S.C. 16844

State Of Connecticut	:	Supreme Court
v.	:	
Michael C. Skakel	:	February 14, 2006

MOTION FOR RECONSIDERATION, TO REARGUE AND FOR RECONSIDERATION AND REARGUMENT EN BANC

Pursuant to §§ 70-7 and 71-5 of the Connecticut Practice Book, the Defendant, Michael C. Skakel, through his undersigned counsel, hereby moves this Court for reconsideration, for reargument, or for reconsideration and reargument en banc. Reconsideration and/or reargument en banc is necessary principally because this Court's decision violates the ex post facto and due process clauses of the United States Constitution (and the due process clause of the Connecticut Constitution) by upholding Mr. Skakel's conviction on a criminal charge that was time-barred for twenty-three years under the statutory law of this State, as authoritatively construed by the Court itself in State v. Paradise, 189 Conn. 346 (1983). The Court evidently failed to consider the grave constitutional implications arising from the retroactive application of its new statutory construction to defendant. We respectfully submit that reconsideration and reargument should be granted if this Court is to honor its highest traditions.

I. BRIEF HISTORY OF THE CASE

There is no question at this point that Michael Skakel was charged, tried and convicted in a criminal prosecution that was unlawful under the 1983 holding of this Court in State v. Paradise. Despite the fact that the prosecution was time-barred, Mr. Skakel was arrested and charged on January 19, 2000 for the October 30, 1975 murder of Martha Moxley in Greenwich, Connecticut. Mr. Skakel, who was thirty-nine years old on the date of his arrest, initially was presented in juvenile court because he was fifteen years old at the time of the homicide. The juvenile court (Dennis, J.) granted the State's motion to transfer the matter to the regular criminal docket because of Mr. Skakel's age. Once the matter was

transferred, Mr. Skakel moved to dismiss the case under the applicable five-year statute of limitations and the direct authority of State v. Paradise, 189 Conn. 346 (1983). The trial court (Kavanewsky, J.) denied the motion to dismiss.

On June 7, 2002, following a month-long jury trial, Mr. Skakel was convicted of murder in violation of Conn. Gen. Stat. § 53a-54a (Rev. to 1975). He was sentenced to a term of incarceration of twenty years to life in accordance with the 1975 adult sentencing laws. Mr. Skakel's appeal was argued before this Court on January 14, 2005. On January 24, 2006, this Court issued its decision denying each of Mr. Skakel's claims on appeal and affirming the conviction. State v. Skakel, 276 Conn. 633 (2006).

II. SPECIFIC FACTS AND LEGALS GROUNDS FOR REQUESTING RECONSIDERATION AND REARGUMENT

A. This Court's Application of Its Statute of Limitations Ruling Violates Mr. Skakel's Constitutional Ex Post Facto and Due Process Rights

In State v. Skakel, 276 Conn. 633 (2006), this Court held that Mr. Skakel's prosecution was permissible under a 1976 Connecticut statute eliminating any limitations period for non-capital murder.[1] In so holding, this Court expressly overruled its own twenty-

[1] The Court's determination that this prosecution was not time-barred by the applicable statute of limitations is based upon an analysis different than that of the trial court. Skakel, 276 Conn. at 663. The trial court concluded that the instant murder prosecution was not subject to the statute of limitations set forth in Section 54-193 (Rev. to 1975) because murder historically was considered a grave offense to which the statute of limitations was never intended to apply. The retroactive application of the 1976 amendment to the statute of limitations was ***never*** argued or presented by the State to the trial court. In fact, in its Memorandum In Opposition To Motion To Dismiss filed on May 30, 2001, the State conceded that it could ***not*** rely on a claim for retroactive application of the 1976 amendment, and it ***never*** argued that Paradise should be reversed. See State's Memorandum In Opposition To Motion To Dismiss, Appendix at A1.

Thus, Mr. Skakel's brief-in-chief to this Court solely addressed the trial court's analysis and argued that the trial court misread this court's established precedent, and disregarded the historical difference between capital murder (murder in the first degree, which was never time-barred) and non-capital murder (murder in the second degree, which was time-barred). For sixteen pages, the State's brief to this Court also focused on the trial court's finding that there never was a statute of limitations for murder. Then, in one page at the end of its argument, the State alternatively requested this Court to overrule Paradise.

three-year-old decision in State v. Paradise, 189 Conn. 346 (1983), which had held that the same 1976 statute did *not* apply retroactively and did *not* permit prosecution of a 1975 non-capital murder. The result of this Court's about-face was to uphold a murder prosecution that, under pre-existing Connecticut statutory law as authoritatively announced by the state's highest court, had been time-barred for at least twenty years. Under the controlling precedents of the United States Supreme Court, this Court's reversal of longstanding Connecticut law violated the Ex Post Facto Clause of Section 10 of Article I of the United States Constitution and the Due Process Clauses of the Fourteenth Amendment of the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

1. The 1976 Amendment to the criminal statute of limitations, as reinterpreted by this Court and retroactively applied to Mr. Skakel, violates the Ex Post Facto Clause of the United States Constitution

The principle that governs this case is clear and can be stated in few words: "the *Ex Post Facto* Clause forbids resurrection of a time-barred prosecution." Stogner v. California, 539 U.S. 607, 616 (2003).[2] The reasons behind this principle are evident. As the Court

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See State's Brief, at 11-27. The State had never raised the issue in the trial court or filed a preliminary statement of the issues that included alternate grounds upon which the judgment could be affirmed. See Thomas v. City of West Haven, 249 Conn. 385 (1999) (appellee has duty to raise the issue in trial court). Mr. Skakel responded to the State's new claim in three-quarters of a page of his 25-page reply brief. Although this Court then overruled long-standing precedent and issued a lengthy opinion addressing the retroactivity of the 1976 amendment, it did so without the benefit of either party's analysis on the issue.

Additionally, in its decision, this Court incorrectly summarized the State's arguments: the State did not argue Paradise should be overruled and alternatively argue that the trial court's determination that there never was a statute of limitations for murder should be affirmed. See Skakel, at 666. The State, in fact, presented its arguments in reverse. Its central argument was that the trial court correctly decided there was no statute of limitations for murder, and its alternative argument, ***presented for the first time and with little analysis***, was that Paradise should be overruled.

[2] See, e.g., United States v. Madia, 955 F.2d 538, 540 (8th Cir. 1992); United States v. Richardson, 512 F.2d 105, 106 (3rd Cir. 1975); Falter v. United States, 23 F.2d 420, 426 (2d Cir. 1927) (Hand, J.), cert. denied, 277 U.S. 590 (1928); People ex rel. Reibman v. Warden, 242 A. D. 282, 285, 275 N. Y. S. 59, 62 (App. Div. 1934); People v. Shedd, 702 P.2d 267, 268 (Colo. 1985) (en banc) (per curiam); State v. Hodgson, 108 Wash. 2d 662, 667-669,

stated in Stogner, "extending the limitations period after the State has assured 'a man that he has become safe from its pursuit . . . seems to most of us unfair and dishonest,'" Stogner, 539 U.S. at 611 (quoting Falter, 23 F.2d at 426), deprives "the defendant of the 'fair warning' . . . that might have led him to preserve exculpatory evidence," id. 611 (quoting Weaver v. Graham, 450 U.S. 24, 28 (1981)) and "'makes that a punishable offense which was previously a condoned and obliterated offense.'" Id. at 613 (quoting H. Black, Constitutional Prohibitions Against Legislation Impairing the Obligation of Contracts, and Against Retroactive and Ex Post Facto Laws § 235 at 298 (1887)).

As the Court recognized in Stogner, statutes of limitation give rise to vested rights of reliance. "'The statute [of limitations] is . . . an amnesty, declaring that after a certain time . . . the offender shall be at liberty to return to his country . . . and . . . may cease to preserve the proofs of his innocence.'" 539 U.S. at 611 (quoting F. Wharton, Criminal Pleading and Practice § 316 at 210 (8th ed. 1880)). Re-opening a prosecution long after the pre-existing limitations period has expired is "arbitrary" and "potentially vindictive," allowing a defendant to be convicted of a crime well after "memories [have] fade[d] and witnesses [have] die[d] or disappear[ed]." Id. at 611, 631. Reviving a time-barred prosecution "'inflict[s] punishments where the party, by law, was not liable to any punishment.'" Stogner, 539 U.S. at 611 (quoting Calder v. Bull, 3 U.S. (3 Dall.) 386, 389 (1798)). It is thus "manifestly *unjust and oppressive*" and a violation of the Ex Post Facto Clause. Id. at 613 (original emphasis) (quoting Calder, 3 U.S. (3 Dall.) at 389).

For all these reasons, this Court's decision in this case – which, according to its own reasoning, resurrected a prosecution time-barred under Connecticut law from 1983 to 2006

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740 P.2d 848, 851-852 (1987) (en banc), cert. denied, 485 U.S. 938 (1988); State v. Nunn, 244 Kan. 207, 218, 768 P.2d 268, 277-278 (1989); State v. O'Neill, 118 Idaho 244, 247, 796 P.2d 121, 124 (1990); State v. Hirsch, 245 Neb. 31, 39-40, 511 N.W.2d 69, 76 (1994); State v. Schultzen, 522 N.W.2d 833, 835 (Iowa 1994); State v. Comeau, 142 N. H. 84, 88, 697 A.2d 497, 500 (1997); Santiago v. Commonwealth, 428 Mass. 39, 42, 697 N.E.2d 979, 981, cert. denied, 525 U.S. 1003 (1998).

– is plainly unconstitutional. Twenty three years ago, in Paradise, this Court, as the highest judicial authority in the state and hence the final arbiter of statutory meaning, authoritatively determined: (*i*) that the 1976 amendment to Conn. Gen. Stat. § 54-193 did *not* apply retroactively; and (*ii*) that the five-year limitations period in the pre-1976 version of § 54-193 applied to a non-capital murder committed in 1975. State v. Paradise, 189 Conn. 346 (1983). Hence as of 1983, under the statutory law of Connecticut, as authoritatively adjudicated by the state's highest court, a prosecution for the 1975 non-capital murder at issue in this case was time-barred.

Now, twenty-five years later, this Court has reversed itself, holding that the 1976 amendment to § 54-193 *does* apply retroactively; and that, so construed, § 54-193 *does* permit a prosecution for a 1975 non-capital murder, even though under Paradise such a prosecution was deemed unlawful. Thus, the 1976 amendment to § 54-193, as today reinterpreted by this Court, has "resurrected a time-barred prosecution" – violating the unequivocal prohibition of the Ex Post Facto Clause.

