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SCPW-24-0000537

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII POLICE DEPARTMENT,
COUNTY OF HAWAII,

Petitioner,

vs.

THE HONORABLE PETER K. KUBOTA,
Judge of the Circuit Court of Third Circuit,
State of Hawaii,

Respondent.

ORIGINAL PROCEEDINGS

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

PETITIONER'S SUPPLEMENT TO
RECORD ON APPEAL; EXHIBITS "G"- "I";
CERTIFICATE OF SERVICE

CIRCUIT COURT OF THE THIRD
CIRCUIT

HONORABLE PETER K. KUBOTA

PETITIONER'S SUPPLEMENT TO RECORD ON APPEAL

EXHIBITS "G"- "I"

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PETITIONER’S SUPPLEMENT TO RECORD ON APPEAL

Comes now Petitioner, HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I (“HPD”), by and through its undersigned attorney, E. BRITT BAILEY, and hereby provides this Court with the supplement to record on appeal per Order of the Supreme Court of the State of Hawai‘i, filed August 8, 2024 (“Order”).

On August 8, 2024, Petitioner submitted to the Circuit Court *Expedited Request for Written Transcript*, Dkt. 191, for the July 30, 2024 hearing in 3CSP-23-0000003 and 3CSP-23-0000017. On August 20, 2024, Petitioner received the written transcript for the July 30, 2024 hearing from Ms. Brown, Supervising Court Reporter, Second Circuit Court, attached hereto as Exhibit “G”.

On August 5, 2024, Petitioner submitted to the Circuit Court *Expedited Request for Written Transcript/Recording of Proceedings*, Dkt, 180, for the August 5, 2024 hearing in 3CSP-23-0000003 and 3CSP-23-0000017. On August 20, 2024, Petitioner received the written transcript for the August 5, 2024 hearing from Ms. Brown, Supervising Court Reporter, Second Circuit Court, attached hereto as Exhibit “H”.

On August 8, 2024, Petitioner submitted to the Circuit Court *Expedited Request for Written Transcript*, Dkt. 192, for the August 7, 2024 hearing in 3CSP-23-0000003 and 3CSP-23-0000017. On August 20, 2024, Petitioner received the written transcript for the August 5, 2024 hearing from Ms. Brown, Supervising Court Reporter, Second Circuit Court, attached hereto as Exhibit “I”.

Petitioner additionally requested recordings of the hearings of July 30, August 5, and August 7, 2024. On August 20, 2024, Petitioner received the recordings of July 30, August 5,

and August 7, 2024. Petitioner is ready and able to file copies of the recordings if further directed by this Court.

Dated: Hilo, Hawai'i, August 20, 2024.

HAWAI'I POLICE DEPARTMENT, COUNTY
OF HAWAI'I

By: /s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel
Its Attorney

EXHIBIT G

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

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)	
ALBERT IAN SCHWEITZER,)	
SHAWN SCHWEITZER,)	
)	
)	3CSP-23-0000003
Vs.)	3CSP-23-0000017
)	
STATE OF HAWAII, ET AL.,)	TRANSCRIPT OF
)	ELECTRONICALLY
Defendants.)	RECORDED PROCEEDINGS
)	
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TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS
had before the Honorable Peter K. Kubota, Circuit
Court Judge presiding, on Tuesday, July 30, 2024, in
the above-entitled matter.

Transcribed by:

Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

EXHIBIT G

1 APPEARANCES:

2

3 Attorneys for Petitioners:

4 William A. Harrison

5 Barry Scheck

6 Keith S. Shigetomi

7 Jennifer L. Brown

8 L. Richard Fried, Jr.

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16 Attorneys for Respondent Office of the Hawaii
State of Hawaii: County Prosecuting
Attorney

17 Shannon Kagawa

18 Michael Kagami

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IN EVIDENCE :

1 THE COURT: Good morning.

2 MS. KAGAWA: Good morning, your Honor.
3 Shannon Kagawa and Mike Kagami for the State.

4 THE COURT: Good morning. So we have
5 several matters to deal with today. First of all,
6 might as well get to the State's motion to continue
7 this matter. State's asking to continue the hearings
8 on the grounds that there's continuing investigation
9 and they wish to continue for three weeks.

10 Mr. Harrison.

11 MR. HARRISON: Your Honor, we would --

12 MS. KAGAWA: Sorry. Just to clarify,
13 only regarding the petition for the 661(b), not the
14 motion to compel, your Honor.

15 THE COURT: Okay. So noted.

16 MR. HARRISON: Your Honor, we would
17 oppose that, strongly oppose that motion. We have
18 had ample time to put this matter to rest. It's been
19 ongoing for way too long. We've got ample evidence as
20 to who the killer of Dana Ireland is. The State had
21 that evidence for a long period of time. The police
22 have had that evidence and they -- unfortunately,
23 your Honor, they have botched that evidence and
24 caused the unknown male, Mr. Lauro, to commit
25 suicide. And we're just appalled at procedures that

1 were undertaken in this case, especially since we had
2 asked them specifically to take --

3 THE COURT: Okay. We can deal with
4 that --

5 MR. HARRISON: -- certain precautions.

6 THE COURT: -- at the appropriate time
7 Mr. Harrison. We're just talking about the motion to
8 continue.

9 MR. HARRISON: So we would strongly
10 object to the motion to continue.

11 THE COURT: Mr. Shigetomi, your
12 position.

13 MR. SHIGETOMI: Your Honor, we're
14 objecting. I think we already discussed the matter
15 and the Court will take argument if there's a need to
16 reopen based upon whatever is produced in the motion
17 to compel. The Court indicated it (inaudible) we can
18 go forward with what we're prepared to do.

19 THE COURT: All right. The Court will
20 also note that the motion for finding of actual
21 innocence was filed by Ms. -- by the Schweitzer
22 brothers on March 7, 2024. I thought it was May but
23 it's March. April, May, June, July -- that's almost
24 five months ago that this motion has been pending.
25 And the State filed its response on Friday, last week

1 Friday, as I ordered them to do.

2 So the Court is prepared to go forward
3 on this motion for finding of actual innocence. But
4 prior to today's hearing, new matters have come up
5 which are of material importance as to the motion for
6 finding of actual innocence. So prior to getting to
7 the motion for a finding of actual innocence, the
8 Court will hear the arguments on the motion to
9 preserve and the motion to compel discovery.

10 So, Mr. Harrison, are you prepared to
11 proceed on that?

12 MR. HARRISON: Yes, your Honor. We are
13 prepared to proceed.

14 THE COURT: Mr. Harrison, just a
15 question for you: Are any of your associated counsel
16 on Zoom going to argue? Is it going to be the
17 counsel present?

18 MR. HARRISON: I think that Mr. Scheck
19 is going to argue as well.

20 THE COURT: All right. I see
21 Mr. Scheck. All right. So at the right time, we'll
22 bring Mr. Scheck into the courtroom for his argument.

23 Go ahead, Mr. Harrison.

24 MR. HARRISON: Yes, your Honor. Your
25 Honor, I'm not going to go into the details and facts

1 of this case. This Court has lived with these facts
2 for many, many months and the Court understands
3 because the Court issued an order exonerating our
4 client in this matter, but there's certain salient
5 facts that happened since that time that I think it's
6 important for all the parties.

7 THE COURT: I'm sorry. One moment.
8 Can I interrupt you. Can you please bring the
9 microphone as close to Mr. Harrison as possible or if
10 you can stand or at this microphone, Mr. Harrison.

11 MR. HARRISON: Sure.

12 THE COURT: Stand at the podium because
13 we need to make a complete record and we need the
14 audio to be clear for everyone participating to hear
15 the arguments.

16 MR. HARRISON: Thank you, your Honor.

17 THE COURT: So you can start all over.

18 MR. HARRISON: Yes, your Honor. And
19 I'm just noting that this Court has had this case for
20 many, many months and the Court issued a decision on
21 the exoneration, so the Court's very familiar with
22 the facts. I'm not going to spend too much time on
23 the facts here. But what's important is since the
24 time of this Court's order, we have actually put
25 together information to give and assist the State in

1 finding this unknown male and all the material, all
2 the information out there is that the State has
3 actually done this. No, we have assisted them in
4 finding this individual. We actually did most of the
5 groundwork in doing that.

6 And since that time, as you know from
7 yesterday's pronouncement by the chief of police
8 here, they spent a period of time with this
9 individual, Mr. Lauro, interviewing him and
10 apparently they had video going at the same time of
11 the interview as well as statements and apparently
12 some discussion with some witnesses relative to this
13 matter as well.

14 All of that information is really
15 important. It's information that a this Court should
16 have in making decisions in this matter. And we had
17 asked them for this information over and over again,
18 as the Court knows. We had status conferences on
19 this.

20 The State has taken the position that
21 they do not have to give us that information because
22 of the fact that they believe that's an ongoing
23 investigation. Notwithstanding that, your Honor,
24 the individual that committed this offense is dead.
25 So whatever ongoing investigation they have with

1 reference to that individual is not pertinent to what
2 we're having the Court decide in this matter and
3 that's actual innocence, in fact, the information we
4 believe will assist this Court in making that
5 determination.

6 So we're asking the Court for all the
7 matters that have -- we've asked for in our motion to
8 compel in this matter. There's information that
9 we're seeking that we believe the Court can take in
10 camera, review it before deciding whether to release
11 that, and more importantly, your Honor, we're also
12 asking the Court to review communications between the
13 FBI and local police in setting this matter up as
14 well as getting the probable cause -- and we believe
15 there's ample probable cause to charge Mr. Lauro in
16 this case -- but whatever correspondence and e-mails
17 went back and forth between the FBI agent in this
18 matter as well as the local police and the
19 prosecutors.

20 Now, I know the prosecuting attorney is
21 going to argue that is work product and confidential
22 and privileged communication. We'll let the Court
23 decide that. There's been so much error in this
24 case, not that we don't believe the State when they
25 say something, but we want to make sure that we get

1 what we're entitled to, and we believe the Court
2 could be the gatekeeper in that regard by taking all
3 the information that we requested in this motion in
4 chambers and decide what the Court will turn over to
5 us. So in short, your Honor, we believe we're
6 entitled to this information.

7 THE COURT: All right. And is
8 Mr. Scheck going to argue next, Mr. Harrison?

9 MR. HARRISON: I believe he may.
10 Mr. Scheck.

11 THE COURT: All right. Let's enable
12 Mr. Scheck's audio.

13 MR. SCHECK: Thank you, your Honor.

14 THE COURT: Good morning, Mr. Scheck.

15 MR. SCHECK: Good morning.

16 One of the things that we really wanted
17 to focus on we -- laid it all out, of course, in the
18 motion to compel is that the FBI agents here, it's
19 clear, was working with local police. She was
20 trained on how to do this genetic genealogy. We had
21 retained Steven Cramer, who found the Golden State
22 Killer and had developed really a way of rapidly
23 doing the searching involving artificial intelligence
24 tools and other training data to find the unknown
25 male, and his papers indicate, you know, we consulted

1 with him and as early as February 7th. He
2 transferred this information to local police and an
3 FBI agent was working with them, you know, to
4 actually do the covert collection of a fork that
5 Mr. Lauro had disposed.

6 They got DNA from that fork, and the
7 lab that we had been working with immediately
8 determined -- well, determined very quickly that he
9 was, indeed, Unknown Male No. 1.

10 And so we have maintained throughout
11 the trial, our clients have and during
12 post-conviction, that there were inappropriate and
13 improper procedures used to convict our clients in
14 terms of the jailhouse informants and, of course,
15 Mr. -- there was testimony from one of the
16 defendants, who has now passed, that, in fact, he was
17 being fed information and that's how he came to make
18 a confession in this case.

19 So all of that raised serious issues
20 and as a consequence, we really -- we went out of our
21 way -- as the Court knows, we asked our colleagues
22 when we got this information to go get an arrest
23 warrant and a search warrant for Unknown Male No. 1.
24 At that time that was on July 6th -- 2nd. On
25 July 1st, we got this information that it was,

1 indeed, Albert Lauro, Jr., and they said to us that
2 they had no authority -- they thought some of the
3 ideas we were giving them were good but they had no
4 authority to tell the police what to do. And we said
5 to them and to you in chambers, we believe that they
6 had probable cause to arrest him for murder.

7 And I'm going to defer to my
8 co-counsels, Mr. Harrison and Mr. Shigetomi, about
9 Hawaiian law on this, but it was clear to us that
10 this was a homicide, a murder by omission, because as
11 you know, Judge, the DNA testing of the Jimmy Z
12 T-shirt shows that it was Mr. Lauro's DNA; that he
13 was wearing it, not Frank Pauline which in both Ian
14 Schweitzer's case and Frank Pauline's case the
15 position of the prosecution was Frank Pauline wore
16 that T-shirt. They even brought in witnesses who
17 said that was the T-shirt that Frank Pauline wore.
18 In fact, we know Albert Lauro, Jr., wore that
19 T-shirt.

20 And now, Judge, if you go back and look
21 at the photos, you'll see there was blood on the back
22 of that T-shirt and blood on the front of that
23 T-shirt, including Mr. Lauro's DNA. And what that
24 plainly indicates, I think, to any homicide
25 investigator or any prosecutor is that he took Dana

1 Ireland's body and flipped it over onto his
2 shoulders. And what the DNA testing shows without
3 question is that he had sexual intercourse with Dana
4 Ireland. His semen was on the vaginal swabs. His
5 semen was on the gurney. There was even a semen
6 stain on the Jimmy Z t-shirt. It's all Albert Lauro,
7 Jr.

8 So what we have is Dana Ireland
9 bleeding profusely at that scene, and this man is
10 having sex sexual intercourse with her. And as we
11 all know, that is a very difficult place to get to
12 with vehicles, right. And all the tread marks were
13 from what appeared to be pickup trucks, you know, not
14 exactly where her body was but before it. And it
15 even took the ambulances a long time to get there.

16 The cause of death in this case is that
17 she bled out. So these prosecutors knew and we told
18 them that Mr. Lauro had sex with a bleeding Dana
19 Ireland -- DNA evidence shows that indisputably --
20 and then left the scene leaving her to bleed out and
21 die.

22 Now, if that's not probable cause for
23 homicide, I don't know what is. And the worst part
24 of this is the motion to compel shows -- we told them
25 that in front of you, your Honor, and they said we

1 can't tell the police what to do. We notified the
2 United States Attorney's Office who told us well,
3 it's something for the Attorney General, but don't
4 worry. If the FBI agent who has been working on this
5 case as part of it -- it will all be handled
6 appropriately.

7 We then sent a letter, as the motion to
8 compel shows and the Court knows, to our colleagues,
9 the prosecutors, laying it all out and saying what
10 they should do. And we made it clear in the
11 conference to you and we made it clear in the letter
12 and we made it clear in the brief discussions we had
13 with the first assistant to the Attorney General, it
14 was our fear that if they did not bring Mr. Lauro
15 into custody, that he would flee, destroy evidence,
16 or kill himself because that -- plainly, for a man
17 that is living with the knowledge that he had sexual
18 intercourse with Dana Ireland while she was bleeding
19 in that area, he knows that there's a good chance
20 that he is going to be indicted for murder or
21 certainly brought up -- you know, arrested for
22 murder.

23 So if you bring him in and you ask him
24 for a swab at the police station and you tell him
25 it's about the Dana Ireland case, which is what the

1 news conference yesterday the police indicated they
2 did, right, he is going to know that he is going to
3 be picked up and potentially charged.

4 Now, the idea that they didn't have
5 probable cause for charging him with murder as
6 opposed to rape is deeply, deeply troubling. And we
7 told them again and again that there was this danger
8 that he would flee, destroy evidence, or kill
9 himself. So we really would like to see all the
10 communications with the FBI agent who stood ready to
11 assist them in the last part of this and we
12 specifically suggested it. As our motion to compel
13 indicates, there was a discussion between the
14 Attorney General's Office and the police department
15 about what they were going to do. We think we should
16 see that as well.

