Court that now Known Male #1 had apparently committed suicide. Petitioners' Counsel asked the HCPA's Shannon Kagawa and Michael Kagami (the latter of whom appeared by phone), if they were aware that now Known Male #1 had committed suicide and when they were informed of this information. Prosecutors Kagawa and Kagami did not appear shocked or surprised by this information and stated that they could not confirm or deny any information about now Known Male #1 and his apparent suicide, saying that it was an ongoing investigation. When asked what is the "ongoing investigation" that they were referring to because both Ms. Ireland and now Known Male #1 are both deceased, they again refused to answer.

42. This Court then instructed Petitioners' Counsel to file a Motion to Compel Discovery to HCPA and HCPD, requiring them to produce any relevant information regarding

Ms. Ireland's murder, especially the facts and circumstances surrounding their actions in the investigation of now Known Male #1 and his subsequent suicide.

Any Exculpatory Statements Made by Known Male #1 Are Highly Relevant to Petitioners' Actual Innocence Petition And Refutes the Theory that Petitioners Acted as Co-Conspirators

43. Petitioners have been excluded as sources of the DNA recovered from all probative items collected from the crime scene of Ms. Ireland's murder. JSF at ¶ 19. This Court vacated Petitioners' convictions given the overwhelming proof of actual innocence. *See* COL, Dkt. 117.

44. After Petitioners were exonerated, former and current individuals at the HCPA's Office and the HCPD have made public statements to the media regarding their false and unfounded belief and contending that Petitioners and Pauline were guilty, that nothing improper was done in the investigation, and that an unapprehended fourth perpetrator, now Known Male #1, committed the kidnapping, rape, and murder with Petitioners. Inducing now Known Male #1 to flee, destroy evidence, or commit suicide would impede an investigation of police and prosecutorial misconduct in this case. But now Known Male #1 is still the *only* person whose DNA conclusively establishes his presence at the crime scenes of Ms. Ireland's murder. Any exculpatory statements or other evidence provided to the HCPA and HCPD would refute the theory that Petitioners were involved with now Known Male #1 in Ms. Ireland's murder as co-conspirators. The HCPA and HCPD are entitled to their theory of the case, but justice requires an impartial and proper investigation where best practices are utilized.

45. Petitioner's shared their investigative leads which resulted in the identification of now Known Male #1 with the understanding that the HCPA and HCPD were dedicated to pursuing a cooperative effort towards uncovering the truth about Ms. Ireland's murder and seeking justice for Petitioners and the Ireland family. But their handling of the investigation into

now Known Male #1 reflects a complete abandonment of best practices and basic fundamental principles of justice.

46. Counsel for Petitioners did everything in their power to find now Known Male #1 and investigate that case fairly and impartially with the assistance of the FBI and the leading experts in Forensic Genetic Genealogy cases. We urged them repeatedly to get arrest and search warrants to prevent now Known Male #1 from fleeing, destroying evidence, or killing himself. Frankly, any experience homicide investigator with the DNA evidence provided to the prosecutors and police in this matter, even if it were not provided by genetic genealogy but a conventional CODIS hit, would have sought an arrest and search warrant before getting a swab to confirm the STR DNA profile that was covertly collected. Their failure to do so is deeply disturbing.

47. Specifically, the HCPA refused to confirm if the HCPD had executed a search and arrest warrant for now Known Male #1 so that he could not flee, destroy evidence, or take his own life his after DNA was collected, stating that their definition of best practices differed but would not confirm or deny what procedures were followed.

48. If now Known Male #1 had been taken into custody and put on suicide watch after his DNA was collected, he would still be alive. If now Known Male #1 was still alive, the circumstances surrounding Ms. Ireland's murder could have been further investigated and revealed. His apparent suicide has irreparably hampered all interest in Petitioners' ability to uncover the truth and receive closure after the decades that they served wrongfully convicted of Ms. Ireland's murder.

49. The HCPA and the HCPD should not be permitted to conceal their egregious disregard for best practices and common sense under the guise of protecting an “ongoing investigation.”

50. Petitioners, Ms. Ireland’s family, and the public have every right to know all of the circumstances surrounding the collection of now Known Male #1’s DNA on July 19, 2024, his subsequent suicide on July 24, 2024, and whether he provided any information regarding his involvement Ms. Ireland’s murder and the wrongful conviction of the Petitioners.

51. Petitioners’ hereby move to compel disclosure of documents, tapes (audio and video), photographs, emails, digital information, or any other physical evidence obtained by HCPD or the Hawai’i FBI that have been gathered since February 7, 2024 when Stephen Kramer, of Indago Solutions, forwarded information from his genetic genealogy investigation identifying suspected Unknown Male #1 that tend to show that now Known Male #1 committed the assault, kidnapping, sexual assault, and murder of Dana Ireland on December 24, 1991. This request for this Court to compel the production of documents and things includes, but is not limited to the following:

- a. Any tapes (video or oral), emails, or written communications concerning the taking of a swab now Known Male #1 on July 19, 2024, including everything said by anyone to now Known Male #1 before, during, and after the swabbing; what he said before, during and after the swabbing; where the swabbing took place, surveillance of now Known Male #1 before the swabbing took place and afterwards.
- b. All plans and communications, written and oral, about the decision to not to follow the proposed best practices petitioners suggested to prosecutors that police

seek an arrest warrant and search warrant apprehend now Known Male #1 after it was confirmed by the covert collection of his DNA from a fork that he was the contributor of incriminating biology from the crime scene, including who made the decision not to arrest now Known Male #1 or execute a search warrant before or after the swabbing;

- c. Any and all information gathered that shows a relationship between now Known Male #1 and either Ian Schweitzer, Shawn Schweitzer, or Frank Pauline;
- d. All surveillance (reports, photos, videos, over hearings of voice communications, or digital communications) of now Known Male #1;
- e. All interviews of family members, friends, or others concerning now Known Male #1 before or after February 7, 2024;
- f. Any and all information apart from DNA testing tending to show now Known Male #1 committed the assault, rape, and murder of Dana Ireland by himself or acting in concert with individuals other than Petitioners;
- g. When and how did Hilo police or Hilo prosecutors learn about the death of now Known Male #;
- h. Whether or now Known Male #1's home, place of work, or vehicles ever searched or impounded and the results of this search;
- i. Whether now Known Male #1's phones, computers, or other devices recovered or searched and the results of this search;
- j. All communications, written, digital, oral between HCPA and Lincoln Ashida concerning the re-investigation of Petitioners' convictions or the court's decision to vacate that convictions;

- k. The autopsy report on the death of now Known Male #1 and all investigative reports concerning whether the manner of death was suicide or homicide;
- l. Any and all other information discovered during the investigation of now Known Male #1 that tends to exculpate petitioners.
- m. Preservation of all police reports, notes, and any other documentary evidence (including audio and visual evidence) generated at any point in time during the Dana Ireland murder investigation in the past or moving forward;
- n. Preservation of all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding the same generated at any point in time during the investigation in the past or moving forward;
- o. Preservation of all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding now Known Male #1 including any evidence obtained prior to and during the process of identifying now Known Male #1 during the Dana Ireland murder investigation in the past or moving forward;
- p. Preserve a chain of custody for all evidence; and,
- q. Document and preserve all communications of any kind between members of law enforcement, communications with witnesses, potential suspects, and anyone contacted as part of the investigation.
- r. Any statements made by now Known Male #1 that incriminate himself are highly relevant to Petitioners' Actual Innocence Petition.
- s. Any statements by now Known Male #1 about the guilt or innocence of Petitioners, or the absence of any statements about the guilt or innocence of Petitioners is relevant to Petitioners' Actual Innocence petition.

- t. Any evidence that HCPD and HCPA knowingly, recklessly, or negligently allowed now Known Male #1 to remain at large after swabbing him for DNA so that he could flee, destroy evidence, or commit suicide is relevant to Petitioners' Actual Innocence claim.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
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RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAII

ALBERT IAN SCHWEITZER, SHAWN
SCHWEITZER,

Petitioners,

vs.

STATE OF HAWAII,

Respondent.

Case No. 3CSP-23-0000003; 3CSP-23-
0000017

(Prior Case no: 3PC-99-0000147)

MEMORANDUM IN SUPPORT OF
MOTION TO PRESERVE EVIDENCE
AND COMPEL DISCOVERY RE: JOINT
PETITION FOR RELIEF PURSUANT TO
H.R.S. CHAPTER 661B

MOTION HEARING

Date: July 30, 2024

Time: 8:30 AM

Judge: Honorable Peter K. Kubota

MEMORANDUM IN SUPPORT OF MOTION TO PRESERVE EVIDENCE AND COMPEL
DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B

Under the landmark case *Brady v. Maryland* (1963) 373 U.S. 83, the United States Supreme Court held that the suppression by the prosecution of evidence favorable to the accused violates due process where the evidence is *material to guilt* or punishment, regardless of the good faith or bad faith of the prosecution. *Domingo v. State*, 76 Haw. 237, *State v. Mark*, 120 Haw. 499, *State v. Diaz*, 100 Haw. 210, *State v. Alkire*, 148 Haw. 73. In *United States v. Bagley*, the United States Supreme Court explained evidence is “material only if there is a reasonable probability that, had the evidence been disclosed to the defense, *the result of the proceeding* would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” *United States v. Bagley*, 473 U.S. 667, 682 (1985).

The Hawai‘i Rules of Penal Procedure (H.R.P.P.) Rule 16 also outlines the specific materials that must be disclosed by the prosecutor once the case is in the trial phase. *State v. Moses*, 107, Haw. 282, *State v. Kwak*, 80 Haw. 291. The primary focus of *Brady* and related jurisprudence is on ensuring a fair trial and due process for the defendant, not on pre-charge investigations. Although at first glance it may appear that in Hawai‘i, the duty to disclose *Brady* evidence is primarily tied to the trial process, the Hawai‘i Rule of Professional Conduct (H.R.P.C.) 3.8 extends this obligation. Under these rules, the prosecutor or other government lawyer is required to “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to *negate the guilt* of the accused” except when the prosecutor seeks a protective order from a court. H.R.P.C. 3.8(b). Further, section 3.8, subsection (c) states that when “a prosecutor knows of new credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted” the prosecutor shall disclose the evidenced to the court or to the defense.” 3.8(b)(1)-(2). Indeed, “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the convictions of innocent persons.” H.R.P.C, Rule 3.8, Comment 1.

Although these rules do not explicitly mandate the disclosure of *Brady* evidence during the investigative phase before charges are filed, this procedural posture of this case does require the government disclose potentially exculpatory evidence to Petitioners’ counsel. First, the investigative phase of this case is occurring against a suspect who we now know to be deceased. Since Petitioners were once convicted of Ms. Ireland’s murder, their convictions have been

vacated, but this vacatur was made without prejudice, leaving the possibility that the prosecution may seek to recharge them. Indeed, as discussed in more detail *supra* in the Petitioners' Motion, both current and former prosecutors from the Hawai'i County Prosecuting Attorney's Office have made statements implying they believe Petitioners were involved in Ms. Ireland's murder and the mistaken belief that Unknown Male #1 was the fourth perpetrator. Any information, especially information that is required to be disclosed under *Brady* and the H.R.P.C. ethical rules must be turned over to Petitioners because the Hawai'i County Prosecuting Attorneys seek to use this evidentiary hearing to contest actual innocence, as evidenced by their opposition to Petitioners' Petition for a finding of actual innocence and compensation under H.R.S. 661B. *See* Prosecutor Kagawa's Memorandum in Opposition filed July 26, 2024, Dkt. 130.

In conclusion, not granting Petitioners' Motion to Preserve and Compel Discovery and requiring the Hawai'i County Prosecuting Attorney's Office and the Hawai'i County Police Department to turn over the discovery that Petitioners request, may change the results and outcome of this proceeding, as well as any future proceeding as it relates compensation under H.R.S. 661B, depending on how this Court rules on their Petition. Thus, the Hawai'i County Prosecuting Attorney's Office have a duty to disclose favorable evidence as the posture of this case is one that well beyond the investigative phase. The upcoming hearing on July 30, 2024, is a proceeding involving an assessment of the Petitioners' actual innocence and a potential hearing on what compensation the Petitioners may be entitled to under H.R.S. 661B, and without the requested discovery, the outcome of this proceeding may be severely and unfairly impacted.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
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/s/ Keith Shigetomi
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SHAWN SCHWEITZER
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(Prior Case no: 3PC-99-0000147)

DECLARATION OF COUNSEL

MOTION HEARING

Date: July 30, 2024

Time: 8:30 AM

Judge: Honorable Peter K. Kubota

DECLARATION OF COUNSEL

I, Jennifer Brown, declare as follows:

1. I am one of the attorneys representing Petitioners in this case.
2. I can testify to the following based on my own personal knowledge, except otherwise indicated, in which case my testimony is based on information and belief.
3. Attached hereto as Exhibit "1" is a true and correct copy of the Discovery and Cooperation Agreement between Petitioners' Counsel and HCPA.
4. Attached hereto as Exhibit "2" is a true and correct copy of the letter from HCPA requesting to dissolved the Discovery and Cooperation Agreement between Petitioners' Counsel and HCPA.
5. Attached hereto as Exhibit "3" is a true and correct copy of an email from FACL regarding preservation of DNA evidence.

6. Attached hereto as Exhibit “4” is a true and correct copy of to FACL regarding Petitioners’ request that this Court intervene regarding the preservation of DNA evidence.

7. Attached hereto as Exhibit “5” is a true and correct copy of the email from FACL that the abandoned DNA collected from suspected Unknown Male #1 was a match to the DNA profile in Ms. Ireland’s murder.

8. Attached hereto as Exhibit “6” is a true and correct copy of Petitioners’ Counsel’s email to HCPA regarding best practices.

9. Attached hereto as Exhibit “7” is a true and correct copy of Petitioners’ Counsel’s email to HCPA regarding stipulating to best practices.

10. Attached hereto as Exhibit “8” is a true and correct copy of Petitioners’ Counsel’s email to HCPA regarding the media leak and best practices.

11. Attached hereto as Exhibit “9” is a true and correct copy of Petitioners’ Counsel’s email to the Hawai‘i Attorney General.

12. Attached hereto as Exhibit “10” is a true and correct copy of the letter received by Petitioners’ Counsel’s from the Hawai‘i Attorney General.

13. Attached hereto as Exhibit “11” is a true and correct copy of FACL’s lab report confirming the identity of now Known Male #1.

I declare under penalty of perjury of the laws of the United States and the State of Hawai‘i that the foregoing is true and correct.