The stark illegality arising from the retroactive application of this Court's new construction of statutory law cannot be avoided by characterizing the Court's reasoning in Paradise as merely an unfortunate error. Skakel, 276 Conn. at 693. That assertion, while candid, is constitutionally irrelevant. Preexisting law does not magically disappear for ex post facto purposes simply because it is later revoked as a regrettable error. This prosecution cannot be saved by arguing that Paradise should have been decided differently in 1983, or that had the Court construed the statute differently the first time, the prosecution of Mr. Skakel would have been constitutionally permissible. The simple fact is that the statutory law in this State between 1983 and 2006, as it applied to the prosecution of Michael Skakel for the 1975 murder of Martha Moxley, was precisely what this Court said it was at that time, on indistinguishable facts, in the Paradise case. It is "emphatically the province and duty of the judicial department to say what the law is," Marbury v. Madison, 5 U.S. (1 Cranch.) 137, 177 (1804), and in Paradise, this Court said what the statutory law of

this state was in terms that could not have been clearer or more directly applicable to this case: as of 1983, the statute of limitations for a 1975 non-capital murder had expired. Applying § 54-193 in 2006 to resurrect a 1975 prosecution is therefore "manifestly unjust and oppressive," a denial of the constitutionally required "fair warning," a breach of defendant's vested rights, and a violation of the Ex Post Facto Clause.

Labeling the Court's Paradise decision an "error" thus does nothing to remove the constitutional impediment to retroactive application of the newly announced construction of the statute. A statute construed to change its effect in this manner violates the Ex Post Facto Clause, no matter how it is labeled. "The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised." Cummings v. Missouri, 71 U.S. 277, 325 (1867).

It is important to understand that Paradise did ***not*** involve an instance of mere common-law adjudication,[3] but rather engaged this Court in the task of construing a statute, Conn. Gen. Stat. § 54-193. The protection conferred by the Ex Post Facto Clause should be especially strong here due to the dual nature of the governmental authority behind the statutory rule announced in Paradise -- a rule of law enacted by the legislative branch and accorded a definitive construction by the judicial branch.[4] The constitutional Ex Post Facto Clause confers upon Connecticut's citizenry, including Mr. Skakel, the entitlement to rely with confidence on those legal rules enacted by the legislature and construed by the highest court in this State. Such confidence can be expected to reach its highest point in a

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[3] Compare Rogers v. Tennessee, 532 U.S. 451 (2001) (ex post facto clause does not apply, of its own force, to judge-made changes to the common law as opposed to statutes).

[4] While the Ex Post Facto Clause "is a limitation upon the powers of the Legislature, and does not of its own force apply to the Judicial Branch of government," Marks v. United States, 430 U.S. 188, 191 (1977) (clause not directly applicable to Supreme Court's constitutional decisions), it is established beyond cavil that, where a court in a criminal case reads a statute to impose impermissible retroactive effects, the Ex Post Facto Clause can be violated. E.g., Carmell v. Texas, 529 U.S. 513 (2000); Lynce v. Mathis, 519 U.S. 433 (1997). That is precisely what occurred here.

case like the present one, moreover, because the factual and legal context in which this Court decided the meaning of Conn. Gen. Stat. § 54-193 in Paradise is identical to the operative facts and law here. Indeed, for constitutional purposes, the Paradise court directly addressed every citizen who might become Michael Skakel when it explicitly acknowledged that its decision would "directly affect a number of unsolved class A felonies." State v. Paradise, 189 Conn. 346, 353 (1983). These words were not simply a prediction; they reflected a constitutional promise that cannot be later revoked.

By reversing its twenty-three year old interpretation of Conn. Gen. Stat. § 54-193, this Court in 2006 construed that statute to resurrect a prosecution that had been time-barred for decades under the authoritatively established statutory law of Connecticut. This Court then applied its new decision on the retroactivity of Conn. Gen. Stat. § 54-193 retroactively. So construed and so applied, Section 54-193 plainly violates the Ex Post Facto Clause of the United States Constitution.

2. This Court's retroactive resurrection of a time-barred prosecution violated the due process clauses of the state and federal constitution

"[L]imitations on *ex post facto* judicial decisionmaking are inherent in the notion of due process." Rogers v. Tennessee, 532 U.S. 451, 456 (2001); Marks v. United States, 430 U.S. 188 (1977) (due process prohibited Supreme Court decision reversing precedent from being retroactively applied against defendant in criminal case); Bouie v. City of Columbia, 378 U.S. 347 (1964) (due process prohibited state supreme court decision reinterpreting statute from being retroactively applied against defendant in criminal case). Accordingly, this Court's doubly retroactive decision in this case – overruling its own earlier decision in Paradise and on that basis applying § 54-193 retroactively against Mr. Skakel – also violated due process. See U.S. Const., amend. XIV; Conn. Const., art. I, § 8.

The "basic" principle required by the Due Process Clause is "fair warning." Rogers, supra, 532 U.S. at 457. When an "unforeseeable state-court construction of a criminal

statute is applied retroactively to subject a person to criminal liability for past conduct, the effect is to deprive him of due process of law." Bouie, 378 U.S. at 355; Douglas v. Buder, 412 U.S. 430, 432 (1973); Keeler v. Superior Court, 2 Cal. 3d 619, 470 P.2d 617 (Cal. 1970); State v. McGann, 199 Conn. 163, 506 A.2d 109 (Conn. 1985).[5]

Under these principles, this Court's decision in this case was plainly unconstitutional. As the United States Supreme Court recently stated in *Stogner*, the resurrection of a time-barred prosecution "deprives the defendant of . . . fair warning." Stogner, 539 U.S. at 611. Hence "a retrospective judicial determination that effectively changes the statute of limitation and revives a previously barred criminal prosecution is in the nature of an ex post facto law and thus violates the defendant's right to substantive due process." Hunt v. Tucker, 875 F. Supp. 1487, 1509 (N.D. Ala. 1995) (emphasis added), aff'd, 93 F.3d 735 (11th Cir. 1996).

It is certain that due process was violated here because this Court reached its result by overruling its own earlier decision in Paradise. A state-court overruling of settled, controlling precedent is "constitutionally unforeseeable" ***as a matter of law***. Moore v. Wyrick, 766 F.2d 1253, 1257 (8th Cir. 1985); see also Rubino v. Lynaugh, 845 F.2d 1266 (5th Cir. 1988) (Texas court's reversal of longstanding "carving doctrine" could not be applied retroactively if preexisting doctrine would have barred defendant's prosecution); Comm. v. Davis, 760 A.2d 406 (Pa. Super. 2000) (state supreme court's overruling of precedent unforeseeable under Bouie); People v. Martinez, 20 Cal. 4th 225 (Cal.1999)

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[5] It is immaterial to the due process analysis that this Court has said that statutes of limitation are no longer to be deemed "penal statutes" for purposes of state-law canons of construction. Skakel, 276 Conn. at 675-76. The Due Process foreseeability test is a matter of federal constitutional law; it is unaffected by a state court's determination that a particular statute is or is not "penal" for state-law purposes. See, e.g., Rubino v. Lynaugh, 845 F.2d 1266 (5th Cir. Tex. 1988) (effort to characterize as "procedural" judiciary's alteration of preexisting doctrine barring multiple prosecutions for single transaction could not circumvent Due Process Clause). Under Bouie, a retroactive state court decision must satisfy the foreseeability test if its effect is to "subject a person to criminal liability for past conduct," 378 U.S. at 355, which is precisely the effect of this Court's decision in this case.

(retroactive application of overruling of precedent would be unconstitutional under Bouie); Ex Parte McAtee, 586 S.W.2d 548 (Tex. Ct. Crim. App. 1979); State v. Saylor, 216 N.E.2d 622 (Ohio 1966); Love v. Fitzharris, 460 F.2d 382 (9th Cir. 1972) (overruling of agency decisions could not be applied retroactively under Bouie).

When, in a criminal case, a state court overturns its own precedent and applies a new interpretation of a statute retroactively against the defendant, it is wholly "irrelevant" – in the words of the United States Court of Appeals for the Eighth Circuit – that the state court's new decision might have been defensible if considered as a matter of "first impression," by reference to the statutory language at issue or the law of other jurisdictions:

> [T]he state claims that the plain language of the statute provided [defendant] with fair warning that his conduct might, under these circumstances, be considered felony murder. The state's argument would be persuasive had Moore's case presented a question of first impression in Missouri. However, in light of *State v. Majors* [the case reversed by the state supreme court in upholding defendant's conviction], which narrowed the scope of the felony murder statute, *we are not confronted with the statute "as written" but rather as judicially construed.* As such, whether or not the plain language of the statute would, absent prior judicial construction, give Moore fair warning that his conduct might constitute felony murder is irrelevant. Instead, we must determine whether the expanded scope of the Missouri felony murder statute *was foreseeable in light of its previously narrow construction.*

Moore, 766 F.2d at 1257-58 (emphasis added). See also id. at 1258 ("in light of prior unquestioned Missouri authority directly on point, it cannot reasonably be argued that cases from other jurisdictions supply the fair warning that is constitutionally required by the due process clause").

The appellate court in Moore emphasized several factors as particularly important in establishing that the state supreme court's decision was "constitutionally unforeseeable" under the Due Process Clause. First, "the state supreme court recognized that State v. Majors [the overturned decision] was indistinguishable from the present case." Id. at 1257. Moreover, "the state supreme court recognized that no case other than Majors had presented the precise question involved and then specifically overruled Majors." *Id.*

Finally, "no case arising between Majors and [the instant case] undermined the authority of Majors." Id.

Every one of these factors applies with equal or greater force here. First, the decision being reversed – Paradise – was "indistinguishable" from the present case. See Skakel, 276 Conn. at 668. Moreover, no case since Paradise presented the "precise question involved" and this Court in Skakel "specifically overruled" Paradise. Id., at 670-72. Finally, here too, no case intervening between Paradise and Skakel had undermined Paradise. Id., at 670 ("In State v. Crowell, 228 Conn. 393, 398-99, 636 A.2d 804 (1994), we expressly reaffirmed our conclusion in Paradise that criminal statutes of limitation are accorded prospective effect only).

Even the decisions of the United States Supreme Court, when they expressly overrule past precedent, cannot be retroactively applied against criminal defendants without violating Bouie. See, e.g., Marks v. United States, 430 U.S. 188 (1977); United States v. Sherpix, Inc., 512 F.2d 1361 (D.C. Cir. 1975). In Sherpix, defendants were charged with distributing obscenity at a time when the then-prevailing First Amendment rules on obscenity were governed by the Supreme Court's *Roth-Memoirs* test.[6] By the time defendants came to trial, the Supreme Court had overruled Roth and established the Miller test.[7] The trial court applied the new Miller standard to defendants' case, but the District of Columbia Circuit reversed, holding that under Bouie, the Supreme Court's overruling of prior doctrine could not be applied retroactively without violating due process.

Significantly, the District of Columbia Circuit in no way suggested that the Supreme Court's Miller test was somehow "indefensible" in its own right – for example, by reference to the text of the First Amendment. On the contrary, the circuit court accepted, as it was bound to do, that the Supreme Court's Miller case properly and reasonably set forth the

[6] See Roth v. United States, 354 U.S. 476 (1957); A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Massachusetts, 383 U.S. 413 (1966).
[7] See Miller v. California, 413 U.S. 15 (1973).

correct interpretation of the freedom of speech. Nevertheless, because *Miller* had expressly overturned Roth, the circuit court held that Miller was "unforeseeable" for Bouie purposes and could not be applied retroactively. Sherpix, 512 F.2d at 1366.[8]

For the foregoing reasons, this Court's decision – retroactively overruling its own past precedent and thereby construing a state statute to revive a prosecution time-barred for decades under the pre-existing, authoritatively determined law of Connecticut – has plainly violated both due process and ex post facto principles and must be reversed.

