

JENNIFER L. BROWN, #10885
L. RICHARD FRIED, JR., #764
WILLIAM A. HARRISON, #2948
VIRGINIA HENCH, #6821
HAWAI'I INNOCENCE PROJECT
2485 Dole Street, Suite 206
Honolulu, Hawai'i 96822
Telephone Number: (808) 956-6548
Facsimile Number: (808) 956-5569
E-MAIL: jenbrown@hawaiiinnocenceproject.org

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SUSAN FRIEDMAN # 5008891 (New York)*
BARRY SCHECK # 1634765 (New York)*
INNOCENCE PROJECT
40 Worth Street, Suite 701
New York, NY 10013
Telephone Number: (212) 364-5398
E-MAIL: sfriedman@innocenceproject.org
bscheck@innocenceproject.org
**Admitted Pro Hac Vice*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER

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

ALBERT IAN SCHWEITZER,

Petitioner,

vs.

STATE OF HAWAI'I,

Respondent.

Case No. 3CSP-23-0000003

JOINT STIPULATED FACTS;
EXHIBITS "1"- "26"; DECLARATION
OF COUNSEL; CERTIFICATE OF
SERVICE

JOINT STIPULATED FACTS

Petitioner, Albert Ian Schweitzer ("Mr. Schweitzer"), by and through his attorneys, JENNIFER L. BROWN, WILLIAM H. HARRISON, L. RICHARD FRIED, JR., and VIRGINIA HENCH of the Hawai'i Innocence Project, and SUSAN FRIEDMAN and BARRY SCHECK of

the Innocence Project, along with Respondents Prosecuting Attorneys KELDEN WALTJEN and SHANNON KAGAWA of the Hawai'i County Prosecuting Attorney's Office, jointly submit these Joint Stipulated Facts.

These Joint Stipulated Facts are filed pursuant to Rule 19 of the Rules of the Circuit Courts of the State of Hawai'i and are supported by all other files and records in this matter.

DATED: Hilo, Hawai'i, January 23, 2022.

/s/ Jennifer L. Brown
JENNIFER L. BROWN, #10885
L. RICHARD FRIED, JR., #764
WILLIAM A. HARRISON, #2948
VIRGINIA HENCH, #6821

SUSAN FRIEDMAN, #5008891 (New York)*
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
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JOINT STIPULATED FACTS

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CURRENT STATUS OF POST-CONVICTION CASE

1. On May 23, 2019, counsel for Petitioner and the Hawai'i County Prosecuting Attorney's Office entered into a Conviction Integrity Agreement. Under the terms of this agreement, the parties worked collaboratively to re-investigate Dana Ireland's kidnapping, rape, and murder. Over the last three years, the parties shared information and re-examined forensic evidence. This re-investigation has led to the discovery of new evidence that was not presented to the jury in Mr. Schweitzer's 2000 trial. The parties agree the relevant factual record is the following:

FACTUAL BACKGROUND

2. On December 24, 1991, the Hawai'i County Police Department responded to a report of a mangled bicycle at the intersection of Kapoho Kai Drive and Illilani Road. 1/24/00 Tr. 49 (Ex. 1). Shortly thereafter, Hawai'i County Police Department received a report that a badly injured woman was found nude from the waist down on a fishing trail in the Wa'a Wa'a subdivision. 1/26/00 Tr. 17-18, 57 (Ex. 1). The woman was later identified as Dana Ireland, who was the bicyclist injured at the Kapoho Kai Drive crash scene. *Id.* at 34-35. On December 25,

1991, at 12:07 a.m., Ms. Ireland died from severe blood loss at the hospital. 1/26/00 Tr. 130; 2/8/00 Tr. 5 (Ex. 1).

3. Following Ms. Ireland's death, Hawai'i County Police began investigating Ms. Ireland's death as a murder, kidnapping, and sexual assault (referred collectively as "Ms. Ireland murder"). Physical evidence was collected from the bicycle collision scene, the fishing trail, and from Ms. Ireland's body. At the Kapoho Kai scene of the bicycle crash, investigators collected the remnants of Ms. Ireland's bicycle, one of her shoes, her watch, and a clump of her hair. 2/8/00 Tr. 7 (Ex. 1). At the Wa'a Wa'a scene where Ms. Ireland was found, investigators collected her clothing, a child's athletic shoe and socks, beer bottles, cigarette butts, a red pair of men's underwear, and a men's Jimmy'Z brand t-shirt soaked in what was later confirmed to be the Ms. Ireland's blood. 1/25/00 Tr. 106-114 (Ex. 1). At the hospital, a rape kit was collected which included oral, anal, and vaginal swabs; fingernail clippings; head hairs; pubic hair combings; swabbings of what appeared to be oil or grease on Ms. Ireland's calf and thigh; the hospital gurney sheet Ms. Ireland was transported on; and Ms. Ireland's bra, tank top, denim shorts, and underwear. 1/26/00 Tr. 139; 2/2/00 Tr. 123, 132; 2/7/00 Tr. 108, 145 (Ex. 1). *See also* 1/21/92 Letter from Victor V. Vierra to William S. Sessions (Ex. 2).

