

SCPW-24-0000537

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Supreme Court
SCPW-24-0000537
05-SEP-2024

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII COUNTY POLICE)
DEPARTMENT, COUNTY OF HAWAII)

Petitioner,)

vs.)

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

and)

ALBERT IAN SCHWEITZER,)
SHAWN SCHWEITZER; STATE OF)
HAWAII, Respondents.)

ORIGINAL PROCEEDINGS)
No. 3CSP-23-0000003)
No. 3CSP-23-0000017)
(Special Proceedings)

RESPONDENT OFFICE OF THE)
PROSECUTING ATTORNEY,)
COUNTY AND STATE OF)
HAWAII'S ANSWER TO)
PETITION FOR WRIT OF)
MANDAMUS

CIRCUIT COURT OF THE THIRD)
CIRCUIT

HONORABLE PETER K KUBOTA

RESPONDENT OFFICE OF THE PROSECUTING ATTORNEY, COUNTY AND
STATE OF HAWAII'S ANSWER TO PETITION
FOR WRIT OF MANDAMUS

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**RESPONDENT OFFICE OF THE PROSECUTING ATTORNEY, COUNTY AND
STATE OF HAWAII'S ANSWER TO PETITION
FOR WRIT OF MANDAMUS**

FACTS

Respondent, Office of the Prosecuting Attorney, County and State of Hawai'i does not dispute the Statement of Facts as stated in Petitioner's Writ of Mandamus.

ARGUMENT

A. HRS §661B

The Joint Petition for Relief Pursuant to HRS§661B was filed on June 4, 2024 and requested the Court to make a finding of "actual innocence." Pursuant to HRS§661B-1(b)(1), one factor necessary to seek a claim against the State is a finding of actual innocence.

HRS §661B-1 provides:

- (a) Any person convicted in a court of the State and imprisoned for one or more crimes of which the person was actually innocent may file a petition for relief pursuant to this chapter for an award of damages against the State; provided that the requirements of subsection (b) are met.
- (b) To present an actionable claim against the State for wrongful conviction and imprisonment, the petitioner shall allege that the petitioner was convicted of one or more crimes under the laws of the State, was subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence and either that:
 - (1) The judgment of conviction was reversed or vacated because the petitioner was actually innocent of the crimes for which the petitioner was convicted, and the court decision so states; or
 - (2) The petitioner was pardoned because the petitioner was actually innocent of the crimes for which the petitioner was convicted and the pardon so states.

Hawaii Revised Statutes, Section 661B-1 (emphasis added).

The Circuit Court vacated Albert Ian Schweitzer's conviction and dismissed the Indictment without prejudice, based on "newly discovered DNA and bitemark evidence

discovered after the trial, could not have been discovered before trial, is material, and not cumulative, or solely for purposes of impeachment, and the evidence is of such a nature as to probably change the result of a later trial.” See Judicial Electronic Filing System (“JEFS”), 3CSP-23-0000003, Docket (“Dkt”) 117. The Circuit Court did not vacate Albert Ian Schweitzer’s conviction based on a finding of “actual innocence.” Similarly, as to Shawn Schweitzer, a Stipulation to Withdraw his Plea in 3PC990000147 and a Motion to Nolle Prosequi Without Prejudice was granted. JEFS, 3PC990000147, Dkt. 487, 491. Again, there was no finding of “actual innocence.” Therefore, without a finding of “actual innocence,” it would be premature for a petition to seek relief under HRS§661B.

B. Hawaii Rules of Penal Procedure Rule 40(c)(3)

Hawaii Rules of Penal Procedure, Rule 40(c)(3) provides:

If a post-conviction petition alleges neither illegality of judgment nor illegality of post-conviction “custody” or “restraint” but instead alleges a cause of action based on a civil rights statute or other separate cause of action, the court shall treat the pleading as a civil complaint not governed by this rule. However, where a petition seeks relief of the nature provided by this rule and simultaneously pleads a separate claim or claims under a civil rights statute or other separate cause of action, the latter claim or claims shall be ordered transferred by the court for disposition under the civil rules.