DATED: Honolulu, Hawai‘i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner

ALBERT IAN SCHWEITZER

**Admitted Pro Hac Vice*

/s/ Keith Shigetomi

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SHAWN SCHWEITZER

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NOTICE OF HEARING

MOTION HEARING

Date: July 30, 2024

Time: 8:30 AM

Judge: Honorable Peter K. Kubota

NOTICE OF HEARING

To: KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai'i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720

Attorneys for Respondent
STATE OF HAWAI'I

NOTICE IS HEREBY GIVEN that Petitioners' "Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B" shall come for a hearing before the Honorable Peter K. Kubota, Judge of the above-entitled Court, in his courtroom in the Hale Kaulike 777 Kilauea Avenue Hilo, Hawai'i 96720-4212, on July 30, 2024 at 8:30 A.M., as previously scheduled by this court.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885

WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

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**Admitted Pro Hac Vice*

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI'I

ALBERT IAN SCHWEITZER, SHAWN
SCHWEITZER,

Petitioners,

vs.

STATE OF HAWAI'I,

Respondent.

Case No. 3CSP-23-0000003; 3CSP-23-
0000017

(Prior Case no: 3PC-99-0000147)

CERTIFICATE OF SERVICE

MOTION HEARING

Date: July 30, 2024

Time: 8:30 AM

Judge: Honorable Peter K. Kubota

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached “Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B, Memorandum in Support of Motion, Declaration of Counsel, Exhibits “’1”-“’11”, and Notice of Hearing” was duly served upon the following parties listed below via electronic filing:

KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai‘i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720

Attorneys for Respondent
STATE OF HAWAI‘I

DATED: Honolulu, Hawai‘i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948

BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
KEITH S. SHIGETOMI, #3380
RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

Discovery and Cooperation Agreement

The parties enter into a discovery and cooperation agreement relating to the Hawai'i Innocence Project and the Innocence Project's (together, "The Innocence Projects") review of all actual innocence claims and/or post-conviction wrongful conviction claims in:

Case No.: 3PC99-147; S.P.P. No. 17-1-0002
Defendant: Albert Ian Schweitzer

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THIRD CIRCUIT
3CSP-23-000003
28-JUL-2024
06:50 PM
Dkt. 135 EXH

The Innocence Projects agree:

- 1) To produce files and other documentation in their possession or acquired through their investigation to The Office of the Prosecuting Attorney for Hawai'i County including work product, but excluding information bound by attorney-client privilege unless otherwise consented to by the Defendant.
- 2) To maintain custody of all documents produced pursuant to this Agreement and not allow anyone to copy the documents produced pursuant to this Agreement except copies provided to experts, attorneys, staff and colleagues who are assisting with the investigation and who also agree to be bound by attorney-client privilege and the terms of this agreement, unless the parties agree to such additional disclosure.

The Office of the Prosecuting Attorney for Hawai'i County agrees:

- 1) To release their file with respect to the Defendant's Criminal Case No. 3PC99-147 and Defendant's Post Conviction Case No. S.P.P. No. 17-1-0002, including existing work product.
- 2) To make timely and appropriate disclosures of any exculpatory, impeachment or mitigating evidence currently in its possession or that it discovers as part of ongoing case review and as may be related to any potential post-conviction legal claim.

The Innocence Projects and The Office of the Prosecuting Attorney for Hawai'i County both further agree:

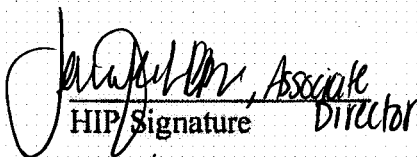
- 1) To the release of forensic evidence to be examined by forensic experts and that the results of those examinations and access to those experts will be equally available to both parties. Parties will earnestly endeavor to use mutually agreed upon experts for said testing where feasible. The term "feasible" includes cost considerations when cost to the County of Hawai'i is relevant.
- 2) To coordinate the scheduling of witness interviews and other investigatory assignments, and to conduct all witness interviews only with the consent and presence of the other party or an agent for the other party, so as to maintain open communication and objectivity in the parties' shared goal.
- 3) To develop and adhere to a joint investigation plan, in which the parties establish goals, priorities and methods for the investigation of the above referenced case. Included in this plan will be the identification of various theories to pursue, as well as



how work will be divided in the pursuit of those theories. The parties may agree to amend said plan at any time.

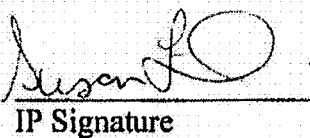
- 4) To utilize investigators who were not involved in the Defendant's original criminal case, in the interest of renewed, objective investigation.
- 5) To seek the assistance of a Hawai'i based private law firm that is willing and capable of committing to *pro bono* work hours to assist in the investigation and review of the above referenced case. Only if the parties can mutually agree upon such a firm will one be so retained. Honolulu firms for initial review are: Davis Levin Livingston and Dentons (formerly Alston Hunt Floyd & Ing).
- 6) That while the Innocence Projects' review is pending, the parties shall refrain from the release of work product or the discussion of this case in the media or to any third party other than an agreed upon retained private firm unless consented to by the other party. If either party determines it is necessary to discuss the case in the media, this agreement may be terminated, however, the parties agree to give reasonable notice of any intent to terminate and speak with the media.
- 7) At the conclusion of the joint re-investigation the parties may: (1) agree that Mr. Schweitzer's conviction should be vacated or his sentence modified; (2) agree that Mr. Schweitzer is not entitled to relief; or (3) disagree about the results of the joint re-investigation and Mr. Schweitzer may decide that a court should adjudicate his claims.
- 8) At any point, should the parties decide that their goals are no longer aligned and that they no longer wish to adhere to this Agreement, the Agreement may be terminated, by any party, upon giving 15 days written notice to the other party.

By signing below, both parties agree to be bound by all of the terms of this agreement until the termination of the joint re-investigation and post-conviction proceedings resulting from that review.


HIP Signature *Associate Director*

5/23/19

Date


IP Signature

5/23/2019

Date



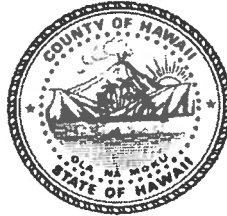
Prosecutor's Signature

5-23-19

Date

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAII JUDICIAL CENTER
74-675 KEALAKEHE PARKWAY
KAILUA, HAWAII 96740
PH: (808) 322-2552
FAX: (808) 322-2553

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Dkt. 136 EXH

OFFICE OF THE PROSECUTING ATTORNEY

April 11, 2024

Jennifer Brown, Associate Director of the Hawai'i Innocence Project
Barry Scheck, Innocence Project

Dear Barry and Jennifer:

Re: Discovery and Cooperation Agreement

First, I would like to thank the both of you as well as everyone associated with the Innocence Project and the Hawai'i Innocence Project. This agreement was the first of its kind with our office and it has been an invaluable journey and experience.

However, as the goals and conditions of this agreement have been met and the post-conviction proceedings have ended, it is time for our office to terminate this agreement. Based on the termination, our office is requesting that any evidence (including any DNA extracts that may still be in your possession) that may have been sent as part of the joint re-investigation be returned to the Hawai'i County Police Department within thirty days of receipt of this letter. We are also requesting that any other agreements (including Genetic Genealogy) also be terminated and that portal be closed.

Again, we appreciate all the help from the Innocence Project during this lengthy journey.

Sincerely,

KELDEN B.A. WALTJEN
Prosecuting Attorney

SHANNON M. KAGAWA
Deputy Prosecuting Attorney





Kenneth Lawson <klawson3@hawaii.edu>

(no subject)

4 messages

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THIRD CIRCUIT
3CSP-23-000003**

Rich Bernius <rbernius@facrimelab.com>

Mon, Mar 25, 2024 at 10:26 AM

To: Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>, Barry Scheck <bscheck@innocenceproject.org>, Kenneth Lawson <klawson3@hawaii.edu>

**28-JUL-2024
06:50 PM**

Dkt. 137 EXH

Cc: Nancy Dinh <ndinh@facrimelab.com>, Dave Hansen <dhansen@facrimelab.com>

Jen and Ken, I really appreciate you sending along a copy of the cooperation agreement.

I want to let you all know that we had a follow up conversation with Hawaii PD. We let them know that we were unable to perform any work for HPD on this case without agreement from IP. We also informed them that we would not release the extracts to any party without either mutual agreement of both parties or a court order.

Thanks again for everyone's time.

--Rich



**Forensic Analytical
Crime Lab**

"Complex Cases, Comprehensive Results"

Rich Bernius, CEO
Forensic Analytical Crime Lab
3777 Depot Road, Suite 403 | Hayward, California 94545
Direct: 510-266-8138 | Fax: 510-887-4451 | Main: 510-266-8100
rbernius@facrimelab.com | www.facrimelab.com

Barry Scheck <bscheck@innocenceproject.org>

Mon, Mar 25, 2024 at 10:40 AM

To: Rich Bernius <rbernius@facrimelab.com>

Cc: Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>, Kenneth Lawson <klawson3@hawaii.edu>, Nancy Dinh <ndinh@facrimelab.com>, Dave Hansen <dhansen@facrimelab.com>

Thank you Rich. Appreciate it. Apologies for being very forceful in advocating for this position. I hope I didn't offend you or your colleagues. Let's hope this case has a very positive outcome beyond what has already been achieved. Your laboratory did a great job.

[Quoted text hidden]

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mail in error, please immediately notify the sender by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you.

Rich Bernius <rbernius@facrimelab.com>

Mon, Mar 25, 2024 at 10:48 AM

To: Barry Scheck <bscheck@innocenceproject.org>

Cc: Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>, Kenneth Lawson <klawson3@hawaii.edu>, Nancy Dinh <ndinh@facrimelab.com>, Dave Hansen <dhansen@facrimelab.com>

No worries, no offense taken. And thanks for the kind words about our work. The team takes great pride in it.



Forensic Analytical[™] Crime Lab

"Complex Cases, Comprehensive Results"

Rich Bernius, CEO

Forensic Analytical Crime Lab

3777 Depot Road, Suite 403 | Hayward, California 94545

Direct: 510-266-8138 | Fax: 510-887-4451 | Main: 510-266-8100

rbernius@facrimelab.com | www.facrimelab.com

[Quoted text hidden]

Kenneth Lawson <klawson3@hawaii.edu>

Sun, Jul 28, 2024 at 9:10 AM

To: Raquel Barilla <raquel@theinnocencecenter.org>

[Quoted text hidden]



Kenneth Lawson <kenlawdog@gmail.com>

Schweitzers evidence

3 messages

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THIRD CIRCUIT
3CSP-23-000003**

28-JUL-2024
Mon, Jun 10, 2024 at 2:28
06:50 PM PM

Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>

To: Rich Bernius <rbernius@facrimelab.com>, Nancy Dinh <ndinh@facrimelab.com>, Dave Hansen <dhansen@facrimelab.com>, Kenneth Lawson <kenlawdog@gmail.com>

Dkt 138 EXH

Aloha everyone,

I just wanted to let you all know that we have raised the issue regarding evidence preservation in the Schweitzer case and have our next hearing with the Judge on 7/2/24 and a follow up hearing on 7/30/24. I am not certain on which date the Judge will be hearing our arguments regarding the evidence and issuing his order, but we will let you know as soon as an order has been entered and what the court decides regarding the evidence you have and further testing.

We just wanted to update you as I know the PD has been making requests of your lab regarding the evidence and we have communicated with the Prosecutors to let them know nothing should be done until the Judge so orders.

Thank you and let us know if you have any questions!

Jennifer Brown
Associate Director

Hawai'i Innocence Project
William S. Richardson School of Law
2485 Dole Street, Suite 206
Honolulu, HI 96822
office: (808) 956-6547
cell: (808) 554-5576
www.hawaiiinnocenceproject.org

Rich Bernius <rbernius@facrimelab.com>

Wed, Jun 12, 2024 at 6:29 AM

To: Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>

Cc: Nancy Dinh <ndinh@facrimelab.com>, Dave Hansen <dhansen@facrimelab.com>, Kenneth Lawson <kenlawdog@gmail.com>

Thanks for the update Jennifer.



**Forensic Analytical
Crime Lab**

Exhibit "4"

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
"Complex Cases, Comprehensive Results" The Third Judicial Circuit, State of Hawai'i




Rich Bernius, CEO
Forensic Analytical Crime Lab
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Direct: 510-266-8138 | Fax: 510-887-4451 | Main: 510-266-8100
rbernius@facrimelab.com | www.facrimelab.com

[Quoted text hidden]

Kenneth L. Lawson <kenlawdog@gmail.com>
To: Raquel Barilla <raquel@theinnocencecenter.org>

Sun, Jul 28, 2024 at 9:05 AM

[Quoted text hidden]

From: Dave Hansen dhansen@facrimelab.com 
Subject: RE: HI v. Schweitzer - Unknown Male #1
Date: July 1, 2024 at 1:16 PM
To: Barry Scheck bscheck@innocenceproject.org, Jennifer Brown jenbrown@hawaiiinnocenceproject.org
Cc: Morimoto, Derek Derek.Morimoto@hawaiicounty.gov, Kagawa, Shannon Shannon.Kagawa@hawaiiinnocenceproject.org, Nancy Dinh ndinh@facrimelab.com, Rich Bernius rbernius@facrimelab.com

DH

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THIRD CIRCUIT
3CSP-23-000003
28-JUL-2024
06:50 PM
Dkt. 139 EXH

The fork, plate, and napkin were pulled from the trash after covert observation of the PO eating.



Dave Hansen, M.S., ABC-MB
DNA Technical Leader/Forensic DNA Analyst
Forensic Analytical Crime Lab
3777 Depot Road, Suite 403
Hayward, CA 94545-2761
(510) 266-8167

From: Barry Scheck <bscheck@innocenceproject.org>
Sent: Monday, July 1, 2024 4:15 PM
To: Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>
Cc: Morimoto, Derek <Derek.Morimoto@hawaiicounty.gov>; Dave Hansen <dhansen@facrimelab.com>; Kagawa, Shannon <Shannon.Kagawa@hawaiiinnocenceproject.org>; Nancy Dinh <ndinh@facrimelab.com>; Rich Bernius <rbernius@facrimelab.com>
Subject: Re: HI v. Schweitzer - Unknown Male #1

What is meant by trash pull? I was hoping the fork came from a covert observation of Unknown Male #1 eating and then the fork was pulled.

On Jul 1, 2024, at 6:20 PM, Jennifer Brown <jenbrown@hawaiiinnocenceproject.org> wrote:

Thank you Dave and team!