4. From the date of Ms. Ireland's murder, the local and state news continued to cover the case closely, producing regular news reports and articles about any developments in the case. From December 24, 1991 through 1994, local newspaper articles on Ms. Ireland's murder were published on a regular basis, appearing monthly if not more often, in popular publications such as *Honolulu Advertiser*, *Star-Bulletin*, *Hawai'i Tribune Herald*, *West Hawai'i Today*, *Big Island Review Journal*, etc. The Hawai'i Island community also came out in support of the Ireland family and their desire to solve the case, helping to raise money for the Ireland's

reward fund which had reached \$22,000 just one year after her murder. Hugh Clark, “Reward in Ireland case over \$7,000,” *Star-Bulletin*, Dec. 29, 1991; “Reward in Ireland case is \$22,000,” *Hawai‘i Tribune Herald*, Jan. 17, 1992 (Ex. 3). The Hawai‘i Island community also organized a candlelight vigil and parade on the one-year anniversary of Ms. Ireland’s death, which helped to keep her case prominent in the news. “Vigil recalls Dana Ireland,” *Honolulu Advertiser*, Dec. 25, 1992 (Ex. 4). The media attention continued well beyond the one- year anniversary of Ms. Ireland’s death. The fact that her murder remained unsolved heightened fears within the Hawai‘i Island community and led to mounting public pressure on authorities over the next four years to solve the crime. The Hawai‘i Island victim’s organization, Citizens for Justice, organized a party in support of the Ireland family in January of 1994 and finally started a petition by April of 1994 requesting that the Hawai‘i Attorney General appoint an independent prosecutor to investigate Ms. Ireland’s murder, collecting many signatures from the Hawai‘i Island community. Del Pranke, “Helping the Irelands,” *Hawai‘i Tribune Herald*, Jan. 26, 1994; Chris Loos, “Group Demands Justice for Ireland,” *Star-Bulletin*, Apr. 6, 1994 (Ex. 5).

5. The Hawai‘i County Police Department investigated the case from its inception, tracking numerous suspects over the years, but was unable to make an arrest. But on May 23, 1994, nearly three and a half years after the murder and less than two months after the petition calling for an independent prosecutor was circulated, the police got what they thought was a big breakthrough. They were contacted by John Gonsalves, who, at the time, was facing decades in prison for his role in the “largest case of conspiracy to import cocaine ever uncovered on the Big Island.” Crystal Kua, “Cocaine Case is Closed,” *Hawai‘i Tribune Herald*, May 1, 1995 (Ex. 6). Gonsalves claimed that his half-brother, Frank Pauline, Jr., had been present during Ms. Ireland’s attack and that Pauline would provide information on the case. 5/23/94 Report by Steven

Guillermo at 1 (Ex. 7). Pauline was in his third month of a ten-year prison sentence for sexual assault and theft. 2/15/94 Letter from Sharon W. Rooney to The Honorable Riki May Amano at 1 (Ex. 8). John Gonsalves and Pauline eventually told police that brothers Albert Ian Schweitzer (“Mr. Schweitzer”) and Shawn Schweitzer were the perpetrators of the attack on Ms. Ireland. 5/31/94 Report by Steven Guillermo (Ex. 9).

6. Starting in June 1994, and for the next two years, police interrogated Pauline at least seven times and each time Pauline provided inconsistent statements. *See* Hawai‘i County Police Dep’t Interviews with Frank Pauline, Jr. (Ex. 10). Ultimately, on July 6, 1996, two years before DNA testing was conducted in this matter, Pauline stated that he had been lying to police about the involvement of himself and the Schweitzers in Ms. Ireland’s murder. 7/6/96 Interview by John L. Kalawe, Jr., with Frank Pauline, Jr. (Ex. 11). Pauline explained that his brother John Gonsalves had asked him for help and that “John made a deal with the police to persuade Frank to talk to them regarding the Dana Ireland case in exchange to dropping drug charges.” *Id.* at 2.

