

Exhibit 13: Affidavit of Toby Shook

AFFIDAVIT

COUNTY OF DALLAS
STATE OF TEXAS

BEFORE ME, the undersigned official, on this day appeared Toby Shook, who is personally known to me, and first being duly sworn according to law upon his oath, deposed and said as follows:

My name is Toby Shook. I am over 18 years of age, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

I am an assistant district attorney in the Dallas County District Attorney's office. I have worked in this office for nineteen years, and I have tried numerous death penalty cases. I assisted in the prosecution of *State v. Darlie Lynn Routier*, cause number F96-39973-J (Dallas County) and cause number A96-253 (Kerr County), with prosecutors Greg Davis and Sherri Wallace Patton.

I.

Charles Linch, formerly a trace evidence analyst with Southwestern Institute of Forensic Sciences (SWIFS) in Dallas, Texas, testified in the State's case in chief in the *Routier* case. I understand that Routier's state writ attorneys have alleged that I had "direct knowledge of Linch's mental health problems" as well as "direct knowledge of his hospitalization for alcoholism and depression." (Writ Application at 112, 117). The basis for this allegation is an article that appeared in the *Dallas Morning News* newspaper on May 7, 2000, which provides in part:

Dallas County Assistant District Attorney Toby Shook, Mr. Linch said, had a friend at Doctors Hospital who told him about his hospitalization, and the prosecutor asked Mr. Linch about it one day at the courthouse.

Mr. Shook, the prosecutor who had relied heavily on Mr. Linch's testimony in the Albright case and would later use him in the Routier trial, said he believed the forensic expert had been treated for alcoholism and only recently learned that he had been hospitalized for depression, too.

"As far as people's personal business, yeah, I think that it was no secret that Charlie had some drinking problems," Mr. Shook said. "That was what I was aware of . . . That was always on his own personal time."

(Applicant's Writ Exhibit F at 3). What follows is a more detailed and accurate explanation.

In the early 1990's, I ran into a friend of mine, who knew I worked at the District Attorney's office. She told me she had met another friend of mine, Charlie Linch, while they had both been in the hospital together. She explained what a great guy she thought Linch was, and I agreed. I did not know why she or Linch had been in the hospital, and I did not ask.

A few weeks later, I saw Linch at the courthouse. I told him that I had seen a friend of mine who said she had met him in the hospital. Linch looked surprised but did not elaborate. I never asked Linch why he had been in the hospital, and he never volunteered any information.

Sometime after the *Routier* trial, I learned that my friend who told me about being hospitalized with Linch was being treated for a drinking problem. It was then that I speculated that she and Linch must have been hospitalized for the same reason.

I had heard from time to time that Linch sometimes drank a lot outside of work, but I never had personal knowledge of this. I have never heard or seen any evidence that his drinking interfered with or affected his work in any way, and no one has ever told me that Linch had a drinking problem that interfered with his work. To my knowledge, Linch has always performed exemplary work as a forensic scientist, and he has been and continues to be well-respected in the community as well as both inside and outside the State for his technical skills and expertise. In fact, throughout the years that I've known Linch, I've never observed him under the influence of alcohol at the courthouse or while working.

I was not aware of any allegations that Linch suffered from depression or that he had been admitted to the psychiatric unit of a hospital until newspaper reporters began investigating Linch's background for the newspaper articles. I have never heard about or seen evidence that depression interfered with Linch's work in any way while he was at SWIFS.

I have worked on several cases with Linch over the years, and I have always found him to be objective and his opinions scientifically based, and he never seemed motivated by a particular result for one side or the other. As a forensic expert, and a consummate professional, Linch would simply test the evidence and report the results.

II.

In preparing for the *Routier* trial, the State hired psychiatrist Dr. Kenneth Dekleva as a consultant. At that time, we anticipated that the defense would be calling a psychiatrist or psychologist during trial to talk about traumatic amnesia. We later learned that the defense would,

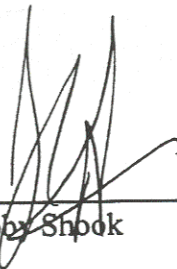
in fact, be using Dr. Lisa Clayton as one of their experts. In preparing for Dr. Clayton's testimony, we consulted Dr. Dekleva often about traumatic amnesia questions we could use to cross-examine Dr. Clayton and about possible rebuttal testimony.

At some point Dr. Dekleva and I also discussed punishment issues (although we did not know at that time whether the defense would call a psychiatrist during the punishment phase). I personally selected the jury in Kerrville and, from questioning the jurors and reading their questionnaires, I did not feel that they were going to put a whole lot of stock in psychiatric testimony. In fact, Dr. Dekleva did not go to Kerrville for the trial, and therefore, he did not hear any of the trial testimony.

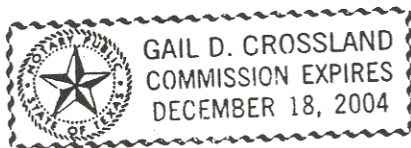
In discussing punishment issues, Dr. Dekleva and I went over what he called various risk factors involving Darlie Routier. It is common in every case in which Dr. Dekleva has acted as a consultant for the Dallas County District Attorney's office for us to discuss risk factors that would weigh for or against a defendant's future dangerousness. In Mrs. Routier's case, Dr. Dekleva indicated that risk factors showing her to be dangerous were, obviously, the brutality of the crime, her lack of remorse, and the innocence of the victims she had chosen. As far as risk factors that were in her favor, *i.e.*, she would not be violent, Dr. Dekleva said that there was no evidence of her being violent while in jail awaiting trial. It should be noted, however, that any time a capital murder defendant has not had discipline problems in jail, the psychiatrist must always say under oath that that is a factor that weighs in the defendant's favor. It should be further noted that this is an obvious factor considered in any case, whether there is an expert involved or not.

At no time did I ever tell Dr. Dekleva we were not calling him because he had an opinion that Mrs. Routier would not be violent in prison. In fact, Dr. Dekleva never expressed an opinion on the ultimate issue of whether Ms. Routier would constitute a future danger to society. During the punishment phase, I told Dr. Dekleva we would not be calling him for several reasons. One, we did not need a psychiatrist because, after viewing the jury during jury selection and reading their questionnaires, I thought they would be required to answer the special issues the way we wanted. Two, the jury seemed tired and ready to make their decision, and they had plenty of evidence to base it on. The State believed that the jury's finding of guilt and the overwhelming evidence we had of the defendant's vicious crime was sufficient for them to answer the special issue number one "yes." Also, the defense did not call a psychiatrist in the punishment phase so there was nothing to rebut


from a scientific point of view. These were the reasons Dr. Dekleva was not called.


Toby Shook

SUBSCRIBED AND SWORN TO BEFORE ME, on the 7 th day of Jan, 2003, to
certify which witness my hand and official seal.



SEAL


Signature
GAIL D. CROSSLAND
Printed Name

Notary Public in and for
Dallas County, Texas

My commission expires: 12-18-04