17 And, you know, the police chief
18 yesterday at his press conference said well, we only
19 had probable cause here for rape and the statute of
20 limitations has run on that but I'm not a lawyer. I
21 don't really know these things about, you know, the
22 standards. Well, you know, he should have asked
23 somebody, right. Where maybe he was told -- because
24 people that know the evidence in this case, know that
25 it indisputably shows that Lauro had sexual

1 intercourse with her while she was bleeding at the
2 Wa'a Wa'a scene and left her there to bleed out and
3 die. That is homicide.

4 Now, I leave it to Mr. Shigetomi and
5 Mr. Harrison to argue that point further with the
6 Court because they are Hawaiian lawyers and they know
7 this from their own experience in cases. And
8 Mr. Shigetomi, I think, is prepared to point out to
9 the Court that when Shawn Schweitzer was indicted,
10 this same theory of homicide by omission was used
11 against him because the Frank Pauline statement
12 arguably had Shawn just observing everything that was
13 going on and not having sexual intercourse with
14 Ms. Ireland.

15 So it is so important, as this Court
16 knows, that there be a finding for our clients and
17 for, I think, the people of Hilo and Hawaii and the
18 nation to know that our clients are actually
19 innocent. And that press conference yesterday and
20 the continued statements by the police department
21 that our clients are somehow involved in this is
22 deeply, deeply troubling because the evidence
23 supporting that is literally nonexistent or certainly
24 nothing more than jailhouse informants and statements
25 that have been proven to be false, indisputably, by

1 DNA testing, who wore the Jimmy Z T-shirt and what
2 happened.

3 So I couldn't be more troubled by this,
4 and we will be submitting to you, your Honor, in the
5 next day after you decide this motion to compel an
6 affidavit from Steven Cramer, who is the person that
7 gave them the information to find Mr. Lauro, who is
8 the person that trained all the 200 FBI agents how to
9 do genetic genealogy testing, who found the Golden
10 State Killer, who is an experienced investigator,
11 former US attorney, FBI agent, and he has never heard
12 of anything like this and is deeply, deeply
13 disturbed, so we will submit that to you.

14 And the reason I am telling you this
15 now and the reason that we were so extensive in our
16 motion to compel as to all the authorities that knew
17 this was going on and our very, very clear statement
18 to the police department here and to our fellow
19 prosecutors that if they didn't bring this man into
20 custody, that there was danger that he would flee,
21 destroy evidence, or kill himself, I would -- I am
22 so, so deeply troubled by their failure to do it.
23 And I would just submit I can't -- I have no
24 reasonable explanation for it other than they did not
25 want him to be charged and they did not want his case

1 to be investigated. That's my concern.

2 So I think we really need all that
3 produced, particularly any videotape, and they
4 indicated they videotaped the statement from him. It
5 is highly relevant and probative.

6 And finally as to my colleagues on
7 their issue of exculpatory evidence, ABA Rules 3(g)
8 and (h) are very clear, that our colleagues have an
9 ethical obligation to disclose exculpatory evidence
10 in a post-conviction setting, and certainly since
11 this is still a post-conviction proceeding, the Brady
12 obligation applies to us -- you know, our clients.

13 Thank you, very much, Judge, for your
14 patience in this matter. I am sorry if I am upset
15 and, perhaps, raising my voice here and I apologized
16 yesterday and our robing room conference for being so
17 passionate about this. But I've been doing this
18 since 1992, innocence cases, and a lawyer since 1975
19 and I can't tell you, I have never been more
20 disturbed by the conduct of law enforcement here
21 because we made it as clear as day that if they
22 didn't arrest him to take a swab, certainly there was
23 a clear danger he would kill himself because,
24 obviously, there was probable cause to believe he
25 committed a murder.

1 THE COURT: Thank you, Mr. Scheck.

2 Is there anyone else speaking for Ian
3 Schweitzer? If not, I'm going to ask Mr. Shigetomi
4 to speak for Mr. Shawn Schweitzer.

5 MR. SHIGETOMI: Your Honor, in regards
6 to the motion to compel, we'd simply join it. I'm
7 not sure if it's clear, but it is a joint motion. I
8 don't -- because we have two separate case numbers,
9 if the Court wants, I can ask the Court to take
10 judicial notice of Mr. Ian Schweitzer's case, but I
11 can file a copy of that.

12 THE COURT: The Court will take
13 judicial notice of the proceedings and the findings
14 of fact and conclusions of law and order in 3CSP
15 23-003 as applicable to your case, but it is the same
16 underlying facts. And this is a joint motion to
17 preserve evidence, joint motion for actual innocent;
18 right?

19 MR. SHIGETOMI: Yes.

20 THE COURT: So you may argue,
21 Mr. Shigetomi.

22 MR. SHIGETOMI: Well, I just simply say
23 we'll just join in the arguments.

24 THE COURT: You have nothing else to
25 add?

1 MR. SHIGETOMI: Not as to the motion to
2 compel.

3 THE COURT: All right.
4 State, your argument.

5 MS. KAGAWA: Your Honor, State will be
6 brief as to this. As far as the motion to compel,
7 I'm not sure what -- how -- what their argument --
8 why they're entitled to this information, but I heard
9 Mr. Scheck argue Brady. Brady applies for accused
10 criminal defendants. At this point, there is no
11 criminal case against either Ian Schweitzer or Shawn
12 Schweitzer.

13 The Court in the Rule 40 hearing
14 against Albert Ian Schweitzer vacated the conviction
15 and then dismissed the underlying criminal case, so
16 there's no criminal case. As for Shawn Schweitzer,
17 we withdrew the motion and then we dismissed the
18 underlying criminal case. So, again, is there is no
19 criminal case against him as far as Brady. It
20 wouldn't apply as well as Rule 6(b).

21 I guess, talking about the
22 communications that Mr. Scheck had mentioned -- I
23 think Mr. Harrison had mentioned as well -- I don't
24 see how any communication would be relevant to any
25 determination of actual innocence.

1 THE COURT: Meaning any evidence of the
2 proof of Albert Lauro as the killer is not relevant
3 to the determination of actual innocence of these two
4 people?

5 MS. KAGAWA: The communication
6 between -- I think he was talking about communication
7 between the police as well as our office and the
8 police and the FBI.

9 THE COURT: What about the -- any
10 videotaped interview of the one time that Albert
11 Lauro was in police custody or in police presence on
12 July 19, 2024, videotaped interview? I understand
13 Chief Moszkowicz disclosed and I have not received
14 any information from the Office of the Prosecutor
15 anything in this matter. Chief Moszkowicz and the
16 Prosecutor's Office stood behind this wall saying
17 this is a matter of -- under investigation for not
18 confirming any evidence to me.

19 So the only evidence I have is what
20 police Chief Moszkowicz stated in his press release,
21 that there was a videotaped interview on July 19th
22 when Mr. Lauro came into the police station. What is
23 your position regarding the videotaped interview?

24 MS. KAGAWA: Your Honor, there is -- as
25 we stated, there is an ongoing investigation. As the

1 police chief -- I didn't watch what he stated but I'm
2 sure he said there was still an ongoing investigation
3 involving this matter.

4 THE COURT: So if there is a video as
5 Moszkowicz stated, what is the State's position
6 regarding the disclosure of this information, this
7 videotaped interview?

8 MS. KAGAWA: That, your Honor, it might
9 be relevant, but at this time we don't believe that
10 they're entitled to it.

11 THE COURT: Why? And I asked you
12 before, I believe, three times in our confidential
13 conferences. What investigation is still ongoing?
14 The murder was committed. The only person delivered
15 as being Unknown Male No. 1 has now committed
16 suicide, and your office wasn't even able to disclose
17 that to me. You're unwilling to even disclose that
18 fact at our conference. I believe it was two days
19 after he died. What ongoing investigation is there?

20 MS. KAGAWA: Into the murder or the
21 death of Dana Ireland.

22 THE COURT: All right. That is your
23 position, that there is still an investigation
24 ongoing into the death of Dana Ireland. And so the
25 State is opposing disclosure of any evidence

1 regarding the investigation of Unknown Male No. 1
2 that is sought to be produced?

3 MS. KAGAWA: Yes, your Honor.

4 THE COURT: All right. Now, you said
5 that this is not a criminal proceeding and Brady
6 rights don't apply. The State's position is that the
7 Schweitzer brothers are not entitled to an
8 determination of actual innocence and you're opposing
9 that. So the actual innocence is still a matter in
10 contention; right?

11 MS. KAGAWA: Yes, it is.

12 THE COURT: So --

13 MS. KAGAWA: But it's not a criminal
14 matter.

15 THE COURT: It's not a criminal matter.
16 It's a special proceeding. They're no longer
17 criminal defendants. And Mr. Schweitzer has now
18 served 25 years in custody as a result of this
19 wrongful conviction so he's already served -- so
20 you're saying even if he's already served, he's not
21 entitled to this evidence to prove that he was
22 actually innocent because he's no longer now a
23 criminal defendant?

24 MS. KAGAWA: Not at this time, your
25 Honor.

1 THE COURT: All right. Any rebuttal,
2 Mr. Harrison? Come forward to the microphone,
3 please.

4 MR. HARRISON: Your Honor, we agree,
5 this is a civil proceeding. But as the Court knows
6 having sat in civil matters, we have a right as civil
7 attorneys or civil plaintiffs to obtain information
8 from the opposing parties. And I would point out
9 here, your Honor, this is a little bit different.
10 Actually, the Prosecutor's Office is not the opposing
11 party in this matter with regard to the request that
12 we're making. It's the police department.

13 We're asking the Court to give us the
14 subpoena power to obtain these records from the
15 police department. If they have an objection to
16 it -- these individuals are not here to complain
17 about that objection. It's going to be the county
18 attorneys. Their attorney is going to explain.

19 So we're asking the Court just give us
20 the right to issue a subpoena. And this is basically
21 under the Town provisions. We have to go through
22 this process. If we want information, we have to ask
23 the Court through a motion to compel to allow us to
24 get subpoenas so we can actually serve the proper
25 parties here, and that's the Hawaii Police Department

1 for these items. And we believe that they are
2 relevant to the civil proceeding, highly relevant to
3 the civil proceeding, so we're entitled to them.

4 THE COURT: All right. I'll note that
5 the deputy corporation counsel for the Hawaii County
6 Police Department is present in the audience. I'm
7 going to rule on this motion to preserve evidence and
8 to compel discovery.

9 The Court finds that the investigation
10 into the person who was previously known as Unknown
11 Male No. 1, who is now identified as Albert Lauro,
12 Jr., is material and relevant to the determination of
13 the actual innocence of Ian Schweitzer and Shawn
14 Schweitzer and is necessary and very compelling for
15 these parties to avail themselves of any kind of
16 exculpatory information that may have arisen from the
17 investigation into Albert Lauro, Jr.

18 Therefore, the Court will grant the
19 motion to preserve evidence and compel discovery and
20 I'll set a date. The parties may submit a request
21 for issuance of a subpoena duces tecum. I will have
22 it returnable on Thursday -- let's look for a
23 Thursday morning. I believe 9:00 or 10:00 would be
24 an appropriate return date. Thursday --

25 THE CLERK: Return will be August 1st

1 at 9:30.

2 THE COURT: All right. We'll continue
3 this for a return date on the return of subpoena
4 duces tecum, August 1, 2024, 9:30 a.m., subject to
5 the corporation counsel and Hawaii Police
6 Department's -- any dispute they may have and a
7 motion to quash the subpoena.

8 The subpoena duces tecum shall be
9 issued with all the documents and evidence listed in
10 the motion to preserve evidence filed by Mr. -- the
11 two Schweitzer brothers. So we will return with that
12 evidence.

13 Now, as to the motion to determine
14 actual innocence, do the parties wish to make the
15 arguments and subject to supplement after any
16 documents are revealed and produced?

17 And for the record, the documents
18 produced by the Hawaii County Police Department shall
19 be submitted in camera for my review as to whether or
20 not said documents can be disclosed to the
21 petitioning parties.

22 So do you wish to proceed with the
23 motion for determination of actual innocence today?

24 MR. HARRISON: Yes, your Honor.

25 THE COURT: All right. Mr. Harrison,

1 you may proceed.

2 MR. HARRISON: Your Honor, I'm going to
3 have Mr. Scheck start this argument off, your Honor,
4 if that's okay with the Court.

5 THE COURT: All right. Mr. Scheck, you
6 can proceed.

7 MR. SCHECK: Thank you, your Honor.

8 Actually, Mr. Harrison, as you know,
9 was on -- and Mr. Lawson were on the committee that
10 decided on the term "actual innocence" in the statute
11 that governs here, I guess 661(b). The issue of
12 actual innocence actually has -- we believe that in
13 the accordance with the statute that -- and I think
14 the statute references it, the burden on us is to
15 prove innocence by a preponderance of the evidence.
16 It is in other jurisdictions sometimes -- and even I
17 would argue, the United States Supreme Court has said
18 in the Davis case that one can prove actual innocence
19 by clear and convincing evidence.

20 In a way as far as that standard is
21 concerned, I don't think it really -- for purposes of
22 this case, I don't think it matters which standard
23 applies because we meet them all, arguably, and I
24 don't want to assume this standard. I think we have
25 now proven beyond a reasonable doubt that our clients

1 had nothing to do with this. All the evidence that
2 was put before them is false that led to their
3 conviction and that, in fact, they were innocent
4 beyond a reasonable doubt. That's what the DNA
5 shows. And we certainly are interested in seeing
6 what Mr. Lauro said on a videotape. But there is no
7 connection to our clients here at all.

8 You know, the cause of death is that
9 she bled out. Mr. Lauro was the person that had
10 sexual intercourse with her at that time at that
11 location. So there is no -- not a scintilla of
12 credible evidence that ties our clients to this case.
13 So in terms of the -- any actual innocence standard,
14 our clients should be -- merit that adjudication and
15 finding so their names can be cleared. And I think
16 that the Ireland family deserves that kind of
17 adjudication, that these men are actually innocent.

18 That would help a lot because, frankly,
19 with the -- you know, what the innocence
20 organizations in this case have done, and I think as
21 the Court well knows, is that we -- and we didn't
22 work cooperatively for a long time with our
23 colleagues, but we actually identified who Unknown
24 Male No. 1 was or Mr. Lauro. That cooperation
25 disappeared and the agreement was -- they pulled out

1 of the agreement -- let's just put it this way -- the
2 cooperation agreement, and that is so, so troubling.
3 But I think it's obvious any way you look at the
4 evidence, any way you look at the standards, that
5 these men are actually innocent.

6 And I'm not even mentioning -- I should
7 mention the final thing. You know what ties them to
8 this case? The idea that they had -- they were in a
9 Volkswagen. It makes no sense. The tire tread
10 evidence, as this Court well knows better than any of
11 us because you were quite attentive to that --
12 there's no evidence of a Volkswagen at this scene.
13 And the idea that -- their theory of the case that a
14 bleeding Dana Ireland and three men were in this
15 Volkswagen at the crime scene is not in any way
16 corroborated by the evidence.

17 And, perhaps, most important of all,
18 that Jimmy Z T-shirt was the key evidence in the case
19 in both the Frank Pauline case and Ian Schweitzer
20 case. They were saying oh, it was Frank Pauline. He
21 was there. That's his shirt. They even brought in
22 witnesses to testify, I seen that shirt and I can
23 tell you that is his shirt, right, which was
24 incredible to think about in retrospect.

25 There's that T-shirt shows that Albert

1 Lauro, Jr., was the one that -- he had sexual
2 intercourse, was the one that put the bloody Dana
3 Ireland over his shoulder on that shirt, and he's the
4 one that let her bleed to death at the crime scene
5 which is a murder.