7. Based on Pauline’s initial admissions incriminating himself and the Schweitzers, police obtained a search warrant for the Schweitzer residence. 7/3/94 Report by Steven Guillermo at 13 (Ex. 12). During the search police discovered a trash bag containing clothes and a rusted tire iron, which forensic analysis failed to link to the crime *Id.* at 14; 1/12/95 Report by Tracy T. Tanaka, 4/28/95 Affidavit by Steven Guillermo, 4/29/95 Report by Dean Yamamoto (Ex. 13). Both Schweitzer brothers volunteered for interviews where they denied involvement in Ms. Ireland’s murder and explained the longstanding feud between their family and the Pauline/Gonsalves family. 6/29/94 Report by Steven Guillermo (Ex. 14). Police collected dental impressions from the Schweitzers, which the state’s expert concluded did not match what they believed at the time was a “bite mark” on the victim’s breast. 10/10/94 Report by Norman Sperber

(Ex. 15). Police seized Albert Ian Schweitzer's VW Beetle and searched the vehicle for evidence of the crime. A phenolphthalein test revealed no traces of blood in the car. *Supra* Ex. 13 at 12. Grease samples from the vehicle were collected. *Id.* There was either no match or no comparison possible. *Id.* at 5. Paint scrapings from the car were compared to a paint transfer on Ireland's bicycle, which also failed to yield a match. *Id.* at 2. Hairs were collected from 14 parts of the vehicle. *Id.* at 13. All the hairs were dissimilar to Ms. Ireland's. *Id.* at 4-5, 7. In fact, a review of the VW Beetle's title transfer revealed that Mr. Schweitzer did not own the car until January 28, 1992, a month after the crime was committed. 1/28/92 Certificate of Title (Ex. 16).

8. On July 30, 1997, Frank Pauline, Jr. was indicted for the rape, kidnapping, and murder of Dana Ireland. Crystal Kea, "Ireland Murder Trial Set For Jan. 19," *Hawai'i Tribune-Herald* (Ex. 17). On October 9, 1997, Albert Ian Schweitzer and Shawn Schweitzer were indicted for the same charges. 10/9/97 Tr. at 142 (Ex. 1). Following their indictment, Ms. Ireland's vaginal/cervical swab, the hospital sheet, the red underwear, and the Jimmy Z t-shirt for DNA testing at Forensic Analytical Science, Inc. ("FASI"). 2020 FACL Report at 4 (Ex. 18). On October 7, 1998, FASI testing yielded two findings: first, that Ms. Ireland's vaginal/cervical swab and hospital gurney sheet both contained sperm; and second, that Albert Ian Schweitzer, Shawn Schweitzer, and Frank Pauline, Jr., were all excluded the source of the as sperm. *Id.* at 5. Based on these DNA results, the Hawai'i County Prosecutor's Office dismissed all charges against Mr. Schweitzer and Shawn Schweitzer on October 20, 1998. Rod Thompson, "Charges Dropped in Dana Ireland Case," *Hawai'i Tribune-Herald*, Oct. 21, 1998 (Ex. 19).

9. On May 5, 1999, an investigator for the prosecution interviewed Michael Ortiz, an associate of John Gonsalves who had been detained at Hawai'i County Correctional Center ("HCCC") at the same time as Albert Ian Schweitzer and Shawn Schweitzer, before their

indictments were dismissed. 2/03/00 Tr. at 5-9 (Ex. 1). Ortiz alleged that Mr. Schweitzer had confessed to him at HCCC. 2/03/00 Tr. at 9–10 (Ex. 1). In May of 1999, Ortiz’s claims (along with claims from three other informants) were used to secure a reindictment of Ian Schweitzer and Shawn Schweitzer.

10. At the time of Mr. Schweitzer’s trial, the prosecutor told the jury that “they found Frank Pauline’s T-shirt drenched in Dana Ireland’s blood.” 1/24/00 Tr. at 27 (Ex. 1). The prosecution presented testimony from three witnesses who alleged that the Jimmy Z t-shirt belonged to Pauline: Lynn Matthews (1/27/00 Tr. at 90-92), Steven Dearing (*Id.* at 149-151), and Charla Figueroa (*Id.* at 132).¹ In closing arguments, the prosecution stressed that Pauline was wearing the Jimmy’Z brand t-shirt during the physical and sexual assault as demonstrated by the fact that Dana Ireland’s blood was on the Jimmy’Z brand t-shirt. 2/14/00 Tr. at 103, 109-110 (Ex. 1).