B. This Court Erred In Concluding That Mr. Skakel Was Properly Transferred From The Juvenile Court To The Adult Criminal Division Of The Superior Court

1. This Court improperly utilized an administrative regulation to abrogate rights conferred on Mr. Skakel by statute

This Court's resolution of all three of the issues raised by Mr. Skakel relating to the transfer of his case from juvenile court to the regular criminal docket is based entirely upon an administrative regulation promulgated by the Department of Children and Families ("DCF") in 1994. The regulation provides:

> As used in Sections 17a-145-48 to 17a-145-99, except as otherwise provided therein:
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> (e) "Child" means any person under eighteen years of age not related to the owner of the child care facility.

Regs. Conn. State Agencies § 17a-145-48. This Court interpreted that regulation to mean that anyone over the age of eighteen is not considered a "child," and thus is not within the jurisdiction of the DCF. State v. Skakel, 276 Conn. at 660 & n. 24.

This Court relied on the 1994 DCF regulation to conclude that: (1) even though the mandatory investigation under Conn. Gen. Stat. § 17-66 (Rev. to 1975) was not completely performed in this case, it is of no consequence because the DCF regulation required Mr.

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[8] The Sherpix court's reasoning was subsequently approved by the United States Supreme Court in Marks, supra.

Skakel to be transferred to the adult docket simply because of his age; (2) the juvenile court properly relied on this 1994 regulation at the time of the transfer hearing even though it was not in place in 1975 because the transfer statute required the juvenile court to look at current options for placement rather than options that may have existed in 1975; thus, because Mr. Skakel was over eighteen, there were no current options available to him for placement at the time of transfer; and (3) the juvenile court was not required to consider out of state placement of Mr. Skakel because the court could only consider placement for those persons committed, admitted or transferred to the DCF; because Mr. Skakel was over eighteen, the DCF had no jurisdiction over him and could not place him anywhere, including out-of-state facilities. State v. Skakel, 273 Conn. at 660-62.

In so ruling, this Court improperly relied on the DCF regulation and erroneously determined that Mr. Skakel's age alone mandated his transfer to the adult docket. The Court ignored Mr. Skakel's argument on appeal that an administrative regulation should not be permitted to trump a statute enacted by the legislature. See Def.'s Br. at 17. The applicable commitment statute, Conn. Gen. Stat. § 17-68 (Rev. to 1975), is completely silent as to what is to occur if a delinquent is over the age of eighteen when he is arrested for a crime committed while a juvenile. Despite this silence, this Court relied on a subsequently-enacted administrative regulation to conclude that anyone over the age of eighteen cannot be committed as a juvenile delinquent under Conn. Gen. Stat. § 17-68, even if the crime were committed as a juvenile.

In effect, the DCF regulation relied upon by this Court completely abrogates a right conferred upon Mr. Skakel by the legislature: the right to juvenile status. By virtue of the 1975 juvenile delinquency statutes, the legislature created a right to juvenile status for Mr. Skakel, who was charged with committing a crime while under the age of sixteen.[9] This

[9] The right to juvenile status is not created directly by the United States or Connecticut Constitutions. See State v. Angel C., 245 Conn. 93, 104 (1998). Any special treatment accorded to a juvenile because of his or her age results from statutory authority rather than from any inherent or constitutional right. Id. at 104-05.

right to juvenile status included benefits such as a determination of delinquency rather than criminality, confidentiality, limitations with respect to sentencing, erasure of files, and isolation from the adult criminal population. State v. Angel C., 245 Conn. 93, 103 (1998). However, because Mr. Skakel was not arrested until after the age of eighteen, the DCF regulation relied upon by this Court wholly deprived him of all of the rights that would have been available to him had he been apprehended in a timely manner while still under the age of eighteen.

For example, under the 1975 statutory scheme, Mr. Skakel was afforded a transfer hearing pursuant to Conn. Gen. Stat. § 17-60a (Rev. to 1975) before being transferred to the adult docket. Pursuant to that hearing, in order to transfer Mr. Skakel to the adult criminal division, the juvenile court was required to find:

> (1) the child committed the act for which he is charged and (2) there is no state institution designed for the care and treatment of children to which said court may commit such child which is suitable for his care and treatment or (3) the safety of the community requires that the child continue under restraint for a period extending beyond his majority and (4) the facilities of the superior court provide a more effective setting for disposition of the case and the institutions to which said court may sentence a defendant are more suitable for the care or treatment of such child.

Conn. Gen. Stat. § 17-60a (Rev. to 1975). The central issue under consideration by the juvenile court in this case was the second statutory factor, namely, whether there was a state institution to which the juvenile court could commit him. State v. Skakel, 273 Conn. at 660. However, by operation of the 1994 DCF regulation, Mr. Skakel would never have been able to prove that there was an institution to which he may have been committed pursuant to the second statutory factor. Thus, the application of the 1994 DCF regulation effectively made it impossible for Mr. Skakel, who was not arrested until he was thirty-nine years old, to remain within the jurisdiction of the juvenile court. A transfer hearing under § 17-60a was absolutely unwinnable by application of the 1994 DCF regulation, thus stripping Mr. Skakel of his right to juvenile status that was conferred by the legislature.

Further, the application of the 1994 DCF regulation abridged another statutory right conferred upon Mr. Skakel by the legislature, namely, the right to a complete investigation under Conn. Gen. Stat. § 17-66 prior to transfer to the adult docket. This Court concluded that the § 17-66 investigation was mandatory and that it was not properly completed by the juvenile court in this case. State v. Skakel, 276 Conn. at 660. However, this Court determined that the juvenile court's failure to accomplish the required statutory investigation was of no consequence because, pursuant to the 1994 DCF regulation, Mr. Skakel was required to be transferred to adult court due to his age, regardless of what the investigation showed. Id. Therefore, the 1994 DCF regulation rendered Mr. Skakel's statutory right to a complete investigation under § 17-66 a nullity.

The 1994 DCF regulation is the only basis upon which this Court concluded that because the Defendant was over the age of eighteen, he was not within the jurisdiction of the DCF and, thus, transfer to the adult docket was required. The 1975 juvenile statutes do not compel such a result as they are silent as to the procedure that is to be employed when a juvenile defendant is not apprehended until after the age of eighteen. Therefore, this Court improperly permitted an administrative regulation to abridge rights conferred upon Mr. Skakel by statute.

It is well settled that an administrative regulation that alters, abridges, enlarges or modifies a statute is beyond the power of an agency to enact. Alcorn ex. rel. Baskin v. Bartlett, 13 Conn. Supp. 463, 1945 WL 638, at *5 (1945). A regulation that imposes additional requirements beyond those contained in a statute cannot be effective to override the statute. Id. (citing Hammerberg v. Holloway, 131 Conn. 616, 621 (1945)); see also 30 Op. Atty Gen. 135 (Mar. 24, 1958) (administrative rule or regulation may not amend, alter, enlarge or restrict terms of a legislative enactment); 29 Op. Atty. Gen. 143 (Jan. 12, 1956) (same). When a statute and a regulation conflict, the statute must prevail. Comm'r of Admin. Servs. v. Gerace, 40 Conn. App. 829, 834 (1996). This Court's decision in permitting the 1994 DCF regulation to abridge Mr. Skakel's statutory rights is therefore

contrary to established law.[10]

2. This Court's improper reliance on the 1994 DCF regulation violated Mr. Skakel's state and federal constitutional rights to due process of law

The improper application of the 1994 DCF regulation deprived Mr. Skakel of due process of law as guaranteed by the federal and state constitutions. See U.S. Const., amend. XIV; Conn. Const., art. I, § 8. Courts have recognized that particular state statutes may create a liberty interest in juvenile status. Kent v. United States, 383 U.S. 541, 556-57 (1966); State v. Angel C., 245 Conn. 93, 104 (1998); State v. Skakel, 276 Conn. at 658. Connecticut's 1975 juvenile statutes created such a liberty interest in the Defendant, as the statutes provided for mandatory, exclusive, and original jurisdiction in the juvenile court. State v. Skakel, 276 Conn. at 658-69; Conn. Gen. Stat. § 17-59 (Rev. to 1975). Transfer from the juvenile court in 1975 could only occur after a hearing in which certain criteria were established. Conn. Gen. Stat. § 17-66 (Rev. to 1975).[11] As a result of the juvenile court's original and exclusive jurisdiction pursuant to the 1975 statutes, Mr. Skakel had a vested right to juvenile status. Cf. State v. Angel C., 245 Conn. at 106-09.

A liberty interest in juvenile status created by statute cannot be taken away without due process of law. Kent v. United States, 383 U.S. at 557; see also State v. Angel C., 245 Conn. at 106 ("[I]f a statute vests a juvenile with the right to juvenile status, then that right

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[10] As discussed supra in Footnote 9, because Mr. Skakel's right to juvenile status is statutory rather than constitutional, the right may be limited or withdrawn. See State v. Angel C., 245 Conn. at 105. However, any limitations on this statutory right may necessarily only be imposed by the legislature, not by an administrative regulation.

[11] In contrast to the 1975 juvenile statutes, Connecticut's current statutory scheme does not create a liberty interest in juvenile status for juveniles charged with a capital felony, Class A or B felony, or arson murder. See State v. Angel C., 245 Conn. at 104. This is because the present-day transfer statute provides for mandatory transfer to the adult docket without a hearing for juveniles charged with such crimes. Id. at 96 n.1 (quoting Conn. Gen. Stat. § 46b-127(a)). The juvenile court never obtains exclusive jurisdiction over those juveniles charged with the enumerated crimes and, thus, the juveniles have no vested right to juvenile status. Id. at 108-09. In contrast to the current statutory scheme, the 1975 juvenile statutes did not provide for such mandatory transfer, thus vesting a right to juvenile status in all persons who committed a crime under the age of 16.

constitutes a liberty interest, of which the juvenile may not be deprived without due process, i.e., notice and a hearing."). In the present cast, Mr. Skakel was denied due process of law in that the transfer hearing pursuant to § 17-60a was unwinnable by virtue of the application of the 1994 DCF regulation. It is well settled that in order to satisfy the constitutional requirement of due process, the process afforded to a citizen must be meaningful. Bell v. Burson, 402 U.S. 535, 541-42 (1971) ("The hearing required by the Due Process Clause must be meaningful."); State v. Long, 268 Conn. 508, 525 (2004) ("The fundamental requisite of due process of law is the opportunity to be heard ... [which] must be at a meaningful time and in a meaningful manner."). Because the application of the 1994 DCF regulation rendered the transfer hearing an utterly meaningless exercise in that Mr. Skakel would never have been able to meet the second statutory factor set forth in § 17-60a, Mr. Skakel was deprived of his liberty interest in his juvenile status without due process of law.

Mr. Skakel was further deprived of his liberty interest in his juvenile status without due process of law in that the mandatory investigation required under § 17-66 in transfer hearing situations was not fully performed. This Court's affirmance of the juvenile court's application of the 1994 DCF regulation effectively eliminated Mr. Skakel's right to a complete and full investigation as required under § 17-66. Without the thorough completion of this mandatory investigation, Mr. Skakel was not provided the full process afforded by law prior to the deprivation of his liberty interest in his juvenile status.