6 THE COURT: One question first,
7 Mr. Scheck. You mentioned the cooperation agreement.
8 Explain that. There was a note that during the
9 pendency of the earlier case that the State and the
10 Innocence Project lawyers worked cooperatively to
11 review the evidence, again for conviction integrity.
12 That agreement you said fell apart.

13 MR. SCHECK: Well, yes. We do have
14 e-mails. I'm sure that our colleagues would agree to
15 share them. The -- what happened is that we had this
16 cooperation agreement. Then after the conviction was
17 vacated, they said that they no longer wanted to
18 participate in the cooperation agreement. And this
19 will help explain all the filings, I think, in the
20 motion to compel.

21 What happened was that they wanted to
22 use the FALC Crime Lab, right, to do DNA testing in
23 this matter. And we told the crime lab -- frankly,
24 that we did not trust the local police. We did not
25 because, you know, it's clear from the evidence in

1 the case and the contentions that we've made all
2 along, that the jailhouse snitch testimony was
3 fabricated. Frank Pauline said that his so-called
4 confession was fabricated.

5 And this extremely disturbing
6 proceeding that happened with Lincoln Yoshida where
7 they claim that Shawn Schweitzer had passed a
8 polygraph where he indicated that he was guilty of
9 this crime when, in fact, a polygraph was given, the
10 polygrapher told Mr. Shigetomi that when
11 Mr. Schweitzer was saying that he was guilty, he came
12 up deceptive.

13 And as the Court and the prosecutors
14 know, we subsequently had a very well-regarded
15 polygrapher come and give Mr. Shawn Schweitzer a
16 polygraph test which he passed with flying colors,
17 but the most troubling part of it is a representation
18 was made to the Court that he had failed it.

19 Now, obviously, he we can lay it out
20 and the Court knows from the proceedings with Shawn
21 Schweitzer that his brother, Ian, had urged him to
22 take a plea because of his children and protection of
23 his family, right, and so he did that. But what
24 troubles me about me about that whole proceeding with
25 the polygraph and trying to tell the whole community

1 in Hawaii, the world, that he was guilty and his
2 brother was guilty and Frank Pauline was guilty, when
3 we looked at the police reports that our colleagues
4 shared to us in the joint investigation agreement,
5 there were no polygraph charts. So everything that
6 Mr. Shigetomi has told us that transpired, that the
7 lead detectives who was asked can you live with an
8 inconclusive and still give Shawn the plea, all the
9 evidence corroborates that that actually happened.

10 So that is so troubling -- so we told
11 the laboratory no. We -- we hired you. We paid for
12 this. We do not want you to do any DNA testing for
13 the Hilo Police Department because they have a
14 conflict of interest unless we approve of it.

15 And so what subsequently happened is
16 that we worked out an agreement with Ms. Kagawa and
17 the laboratory that any DNA testing they did on any
18 matter concerning this case, they would immediately
19 notify the Innocence organizations and the district
20 attorney at the same time. That's how we first found
21 out on July 1st because they sent us the results of
22 the DNA test on the fork -- that there had been a
23 convert collection of a folk that was showed it was,
24 indeed, Mr. Albert Lauro, Jr., who was Unknown Male
25 No. 1.

1 And then when on July 19th they brought
2 him in to get a swab and apparently videotaped him --
3 and this is so troubling to us, Judge, because they
4 know that that laboratory is in California. So when
5 they get a swab from him on July 19th and send it,
6 they know they're closed on Sunday -- Saturday and
7 Sunday, right. So as soon as they got that, they did
8 a DNA test. And on July 24th, we were first notified
9 that they had done this swabbing of Mr. Lauro.

10 So that's how we first knew that they
11 had gotten that. But that's why we didn't -- by that
12 time, he was dead. By that time, he was dead. And I
13 saw that -- well, I won't say anything more about
14 that.

15 But that is -- I think, Judge, unless
16 Ms. Kagawa believes I'm misstating anything, I would
17 love to hear it. That is, I think, the way that the
18 cooperation agreement broke down. As a matter of
19 fact, as I recall one of her e-mails to me about that
20 was that they wanted to end the joint cooperation
21 agreement because letting the police department
22 continue with the investigation itself would be,
23 quote unquote, cleaner. Unfortunately, that's not
24 what happened.

25 THE COURT: Mr. Schweitzer -- I recall

1 the private conference on July 2nd in which you
2 raised all of the concerns regarding the proper
3 handling of the DNA evidence and the subsequent
4 investigation, and I recall what you said accurately
5 about the prosecutor saying that we can't tell the
6 Hawaii Police Department what to do.

7 One thing that's unclear to me is you
8 mentioned the DNA test on the covertly collected fork
9 was submitted for testing and results were found on
10 July 1st identifying this as Albert Lauro, Jr. What
11 date was the covert collection conducted? I did not
12 see that in any of the documents submitted.

13 MR. SCHECK: It actually was in a
14 police report when we got the rule -- the results, it
15 reflected, I think, a police report from Detective
16 Morimoto so I don't, off the top of my head, remember
17 the date, but it wasn't very long after the fork had
18 been swabbed and the sample had been sent to a lab.

19 And I really want to emphasize that,
20 you know, this is -- as opposed to other cases where
21 there's a CODIS hit, this was a case where the police
22 themselves observed Mr. Lauro use a fork, and I think
23 that the police chief said yesterday, put it in a
24 container that was then retrieved from the garbage.
25 So there's no doubt -- there's no -- there's no

1 untruth -- there's no real investigative need for
2 another swabbing, right, because they saw with their
3 own eyes him eating from that fork and then saw the
4 DNA results come back to Mr. Lauro.

5 So -- and I'm sure that -- I know that
6 from Mr. Cramer, who is really the expert on this,
7 and I'm sure you will see that in his (inaudible).

8 THE COURT: Explain to me the
9 difference between a CODIS hit -- what is a CODIS hit
10 versus the fork that was collected from the covert
11 surveillance.

12 MR. SCHECK: Sure. Sometimes, like in
13 this case, there was a full DNA profile that would be
14 submitted into CODIS that was obtained from the
15 vaginal swabs of and, you know, the semen on the
16 gurney and even the T-shirt, but the point is that
17 was the DNA profile of the man who wore the T-shirt
18 and whose semen was found in Ms. Ireland. That was
19 put into a CODIS system.

20 So let's assume for the sake of
21 argument that when they put that profile into the
22 CODIS system, it hit an individual who had a prior
23 criminal record, whose profile is in the system, that
24 would be a hit. Under those circumstances when --
25 and they identified that individual -- they would

1 arrest him, bring him in, and they would take a swab
2 from him again to be sure that there wasn't a sample
3 handling error of any kind and that, in fact, his DNA
4 profile from the swab they took when -- he was in
5 custody, would come back, you know, to him.

6 In this instance, what makes this case
7 as clear as day about why they should have brought
8 him into custody to take a new swab is that with
9 their own eyes, they saw him eat with that fork and
10 then they sent that DNA sample to the lab and it came
11 back matching the evidence at the crime scene. Any
12 homicide detective that saw that would immediately go
13 and get an arrest warrant and bring him into custody,
14 and, frankly, it wouldn't even need an arrest warrant
15 with that kind of information. They would go get him
16 for murder, not rape, not rape alone.

17 THE COURT: Okay. Thank you.

18 Mr. Shigetomi, are you going to have
19 argument?

20 MR. SHIGETOMI: Yes, your Honor.

21 THE COURT: All right. I'm going to
22 take a short recess. We'll come back in five
23 minutes. It's about 9:26. We'll come back shortly
24 after 9:30.

25 THE CLERK: All rise.

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(At which time a recess was taken.)

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THE CLERK: All rise. Court is reconvened. You may be seated.

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MR. HARRISON: Your Honor, I apologize but can I speak on one of the points you raised initially in this case?

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THE COURT: All right. Mr. Harrison, you may finish and then we'll call Mr. Shigetomi.

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MR. HARRISON: Thank you, your Honor. Your Honor, one of the questions that you asked right from the get go in this matter is what's the standard of proof with regard to 661(b). And I wanted to point out to the Court that as the Court is aware, that Ken Lawson and myself were on that task force the legislature had put together to actually draft this bill. And in our revisions, we did have an actual standard of proof, but apparently as it went through all the permutations as it does through the legislature, this is the bill that came out.

23

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But what I argue to the Court is this -- under 661(b)(3), judgment and awards, it says the petitioner shall have the burden of proof by

1 preponderance of the evidence. And we would argue
2 that the law says that you take the statute and pair
3 (inaudible) to other provisions, and this is in
4 provisions with regard to 661(b).

5 So although the legislature may have
6 left out the standard when defining innocence, actual
7 innocence, I think that the Court can comfortably
8 write that and find that the standard of proof here
9 is preponderance of the evidence based on 661(b)(3).
10 But I would agree with my colleague here, that
11 whatever standard the Court determines here, we've
12 met that proof.

13 And I want to touch upon just two real
14 quick matters here. Number one, one of the things
15 that's important is that the whole reason why these
16 two individuals were actually roped into this matter
17 was the fact that some jailhouse snitches said they
18 were involved. And one of the affidavits we
19 presented to the Court was my affidavit. We went up
20 to Saguaro -- and this has got to be ten -- maybe ten
21 years ago today -- with an investigator Justin Yentis
22 (phonetic) from Arizona, from -- I believe he was
23 attached to the Innocence Project in Arizona -- and
24 we interviewed Michael Ortiz, which is one of the
25 main witnesses the State had in this case.

1 And Mr. Ortiz told us that his
2 testimony that he gave to the Court was not true;
3 that, in fact, he got some benefit from testifying on
4 behalf of the State in the case, and he got some --
5 the State apparently offered him something with
6 regard to his parole. I don't know -- exactly know
7 the facts of that or remember the facts of that, but
8 he had mentioned he had lied, and, in fact, the whole
9 testimony he had given was given to him by the
10 investigator who went up from the Hawaii Police
11 Department and the prosecutor at the time to actually
12 give him facts that he didn't know about to testify
13 to.

14 So that whole idea that there were
15 other individuals that gave testimony as to what
16 these gentlemen said, Mr. Albert Ian Schweitzer said,
17 is incorrect. That individual was debunked by his
18 own words that he had lied to the Court at that time.

19 Additionally, you've heard ample
20 evidence that Ms. Ireland -- she bled out during the
21 course of these matters. The Jimmy Z T-shirt was
22 totally filled with blood. One of the theories that
23 the State is on and continues perpetuate here is that
24 somehow this VW was involved. That VW was taken
25 apart. There was not a shred of DNA evidence found

1 in that VW. If, in fact, Dana Ireland was hit at a
2 scene and taken to this road in Wa'a Wa'a in the VW,
3 there would have been some evidence of any DNA in
4 that.

5 THE COURT: I recall the DNA test that
6 there was no blood evidence, there was no hair
7 evidence from about 14 items of hair or so that was
8 taken from the VW.

9 I'd also note regarding the VW, that
10 Ian Schweitzer registered the vehicle in his name
11 over a month after the date of the crime which would
12 perplex anybody on why a culpable criminal defendant
13 would register a vehicle in his name after the crime
14 was committed.

15 I'd also note that the evidence in that
16 matter showed that the grease from the VW did not
17 match the grease on Dana Ireland's bicycle.

18 MR. HARRISON: Absolutely.

19 THE COURT: A question for you -- you
20 mentioned Mr. Ortiz -- because I believe you folks
21 had included your declaration regarding your
22 interview with Mr. Ortiz, and this is the -- what's
23 his name? William Ortiz?

24 MR. HARRISON: This is Michael Ortiz.

25 THE COURT: Michael Ortiz was the

1 person that the State referenced in their objection
2 to your motion to determine actual innocence.

3 MR. HARRISON: Right.

4 THE COURT: And that I should consider
5 his testimony, and you personally interviewed Michael
6 Ortiz at Saguaro --

7 MR. HARRISON: At Saguaro.

8 THE COURT: -- and he admitted that he
9 lied that he said that Ian Schweitzer confessed to
10 him.

11 MR. HARRISON: Absolutely. And one
12 further thing on that path there: Mr. Ortiz was
13 involved with Mr. John Gonsalves' niece. They had a
14 relationship. And John Gonsalves had also asked him
15 to assist the police. And just down that line, your
16 Honor, I want to make sure that the Court can sort of
17 follow this whole theory here.

18 Frank Pauline, which was the other
19 codefendant in this case, he had no relationship with
20 the Schweitzer brothers at all. Mr. Pauline had a
21 relationship -- was a cousin of this guy John
22 Gonsalves who was involved in a drug deal, and
23 Mr. Pauline testified and agreed to be -- assist the
24 government in this case, specifically to help his --
25 John Gonsalves. Okay. That's why he agreed to

1 testify clearly. It's in the evidence here.

2 He later on recanted his testimony
3 saying that he had lied. Okay. But Mr. John
4 Gonsalves was related through this relationship with
5 Mr. Ortiz. And so that's how Mr. Ortiz also was sort
6 of prodded to assist in not only helping himself out
7 to get of jail, but help to perpetuate this whole
8 theory of the Schweitzers and Mr. Pauline.

9 These folks had no relationship to
10 Mr. Pauline. There would be no reason why they would
11 have -- even if they chose to get into their
12 Volkswagen and drive off, they would have him in
13 their Volkswagen.

14 THE COURT: One more question for you,
15 Mr. Harrison: You're an officer of this Court.
16 You've said that you talked to Mr. Ortiz about HPD
17 feeding Mr. Ortiz with information of the case. Now
18 I'm counting on you as an officer of the Court, you
19 personally heard Mr. Ortiz tell you what?

20 MR. HARRISON: That the prosecutor and
21 the investigator -- now whether that investigator was
22 from the Prosecutor's Office or HPD, he didn't say.
23 He said I can't tell you which, but it was an
24 investigator they came over there with to sit down
25 with me. They brought me some omiyage. We ate. And

1 they told us -- basically told me facts that I did
2 not know to put into this statement that I was going
3 to give the Court. That's what he told us.

4 THE COURT: And Mr. Ortiz testified in
5 the criminal trial against whom? Against Pauline and
6 Ian Schweitzer?

7 MR. HARRISON: Exactly.

8 THE COURT: All right.
9 Mr. Shigetomi -- is that all, Mr. Harrison?

10 MR. HARRISON: Yes, your Honor. Thank
11 you.

12 THE COURT: Okay. Mr. Shigetomi, go
13 ahead.

14 MR. SHIGETOMI: Just as an aside, your
15 Honor, I also spoke to Mr. Ortiz when this case was
16 active and Mr. Ortiz asked me if I could help him in
17 any way, so for whatever that's worth.

18 So we're here, your Honor, for the
19 actual innocence. And we fully recognize that Shawn
20 has the burden of proof, and so I guess the first
21 question is what is that standard of proof?

22 Mr. Harrison is correct. 661(b) says
23 it's by a preponderance of the evidence that the
24 petitioner was actually innocent. We cited a federal
25 statute that uses the clear and convincing standard.

1 As Mr. Scheck said, we believe that the proof
2 surpasses preponderance of the evidence as well as
3 clear and convincing. And I think -- we urge the
4 Court to acknowledge both standards, to say that
5 regardless of what the standard is, that we have met
6 that standard and that will protect the record in
7 this case.

8 In terms of well, what does actual
9 innocence mean? No one's really said what it means.
10 We know that the -- the Intermediate Court of Appeals
11 in Gildy (phonetic) Vs. State faced that problem, but
12 they never really answered the question for us. They
13 looked at the legislative history which says that if
14 a person can demonstrate they were wrongfully
15 convicted and imprisoned when actually innocent,
16 that's what the purpose of the statute was.