11. Michael Ortiz testified against Albert Ian Schweitzer and claimed that while he was awaiting trial in HCCC, Mr. Schweitzer confessed to participating in Ms. Ireland’s murder. According to Ortiz, Mr. Schweitzer stated that he was in the car with Shawn Schweitzer and Pauline when they saw Ms. Ireland and Pauline told Mr. Schweitzer to turn the car around to “scare” her. 02/03/00 Tr. at 9 (Ex. 1). Ortiz also testified that Mr. Schweitzer confided that he had “seen Frank rip her shirt off and bite her on [the] breast.” 2/3/00 Tr. at 16 (Ex. 1). In opening statements, the prosecution told the jury “...[Pauline] reaches over and bites her back on the breast, nearly avulging [sic] or biting through her – nipple on her breast.” 1/24/00 Tr. at 23 (Ex. 1). The

¹ Louise Furtado, Figueroa’s grandmother, testified that she was at the Pauline residence on Christmas Eve 1991 and that Pauline arrived in the early evening without a shirt. *Id.* at 141-142.

Medical Examiner testified that the injury on Ireland's breast was "very characteristic for a bite mark of the breast area." 1/26/00 Tr. at 123 (Ex. 1).

12. A "neutral" DNA expert, Lisa Calandro, was hired by the prosecution and defense to perform DNA testing on four items: the victim's vaginal swabs, the hospital gurney sheet, a pair of red briefs recovered about 40 feet from the victim, and the Jimmy'Z t-shirt. 02/10/00 Tr. at 17-18 (Ex. 1). Ms. Calandro ultimately *did not test* the Jimmy'Z t-shirt because it was soaked in the victim's blood, and she did not obtain results on the red briefs. *Id.* at 21-23. (Ex. 1) Albert Ian Schweitzer, Shawn Schweitzer, and Frank Pauline, Jr., were all excluded as being the source of the sperm recovered from the victim's vaginal swab and the hospital gurney sheet. *Id.* at 5 (Ex. 1).

13. On February 16, 2000, the jury found Albert Ian Schweitzer guilty of Second Degree Murder, Kidnapping, and Sexual Assault in the First Degree. 2/16/00 Tr. at 10 (Ex. 1). Mr. Schweitzer was sentenced to a term of: (1) life imprisonment with the possibility of parole for the Second Degree Murder, (2) 20 years in prison for Kidnapping, and (3) 20 years in prison for Sexual Assault in the First Degree, all terms to run consecutively. 04/24/00 Tr. at 39-40 (Ex. 1).

14. After Pauline and Mr. Schweitzer were convicted, on March 23, 2000, Shawn Schweitzer entered into a proffer agreement in which he agreed to enter into plea negotiations, fully cooperate with investigators, take a polygraph test, and in exchange he would not be called as a witness to testify in Albert Ian Schweitzer's trial. 3/23/00 Shawn Schweitzer Proffer Agreement (Ex. 20). On May 9, 2000, Shawn pled guilty to manslaughter and kidnapping (by omission) and was sentenced to one year in jail with credit for time served and five years probation. (Docket Cr: 3PC99-0000147).

15. In an unpublished decision, the Hawai'i Supreme Court affirmed Albert Ian Schweitzer's conviction. *State v. Schweitzer*, 103 Hawaii 400 (2004). Mr. Schweitzer at trial and

in post-conviction proceedings has continually maintained that he is innocent of Ms. Ireland's rape, kidnapping, and murder. In January 2005, Albert Ian Schweitzer filed a *pro se* petition under 28 USC § 2254 for a Writ of Habeas Corpus and an amended petition in March 2005, which has been held in abeyance because Mr. Schweitzer must exhaust his state law claims before proceeding in federal court. While Mr. Schweitzer's federal habeas was pending, the Hawai'i Innocence Project ("HIP") began representing him and entered into an agreement for DNA Testing of Evidence with the State of Hawai'i. (Case no. 3SP071-000007). In order to exhaust all his State claims and present new evidence, Mr. Schweitzer filed his initial Petition to Vacate, Set Aside or Correct Judgment or to Release Petition pursuant to Hawaii Rule Penal Procedure Rule 40 on February 3, 2017, and filed amended petitions on February 7, 2017 and January 16, 2018. (Case no. 3PR171-000002).