In effect, this Court's application of the 1994 DCF regulation afforded Mr. Skakel a hearing under § 17-60a that he could not win, and allowed him an investigation under § 17-66 that he could not have. Because this result clearly offends due process, Mr. Skakel's Motion For Reconsideration And Reargument should be granted.

3. This Court's improper reliance on the 1994 DCF regulation violates the Ex Post Facto Clause of the United States Constitution

This Court's affirmance of the juvenile court's retrospective application of the 1994

DCF regulation violates the Ex Post Facto Clause. The Ex Post Facto Clause prohibits any statute "which makes more burdensome the punishment for a crime, after its commission." Beazell v. Ohio, 269 U.S. 167, 169 (1925); United States v. Juvenile Male, 819 F.2d 468, 470 (4th Cir. 1987); see also U.S. Const., art. I, § 10. The application of the 1994 DCF regulation violates the Ex Post Facto Clause because it imposed a greater, more burdensome and more onerous punishment than the law in effect at the time the crime was committed.[12] Had Mr. Skakel been adjudged delinquent under the law in effect in 1975, he would have been sentenced to at most four years. See Conn. Gen. Stat. § 17-69(a)-(b) (Rev. 1975). However, because the 1994 regulation was retrospectively applied to him and he was thus transferred to the adult criminal division of the superior court, Mr. Skakel was sentenced to 20 years to life. This dramatic retrospective increase in the punishment for the crime violates the Ex Post Facto Clause.

The 1994 DCF regulation cannot be interpreted merely as a procedural mechanism that is allowed to be applied retroactively. The regulation "is 'procedural' only in the most superficial, formal sense." United States v. Juvenile Male, 819 F.2d at 471.

> [Application of the regulation] is no mere change in venue ...; it is instead a means by which to impose on certain juveniles the harsher sentences applicable to adults. ... The significance is that the transferred defendant is suddenly subject to much more severe punishment. Only by closing one's eyes to the actual effect of the transfer can one label this radical increase in the applicable punishment a procedural change. ... If applied to [Mr. Skakel] retroactively, the [regulation] would have the undisputed effect of increasing the applicable punishment. ... [T]his change can only be characterized as substantive.

Id.;[13] see also United States v. Baker, 10 F.3d 1374, 1394-95 (9th Cir. 1993),

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[12] Administrative regulations have the force of law. Teresa T. v. Ragaglia, 272 Conn. 734, 751 (2005).

[13] In United States v. Juvenile Male, the defendant was arrested for the murder of three relatives which took place in 1981 when the defendant was 15 years old. The authorities lost track of the defendant and did not arrest him until 1986, when he was 20 years old. In the interim, Congress amended the Juvenile Delinquency Act to provide that individuals who commit certain crimes at the age of 15 may be prosecuted as adults. The district court applied this amendment to the defendant retroactively, ruling the amendment a procedural

overruled on other grounds, United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000) (holding that applying amended transfer statute retroactively violated the Ex Post Facto Clause because it exposed juvenile to a much more severe sentence); In re Daniel H., 237 Conn. 364, 376 (1996) (substantive change in juvenile law is to apply prospectively only).

Because the 1994 regulation affected the severity of the punishment applied to Mr. Skakel by mandating his transfer from juvenile court, the regulation is a substantive law that should not have been retrospectively applied to Mr. Skakel. This retroactive application violated the Ex Post Facto Clause and Mr. Skakel's Motion For Reconsideration And Reargument should be granted.

C. Fundamental Fairness Dictates That This Court Should Conduct An *In Camera* Comparison Of The Profile Reports To The Police Reports

This Court's refusal to either review the profile reports in comparison to the 1,806 pages of police reports *in camera* is inexplicable. It is the obligation of this Court to review *in camera* alleged exculpatory evidence so that it can be certain that Mr. Skakel, who is serving a sentence of twenty years to life, received a fair trial. Alternatively, this matter should be remanded for a full evidentiary hearing, which had been requested by the defense. Record, at 151.

Eight years prior to Mr. Skakel's arrest, the lead investigator prepared two "profile reports" – one for Kenneth Littleton and one for Thomas Skakel – that contained incriminating evidence pointing to each as the possible killer of Martha Moxley. Tr.5/13/02 at 76-7; 81. The State never disclosed the reports despite an order of the trial court to disclose any evidence that someone other than Mr. Skakel was involved in the commission

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change in the law. The Fourth Circuit reversed, holding that the amendment was substantive because it increased the punishment for the offense, and that retroactive application of the amendment to the defendant violated the Ex Post Facto Clause. 819 F.2d at 469-72. The Fourth Circuit stated: "We are bound by the result Congress dictated when it drafted the law in effect in 1981 – that fifteen-year-old offenders should be tried as juveniles, even if they are not charged until they reach the age of twenty." Id. at 472.

of the murder. The existence of the profile reports came to the attention of Mr. Skakel's trial counsel mid-trial when the author of the reports, former State's Attorney Inspector John Solomon, testified. Skakel, 276 Conn. at 707-08. Trial counsel asked the court for a copy of the report, but the court denied the request by responding "not right now." Id., at 708. Trial counsel did not renew his request for the profile reports during the trial. Id. In his timely post-trial motion for new trial, trial counsel argued that Mr. Skakel's "constitutional and statutory rights were violated by the prosecution's belated disclosure of exculpatory information and material....".[14] See Record, at 138. Following the jury's verdict and before sentencing, Mr. Skakel retained new counsel. Upon their review of the entire transcript, including Mr. Solomon's testimony regarding the profile reports, new counsel filed an amended motion for new trial and specifically raised the State's failure to disclose the profile reports. See Record, at 151.

This Court excuses the State's failure to comply both with a court order and with its *own* constitutional obligation to disclose exculpatory information by concluding trial counsel had failed to raise the issue in the original motion for new trial.[15] The original, timely motion for new trial was, in part, already based on a Brady violation. While the original motion

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[14] Trial counsel specifically identified the late disclosure of the 1976 arrest warrant for Thomas Skakel and the 1992 videotaped police interviews of Littleton, but his motion for new trial was not limited to them.

[15] With respect to trial waiver, this Court's disparate treatment of the parties is manifestly unfair. In overruling Paradise and holding that the 1976 amendment to the statute of limitation should be applied retroactively to Mr. Skakel, this Court overlooked the State's explicit concession in its brief to the trial court that it could not rely on a claim for retroactive application of the 1976 amendment. Not only did the State fail to argue that Paradise should be overruled in the trial court proceedings, this Court also excused the State's failure to provide a full analysis of the issue in its appellate brief. Yet, this Court held Mr. Skakel to a higher standard than the State in its preservation of appellate issues. Even though defense counsel requested all exculpatory information in written pretrial motions, the court ordered the disclosure of all exculpatory information, the State has a constitutional obligation to provide all exculpatory information, defense counsel asked mid-trial for a copy of the profile reports as soon as he learned of their existence, and new counsel filed an amended motion for new trial raising the issue, this Court determined that Mr. Skakel "failed to raise it in a timely manner." Skakel, 276 Conn. at 710.

included Thomas Skakel's arrest warrant affidavit and the Littleton interviews, it was ***not*** limited to those items. The amended motion simply raised additional Brady claims based upon new counsel's review of the record. See Tr.8/28/02 at 25.[16] The specific Brady claims relating to the profile reports concerned the same two individuals, Thomas Skakel and Littleton, who were referred to in the original motion.[17] See Tr.8/28/02 at 26.

Additionally, because a Brady violation can be raised by way of a petition for new trial or a writ of habeas corpus, it would not serve the interests of justice to bar Mr. Skakel from making the claim before he was sentenced, particularly when there was no prejudice to the State. Moreover, our criminal rules do not require court permission to seek an extension to amend motions when the original motion is timely filed. Fundamental fairness mandates that this Court's decision affirming the trial court's refusal to invoke the interests of justice provision of P.B. § 42-54 to permit the amendment should be reconsidered.[18]

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[16] Cf., Wagner v. Clark Equipment Co., 259 Conn. 114, 129-30 (2002) ("A change in, or an addition to, a ground of negligence or an act of negligence arising out of the single group of facts which was originally complained to have brought about the unlawful injury to the plaintiff does not change the cause of action. . . . It is proper to amplify or expand what has already been alleged in support of the cause of action, provided the identity of the cause of action remains substantially the same . . . .").

[17] Furthermore, the State was on notice that it had a duty to provide exculpatory evidence whether it was pretrial, mid-trial or post-trial. If, in fact, the State's failure to provide the defense with a copy of the profile reports during pretrial discovery was an oversight, then certainly when Mr. Solomon was on the stand and testified about them, the State had an obligation to disclose the information at that time.

[18] This Court's claim that the defendant did not provide the court and the state with copies of 1806 pages of discovery until after the hearing on the defendant's amended motion for new trial improperly ignores certain facts. First, Mr. Skakel's new counsel specifically requested an evidentiary hearing in his amended motion for new trial and the accompanying memorandum of law. Record, at 151; Appendix to Defendant's Brief, A285. If an evidentiary hearing had been permitted, then Mr. Sherman would have testified about the documents received during discovery and the police reports would have been marked at that time. The Court denied the Defendant's request for an evidentiary hearing. Tr.8/28/02 at 89. Secondly, new counsel interrupted the court's recitation of its ruling to request that the profile reports be released to defense counsel so that a comparison could be made between the information in the profile reports and the police reports. Id., at 94. The court denied the request. Id., at 95. Thirdly, at the beginning of the next day, new counsel marked as an exhibit the 1,806 pages of police reports in order to provide an appellate court with the "raw data" to compare to the profile reports. Tr.8/29/02 at 2-3.

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CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been mailed first class and postage prepaid this 14th day of February, 2006, to the following counsel of record and interested persons:

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CERTIFICATION PURSUANT TO P.B. § 66-3

THIS IS TO CERTIFY that this motion complies with all of the provisions of Practice Book § 66-3.

HOPE C. SEELEY

APPENDIX

CR00 FST 135-792T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF
V.	:	STAMFORD/NORWALK
MICHAEL SKAKEL	:	MAY 30, 2001

STATE'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Pursuant to Connecticut General Statute 54-193 (Rev. to 1975) the Defendant has moved to dismiss the instant prosecution for not having been commenced within five years of the date of the commission of the offense.

I. FACTUAL BACKGROUND

The defendant is accused of having, on the night of October 30-31, 1975, murdered Martha Moxley in the Town of Greenwich. Following an eighteen month-long inquiry by an Investigative Grand Jury (Thim, J), the defendant was, on January 19, 2000, arrested, pursuant to a warrant (Commerford, J), for the crime of murder. At the time of the offense, both parties were fifteen years of age. In 1975, pursuant to Connecticut General Statute 17-60a (PA 71-170), the juvenile court had the authority to transfer to the superior any child referred to it for the commission of murder if committed after the child had attained the age of fourteen years. After an evidentiary hearing (Dennis, J.), the matter was, on January 31, 2001, ordered transferred to the Superior Court of the Judicial District of Stamford.

