

THE STATE OF TEXAS)(IN THE DISTRICT COURT OF
V.)(HARRIS COUNTY, TEXAS
WILLIAM DARIN IRVAN)(180th JUDICIAL DISTRICT

**MOTION TO COMPEL THE STATE TO ALLOW EVIDENCE IN THEIR
SOLE POSSESSION TO BE SUBJECTED TO FORENSIC TESTING AT THE
EXPENSE AND DIRECTION OF THE DEFENDANT**

TO THE HONORABLE JUDGE OF SAID COURT:

The undersigned attorney, James Leitner, has employed the services of forensic DNA consultant Karin Scalise¹. She along with the attorney and his investigator² has reviewed the entire case file obtained via open records request from Assistant District Attorney Brian Rose. She has further been allowed to have access to all of the files of the undersigned attorney and have access to all of his and his investigator's knowledge and findings of this case. The State, pursuant to orders of this court, has made available the evidence that is in the sole possession of the State, for visual review by the defense team. After review of this evidence, and after being advised by the defense team of their writ strategy in this case she has advised the defense team that the following forensic testing

¹A list of Karin Scalise's education and work experience is attached hereto as Exhibit "A"

²The investigator in this case is Brian Benken who is also a licensed attorney in the State of Texas.

needs to be conducted by the defense to further their claims.³ These suggestions includes:

1. Fingernail scrapings from the left and right hand of the victim. This evidence is in the possession of the Harris County Sheriff's Department and it was visually inspected by the defense team on July 6, 2005, at the Harris County Sheriff's Office on Lockwood Street in Houston, Harris County, Texas. It is the belief of the defense team that these fingernail scrapings would produce epithelial (skin cells) from her attacker "killer". This evidence was collected by agents of the State, and has remained in the State's sole possession since this crime was committed. To our knowledge, and what has been represented to us, this evidence has never been subjected to SDTR DNA analysis and we wish to conduct the same at Orchid Cellmark Lab-Dallas, Texas.

2. One hair from the victim's left hand fingernail scrapings which remains intact with a root and is stored at the Harris County Sheriff's Office property room on Lockwood Street in Houston, Harris County, Texas. To our knowledge, and what has been represented to us, this evidence has never been subjected to SDTR DNA analysis and we wish to conduct the same at Orchid Cellmark Lab-Dallas, Texas.

3. One hair that was recovered from the knife presumed to have been used to stab the victim in this case. Karin Scalise is also a hair analyst, and she did not believe that this hair was a hair from the victim in this case. To our knowledge, and what has been represented to us, this evidence has never been subjected to SDTR DNA analysis and we

³A copy of the letter informing the attorney of her suggestions is attached hereto as exhibit "B"

wish to conduct the same at Orchid Cellmark Lab-Dallas, Texas.

4. There is what appears to Karin Scalise as being a 90 degree blood drop that was recovered from the crime scene on a newspaper. This 90 degree blood drop appears in pictures from the scene that were viewed from the State's file, and the newspaper itself was seized and is presently housed in the property room on Lockwood Street in Houston, Harris County, Texas. To our knowledge, and what has been represented to us, this evidence has never been subjected to SDTR DNA analysis and we wish to conduct the same at Orchid Cellmark Lab-Dallas, Texas.

5. Even though the husband of the victim, Jackie Shadbolt, was the sole suspect in this case for many years, Karin Scalise after reviewing the entire DNA files of Orchid Cellmark has concluded that the complete DNA profile of Jackie Shadbolt was never obtained. She has also determined that 3 unknown (foreign) DNA profiles have already been obtained by earlier DNA analysis conducted by the State.⁴ None of these foreign DNA profiles were discussed in the trial of William Darin Irvan in the 180th District Court wherein he was convicted of capital murder. Ms Scalise has advised the defense team that Jackie Shadbolt's reference samples⁵ should be analyzed with STR DNA analysis and Mitochondrial DNA analysis for comparison to 3 unknown (foreign) DNA profiles which have been obtained by earlier DNA analyses. As of this date these samples are located at

⁴See Exhibit "B" attached hereto.

⁵Please note that Jackie Shadbolt's reference samples have not been stored refrigerated and that obtaining DNA profiles from them may be impossible. New reference samples from Mr. Shadbolt may be necessary. If necessary, that request will be also be made to this court.

the Harris County Sheriff's Office on Lockwood Street in Houston, Harris County, Texas. Unknown DNA profiles have been detected on the following items of evidence by earlier DNA analyses:

(a) one hair from the victim's fingernail scrapings-mitochondrial DNA testing
(b) one hair from the wheel of vacuum cleaner which was found near and with the cord under the victim when she was discovered dead on the floor of her home. -STR DNA analysis

(c) paint scraping from wall at crime scene-STR DNA analysis.