Jennifer Brown
Associate Director

Hawai'i Innocence Project
William S. Richardson School of Law
2485 Dole Street, Suite 206
Honolulu, HI 96822
office: (808) 956-6547
cell: (808) 554-5576
www.hawaiiinnocenceproject.org



On Jul 1, 2024, at 12:15 PM, Morimoto, Derek
<Derek.Morimoto@hawaiicounty.gov> wrote:

Mahalo Dave for the update!

Detective Derek Morimoto
Area I Criminal Investigation Section
Hawaii Police Department
349 Kapiolani Street
Hilo, Hawaii 96720
Desk: 808-961-2380
Cell: 808-333-7299
E-mail: Derek.Morimoto@hawaiicounty.gov

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From: Dave Hansen <dhansen@facrimelab.com>
Sent: Monday, July 1, 2024 12:10 PM
To: Morimoto, Derek <Derek.Morimoto@hawaiicounty.gov>; Kagawa, Shannon <Shannon.Kagawa@hawaiicounty.gov>; bscheck@innocenceproject.org; Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>; Nancy Dinh <ndinh@facrimelab.com>; Rich Bernius <rbernius@facrimelab.com>
Subject: HI v. Schweitzer - Unknown Male #1

Hi All,

The male DNA profile obtained from the trash pull evidence (fork) submitted by HPD is a match to Unknown Male #1.

Dave

<image002.jpg>

Dave Hansen, M.S., ABC-MB
DNA Technical Leader/Forensic DNA Analyst
Forensic Analytical Crime Lab
3777 Depot Road, Suite 403
Hayward, CA 94545-2761
(510) 266-8167

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Raquel Barilla <raquel@theinnocencecenter.org>

Status Conference

1 message

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3CSP-23-000003
Fri, Jun 28, 2024 at 3:41 PM
28 JUL 2024
06:50 PM
Dkt. 140 EXH

Barry Scheck <bscheck@innocenceproject.org>

To: Shannon Kagawa <Shannon.Kagawa@hawaiicounty.gov>, kelden.waltjen@hawaiicounty.gov, <ndinh@facrimelab.com>, Raquel Barilla <raquel@theinnocencecenter.org>, Rich Bernius <rbernius@facrimelab.com>, William Harrison <wharrison@hamlaw.net>, Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>, keith shigetomi <keithsshigetomi@gmail.com>, Richard Fried <rfried@croninfried.com>

Dear Shannon and Kelden,

We have always told your office, even while Mitch Roth was working with us, that any forensic investigative genetic genealogy (FIGG) should be done along the lines of the model bill that was passed in Maryland. The objective was make sure the testing was done reliably and the privacy of innocent third parties was protected. The Maryland bill does the job, had the support of law enforcement in the state, and now has the unanimous endorsement of the Criminal Justice Section of the American Bar Association. We will be seeking endorsement by the "big" ABA in August in Chicago. Frankly, the CIU co-operation agreement is also a model that we hope you endorse. I am attaching an article featured in the ABA Judge's Journal this month that explicates the complex constitutional issues and lays out the key provisions of the Maryland bill.

--

*NOTICE

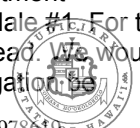
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We think important constitutional issues are implicated by the FIGG testing and, out of an abundance of caution, it would be wise to ask Judge Kubota to exercise judicial supervision of the FIGG process here. We all have a shared interest in making sure Unknown Male #1 is brought to justice. This would include making sure the family tree information and the SNP profiles of innocent third parties are kept secret and ultimately destroyed when the case is over. Judge Kubota knows all about the FIGG efforts and the potential identification of Unknown Male #1.

There is another reason that judicial supervision would be appropriate. There is an apparent if not an actual conflict of interest for the police department in Hilo. The misrepresentations with respect to Shawn Schweitzer passing a polygraph that showed he committed the crime when, in fact, he failed or, at best, was inconclusive. This was known to the lead investigator. Moreover, as our joint statement of facts sets forth, in 1994 multiple op-Ed's were published criticizing local government for "foot-dragging" in the Ireland investigation and residents held a public rally calling for the prosecution of Ireland's killer. There was a clear prospect that the Attorney General's office might be asked to take over the investigation. It was during this period when the police were under pressure to solve a high profile case that remained unsolved after three years that John Gonsalves came forward to say that his half-brother Frank Pauline had been present during the attack on Ireland and would soon provide information on the case. In light of the DNA results and other objective evidence adduced at the hearing in this case, current and former members of the Hilo police department might reasonably anticipate they could become defendants in a civil rights lawsuit alleging they falsely denied feeding information to Frank Pauline to incriminate Pauline and Schweitzers in a murder that none of them committed and that they similarly fed false information to Gonsalves and Michael Ortiz. For this reason alone, at this crucial point in the re-investigation when there is very good prospect that Unknown Male #1 might be identified by DNA testing, judicial supervision is critical.

Indeed, it is arguably even more important to have an independent agency other than the Hilo police department supervise the arrest, investigation, and potentially interview the POI if DNA demonstrates he is Unknown Male #1. For this reason, we suggest that the FBI agents who provided invaluable assistance in this investigation, take the lead. We would also urge that the investigative steps be contemporaneously documented and that any interview or interrogation be

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawaii.
Dated at Hilo, Hawaii, this 11th day of July, 2024. Cheryl Salmo, Clerk of the Third Judicial Circuit, State of Hawaii.



videotaped. If the POI is Unknown Male #1 there is obviously probable cause to get an arrest warrant for him from Judge Kubota. We make these suggestions to you now, hoping that you will agree. If you do not, we will raise them with Judge Kubota at our status conference on Monday. That proceeding should, of course, be secret. We are not requesting to be part of the warrant application process because you may well have other evidence we don't know. We only ask that you let the FBI agents take the lead.

Finally, as we have already communicated to you in writing, I told Stephen Kramer I did not want to know the name of the POI who might be Unknown Male #1, because i anticipated this turn of events and wanted to make sure this investigation ended in a way where its integrity and independence could not be questioned. Please give serious thought to this suggestion and feel free to speak to me and/or our team about it before Monday.

All the best,
Barry Scheck
917-796-1150
Sent from my iPhone

 **JJ-spring-2024-Browne-Scheck.pdf**
195K



Raquel Barilla <raquel@theinnocencecenter.org>

CONFIDENTIAL re: Schweitzer v. State

1 message

**Electronically Filed
THIRD CIRCUIT****Jennifer Brown** <jenbrown@hawaiiinnocenceproject.org>3CSP-23-0000003
Thu, Jul 11, 2024 at 10:22 PM

To: "Kagawa, Shannon" <Shannon.Kagawa@hawaiiicounty.gov>, "Waltjen, Kelden B. A." <Kelden.Waltjen@hawaiiicounty.gov>

Cc: keith shigetomi <keithsshigetomi@gmail.com>, Raquel Barilla <raquel@theinnocencecenter.org>, Barbara Scheck <bscheck@innocenceproject.org>, William Harrison <william@harrisonlawcenter.com>, Kenneth Lawson <kenlawdog@gmail.com>, Michael Semanchik <mike@theinnocencecenter.org>, Richard Fried <rified@cronified.com>

28 JUL 2024
06:58 PM

DKT 141 EXH

Aloha Shannon,

Thank you for speaking with me this afternoon regarding the ongoing investigation into Unknown Male #1 in the Schweitzer matter. As discussed, I am attaching a cover letter and draft stipulation to this email. We understand your concerns about not signing a stipulation because you do not want to appear as if you are directing the investigation in any way, thereby potentially waiving prosecutorial immunity. I think we can agree that if the Court issues an Order that follows the best practice methods in cases like our, everyone is protected by the integrity of the process. For the reasons outlined in the attached letter, a reasonable and objective person can question the integrity of the process. As you know, we believe that there is a clear conflict of interest with the Hawai'i County PD leading the investigation into Unknown Male #1, and we firmly believe that this proposed Stipulation, which is based on recognized best practices, actually protects your office.

We would like the opportunity to discuss this issue with you tomorrow morning so that we can hopefully find some middle ground that protects not only our clients but also your office by ensuring that the Judge orders the investigation to be conducted properly by using the already established best investigations methods in cases like ours. If we are unable to come to an agreement after conferencing tomorrow, we plan to file our Motion before the end of the day tomorrow. Please let us know what time you are available for a brief conference tomorrow morning.

Lastly, as I did not have Mike's email address could you please forward this email with its attachments as you indicated you would do on our call today?

Thank you again,
Jennifer Brown
Associate Director

Hawai'i Innocence Project
William S. Richardson School of Law
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office: (808) 956-0596
cell: (808) 554-5576
www.hawaiiinnocenceproject.org

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2 attachments


 **Stip to Preserve - Final [Schweitzers].docx**
28K

Exhibit "7"

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Hilo, Hawai'i 16-AUG-2024, /s/ Cheryl Salmo, Clerk of the Third Judicial Circuit, State of Hawai'i





2024.07.11_Letter to Hilo Prosectors.DRAFT -FINAL.pdf
181K

July 11, 2024

Kelden B.A. Waltjen
Shannon M. Kagawa
Mike Kagami
Hawai'i County Prosecutor's Office
655 Kilauea Avenue
Hilo, Hawaii 96720

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THIRD CIRCUIT
3CSP-23-000003
28-JUL-2024
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Re: Investigation of Unknown Male #1 in Dana Ireland's Murder

Dear Kelden, Shannon, and Mike:

On July 2, 2024, Honorable Peter K. Kubota held a confidential status conference to discuss the pending Joint Petition for Relief Pursuant to HRS Chapter 661B (hereinafter "Petition for Finding of Innocence") in *Schweitzer v. State of Hawai'i*, Case Nos. 3CSP-23-0000003; 3CSP-23-0000017. During that hearing, counsel for both Albert Ian Schweitzer ("Ian") and Shawn Schweitzer ("Shawn") expressed concerns related to the current investigation of Unknown Male #1. We offered various suggestions in order to protect the integrity of the investigation and to protect our clients' rights.

Since our last hearing, we have been informed that someone (whom we believe is with or affiliated with the Hawai'i County Police Department ("HCPD")), has leaked information to the media that Unknown Male #1 had been identified. Our team told the media that we could not confirm or deny the story but asked the media not publish anything about it because, whether or not it was true, it could compromise an ongoing investigation. The media has confirmed that as of the date of this letter that their information is just a "rumor," and at our request has not released any information to the public regarding Unknown Male #1. This unfortunate leak highlights the problem we raised at our status conference: given the compelling evidence we have developed that Unknown Male #1 sexually assaulted and murdered Dana Ireland your office should be seeking from a court approval of warrants for the arrest of Unknown Male #1 and a search of his home and vehicles. Such judicial supervision would allow the prosecution and the court to agree upon guidelines for the arrest and search that comply with best practices for Forensic Investigative Genetic Genealogy promulgated by the FBI and amplified by legislation passed in Maryland that the Criminal Justice Section of the ABA unanimously approved as a model for states. Additionally, it reinforces the position



we took with Judge Kubota that HCPD should not be leading this investigation. As such, we are sending this letter to reiterate our concerns and offer viable solutions.

We have worked cooperatively with your office since 2019 in an effort to reinvestigate Ms. Ireland's murder and to determine whether our clients were wrongfully convicted. Those efforts ultimately resulted in our clients' convictions for being vacated last year. Even after our clients' convictions were vacated, they have never felt *real* freedom or peace because Unknown Male #1 had never been identified. We began the FIGG investigation to find Unknown Male # 1 together and we have fully shared information with you and an FBI agent working with the HCPD that has led to the identification of Unknown Male #1 even after the convictions were vacated. The petition we have filed with the Attorney General and your office to prove an actual innocence claim will be profoundly affected by the way the arrest, search, and potential interview of Unknown Male #1 is conducted. We want to ensure that those procedures are done fairly, under judicial supervision, and in conjunction with the Attorney General's office, which has a legal obligation to make sure the "actual innocence" hearing and investigation is done independently and appropriately. We ask now that you work cooperatively with Judge Kubota, the Attorney General's office, and the FBI agent who has greatly assisted in the FIGG investigation. We ask only for a fair and independent investigation from this point forward. The family of Dana Ireland deserves the truth and justice. Our clients and their families, who were victims of a wrongful conviction, also deserve the truth and justice.

Following our most recent conference with Judge Kubota, we are renewing our request that your office adhere to and instruct those involved in the investigation into Unknown Male #1 (including but not limited HCPD), to follow Judge Kubota's recommendation to follow the guidelines enacted by Maryland's recent FIGG legislation. We discussed at the July 2, 2024 conference with Judge Kubota the guidelines that we wanted your office to abide by since Unknown Male #1 DNA has been identified, including that: 1) your office to assure us that the arrest and search of the home of the person DNA tests now show is Unknown Male #1 would be led by the FBI agent who has worked closely with our expert, Stephen Kramer,¹ in identifying Unknown Male #1; 2) any arrest and search warrants be

¹ Stephen Kramer is a former Assistant United States Attorney in the Middle District of California, has special expertise in the area of genetic genealogy investigations. He led the genetic genealogy unit at the FBI DNA laboratory and as well as the investigation and apprehension of the Golden State Killer in California. His company, Indago, uses a model to perform genetic genealogy searches that features AI tools, algorithms, neural networks, and a number of patented methods. Within two

obtained under the supervision of Judge Kubota who is intimately familiar with the facts of this case and all of our joint efforts in re-investigating this matter; 3) the arrest of Unknown Male #1 and search of his home and vehicles be videotaped by law enforcement officials wearing body cameras; 4) and, most importantly, that conversations with Unknown Male #1 and any interview or interrogation would be videotaped from start to finish and would not include leading questions about the possible involvement of our clients, including any intimation or suggestion that statements implicating our clients would result in any benefits to Unknown Male #1.²

During this conference with Judge Kubota, Mike Kagami agreed that our suggestions about videotaping and other requests were “good ideas,” *however*, he indicated that your office could not instruct HCPD on how to conduct their investigation and potential interrogation of the now identified Unknown Male #1. Specifically, when asked if body cameras and videotaping of interrogations were policies of HCPD, your office indicated that they may not be required in every circumstance. Further, your office indicated that you would request HCPD to follow our suggested guidelines, but your office indicated that you did not have that authority to order them to do so. If you do not have a policy in place that permits you to enforce HCPD policies and other guidelines that were supported by Judge Kubota, we are requesting that you stipulate to the suggestions that we made to Judge Kubota so he may provide a court order that instructs HCPD to adhere to the guidelines that we you have already represented to you and Judge Kubota that you support.