II. ARGUMENT

In seeking a dismissal, the defendant misreads both the legislative history of Conn-

ecticur's Murder / Capital Felony laws as well as the judicial gloss placed by the Connecticut Supreme Court on the State's criminal statute of limitations as it applies to those same laws.

A. State v. Paradise does not, as argued by defendant, warrant relief

The Statute of Limitations in effect at the time of the instant offense, C.G.S. 54-193 (Re. to 1975), states in relevant part:

> No person shall be prosecuted....for any crime or misdemeanor of which the punishment is or may be imprisonment in the Connecticut Correctional Institution, Somers, except within five years next after the offense has been committed; nor shall any person be prosecuted for the violation of any penal law, or for other crime or misdemeanor, except crimes *punishable by death* (emph. added)or imprisonment in the Connecticut Correctional Institution, Somers, but within one year next after the offense has been committed..

A scenario similar to that of the instant case, is presented in State v. Paradise, 189 Conn.349, (1983). There, prosecution was commenced in 1982, over seven years after the 1974 date of the commission of the charged offense of Murder, C.G.S. 53a-54a. (Rev. to 1975). The defendants moved to dismiss, arguing that the crime of Murder, being defined in the Penal Code as a Class A. Felony, was therefor subject to the five year bar for felonies of C.G.S. 54-193 (Rev. to 1975). The state confined its response to reliance on the 1976 amendment of the statute which specifically provided that there be no limit placed on the prosecution of either Capital or Class A felonies (P.A. 1976 No. 76-35). Claiming that statutes of limitation are procedural in nature, the state argued that the 1976 act should be given retroactive effect and prosecution therefor be allowed to proceed.. On appeal, the court rejected this claim, holding that criminal statutes, whether procedural or substantive, are to be denied retroactive effect barring language clearly necessitating such a construction. State v. Paradise, supra, 353.

While the defendant suggests that Paradise is analogous to the instant case, it can

hardly be viewed as ultimately controlling. That case was clearly decided only upon the very narrow issue of the application of principles of retroactivity. "Because it was not raised... we do not decide whether this statute [C.G.S. 54-193 (Rev. to 1975)], which does not specifically cover capital offenses, bars prosecution of a person for a crime for which the punishment is or may be death" Paradise, supra, 348 at N. 1. Indeed, the Connecticut Supreme Court later noted; "In State v. Paradise...we addressed the narrow issue of whether this amendment [P.A.1976 No. 76-35] could be applied retroactively.... We did not address the issue presented today of whether the pre-1976 statute of limitations was intended to apply to prosecutions for crimes for which, because of the invalidation of the death penalty, could be punishable only by imprisonment." State v. Golino, 201Conn. 435, 441, N. 5 (1986). While it is thus conceded that the state cannot here rely on a claim for retroactive application of the1976 amendment, it is clear that other principles remain to be considered. (Indeed, based upon the authorities cited below, it is apparent that, were Paradise decided today, it would have a different result)

B. State v. Ellis, restricted only to the offense of Capital Felony, is not controlling.

After the murder prosecutions in the original cases of State v. Paradise et als. were dismissed, the state filed new informations, charging each defendant with Capital Felony. The defendants again moved to dismiss under the applicable statute of limitations; again, C.G.S. 54-193 (Rev. to 1975). The issue was taken up on appeal under the caption of State v. Ellis, 197 Conn.436, 460 (1985). There, the appellant argued narrowly that, since Capital Felony was punishable either by death or imprisonment for life, C.G.S 53a-46a, the latter option restricted the prosecution to the five year Statute of Limitations reserved for offenses punishable in "the Connecticut Correctional Institution, Somers"; The state argued for a broader interpretation, e.g.; that, since Capital Felony was, indeed, optionally, *"punishable"* by death , no limitation should apply.

In considering whether C.G.S. 53a-193 (Rev. to 1975) placed a five year limit to the commencement of prosecution for the crime of Capital Felony, the Court in Ellis, looked first to the history of the relevant statutes. Noting that the language of the statute of limitations had

remained substantially unchanged since 1821, the crime of Murder, which had historically mandated the death penalty, had never been subject to a time bar. However, with the institution of degrees of murder in 1951, the state had dispensed with a mandatory death penalty, and placed the issue of punishment for Murder in the First Degree, C.G.S. 53-9, before the trier of fact to be decided at a post- verdict hearing; C.G.S. 53-10; PA 1951, No.369. The adoption of the Penal Code, P.A.1969 No. 828 and, subsequently, Connecticut's current Capital Felony sentencing scheme, C.G.S. 53a-46a;(P.A. 1973-137 sec. 4), continued the non-mandatory nature of the death penalty. See Ellis, supra, 442-3. Reduced to its simplest terms, the issue before the Court was whether, because a conviction for Capital Felony permitted, but no longer mandated the death penalty, the crime was subject to the five year time limit of the statute.

In deciding that the statute did not apply to a Capital Felony prosecution, the Court, analyzed the legislative intent of C.G.S. 54-193 (Rev. to 1975), by employing traditional rules of statutory construction. It found that "that the statute, as a whole represents a system, a classification scheme whereby the allowable period of prosecution is related to *the gravity of the offense*" (emph. added). Ellis, supra, 450, rather than the prospective punishment to be imposed. The Court further elaborated that the legislature's action in 1951 when it eliminated mandatory punishment by death merely reflected "a changing attitude not toward murder, but toward capital punishment...The concerns addressed by the 1951 legislature with regard to capital punishment bear no substantive relationship to the competing interests underlying the statute of limitations" supra, at 457-8." Consequently, the Court held that the statute did not apply to a Capital Felony prosecution. It should be noted that the Ellis decision is completely silent on the subject of a charge of non-capital murder; that question remained for the third, and, logically, final installment to the Court's inquiry.

C. A prosecution for non-capital murder is not subject to any statute of limitations.

The final chapter of the trilogy was presented in State v. Golino, 201 Conn. 435 (1986). There, the defendant had been arrested in 1984 for a 1973 homicide which was charged as

Murder (intentional) under C.G.S.53a-54a (Rev. to 1972), an offense which had, with the adoption of the Penal Code (P.A. 1969 No. 828), replaced Murder in the First Degree (C.G.S. 53-9) of the former Connecticut Penal Law ("wilful, deliberate, and premeditated killing"). Both the new Penal Code's crime of Murder, in effect at the time of Golino's offense and its predecessor provided for a post-verdict penalty hearing in which the finder of fact had the option of imposing either the death penalty or life without release. See C.G.S. 53a-54(c) (P.A. 1969 No. 828) and C.G.S.53-10 (repealed at P.A. 1969 No. 828). Subsequently, however, the United States Supreme Court, in Furman v. Georgia, 408 U.S. 234 (1972), held the death penalty, as written in many jurisdictions, to be unconstitutional. Connecticut quickly followed suit as to this state's capital punishment scheme. State v. Aillon, 164 Conn. 661 (1972). The defendant in Golino, supra, consequently complained that, as his crime was not *constitutionally* punishable by death, it was therefore time-barred by C.G.S. 54-193 (Rev. to 1975).

On appeal, the Connecticut Supreme Court, "we must enquire whether, by using the phrase 'punishable by death' in Sec. 54-193, the legislature intended to exempt from the statute crimes which *actually* could be punished by death, the exemption being because of the severity of the punishment imposed, or whether it intended to exempt a specific *category* of crimes, which, because of their heinous nature, should always be amenable to prosecution." State v. Golino, supra, at 443. Consistent with its previous analysis in Ellis, supra, that the reach of the statute of limitations revolves around the gravity of the offense, rather than the severity of available punishment, Golino, supra, 444, the Court , again employed principles of statutory construction. It concluded that the legislative intent of the language " punishable by death" for purposes of the Statute of Limitations, was merely to serve as "a short-hand reference to a category of crimes which, because of their atrocious nature, would always be amenable to prosecution." id,. at 446. Consequently the crime of Murder, though not *constitutionally* punishable by death, was nevertheless exempted from the statute.

The defendant asserts in the instant case, however, that Golino is distinguishable. He bases this claim on the fact that, while the defendants in both cases were identically charged. ("a person is guilty of murder when with intent to cause death of another person he causes the

death of such person"); C.G.S. (Rev. to 1972) Sec. 53a-54(a)(1); C.G.S.(Rev. to 1975) Sec.53a-54(a); the two crimes straddled the passage of a 1973 statute which amended the punishment provisions of the crime of murder from "punishable as a Class A Felony *unless the death penalty is imposed*(Golino;) to "punishable as a Class A Felony" (Skakel;). In short, the defendant notes that, while the offense he is charged with is, by statutory definition, identical to that in Golino, it clearly is not subject to the death penalty. The defendant concludes, therefor, that, since his offense is neither, as a matter of constitutional law nor of statutory language, even potentially punishable by death, the five year limitation of C.G.S. 54-193 applies.

In positing his claim, the defendant ignores both the legislative history of Connecticut's death penalty scheme and the judicial gloss placed by the Connecticut Supreme Court on the statute of limitations as it relates to the crime of murder. As noted above, when the legislature, in enacting the Penal Code (P.A. 1969 No.828), replaced the Penal Law's definition of murder as a "wilful, deliberate, and premeditated killing" C.G.S.53-9, with the somewhat broader "intentional causing of death" (C.G.S. 53a-54), it retained the older law's (C.G.S 53-10 Rev. to 1963) penalty provisions which placed the decision of execution or imprisonment in the hands of the trier of fact. Shortly thereafter, however, the new statute's penalty provisions were held to be unconstitutional, Furman v.Georgia, supra, State v. Aillon, supra, both decided in 1972. In response, the General Assembly, at the very next opportunity, passed amending legislation that created the new crime of Capital Felony (P.A. 1973 No. 137) which reserved capital punishment only for the crime of murder when aggravated by proof of an additional element; murder, without more, was punishable only by imprisonment. Not until after the commission of the instant offense was C.G.S. 54-193 amended to place Murder back amongst those offenses not subject to the statute of limitations. P.A. 1976 No. 76-35.

The trend to determine the applicability of the statute of limitations on the basis of the seriousness of the offense rather than the severity of the punishment that may be imposed is well established. State v. Ellis, supra; State v. Golino, supra. "[A]lthough criminal statutes are strictly construed, it is equally fundamental that the rule of strict construction does not require an interpretation which frustrates an evident legislative intent." Ellis, supra, 445; Golino, supra,

441; State v. Belton, 190 Conn. 496, 505-6 (1983); State v. Roque, 190 Conn.143, 151 (1983). The very juxtaposition of *Furman* and *Aillon* with the passage of P.A. 1973 No. 137, creating the new offense of Capital Felony, strongly suggests that the legislature's sole motivation was to simply and quickly repair a body of law that had been declared unconstitutional. Indeed , the remarks of the sponsors of the amendment in each house of the General Assembly make clear that their sole purpose was to enact a statute that would comply with *Furman.* See 16 S. Proc., Pt. 4, 1973 Sess., pp.1869-71 (remarks of Senator George Guidera); 16 H. Proc., Pt. 6, 1973 Sess., pp 2925, 2975 (remarks of Rep. James Bingham), both attached. That debate was utterly silent on the effect of the statute of limitations upon the crimes of Capital Felony and Murder. How-

ever, the legislature wasted little time in reiterating its view that the historical inapplicability of the statute of limitations to the intentional unlawful taking of human life should not be disturbed. As noted and found persuasive in both Ellis, supra, 459-60 and Golino, supra, 445, were the remarks of the sponsor of the 1976 amendment to `C.G.S. 54-193 wherein it was stated that its purpose was to simply "clarify existing law." 19 S.Proc., Pt. 1, 1976 Sess., p. 341 (remarks of Senator David H. Neiditz).