Respondents Albert Ian Schweitzer and Shawn Schweitzer filed a Joint Petition for Relief Pursuant to HRS Chapter 661B seeking a determination of “actual innocence.” Based on HRPP Rule 40(c)(3), the Petition filed on June 4, 2024 should be treated as a separate cause of action and therefore, treated as a civil complaint governed by the Hawaii Rules of Civil Procedure.

C. Hawaii Rules of Civil Procedure, Rule 26(b)(1)(A)

Hawaii Rules of Civil Procedure, Rule 26(b)(1)(A) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information or tangible things and the identity and location of persons having knowledge of any discoverable matter.

Respondent, Office of the Prosecuting Attorney, County and State of Hawai`i believes that this information on the ongoing police investigation is privileged. This Court in Mehau v. Gannett Pacific Corp. recognized the “pendency of a criminal investigation is a reason for denying discovery of investigative reports,” (citing Swanner v. United States, 406 F.2d 716, 719 (5th Cir. 1969), and the circuit court may well have been dealing with a “special, individual case” where there was “reason for insulation of police ... records from discovery. Mehau v. Gannett Pacific Corp., 66 Haw. 133, 156, 658 P.2d 312, 327, 38 A.L.R. 4th 1089 (1983) (citing Tighe v. City & County, 55 Haw. at 422, 520 P.2d at 1346-47.”

“Public interest in preservation of confidentiality and secrecy may be sufficient reason for insulation of police or other governmental records from discovery in special, individual cases, but such claims of privilege for such records on this basis require documentation and argument by the governmental agency asserting the privilege, and subsequent judicial evaluation of the claim of privilege.” Tighe v. City and County of Honolulu, 55 Haw. 420, 422; 520 P.2d 1345, 1346-1347 (1974).

Respondent, Office of the Prosecuting Attorney, County and State of Hawai`i believes that this case is a “special and individual case” where the governmental records should not be disclosed. As the Court is well aware, the murder of Dana Ireland is a highly public criminal investigation. The Hawai`i Police Department continues to

investigate the death of Dana Ireland and to investigate who is responsible or involved in this crime. Any release of information as to their current investigation could lead to witnesses refusing to make statements or loss of evidence.

Respondent Albert Ian and Shawn Schweitzer allege that there is no need for further investigation as the sole perpetrator is deceased and therefore, there is no one to prosecute. However, the evidence and facts do not support that. The DNA evidence was only recovered from the Wa`a Wa`a scene (Scene #2). This DNA evidence regarding Unknown Male #1 was known at the time of the trial involving Albert Ian Schweitzer and during the guilty plea of Shawn Schweitzer. At the time of the trial, it was known that this DNA did not belong to either Albert Ian Schweitzer, Shawn Schweitzer or Frank Pauline. Yet, despite that fact, Albert Ian Schweitzer was found “guilty” and Shawn Schweitzer pled “guilty.” The jury had witness testimony placing them near the scene as well as testimony regarding seeing the three of them together that evening. JEFS, 3CSP-23-0000003, Dkt. 57 - 82. These factors as well as the evidence discovered during the initial investigation still support Albert Ian Schweitzer and Shawn Schweitzer as possible suspects in the death of Dana Ireland.

In fact, Shawn Schweitzer’s own statement to the police connect him, Albert Ian Schweitzer and Frank Pauline in the kidnapping and murder of Dana Ireland. Id. Dkt. 131. Similarly, the statements made during the change of plea hearing of Shawn Schweitzer on April 17, 2000, is also another fact that makes them suspects. Id., Dkt. 130, Exhibit 1. There are also statements made by Michael Ortiz and John Gonsalves, during the trial and under oath that support a theory that Albert Ian Schweitzer and Shawn Schweitzer remain as suspects in the death of Dana Ireland. John Gonsalves

testified at trial that Frank Pauline was with Ian and Shawn Schweitzer that evening. Id., Dkt. 66, pgs. 74 – 100, Dkt. 67, pg. 1 - 26. Similarly, Michael Ortiz testified at trial regarding statements made by Albert Ian Schweitzer. Id., Dkt. 67, pgs. 32 - 82. There are also statements made in police reports by Frank Pauline that support the theory that Pauline and Albert and Ian Schweitzer are still suspects in the death of Dana Ireland. Id. Dkt. 18, 21, 23, 24.

