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Supreme Court
SCPW-24-0000537
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NO. SCPW-24-0000537

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII POLICE DEPARTMENT, COUNTY OF HAWAII,)	ORIGINAL PROCEEDINGS
	)	CASE NOS. 3CSP-23-0000003;
Petitioner.	)	3CSP-23-0000017
)	
vs.	)	PETITION FOR WRIT OF MANDAMUS
)	
	)	THIRD CIRCUIT COURT
THE HONORABLE PETER K. KUBOTA, Judge of the Circuit Court of Third Circuit, State of Hawaii,	)	HONORABLE PETER K. KUBOTA
	)	JUDGE
Respondent Judge.)	
)	
and)	
)	
ALBERT IAN and SHAWN SCHWEITZER,)	
)	
Respondents.)	
_____)	

APPENDICES "A"- "B"

and

CERTIFICATE OF SERVICE

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SHAWN SCHWEITZER

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THIRD CIRCUIT
3CSP-23-0000003
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

ALBERT IAN SCHWEITZER, SHAWN)	Case Nos. 3CSP-23-0000003;
SCHWEITZER,	)	3CSP-23-0000017;
	)	3SCW-24-0000537
Petitioners,)	
	)	(Prior Case no: 3PC-99-0000147)
)	
vs.	)	COURT ORDER DENYING HAWAI'I
	)	POLICE DEPARTMENT'S MOTION TO
	)	QUASH <i>SUBPOENA DUCES TECUM</i> ,
STATE OF HAWAI'I,	)	FILED ON AUGUST 2, 2024
)	
Respondent.)	
	)	Judge: Honorable Peter K. Kubota

**COURT ORDER DENYING HAWAI'I POLICE DEPARTMENT'S
MOTION TO QUASH *SUBPOENA DUCES TECUM*,
FILED ON AUGUST 2, 2024**

This matter came before this Court on August 5, 2024; the Hawaii Police Department, County of Hawaii, represented by E. Britt Bailey, Deputy Corporation Counsel, The Hawaii County Prosecuting Attorney, represented by Deputy Prosecuting Attorney Shannon Kagawa, Petitioner Albert Ian Schweitzer represented by Jennifer Brown, Kenneth Lawson, Richard Fried and Barry Scheck of the Innocence Project, and Shawn Schweitzer, represented by Keith

Shigetomi and Raquel Barilla of the California Innocence Project.

The Court has previously issued Findings of Fact, Conclusions of Law Granting Petition to Vacate, Set Aside, and Correct Judgment, and to Release Petitioner Albert Ian Schweitzer from Custody on October 20, 2023. (Dkt 117). This Order was the result of numerous Stipulated Facts filed by Albert Ian Schweitzer and the Hawaii County Prosecutor's Office on January 23, 2023, and a day-long hearing held on January 24, 2023, in which this Court heard newly discovered and newly produced evidence, which resulted in Albert Ian Schweitzer's conviction being vacated and the Indictment being dismissed. Similarly, Shawn Schweitzer's conviction was set aside by this Court on October 23, 2023.

In response to Subpoena Duces Tecum served on August 1, 2024, the Hawaii County Police Department filed an Emergency Motion to Stay and enjoin Compliance with Petitioner's Subpoena Duces Tecum Served August 1, 2024 Pending Mandamus Review (Dkt 111 in 3CSP 23-017), and a similar Emergency Motion to Stay in 3CSP-23-3 (Dkt 185).

The Court orally denied the Hawaii County Police Department's Motion to Stay filed in each of the cases on August 5, 2024, and the Motion to Quash Subpoena (filed only in 3CSP-23-003 as Dkt 176) ("Motion to Quash"). The Hawaii County Police Department has then filed a Petition for Writ of Mandamus on August 7, 2024 seeking to vacate this Court's denial of the instant Motion to Quash.

The Hawaii Supreme Court, in SCPW-24-537 ordered this Court to enter a written order denying Petitioner's Motion to Quash, to be filed in 3CSP 23-3 and 3CSP 23-017, and also in SCPW-24-537.

After hearing argument on the instant Motion, the Court hereby denies the Motion to Quash for the following reasons:

1. The Hawaii County Police Department's argument based upon Chapter 92F is inapposite and does not apply to the present issue in this case.
2. The constitutional due process principles articulated in the Brady v. Maryland line of cases, do apply to the proceedings of this quasi-criminal case, being a contested Petition for Determination of Actual Innocence.