NEWLY DISCOVERED DNA EVIDENCE

16. Since Mr. Schweitzer's trial, there have been significant advancements in forensic DNA testing. Modern forensic DNA testing has the ability to test articles of clothing to identify DNA that belongs to the "usual wearer" or "habitual wearer." In light of these advances, in 2007, the Jimmy'Z t-shirt was sent to Reliagene/Cellmark² to be re-examined. In Reliagene/Cellmark's October 29, 2008, laboratory report, the testing concluded that Mr. Schweitzer was excluded as being the source of the DNA on the armpit area of the Jimmy'Z t-shirt. 2020 FACL Report at 17 (Ex. 18). In 2017, Forensic Analytical Crime Lab ("FACL") performed additional testing on the Jimmy'Z t-shirt and found that the t-shirt has sperm on it and the source of that sperm is the same person ("Unknown Male #1") whose DNA was recovered from the victim's vaginal swab and from the hospital gurney sheet that was presented at trial. *Id.* at 6-7. FACL also reviewed the

² Reliagene was later purchased by Cellmark.

Reliagene/Cellmark results and concluded that “the t-shirt armpit cutting is explained by a mixture of DNA from Dana Ireland and Unknown Male #1.” *Id.* Additionally, the lab concluded that “[b]ased on the presence of semen from Unknown Male #1 and biology from Unknown Male #1 in two other cuttings from the Jimmy Z t-shirt, Unknown Male #1 is likely the owner/habitual wearer of this shirt.” *Id.* at 49.

17. Furthermore, the lab’s new examination of the victim’s pubic hair combing and sperm found on her “pink panty” produced Y-STR profiles and FACL concluded that Unknown Male #1 cannot be eliminated as the source of this DNA.³ 2020 FACL Report at 50 (Ex. 18).

18. A summary of all the DNA testing in this case is the following:

A. Jimmy’Z T-shirt:

- (1) **Unknown Male # 1** is the “habitual wearer” of the Jimmy’Z t-shirt. *Id.* at 47.
- (2) **Unknown Male # 1** is the source of the semen on the outside lower part of the Jimmy’Z t-shirt. *Id.* at 47.
- (3) The non-sperm fraction of the cutting of the fluorescent stain is degraded, however, this “**DNA mixture is compatible with Dana Ireland and Unknown Male # 1.**” *Id.* at 48.
- (4) The blood drop cutting is degraded, however “**DNA mixture is compatible with Dana Ireland and Unknown Male # 1.**” *Id.*

³ Y-STR testing analyzes the Y chromosome which is inherited paternally. Every male in a paternal line will have the same Y-STR profile.

- B. Victim's Pink Panty: Y-STR testing shows that “**Unknown Male # 1** and his patrilineal relatives cannot be eliminated as a potential contributor to the mixture of the male DNA from the pink panty sample.”⁴ *Id.* at 9.
- C. Victim's Pubic Comb: Y-STR testing shows that **Unknown Male # 1** and “his patrilineal relatives cannot be eliminated as the source of the male DNA in the epithelial cell DNA and sperm DNA extracts recovered from the pubic comb swabs.” *Id.* at 9.
- D. Victim's Vaginal Swabs: **Unknown Male # 1** is the source of the semen recovered from the victim's vaginal swabs. *Id.* at 49.
- E. Hospital Gurney Sheet: autosomal STR and Y-STR DNA profiles prove that **Unknown Male # 1** is the source of the sperm recovered from this item. *Id.* at 46-47.

19. Unknown Male # 1 is the only individual whose DNA is recovered from all probative items of crime scene evidence. Albert Ian Schweitzer, Shawn Schweitzer, and Frank Pauline, Jr. are all excluded.

NEWLY DISCOVERED BITEMARK EVIDENCE

20. For decades, “bitemark evidence was an accepted forensic technique, generally understood by its practitioners and by the scientific community to be both valid and reliable.” *See* Affidavit of Dr. Adam Freeman (“Freeman Aff.”) ¶ 4 (Ex. 21). In 2009, National Academy of Sciences (“NAS”) issued a report, *Strengthening Forensic Science in the United States: A Path Forward* (“NAS Report”) which criticized bitemark evidence stating “[t]he committee received no evidence of an existing scientific basis for identifying an individual to the exclusion of all

⁴ Y-STR testing produced one extra allele which required the lab to report this as a mixture of at least two males. 2020 FACL Report at 9 (Ex. 18).

others.” NAS Report at 176 (Ex. 22). The NAS Report also found that because no population data existed about how rare bitemark patterns are, it is not possible for experts to identify an individual as the source of a human bitemark. *See, supra*, Ex. 22 at 174-76; *see also* Ex. 21 ¶ 8.

