

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

v.

**MOTION IN LIMINE/
ANSWERING AFFIDAVIT**

Indictment No. [REDACTED]

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
CITY OF BUFFALO)

[REDACTED], an attorney licensed to practice law in the courts of this State, under penalties of perjury pursuant to CPLR 2106(a), affirms the following statements to be true.

1. I, along with co-counsel [REDACTED] Esq., am the attorney for the defendant, [REDACTED] [REDACTED], who is charged in this indictment with murder in the second degree (Penal Law § 125.25[1]) for the fatal stabbing of [REDACTED] in the city of Buffalo on [REDACTED]
2. I make this affirmation (i) in response to the prosecution’s motion in limine dated September 21, 2022 and (ii) in support of the defendant’s motion for the relief described below.
3. In an affidavit filed September 13, 2022, the defense sought admission of the description of the presumed killer given by [REDACTED], the next door neighbor of [REDACTED]. We maintain our intent to offer this evidence, relying on the logic provided in the prior affidavit.
4. The defense also seeks admission of a document labeled “Forensic Analysis Laboratory Report” dated [REDACTED] (attached). The report, completed by analyst [REDACTED], contains results of blood and fiber analysis for various items gathered at the crime scene.
5. One of the items listed is “AW,” described as “[b]rown hair or fiber smaller diameter than suspects [sic] or victim’s hair.”

6. [REDACTED] report lists Item AW1 as hair that was in [REDACTED] right hand (the two strands are presumably AW1 and AW2). The defense plans on confirming this during [REDACTED] trial testimony.
7. In other words, there were two strands of brown hair clutched in [REDACTED] right hand, and the hairs were not her own (because they were smaller in diameter) and not the defendant's (whose hair is black).
8. As stated in the affidavit filed September 13, 2022, "[a] defendant has a constitutional right to present a defense" (*People v. Hayes*, 17 NY3d 46, 53 [2011]), and a "defendant's right to due process requires admission of hearsay evidence when the declarant has become unavailable to testify and the hearsay testimony is material, exculpatory and has sufficient indicia of reliability" (*People v. Burns*, 6 NY3d 793, 795 [2006]).
9. It appears that Harvey W. Anger died in 2007, and is therefore unavailable to testify at trial (<https://www.legacy.com/obituaries/legacy/obituary.aspx?n=harvey-w-anger&pid=87053876>).
His report is obviously material and exculpatory, because if the hairs clutched in Linda Tschari's right hand belonged to her killer – a reasonable inference – then the defendant must be innocent. As an official document of the Erie County Central Police Services Laboratory, and one that was provided by the prosecution in discovery, it has sufficient indicia of reliability.
10. Because the report bears substantial assurances of trustworthiness, and is so critical to the defense, its exclusion would deprive the defendant of his constitutional right to due process of law (*Chambers v. Mississippi*, 410 US 284 [1973]).
11. The report is admissible under the Ancient Document Rule ("[a] statement in a document is admissible if it is proved to be in existence for more than thirty years, and its authenticity is supported by its proper custody or otherwise accounted for, and it is free from any indication of fraud or invalidity" [Guide to NY Evidence § 8.07]).

12. Additionally, the prosecution seeks admission of several documents relating to evidence collection and testing from the original investigation, none of which the defense objects to – as long as the above-referenced Forensic Analysis Laboratory Report is admitted as well.
13. The prosecution also seeks admission of a [REDACTED], containing a statement of Raffaella [REDACTED] the mother of [REDACTED], who told the police that, like [REDACTED] [REDACTED] she saw the presumed killer get into a green Chevrolet [REDACTED]. The constitutional exception to the rule against hearsay applies only to exculpatory material, and the prosecution can cite no other applicable hearsay exception.
14. However, the defense will waive its objection to the admission of this P-73 if we are permitted to ask Det. [REDACTED] about the following information she obtained through the New York Department of Motor Vehicles: that there were over 1,000 green, Chevrolet sedans, model years [REDACTED] registered in Erie County (see P-73 [REDACTED], attached).
15. Finally, although the defense is not planning on putting any items into evidence regarding third party culpability, we plan to question three prosecution witnesses -- [REDACTED], Det. [REDACTED] [REDACTED] -- on information they learned about [REDACTED], an acquaintance of [REDACTED] [REDACTED]
16. We plan to ask [REDACTED] about his prior statement that [REDACTED] was going to testify against [REDACTED] in a stabbing case. We plan to ask [REDACTED]s about the fact that she was still looking for [REDACTED] a after the defendant became the prime suspect, and was never able to obtain a DNA sample from him. We plan to ask [REDACTED] about the fact that she never received a sample of [REDACTED] DNA to compare to the DNA profile on the blood stain evidence.
17. All of this evidence is relevant to the identity of the killer and within the scope of the witnesses' knowledge, and is therefore the proper subject of cross-examination.