17 And the Supreme Court in State Vs.
18 Kamanu, which the ICA referred to in Gildy, used
19 language he did not commit the offense of which he
20 stands convicted, i.e., that he is actually innocent.
21 As I said, Gildy Vs. State, there was no definition
22 provided. The government in Gildy offered the
23 standard that the government here offers, which is
24 factual innocence, not mere legal insufficiency, but
25 there is nothing to indicate that this is what the

1 standard is.

2 As we indicated, the federal law uses
3 the language, in light of new evidence, no reasonable
4 juror would have found him guilty beyond a reasonable
5 doubt. And I would just say that after the contested
6 hearing, this Court has already concluded that the
7 newly discovered evidence, newly presented evidence
8 was credible and relevant; that the Court further
9 concluded that the new DNA and bite mark evidence,
10 newly presented tire tread evidence, and the recent
11 recantation of Shawn conclusively proved that in a
12 new trial, a jury would likely reach a verdict of
13 acquittal, which is the federal standard, and clearly
14 the Court has already ruled that that standard had
15 been met. You know, in pidgin we might say, "He
16 never do 'em." But under any definition, I think
17 it's quite clear that Shawn is actually innocent. As
18 we said in our memo, I know it when I see it.

19 So the question is, well, what is the
20 evidence of the actual innocence? And I think I've
21 been involved in this case longer than anyone in this
22 courtroom and I just have two questions that I'd like
23 to have answered: What did Shawn do to make him
24 guilty? And what proof do you have?

25 Well, what's the proof at the bike

1 crash scene, which nobody witnessed? The only
2 evidence that we can rely on is the tire tread
3 evidence, and we've already seen that the newly
4 presented tire tread evidence was that the Volkswagen
5 did not leave the tire marks and that was probably a
6 larger vehicle such as a truck. And as I said
7 before, the Court has already found that to be
8 credible and persuasive.

9 What about the crime scene? Again, no
10 one witnessed it. The only evidence we have is the
11 biological evidence. The Jimmy Z T-shirt, the pink
12 panty, the pubic comb, the vaginal swab, the hospital
13 gurney sheet showed that the only DNA present was
14 Dana Ireland and Albert Lauro, Jr. Shawn's DNA was
15 not present. There is no blood or DNA found in the
16 Volkswagen. There is no evidence to show that Shawn
17 was involved, no evidence to show that Shawn was even
18 present much less guilty.

19 So if you look at the State's memo,
20 they submit two reasons why the Court should not find
21 Shawn to be actually innocent and the first one is,
22 is that Shawn pled guilty. Well, if you look at what
23 the plea form says is that Shawn pled guilty to
24 manslaughter by omission and kidnapping by omission.
25 That was the poison pill that was placed in the plea

1 agreement because there are no such charges that
2 exist legally as manslaughter by omission and
3 kidnapping by omission. He pled guilty to charges
4 that do not exist. By omission -- if you look at the
5 plea form, Shawn didn't admit to doing anything
6 illegal. He admitted he did nothing, literally
7 nothing.

8 So yeah, okay. We agree Shawn pled
9 guilty, but it's also true that the State stipulated
10 to allow Shawn to withdraw that guilty plea, and we
11 all know that the standard to withdraw a plea after
12 sentencing is that Shawn -- Shawn must prove manifest
13 injustice and the State knew that.

14 A person can't just come to court and
15 say well, I changed my mind, I mean, even if it's
16 23 years later. And as the Court knows, the
17 prosecutors never agreed to that. They opposed every
18 request until this case.

19 Now, I'm not a magician. I can't put a
20 spell on anyone or pull a rabbit out of a hat. I'm
21 just a lawyer. But the State on their own agreed to
22 withdraw -- allow Shawn to withdraw his plea based on
23 manifest injustice. For them to agree to that, there
24 had to have been manifest injustice. And on top of
25 that, they agreed to dismiss Shawn's case on its own.

1 We didn't even have to ask. It's their choice.

2 There's no spells. There's no rabbits.

3 If Shawn was not actually innocent
4 because he pled guilty, then why did they allow him
5 to withdraw his guilty plea and dismiss the case
6 against him when they did not have to? And the
7 reason is, is that they believed that he was actually
8 innocent. They just can't say it.

9 Now, the State also argued that Shawn
10 was not actually innocent because he gave a statement
11 detailing Ian's and his involvement and Shawn's
12 involvement that maybe consistent with Albert Lauro,
13 Jr., only involved at one of the crime scenes.

14 We submitted an exhibit in two parts
15 that are at Docket 64 and 66 in Shawn's case, and
16 that is the report of Dr. Richard Leo. And Dr. Leo
17 in his opinion stated that the statements -- Shawn's
18 statement to Guillermo and the change of plea
19 statement met the criteria of proven false
20 confessions.

21 Now, the statement that the State
22 refers to is the statement that was given to then
23 Detective Guillermo as part of a proffer which was a
24 condition that was required before the plea agreement
25 would be approved and it also required that a

1 polygraph exam be passed as part of the plea
2 agreement. And as Mr. Scheck has indicated, Shawn
3 did not pass the polygraph, and I know because I was
4 there and I'm the one who spoke to the polygrapher as
5 well as Detective Guillermo. Despite that, Shawn
6 still got the plea agreement.

7 So the State says well, look at the
8 statement that Shawn made to Detective Guillermo.
9 They included it as an exhibit. And I say yeah, go
10 ahead. Look at it. What did he say? He did not
11 admit to anything he did that was wrong. He said the
12 Volkswagen hit the bicycle, which we know is not true
13 because the Court has already found that that's not
14 supported by the newly presented evidence.

15 Shawn said Frank sexually assaulted
16 Ms. Ireland, which we already know not to be true
17 which the Court found not to be supported by the
18 newly supported DNA evidence. And with the Court's
19 findings and the conclusions, the State at this point
20 is not permitted to challenge them.

21 And I think of major importance is that
22 at no time in that statement, at no time in his
23 change of plea, at no time in his life did Shawn ever
24 mention or hint of Albert Lauro, Jr.'s involvement.
25 We know Lauro raped Ireland. So how is Shawn's

1 statement that he did nothing -- no mention of
2 Mr. Lauro -- consistent with Lauro only being present
3 at one crime scene?

4 I have another question I'd like to
5 have answered and that is, in the statement to
6 Guillermo, why would Shawn implicate his brother,
7 Ian, and not implicate Albert Lauro, Jr.? Doesn't
8 make any sense. Shawn had no idea Lauro raped
9 Ireland because Shawn and Ian weren't there when
10 Lauro did it.

11 Think to yourself. Why would Simba
12 want to kill Mufassa? Doesn't make any sense. It's
13 a false statement shown by the scientific facts and
14 the failed polygraph, and the State's argument
15 against the actual innocence fails.

16 You know, on December 24th, 1991, at
17 4:45 p.m., Ida Smith was about to start cooking
18 Christmas Eve dinner when she heard the sounds of
19 screeching tires. She then heard a soft voice
20 asking, "Help me. Help me." And when Ida went
21 outside to check on what she heard, she found Dana
22 Ireland. Dana had been beaten and raped. Without a
23 telephone, Ida could only stay with and comfort Dana
24 while they both prayed, and somebody finally drove by
25 Ida, asked them to call for help.

1 The first call to police was made at
2 5:47 p.m., over an hour after Ida first heard Dana
3 ask, "Help me. Help me." At 6:03 p.m., a police
4 officer finally responded to their location to help.
5 And when the police arrived, Ida asked him, go get
6 your first aid kit so they could tend to Dana. The
7 police officer didn't have one. He said it was
8 optional to carry one. It wasn't optional. It was
9 mandatory for officers to carry first aid kits. That
10 officer didn't follow proper police procedure.

11 And during those anxious moments,
12 precious time ticked away. Ida asked the police
13 officer, can we put Dana in a car and just take her
14 to the hospital? And the police officer said it
15 might not be a good idea to move her. So in the
16 darkness, all they did -- all that they could do was
17 wait for help to arrive. It took the ambulance over
18 an hour after the first call for help was made to get
19 there. That was over two hours after Ida first heard
20 Dana say, "Help me. Help me."

21 Dana died of severe blood loss which
22 might have been avoided if the first aid kit had been
23 available and the ambulance didn't take over an hour
24 to arrive, and the County settled a lawsuit for
25 \$452,000.

1 Well, after Dana's death, her parents
2 asked for help, but it was not in a soft tone like
3 Dana. They were angry. They called the police
4 incompetent. They called the police corrupt, and the
5 community echoed the sentiments.

6 And years went by and the police were
7 no closer to solving the case than they were when it
8 first happened. With nowhere else to turn to and the
9 need to save face, they turned to two criminals who
10 claimed to have information, but with criminals,
11 there's always an itch that needed to be scratched.
12 You scratch my back; I'll scratch yours. But they
13 had no place to go, so the police went down the
14 rabbit hole with John Gonsalves and Frank Pauline,
15 taking Gonsalves and Pauline's words at face value
16 and they had no value. The police took the bait hook
17 line and sinker. Welcome to Wonderland.

18 Blinded by the need to solve the case,
19 the police and prosecutors charged Ian and Shawn
20 Schweitzer with murder, kidnapping, and rape. They
21 had no one else. Then something happened; something
22 came up the police never anticipated. The DNA at the
23 crime scene didn't match Ian and Shawn. All of the
24 DNA at the crime scene belonged to one person who
25 became known as Unknown Male No. 1. Oh, that pesky

1 DNA.

2 At a loss of what to do, the cases
3 against Shawn and Ian were dismissed, and once again
4 the cries of police incompetent and corruption rang
5 out. But the police still had nothing. What were
6 they to do? They just basically said we got nothing
7 else. Let's just go for it. And then Monty Hall
8 came to Hilo. The slime provided by more criminals
9 with their hands asking for deals, the police and
10 prosecutors kept pounding until they forced a square
11 peg into a round hole, and what do you know, it
12 worked.

13 A community desperate for conviction
14 blindly bought the Swiss cheese. They ignored the
15 DNA. They ignored the fact that no one could tell
16 them who this Unknown Male No. 1 was. They ignored
17 common sense. But if the DNA didn't fit, you must
18 acquit but not in Wonderland.

19 Updated and more advanced DNA testing
20 increased the size of the holes in the Swiss cheese,
21 and newly discovered DNA evidence pointed again to
22 Unknown Male No. 1 and no one else. Oh, that pesky
23 DNA.

24 Ian's and Shawn's convictions could no
25 longer stand up to the weight of the overwhelming

1 evidence of innocence. The Court believed the
2 science and not the convicts. No reasonable juror
3 would find guilt. Ian's conviction was vacated, and
4 at their own request, the State dismissed the case
5 against Shawn.

6 But the story doesn't end there. Since
7 we were last in court, science told us even more. A
8 consultant hired by the defense identified a
9 potential suspect who might be Unknown Male No. 1.
10 That information was shared with the FBI. The FBI
11 agreed with it and agreed that the potential suspect
12 provided by the defense might be Unknown Male No. 1.
13 So they followed him, got the abandoned sample, and
14 as we all know, July 1st, 2024, the State and the
15 defense were informed that the DNA from the abandoned
16 DNA sample matched the DNA of Unknown Male No. 1.

17 At last after almost 33 years, the
18 police knew that Unknown Male No. 1 was Albert Lauro,
19 Jr., and July 19th, the police obtained another
20 sample from Lauro, sent it for additional testing,
21 and in doing so, the police -- Mr. Lauro learned that
22 the police were onto him. For almost 33 years he had
23 gotten away with it.

24 On July 23rd we were informed -- the
25 State was informed that the DNA matched, again so

1 relying on the matching DNA and not the words of
2 convicts. Of course, the police immediately arrested
3 Albert Lauro, Jr. -- well, no, they didn't because
4 just the day before, he committed suicide.

5 Was it proper procedure to arrest him
6 earlier? Was it proper procedure to carry a first
7 aid kit at all times? In our memo we refer to the
8 suicide as the confessional scream. It was loud. It
9 was unequivocal. It was Lauro's final confession: I
10 did it. But in the end, he got away again as he had
11 before. We must be still in Wonderland. Once again,
12 the cries of incompetent and corruption.

13 "Help me. Help me." That was what
14 Dana Ireland asked. The police failed Dana on the
15 day she was attacked. The police failed Dana when
16 they wrongfully charged and convicted Ian and Shawn.
17 The police failed Dana after Ian and Shawn helped
18 them solve her case after prosecuting the wrong
19 people. The police let the guy who did it get away.
20 They let him get away.

21 They will deny it. They will tell you
22 that having the matching DNA wasn't enough. It
23 wasn't enough? They didn't even have matching DNA in
24 Ian and Shawn's case but that didn't stop them from
25 persecuting them, which brings us to today.

1 We ask the Court to allow us to rewrite
2 history, to right the wrong, to correct the 33-year
3 old mistake, declare what the science tells us, what
4 Albert Lauro's final confession tells us, what common
5 sense tells us. Under any definition of actual
6 innocence, Shawn Schweitzer is actually innocent. He
7 didn't do it. It's as simple as A-B-C but in this
8 case it is and has always been spelled D-N-A. Thank
9 you to that pesky DNA. We ask the Court to declare
10 Shawn Schweitzer actually innocent based on the
11 evidence. Thank you.

12 THE COURT: All right. Thank you,
13 Mr. Shigetomi.

14 Does the State wish to respond to the
15 petition?

16 MS. KAGAWA: Your Honor --

17 THE COURT: Can you please come forward
18 to this microphone here. Thank you.

19 MS. KAGAWA: Sorry. If it helps, it
20 was off. Can you hear with this on? The microphone
21 was off earlier. Now I turned it on.

22 THE COURT: Yeah, if you just speak
23 clearly to the microphone because we need to make
24 sure that everyone in the courtroom and people on
25 Zoom can hear you clearly.

1 MS. KAGAWA: I apologize, your Honor.

2 It is on now?

3 THE COURT: Go ahead.

4 MS. KAGAWA: Your Honor, just for
5 housekeeping matters, I just wanted to be clear as
6 far as what the Court is considering, is the Court
7 considering all of the exhibits that have been filed
8 from the very beginning from attached to the joint
9 stipulated facts, all those exhibits as well as the
10 exhibits attached to the initial Rule 40 motion and
11 all the motions that have been --

12 THE COURT: I don't know that I need
13 consider anything beyond -- going back beyond the
14 findings of fact and the joint stipulated facts,
15 though.

16 MS. KAGAWA: Okay.

17 THE COURT: I think the joint
18 stipulated facts and findings of fact and order, I
19 believe, are what the defense counsel are arguing
20 from.

21 MS. KAGAWA: Okay. What I'm going to
22 ask is that the Court consider what was attached, I
23 believe, to the joint stipulated facts, specifically
24 Exhibit 1, the trial transcript regarding State of
25 Hawaii Vs. Albert Ian Schweitzer. I believe it's

1 Docket No. 57 through 82 because I believe it's
2 uploaded.

3 THE COURT: 57 through 82?

4 MS. KAGAWA: Yes.

5 THE COURT: All right. So noted.

6 MS. KAGAWA: There are also police
7 reports that were attached, your Honor. I apologize
8 I didn't write down those police report numbers, but
9 they were also exhibits in the joint stipulated facts
10 I would ask that be included.

11 I'm also asking that the Court include
12 in our exhibit Respondent's Exhibit 1, the transcript
13 of the change of plea hearing of Shawn Schweitzer. I
14 believe that's Docket 130, and State Exhibit 2, which
15 was a statement in Docket 131.

16 THE COURT: All right. That's the
17 statement between Shawn and Officer Guillermo --
18 Detective Guillermo?

19 MS. KAGAWA: Yes.

20 THE COURT: Okay. So noted.

21 MS. KAGAWA: Thank you.

22 Your Honor, the State's position is
23 that actual innocence is factual innocence and not
24 mere legal insufficiency. I know that Mr. Shigetomi
25 brought up the fact that -- and I believe even

1 Mr. Harrison, that there is no definition under
2 661(b) truly of what actual innocence is. So the
3 State's position at this point is to take the
4 definition that was in federal court, factual
5 innocence and not mere legal insufficiency.