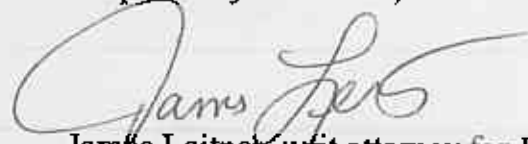
6. It is also requested that the Court order the State to have the DNA profile obtained from the hair recovered from the wheel of the vacuum cleaner uploaded into the CODIS (state) and NDIS (National) databases using a quick keyboard search. She advises that Dr. Dennis Lochermann, the Texas CODIS Administrator, Supervisor of the TXDPS CODIS lab in Austin, Texas can provide such information on quick keyboard searches. 512-424-2000. That profile is depicted in Exhibit "B" which attached hereto.

7. There were unidentified fingerprints found on the vacuum cleaner and on part of a trophy which was testified to at trial as being bludgeoning instrument that contributed to the death of the complainant in this case. These items were found by agents of the State and are in the sole possession of the State at the Lockwood Office of the Harris County, Sheriff's Office in Houston, Harris County, Texas. Appellant has already been excluded as a possible source of these prints. The print on the trophy was allegedly a print made in blood. These prints need also to be made available to the defense for review by their

fingerprint expert, and for further DNA testing.

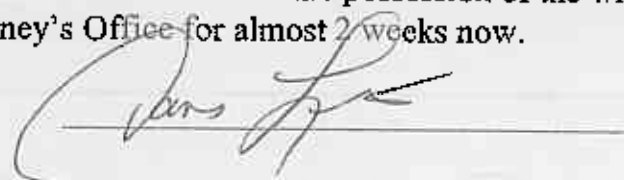
Wherefore, the defense would ask this Court to ORDER the State to make this evidence available for the testing requested herein. And time is of the essence in this case and it would ask that the order state such. It is further requested that if the Court either denies this request in total, or grants this request in total, that it so state the same. If the Court would grant some of these requests and deny others, it is specifically requested that the order specify which requests are granted and which requests are denied. The defense is asking that all the requests be granted, but if the Court does not find so, that the Court consider each request individually and rule on each request.

Respectfully submitted,

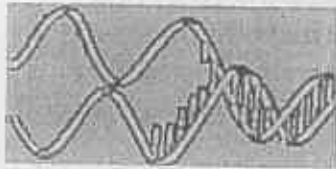


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By agreement with Jack Rhoadie, Assistant District Attorney, this motion was hand delivered to him on July 26, 2005. Exhibit "B" has been in the possession of the writ division of the Harris County, District Attorney's Office for almost 2 weeks now.



James Leitner
Writ Attorney
Jul 28 2005



KARIN SCALISE
FORENSIC DNA CONSULTANT
204 Lazy L Lane
Wimberley, Texas 78676
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fax 512-847-8393
karinscalise@starband.net

Experience

June-04 to present

Forensic DNA Consultant-private

- 1 Review and evaluation of the following:
 - Forensic DNA criminal casework PCR-STR DNA technology
 - Forensic DNA Paternity casework
 - Forensic Serology casework
 - Crime Scene Investigations
 - Evidence collection and storage
 - Chain of custody issues
 - DNA protocol compliance
 - DNA Analyst qualifications
 - DNA laboratory qualifications
 - DNA quality assurance/quality control issues
 - Compliance with TX House Bill 2703-mandatory TXDPS accreditation
 - Retesting of samples and sample depletion issues
- 1 Discovery lists
- 2 Daubert hearing preparation
- 3 Technical cross preparation
- 4 Test witnessing
- 5 Expert testimony
- 6 Counsel education
- 7 PowerPoint presentations-court and CLE meetings
- 8 Referrals to other experts and private labs
- 9 Information resources

Representative Clients

- 1 Schneider & McKinney-Houston, Texas
- 2 Berg & Androphy-Houston, Texas
- 3 Robert K. Loper-Houston, Texas
- 2 Brett Ligon-Houston Police Officer's Union
- 1 Marie Alex-Woodland Hills, California

- 2 Andre deGruy-State of Mississippi Public Defense Counsel
- 3 Leon Grizzard-Austin, Texas
- 4 Gerson Lehrman Group-New York, New York
- 2 William Allison-Actual Innocence Clinic-University Of Texas School of Law