In spite of the unambiguous legislative and judicial history detailed above, the defendant argues that the creation of the crime of Capital Felony in1973 should be interpreted as placing a murder committed in 1975 under the five-year limitation of the statute. As noted above however, in the context of the 1951 elimination of the mandatory aspect of the death penalty "That action reflected a changing attitude not toward murder, but toward capital punishment." State v. Ellis, supra, 457. By the same token, the 1973 amendment to the state's death penalty scheme can only be reasonably viewed as a legislative response to a judicial fiat that spoke to capital punishment only, and had no relation to the various states' laws on limitation of prosecutions. "The fact that particular procedures for implementing the death penalty were held unconstitutional in *Furman v. Georgia*, supra , and *State v. Aillon*, supra does not diminish the seriousness of an offense which, prior to those decisions, was punishable by death." State v. Golino, supra, 446. Neither should the fact that the legislature quickly took measures to rectify a constitutional defect.

D. Other considerations.

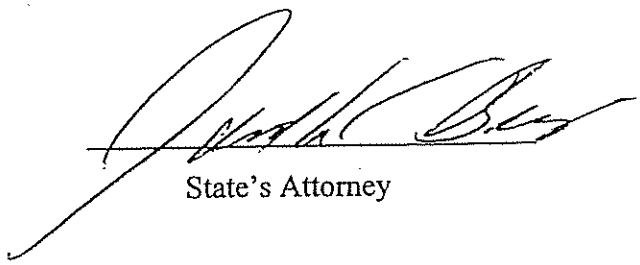
There remain two additional arguments to be considered; one raised in the defendant's memorandum, the other to be anticipated as being raised at some future point. The defendant notes that, at the time of the offense, he was under the age of sixteen and therefor a juvenile. Insofar as he has, in accordance with the applicable procedures been awarded adult status, this would appear to be irrelevant. On the other hand, it is also true that, as someone under the age of eighteen at the time of his crime, he could never be eligible for the death penalty, whatever the crime charged. C.G.S (Rev.to 1973) 53a-46a(f)(1). Any suggestion that the defendant's age at the time of the offense invokes an absolute bar to the imposition of the death penalty, however, clearly runs afoul of the above-noted reasoning that the applicability of the Statute of Limitations is controlled by the gravity of the offense rather than the punishment available. State v. Ellis, supra; State v. Golino, supra. That the defendant was only fifteen years old hardly makes the bludgeoning/stabbing murder of another child a less serious offense.

"The statute [of limitations]...represents a system, a classification scheme whereby the allowable period of prosecution is related to the gravity of the offense" State v. Ellis, supra, 450. To reiterate it is "intended to exempt a specific *category* of crimes, which, because of their heinous nature, should always be amenable to prosecution." Golino, supra, 443. As held in Ellis, supra, a change in the availability of the death penalty to a particular criminal statute should have no effect on the applicability of the statute of limitations to that offense. Similarly here, the mere fact that the death penalty is due to the offender's age, not an available sentence for intentional murder should hardly be taken as an indication that society has abandoned its traditional view of such conduct as being sufficiently abhorrent to be permanently amenable to prosecution. "[W]e fail to see how legislation specifically addressed to the issue of capital punishment, and only indirectly affecting the statute of limitations, is any better gauge of legislative intent...In the interpretation of a statute, a radical departure from an established policy cannot be implied. It must be expressed in unequivocal language."Ellis, supra, 457-459.

III. CONCLUSION

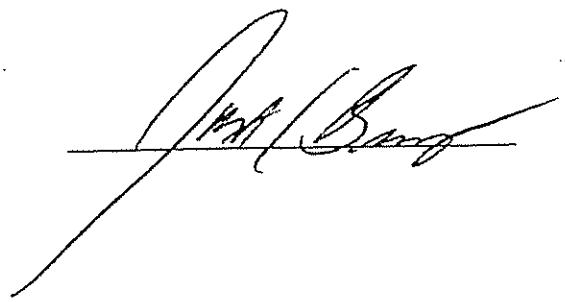
For the foregoing reasons the defendants Motion to Dismiss should be denied

Respectfully Submitted,



State's Attorney

This is to certify that a copy of the foregoing was on 5/31/01 delivered to counsel of record by



IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT

FBT CR

PART A FEBRUARY 2001

JONATHAN C. BENEDICT, State's Attorney for the Judicial District of Fairfield

Accuses **MICHAEL SKAKEL**

Of **MURDER**

and charges that at the Town of Greenwich, Fairfield County,

in October 1975, between the hours of 9:30 p.m. on October 30, 1975 and 5:30 a.m. on October 31, 1975, at Walsh Lane, Greenwich, the said **MICHAEL SKAKEL**, with intent to cause the death of one MARTHA MOXLEY, did cause the death of the said MARTHA MOXLEY, in violation of Section 53a-54a(a) of the Connecticut General Statutes.

Dated at Bridgeport, Connecticut this 2nd day of February, 2001.

2001 FEB -4 P 3:30

JONATHAN C. BENEDICT
State's Attorney
Judicial District of Fairfield

State of Connecticut

List of Exhibits JD-CL-28

Superior Court

INSTRUCTIONS TO USER:

Complete one copy for each file involved and place into file;

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Court	Judicial District of:	AT (Town)
☐ G.A. No. _____	☒ Stamford/Norwalk	NORWALK

State of Connecticut vs. Michael SKAKEL

Name of Judge:	Name of Court Reporter/Monitor	Courtroom Clerk	Docket Number:
(Kavanewsky, J.)	Susan Wandzilak	Ann-Margaret Archer	FSTCR00 135792T

DESCRIPTION OF HEARING FOR WHICH EXHIBITS USED: **Jury Trial, Criminal**

STATE'S EXHIBITS

Date Entered	Exhibit Number	ID Only (x)	Description of Exhibit Describe as fully as possible. Use more than one line if necessary.
5/7/02	01		Large overhead of Belle Haven
5/7/02	02		Black and white photograph - Front of Moxley home
5/7/02	03		Black and white photograph Moxley home – diagonal view
5/7/02	04		Photograph Moxley home – side view
5/7/02	05		Photograph – Martha Moxley
5/7/02	06		Moxley home – first floor diagram
5/7/02	07		Moxley home – second floor diagram
5/7/02	08		Moxley home – third floor diagram
5/7/02	09		Photograph – view of driveway looking toward Skakel home
5/7/02	10		Photograph – Skakel home - sunroom
5/7/02	11		Photograph – Revcon in Skakel driveway
5/7/02	12	X	Diary
5/7/02	13		Black and white photograph Moxley home snow
5/7/02	14		Photograph of tree
5/7/02	15		Photograph of body under tree from a distance
5/7/02	16		Photograph full body of victim
5/7/02	17		Photograph- close-up of upper torso of victim under tree
5/7/02	18		Autopsy photograph cropped black and white of victim's face

5/7/02	19		Autopsy photograph left face with hair
5/7/02	20		Autopsy photograph right side with hair
	20a	X	Close-up photograph right side with hair
	21		Photograph – tree
5/7/02	22		Photograph - victim under tree
5/7/02	23		Photograph – close-up of victim's thigh
5/7/02	24		Autopsy photograph victim's blue and yellow shirt
5/7/02	25		Photograph – close-up of spatter
5/7/02	26a		Blank crime scene
5/7/02	26b		Overlay
5/7/02	27		Photograph of club head
5/7/02	28		Photograph close-up of club head
5/7/02	29		Photograph of shaft and leaves
5/7/02	30		Club head
5/7/02	31		Longer piece of shaft
5/7/02	32		Photograph of driveway
5/7/02	33		Photograph close-up of blood on driveway
5/7/02	34		Photograph closer view of blood on driveway
5/7/02	35		Photograph of shaft and grass
5/7/02	36		Shaft of club
5/7/02	37		Photograph of drag path
5/7/02	38		Photograph of turnaround on drag path
5/7/02	39		Photograph of turn around on drag path
5/7/02	40		Black and white photograph crime scene measurement
5/7/02	41		Black and white photograph of victim on back
5/8/02	42		Victim's shoes
5/8/02	43		Photograph victim's face – front view
5/8/02	44		Photograph victim's shaven skull
5/8/02	45		Photograph victim's left face

	46		NUMBER NOT USED
5/8/02	47		Photograph left neck of victim
5/8/02	48		Photograph close-up left neck of victim
	49	X	Photograph left face with club head
	50	X	Photograph left neck
5/8/02	51		Photograph showing sooty deposits on victim's nose
5/8/02	52		Black and white photograph victim's skull
5/8/02	53		Autopsy report
5/9/02	54		Photograph Skakel home – front view
5/7/02	55		Photograph Skakel home – rear view
5/9/02	56		Photograph Skakel driveway rear with shed
5/9/02	57		Photograph of shed
5/9/02	58		Photograph Skakel home driveway – garbage can area
5/9/02	59		Photograph - Skakel hallway view toward back door from kitchen area
	60		Photograph Skakel hallway
	61		Photograph Skakel hallway toward kitchen
	62		Photograph Skakel hallway
5/9/02	63		Consent to search form
5/9/02	64		Four Iron
5/9/02	65		Label removed from golf club
5/9/02	66		Diagram of club
5/9/02	67		Photograph of two golf clubs
5/9/02	68		TV Guide
5/15/02	69		Photograph – Skakel family
5/16/02	70		Photograph Triborough Bridge – side view
5/16/02	71		Photograph Triborough Bridge Road view
5/16/02	72		Photograph – Elan School and Elan 3
	73		Photograph – Elan
	74		Photograph – Elan

	75		Photograph – Elan
	76	X	Probable cause transcript Testimony of Gregory Coleman
	77	X	Elan Skakel file
	78	X	Book offering
5/21/02	79	X	Audio tape 6 Hoffman interview of Michael Skakel (Replaced by CD Rom # 108)
5/21/02	80		Transcript of Tape 6 (Hoffman interview of Michael Skakel
5/7/02	81		Passages from victim's diary – Sept 4, 7, 11, 12, 15, 17, 19, 21, Oct 4 1975
5/8/02	82	X	Photograph - Margolis, Sheridan, Lee
5/13/02	83		Video tape Littleton/Morrell Excerpts 12-14-1992 & 12-16-1992
5/13/02	84		Greenwich Police Report dated 5-6-1976
5/13/02	85	X	Arrest warrant affidavit for Thomas Skakel
5/15/02	86	X	Report of Terry Melton dated 4/5/02
5/15/02	87		Grand Jury testimony of Mildred Ix page 51
5/15/02	88		Mildred Ix interview with John Soloman 7/23/1991
5/15/02	89		Photograph of Skakel family on stairs
5/16/02	90	X	Probable Cause Hearing transcripts 4-18-01 and 4-19-01
5/16/02	91	X	Report by Detective Haug to Captain Cornelius dated 9/10/80
5/17/02	92		Alice Dunn Grand Jury testimony Page 8 11/20/98
5/17/02	93	X	Plain Elan file of Michael Skakel
5/17/02	94	X	Personnel file of Michael Skakel
517/02	95	X	Copy of Contact card for Michael Skakel at Elan
5/17/02	96		Redacted Probable Cause hearing- Gregory Coleman Testimony
5/17/02	97	X	Coleman pg. 15-17 Grand Jury testimony 9/23/98
5/17/02	98	X	Coleman pg. 19-20 Grand Jury testimony 9/23/98
5/17/02	99	X	Coleman testimony Juvenile hearing
5/20/02	100	X	Coleman Grand Jury testimony page 18
5/20/02	101	X	Coleman Juvenile Hearing page 175
5/20/02	102		Coleman Excerpt Grand Jury 9-23-98 pp 15-20
5/20/02	103		Coleman Excerpt Juvenile hearing 6-20-00 pp 168-175
5/21/02	104		Transcript Gerrane Ridge/Matthew Attanian telephone conversation