6 Mr. Shigetomi brought up something
7 about that not -- in the light of the evidence, not a
8 reasonable jury wouldn't find guilt, I think is what
9 he said. But if I look at that, it means anybody's
10 who's found not guilty at a trial would be considered
11 actually innocent. There's a difference between not
12 guilty and actual innocence and I think that's clear.
13 If not, 661(b) would have said anybody finding
14 someone not guilty and that would open up basically a
15 can of worms.

16 THE COURT: Well, that's the question I
17 asked all of you folks to brief in that -- in the
18 writing of the statute. You know, is there some term
19 of art beyond just plain common sense language that
20 someone who was convicted and incarcerated was
21 actually innocent? That sounds like plain language
22 speaking and I think it's common sense language. But
23 you're stating that the State's position is that they
24 need to prove factual innocence. So if that is the
25 standard you're articulating, please explain that.

1 MS. KAGAWA: Okay. Your Honor, if I'm
2 saying that it's factual innocence, I think the Court
3 has to look at the facts presented. I'm not
4 disputing what's in the findings of fact or
5 conclusions of law. We agree to it. Those are the
6 facts.

7 But it's also fact that Michael Ortiz
8 made a statement. It's also a fact that John
9 Gonsalves made a statement. Those are all facts that
10 the Court has to consider. Yes, the Court also can
11 consider the statement that Mr. Harrison took from
12 Mr. Ortiz in his declaration. Those are both facts
13 they may be conflicting, but those are still facts
14 the Court has to consider.

15 I don't believe that this Court is here
16 to determine the credibility of which one is true.
17 Those are just both facts that are presented.

18 THE COURT: So just say that I consider
19 all the facts in the trial and everything that's been
20 submitted as exhibits in the joint stipulation of
21 facts. Tell me why you believe that these defendants
22 should not be found actually innocent.

23 MS. KAGAWA: Because there's facts
24 where they themselves have made statements that put
25 them at the scene. If you look at the statement in

1 State's Exhibit 2 -- and I'm not going read the whole
2 statement -- but Shawn --

3 THE COURT: Yes, I read Exhibit 2, so
4 I'm familiar with the statement that Shawn Schweitzer
5 made. But Mr. Shigetomi's argument was that at the
6 time, that was a proffer before his plea and one of
7 the conditions -- well, the polygraph, which he
8 failed as being deceptive to the facts of this crime,
9 and somehow this polygraph result is not even in the
10 record of all the entire trial documents that were
11 produced in discovery or in this joint investigation.

12 So there was a polygraph.
13 Mr. Shigetomi was the only attorney probably of all
14 of you sitting here who was in this case at that
15 time, and he represented Shawn Schweitzer through
16 that proffer, the interview with Guillermo, the
17 polygraph exam, and he said it came up as deceptive
18 and as a result, Shawn was allowed to withdraw his
19 plea, and the State agreed to withdraw his plea, so
20 then withdraw his plea on the grounds of manifest
21 injustice. So what of this do you believe is still
22 in play that I should consider? I should consider
23 his statements to Officer Guillermo as being reliable
24 facts, reliable admissions?

25 MS. KAGAWA: Yes. Those are statements

1 that he made, your Honor.

2 THE COURT: All right.

3 MS. KAGAWA: That is not deniable. I
4 don't think that Mr. Shigetomi would deny that
5 Schweitzer made those statements.

6 THE COURT: Okay. I'll consider that.

7 MS. KAGAWA: And even with the DNA
8 evidence, your Honor, State's not disputing that the
9 DNA evidence shows that Albert Lauro's DNA wasn't
10 deemed to be wasn't (inaudible) or Ms. Ireland's body
11 was found, but there's no evidence to say that they
12 were not involved as well.

13 Even if you believe Mr. Scheck's or if
14 you look at Mr. Schweitzer's statement, he talks
15 about how Ms. Ireland was hit with the vehicle at
16 Scene 1. She was put in the car and taken to Scene 2
17 so --

18 THE COURT: You're talking about the
19 statement in Exhibit 2?

20 MS. KAGAWA: Yes.

21 THE COURT: All right. I read that.

22 MS. KAGAWA: Okay. So even at Scene
23 1 -- and I know they talked about the tire treads.
24 I'm not disputing that Dr. -- Mr. Marvin -- I can't
25 recall his name at the moment -- but the tire tread

1 person took measurement of the tire tread (inaudible)
2 et cetera. I'm not disputing that.

3 But there's no facts to show that those
4 tire tracks at this point were left by anybody even
5 involved in this incident. The testimony came out
6 that these tire tracks were at the scene, and yes, it
7 was recovered, but no there is no testimony or there
8 is no evidence to show that those tire track marks
9 are actually even related to anything that occurred.

10 THE COURT: All right. But as I recall
11 the testimony -- and this is based on police
12 investigation of a murder -- that was the only tire
13 tread evidence taken at the Wa'a Wa'a scene. That's
14 the only evidence of tire tracks. So that is the
15 only thing that police found as being relevant to
16 this murder investigation. So you're saying that the
17 tire tread evidence does not tie into Mr. Lauro?

18 MS. KAGAWA: I don't have any proof
19 that the tire tracks are even related to the
20 incident. As defense as or petitioner has mentioned,
21 that it took the ambulance over an hour to get to the
22 scene; it took police even a while to get to the
23 scene. The scene was not secured as what you may
24 think on TV. It's a gravel road. I don't know who
25 left the tire tread marks. I don't know when the

1 tire tread marks were left.

2 THE COURT: Well, the evidence that the
3 Court made findings on was that it was clear that it
4 was not Ian Schweitzer's '53 Volkswagen Bug that made
5 those tire tracks. That was clear from Mr. Marvin's
6 testimony and I made express factual findings as to
7 that. So it was clearly not his tire tracks.

8 So as far as determination of actual
9 innocence, what does it matter whose tire treads they
10 were? They were certainly not Mr. Schweitzer's.

11 MS. KAGAWA: Right. So we don't even
12 know if they did leave tire track marks.

13 THE COURT: All right. Well, I'll note
14 that the only tire tread evidence taken by the police
15 on this murder investigation which was the subject of
16 Mr. Marvin's analysis so you can move on beyond tire
17 tread.

18 MS. KAGAWA: I think the other -- well,
19 I guess we can go back to John Gonsalves and Michael
20 Ortiz. We talked about Michael Ortiz. They brought
21 up John Gonsalves. John Gonsalves himself also makes
22 statements in the trial transcripts of putting the
23 three of them together on the evening. He comes
24 home. He talks about the Volkswagen being damaged.
25 They're also statements for the Court's to consider

1 that Frank Pauline made statements and that's in the
2 police reports that are attached as exhibits.

3 THE COURT: But I'll note also
4 Mr. Pauline made many statements throughout the
5 course of this case.

6 MS. KAGAWA: Correct.

7 THE COURT: I believe he gave about
8 seven different versions and not every one of them
9 was consistent with each other, and one of them was a
10 recantation of his confession saying I lied. I lied,
11 but you guys don't believe me anymore because I lied
12 so many times.

13 MS. KAGAWA: Correct.

14 THE COURT: The boy who cried wolf,
15 gets caught, right.

16 MS. KAGAWA: Right. But those
17 statements are still made, your Honor.

18 THE COURT: They're still there.

19 MS. KAGAWA: They're still facts that
20 the Court needs to consider in determining if there's
21 actual innocence. There's still facts that he put
22 forward that he -- that he as well as the Schweitzers
23 were involved in these crimes.

24 THE COURT: Okay. I understand what
25 Mr. Pauline's statements were because we went over

1 them many times before. John Gonsalves was the
2 half-brother of Frank Pauline who was arrested or
3 convicted of a drug dealing charge, and Frank Pauline
4 offered to give testimony implicating the Schweitzers
5 in return for favorable treatment for John Gonsalves.
6 So what did John Gonsalves testify to?

7 MS. KAGAWA: He put -- at the trial for
8 Ian Schweitzer, he testified that on the
9 December 24th, 1991, that they had come home or they
10 had come to the house. That Frank Pauline got out of
11 the car and that he said that he recalled Ian and
12 Shawn being there as well as I believe -- I don't
13 know exact words, but he said there was somebody else
14 and he didn't know who it was.

15 THE COURT: Did he testify in Frank
16 Pauline's trial as well?

17 MS. KAGAWA: I believe so.

18 THE COURT: All right. Continue.

19 MS. KAGAWA: But I am not sure that
20 transcript was submitted as part of the record for
21 this case.

22 THE COURT: All right. I just wanted
23 to know. Continue on.

24 MS. KAGAWA: I think the -- one moment.
25 And I think the last portion I really wanted to talk

1 about is what Shawn Schweitzer said. Shawn -- as far
2 as his change of plea, you know, the Court is saying
3 don't consider or that there was a proffer made or
4 unreliability of his polygraph. Shawn Schweitzer
5 came before the Court, signed the change of plea form
6 and did a plea. I think the Court has to consider
7 the fact that he did say that on December 24th, 1991,
8 he was present during the incident in which Dana
9 Ireland was kidnapped, sexually assaulted, and
10 killed. He admitted to that those facts. Shawn
11 Schweitzer himself put himself involved in this
12 crime.

13 The Court has to consider and
14 determined if somebody is actually innocent, the fact
15 that he admitted to his participation and I think
16 with that fact that -- if you take what Shawn's
17 statement is as well as his statement as well as his
18 change of plea, it could still be consistent with the
19 fact that they left her -- left Ms. Ireland at the
20 second scene, in the Wa'a Wa'a scene to die, and
21 that's when Albert Lauro came along.

22 THE COURT: I'm sorry. What did you
23 say, the last part? You mentioned Albert Lauro.

24 MS. KAGAWA: That after they left --
25 after they left her there to die at that scene, that

1 Albert Lauro may have come across her body.

2 THE COURT: Oh, so this -- the theory
3 is that Albert Lauro came across the body after these
4 boys committed the crime?

5 MS. KAGAWA: That could be one theory,
6 yes.

7 THE COURT: All right. Is there
8 anything else?

9 MS. KAGAWA: Nothing else, your Honor.

10 THE COURT: All right. Any response,
11 Mr. Harrison? Mr. Shigetomi?

12 MR. HARRISON: No, your Honor.

13 THE COURT: All right. Go ahead,
14 Mr. Shigetomi.

15 MR. SHIGETOMI: Gee, that maybe Albert
16 Lauro, Jr., came upon a scene and saw Dana Ireland
17 beaten, that he then took the opportunity to rape
18 her? 33 years later they're still grasping at
19 straws.

20 THE COURT: All right. We'll continue
21 this hearing. I'm going to continue the same date
22 and time as the return on the subpoena duces tecum.
23 Obviously, we're not going to have provided any such
24 information to the defense, but just to keep --
25 administratively, keep this case together. We're

1 going to continue this to -- what was it? 9:30?
2 9:30 a.m., August 1st.

3 Parties may appear by Zoom because
4 we're not going to do anything substantive. That is
5 the return date. I will then review in camera any
6 documents which are disclosed by the Hawaii County
7 Police Department, if there is a motion to quash the
8 subpoena. The parties may argue. If you wish to be
9 present in person, you may come. If not, you're
10 authorized to participate by Zoom. And then I'll
11 make any appropriate disclosures to the defense in
12 response to their petition for the motion to compel
13 production, and we'll set a date to continue this
14 hearing for further arguments based on the newly
15 produced evidence and a Court decision.

16 So everybody understand, come back
17 August 1st, just administratively the same date and
18 time as the return of the subpoena duces tecum. The
19 Innocence Project attorneys (inaudible).

20 MR. HARRISON: (Inaudible).

21 THE COURT: Yes, everybody can appear
22 by Zoom. So, Innocence Project attorneys, you'll
23 prepare an order granting your motion to compel
24 production with the subpoena returnable on August 1st
25 at 9:30 a.m. in Courtroom 3D, and we'll proceed from

1 there. Okay.

2 MR. HARRISON: Thank you.

3 MS. KAGAWA: Your Honor, are they also
4 preparing the motion of -- denial of the motion to
5 continue?

6 THE COURT: Yes. Defense can prepare
7 the denial of the motion to continue this hearing.
8 All right. Thank you. See you on August 1st.

9 THE CLERK: All rise.

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11 (AT WHICH TIME THE PROCEEDINGS WERE CONCLUDED.)

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C E R T I F I C A T E

I, Melissa Noble, a Court Reporter of the Circuit Court of the Second Circuit, State of Hawaii, do hereby certify that the foregoing pages, 1 through 72 inclusive, were transcribed to the best of my ability and comprise a full, true, and correct transcript of the proceedings had in connection with the above-entitled cause.

Dated this 19th day of August, 2024.

/s/ Melissa Noble, RPR, CSR 376

Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

EXHIBIT G

EXHIBIT H

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

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)	
ALBERT IAN SCHWEITZER,)	
SHAWN SCHWEITZER,)	
)	
)	3CSP-23-0000003
Vs.)	3CSP-23-0000017
)	
STATE OF HAWAII, ET AL.,)	TRANSCRIPT OF
)	ELECTRONICALLY
Defendants.)	RECORDED PROCEEDINGS
)	
-----)	

TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS
had before the Honorable Peter K. Kubota, Circuit
Court Judge presiding, on Monday, August 5, 2024, in
the above-entitled matter.

Transcribed by:

Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

EXHIBIT H

1 APPEARANCES:

2

3 Attorneys for Petitioners:

4 William A. Harrison

5 Barry Scheck

6 Keith S. Shigetomi

7 Jennifer L. Brown

8 L. Richard Fried, Jr.

9

10

11

12

13	Attorneys for Respondent State of Hawaii:	Office of the Hawaii County Prosecuting Attorney
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14 Shannon Kagawa

15 Michael Kagami

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18	E. Britt Bailey	Corporation Counsel County of Hawaii
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IN EVIDENCE :

1 MR. SHIGETOMI: Good morning, your
2 Honor. Keith Shigetomi along with Raquel Barilla
3 with Shawn Schweitzer.

4 THE COURT: All right. Good morning.

5 MR. HARRISON: And, your Honor, I
6 apologize. I forgot to put Albert Ian Schweitzer's
7 presence on the record as well via Zoom.

8 THE COURT: All right. Good morning.
9 We have -- the main motion that we have to deal with
10 today is the motion to quash subpoena, but we had a
11 motion to unseal evidence that was filed previously.
12 I believe it was last week.

13 Ms. Kagawa and Innocence Project team,
14 that was with regard to the redaction of the DNA test
15 that was filed. The un-redacted version was filed in
16 camera and also the interview by Detective Guillermo
17 of Shawn Schweitzer, I believe, back in 2001. That
18 was filed under seal and there was a request to
19 unseal those documents.

20 Ms. Kagawa, do you have any position?

21 MS. KAGAWA: Your Honor, State would
22 object to the unsealing. As the Court is well aware,
23 there is still a pending investigation in this matter
24 as to the death of Dana Ireland, so based on that,
25 the State would ask that exhibit be sealed. I know

1 that in their motion they mention it may have been
2 disclosed and if it were disclosed prior, I don't
3 know about it. I did not see a copy of whether or
4 not that report was disclosed.

5 THE COURT: So the report simply
6 redacted Mr. Lauro's name, I believe.

7 MS. KAGAWA: Oh, I'm sorry. I was
8 talking about regarding Guillermo.

9 THE COURT: Oh, the police report?

10 MS. KAGAWA: Yes.

11 THE COURT: So what about the FALC
12 report identifying Albert Lauro, Jr.?

13 MS. KAGAWA: Your Honor, that one I'll
14 defer to the Court. It does mention his name in.

15 THE COURT: What is the grounds for the
16 objection for release of the Guillermo report?

17 MS. KAGAWA: As I said, there is a
18 pending investigation into the death of Dana Ireland
19 so based on that, I would ask that report be remain
20 sealed.

