

**Electronically Filed
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SCPW-24-0000537
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Dkt. 34 SR**

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 AMENDED SUPPLEMENT
TO RECORD ON APPEAL; EXHIBIT "J";
CERTIFICATE OF SERVICE

CIRCUIT COURT OF THE THIRD
CIRCUIT

HONORABLE PETER K. KUBOTA

PETITIONER'S AMENDED SUPPLEMENT TO RECORD ON APPEAL

EXHIBIT "J"

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[NOTICE OF SERVICE ELECTRONIC FILING SERVICE GENERATED BY JEFS]

PETITIONER'S AMENDED 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 an amended supplement to record on appeal per Order of the Supreme Court of the State of Hawai'i, filed August 8, 2024 ("Order").

On August 22, 2024, Ms. Brown, Supervising Court Reporter, Second Circuit Court, submitted to Petitioner a corrected transcript for the hearing on August 7, 2024, attached hereto as Exhibit "J". Ms. Brown stated that Ms. Jennifer Brown, Associate Director of the Hawai'i Innocence Project, contacted her and pointed out that that Mr. Lawson is co-director and not co-counsel. This was corrected in the transcript at page 4 line 17. Ms. Brown, Supervising Court Reporter, Second Circuit Court, also added Petitioner's name as speaker at page 4 line 9 and again at page 5 line 23.

The corrected transcript for the hearing on August 7, 2024 is attached hereto as Exhibit "J". This corrected transcript would replace Exhibit "I" submitted in the Supplement to Record on Appeal, filed August 20, 2024 [Dkt. 26 SR].

Dated: Hilo, Hawai'i, August 22, 2024.

HAWAI'I POLICE DEPARTMENT, COUNTY
OF HAWAI'I

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

EXHIBIT J

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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.

(CORRECTED VERSION PER REPORTER 8-22-24)

Transcribed by:

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

EXHIBIT J

1 APPEARANCES:

2

3 Attorneys for Petitioners:

4

Barry Scheck

5

Keith S. Shigetomi

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Jennifer L. Brown

7

L. Richard Fried, Jr.

8

Raquel Barilla

9

10

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15 Attorneys for Respondent
State of Hawaii:

Office of the Hawaii
County Prosecuting
Attorney

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Shannon Kagawa

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19 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.

MS. BAILEY: 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-director 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 MS. BAILEY: Well, first of all, before
24 you 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.

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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 22nd day of August, 2024.

/s/ Melissa Noble, RPR, CSR 376

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

EXHIBIT J

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 system on August 22, 2024:

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