The suggestions that we previously relayed to you and that we discussed during our conference with Judge Kubota, although not mandated, are reasonable

days of retaining Mr. Kramer he was able to identify a person he believed could be Unknown Male #1. In February of this year, at our direction, Mr. Kramer shared this genetic genealogy information about the identity of Unknown Male #1 with Daniella DeSantis, an FBI agent who was working with HCPD.

² We have not told our clients about Unknown Male #1 being identified through DNA testing, nor his identity. Specifically, Barry Scheck explicitly at the hearing explained to Judge Kubota that the Innocence Project had been in a similar situation decades ago when Matias Reyes, the man who actually assaulted the Central Park Jogger, wrote Barry a letter confessing to the crime. Working with the NY County District Attorneys, who had also learned about Reyes’ confession, a secret investigation was conducted for months without involving the New York City Police department. The lawyers for the Exonerated Five, as they are now known, and the clients themselves were not notified about the investigation or the Reyes confession. The purpose of that secrecy was to permit a secret, independent investigation in a high-profile case that would ensure any connection between Reyes and the convicted teenagers was investigated without interference.

as they are similar to the mandates found in Maryland’s recent FIGG legislation. Indeed, at the July 2, 2024, hearing, the Court stated he read Maryland’s legislation and suggested the police should investigate in line with the model legislation which “requires judicial supervision, protects third-party autonomy and data, grants equal access to the defense and prosecution, and ensures transparency and accountability.”³ That’s what we want here.

Judicial Supervision, Adherence to Best Practices, and Participation of the Attorney General’s Office are Necessary to Prevent Apparent or Actual Conflicts of Interest from Tainting the Re-Investigation:

Unknown Male #1 is the only individual whose DNA is recovered from all probative items submitted for testing from crime scene evidence – semen on vaginal swabs, semen on the gurney used to transport Ms. Ireland, semen on a Jimmy Z t-shirt soaked with Dana Ireland’s blood as well as “usual wearer” DNA found on the t-shirt. Ian, Shawn, and Frank Pauline have all been excluded from this evidence. Despite this conclusive proof and the fact that your office did not oppose any of the new evidence that we presented that proved to this court of the Schweitzers’ innocence and thereby vacated their convictions, former and current members of your office and HCPD have made public statements to the media regarding their belief that *still* the Schweitzer’s were somehow involved in Ms. Ireland’s murder. This is very concerning to us and detailed below, further strengthens our continued request that our proposed guidelines be formally stipulated to by your office submitted to Judge Kubota.

First, since the hearings that resulted in the convictions of Ian and Shawn Schweitzer being vacated, HCPD issued statements reflecting their belief that Unknown Male #1 was a “fourth perpetrator” in Ms. Ireland’s murder along with the Schweitzer brothers and Frank Pauline. This statement demonstrates that despite the Schweitzers’ exonerations, which were reached during our cooperative reinvestigation agreement with your office, HCPD is in stark disagreement with your office and holding fast to the unproven belief that not only were our clients and Pauline involved in Ms. Ireland’s murder, that there was also another “fourth perpetrator” (presumably Unknown Male #1) responsible for the crime. HCPD held steadfast to this mistaken belief and going as far as to make public statements to

³ Browne and Scheck, *Regulating Forensic Investigative Genetic Genealogy: The Case for Judicial Oversight and the Bipartisan Model Legislation Passed in Maryland*, Judges Journal (Spring 2024).

the press continuing to incriminate the Schweitzers and Frank Pauline and support their “fourth person” theory despite our clients’ their exonerations.

Second, Lincoln Ashida, who was one of the prosecutors in the Schweitzers’ criminal trials decades ago, recently told Hawai‘i News Now that despite Ian’s exoneration “another trial, prosecution and conviction is possible’ against Schweitzer based upon other admissible and incriminating evidence.”⁴ In response to Shawn’s exoneration,⁵ Ashida gave a statement to Honolulu Civil Beat, that “we stand by every fact that is already in the record, that has not been altered or changed for the past 23 years.”⁶ Ashida further doubled down on the correctness of the convictions stating “[t]here” is no evidence to substantiate allegations against any of the prosecutors or investigators who worked on these cases.”⁷

Third, based on the evidence gathered in our joint reinvestigation and the documents provided by your office indicate there is substantial evidence that Ashida made a materially false representation to the court and the public at the allocution to buttress a weak case based on jailhouse informant testimony and undermined by rounds DNA testing excluding the our clients. Mr. Ashida had close working relationships with a number of former colleagues in your office as well as HCPD. As we all know, Shawn ultimately passed a polygraph administered by a respected polygrapher during our reinvestigation, which was recorded and contains a full set of charts.

⁴ Kawano, L. *Who Killed Dana Ireland?: A Brutal Murder. A Wrongful Conviction. And 23 Years Later, a New Search for Answers*, Hawai‘i News Now, Apr. 6, 2023, located at: <https://www.hawaiinewsnow.com/2023/04/06/who-killed-dana-ireland-brutal-murder-an-exoneration-23-years-later-new-search-answers/>

⁵ Shawn was offered a plea bargain that required him to take and pass a polygraph test admitting to State’s theory that with Ian and Pauline ran down Dana Ireland and sexually assaulted her. After Ian’s wrongful conviction, Shawn was offered a plea to probation with credit for time served if he admitted to the State he committed the crime. Shawn was given a lie detector test to admit of the crime but could not pass, so HCPD Det. Guillermo asked the State if they could “live” with an inconclusive result and still allow Shawn to take the plea, and his second test was determined to be inconclusive. No polygraph was produced by the State, yet, Ashida informed the court and the public that Shawn “passed” the polygraph thereby corroborating not just Shawn’s guilt but the guilt of Ian and Frank Pauline.

⁶ Dayton, K. *2nd Man is Exonerated in the Dana Ireland Murder Case*, Honolulu Civil Beat, Oct. 23, 2023, located at: <https://www.civilbeat.org/2023/10/2nd-man-is-exonerated-in-the-dana-ireland-murder-case/>

⁷ Kolker, R., *The Neighbors Who Destroyed Their Lives*, The Atlantic, Dec. 22, 2023, located at: <https://www.theatlantic.com/ideas/archive/2023/12/schweitzers-brothers-murder-conviction-exoneration-hawaii/676910/>

Lastly, given the undisputed DNA results and the fact that Unknown Male #1 has been identified, there is good reason to believe that HCPD gave Pauline information to convict the Schweitzers, a fact that Pauline testified to at his trial. Similarly, there is reason to believe that HCPD, Mr. Ashida, or others gave jailhouse informants John Gonsalves and Michael Ortiz information in an effort to convict the Schweitzers. The circumstances leading to their involvement in the Schweitzers' convictions could reveal serious civil rights violations as well as potential criminal conduct. Our goal in relaying this information to you is not to make any accusations against your current office, but to highlight the fact that there is indeed a past and very present threat of more false information getting leaked or fed to Unknown Male #1 in the current investigation, especially if influenced by any parties that had prior involvement in the wrongful convictions of our clients.

Request for Preservation of Relevant Information:

Based upon the information that has come to light during our postconviction reinvestigation in the Schweitzers' case and the fact that Unknown Male #1 has now been identified through DNA testing, we stand firm in our request that we want to continue to work cooperatively but only if we do so in a manner that preserves all past and present evidence in this case. We have respected and adhered to our cooperative agreement, even after Ian and Shawn's convictions were vacated. Not only have we continued to share information, we have also actively funded and provided critical resources to assist your office and HCPD that led to the identification of Unknown Male #1. We have given you this important and critical information in the spirit of our continued cooperation so that you can help bring final closure to this case by bringing the relief and justice our clients, the Ireland family, and the public desire and demand. After over 32 years of everyone seeking the identity of Unknown Male #1, we now ask that we continue our joint effort to bring closure to this investigation by upholding the standards set forth in other jurisdictions and as we have requested in our prior correspondence and articulated in our most recent conference with Judge Kubota.

Specifically, as detailed on our attached Proposed Stipulation, we are also requesting the preservation of various items, including:

1. Preserve all police reports, notes, and any other documentary evidence (including audio and visual evidence) generated at any point in time during the Dana Ireland murder investigation in the past or moving forward;

2. Preserve all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding the same generated at any point in time during the investigation in the past or moving forward;
4. Preserve all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding Unknown Male #1 including any evidence obtained prior to and during the process of identifying Unknown Male #1 during the Dana Ireland murder investigation in the past or moving forward;
3. Video tape the execution of any search warrant on the home or other property of Unknown Male #1, use body cam video at his arrest, and videotape any interrogation from Miranda warnings to the end of interview and videotape any subsequent interviews;
4. Preserve a chain of custody for all evidence; and
5. Document and preserve all communications of any kind between members of law enforcement, communications with witnesses, potential suspects, and anyone contacted as part of the investigation.

We have worked well together through the reinvestigation of Ms. Ireland's murder for over five years. Ms. Ireland's family deserves to know the identity of Unknown Male #1, who is responsible for this heinous crime, and that he be thoroughly and carefully investigated so they can finally receive justice. Our clients likewise deserve justice after being wrongfully convicted of Ms. Ireland's murder over 24 years ago, which stripped of them of their lives and freedom by forcing them to live under the false belief that they were responsible. Even though the Schweitzers are now exonerated, the public too deserves for Unknown Male #1 to be fully and properly investigated because they too still live in fear wondering who in their community could be Unknown Male #1. We now have the opportunity to continue bring justice to those most harmed by continuing to work cooperatively together. We ask that you continue to honor the positive working relationship we have had with your office for over the last five years that we have reinvestigated this case together; let's work together to see that the truth and justice in this case finally prevails.

We hope to continue to work cooperatively in the interest of justice for Ms. Ireland, Ian, Shawn, Frank, and the community that has been affected by this heinous crime. Since we have already discussed with you in writing and at hearings with Judge Kubota our position on these issues, it is our hope that you will agree to the attached Proposed Stipulation so that Judge Kubota can approve it as soon as possible. Given the urgency and immediacy of the investigation into Unknown Male #1, we ask that you respond as soon as possible.

If we do not receive a response or comments from you by the end of this week, we intend to file a motion with a request to be heard by Judge Kubota immediately but no later than our already scheduled hearing on the Petition for Finding of Innocence on July 30, 2024. If we do not hear back from you by the end of the week, we intend to include in our motion a more detailed outline of our position regarding the actual and apparent conflicts of interest with your office and HCPD being involved in any way with the investigation and potential apprehension of Unknown Male #1, and will be asking that Judge Kubota appoint the Hawai'i State Attorney General to oversee this matter with the assistance of the FBI. As stated, we hope that we can agree on a path forward, but if that is not possible we will file an immediate motion to protect the best interests of our clients and the pending investigation into Unknown Male #1.

Thank you,

/s/ Jennifer L. Brown

JENNIFER BROWN, #10885

WILLIAM A. HARRISON, #2948

BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner

ALBERT IAN SCHWEITZER

/s/ Keith Shigatomi

KEITH S. SHIGETOMI, #3380

RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner

SHAWN SCHWEITZER

*Admitted Pro Hac Vice

CONFIDENTIAL - Schweitzers v. State

3 messages

Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>

To: anne.e.lopez@hawaii.gov, Lance.M.Goto@hawaii.gov

Cc: "Kagawa, Shannon" <Shannon.Kagawa@hawaiicounty.gov>, "Waltjen, Kelden B. A."

<Kelden.Waltjen@hawaiicounty.gov>, Michael.kagami@hawaiicounty.gov, Barry Scheck <bscheck@innocenceproject.org>,
William Harrison <william@harrisonlawcenter.com>, keith shigetomi <keithsshigetomi@gmail.com>, Raquel Barilla

<raquel@theinnocencecenter.org>

**Electronically Filed
THIRD CIRCUIT****3CSP-23-000003**

Mon, Jul 15, 2024 at 7:10 PM

28-JUL-2024**06:50 PM****DK # 143 EXH**

Aloha Attorney General Lopez and Criminal Justice Division Administrator Goto,

We are contacting you as we represent Ian and Shawn Schweitzer in their post-conviction claims of actual innocence under H.R.S. Chapter 66B in case numbers 3CSP-23-000003; 3CSP-23-000017, relating to their wrongful conviction and incarceration in criminal case number 3PC-99-0000147, involving the Dana Ireland kidnapping, rape, and murder. *See* Petition attached. As we have been in discussions with your office relating to the Schweitzers' claim of innocence and compensation, we are contacting you today on a related but more pressing matter where we, along with Hawai'i County Prosecuting Attorneys Shannon Kagawa and Mike Kagami, seek your guidance and intervention.

Through our post-conviction efforts since the exoneration of both Ian and Shawn in 2023, we have been able to investigate, locate, and identify Unknown Male #1, whose DNA was recovered from all probative items submitted for testing from crime scene evidence; Ian, Shawn, and Frank Pauline were all excluded from this evidence. Since their exonerations, Ian and Shawn's legal team has made great strides in using post-conviction genetic genealogy with the assistance of former [FBI attorney Steve Kramer](#), to identify Unknown Male #1. Unknown Male #1 has now been located and his DNA surreptitiously taken, tested at an independent DNA laboratory, and found to be a match to the DNA found on all of the probative crime scene evidence.

The fact that Unknown Male #1 has been identified has only been disclosed to our legal team, the Hawai'i County Prosecutors and Hawai'i County Police Department, and now to your office as we seek your assistance. Unfortunately, despite us keeping this information confidential, this information has been leaked by a member(s) of the Hawai'i County Police Department to the local press. The Hawai'i County Prosecuting Attorney and our office have now both been contacted by the media and have continually refused to confirm or deny this information, but the fact that it was leaked by HCPD in the first place is of grave concern to all parties.

As outlined fully in the attached letter, we believe that your office should intervene into the investigation into Unknown Male #1. Not only because we have serious concerns about potential conflicts of interest that are present within both the Hawai'i County Prosecutors and Hawai'i County Police Department continuing with this investigation, especially given that this information has already been leaked before Unknown Male #1 can be apprehended. We have requested (as you will see detailed in the attached letter) that best practices be adhered to and that any investigation conducted, evidence gathered, or interviews conducted be done based on the model best practices. We tried to reach an agreement to stipulate these terms and have an Order filed before Judge Kubota, however, the Hawai'i County Prosecutors have stated to us that although they agree with the best practices that outlined in our stipulation, they do not believe they have the authority to instruct the Hawai'i County Police Department on how to conduct their investigation. We have included a draft of this proposed stipulation which outlines the investigative and evidence preservation that we have requested.

