

# Affidavit of J. Stephen Cooper

**In the Criminal District Court No.3**

**Dallas County, Texas**

**DARLIE LYNN ROUTIER**

**No. F96-39973-MJ IN THE CRIMINAL**

**DISTRICT COURT**

**NO. 3 OF**

**DALLAS COUNTY, TEXAS**

First Affidavit Of J. Stephen Cooper

BEFORE ME, the undersigned authority, on this day personally appeared J. STEPHEN COOPER, who, being by me duly sworn on his oath, stated the following:

"My name is J. Stephen Cooper and I am competent to make this affidavit

"I am the attorney of record for the Appellant in the case styled Darlie Lynn Routier V. The State of Texas under case under 72,795 now pending in the Court of Criminal Appeals. The trial court was the Criminal District Court No. 3 of Dallas County, Texas, Case No. F96-39973-J.

"In 1998, the trial court verbally ordered the attorneys for Appellant and the State not to contact or speak with Susan Simmons regarding her work in attempting to prepare a new reporter's record after the inaccuracy of the original reporter's record had become apparent.

"Subsequent to this order, a series of hearings were conducted in which the trial court also prohibited me from questioning Ms. Simmons directly but rather I, as well as the State, were limited to submitting in writing proposed questions which the trial court alone would ask of the witness Simmons.

"This order remained in force until June 30, 2000, when the Court authorized the parties to interview Ms. Simmons.

"Following the filing on March 2, 2000 of (1) Defendant-Appellant's Objections To The Proposed New Reporter's Record and (2) Defendant-Appellant's Request For A Evidentiary Hearing To Resolve All The Factual Disputes About The Reporter's Record, an in-chambers, off-the-record conference was held on June 23, 2000, with the Court, me, and counsel for the State. During this conference, I asked the Court for permission to interview Susan Simmons in preparation for an anticipated hearing on Appellant's above pleadings and the Court denied my request.

'At this conference the Court further directed Appellant to submit in writing the questions Appellant proposed for Simmons in any further hearing(s) on the attempted reconstruction of the reporter's record in this cause. The Court again advised that it would be asking all questions of Simmons rather than the parties at any such hearing(s).

"Appellant had already submitted in her pleadings filed March 2, 2000, her proposed issues and questions to be answered at any hearing

'On June 30, 2000, I filed a Motion To Permit Appellant To Interview Susan Simmons, the original of which is attached hereto as Exhibit 1. After filing it with the clerk and dropping off a copy with the judge, I drove straight back to my office and Kerry Young, the judges' chief staff attorney was calling when I walked in the door. He said the judge was going to grant my motion but the Court wanted me back down to court to withdraw the motion. I went back to the Court's chambers and was told I could interview Ms. Simmons. The Court then handed me the original file-marked copy to me across his desk and said take this with you. On July 12, 2000, I went to Tyler, Texas and, along with Appellant's writ counsel, Steven Losch, and another attorney, Eric Albritton (who was assisting Mr.

Losch), interviewed Ms. Simmons. Attached hereto as Exhibit 2 and incorporated by reference is, in affidavit form prepared for Ms. Simmons' signature, a true and accurate summary of Ms. Simmons' statements during the afternoon of July 12, 2000. Ms. Simmons advised me today that while she is willing to testify in court in this matter, she didn't feel it was appropriate as the 'Court's expert1 to sign any affidavit without the Court's permission.

"On July 14, 2000, another in-chambers, off-the-record conference was held with the Court, me, and counsel for the State. The purpose of this conference was, according to the Court, for me to advise the Court what Ms. Simmons may have said which I felt would require a new hearing. i revealed many of the things which she had said which either conflicted with, or clarified, some of her prior testimony. After some time, both the Court and Lindsay Roberts, assistant district attorney, agreed that a new hearing was necessary to clarify Ms. Simmons' testimony both in this Court and before the court reporter certification board where Simmons had also testified on the subject of this record.

This hearing was eventually scheduled for September 7, 2000. Sometime after 4:00 p.m., a member of the news media called me and said he had been told by court personnel that the hearing had been cancelled, a fact which I subsequently confirmed with the court administrator."

[signed]

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J. Stephen Cooper

SUBSCRIBED AND SWORN to before me on this the 12th day of July,  
2002

[signed]

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Notary Public, State of Texas