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Case Name: *Shad Edward Luvano v. The State of Texas*

- **OFFENSE**: Capital Murder - Life Sentence
- **COUNTY**: Taylor
- **C/A CASE No**. 11-04-0218-CR
- **DATE OF OPINION**: February 2, 2006
- **DISPOSITION**: Conviction Affirmed
- **OPINION BY**: **Strange, J.**
- **TRIAL COURT**: 42nd D/C; Hon. John Weeks
- **LAWYERS**: Kenneth Leggett (Defense); Patricia Dyer (State)

Ed Note: (**Background Facts**) A police investigation determined that the deceased was stabbed multiple times in the upper torso and neck while sitting in a recliner at his home. Appellant was identified as a suspect in the crime. The police located Appellant and his girlfriend (Rodriguez) in Room 116 of the Century Lodge, and Rodriguez consented to a search of their room. During the search, police discovered several pieces of clothing during the search, including a pair of denim pants and a white shirt both stained with blood. DNA testing indicated that the blood found on this clothing matched the deceased's DNA. After taking Appellant into custody, the police interviewed Rosie Applin, who was staying in Room 112 of the Century Lodge. She indicated that, on the night of the murder, she had loaned a sword to Appellant. When she asked why he wanted to borrow the sword, Appellant told her that he was going to kill or "shank" somebody. When Appellant returned to the Century Lodge the next morning, Applin noticed that his jeans and shirt were bloody. She also noticed that the sword, which Appellant returned to Applin, was covered in what looked like blood. DNA testing indicated that the blood on the sword belonged to the victim.

§§ 259.03 Physical Evidence / Blood Tests / Right to Independent Testing: Both the State and the defense called DNA experts to testify. The State's expert (Patton), testified that the blood on the murder weapon and on Appellant's clothing belonged to the deceased. Appellant's DNA expert (Staub), concurred with the results of the State's DNA testing. Prior to trial, Appellant filed a Motion for Forensic DNA Testing of Evidence Collected of twenty-nine untested DNA samples collected by the Abilene Police Department during the investigation. One of Appellant's theories during trial was that Rodriguez stabbed the victim. Appellant asserts that it was essential for him to prove in some way that Rodriguez was in the room where the victim died.

Holding: A trial court abuses its discretion if it does not permit discovery of evidence that is material to the defense of the accused. In determining materiality, omitted evidence must be evaluated in the context of the entire record. Materiality requires more than the mere possibility that the information might help the defense or affect the outcome of the trial. Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. After reviewing

the entire record, we do not believe there is a reasonable probability that, had Appellant been able to test the DNA samples, the result of the proceeding would have been different.

309.01 Witnesses / Subpoenas (Motion to Quash): The day after the trial began, Appellant filed a subpoena *duces tecum* to collect DNA from Rodriguez. Counsel for Rodriguez filed a motion to quash the subpoena, which the trial court granted. Appellant asserts that, by quashing his subpoena *duces tecum*, the trial court violated Art. 24.02, C.Cr.P., as well as the Sixth and Fourteenth Amendments of the U.S. Constitution.

Holding: Appellant's arguments concerning the Sixth and Fourteenth Amendments involve his constitutional rights to due process and compulsory process. As we have already explained, we do not believe Appellant's rights to due process and compulsory process were violated because the DNA evidence was not material to Appellant's case. We also do not believe Article 24.02 was violated. This statute provides that, "if a witness have in his possession any instrument of writing or other thing desired as evidence, the subpoena may specify such evidence and direct that the witness bring the same with him and produce it in court." A subpoena *duces tecum* is not to be used as a discovery weapon but as an aid to discovery based upon a showing of materiality and relevance. If a showing of materiality is not made, it is proper for the trial court to quash the subpoena. As we have already explained, Rodriguez's DNA was not material to Appellant's case because there is not a reasonable probability that Rodriguez's DNA would have changed the outcome of the trial. For that reason, we hold that the trial court did not err in quashing the subpoena *duces tecum*.