For these reasons above and attached, we are requesting a confidential Zoom meeting with your office to discuss this matter as soon as possible. We would also welcome the participation of the Hawai'i County Prosecutors, who have indicated to us that they are reaching out to your office as well.

Given that Unknown Male #1 who committed this heinous crime is a risk to the public and his apprehension must be conducted with the utmost integrity and modeled in best practices. We would like your assistance in bringing the perpetrator of one of the most notorious crimes in Hawai'i's history to justice. It is extremely important that we discuss this matter with you as soon as possible given the leaks made by the Hawai'i County Police Department regarding Unknown Male #1 to the public/media. Please let us know at your earliest convenience when you may be able to meet with us.

With warmest regards,

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i

Dated at: Hilo, Hawai'i 16-AUG-2024, /s/ Cheryl Salmo, Clerk of the Third Judicial Circuit, State of Hawai'i




Exhibit "9"

Jennifer Brown
Associate Director

Hawai'i Innocence Project
William S. Richardson School of Law
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Mahalo!

3 attachments

-  **2024.07.11_Letter to Hilo Prosecutors.DRAFT -FINAL.pdf**
181K
-  **Stip to Preserve - Final [Schweitzers].docx**
28K
-  **Joint Petition Compensation - Filed Copy.pdf**
309K

Jennifer Brown <jenbrown@hawaiiinnocenceproject.org>

Mon, Jul 15, 2024 at 7:21 PM

To: anne.e.lopez@hawaii.gov, Lance.M.Goto@hawaii.gov

Cc: "Kagawa, Shannon" <Shannon.Kagawa@hawaiicounty.gov>, "Waltjen, Kelden B. A."

<Kelden.Waltjen@hawaiicounty.gov>, Michael.kagami@hawaiicounty.gov, Barry Scheck <bscheck@innocenceproject.org>,

William Harrison <william@harrisonlawcenter.com>, keith shigetomi <keithsshigetomi@gmail.com>, Raquel Barilla

<raquel@theinnocencecenter.org>, Kenneth Lawson <kenlawdog@gmail.com>

Aloha Attorney General Lopez and Criminal Justice Division Administrator Goto,

My apologies for the subsequent email but I inadvertently left Ken Lawson, Co-Director of HIP, on the original email and have added him to this chain.

Thank you again for your time and consideration,

Jennifer Brown
Associate Director

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[Quoted text hidden]

Raquel Barilla <raquel@theinnocencecenter.org>
To: Kenneth Lawson <kenlawdog@gmail.com>

Fri, Jul 19, 2024 at 2:58 PM

Here is the final letter and stip we sent over to them.

[Quoted text hidden]

3 attachments

 **2024.07.11_Letter to Hilo Prosectors.DRAFT -FINAL.pdf**
181K

 **Stip to Preserve - Final [Schweitzers].docx**
28K

 **Joint Petition Compensation - Filed Copy.pdf**
309K

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Ka 'Oihana O Ka Loio Kuhina
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HONOLULU, HAWAII 96813
(808) 586-1500

Electronically Filed
THIRD CIRCUIT
3CSP-23-000003
28-JUL-2024
06:50 PM
Dkt. 144 EXH

MATTHEW S. DVONCH
FIRST DEPUTY ATTORNEY GENERAL

July 19, 2024

Jennifer L. Brown
Hawaii Innocence Project
2485 Dole Street, Suite 206
Honolulu, Hawaii 96822

Dear Ms. Brown,

Thank you for your July 15, 2024, e-mail regarding the investigation of Unknown Male #1, in the Dana Ireland kidnapping, sexual assault, and murder case. The fact that Unknown Male #1 has finally been identified is tremendous news, and I appreciate the efforts made by all of the parties to bring the investigation to this point.

As you have expressed in your e-mail, the Dana Ireland case is one of the most notorious in the history of the state, and everyone involved in this investigation including the Hawaii Innocence Project, the Hawaii County Police Department and the Hawaii County Prosecutor's Office are highly motivated to ensure that the matter is correctly investigated and properly handled, to ensure the integrity of the result.

I share the Hawaii Innocence Project's desire to see that the collection and preservation of statements and evidence in furtherance of the investigation of Unknown Male #1, be handled with all possible diligence and fairness. Pursuant to your request that the Department of the Attorney General intervene in the investigation into Unknown Male #1, I have contacted Hawaii County Police to make sure they are aware of your specific concerns and proposals. Based on my discussions, I am assured that the Hawaii County Police Department is capable of handling the investigation of Unknown Male #1, and that they are committed to doing so in a thorough and impartial manner.

Both the Hawaii County Police Department and the Hawaii County Prosecutor's Office have been informed that the Department of the Attorney General stands ready to assist them if the need arises.

Sincerely,

Anne E. Lopez
Attorney General



Detective Derek Morimoto Hawai'i Police Department 349 Kapiolani Street Hilo, HI 96720	Report Date: July 24, 2024 FACL Case #: 20220253 Client #: 16846 Client Case #: D-74774 Case Name: (V) Dana Ireland Report Type: DNA Laboratory Activity: 7/23/24 – 7/24/24
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Summary

The Hawai'i Police Department (HPD) is continuing their investigation into the December 24, 1991 rape and murder of 23-year-old victim Dana Ireland in Kalapana. This report follows the Forensic Analytical Crime Lab (FACL) report of July 3, 2024, wherein we document the DNA analysis of a fork observed by undercover HPD officers as having been used and discarded by suspect Albert Lauro, Jr.

Semen from three evidence items – Ireland's vaginal swabs [FACL 98-0382 #1-3/18 SP], a blue sheet [FACL 98-0382 #1-10A SP], and a Jimmy Z t-shirt [FACL 98-0382 #59F sp] – was identified in previous analyses as originating from a single male contributor, designated as Unknown Male #1. Lauro, Jr. was identified as the possible source of semen through single nucleotide polymorphism (SNP) testing on the blue sheet sperm DNA extract and genealogical research. The DNA recovered from the fork [FACL 22-0253 #3A] surreptitiously collected from Lauro Jr. originated from a single male contributor. The DNA profile obtained from the 3A fork swab is the same profile obtained from the semen from Dana Ireland's vaginal swabs, the blue sheet, and the t-shirt found at the scene, i.e. the profile of Unknown Male #1.

On July 19, 2024, HPD collected a reference oral specimen from Albert Lauro, Jr. Detective Derek Morimoto of HPD requested FACL develop a DNA profile for Lauro, Jr., to confirm if Lauro, Jr. is the DNA contributor to the fork swab result, and ultimately, determine if Lauro, Jr. can be identified as Unknown Male #1.

Albert Lauro, Jr. Reference Oral Swab [5A]

There is very strong genetic evidence that Albert Lauro, Jr. [5A] is the contributor to the single source DNA result obtained from the fork swab [3A]. Albert Lauro, Jr. possesses the same profile as the semen contributor from the Ireland vaginal swabs [FACL 98-0382 #1-3/18 SP], the blue sheet [FACL 98-0382 #1-10A SP], and the t-shirt [FACL 98-0382 #59F sp].

Exhibit "11"

Evidence

The following item of physical evidence for this round of testing was submitted to FACL by Det. Derek Morimoto of HPD on July 23, 2024 via Federal Express courier:

- 5. Albert Lauro, Jr. reference oral swabs [HPD Property #228798].

Evidence Examination

FACL Item No.	Item and Sample Description
<p>5 Albert Lauro, Jr. reference oral swabs</p>	<p>Two apparently intact pale yellow stained swabs. See Fig. 1. The entirety of one of the swabs was removed for analysis [5A]. A portion of the DNA from 5A was amplified with Investigator 24plex.</p>

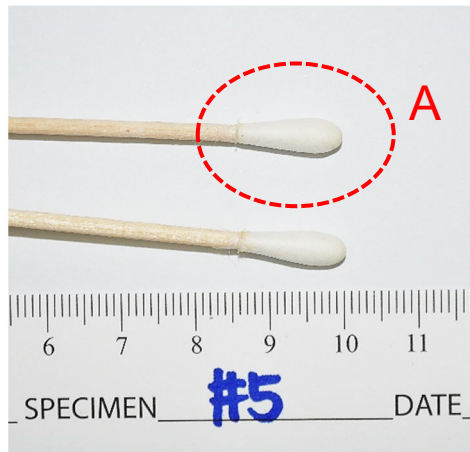


Figure 1. Albert Lauro, Jr. reference oral swabs (5).

Results¹

24plex

The likelihood ratio results in the table below can be related with a verbal statement in the following manner:

Assuming [# of contributors] contributors the DNA result is [LR] times more likely if the DNA originated from [Hp] than if the DNA originated from [Hd]. This analysis provides [Verbal Equivalent].

¹ The DNA profiles for the vaginal swab [98-0382 #1-3/18 SP], the blue sheet [98-0382 #1-10A SP], t-shirt [98-0382 #59F sp], and the fork [22-0253 #3A] are included in Appendix 1 of this report. A table of results containing the genotypes of the contributors to these items and the genotypes of Albert Lauro, Jr., is provided in Appendix 2.

FACL Sample	Typing Result	Propositions	Likelihood Ratio (LR)	Verbal Equivalent
3A Fork swab	A single male contributor	Hp: Albert Lauro, Jr. [5A] Hd: One unknown individual	30 quadrillion	Very strong support for the proposition that Albert Lauro, Jr. is a contributor to this result [Hp].

The genotypes of Unknown Male #1 at each of the 15 loci typed with Identifiler from the sperm DNA recovered from Dana Ireland’s vaginal swabs [98-0382 #1-3/18 SP], the blue sheet [98-0382 #1-10A SP], and the t-shirt found at the scene [98-0382 #59F sp] match the genotypes of the same loci in the 21-locus Investigator 24plex analysis of Albert Lauro, Jr’s reference DNA profile.

The Unknown Male #1 profile was previously determined to be unique among unrelated individuals in the general population. Since the Unknown Male #1 profile is expected to be unique and identical genotypes were obtained at the Identifiler loci redundant to those in Albert Lauro, Jr’s 24plex reference DNA profile, absent any identical twins, Albert Lauro, Jr. is identified as Unknown Male #1.

Disposition of Evidence

All evidence items will be returned to the submitting agency. DNA extracts generated, and not consumed, as a result of this evidence examination will be retained at FACL unless otherwise instructed.

Prepared by:

Reviewed by:



Nancy Dinh, M.S., Senior Forensic Scientist



Kristen Harty-Connell, M.S., Senior Forensic Scientist



APPENDIX 1: Electropherograms

22-0253 #5A. Albert Lauro, Jr. (24plex)

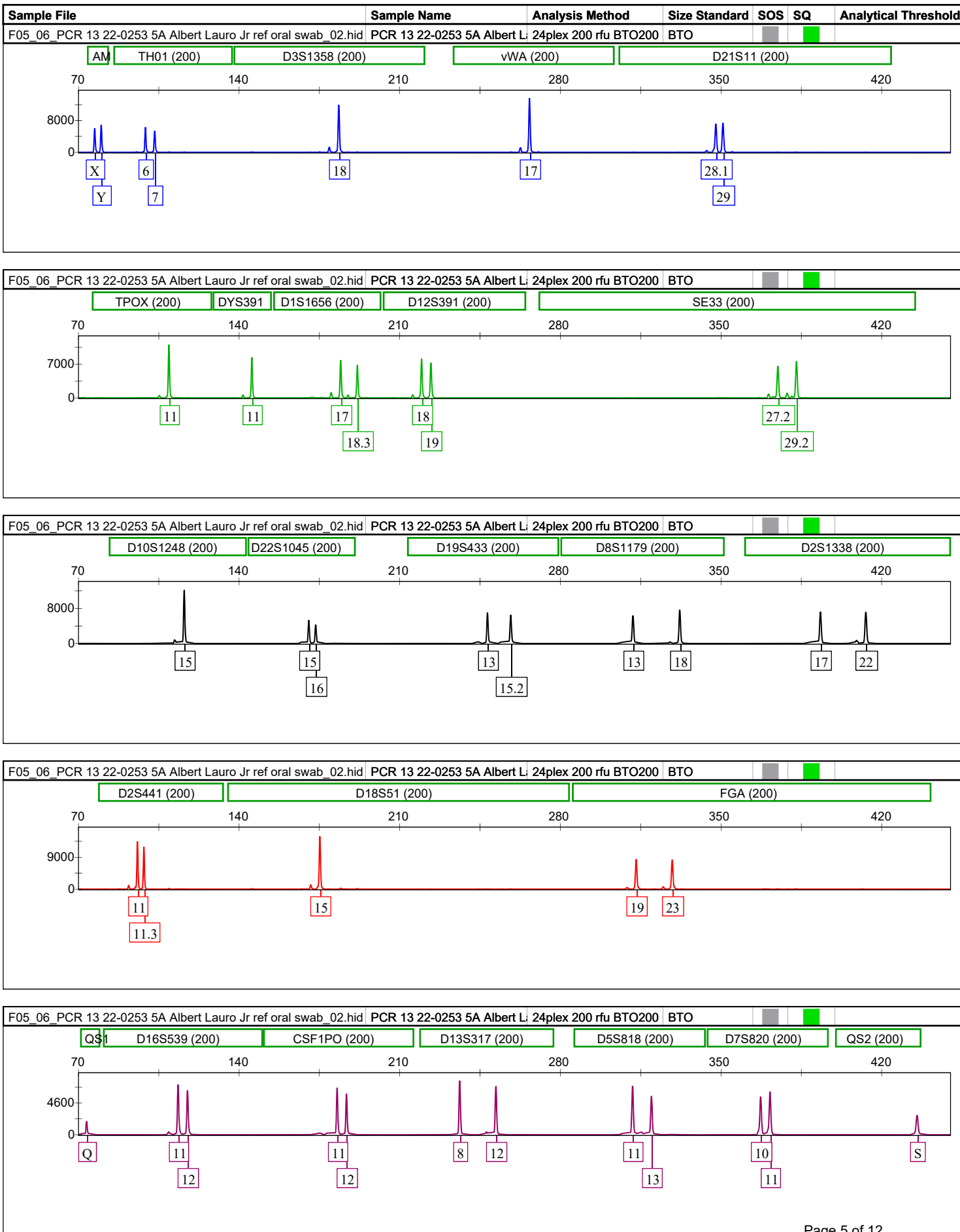
22-0253 #3A. Fork Swab (24plex)

98-0382 #1-3/1-18 sp. Vaginal swab/sticks, sperm fraction (Identifiler)