1. Chapter 92F is Inapposite to this Case

The Hawaii County Police Department sought to prevent disclosure of its investigation of Albert Lauro Jr., who was identified through Innocence Project's DNA laboratory, Indago Solutions, on the grounds that HRS Chapter 92F, the Hawaii Uniform Information Practices Act ("UIPA") prevents such disclosure for the reason that it will frustrate a legitimate governmental function, namely the investigation of the Dana Ireland murder.

The Court notes that these Special Proceedings are civil in nature, pursuant to Hawaii Revised Statutes Chapter 661E for compensation of wrongfully incarcerated persons. By admission, the Hawaii County Police Department and the Hawaii County Prosecutor (in response to the Brady doctrine question), argued that this is a *civil proceeding, not a pretrial criminal proceeding, and thus, Brady rights do not apply*. The Subpoena was issued as a discovery demand after the Hawaii County Prosecutor repeatedly refused to disclose any information regarding the investigation of Albert Lauro Jr. to this Court. The Innocence Project teams filed a Motion to Preserve Evidence and Compel Discovery on July 28, 2024 (Dkt 133), which was granted by this Court on August 1, 2024 (Dkt 169), from which the subject Subpoena Duces Tecum originated. The Subpoena to the Hawaii County Police Department was issued because the HPD was not then a party to this Joint Petition for Determination of Actual Innocence. The Court finds that the UIPA exemption from disclosure under HRS Chapter 92F-13 (3) is irrelevant

to civil litigation discovery methods and practices under the Hawaii Rules of Civil Procedure, and only apply to records requests made under the UIPA.

Even assuming that Chapter 92F applies to this discovery issue, the information regarding Albert Lauro Jr's 1 hour long interview with HPD, and any other information confirming him as previously Unknown Male #1, is relevant and essential for the determination of the Actual Innocence of Albert Ian Schweitzer and Shawn Schweitzer. The Court expressly finds that the interest of determination of Actual Innocence of the Schweitzers, and the public right to review matters which have been of great significance to this community over the past 33 years, greatly outweighs the HPD request to keep its investigation private.

The Court is mindful of the need to preserve ongoing investigations from disclosure in pretrial criminal cases, to prevent destruction of evidence, or persons fleeing or committing suicide. The Hawaii County Prosecutor's Office was exactly made aware of these three grave concerns on July 2, 2024 by the Innocence Project attorneys. However, due to the suicide of Albert Lauro Jr. following HPD's interview, the "ongoing investigation" into his role as Dana Ireland's killer is essentially over, and the merits of further confidential investigation into his role, are far outweighed by the needs and rights of the Schweitzers to prove their actual innocence, which is still pending as the central issue before this Court.

Further, the right of the public to demand that court proceedings be open to the public and not kept in secret is well documented in the line of Grube v. Trader, 142 Haw. 412, 420 P3d 343 (2018), and Gannett Pacific Corp. v. Richardson, 49 Haw. 224, 580 P.2d 49 (1978) cases.

"... our natural suspicion and traditional aversion as a people to secret proceedings, suggestions of unfairness, discrimination, undue leniency, favoritism and incompetence are more easily entertained when access to the public to judicial proceedings are unduly restricted."

Further, "Openness.... serves to enhance public trust and confidence in the integrity of the judicial process"

In the long history of this case, the Defendants Schweitzer and their family have been subjected to the most adverse treatment by the community, and their convictions have been overturned by undisputed facts agreed upon by the State to be true, and in Shawn Schweitzer's case, a finding of manifest injustice if his plea and conviction were to be upheld.

2. Due Process requires Production of Documents for the Schweitzer's claims of Actual Innocence

In Brady v. Maryland, 373 U.S. 83 (1963), and the line of cases following, the Courts have held that an accused defendant has a right to obtain exculpatory information and evidence from Law Enforcement which would tend to show that a defendant is not guilty, or which would lessen his punishment, and the Prosecutor's Office has a duty of good faith to obtain and provide such information to an accused defendant.