21. The American Board of Forensic Odontologists (“ABFO”) certifies forensic odontologists and issues standards and guidelines for them to follow. *See* ABFO Diplomates Reference Manual § IV: Standards & Guidelines, <https://abfo.org/resources/abfo-manual> (last visited Jan. 5, 2022) (Ex. 23). In March 2016 (most recently updated in 2018), the ABFO implemented significant changes to its standards and guidelines which now *prohibit a forensic odontologist from determining that a specific individual inflicted a bite* and the only acceptable conclusions in cases where there is sufficient information are “excluded” and “not excluded.” *Id.* at 6.

22. Additionally, in September 2016 the President’s Council of Advisors on Science and Technology issued its report, *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (“PCAST Report”), which found that “available scientific evidence strongly suggests that examiners cannot consistently agree on whether an injury is a human bitemark and cannot identify the source of bitemark with reasonable accuracy.” *See* PCAST Report at 87 (Ex. 24).

23. Mr. Schweitzer’s board-certified forensic odontologist expert, Dr. Adam Freeman, reviewed the pattern injury in this case and concluded “the injury Dr. Reinhold testified was a bitemark is not actually a bitemark. Because that threshold inquiry cannot be satisfied in this case, there would be no comparison, under today’s standards, between the injury and any known dentition.” Freeman, *supra* ¶ 37 (Ex. 21).

NEWLY PRESENTED TIRE TREAD EVIDENCE

24. Investigators identified and measured tire track evidence at the scene of the bicycle collision and at the Wa'a Wa'a scene. The tire track evidence was only disputed in the Frank Pauline trial and not raised in Mr. Schweitzer's trial.

25. This tire tread evidence in Mr. Schweitzer's case was sent for review to Matthew Marvin at Ron Smith & Associates ("RS&A"). Based on Mr. Marvin's experience he indicated that tread width is the measurement from the inside edge to outside edge across the tread of a single tire; track width is the measurement from the passenger's side tire to the driver's side tire for either the front two tires (front track width) or the rear two tires (rear track width); wheelbase is the measurement from the center of the front axle to the center of the rear axle on the same side of the vehicle (center of front driver's side to the center of the rear driver's side). Affidavit of Matt Marvin ("Marvin Aff.") ¶ 6 (Ex. 25).

26. In 1991, investigators reported that the tread width at the Wa'a Wa'a scene was 9 inches, the wheelbase was approximately 11 feet (or 132 inches), and track width of approximately 74 inches. 1/14/92 Report by Steven Guillermo at 3 (Ex. 26). Mr. Marvin compared these measurements to that of a 1953 VW Beetle, which is the same type of vehicle the Prosecution alleged at trial struck Ms. Ireland. Based on Mr. Marvin's research, a 1953 VW Beetle has a tread width of 4.92 inches, a track width of 51 inches for the front and 49.3 inches for the back, and a wheelbase of 94.5 inches. Marvin Aff. ¶ 11 (Ex. 25).

27. Based on the tire track width and wheelbase measurements crime scene investigators took at the Wa'a Wa'a scene, Mr. Marvin concluded that Mr. Schweitzer's VW Beetle could not have produced the measured tire tracks reported by the investigators. Marvin Aff. ¶ 10.

28. Mr. Marvin also reviewed evidence from the scene of the bicycle collision. *Id.* ¶ 11. Mr. Marvin concluded that the VW Beetle likely did not produce the tire tracks at the bicycle collision. *Id.*

29. Investigators reported that the tire tread evidence at the bicycle collision scene was approximately 10 inches. *Id.* at 8. Mr. Marvin reviewed the vehicle specification for a 1953 VW Beetle and found that it corresponds to a tread width of 4.92. *Id.* In order for the 10-inch track width to have been made by the 1953 VW Beetle, the car would need to be fitted for oversized tires that were more than twice the width of the manufacturer's specification. *Id.* ¶ 11.

30. Lastly, Mr. Marvin concluded that the same vehicle may have produced the tire tracks at the Wa'a Wa'a scene and at the bicycle accident scene. *Id.* ¶ 12.

NEWLY DISCOVERED RECANTATION EVIDENCE

31. On October 21, 2022 Shawn Schweitzer, accompanied by Alex Simpson, a lawyer from his new legal team, and Keith Shigetomi, his prior counsel, met in person with Hawai'i County Prosecuting Attorneys Shannon Kagawa and Kevin Hashizaki to discuss the circumstances surrounding Shawn Schweitzer's polygraph examination and the guilty plea he entered on May 9, 2000 in connection with Ms. Ireland's murder. See, *supra*, Ex. 20; see also Docket Cr: 3PC99-0000147. Professor Ken Lawson, from the Hawai'i Innocence Project was also present in person; Jennifer Brown from the Hawai'i Innocence Project and Susan Friedman, Barry Scheck, and Natalie Baker from the Innocence Project in New York attended remotely.