98-0382 #1-10A sp. Exam sheet area A, sperm fraction (Identifiler)

98-0382 #59F sp. T-shirt, outside front lower center fluorescent stain cutting, sp fraction (Identifiler)

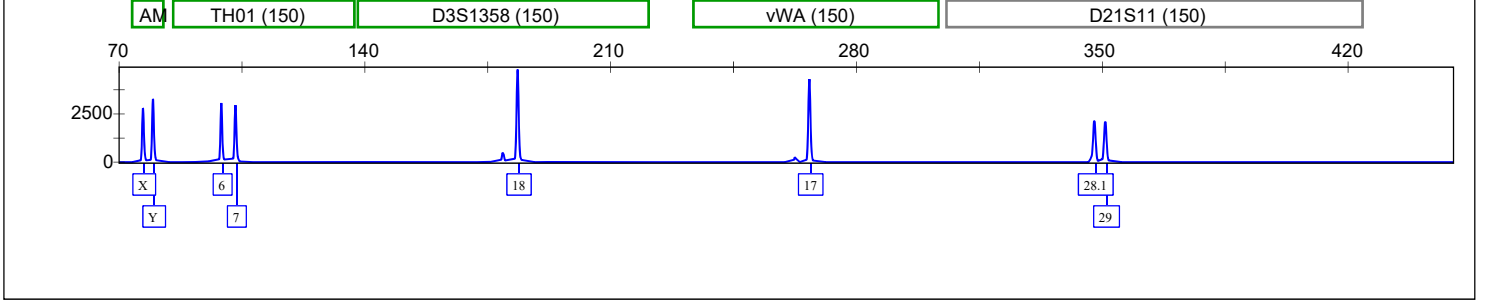
#5A. Albert Lauro, Jr. Reference Oral Swab



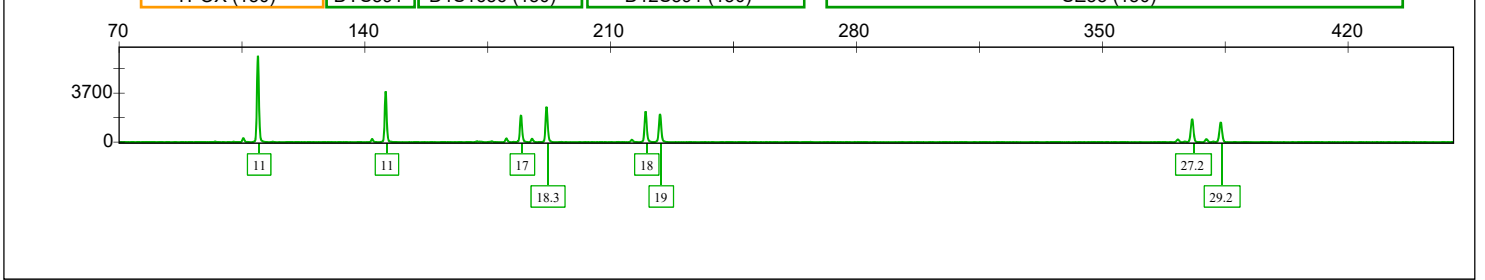
GeneMapper™ ID-X 1.7

#3A. Fork Swab

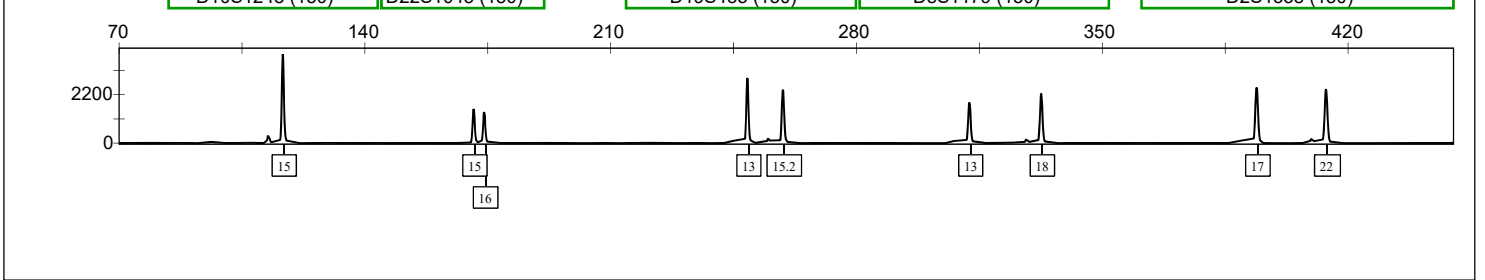
Sample File	Sample Name	Analysis Method	Panel	Size Standard	SOS	SQ	Analytical Threshold
C12_03_PCR 1 - 22-0253 #3A. Fork swab	22-0253 #3A. Fork swab	24plex BGYRP 150	24plex_QS_Panels_v5	SST-BTO_60-500bp			



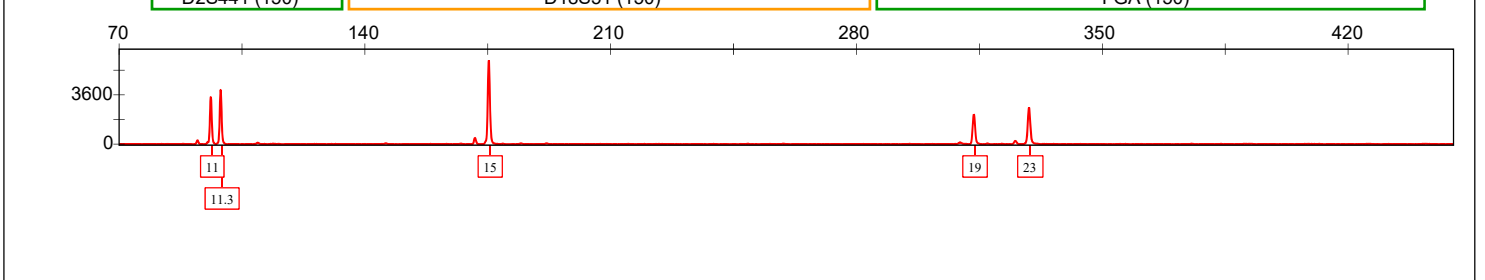
Sample File	Sample Name	Analysis Method	Panel	Size Standard	SOS	SQ	Analytical Threshold
C12_03_PCR 1 - 22-0253 #3A. Fork swab	22-0253 #3A. Fork swab	24plex BGYRP 150	24plex_QS_Panels_v5	SST-BTO_60-500bp			



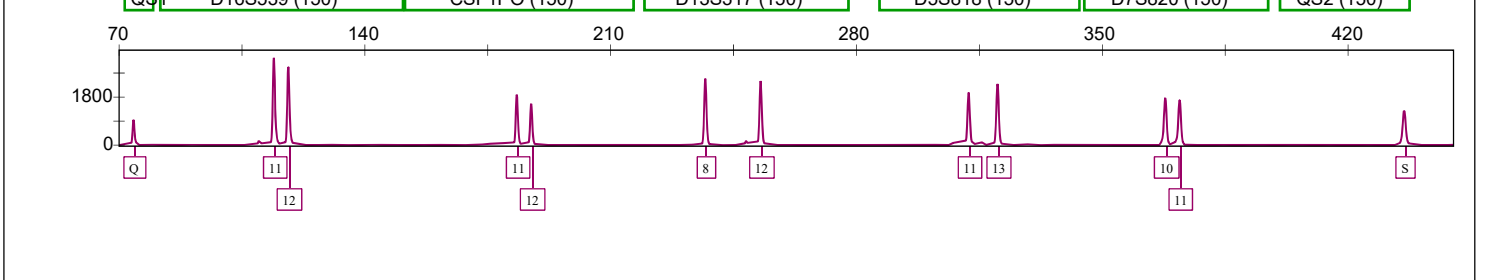
Sample File	Sample Name	Analysis Method	Panel	Size Standard	SOS	SQ	Analytical Threshold
C12_03_PCR 1 - 22-0253 #3A. Fork swab	22-0253 #3A. Fork swab	24plex BGYRP 150	24plex_QS_Panels_v5	SST-BTO_60-500bp			



Sample File	Sample Name	Analysis Method	Panel	Size Standard	SOS	SQ	Analytical Threshold
C12_03_PCR 1 - 22-0253 #3A. Fork swab	22-0253 #3A. Fork swab	24plex BGYRP 150	24plex_QS_Panels_v5	SST-BTO_60-500bp			

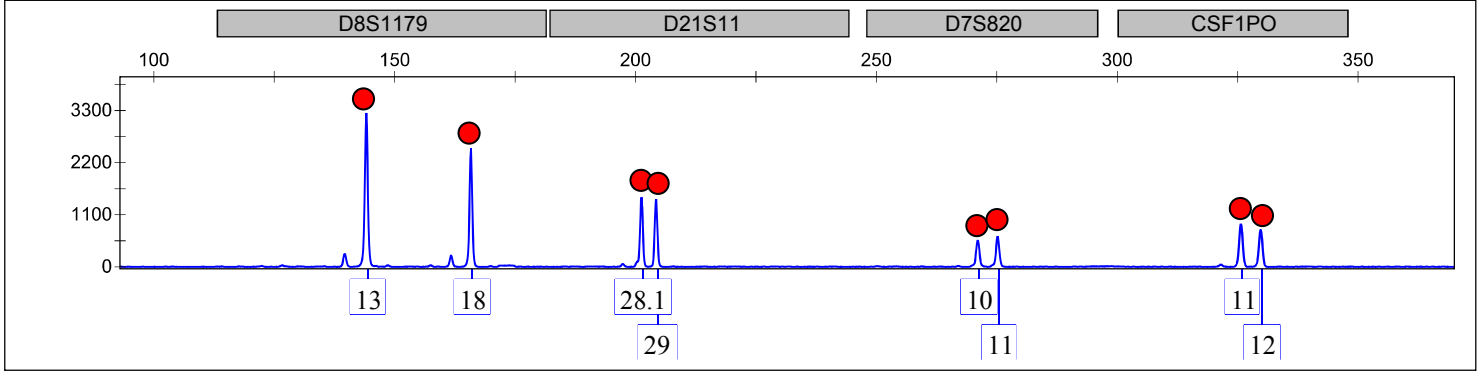


Sample File	Sample Name	Analysis Method	Panel	Size Standard	SOS	SQ	Analytical Threshold
C12_03_PCR 1 - 22-0253 #3A. Fork swab	22-0253 #3A. Fork swab	24plex BGYRP 150	24plex_QS_Panels_v5	SST-BTO_60-500bp			

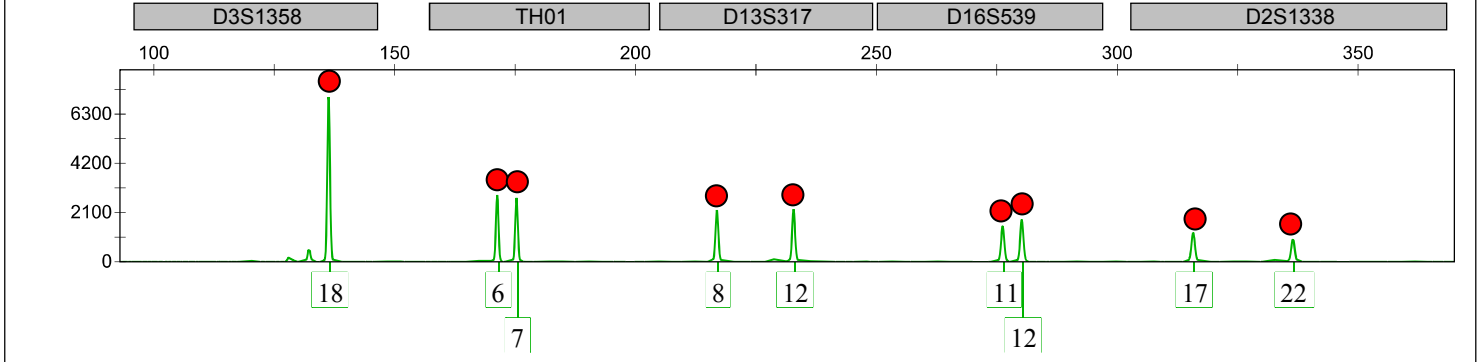


#1-3/1-18 sp Vaginal swab/sticks, sperm fraction

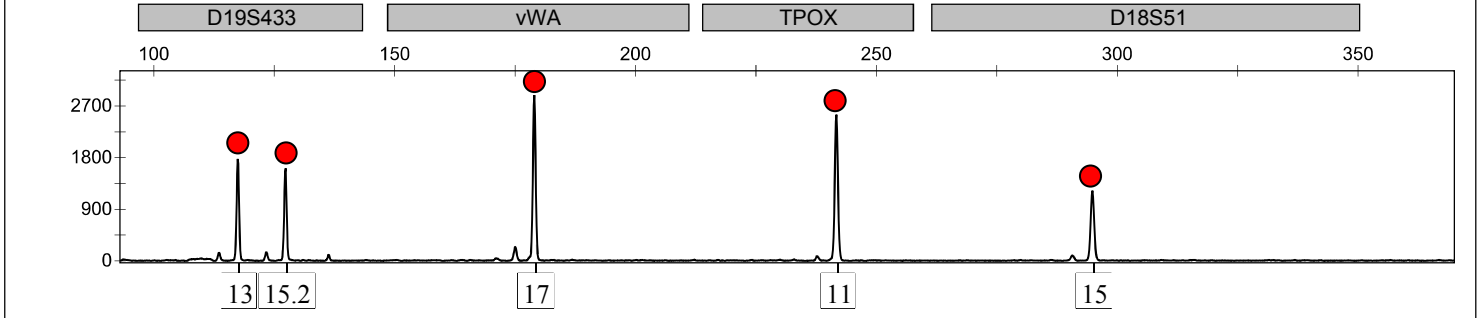
Sample File	Sample Name	Panel	OS	SQ
ID PCR 02 4-7-16-2-43 PM.fsa	98-0382 1-3/1-18 sp Vaginal swab/sticks, sp fraction, 2s inj	Identifiler_v2	▲	■