Here, the DNA of Albert Lauro Jr. was identified by the Innocence Project's DNA laboratory and provided to Law Enforcement. However, since the information has been provided, the Prosecutor and HPD have steadfastly declined any disclosure of the Lauro investigation to the Innocence Project Team and to this Court, simply stating that it is "under investigation". The Prosecutor and HPD have argued that this case is a civil proceeding for compensation, and is not governed by the Brady line of cases. Indeed, this is not a pretrial prosecution discovery matter, this is far worse. This is a proceeding to establish Actual Innocence of two brothers who were wrongfully convicted 24 years ago, and in which one brother has served over 25 years of incarceration as a result of the wrongful convictions. It is the right of Albert Ian Schweitzer and Shawn Schweitzer to review evidence in the custody of the HPD which is relevant to their determination of Actual Innocence, without further delay.

The July 24, 2024 DNA Test Report (Dkt 145) identifies Albert Lauro Jr. as the exact match for Unknown Male #1 with a Likelihood Ratio of Thirty Quadrillion (30,000,000,000,000,000) to one. The mere existence of such a number is inconceivable to most people in this world. The test's likelihood of accuracy can be better understood by comparing it with the entire population of the planet Earth (approximately 8 billion (8,000,000,000) people. The Likelihood Ratio of another person matching Albert Lauro Jr's DNA profile to the DNA found upon multiple items of evidence in this case is 3.75 million (3,750,000) times the entire 8 billion person population of Earth.

In all practical reality, the investigation into Albert Lauro Jr. and the murder of Dana Ireland is over. The surveillance fork DNA test confirmed Albert Lauro Jr. as Unknown Male #1 on July 1, 2024. HPD admittedly had a court-ordered search warrant for a *confirmatory* DNA swab of Albert Lauro Jr. based upon probable cause for Murder, after the surveillance fork DNA test. HPD questioned Mr. Lauro on July 19 and released him, and he committed suicide on July 23, 2024. Investigations may continue by HPD and other agencies, with appropriate scrutiny and review, but the determination of Actual Innocence of Albert Ian Schweitzer and Shawn Schweitzer is long overdue and shall not be further delayed by Law Enforcement. Such a delay could take years. It is the Schweitzers' right as post-conviction exonerees, to avail themselves of all information held by Law Enforcement which tends to support their Actual Innocence. Accordingly, although Brady v. Maryland's holding may not technically apply, this Court adopts the Brady v. Maryland principles of due process and good faith obligations of Law Enforcement as being applicable and enforceable in this HRS Chapter 661E case.

Accordingly, IT IS HEREBY ORDERED that the Motion to Quash is DENIED.
Any and all such information relevant to this case now in possession of the Hawaii County

Police Department has been provided to the court for *in camera* review and inspection on August 5, 2024. The court will review and order redaction of any necessary information, and will order the Hawaii County Police Department, through their attorneys to disclose the redacted copies to the parties. The Court will make an individualized determination as to whether any evidence shall be subject to a protective order, and which evidence shall be filed unsealed for public review.

The Hawaii County Police Department shall have a continuing duty to supplement information covered by the Subpoena Duces Tecum, as it becomes available in this case, with supplemental responses, along with certification of the Custodian of Records, each Wednesday hereafter by 10:00 am, until further ordered by this Court. The said Custodian may make such production through delivery to the Court with a declaration made under oath, and need not appear to be sworn in person.

The Court will reserve the unsealing of Docket items 131 and 152, previously filed under seal, until disclosure of the items which are subject to this Order are addressed.

DATED: Hilo, Hawaii, AUG 15 2024



Peter K. Kubota,
Judge of the Above-Entitled Court
Division 1



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Public Safety

Big Island Police Didn't Have Probable Cause To Arrest Suspect For Dana Ireland's Murder, Chief Says

The suspect, Albert Lauro Jr., committed suicide after he was determined to be the source of semen and other DNA found on Ireland's body and around the crime scene in 1991.

By Madeleine Valera / July 29, 2024

Reading time: 6 minutes.