32. During this October 21, 2022, meeting with Prosecutors, Shawn Schweitzer maintained his innocence of Ms. Ireland's murder and reiterated that neither he nor his brother Ian were involved in her murder in any way. Shawn Schweitzer recanted his prior confession in full, explaining that he only agreed to enter a guilty plea for a crime that he did not commit because he

had already witnessed his brother Albert Ian Schweitzer, who was also innocent, be convicted and sentenced to life in prison for the murder, kidnapping, and rape of Ms. Ireland. Attorney Shigetomi corroborated Shawn Schweitzer's recollection of events. Both explained that Shawn Schweitzer's parents did not want to risk losing another son and encouraged Shawn Schweitzer to do what he needed to do to come home and not suffer the same fate as his brother. At the time of this decision Shawn Schweitzer had two very young children and he worried about what would happen to them if he were wrongfully convicted of Ms. Ireland's murder like his brother. Albert Ian Schweitzer encouraged Shawn Schweitzer to take the deal the prosecution offered. The deal, simply put, was that Shawn Schweitzer would receive a sentence of time served, five years of probation, and would not be asked to testify against his brother. Nonetheless, Shawn Schweitzer felt and continues to feel immense guilt about agreeing to the confession and entering a guilty plea for a crime he did not commit and falsely implicating his brother Albert Ian Schweitzer in Ms. Ireland's murder.

33. During the October 21, 2022 meeting with Hawai'i County Prosecutors the question arose as to whether Shawn Schweitzer would be willing to take another polygraph. He made no commitment to do so at that time, but on November 20, 2022, Shawn Schweitzer did undergo a polygraph examination conducted by defense expert Mark Handler in Kona. Mr. Handler concluded that Shawn Schweitzer passed the polygraph and did not show signs of deception when he denied involvement in Ms. Ireland's murder.

34. Prosecution experts are now reviewing this polygraph.

LEGAL CONCLUSIONS

35. Hawai'i Rule Pen. P. 40 establishes that a petitioner may seek to vacate their conviction "at any time but not prior to final judgment" on the ground that there is "newly discovered evidence." HRPP 40(a)(1)(iv). The standard for a new trial based on newly discovered

evidence was established by the Hawai'i Supreme Court in *State v. McNulty*, 60 Haw. 259, 588 P.2d 438 (1978), *overruled, in part, on other grounds by Raines v. State*, 79 Hawai'i 219, 900 P.2d 1286 (1995). The Intermediate Court of Appeal and the Hawai'i Supreme Court have used the *McNulty* standard for new evidence in evaluating Rule 40 petitions. *See e.g., State v. Mabuti*, 72 Haw. 106, 112-13, 807 P.2d 1264, 1268 (1991); *State v. Jimenez*, 126 Haw. 122, 267 P.3d 706 (Ct. App. 2011); *Karagianes v. State*, 2008 Haw. App. LEXIS 231, at *18 (App. May 8, 2008) (SDO).

36. To be entitled to a new trial based on newly discovered evidence, the defendant must prove:

(1) the evidence has been discovered after trial; (2) such evidence could not have been discovered before or at trial through the exercise of due diligence; (3) the evidence is material to the issues and not cumulative or offered solely for purposes of impeachment; and (4) the evidence is of such a nature as would probably change the result of a later trial.

State v. Ruis, No. CAAP-12-0001115, 2014 WL 1621780, at *1 (Haw. Ct. App. April 22, 2014) (SDO) (citing *State v. McNulty*, 60 Haw. 259, 588 P.2d 438 (1978)).

37. Based on factual record today, the parties agree that the DNA and bite mark evidence discussed above is evidence that has been discovered after trial; that such evidence could not have been discovered before trial or at trial through the exercise of due diligence; and the evidence is material to the issues and not cumulative or offered solely for the purposes of impeachment. The parties also agree that the tire tread evidence is newly presented evidence that was not considered by the factfinder.

38. The joint re-investigation to identify Unknown Male # 1 remains active and will continue.

DATED: Hilo, Hawai'i, January 23, 2022.

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

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SUSAN FRIEDMAN, #5008891 (New York)*
BARRY SCHECK, #1634765 (New York)*

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

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/s/ Shannon Kagawa
KELDEN WALTJEN, #9686
SHANNON KAGAWA, #7373
ATTORNEY FOR THE RESPONDENT
STATE OF HAWAI'I

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Respondent.