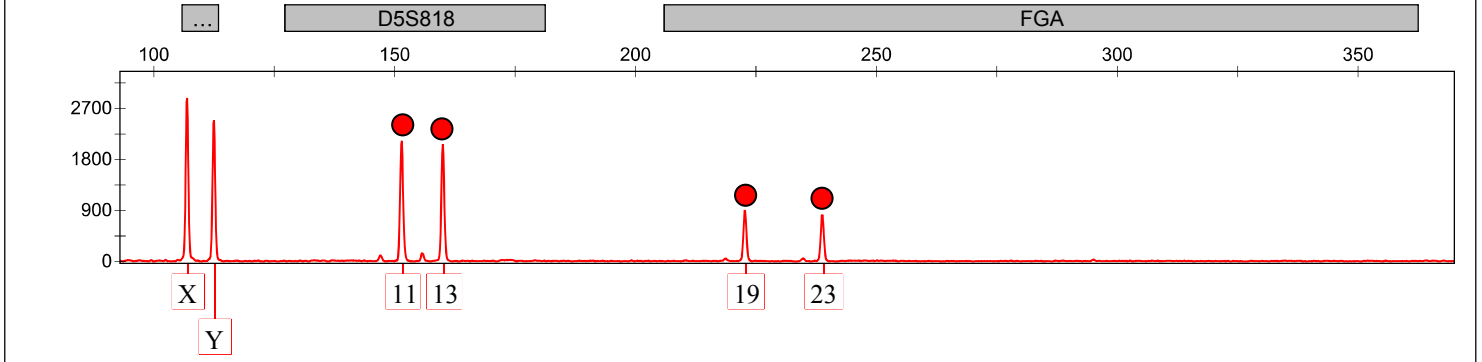
Sample File	Sample Name	Panel	OS	SQ
ID PCR 02 4-7-16-2-43 PM.fsa	98-0382 1-3/1-18 sp Vaginal swab/sticks, sp fraction, 2s inj	Identifiler_v2	▲	■



Sample File	Sample Name	Panel	OS	SQ
ID PCR 02 4-7-16-2-43 PM.fsa	98-0382 1-3/1-18 sp Vaginal swab/sticks, sp fraction, 2s inj	Identifiler_v2	▲	■



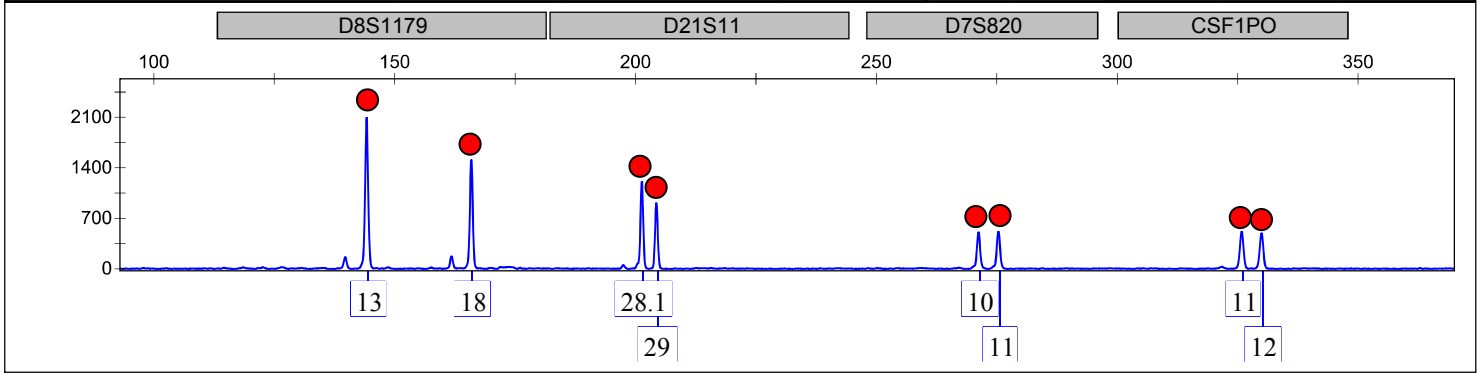
Sample File	Sample Name	Panel	OS	SQ
ID PCR 02 4-7-16-2-43 PM.fsa	98-0382 1-3/1-18 sp Vaginal swab/sticks, sp fraction, 2s inj	Identifiler_v2	▲	■



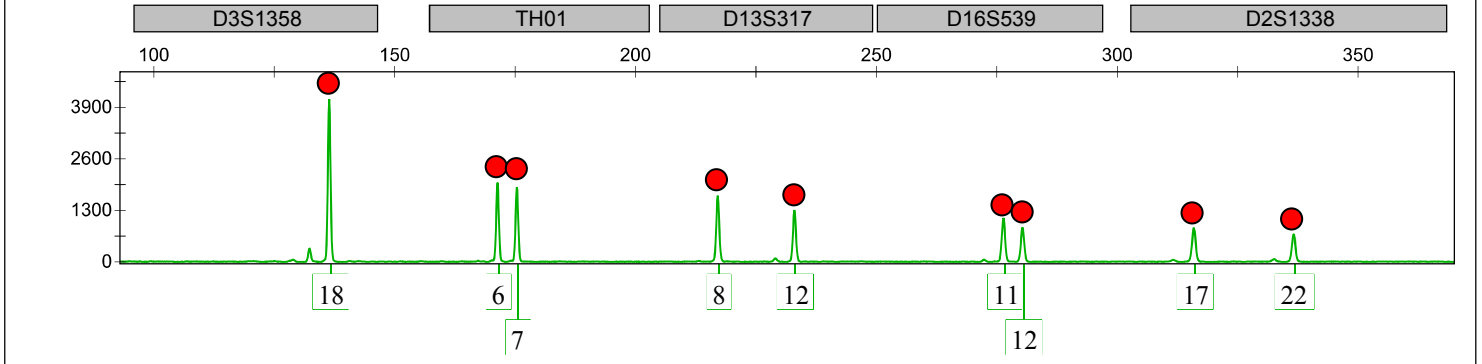
● Alleles possessed by Unknown Male #1

#1-10A sp Exam sheet area A, sperm fraction

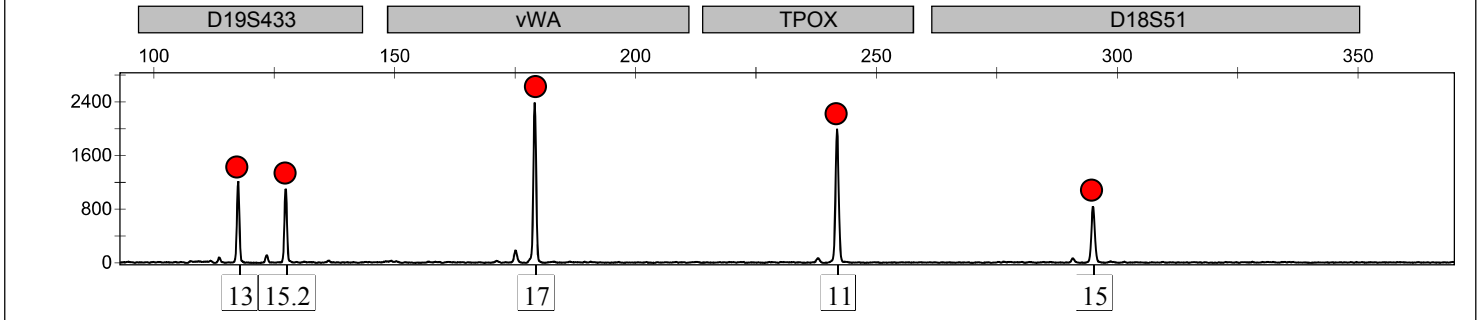
Sample File	Sample Name	Panel	OS	SQ
ID PCR 04 4-7-16-4-21 PM.fsa	98-0382 1-10A sp Exam sheet area A, sp fraction, 1s inj	Identifiler_v2	■	■



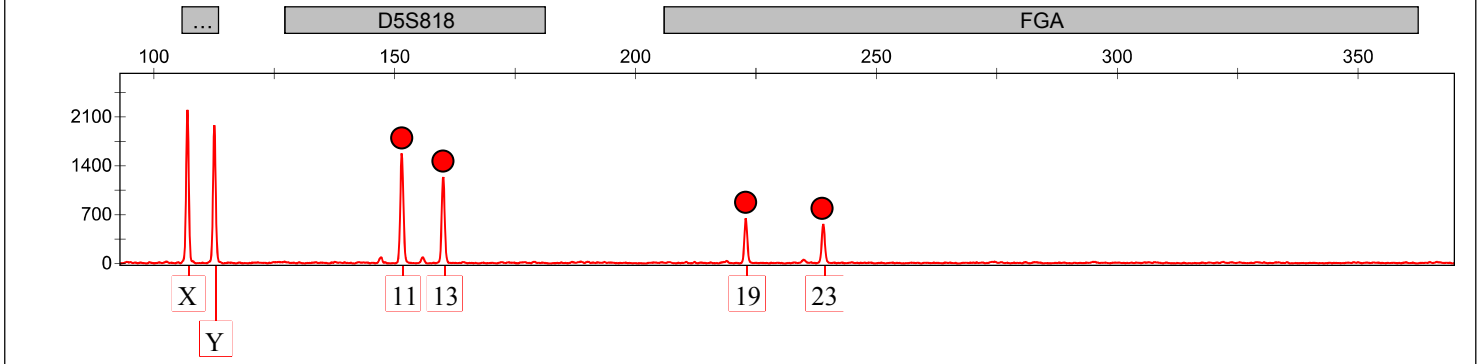
Sample File	Sample Name	Panel	OS	SQ
ID PCR 04 4-7-16-4-21 PM.fsa	98-0382 1-10A sp Exam sheet area A, sp fraction, 1s inj	Identifiler_v2	■	■



Sample File	Sample Name	Panel	OS	SQ
ID PCR 04 4-7-16-4-21 PM.fsa	98-0382 1-10A sp Exam sheet area A, sp fraction, 1s inj	Identifiler_v2	■	■

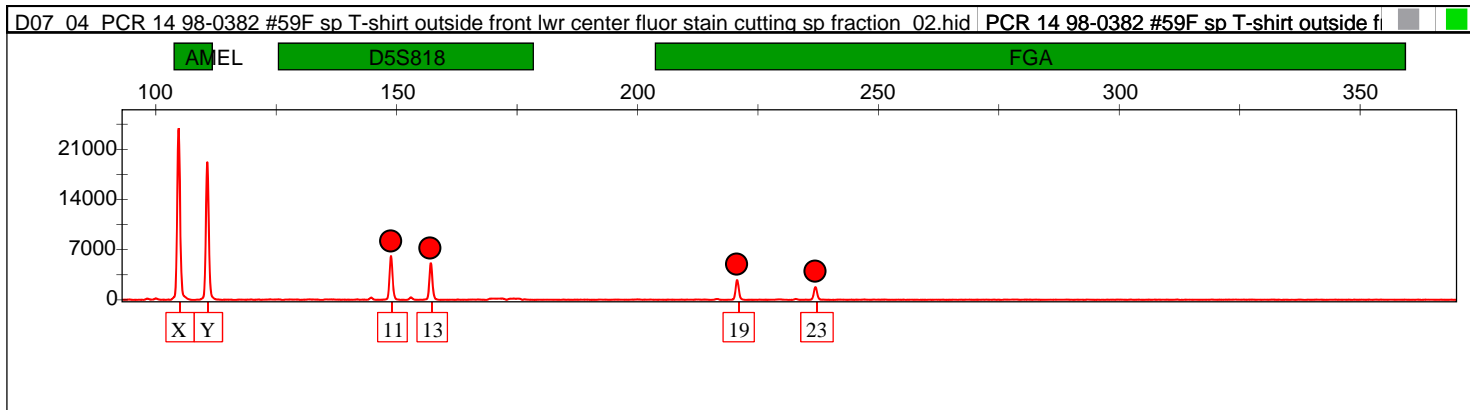
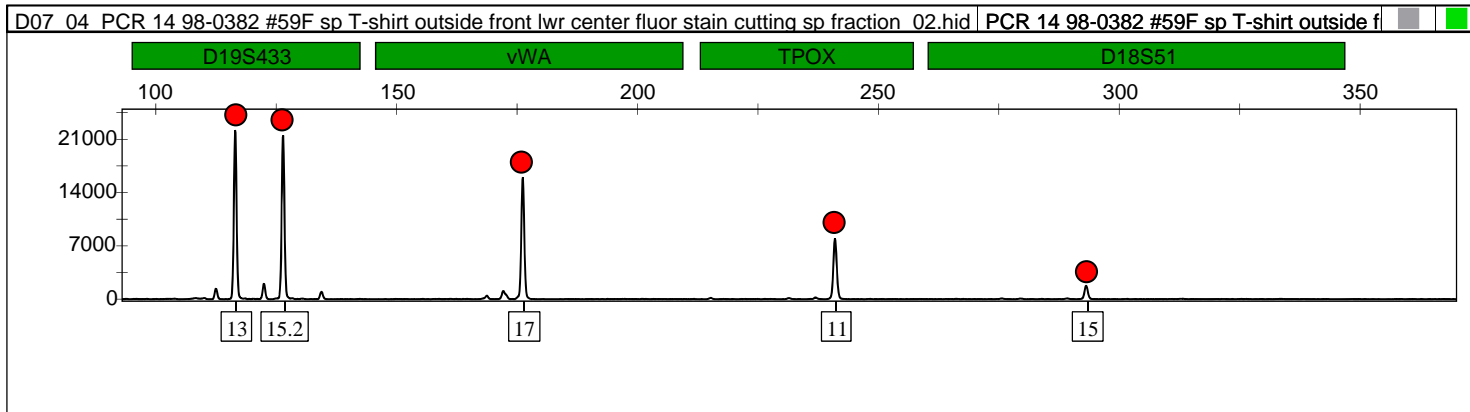
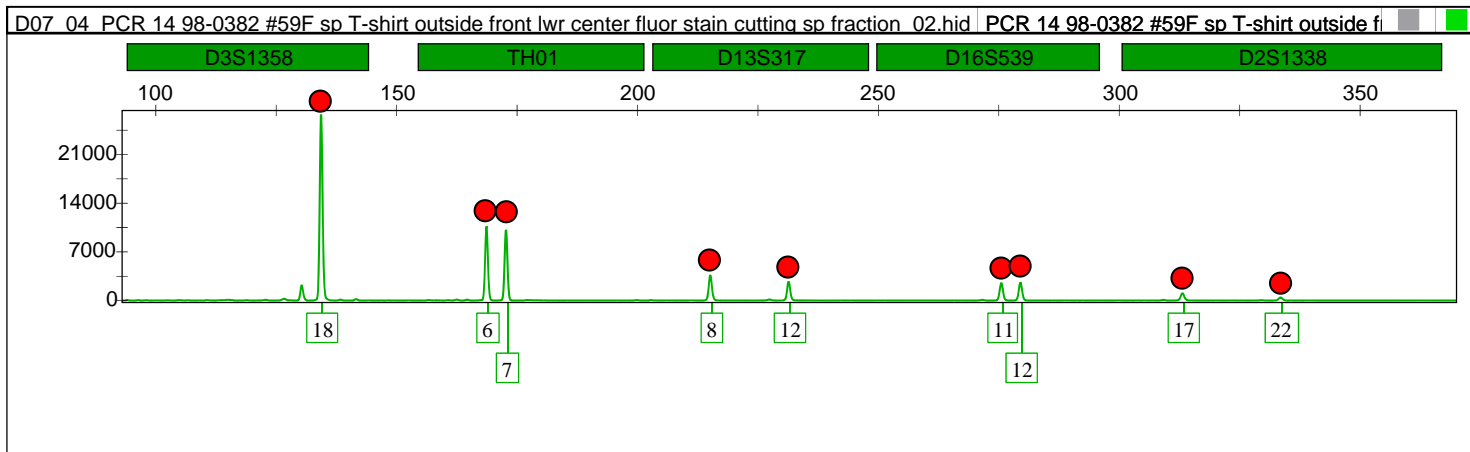
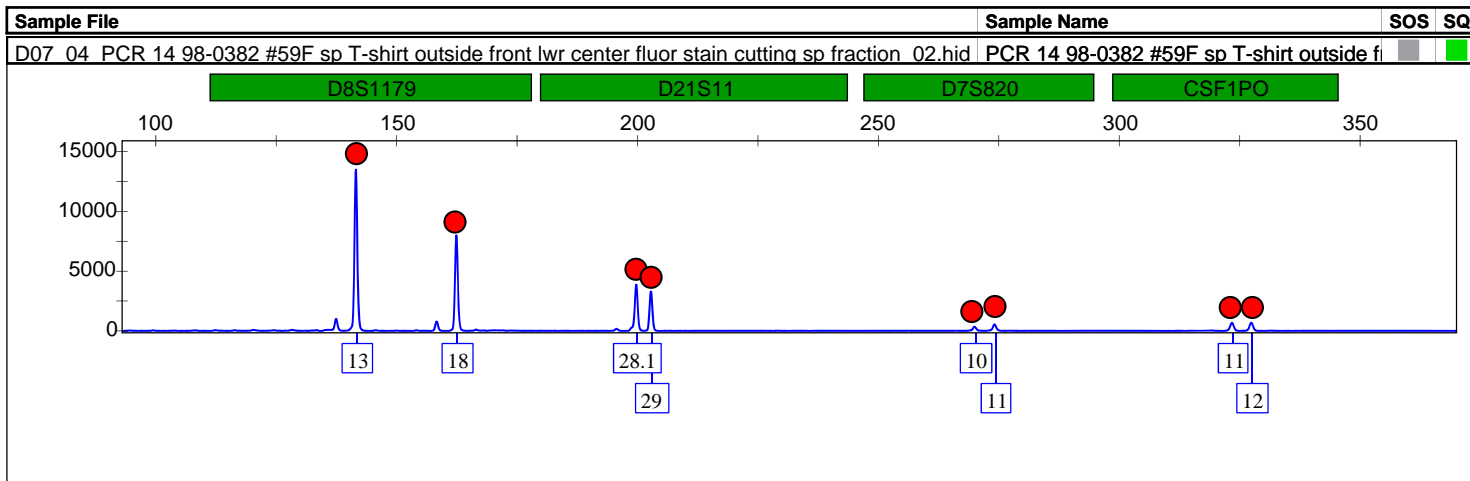