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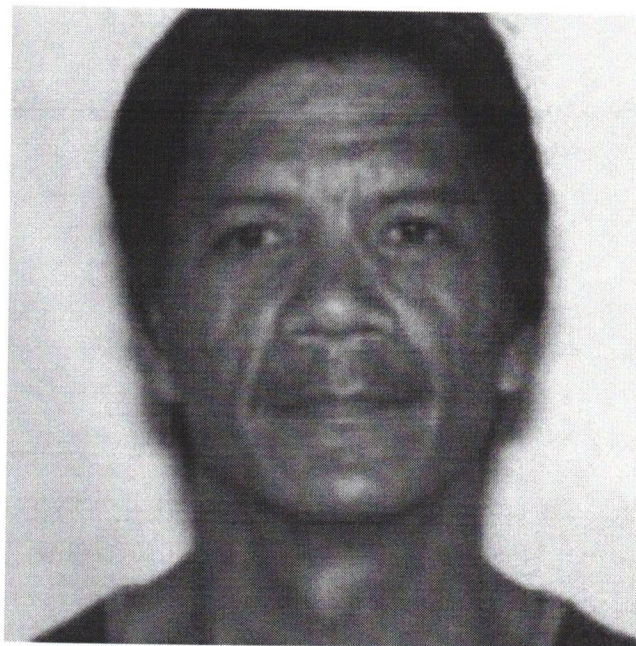
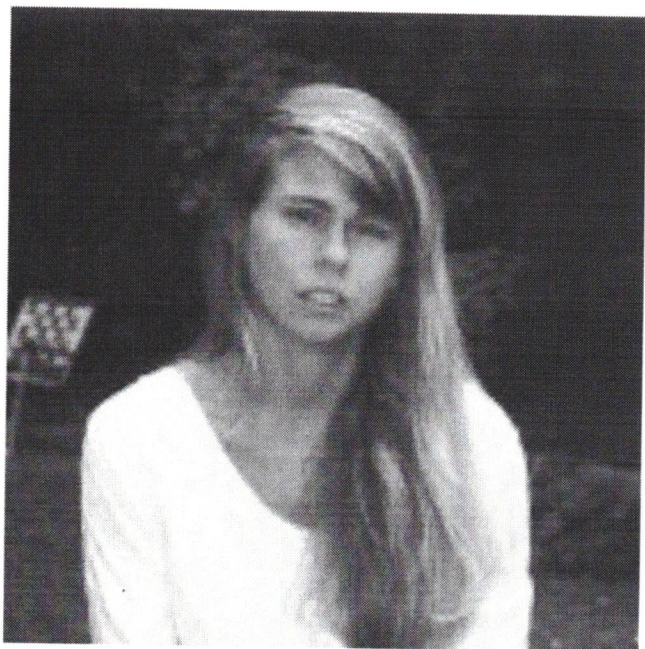
53

Hawaii island police Chief Ben Moszkowicz said police didn't have probable cause to arrest a new suspect in the 1991 Dana Ireland murder case before he killed himself last week.

The suspect, 57-year-old Albert Lauro Jr., of Hawaiian Paradise Park, was recently confirmed to be the source of semen and other DNA retrieved from Ireland's body and a T-shirt soaked with Ireland's blood found near the crime scene.

APPENDIX "B"

Ireland, a 23-year-old visitor from Virginia, was hit on her bicycle, raped, beaten and left on a fishing trail in Puna on Christmas Eve 1991. She died the next day at Hilo Medical Center.



The Hawaii Police Department on Monday released a photo of Albert Lauro Jr. alongside a photo of Dana Ireland. Lauro was a suspect in Ireland's murder, but police said they didn't have probable cause to arrest him before he killed himself last week. (Hawaii Police Department)

The DNA evidence that identified Lauro was enough to show that he sexually assaulted Ireland, but the statute of limitations had expired to charge him with rape, Moszkowicz said. Police lacked probable cause to bring him in on a murder charge.

"We felt then and we continue to feel that the presence of Lauro's DNA at the crime scene was in and of itself not sufficient to prove that Lauro intentionally or knowingly caused her death," he said.

Lauro agreed to meet with detectives at the Hilo police station on July 19 and spoke with them for an hour, Moszkowicz said. Officers took a court-ordered cheek swab of Lauro before letting him go.

Moszkowicz would not share what was discussed at the police station but said, "Nothing from that conversation gave us any additional evidence that we could



Hawaii island police Chief Ben Moszkowicz told reporters that detectives were exploring other avenues of investigation, including searching Lauro's phone and speaking to those who knew him. The Hawaii and New York Innocence Projects have accused the department of mishandling the case. (Tim Wright/2024)

Moszkowicz said if police had arrested Lauro on July 19 without probable cause, they would have risked that any evidence gleaned following his arrest, including a confession, would be excluded from an eventual prosecution.