21 THE COURT: All right. And being that
22 is a police report, Ms. Bailey, your position that
23 was on the motion to unseal Detective Guillermo
24 interview of Shawn Schweitzer back on 2001.

25 MS. BAILEY: And, your Honor, again,

1 because there is an ongoing criminal investigation
2 into the death of Ms. Ireland, we would request that
3 information remain sealed.

4 THE COURT: Innocence Project Team,
5 what is your position regarding the request to
6 unseal?

7 MR. HARRISON: Your Honor, Bill
8 Harrison on behalf of th Hawaii Innocence Project.
9 We have no objection to the DNA result to be
10 unsealed. Everybody knows the name of the
11 individual, Unknown Male No. 1. That's the only
12 portion that was redacted of that report. I'll let
13 Mr. Shigetomi speak as to the other matter, your
14 Honor.

15 MR. SHIGETOMI: Your Honor, we have no
16 objection to any of the requests.

17 THE COURT: The request to unseal?

18 MR. SHIGETOMI: Correct, your Honor.

19 THE COURT: All right. What I will do
20 is the Court will order unsealing of the DNA report
21 identifying Albert Lauro, Jr., as Unknown Male No. 1.

22 With regard to Detective Guillermo's
23 police report, it's a lengthy report. I'm not sure
24 whether confidential information including protective
25 sensitive information is included in the report.

1 I'll give the Hawaii County Police time to redact
2 anything necessary and submit under seal again for in
3 camera review and I'll consider release of Detective
4 Guillermo's report, and that is the report after the
5 interview of Shawn Schweitzer back in 2021.

6 So today being Monday, County shall
7 have until Wednesday, August 7th at 10:00 a.m. for
8 submission of the redacted Guillermo report. All
9 right. Now we'll get to the main matter, Ms. Kagawa.

10 MS. KAGAWA: Your Honor, just to
11 clarify, you said 2021. It's a 2000 report, just for
12 Guillermo's report.

13 THE COURT: Guillermo report was dated
14 what?

15 MS. KAGAWA: I believe the exact date
16 was 2000 but you had mentioned 2021.

17 THE COURT: No, I mentioned 2001. I
18 thought it was 2001 after the conviction after the --
19 I mentioned 2001. I thought it was 2001 after the
20 convictions.

21 MS. KAGAWA: No, I believe it was -- I
22 apologize, your Honor. I do have it.

23 MR. HARRISON: It's preceding the
24 change of plea.

25 MS. KAGAWA: Yeah, so I think it was in

1 March of 2000.

2 THE COURT: Okay. So the March 2000
3 report of Detective Guillermo and his interview with
4 Shawn Schweitzer shall be redacted as necessary and
5 both copies shall be submitted to this Court by
6 Wednesday, August 7th at 10:00 a for in camera
7 review.

8 Now, as to the substance of your
9 motion, Ms. Bailey.

10 MS. BAILEY: Yes, your Honor. May I
11 come forward?

12 THE COURT: Yes, you may.

13 MS. BAILEY: Good morning, your Honor.
14 Just as a housekeeping matter, I would make a motion
15 to withdraw our motion to quash that was filed the
16 morning of August 1st, 2024, pertaining to a
17 July 31st subpoena that was served on our office.

18 THE COURT: That's your earlier motion;
19 right?

20 MS. BAILEY: Correct.

21 THE COURT: Okay. You may.

22 MS. BAILEY: Okay. Thank you. So
23 we'll just be proceeding on the motion that was filed
24 on August 2nd pertaining to the subpoena that was
25 served on our office on August 1st, and then also,

1 your Honor, the subpoena as well as the order require
2 that we bring the records that we had.

3 THE COURT: Yes.

4 MS. BAILEY: Pursuant to our motion,
5 there was a declaration from Captain Ammon-Wilkens.
6 He was to bring those records this morning. He
7 contacted me very early this morning. He is sick.
8 He won't -- per his declaration, he was the
9 custodian. He did pull those records. They are
10 available. They are sealed. However, Detective
11 Christopher Jelsma has brought them to the Court.

12 THE COURT: All right. He is able to
13 testify?

14 MS. BAILEY: He won't be able to --

15 THE COURT: (Inaudible).

16 MS. BAILEY: He will be able to only
17 testify that he picked up a sealed envelope and
18 brought it to this Court but not as to what's inside.

19 THE COURT: All right. I'll allow
20 you -- if Detective Jelsma is to turn over the
21 document, I'll allow you to supplement with a
22 declaration of -- is it Captain Wilkens?

23 MS. BAILEY: Yes.

24 THE COURT: -- as to the completeness
25 of the records being produced pursuant to the

1 subpoena. You can supplement by a later declaration.

2 MS. BAILEY: Okay. And that
3 declaration was filed as part of our motion, so all
4 of the records were pulled prior to his signing that
5 declaration. Do you want an additional one?

6 THE COURT: No. If there's a
7 declaration attesting to the completeness of the
8 records, then that would suffice.

9 MS. BAILEY: Completeness at this time,
10 yes.

11 THE COURT: As of this time.

12 MS. BAILEY: Yes.

13 THE COURT: So noted.

14 MS. BAILEY: Okay. And then as to our
15 motion, your Honor, the County strongly urges this
16 Court to grant our motion to quash because any
17 release of these requested records contravenes law.
18 Our law states that police reports that are part of a
19 pending investigation at the time of the request may
20 be withheld based upon law enforcement record
21 exemption and the frustration exception to
22 disclosure. This is to avoid impeding an ongoing
23 investigation.

24 Hawaii Revised Statutes 92F-13 bars the
25 disclosure of government records. In this case, the

1 law enforcement records requested would if disclosed
2 otherwise frustrate a government purpose. That
3 government purpose is an ongoing and open criminal
4 investigation based upon brand new developments in
5 the Dana Ireland matter. Given the new developments
6 in this case, Hawaii Police Department's
7 investigation is in its infancy, so much so that many
8 of the requested materials are incomplete and/or not
9 available. Because of the ongoing criminal
10 investigation, any premature disclosure of these
11 records would absolutely jeopardize and/or completely
12 upend the investigation.

13 Judge, we recognize that there is a
14 temporal component to the statute and we're not
15 saying -- or excuse me -- a temporal component to the
16 statute and we're not saying petitioners won't ever
17 get the records. We're simply saying at this moment
18 the investigation is not complete. How could it be?
19 Mr. Lauro was found deceased approximately two weeks
20 ago.

21 Hawaii Revised Statutes 92F-22 provides
22 further legal support to grant our motion to quash.
23 This statute specifically allows police departments
24 to deny record requests for access to pending
25 criminal investigation records. It says that an

1 agency is not required to grant access to information
2 or reports prepared or compiled for the purpose of
3 criminal intelligence or of a criminal investigation
4 including reports of informers, witnesses, and
5 investigators.

6 THE COURT: I'm sorry. What is the
7 statutory citation there?

8 MS. BAILEY: 92F-22.

9 THE COURT: All right.

10 MS. BAILEY: In fact, the intent of
11 that statute is to protect the police's ability to
12 conduct its investigation without interference.

13 We ask that your Honor quash the
14 August 1st, 2024, subpoena duces tecum and allow
15 Hawaii Police Department to conduct and complete
16 their investigation. In the alternative and as
17 stated in our motion, we ask that this Court conduct
18 an in camera review of the available subpoenaed
19 documents to determine what information may be
20 relevant to the petitioners' claims of innocence,
21 recognizing, of course, that many of the subpoenaed
22 documents are at this time incomplete and/or do not
23 yet exist.

24 If such documents exist at this time,
25 we request this Court issue a protective order

1 regarding the confidential materials subject to
2 HRS -- excuse me -- 92F-13 and 92F-22 precluding
3 their use for any other purpose other than litigating
4 in the instance proceeding and barring petitioners,
5 their attorneys, representatives, agents, experts,
6 and all persons, entities, parties acting by through
7 or under or in concert with them from disclosing the
8 confidential and/or statutorily protected documents
9 and their substantive comment to any other persons,
10 offices, or other entities including the media.

11 Thank you. I'm available for any
12 questions if you have any.

13 THE COURT: All right. Not at this
14 time.

15 MS. BAILEY: Thank you.

16 THE COURT: Ms. Kagawa, your motion to
17 regarding your motion to quash.

18 MS. KAGAWA: Your Honor, State would
19 (inaudible).

20 THE COURT: All right. Let's hear from
21 the Innocence Project Team.

22 Mr. Harrison, are you going to speak
23 for the team?

24 MR. HARRISON: Yes, your Honor. I
25 will.

1 THE COURT: Go ahead.

2 MR. HARRISON: Your Honor, initially
3 we're here because the fact that we have before the
4 Court a pending matter and that is the actual
5 innocence determination by the Court. We're asking
6 for those records specifically for that purpose.
7 Now, the government argues that they -- that turning
8 over these records are going to frustrate their
9 investigation. We're not here to frustrate their
10 investigation. We're here to find out what happened
11 with Mr. Lauro, what information he gave to the
12 investigators at the time, what evidence additionally
13 he had relevant to this case.

14 And, in fact, they argue that to
15 release these records will be destruction of
16 evidence, loss of witness testimony, tampering with
17 witnesses. Your Honor, we posit that that already
18 happened because they failed to follow protocol
19 initially in this investigation of Mr. Lauro.

20 What we're asking the Court to do here
21 is to simply be a gate keeper, to look at the records
22 produced. They have the records. This Court can
23 determine what records are applicable, the cause that
24 we're before the Court on, and what should be turned
25 over. And we have no issue with an order that

1 basically will keep those records confidential from
2 anyone else other than the parties in this proceeding
3 pending the determination of this Court. That's not
4 an issue in this case.

5 What we need to do is get to the bottom
6 of what happened to Mr. Lauro and what evidence they
7 have that actually assists our client in this matter
8 and that's what we really want here.

9 Now, we have asked them from day one to
10 articulate what is the ongoing investigation and they
11 keep giving us an amorphus kind of thing about well,
12 this is an ongoing open investigation. He's recently
13 passed away. We need the time to investigate.
14 What's the purpose of the investigation? Is it to
15 investigate Mr. Lauro or is it to investigate someone
16 else?

17 Now, if it's to investigate someone
18 else, this Court can review that information and
19 determine not to turn that over if that's applicable
20 our or not applicable to our proceeding but whatever
21 else is applicable, we should be able to have those
22 documents in our possession before the Court to help
23 the Court and supplement the record in this case
24 relative to our actual innocence claim.

25 So our position, your Honor,

1 succinctly, is that evidence is there. They should
2 turn it over to you for review in camera and the
3 Court can determine what should be released to the
4 parties, and we'll sign a protective order on behalf
5 of whatever is released to the parties in this
6 matter.

7 THE COURT: All right. Mr. Shigetomi,
8 on behalf of Shawn Schweitzer.

9 MR. SHIGETOMI: Yes, your Honor. We
10 simply ask the Court to deny the motion to quash,
11 take the records for in camera review, and then
12 distribute. And we'll abide by any protective order
13 the Court imposes.

14 THE COURT: All right. The argument by
15 the Hawaii County Police Department and the
16 Prosecutor's Office is that in both of their
17 responses before today's date were that this is not a
18 pretrial criminal proceeding and the constitutional
19 doctrines of Brady Vs. Maryland do not apply.

20 Mr. Shigetomi or Mr. Harrison, do you
21 have any response to that argument?

22 MR. HARRISON: Your Honor, we would
23 agree that this is not a criminal proceeding at this
24 point with regard to Mr. Albert Ian Schweitzer.

25 THE COURT: All right. And with regard

1 to the application of the constitutional protections
2 of Brady?

3 MR. HARRISON: We would agree that
4 Brady applies in a criminal proceeding, an active
5 criminal proceeding, and that's not what we're before
6 the Court on. We're before the Court on a civil
7 proceeding relative to this determination of actual
8 innocence.

9 THE COURT: And, Mr. Shigetomi, your
10 position.

11 MR. SHIGETOMI: Your Honor, our
12 position is that the materials that we're requesting
13 are relevant to this proceeding. They are necessary
14 for us to proceed, and the government is not entitled
15 to hide behind protections that are just put up there
16 for the purpose of obstructing the investigation and
17 obstructing our claim.

18 So we're asking the Court to provide us
19 the information that the Court deems relevant because
20 of the fact that they're necessary for the further
21 proceedings in this case.

22 THE COURT: All right. With regard to
23 the Brady arguments, the Court understands that this
24 is a post-exoneration proceeding for determination of
25 actual innocence, and Shawn and Ian Schweitzer are

1 not the accused in a criminal prosecution, but the
2 arguments in Brady on constitutional protections and
3 fair play still apply if the defendants whose
4 convictions were reversed are seeking a determination
5 of actual innocence.

6 And the State's position is that they
7 are not actually innocent, then their innocence is
8 still in play and information which tends to
9 exonerate Shawn and Ian Schweitzer are relevant and
10 material for this proceeding, so the Court holds that
11 the Hawaii County Police Department and the
12 Prosecutor's Office do have a good faith obligation
13 to turn over exculpatory evidence.

14 Now, in looking at what is to be
15 produced, the Court understands that there are
16 certain protections required in an ongoing criminal
17 investigation and especially if the investigation is
18 related to anyone other than Albert Lauro, Jr., then
19 certainly that is a defendant that can still be
20 prosecuted. But, however, with regard to Albert
21 Lauro, Jr., himself as Unknown Male No. 1, it seems
22 that the investigation is almost over, so I will
23 order that the Hawaii County Police Department turn
24 over the materials that are in its possession as of
25 today and will have a continuing duty to supplement

1 every Wednesday at 10:00 a other materials, and
2 they're to be submitted in camera for this Court's
3 review.

4 I'll make a determination of what shall
5 be released to the defendants and/or to the public by
6 this Wednesday, August 7th at 10:00 a. So we'll come
7 back and on that date, whatever documents that I
8 order to be produced to defense counsel subject to
9 any protective orders that you may propose shall be
10 turned over to them on Wednesday, August 7th, 10:00
11 a.

12 If there are any documents that need to
13 be redacted that the Court orders shall be redacted
14 for protection of sensitive personal information or
15 unrelated parties whose identities should not be
16 released, I'll order the redactions and the Hawaii
17 County Police Department shall produce them by
18 4:00 p.m. on Wednesday, August 7th.

19 We will continue this -- the hearing on
20 the actual innocence to August 9th at 10:00 a.m.

21 Does that date work for you,
22 Ms. Kagawa?

23 MS. KAGAWA: Yes, your Honor.

24 THE COURT: And for Innocence Project
25 Team, Friday, August 9th at 10:00 a.m. Does that

1 date work?

2 MR. SHIGETOMI: Yes, your Honor. This
3 is for the actual decision, your Honor? What is
4 this -- what is the August 9th hearing for?

5 THE COURT: What I'm contemplating,
6 Mr. Shigetomi, is that on August 7th, I will order
7 documents to be produced to the Innocence Project
8 team for further argument as to the actual innocence.
9 I will give all of the parties until Thursday, that
10 would be August 8th at 4:00 p.m., to file
11 supplemental memos regarding the actual innocence
12 that is the underlying issue of my proceeding.

13 So Innocence Project can file
14 supplemental memos on determination of actual
15 innocence by 4:00 on August 8th. I will hear
16 additional arguments on August 9th at 10:00 a.m. and
17 that can include testimony of Steven Cramer or a
18 representative of FALC and any other witnesses that
19 either the State or defense chooses to call.