Page 2

August-98 to June-04

Forensic DNA Analyst

Texas Department of Public Safety Crime Lab-Austin, TX

- 1 Forensic DNA criminal casework: PCR-STR (short tandem repeat DNA technology (400-500 cases completed)
- 1 Forensic Serology casework (5,000+ Serology tests completed)
- 2 Crime Scene Investigations—approximately 60
- 3 DNA casework technical reviews and evaluations-1,700+ cases
- 4 DNA testimony-100+
- 5 Texas CODIS and NDIS entries
- 6 Forensic statistical analyses-FBI Popstats software
- 7 PowerPoint presentations to law enforcement agencies, prosecutors and defense attorneys
- 1 American Academy of Forensic Science Meeting 2003-presenter on post conviction DNA analyses
- 1 Innocence Project post-conviction DNA casework
- 2 Trainer of new Serologists and DNA Analysts
- 3 Validation studies-310 Genetic Analyzer
- 4 Hair analyses-macroscopic and microscopic comparisons
- 5 Blood Spatter Interpretation (basic)
- 6 In depth knowledge of Quality Control/Quality Assurance requirements and recommendations as set forth by FBI, ASCLAD/LAB, DAB, SWGDAM, NRCII and the TXDPS DNA protocols
- 1 DQ alpha DNA casework-discontinued in 1998
- 2 Trained in D1S80 DNA analysis-discontinued in 1998

May-96 to July-98

Forensic DNA Analyst

Texas Department of Public Safety Crime Lab-El Paso, Texas

- 1 Set up and opening of new DNA Section for the El Paso Crime Lab-ASCLAD/LAB accredited in June 1997
- 2 Criminal DNA casework-DQ alpha DNA analyses/Serology
- 3 Crime scene investigations

21

4 Hair analyses-microscopic comparisons

Page 3

- 5 Blood Spatter interpretation (basic)
6 Trainer of new DNA Analysts and serologists
7 DNA education for El Paso District Attorney's Office, El Paso
Police Department Homicide Unit, El Paso Sheriff's Office Homicide Unit
1 TXDPS DNA Advisory Board member-El Paso representative
2 DNA casework and training provided for Dr. Cesar Julio Del Hierro, Medical
Examiner-Juarez, Chihuahua, Mexico

June-95 to April-96

Forensic DNA Analyst

Texas Department of Public Safety Crime Lab-Austin, Texas

- 1 In-house training and supervised casework
in Serology, DQ alpha DNA and statistical analyses
- 2 Trace (hair) microscopic analyses
- 3 Crime scene investigations
- 4 Blood spatter interpretation (basic)

March-95 to May-95

Laboratory Technician IV

Texas Department of Health-Bureau of Laboratories-Austin, Texas
Clinical Chemistry Division

- 1 Analysis of whole blood samples for PB (lead)
concentration using atomic absorption spectrophotometry

June-93 to March-95

- 2 During this time period I attended the University of Texas at Austin in
preparation for the DNA Analyst position with TXDPS

August-92 to May-93

Science Teacher

Providence High School-San Antonio, Texas

- 3 Courses taught: Biology and Chemistry

89 to 92

- 4 During this time period I was a house wife and worked part time in the family
business.

August -83 to May-89

Science Teacher

Antonian College Preparatory for Boys-San Antonio, Texas

- 5 **Course Taught: Biology, Chemistry, Physics, Pre-Calculus and Algebra II**
- 6 **Administrative positions**
 - Chair-Natural Science Department**
 - Director of Recruitment**
 - Director of Student Activities**

Education

- 7 **University of Houston-Houston, Texas**
 - Bachelor of General Studies-1982**
 - Major: Natural Science (biology/chemistry/physics)**
 - Honors: cum laude**
- 8 **St. Mary's University-San Antonio, Texas**
 - Clinical Psychology-graduate program (18 hours)**
 - 1991 to 1992**
- 9 **University of Texas-Austin, Texas**
 - Genetics-summer 1994**
 - Applied Molecular Biology and Genetic Engineering 1995**

Research

- 10 **University of Texas Health Science Center-Houston, Texas**
 - Research Assistant-Microbiology 1980 to 1981**

Date of Birth

- 11 **September 6, 1954**

Birthplace

- 12 **Houston, Texas**

Professional Associations

- 13 **Association of Forensic DNA Analysts and Administrators**
- 14 **Austin Criminal Defense Lawyer's Association**
- 15 **Texas Criminal Defense Lawyer's Association**



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July 7, 2005

Brian Benken & Associates
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James Leitner
Attorney At Law
1314 Texas Avenue, Suite 1419
Houston, Texas 77002

Re: State of Texas vs. William Darvin Irvan
NO. 864928-A
180th Criminal District Court of
Harris County, Texas

Dear Brian and James,

After review of the complete case file documentation provided to date and examination of the remaining physical evidence on 7-6-05 I have come to the following conclusions in reference to further DNA and fingerprint analyses: (Price quotes for DNA testing are for Orchid Cellmark Lab-Dallas, TX)

DNA analyses

Exhibit "B"