Although it is true that we now know the identity of Unknown Male #1, as Albert Lauro Jr. and that he is deceased, this fact does not create a situation where no further investigation is needed. The DNA evidence was only recovered at the scene in Wa`a Wa`a (Scene #2), where Ms. Ireland was found and not at the bicycle scene (Scene #1). Police still need to investigate to see who may have been involved at Scene #1.

Although the conviction of Albert Ian Schweitzer was vacated, the evidence presented to the jury is still evidence to be considered during this hearing, as well as the current investigation. Similarly, Shawn Schweitzer’s “guilty plea,” regardless of whether it has been withdrawn, is still an admission of “guilt” and is still evidence regarding his involvement, as well as Albert Ian Schweitzer’s involvement in the death of Dana Ireland. Id., Dkt. 130, Exhibit 1. Currently, there is no evidence to conclusively show that Albert Ian Schweitzer and Shawn Schweitzer are not involved in the death of Dana Ireland.

Respondent Albert Ian Schweitzer and Shawn Schweitzer argue that the reason the Hawai`i Police Department does not want to release any information regarding the pending criminal investigation is to “save face” is absurd. This is a situation where there is an ongoing and pending criminal investigation. There should never be a situation

where suspects of a crime are given access to an ongoing criminal investigation that they are suspects in and could possibly be charged with a crime.

The death of Dana Ireland occurred over thirty years ago and the information identifying Albert Lauro Jr. is new, barely two months old. The Hawai`i Police Department needs time to follow up with any information that they have recently received and to go back and look into the life of Albert Lauro Jr. During the initial investigation, over thirty years ago, Albert Lauro Jr. was not a suspect or an individual that police had spoken to and therefore need time to complete their investigation regarding the death of Dana Ireland and any premature release of any information will hinder and frustrate the efforts of the Hawai`i Police Department in this already difficult police investigation.

D. Hawaii Rules of Evidence, Rule 501

Hawaii Rules of Evidence, Rule 501 provides:

Except as otherwise required by the Constitution of the United States, the Constitution of the State of Hawaii, or provided by Act of Congress or Hawaii statute, and except as provided in these rules or in other rules adopted by the Supreme Court of the State of Hawaii, no person has a privilege to:

- (1) Refuse to be a witness; or
- (2) Refuse to disclose any matter; or
- (3) Refuse to produce any object or writing; or
- (4) Prevent another from being a witness or disclosing any matter or producing any object in writing

Respondent, Office of the Prosecuting Attorney, County and State of Hawai`i, argues that HRE 501, does not currently apply in this situation. Assuming arguendo that HRE Rule 501 applies, Respondent, Office of the Prosecuting Attorney, County and State of Hawai`i believes that the requested reports and the current pending investigation would be subject to a privilege, as discussed above.

“Public interest in preservation of confidentiality and secrecy may be sufficient reason for insulation of police or other governmental records from discovery in special, individual cases.” Mehau v. Gannett Pacific Corp, 66 Haw. 133, 155, 658 P.2d 312, 326, 38 A.L.R. 4th 1088, 9 Media L. Rep 1337.

E. Hawai`i Revised Statutes, Section 92F

HRS§92F-13 Government records; exception to general rule. This part shall not require disclosure of:

... (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.

Based on HRS§92F, the pending investigation into the death of Dana Ireland should be kept confidential and not released to Petitioner or to the public, until the police have completed their investigation as any police reports would be related to an active and ongoing criminal investigation.

CONCLUSION

Respondent, Office of the Prosecuting Attorney, County and State of Hawai`i respectfully request that this Court grant the Petition and issue a Writ of Mandamus and order that the police reports are kept confidential and allow the criminal investigation to be completed.

DATED: Hilo, Hawai`i _____ September 5, 2024 _____

/s/ Shannon M. Kagawa
SHANNON M. KAGAWA
Deputy Prosecuting Attorney

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a copy of the foregoing documents was served on the parties identified by electronic filing through the JEFS Court electronic filing on September 5, 2024:

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