Sample File	Sample Name	Panel	OS	SQ
ID PCR 04 4-7-16-4-21 PM.fsa	98-0382 1-10A sp Exam sheet area A, sp fraction, 1s inj	Identifiler_v2	■	■



 Alleles possessed by Unknown Male #1

#59F sp T-shirt, outside front lower center fluorescent stain cutting, sp fraction



● Alleles possessed by Unknown Male #1

APPENDIX 2: Table of Results

Marker	Investigator 24plex Analyses		Identifiler Analyses		
	22-0253 #5A. Albert Lauro Jr. reference	22-0253 #3A. Fork swab	98-0382 #1- 3/1-18 sp. Vaginal swab/sticks, sperm fraction	98-0382 #1- 10A sp. Exam sheet area A, sperm fraction	98-0382 #59F sp. T-shirt stain cutting, sperm fraction
TH01	6,7	6,7	6,7	6,7	6,7
D3S1358	18,18	18,18	18,18	18,18	18,18
vWA	17,17	17,17	17,17	17,17	17,17
D21S11	28.1,29	28.1,29	28.1,29	28.1,29	28.1,29
TPOX	11,11	11,11	11,11	11,11	11,11
D1S1656	17,18.3	17,18.3	N/A	N/A	N/A
D12S391	18,19	18,19	N/A	N/A	N/A
SE33	27.2,29.2	27.2,29.2	N/A	N/A	N/A
D10S1248	15,15	15,15	N/A	N/A	N/A
D22S1045	15,16	15,16	N/A	N/A	N/A
D19S433	13,15.2	13,15.2	13,15.2	13,15.2	13,15.2
D8S1179	13,18	13,18	13,18	13,18	13,18
D2S1338	17,22	17,22	17,22	17,22	17,22
D2S441	11,11.3	11,11.3	N/A	N/A	N/A
D18S51	15,15	15,15	15,15	15,15	15,15
FGA	19,23	19,23	19,23	19,23	19,23
D16S539	11,12	11,12	11,12	11,12	11,12
CSF1PO	11,12	11,12	11,12	11,12	11,12
D13S317	8,12	8,12	8,12	8,12	8,12
D5S818	11,13	11,13	11,13	11,13	11,13
D7S820	10,11	10,11	10,11	10,11	10,11

APPENDIX 3: DNA Analysis, Interpretation, and General Information

Genetic Analysis of DNA

Investigator 24plex QS, an autosomal short-tandem repeat (STR) genotyping kit and Yfiler Plus, a Y-chromosome STR (Y-STR) genotyping kit, are utilized at FACL. The autosomal STR loci typed with **Investigator 24plex QS** are **TH01**, **D3S1358**, **vWA**, **D21S11**, **TPOX**, **DYS391**, **D1S1656**, **D12S391**, **SE33**, **D10S1248**, **D22S1045**, **D19S433**, **D8S1179**, **D2S1338**, **D2S441**, **D18S51**, **FGA**, **D16S539**, **CSF1PO**, **D13S317**, **D5S818**, and **D7S820**. Investigator 24plex also includes **DYS391**, a Y-STR locus to aid in determining the number of males, **amelogenin**, a gene for sex determination, and two quality sensor loci, **QS1** and **QS2**.

The Y-STR loci typed with **Yfiler Plus** are **DYS576**, **DYS389I**, **DYS635**, **DYS389II**, **DYS627**, **DYS460**, **DYS458**, **DYS19**, **YGATAH4**, **DYS448**, **DYS391**, **DYS456**, **DYS390**, **DYS438**, **DYS392**, **DYS518**, **DYS570**, **DYS437**, **DYS385**, **DYS449**, **DYS393**, **DYS439**, **DYS481**, **DYF387S1**, and **DYS533**. Y-STR analysis can aid in determining the number of males in mixtures with multiple males and to examine male only traits in female and male mixtures. Males of the same paternal lineage (biological father, sons, brothers and paternal grandfather, uncles, and nephews) share the same Y-STR profile, absent mutations, known as a haplotype.

Where indicated, the various STR and Y-STR loci described above were amplified using the polymerase chain reaction (PCR) and analyzed using capillary electrophoresis.

Interpretation of DNA Typing Results

Interpretation of Investigator 24plex STR results is routinely performed using STRmix™ probabilistic genotyping software. STRmix™ uses laboratory specific parameters (STR genotyping kit, amplification and typing protocols, and instrument platforms) and the quantitative allele peak data from an electropherogram in a Markov Chain Monte Carlo (MCMC) analysis to interpret contributor profiles in a DNA result. During MCMC analysis the likely genotypes of the individual contributors to a DNA profile are determined and given a weight of probability. The more likely genotypes of the contributors to a DNA profile, as determined by this analysis, will have higher weights.

Comparison of a reference profile to an interpreted (or deconvoluted) evidence profile is performed using a likelihood ratio (LR), which assesses the probability of two alternative hypotheses or propositions. Typically, the hypothesis of the prosecution (H_p) includes the person of interest (POI) whereas the alternative hypothesis (H_d) attempts to explain the data in the absence of the POI as a contributor. The LR of any given proposition will indicate which hypothesis has more support². In general, an $LR > 1$ favors H_p and an $LR < 1$ favors H_d .

Likelihood ratios are calculated based upon propositions that attempt to best explain the evidence using assumptions about possible contributors as well as the number of contributors to evidence DNA profiles considering the information provided about the case and the logical interpretation of evidence DNA profiles. Alternative propositions suggested by the prosecution and/or defense will be considered provided they conform to the test results and the FACL validated parameters of STRmix™.

² The FBI expanded CODIS core STR loci frequency data for the populations used in the LR calculations at FACL, provided with STRmix™, is described in: Population data on the expanded CODIS core STR loci for eleven populations of significance for forensic DNA analyses in the United States. Forensic Science International: Genetics 25 (2016) 175-181. The ABI STR loci frequency data used for LR calculations at FACL is from the Applied Biosystems GlobalFiler™ PCR Amplification Kit User Guide, Publication Number 4477604, Revision E.

FACL likelihood ratio range:

Likelihood ratio	Verbal equivalent
≥ 1 million	Very strong support for H _p (POI inclusion)
10,000 to 999,999	Strong support for H _p (POI inclusion)
1,000 to 9,999	Moderate support for H _p (POI inclusion)
2 to 999	Limited support for H _p (POI inclusion)
1	Uninformative
> 0.001 to < 1 (1/LR = 2 to 999)	Limited support for H _d (POI exclusion)
0 to ≤ 0.001 (1/LR ≥ 1,000)	POI excluded

Y-STR results are manually interpreted, and haplotype frequencies are calculated using the Y-Chromosome Haplotype Reference Database [YHRD (R69); <https://yhrd.org>; Willuweit S., Roewer L. (2015), 'The new Y Chromosome Haplotype Reference Database.', *Forensic Sci Int Genet* 15, 43-8].

General Information

Acid Phosphatase (AP): an enzyme found in high concentration in seminal fluid and in low concentrations in other body fluids such as vaginal secretions. The Brentamine reaction is used as a presumptive test for AP. Since AP is found in high concentrations in semen, a fast Brentamine reaction is a good indication that semen is present.

Alternate Light Source (ALS): high intensity filtered light at 450 nm that produces fluorescence in body fluid stains such as semen and saliva.

Differential Digestion: a technique to isolate sperm cells/DNA from non-sperm DNA resulting in two separate DNA extract fractions; the non-sperm fraction—commonly referred to as the epithelial cell fraction—and the sperm fraction.

HemDirect: an immunoassay that detects hemoglobin (Hb) in human and primate blood and may cross-react with ferret blood. Trace levels of Hb may be detected in other body fluids such as urine, feces, semen, saliva, and vaginal fluid. A positive result should be used in conjunction with visual observations and presumptive chemical testing of the stain.

ortho-tolidine & hydrogen peroxide: a sensitive presumptive test for blood (heme). This reaction may also occur in the presence of other substances that possess peroxidase-like activity.

Prostate Specific Antigen (p30 or PSA): a glycoprotein produced in the prostate and secreted in seminal fluid in high concentrations. PSA is also found in very low concentrations in other body fluids such as vaginal secretions, urine, and blood. The Seratec PSA Semiquant immunoassay is used to detect PSA as a presumptive test for semen.

EXHIBIT “B”

No. SCPW-24-0000537

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII POLICE DEPARTMENT,
COUNTY OF HAWAII,

Petitioner,

and

THE HONORABLE PETER K. KUBOTA,
Judge of the Circuit Court of the Third
Circuit, State of Hawai'i,

Respondent.

ORIGINAL PROCEEDINGS

No. 3CSP-23-0000003

No. 3CSP-23-0000017

(Special Proceedings)

CIRCUIT COURT OF THE THIRD CIRCUIT,
STATE OF HAWAII

The Honorable Peter K. Kubota

**DECLARATION OF KENNETH L.
LAWSON**

DECLARATION OF KENNETH L. LAWSON

I, Kenneth L. Lawson, hereby declare:

1. I make this declaration based on my personal knowledge and belief, and if called to testify, I could and would do so competently as follows:

2. I serve as Co-Director of the Hawai'i Innocence Project.

3. Counsel for the Hawai'i and New York Innocence Projects (Jennifer Brown, Richard Fried, and Barry Scheck) co-represent Albert Ian Schweitzer.

4. I am not licensed to practice as an attorney, and my involvement in this matter and presence in court have always been solely in my capacity as the managing co-director of the Hawai'i Innocence Project, not as an attorney.

5. Attached as Exhibit A is a true and accurate copy of Respondent's Motion to Compel filed in Circuit Court on July 28, 2024.

6. A true and accurate link to Chief Moszkowicz's July 29, 2024, 4:00 pm press conference can be accessed through the following YouTube link:

https://www.youtube.com/watch?v=krq9_Re2sDk&t=981s

7. Throughout this press conference, Chief Moszkowicz discussed what HPD now claims is "an ongoing and confidential investigation."

8. Chief Moszkowicz also implied that Ian and Shawn Schweitzer are part of the ongoing investigation as suspects.

9. Assistant County Prosecutor, Shannon Kagawa, said essentially the same thing during the hearing on the Motion to Compel. For example, Kagawa speculated that the Schweitzers could have struck Dana Ireland and transported her to the fishing trail where Lauro later found her, raped her, and left her there to die.

10. That declarant has read the above-stated facts and declares under penalty of law that they are true to the best of the declarant's belief, knowledge, and information at this time.

DATED: Honolulu, Hawaii, August 15, 2025.

/s/ *Kenneth L. Lawson*

Kenneth L. Lawson

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2024, a copy of the foregoing pleading was filed electronically and served to counsel of record. Notice of the filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's Electronic Filing System.

Dated: August 16, 2024

Respectfully submitted,

/s/ William A. Harrison

WILLIAM A. HARRISON, #2948
JENNIFER BROWN, #10885
RICHARD FRIED, #764
BARRY SCHECK, #1634765 (New York)*

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ALBERT IAN Schweitzer
*Admitted *Pro Hac Vice*