5/21/02	104a		Audio tape conversation Ridge/Attanian CD substituted for tape
5/21/02	105		Enquirer
5/21/02	106		Globe
5/21/02	107		Star
5/21/02	108		CD ROM Hoffman interview of Michael Skakel
5/22/02	109	X	Transcript of Interview Dowdle/Greenwich PD
5/23/02	110	X	Grand Jury testimony pages 10-11 Georgeann Dowdle
5/23/02	111		Redacted pages 10-11 Georgeann Dowdle
5/28/02	112		Transcript interview Lunney/Michael Skakel
5/29/02	113		Transcript interview Julie Skakel/Lunney
5/29/02	114		Transcript Julie Skakel Grand Jury pg 81 as redacted
5/29/02	115		Transcript Julie Skakel Grand Jury pg 98 as redacted
5/29/02	116		Transcript Julie Skakel Grand Jury pg 92, 93 as redacted
5/29/02	117	X	Greenwich Time 6/2/1991
5/29/02	118		Excerpt Greenwich Time 6/2/1991
5/29/02	119	X	Excerpt Greenwich Time 6/2/1991
5/29/02	120		Excerpt Greenwich Time 6/2/1991

State of Connecticut

List of Exhibits JD-CL-28

Superior Court

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Court	Judicial District of:	AT (Town)
☐ G.A. No. _____	☒ Stamford/Norwalk	STAMFORD/NORWALK

State of Connecticut vs. MICHAEL SKAKEL

Name of Judge:	Name of Court Reporter/Monitor	Courtroom Clerk	Docket Number:
(Kavanewsky,J.)	Susan Wandzilak	Ann-Margaret Archer	FSTCR 00 135792 T

DESCRIPTION OF HEARING FOR WHICH EXHIBITS USED: **Jury Trial**

DEFENDANT'S EXHIBITS

Date Entered	Exhibit Number	ID Only (x)	Description of Exhibit Describe as fully as possible. Use more than one line if necessary.
5/8/02	A		Letter to Keegan from Jachimczyk dated 5/3/1976 Page 1
5/9/02	B		Redacted interview transcript of Renna 11-15-75
5/14/02	C		Transcript Littleton/Baker 2/10/1992
5/16/02	D		Grand Jury testimony of Zicarelli Page 5 as redacted
5/20/02	E	X	Juvenile Hearing Gregory Coleman (Excerpt)
5/20/02	F	X	Video tape of Coleman television interview
5/21/02	G		Transcript of telephone conversation Garr/Ridge
5/21/02	H		Audio tape Garr/Ridge
5/22/02	I	X	Reasonable Cause hearing Coleman testimony
5/23/02	J	X	Police Report 11/8/1975
5/24/02	K	X	Transcript of interview 6/11/91 Andrea Renna
5/24/02	L		Redacted transcript of interview 6/11/91 Andrea Renna
5/28/02	M	X	Full audio tape transcript interview 6/11/91 Andrea Renna
5/28/02	N		Portion of audio tape interview of 6/11/91 Andrea Renna
5/28/02	O		Transcript 11/14/02 John Skakel interview with Greenwich PD
5/28/02	P		Audio tape of John Skakel interview with Greenwich PD
5/29/02	Q		Skakel family photograph 1977
5/29/02	R		Transcript Julie Skakel Grand Jury as redacted

DKT. # DL00-01028 : SUPERIOR COURT

: JUVENILE MATTERS

IN RE MICHAEL SKAKEL : JUDICIAL DISTRICT OF STAMFORD/NORWALK

: AT STAMFORD

: JUNE 20, 2000

MOTION TO DISMISS PURSUANT TO PRACTICE BOOK § 41-8(3)

Pursuant to Practice Book § 41-8(3), and Connecticut General Statute § 54-193 (Rev. to 1975), and the Memorandum of Law in Support of Motion to Dismiss, the Respondent moves this Court to dismiss the charge in the above captioned action, including lesser and/or included offenses, if any, on the grounds that prosecution of the Respondent is barred under the Statue of Limitations in effect at the time the alleged offense was committed.

In support of this motion, the Respondent alleges that he stands accused of murder in connection with a homicide which took place on or about October 30-31, 1975, and that he was first arrested for this offense in January 19, 2000, approximately 25 years past the date of the alleged offense. Since the Statute of Limitations in effect at the time of the alleged offense forbade prosecution of the Respondent upon passage of five (5) years from the date of the alleged offense, the Respondent respectfully requests that the charge in the above captioned matter be dismissed, with prejudice, forthwith and without delay.

THE RESPONDENT

BY _____

Michael Sherman, Esq.
SHERMAN & RICHICHI
27 Fifth Street
Stamford, CT 06905
Tel: (203) 324-2296
Juris No. 57104

Received by Yolanda M. Smith, JCJM Clerk, 6/20/00

SHERMAN & RICHICHI
27 FIFTH STREET • STAMFORD, CONNECTICUT 06905 • (203) 324-2296 • JURIS NO. 57104

FST - CR00 - 135792 - T

STATE OF CONNECTICUT

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF STAMFORD-NORWALK

MICHAEL SKAKEL

DECEMBER 11, 2001

MEMORANDUM OF DECISION RE: MOTION TO DISMISS

Before the court is the defendant's motion to dismiss pursuant to Practice Book § 41-8 (3),[1] dated June 20, 2000. The motion was originally filed in the Juvenile Division of the Superior Court. The court there declined to rule on the motion.[2] The case was transferred to the Criminal Division of the Superior Court, and the motion has been heard and submitted for decision to this court.

The information charges the defendant with the murder of Martha Moxley in the town of Greenwich on or about October 30-31, 1975, in violation of General Statutes § 53a-54a. The defendant claims in his motion that the statute of limitations in effect at the time of the offense, General Statutes (Rev. to 1975) § 54-193, bars his prosecution after five years from the date of the offense. It is undisputed that the prosecution of the defendant commenced after this period.[3]

General Statutes (Rev. to 1975) § 54-193, the statute of limitations in effect at the time of this offense, provided in pertinent part as follows:

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[1] Practice Book § 41-8 provides in relevant part: "The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior to trial, be raised by a motion to dismiss the information: . . . (3) Statute of limitations . . ."

[2] When addressing this motion, the Juvenile Division of the Superior Court found that the motion was "premature." In re Michael S., Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. 01028 (January 21, 2001, *Dennis, J.*).

[3] The defendant was charged with this crime in an arrest warrant dated January 14, 2000, and he was arrested on January 19, 2000.

> "Sec. 54-193. LIMITATION OF PROSECUTIONS FOR VARIOUS OFFENSES. No person shall be prosecuted for treason against this state, or for any crime or misdemeanor of which the punishment is or may be imprisonment in the Connecticut Correctional Institution, Somers, except within five years next after the offense has been committed; nor shall any person be prosecuted for the violation of any penal law, or for other crime or misdemeanor, except crimes punishable by death or imprisonment in the Connecticut Correctional Institution, Somers, but within one year next after the offense has been committed . . ."

The parties do not disagree that this is the statute of limitations that applies to the instant case. However, they differ over its *meaning as applied* here. More particularly, the parties dispute the correct interpretation of a series of Connecticut Supreme Court decisions that bear on the issue of whether the prosecution of this defendant is time-barred. These decisions are State v. Paradise, 189 Conn. 346, 456 A.2d 305 (1983), State v. Ellis, 197 Conn. 436, 497 A.2d 974 (1985), on appeal after remand sub nom. State v. Paradise, 213 Conn. 388, 567 A.2d 1221 (1990), and State v. Golino, 201 Conn. 435, 518 A.2d 57 (1986).

In the consolidated appeals in Paradise, the two defendants, Paradise and Ellis, were arrested in 1981 and charged in informations with murder, in violation of General Statutes (Rev. to 1975) § 53a-54a,[4] and other class A felonies in connection with the homicide of one Cunningham in 1974. State v. Paradise, supra, 189 Conn. 347. The defendants moved to dismiss the informations on the ground that their prosecution was barred by the expiration of the five year limitation period in General Statutes (Rev. to 1975) § 54-193, which was the statute of limitations in effect at the time of the offense in 1974. Id., 347-48. The trial court agreed with the defendants, dismissed the

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[4] General Statutes (Rev. to 1975) § 53a-54a provided in relevant part: "MURDER DEFINED. . . . (a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception . . . ."

informations, and the state appealed. Id., 348. On appeal, the state argued that Public Acts 1976, No. 76-35,[5] which became effective on April 6, 1976, amended the then existing General Statutes (Rev. to 1975) § 54-193 to provide that there shall be no limitation of time within which a person may be prosecuted for a capital or class A felony, and that it should be applied retroactively. Id., 350.

The Supreme Court, in finding that there had been no error in the dismissal of the informations, held that General Statutes § 54-193, as amended by Public Acts 1976, No. 76-35, could not be given retrospective effect inasmuch as there was nothing in the statute evincing a "clear legislative intent" to do so. Id., 353.[6] It is this holding upon which the defendant in the present case

---

[5] Public Acts 1976, No. 76-35 provided: "AN ACT CONCERNING THE LIMITATION OF PROSECUTIONS.

Section 1. Section 54-193 of the general statutes is repealed and the following is substituted in lieu thereof: No person shall be prosecuted for [treason against this state, or for] any [crime or misdemeanor of] OFFENSE EXCEPT A CAPITAL FELONY OR A CLASS A FELONY FOR which the punishment is or may be imprisonment [in the Connecticut Correctional Institution, Somers] IN EXCESS OF ONE YEAR, except within five years next after the offense has been committed; nor shall any person be prosecuted for [the violation of any penal law, or for other crime or misdemeanor, except crimes punishable by death or imprisonment in the Connecticut Correctional Institution, Somers] ANY OTHER OFFENSE, EXCEPT A CAPITAL FELONY OR A CLASS A FELONY, but within one year next after the offense has been committed; but, if the person, against whom an indictment, information or complaint for any of said offenses is brought, has fled from and resided out of this state, during the period so limited, it may be brought against him at any time, within such period, during which he resides in this state, after the commission of the offense; and, when any suit, indictment, information or complaint for any crime may be brought within any other time than is limited by this section, it shall be brought within such time. THERE SHALL BE NO LIMITATION OF TIME WITHIN WHICH A PERSON MAY BE PROSECUTED FOR A CAPITAL FELONY OR A CLASS A FELONY.