Case No. 3CSP-23-0000003

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, JENNIFER BROWN, being first duly sworn on oath deposes and states as follows:

1. I am a Hawai'i licensed attorney in good standing and am the Associate Director of the Hawai'i Innocence Project at the William S. Richardson School of Law.
2. I am co-counsel in Mr. Albert Ian Schweitzer's case along with attorneys Susan Friedman and Barry Scheck of the Innocence Project, *admitted pro hac vice*.
3. Attached as Exhibit "1" is a true and correct copy of Transcripts of Proceedings, commencing on January 24, 2000.
4. Attached as Exhibit "2" is a true and correct copy of FBI Lab Report, dated January 21, 1992.
5. Attached as Exhibit "3" is a true and correct copy of *Honolulu Star-Bulletin* article titled "Reward in Ireland case over \$7,000", dated December 29, 1991.
6. Attached as Exhibit "4" is a true and correct copy of *The Honolulu Advertiser* article titled "Vigil recalls Dana Ireland", dated December 25, 1992.
7. Attached as Exhibit "5" is a true and correct copy of *Hawaii Tribune-Herald* article titled "Helping the Irelands", dated January 26, 1994.

8. Attached as Exhibit “6” is a true and correct copy of *Hawaii Tribune-Herald* article titled “Cocaine case is closed”, dated May 1, 1995.
9. Attached as Exhibit “7” is a true and correct copy of the John Gonsalves Contacts Police Report, dated June 14, 1994.
10. Attached as Exhibit “8” is a true and correct copy of Police Report regarding Pauline in Prison, dated February 15, 1994.
11. Attached as Exhibit “9” is a true and correct copy of Police Report, dated May 31, 1994.
12. Attached as Exhibit “10” is a true and correct copy of Pauline Interrogations and Statements.
13. Attached as Exhibit “11” is a true and correct copy of Pauline’s Recantation, dated December 16, 1996.
14. Attached as Exhibit “12” is a true and correct copy of Police Report, dated July 3, 1994.
15. Attached as Exhibit “13” is a true and correct copy of the Analysis of Car.
16. Attached as Exhibit “14” is a true and correct copy of Police Report, dated June 29, 1994.
17. Attached as Exhibit “15” is a true and correct copy of Dr. Sperber’s Letter, dated October 10, 1994.
18. Attached as Exhibit “16” is a true and correct copy of the Title Transfer, issued on January 28, 1992.
19. Attached as Exhibit “17” is a true and correct copy of *Hawaii Tribune-Herald* article titled “Ireland murder trial set for Jan. 19”, dated August 1, 1997.

20. Attached as Exhibit “18” is a true and correct copy of FACL 2020 Report, dated February 7, 2020.

21. Attached as Exhibit “19” is a true and correct copy of *Hawaii Tribune-Herald* article titled “Charges dropped in Ireland case”, dated October 21, 1998.

22. Attached as Exhibit “20” is a true and correct copy of Shawn’s Signed Proffer Agreement, dated March 23, 2000.

23. Attached as Exhibit “21” is a true and correct copy of Dr. Freeman’s Affidavit, dated November 2, 2022.

24. Attached as Exhibit “22” is a true and correct copy of NAS Report Excerpt for Odontology.

25. Attached as Exhibit “23” is a true and correct copy of ADBO Manual Section IV, dated February 2021.

26. Attached as Exhibit “24” is a true and correct copy of the PCAST Bitemark Analysis, dated September 2016.

27. Attached as Exhibit “25” is a true and correct copy of Matt Marvin’s Affidavit, dated October 14, 2022.

28. Attached as Exhibit “26” is a true and correct copy of Police Report, dated January 14, 1992.

DATED: Hilo, Hawai‘i, January 23, 2023.

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
SUSAN FRIEDMAN, #5008891 (New York)*
BARRY SCHECK, #1634765 (New York)*

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

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

ALBERT IAN SCHWEITZER,

Petitioner,

vs.

STATE OF HAWAI'I,

Respondent.

Case No: 3CSP-23-0000003

CERTIFICATE OF SERVICE RE: JOINT
STIPULATED FACTS; EXHIBITS "1"- "26";
DECLARATION OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached "Joint Stipulated Facts; Exhibits "1"- "26";
Declaration of Counsel" was duly served upon the following parties listed below via electronic filing:

KELDEN WALTJEN
SHANNON KAGAWA
Office of the Prosecuting Attorney
655 Kilauea Avenue
Hilo, HI 96720

Dated: Hilo, Hawai'i, January 23, 2023

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
SUSAN FRIEDMAN, #5008891 (New York)*
BARRY SCHECK, #1634765 (New York)*
Attorneys for Petitioner

ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*