September 26, 2022

FORENSIC LABORATORY
ANALYSIS REPORT

DEPARTMENT OF
CENTRAL POLICE SERVICES
FORENSIC LABORATORY
ERIE COUNTY

LAB NO. 25049
CASE NO. 1606
DATE 3-24-78

INVESTIGATING OFFICER Chief Leo J. Donovan SHIELD NO. 1 AGENCY BPD PCT. BUR Hom.

DEFENDANT(S):
Pending

DESCRIPTION OF EVIDENCE:

REFER TO ATTACHED REQUEST FOR ANALYSIS SHEETS FOR LISTING OF EVIDENCE (14 sheets)

RECEIVED
1978 MAR 31 AM 11:13
HOMICIDE BUREAU
BUFFALO POLICE DEPT.

DATE RECEIVED 2-13, 3-13-78 DATE PERFORMED 3-6, 3-7, 3-8, 3-17, 3-20, 3-9, 3-10, 3-21-78

RESULTS:

Group O human blood was found on the following items:
A, B, C, F, G, K, O, P, Q, R, S, V, Z, AE-2 (Atlantic record), AE-3 (Barbra Streisand album), AK, AL, AO, AP, AQ, AR, AX, AY.
Group A human blood was found on the following items:
J, L, T, U, W, X, AB, AC, AE-4 (Funk album), AE-6 (Funk album).
Human blood of insufficient quantity for grouping was found on the following items:
N, N, AA, AE-1 (SATURDAY NIGHT FEVER Redord), AG, AI, AJ, AU, AV.
Blood of insufficient quantity for species identification was found on the following items:
H, Y, AD, AF, AE, AS, AT (Salem pack).
No blood was detected on the following items:
I, AM, AN (green and white, red and white scarves).
Item A - Robe left side rear area of neck contained a $\frac{1}{2}$ " vertical cut.
AL - contains an animal hair similar to a mouse hair.
AN - green and white scarf - one blue fiber, 1 brown partially grey hair.
AN - red and white scarf - hair similar to victim's hair AZ.
AQ - 2 hairs similar to mouse hairs, 1 small diameter fiber.
AR - 1 hair similar to mouse hair.
AW - Brown hair or fiber smaller diameter than suspects or victims's hair.
AZ - Victim's head hair is brown and has more dandruff than Kevin O'Connell's hair.
BB - Kevin O'Connell's hair is brown and contains less dandruff than the victim's hair AZ. Also BB has finer scale than AZ.

jpm

Harvey W. Anger
Harvey W. Anger
ANALYST

**CITY OF BUFFALO POLICE DEPARTMENT
HOMICIDE SQUAD**

**To: Dennis J. Richards
Chief of Detectives**

**From: Det. Mary Evans
Det. John Paradowski**

Date: 01/22/2020 Wednesday

Subject: File 78-1606 Linda TSCHARI 02/08/78 11 ½ Pooley Buffalo, NY 02/08/78

Re: Meeting with DMV Investigator Wayne Battleson 334 Dingens Street, Buffalo, NY 716-826-1502

Sir:

On 01/21/2020 I communicated via my department email with the above noted investigator relative to the Department of Motor Vehicles material which was generated during the original investigation into the above captioned homicide file. The DMV material consisted of fifty-seven pages which contained information regarding 1,069 vehicles. Information included the make, model, year and registered owners' names and addresses for all 1970-1972 Chevrolet vehicles, two door and four door sedans, which were green in color and were registered in Erie County, NY. In the email I asked Investigator Battleson if he would be able to view the records to determine if he was familiar with the format in which the records were displayed. Inv. Battleson replied via email and advised that he would be available to view them at his office which is located at 334 Dingens Street. I obtained photos of said records with my department issued cellphone and copied same into a word document. I emailed said photos to Inv. Battleson.

At approximately 1315 hours Det. John Paradowski and I traveled to 334 Dingens where we met with Inv. Battleson. We spoke with Inv. Battleson in a small conference room. We showed Inv. Battleson the DMV printout. Inv. Battleson advised that older records such as those shown were generated on a teletype machine. Inv. Battleson said he would attempt to contact a retired co-worker regarding the vehicles.

Inv. Battleson told us he may be able to research any individuals or vehicles relative to our investigation. Inv. Battleson requested that we send him the information via email.

We thanked Inv. Battleson for meeting with us and departed from the office. Upon return to the homicide office I composed the requested email in which I requested he research the following and provide us with any results:

**NY REG 438-BBB
1972 Chevrolet 2dsd green
VIN: 1 V 77 B 2 U 331092**

Reg. to Carol F. FULLAGAR