He said after Lauro left the station, police hoped he would continue to cooperate. Any future decision to indict Lauro would have been made by the prosecutor's office based on evidence provided by the police department.

But Innocence Project attorneys say the department did have probable cause to arrest Lauro, and his suicide has now left investigators with few avenues to find out what really happened to Ireland.

Hawaii Innocence Project co-director Ken Lawson said Lauro had a wife, children and grandchildren, and police should have known he would be a suicide risk after finding out he was a suspect.

Lauro's Facebook page is filled almost exclusively with pictures of him fishing with family and friends and showing off his catches.

He had almost no criminal history, according to court records. Moszkowicz said he was arrested on a shoplifting charge in 1987 but has an otherwise clean criminal record.

A message left at a phone number listed for Lauro's home was not returned Monday evening.

Moszkowicz said police were searching Lauro's cellphone and interviewing other witnesses, including family members and friends. He asked anyone with information about the case to contact the department.

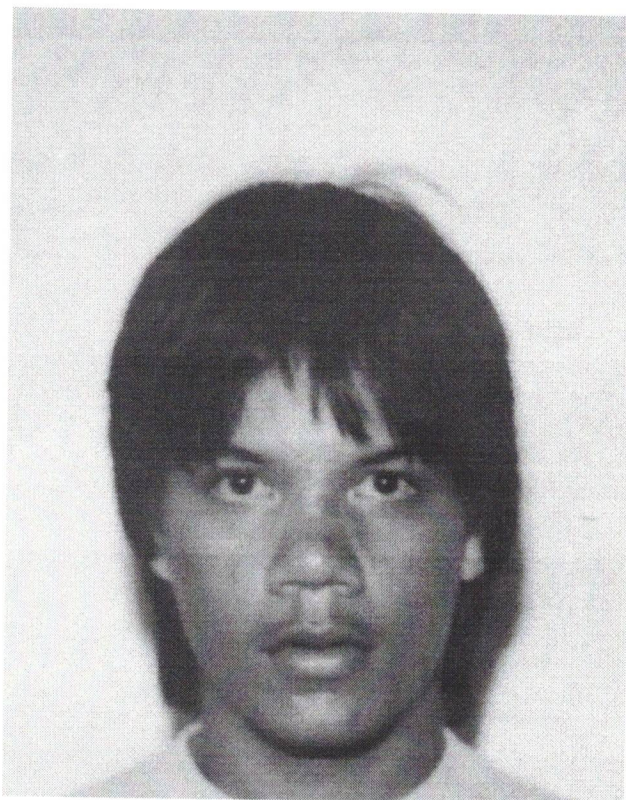
"We remain committed as we have since day one to solving this case," he said.

"Ultimately, it is our responsibility to provide justice for the victim."

But in its filing, Innocence Project attorneys accuse the department of having a conflict of interest because of its earlier arrest of suspects later exonerated. The attorneys represent Albert Ian and Shawn Schweitzer, two brothers who were convicted of Ireland's murder in 2000 and exonerated last year.

A hearing is scheduled for Tuesday morning in Hilo Circuit Court on the motion, which asks the court to compel the police department and prosecutor's office to release all documentation and evidence related to its investigation of Lauro.

Ian Schweitzer was released from prison on Jan. 24, 2023, after spending 26 years behind bars for Ireland's murder. His brother Shawn had his conviction overturned



A mugshot of Lauro when he was arrested on a shoplifting charge in 1987. Lauro had no other criminal record. (Hawaii Police Department)

on Oct. 23 of that year. A third man who was convicted of Ireland's murder, Frank Pauline, was killed by another inmate in a New Mexico prison in 2015. A [posthumous exoneration](#) for him has been delayed.

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Third Circuit, State of Hawaii,)	JUDGE
))
Respondent Judge.))
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and))
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ALBERT IAN and SHAWN SCHWEITZER,))
))
Respondents.))
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document was electronically served on the following party on August 18, 2024:

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DATED: Honolulu, Hawaii, August 18, 2024.

/s/ Keith S. Shigetomi