

IN THE CRIMINAL DISTRICT COURT NO. 3
DALLAS COUNTY, TEXAS

EX PARTE

DARLIE LYNN ROUTIER

Writ No. W96-39973-J
(Trial Court No. F96-39973-J)

THIRD AFFIDAVIT OF DR. ELIZABETH A. JOHNSON

STATE OF CALIFORNIA

COUNTY OF VENTURA

Before me, the undersigned notary, on this day, personally appeared Dr. Elizabeth A. Johnson, a person whose identity is known to me. After I administered an oath to her, upon her oath, she stated as follows:

1. My name is Elizabeth A. Johnson. I am over twenty-one years of age and reside in Ventura County, California. I am fully competent to make this affidavit. The facts stated in this affidavit are true and correct and within my personal knowledge.

2. I have submitted two other declarations in this case and my professional qualifications are outlined in those declarations.

3. The Applicant's counsel has received only final DNA reports dated November 1, 1996 from SWIFS, and DNA reports from Genescreen dated December 2, 1996 and January 7, 1997.

4. These three reports represent the very endpoint in a long process that evidence undergoes and are grossly inadequate in order to make a complete determination of the totality of evidence that was submitted to the crime laboratory, which items were examined and which were not examined, what was observed on items that were examined, whether any presumptive testing was performed and the results of such tests, and whether evidence exists that may have been deemed non-probative in 1996 but may be quite suitable for testing today.

5. The typical procedure in 1996 for crime laboratories such as SWIFS was that evidence items were submitted to a crime lab and an evidence submission form listing each item, date and person submitting it accompanied each submission. The evidence then went to a screening unit, often the serology section, where each item was inventoried and described on hand-written worksheets. If an item was not examined at that time a notation should have been made to that effect on the worksheets. Each piece of evidence that was examined was described and often diagramed and perhaps photographed. Any hairs found would be noted and most likely removed and re-packaged for submission to the trace evidence department. Stains would be noted as apparent bloodstains or sometimes by color (as with possible semen stains). Presumptive chemical tests would be performed for the presence of semen or blood and these results along with the location of the stains tested would be noted. Microscopic examinations for the presence of spermatozoa would be noted in these worksheets. If stains were identified as blood or semen, the stained portion or a part of the stain was usually excised and re-packaged into smaller bindles to be stored in the lab freezers. The bulk item was usually returned to the submitting agency. Items that were deemed to be negative for biological evidence were usually returned intact. Any smaller cuttings that were excised usually contained a sub-number designating which stain with which it was originally associated, and the key to this information

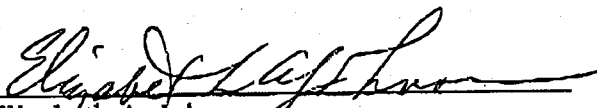
was contained in the notes and diagrams of the original item. Once the screening section had completed its inventory and examination, a written distillation of this information was provided in a report which usually described what items were submitted, when and by whom, what items contained blood and/or semen or hairs. The DNA section of the crime lab or a private DNA lab would usually receive only selected samples consisting of cuttings or swabs for further DNA testing (in some crime labs the same personnel performed the screening as well as any subsequent DNA tests). Once DNA testing was complete, a report describing these results was usually issued. However, the DNA personnel maintained separate notes of their analyses which included information such as whether an entire stain was consumed, the quantity and quality of DNA obtained, whether multiple attempts were made on a test, and since the samples were often re-numbered again at the DNA lab, what original stain a DNA sample number corresponded with. Furthermore, many DNA labs at that time would only report DQ alpha test results above a certain threshold, when examination of the raw data and photographs of the test strips would reveal the presence of an additional low level contributor. This is especially relevant information in the Routier case where indications of an additional, unreported low level contributor might be exculpatory. I have reviewed such documents on other appellate cases and found potentially exculpatory results in unreported data contained within the analyst's bench notes.

6. A tremendous amount of valuable information is contained in all of the documents that precede the three DNA reports issued in this case. It is imperative to have access to all documents maintained including but not limited to submission forms, worksheets, bench notes, photos, and documents describing test performed starting at the time of evidence submission to the laboratory, whether that is SWIFS, Genescreen, or any other laboratory. Evidence may exist that is suitable for testing today that was deemed non-probative in 1996


(such as Ms. Routier's sexual assault kit) or that was simply not examined at that time, and DNA extracts may exist that could be cleaned up and re-tested to give interpretable results today.

7. It is necessary to review all such documents and materials in order to determine what evidence is available before a determination can be made as to what evidence should be tested today and whether unreported results exist in testing already performed.

FURTHER, AFFIANT SAYETH NOT.


Elizabeth A. Johnson

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on the 31st day of January, 2005.


Notary Public, State of California
HELEN C. JANOS