20 If we need more time than permits on
21 August 9th, then I'll continue for further proceeding
22 and further evidence. Are there any questions?

23 Ms. Bailey, do you have the evidence?

24 MS. BAILEY: Yes, I do. I have what
25 evidence is available (inaudible). All right. Would

1 you like him to give it to me and then I can bring it
2 to you?

3 THE COURT: Yes. And this is Officer
4 Jelsma -- Detective Jelsma?

5 Detective Jelsma, I just wish to
6 confirm that you received this sealed evidence
7 envelope from -- is it lieutenant?

8 MS. BAILEY: Captain.

9 THE COURT: Captain Ammon-Wilkens.

10 DETECTIVE JELSMA: I received it from
11 his in tray inside his office as directed by him.

12 THE COURT: As far as you know, this
13 envelope has not been opened or altered in any way.

14 DETECTIVE JELSMA: (Inaudible) no.

15 THE COURT: All right. So the Court
16 will receive the proffered evidence for in camera
17 review. As mentioned, I will convene this hearing
18 again on Wednesday, August 7th at 10:00 a.m. to make
19 a determination of what documentary evidence shall be
20 disclosed to the Innocence Project defense team. And
21 if you do have a protective order form that you can
22 submit to them, I'd suggest that you submit it in
23 advance so that the parties can agree in advance as
24 to how the evidence will be used.

25 Okay. Is there anything else,

1 Ms. Bailey?

2 MS. BAILEY: Nothing further. Thank
3 you.

4 THE COURT: All right. Ms. Kagawa,
5 anything else?

6 MS. KAGAWA: No, your Honor.

7 THE COURT: All right. Mr. Harrison,
8 can I ask you to please prepare an order denying the
9 motion to quash subpoena --

10 MR. HARRISON: Yes, your Honor.

11 THE COURT: -- as long as -- with the
12 terms that the Court has found today?

13 MR. HARRISON: Thank you, your Honor.
14 Will do.

15 THE COURT: See you folks all on
16 Wednesday morning at 10:00 a.m. Thank you,
17 everybody.

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19 (At which time the proceedings were concluded.)

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C E R T I F I C A T E

I, Melissa Noble, a Court Reporter of the Circuit Court of the Second Circuit, State of Hawaii, do hereby certify that the foregoing pages, 1 through 24 inclusive, were transcribed to the best of my ability and comprise a full, true, and correct transcript of the proceedings had in connection with the above-entitled cause.

Dated this 20th day of August, 2024.

/s/ Melissa Noble, RPR, CSR 376

Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

EXHIBIT H

EXHIBIT I

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

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)	
ALBERT IAN SCHWEITZER,)	
SHAWN SCHWEITZER,)	
)	
)	3CSP-23-0000003
Vs.)	3CSP-23-0000017
)	
STATE OF HAWAII, ET AL.,)	TRANSCRIPT OF
)	ELECTRONICALLY
Defendants.)	RECORDED PROCEEDINGS
)	
-----)	

TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS
had before the Honorable Peter K. Kubota, Circuit
Court Judge presiding, on Wednesday, August 7, 2024,
in the above-entitled matter.

Transcribed by:

Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

EXHIBIT I

1 APPEARANCES:

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Keith S. Shigetomi

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Jennifer L. Brown

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L. Richard Fried, Jr.

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15 Attorneys for Respondent
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County Prosecuting
Attorney

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Shannon Kagawa

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E. Britt Bailey

Corporation Counsel
County of Hawaii

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WEDNESDAY, AUGUST 7, 2024

THE CLERK: All rise. Calling Case Nos. 3CSP 23-03, Albert Ian Schweitzer Vs. State of Hawaii. Case No. 3CSP 23-17, Shawn Schweitzer Vs. State of Hawaii. Hearing on release of documents submitted for in camera review.

State your appearances, please.

RIGHT2: Good morning, your Honor. Deputy corporation counsel Britt Bailey on behalf of Hawaii Police Department.

MS. KAGAWA: Good morning, your Honor. Shannon Kagawa appearing for the County, State of Hawaii.

THE COURT: Good morning.

MR. LAWSON: And Ken Lawson, co-counsel for the Hawaii Innocence Project, not licensed to practice law but I'm here with Shawn and Ian Schweitzer.

THE COURT: Good morning. All right. You folks all may be seated. So today is the date on the Court's decision on the Hawaii County Police Department documents filed for in camera review by this Court. The documents were submitted on August 5, 2024 and I committed to review them by this

1 morning. I'm going to explain the principles for my
2 decision today which are based on the following: The
3 petition for actual innocence of Ian Schweitzer,
4 Shawn Schweitzer are still being argued before this
5 Court and the State is contesting the determination
6 of actual innocence.

7 Now that Mr. Lauro is dead other than
8 any kind of investigation and potential reprimands
9 for HPD's handling or mishandling of the
10 investigation, there can be no further prosecution of
11 Mr. Lauro as Dana Ireland's killer. So all
12 information regarding Albert Lauro, Jr., should not
13 only be released to the Innocence Project team, but
14 to the general public as it has a right to know what
15 happened after 33 years of dormancy in this case,
16 what happened in this 2024 investigation of Mr. Lauro
17 as the prime suspect of Dana Ireland's murder.

18 The Hawaii County Police Department has
19 argued grounds to withhold such information on the
20 grounds of a pending investigation, but I'll ask you,
21 Ms. Bailey, as to Albert Lauro, Jr., what further
22 investigation needs to be conducted?

23 RIGHT2: Well, first of all, before you
24 release any documents to the public, there are a
25 couple issues, I think, that need to be addressed.

1 First of all, we did file a petition for writ of
2 mandamus at 9:20 a.m. We also filed yesterday a
3 motion to stay and enjoin compliance with that
4 subpoena duces tecum so that we can seek relief at
5 the Supreme Court level.

6 You asked us on Monday to talk with
7 attorneys regarding a stipulated protective order. I
8 have been attempting to talk to them. I did hear
9 back from Mr. Shigetomi that his client was willing
10 to agree to a stipulated protective order. I have
11 yet to hear back from Albert Ian Schweitzer, Albert
12 Ian Schweitzer's attorneys, as to whether or not they
13 are willing to enter into a stipulated protective
14 order. But we would request time if they are willing
15 to enter into a stipulated protective order and after
16 the Supreme Court has an opportunity to review the
17 denial of the motion to quash, we would ask for time
18 so that we can draft that stipulated protective
19 order.

20 THE COURT: All right.

21 MS. BAILEY: As to any further
22 investigation, we don't know what legs are out there,
23 your Honor, if Mr. Lauro made any contacts from the
24 time he -- this is conjecture, right, complete
25 speculation on my part because I'm not privy to the

1 criminal investigation either. But from what I would
2 understand, if there are any legs out there -- for
3 example, if there are materials on Mr. Lauro's cell
4 phone that may identify somebody else that may be
5 involved, the police would be obligated to
6 investigate that and without that investigation being
7 complete, it's absolutely premature to release these
8 documents. There's an ongoing criminal
9 investigation, your Honor.

10 THE COURT: All right. Ms. Bailey, you
11 just informed me now that you have filed a petition
12 for writ of mandamus to the Supreme Court --

13 MS. BAILEY: Correct.

14 THE COURT: -- this morning --

15 MS. BAILEY: Correct.

16 THE COURT: -- at 9:24 a.m. So explain
17 what are you seeking in the writ of mandamus.

18 MS. BAILEY: In the writ of mandamus,
19 we are seeking a vacation of the denial of the motion
20 to quash pursuant to HRS 92F-13 as well as 92-22.
21 These materials are protected currently. The
22 statutes contemplate that under UIPA, we are just
23 requesting that the documents remain confidential so
24 that they can continue the criminal investigation and
25 there's no integrity lost to that investigation.

1 So we're seeking a review of the denial
2 of the motion to quash.

3 THE COURT: All right. And,
4 Mr. Lawson -- or who is going to speak on the
5 Innocence Project team?

6 MR. SHIGETOMI: Your Honor, I can
7 address that.

8 THE COURT: Go ahead.

9 MR. SHIGETOMI: Your Honor --

10 THE COURT: We're waiting for
11 Mr. Shigetomi to come back on.

12 MS. BAILEY: Your Honor, I did
13 review --

14 THE COURT: Go ahead, Mr. Shigetomi.

15 MR. SHIGETOMI: Your Honor, they
16 (inaudible) with the subpoena duces tecum (inaudible)
17 they provided documents for. They didn't comply with
18 the documents. So basically they're talking about
19 disclosure, and the Court has not even made a
20 decision on disclosure at this point. The Court has
21 not made a decision on what particular documents it
22 will disclose and the justification for each of those
23 documents so any (inaudible).

24 THE COURT: Mr. Shigetomi's audio seems
25 to have cut out.

1 MR. SHIGETOMI: (Inaudible) the Court
2 has not even (inaudible) at this point.

3 THE COURT: So Mr. Shigetomi --

4 MR. SHIGETOMI: So it is a premature.

5 THE COURT: So it's your position that
6 without an order disclosing or releasing certain
7 documents, that this petition is premature. I was
8 not made aware that a petition for writ of mandamus
9 was even filed until just now by Ms. Bailey.

10 MR. SHIGETOMI: Well, your Honor, they
11 filed a motion yesterday (inaudible) in the afternoon
12 threatening to file an application for a writ. I
13 have not actually received any notice of the writ
14 actually being filed, but I did file an answer at
15 11:21 last night in response to the motion to stay
16 and basically we're saying (inaudible).

17 MS. BAILEY: Your Honor, if I may, I
18 think what Mr. Shigetomi is saying is that we've
19 already complied, that's inaccurate. We have -- what
20 we have done is we complied with the order of this
21 Court in the motion to compel to bring certain
22 documents to this Court. We have not yet complied
23 with the subpoena duces tecum. Nothing has been
24 disclosed.

25 MR. SHIGETOMI: Well --

1 (Multiple speakers at once.)

2 MR. SHIGETOMI: Or Court ordered in
3 camera review.

4 MS. BAILEY: In a motion, in the order
5 of the motion.

6 MR. SHIGETOMI: Your Honor, the Court
7 ordered in camera review.

8 THE COURT: So you're saying --

9 MR. SHIGETOMI: Right, and so the
10 Court --

11 (Multiple speakers at once.)

12 MR. SHIGETOMI: -- in the process of
13 making its in camera review.

14 THE COURT: Ms. Bailey, you're saying
15 that your submission of documents for in camera
16 review were not in compliance with the subpoena?

17 MS. BAILEY: It's in compliance with
18 the order of the motion to compel. That's where we
19 were ordered to bring those documents for in camera
20 review by this Court. A subpoena duces tecum is for
21 disclosure of the documents that they requested.
22 That has not yet occurred. And this Court denied our
23 motion to quash on Monday, so there's nothing
24 premature at all about our writ of mandamus.

25 THE COURT: I denied your motion to

1 quash and you produced documents to this Court for in
2 camera review and you're saying that that is only in
3 relation to the order granting the motion, not in
4 response to the subpoena.

5 MS. BAILEY: In the order granting the
6 motion to compel is where this Court ordered Hawaii
7 Police Department to bring those documents for in
8 camera review. Yes, your Honor.

9 THE COURT: But in conjunction with the
10 subpoena and the subpoena contained the same
11 documents as ordered.

12 MS. BAILEY: The production of
13 documents in the subpoena mirrors what's in the order
14 of the motion to compel, but the subpoena duces tecum
15 did not order the Hawaii Police Department to bring
16 those documents for in camera review. That was in
17 the order on the motion to compel.

18 THE COURT: The subpoena did not -- did
19 not order the production of those documents on that
20 date and time? Is that what you're telling me?

21 MS. BAILEY: It didn't require us to
22 produce those for in camera review. The language for
23 the production for in camera review -- all I'm saying
24 is it was in the motion of the order of the motion to
25 compel, so we have not yet complied with the subpoena

1 duces tecum. We've complied with an order of this
2 Court.

3 THE COURT: All right. So your
4 position is that I should withhold ordering release
5 of any documents to the Innocence Project team or the
6 general public until after the Supreme Court hears
7 your petition for writ of mandamus.

8 MS. BAILEY: Correct, your Honor.

9 THE COURT: I see.

10 MR. SHIGETOMI: Well, your Honor, if
11 they're saying that they didn't produce the documents
12 pursuant to subpoena, then the Court (inaudible)
13 compliance with the subpoena. If they provided
14 pursuant to the order, the Court can issue the order
15 and disclose the documents. I mean, they can't have
16 it both ways. They can't try to split hairs and say
17 well, we're not complying with the subpoena. We're
18 complying with an order. Then your writ is based on
19 the subpoena duces tecum which they're saying they
20 have not complied with so they don't have to comply
21 at this point. They have already produced and the
22 Court disclose (inaudible).

23 THE COURT: All right. With regard to
24 the motion which was filed yesterday on the Hawaii
25 Police Department's emergency motion to stay, looks

1 like you took action already by filing a writ of
2 petition for writ of mandamus.

3 MS. BAILEY: Correct.

4 THE COURT: So the Court will deny the
5 motion to stay.

6 MR. SHIGETOMI: (Inaudible) does not
7 stay proceedings.

8 THE COURT: The Court will not stay the
9 proceedings. But now with regard to the petition for
10 writ of mandamus, Ms. Bailey, what do you say in
11 response to Mr. Shigetomi's arguments that I have not
12 ordered release of any documents thus far and that I
13 would need to make such an order and that is what
14 you're supposed to seek a stay on by the Supreme
15 Court?

16 MS. BAILEY: Your Honor, we filed a
17 petition for writ of mandamus based on the denial of
18 our motion to quash. That's what's being reviewed by
19 the Supreme Court.

20 MR. SHIGETOMI: So if they produced
21 nine documents pursuant to the Court order, we're not
22 even dealing with the subpoena.

23 MS. BAILEY: My understanding is that
24 we were ordered back here today to discuss disclosure
25 of the documents after this Court had an opportunity

1 for in camera review. A disclosure of those
2 documents is what would be pursuant to the subpoena.

3 MR. SHIGETOMI: You just said you
4 haven't complied with the subpoena duces tecum.
5 We're dealing with the Court order for production.

6 MS. BAILEY: There hasn't been a
7 disclosure yet.

8 THE COURT: All right. I'm going to
9 take a short recess and review what the Hawaii County
10 Police Department has filed in terms of the petition
11 for writ of mandamus. I don't see it on my feed in
12 this case because that is a separate proceeding and
13 it was not given to me, nor was the Court made aware
14 that you filed such a petition for a writ. So I --
15 do you have a copy, Ms. Bailey?

16 MS. BAILEY: I do, your Honor. May I
17 approach?

18 THE COURT: Yes, you may. All right.
19 The Court will take a short recess. We'll come back
20 in about a half an hour. That would be at 11:40 this
21 morning.

22 THE CLERK: All rise.

23

24 (At which time a recess was taken.)

25

1 THE CLERK: Court is reconvened. You
2 may be seated. Re-calling Case No. 3CSP 23-3 and
3 23-17, Albert Ian Schweitzer and Shawn Schweitzer Vs.
4 State of Hawaii. Hearing on release of documents
5 submitted for in camera review.

6 THE COURT: All right. Presence of
7 Ms. Bailey representing Hawaii County Police
8 Department and Shannon Kagawa representing the Hawaii
9 County Prosecutor's Office; Kenneth Lawson of the
10 Innocence Project, and Ian Schweitzer and Shawn
11 Schweitzer are present. Also noted the presence of
12 Barry Scheck, Rick Fried, Raquel Barilla and Keith
13 Shigetomi and Jennifer Brown on the Innocence Project
14 team.

15 The Court has been handed a courtesy
16 copy at 11:20 a.m. this morning of a proceeding that
17 the County of Hawaii Police Department has filed in
18 the Supreme Court of the State of Hawaii in
19 SCPW-24-537 entitled Hawaii Police Department County
20 of Hawaii Vs. The Honorable Peter K. Kubota, judge of
21 the Circuit Court of the Third Circuit, State of
22 Hawaii, seeking a determination by the Hawaii Supreme
23 Court that I committed an abuse of my discretion in
24 denying the Hawaii County Police Department's motion
25 to quash subpoena. The grounds argued is that

1 there's ongoing investigation in the death of Dana
2 Ireland.

3 I will note that we're now in the
4 thirty-third year since Dana Ireland's death and we
5 came extremely close to solving this crime this year
6 until Albert Lauro was questioned, his DNA taken
7 pursuant to a search warrant issued by a District
8 Court judge, and then released.

9 All of the evidence produced on
10 August 5th Ms. Bailey is contending was in response
11 to the Court order and not the subpoena. Her claims
12 are that this evidence is subject to a pending
13 investigation and that the disclosure would thwart
14 legitimate government interests, that is, the
15 investigation of whether Albert Lauro, Jr., raped,
16 kidnapped, and killed Dana Ireland.

17 I don't see what further investigation
18 the police department must do with regard to Albert
19 Lauro, Jr., as he is now dead and not subject to
20 further prosecution. And I'll note that the
21 Schweitzer brothers have been living under the weight
22 of a wrongful conviction for 25 years and the State
23 is still contesting a finding of actual innocence,
24 and Ian Schweitzer has sat in jail and prison for
25 about 25 years now and that along with the public

1 right to know what happened in this 2024
2 investigation of Albert Lauro, Jr., greatly outweighs
3 the value of any further investigation into Albert
4 Lauro's involvement.

5 However, since there is a Supreme Court
6 case pending on this petition for writ of mandamus, I
7 will await the Supreme Court's decision on this
8 petition. And if the Supreme Court is not
9 prohibiting me from releasing information as
10 requested by the Innocence Project team and the
11 public, I will schedule a hearing date for release of
12 those documents shortly after the Supreme Court's
13 decision.

14 The Schweitzers have been seeking a
15 determination of actual innocence for many years now,
16 and this is just another action to delay this
17 potential finding.

18 So the Court will not schedule any
19 hearings on this matter until we get the Supreme
20 Court's decision on this petition for writ of
21 mandamus.

22 Are there any questions?

23 MR. LAWSON: So the hearing tomorrow is
24 vacated until we hear from --

25 THE COURT: Yes. I'm taking -- well,

1 the hearing would have been scheduled for Friday.
2 That's taken off calendar I'm going to hold off. The
3 next step would be issuance of an order releasing
4 documents that were submitted under seal, so that's
5 the next step we have to take. And then after those
6 documents are dealt with -- those documents and the
7 video of the interview of Mr. Lauro. After those are
8 dealt with, then we can continue on with the
9 determination of actual innocence, so no further
10 hearings until I hear back from the Supreme Court.

11 Are there any other questions?

12 MR. SHIGETOMI: Judge, can we make a
13 record?

14 THE COURT: Yes, Mr. Shigetomi.

15 MR. SHIGETOMI: Yes, your Honor. It
16 seems to me that they have continually used this idea
17 of a further investigation as just a shield to
18 prevent information being disclosed in this case. We
19 have the chief of police going on television, holding
20 press conferences, disclosing information what their
21 investigation has found, yet at this point in time
22 they don't want us, the parties involved, to know
23 that information.

24 There seems to be some sort of waiver
25 here that when you go on television and you release

1 information but you refuse to release the entire
2 information, then that's unfair, especially to Ian
3 and Shawn who the Court has noted have been living
4 under this cloud for 33 years.

5 We have a good faith belief that in
6 Albert Lauro's interview, he did not mention the
7 Schweitzers at all and he had no idea who the
8 Schweitzers are and that he committed these acts by
9 himself. Although, he may not admit to the murder --
10 obviously, that's self-serving -- we have the police
11 going on and defending their actions in this case
12 repeatedly from the very start when they could not
13 find a suspect, when they get in bed with convicted
14 felons, and then when they finally botch it up and
15 then they let the real guy get away. It's just
16 preposterous.

17 And you can't come into court and say
18 well, I don't know what the materials show, but we
19 shouldn't let anybody know. You need to be able to
20 point to materials that frustrate a law enforcement
21 process and procedure rather than just offer a
22 platitude of well, it's protected.

23 And as we've already indicated, the
24 whole point is that they're not even doing -- they're
25 not even doing the extraordinary writ correctly. You

1 can't ask for declaratory judgment. We don't even
2 know what the Court is going to disclose or not
3 disclose, but that's what they're doing. They come
4 in and they tell you that we're -- we want to quash
5 the subpoena. The Court didn't quash the subpoena,
6 but they still produced the documents. We got the
7 documents.

8 Their whole motion is entitled to stay
9 and enjoin compliance with the subpoena. Well, we're
10 not at a subpoena stage if we take their argument.
11 We're at the stage where you're going to release
12 information pursuant to Court order. And so they
13 can -- even if they quash the subpoena, they have
14 already produced the documents, and the Court is
15 obligated to do the in camera review and provide us
16 with the information which we are entitled to.

17 So this whole thing about we have a
18 legitimate interest -- the only legitimate interest
19 they have is protecting themselves from further
20 liability and they're just making it worse for
21 themselves.

22 THE COURT: Mr. Lawson, anything?
23 Mr. Scheck?

24 MS. BAILEY: Your Honor, if I may.

25 THE COURT: I'm sorry.

1 MS. BAILEY: If I may rebut.

2 THE COURT: Go ahead, Ms. Bailey.

3 MS. BAILEY: I just want to address a
4 couple of points. There's a lot of the use of "they"
5 going on, and I just want to make it very clear that
6 the Hawaii Police Department has a very limited space
7 in these larger proceedings. That space is because a
8 subpoena duces tecum was served to the Hawaii Police
9 Department which brought in the Office of the
10 Corporation Counsel which brought the motion to
11 quash. That motion to quash is pursuant to 92F-13
12 and 92F-22.

13 The original proceedings, as large as
14 they are -- as large as they are, do not override the
15 compelling government interest to protect the
16 integrity of an ongoing criminal investigation that I
17 cannot stand here and say to you, your Honor, what
18 that looks like because witness interviews have not
19 been completed. The data from the cell phone has not
20 yet been returned. Autopsy reports are not available
21 yet when we argued on Monday.

22 When and if this particular
23 investigation, based on current brand new
24 developments in an investigation that's in its
25 infancy is completed, we're obligated under statute

1 to then recognize that yes, those materials are then
2 available. It just so happens that this particular
3 subpoena duces tecum came right in the midst of a
4 very current criminal investigation based on new
5 developments.

6 THE COURT: Ms. Bailey, I'll say a few
7 things in response, you know -- and I know and
8 everybody in this courtroom knows that the
9 information regarding Albert Lauro, Jr., was provided
10 to the Hawaii County Police Department because the
11 Innocence Project in seeking to prove Albert and
12 Shawn Schweitzer's innocence pursued it. The police
13 department has not had a clue for 33 years. They
14 were handed Albert Lauro's name on a silver platter
15 in, I believe, March 1, 2024 for investigation.

16 And I'll say this without revealing the
17 details: All of the documents and evidence you
18 produced to me on August 5th relate only to Albert
19 Lauro, Jr. So I would ask you this: What further
20 investigation does the police conduct with a guy who
21 is now deceased? You can get all the information and
22 all the evidence, but what are you going to do with
23 that? Are you going to prosecute this dead guy?

24 MS. BAILEY: First of all, I'm not a
25 prosecutor so I won't answer that question.

1 THE COURT: Well, what are they going
2 to do with this? So they can --

3 MS. BAILEY: So say --

4 THE COURT: So they can prove or
5 disprove that this guy did it? What is that going to
6 do? The investigation regarding Albert Lauro is done
7 or it's not going to go anywhere. It can go on as
8 long as you want to delay this, but the problem I
9 have here is these guys were convicted 23 years ago
10 and they're seeking a determination of actual
11 innocence and, in my view, justice delayed at your
12 behest is justice denied.

13 MS. BAILEY: Understood, your Honor. I
14 will --

15 THE COURT: Anything else? Mr. Scheck,
16 you wanted to say something.

17 MR. SCHECK: (Inaudible) my colleague
18 Counsel Shigetomi's remarks. But what I find
19 particularly troubling here is that what I hear
20 counsel saying is well, there may be more here that
21 we need to collect in our investigation, but they are
22 not in any way allowing us limited access to what
23 they have already given you, and we need that in
24 order to prepare our own actual innocence
25 presentation.

1 And what is troubling about this claim
2 of an ongoing investigation is that as the Court
3 recalls and as we put in our motion to compel, that's
4 the same thing they said to us when we told this
5 police department and these prosecutors that if they
6 did not seek an arrest warrant and bring him into
7 custody, that there was a danger he would flee,
8 destroy evidence, or kill himself. We said that to
9 them on July 2nd in our conference.

10 And those are the best practices of the
11 FBI and were prepared and we will have Steven Cramer
12 testify about that because he's the source of that
13 information; although, frankly, it would be something
14 that any homicide investigator in this country would
15 know to do. It's -- it's not -- it befuddles us.

16 Then they kept on saying oh, it's an
17 ongoing investigation. We can't tell you whether
18 he's in custody or he's dead, right. And to your
19 Honor now, you know, at the very least if they really
20 have a basis for believing out of anything that you
21 have seen already in response to the motion to compel
22 that that's something that shouldn't be public or
23 there's something there that is so sensitive that we
24 are not allowed to have it even though it's
25 absolutely relevant to our actual innocence

1 determination, our ability to clear the name of our
2 clients, then they should specify it to the Supreme
3 Court of Hawaii. They have that burden.

4 You know, they have got to show a
5 compelling interest, and they're not even (inaudible)
6 which items that they have disclosed to you or to the
7 Court, the Supreme Court, under seal would create
8 that kind of situation.

9 All I hear Ms. Bailey saying now is
10 well, there may be more things that we find. Well,
11 if there's more things that you find, fine. You
12 know, come back to us or if you even want to ask for
13 a delay in the hearing because there's -- you're
14 going to be looking at Lauro's cell phone or anything
15 that you might have found in a search of his
16 property. And after all -- what we said to you, what
17 we said to the Attorney General's Office and you know
18 darn well we said it to the United States Attorney's
19 Office because we put (inaudible) that there should
20 have been a search warrant and it would have been
21 done.

22 And they had the temerity to say to the
23 public well, this may be a situation where we
24 couldn't arrest him for rape because the statute of
25 limitations had run. We could only do this if it

1 were a homicide when in all 50 states in this country
2 and in Hawaii that if you find a woman -- even, you
3 know, if you accept what they are claiming Lauro said
4 to them, that he found poor Dana Ireland at Wa'a Wa'a
5 bleeding, right -- and we know that the shirt he was
6 wearing had what was (inaudible) had her -- that he
7 found her and had sex with her and then he left and
8 then she bled out. That is Murder in the Second
9 Degree. There's probable cause to arrest him for
10 Murder in the Second Degree.

11 We told that to them in your presence.
12 Get an arrest warrant on July 2nd. We went and put
13 that in writing to the Attorney's General's Office.
14 We sent it to the United States Attorney's Office,
15 and they went out and created this horrible situation
16 where they induced this man to commit suicide because
17 they didn't want to be embarrassed by prosecuting
18 him.

19 And now they're delaying this again on
20 the grounds of an ongoing investigation. Well, they
21 should (inaudible) itemize going up to the Hawaii
22 Supreme Court anything that they have disclosed to
23 you now that is in any way a basis for a compelling
24 interest that it shouldn't go to us for purposes of
25 our actual innocence proceeding and it should not be

1 released to the public. This is a travesty.

2 THE COURT: Anything else?

3 MR. SHIGETOMI: Your Honor, I just have
4 to make the record.

5 THE COURT: Yes. I'm sorry,
6 Mr. Shigetomi.

7 MR. SHIGETOMI: To make the record for
8 the application, that the Court make an order
9 regarding the disclosure of the information and
10 indicate the docket -- well, seal it for purposes of
11 the Supreme Court, have the entire amount of records
12 that were produced to you identified and then what
13 the Court was going to release in terms of the
14 disclosure today so that at least the Supreme Court
15 can review that information in making a determination
16 as to whether or not the Court was correct in
17 disclosing the information that it was going to do.

18 That's all. Just so that --

19 MR. SCHECK: We join in that. And that
20 is different than what Ms. Bailey said today when she
21 said the compelling interest is what we might find in
22 the future. Well, this is information that was
23 already produced.

24 THE COURT: Well, Mr. Scheck and
25 Mr. Shigetomi, I just received a copy of this

1 petition today at 11:20. It was filed this morning
2 at 9:20. The petition for writ of mandamus seeks a
3 determination that I was wrong in denying the motion
4 to quash subpoena. It does not address the
5 disclosure of documents which may -- which Ms. Bailey
6 says was done pursuant to the Court order. This
7 mandamus doesn't even touch the Court order.

8 MR. SHIGETOMI: Okay. That's fine.

9 THE COURT: Yes, so the issue presented
10 to the Supreme Court is only on the denial of the
11 motion to quash subpoena.

12 Right, Ms. Bailey?

13 MS. BAILEY: Yes, your Honor.

14 THE COURT: So I'm going to await a
15 Supreme Court decision. I'm told that the Supreme
16 Court reviews these petitions for writ of mandamus
17 and in the interest that the Schweitzer brothers
18 should have their day in court on the determination
19 of actual innocence, and the public has a great
20 interest in the transparency of these proceedings, I
21 imagine that the Supreme Court will rule fairly
22 quickly on this matter.

23 So I will schedule a further hearing
24 regarding the disclosure of the documents which were
25 scheduled for today at 10:00 and I will let all of

1 the parties know. Okay.

2 MS. KAGAWA: Your Honor --

3 MR. SHIGETOMI: Thank you, very much.

4 MS. BAILEY: So no further hearing
5 date?

6 THE COURT: No further hearings until
7 scheduled by the Court.

8 MS. KAGAWA: That's what I wanted to
9 make sure. And then the Court had ordered, I guess,
10 continued disclosure from the police every Wednesday.
11 That's on hold as well? I mean, I don't know how
12 long the writ will take, but if no answer is received
13 by next week Wednesday --

14 THE COURT: Yes, so the Court order
15 regarding preservation of records still remains in
16 place. The Hawaii County Police Department is
17 ordered to preserve all evidence and records. If I'm
18 going to deal with the disclosure of records, then
19 the Hawaii County Police Department can update when
20 we take up these proceedings again. So everything is
21 on hold until the Supreme Court's decision.

22 MS. KAGAWA: Okay. Thank you, your
23 Honor. I just wanted to make sure the officers --
24 thank you.

25 THE COURT: All right. Thank you.

1 That is all.

2 MR. SHIGETOMI: Thank you, your Honor.

3 THE CLERK: All rise.

4

5 (At which time the proceedings were concluded.)

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C E R T I F I C A T E

I, Melissa Noble, a Court Reporter of the Circuit Court of the Second Circuit, State of Hawaii, do hereby certify that the foregoing pages, 1 through 31 inclusive, were transcribed to the best of my ability and comprise a full, true, and correct transcript of the proceedings had in connection with the above-entitled cause.

Dated this 20th day of August, 2024.

/s/ Melissa Noble, RPR, CSR 376

Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

EXHIBIT I

SCPW-24-0000537

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

HAWAI'I POLICE DEPARTMENT,
COUNTY OF HAWAI'I,

Petitioner,

vs.

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

Respondent.

ORIGINAL PROCEEDINGS

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing document was served on the parties identified below by electronic filing through the JEFS Court electronic filing on August 20, 2024:

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