Sec. 2. This act shall take effect from its passage. Approved April 6, 1976"

[6] The trial court granted the defendants' motions to dismiss on the basis that § 54-193 as amended "effected a change of substantive law and because it did not expressly provide for retroactive effect was not to be so applied." Paradise, supra, 189 Conn 350. The Supreme Court affirmed the result of the trial court using a statutory construction analysis and "render[ed]

primarily relies. He claims, like the defendants in State v. Paradise, that the five year statute of limitations set forth in General Statutes (Rev. to 1975) § 54-193 applies to this crime, which was committed in 1975, and prevents his prosecution.

In determining whether there is a limitation of prosecution in the present case, consideration must also be given to the Supreme Court's decisions in State v. Ellis, supra, 197 Conn. 436, and State v. Golino, supra, 201 Conn. 435. In Ellis, the Court entertained the consolidated appeals of three defendants, two of whom were the same defendants in Paradise. Subsequent to the State v. Paradise decision in 1983, the Paradise defendants were rearrested on charges of capital felony, in violation of General Statutes § 53a-54b (5).[7] State v. Ellis, supra, 197 Conn. 439. The third defendant, Worthington, who was not originally arrested with the Paradise defendants in 1981, was also arrested on charges of capital felony. Id. Worthington moved to dismiss the capital felony indictment, arguing that General Statutes (Rev. to 1975) § 54-193 barred prosecution for capital felony unless the prosecution commenced within five years from the date of the offense.[8] Id., 440.

The Ellis Court determined that, to accurately examine General Statutes (Rev. to 1975) § 54-193, whose original predecessor had been enacted in 1821, the court must not interpret the statute

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unnecessary a determination of whether § 54-193 is substantive or procedural . . . ." Id., 353.

[7] General Statutes (Rev. to 1983) § 53a-54b provided in relevant part: "CAPITAL FELONY DEFINED. A person is guilty of a capital felony who is convicted of any of the following . . . (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety. . . "

[8] Paradise and Ellis also moved to dismiss arguing that the doctrine of res judicata barred their second prosecution. The trial court agreed and dismissed the informations against them. The Supreme Court, however, found that the trial court had improperly applied the doctrine and set aside the judgments of dismissal. Ellis, supra, 197 Conn 478. Paradise also joined Worthington in his claim as an alternate ground for sustaining the dismissal of the information against Paradise. Id., 440.

in a vacuum, but "must ascertain the statute's meaning by considering its history, its language, the purpose it is designed to serve and the circumstances surrounding its enactment." (Internal quotation marks omitted.) Id., 445. Accordingly, the Court conducted an historical overview of the statute of limitations. It noted that "[t]hen, as now, crimes were classified according to their punishments. While the punishment of crime and the criminal law itself have changed significantly . . . the language and structure of our limitations statute remains substantially the same." Id., 442. In examining the 1821 statute of limitations, the Court concluded that "the statute, as a whole, represents a system, a classification scheme whereby the allowable period of prosecution is related to the *gravity of the offense*." (Emphasis added.) Id., 450.

The Court also addressed legislative amendments over the years, in particular one in 1846 dividing the crime of murder into first degree and second degree for purposes of the statute of limitations and another in 1951 abrogating the mandatory death penalty for murder in the first degree. Id., 456. Although the Court noted that the death penalty would be unconstitutional following a decision by the United States Supreme Court; Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346, reh. denied, 409 U.S. 902, 93 S. Ct. 2726, 33 L. Ed. 2d 346 (1972); it did "not believe that the legislature, in abrogating the mandatory death penalty, intended to reclassify murder in the first degree as a crime not punishable by death." Id., 456-57. The Court borrowed the reasoning and analysis in State v. Zarinsky, 75 N.J. 101, 110, 380 A.2d 685 (1977), when that court "chose to examine individually each legislative enactment affected by the concept of crimes punishable with death in view of the broader policy goals implicated in the legislative design." (Internal quotation marks omitted.) State v. Ellis, supra, 197 Conn. 457. The Court found that "[t]he concerns addressed by the 1951 legislature with regard to capital punishment bear no substantive relationship to the competing interests underlying the statute of limitations. Since 1672,

our legislatures have resolved these interests by refusing to grant repose to those accused of capital crimes. It is unlikely that the 1951 legislature intended to alter this deep-rooted understanding." Id., 457-59.

The Court further addressed the 1976 amendment to General Statutes § 54-193 which removed any time limitation on the prosecution of a capital felony or class A felony. The Court noted that the sponsor of the 1976 amendment, Senator David H. Neiditz, stated that its purpose was to clarify the existing law. Id., 460. In considering the 1976 amendment and the remarks of its sponsor, the Court determined that the legislature never intended to place time limitations on capital prosecutions. Id. Accordingly, the Ellis Court held that General Statutes (Rev. to 1975) § 54-193 permitted the prosecution of a defendant, charged with capital felony in violation of General Statutes (Rev. to 1975) § 53a-54b (5), who was first arrested in 1983 for a homicide committed in 1974.

The final piece to the statute of limitations trilogy is State v. Golino, supra, 201 Conn. 435 (1986). In Golino, the defendant had been arrested in 1984 and charged with murder, in violation of General Statutes (Rev. to 1972) § 53a-54 (a) (1),[9] for a homicide committed in 1973. The Golino Court held that "because § 53a-54 (c) prescribes a possible death sentence, a violation of § 53a-54 (a) (1) is an offense 'punishable by death' for purposes of the statute of limitations, and accordingly, prosecution of the defendant in 1984 for the 1973 slaying is not time-barred." Id., 438-39. The defendant maintained that because he could not constitutionally have been sentenced to death, in light of the United States Supreme Court's decision in Furman and our Supreme Court's decision

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[9] General Statutes (Rev. to 1972) § 53a-54 provided in relevant part: "MURDER DEFINED. . . . (a) A person is guilty of murder when: (1) With intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception . . . ."

in State v. Aillon, 164 Conn. 661, 295 A.2d 676 (1972), the court should apply the five year statute of limitations for crimes punishable by imprisonment at Somers. Id., 439. The Court stated that if the challenged statutory provision, "crime punishable by death," is "inextricably tied to the imposition of the death penalty, upon abolition of the death penalty, that procedural provision would fall; on the other hand, if the history and purpose underlying the provision evidences a broader policy goal, that provision should be interpreted to effectuate such a goal." (Internal quotation marks omitted.) Id., 440-41.

In finding that the history and purpose underlying the statutory provision evidences a broader policy goal, the Court, in quoting its previous decision in Ellis stated that "[a]lthough we acknowledge the fundamental principle that criminal statutes are to be strictly construed, it is equally fundamental that the rule of strict construction does not require an interpretation which frustrates an evident legislative intent." (Internal quotation marks omitted.) Id., 441. Relying on the rationale and analysis in Ellis, the Golino Court reaffirmed the conclusion that our statute of limitations "as a whole, represents a system, a classification scheme whereby the allowable period of prosecution *is related to the gravity of the offense.*" (Emphasis in original.) Id., 444.

The Court, as it did in Ellis, looked again to legislative intent and viewed remarks of the sponsor of the 1976 amendment to determine that the "pre-1976 statute of limitations was not intended to bar a prosecution for murder, the crime with which the defendant is charged, even though in 1973 the defendant could not have been sentenced to death." Id., 445. The Court addressed the matter of the unconstitutionality of the death penalty and concluded that "[t]he fact that particular procedures for implementing the death penalty were held unconstitutional in Furman . . . and State v. Aillon . . . does not diminish the serious nature of an offense which, prior to those decisions, was punishable by death. We conclude that the legislature used the phrase 'punishable

by death' as a shorthand reference to a category of crimes which, because of their atrocious nature, would always be amenable to prosecution." Id., 446.

Finally, Golino appears to certify the limited nature of what was under consideration by the Court in Paradise, upon which the present defendant heavily depends. In Paradise, the Court simply held that Public Acts 1976, No. 76-35,[10] amending General Statutes (Rev. to 1975) § 54- 193 was not, by its terms, retroactive. See, Golino, supra, 201 Conn. 440 n.5. ("In State v. Paradise, 189 Conn. 346, 456 A.2d 305 (1983), we addressed the narrow issue of whether this amendment could be applied retroactively. We ruled it could not, because the amendment, by its terms, did not provide for its retroactive application. Id., 353.).

In conclusion, the correct analysis of the issue presented gives great regard to the gravity of the offense charged, not solely its punishment. Connecticut precedents show that the gravity of the offense charged here, the crime of murder, has been historically unquestioned. This court, in examining the decisions and statutes together and as a whole, is not persuaded that the statute of limitations in effect at the time of the offense charged in 1975, General Statutes (Rev. to 1975) § 54-193, bars the prosecution of the defendant. Therefore, the motion to dismiss is denied.

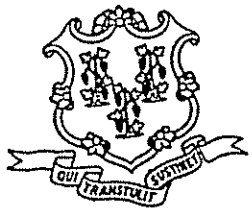
So ordered.

KAVANEWSKY, J.

Decision entered in accordance with the foregoing. 12/11/01.
All counsel notified 12/11/01
Asst Clerk

[10] See footnote 5.

THE GENERAL STATUTES OF CONNECTICUT



REVISION OF 1958

VOLUME IX

Revised to January 1, 1973

Published by Authority of the State

CHAPTER 966

LIMITATION OF PROSECUTIONS

Sec. 54-193. Limitation of prosecutions for various offenses. No person shall be prosecuted for treason against this state, or for any crime or misdemeanor of which the punishment is or may be imprisonment in the Connecticut Correctional Institution, Somers, except within five years next after the offense has been committed; nor shall any person be prosecuted for the violation of any penal law, or for other crime or misdemeanor, except crimes punishable by death* or imprisonment in the Connecticut Correctional Institution, Somers, but within one year next after the offense has been committed; but, if the person, against whom an indictment, information or complaint for any of said offenses is brought, has fled from and resided out of this state, during the period so limited, it may be brought against him at any time, within such period, during which he resides in this state, after the commission of the offense; and, when any suit, indictment, information or complaint for any crime may be brought within any other time than is limited by this section, it shall be brought within such time. (1949 Rev., S. 8871.)

*Note: Death Penalty declared unconstitutional. Furman v. Georgia, July 1972, 92 S. Ct. 2726. (West citation.)

Qui tam information amendable, notwithstanding no new information for same cause could be brought. 10 C. 472. Grand juror's complaint and information of state's attorney part of same proceeding and prevents running of the statute. 49 C. 437. Statute does not run as to conspiracy until last overt act is committed. 126 C. 85. See note to chapter 926. Cited. 150 C. 229.

It is not necessary in criminal prosecution to prove the precise day the acts were committed. 4 CS 259. Cited. 6 CS 349; 24 CS 312

CHAPTER 967

GENERAL PROVISIONS

Sec. 54-194. Effect of the repeal of a criminal statute. The repeal of any statute defining or prescribing the punishment for any crime shall not affect any pending prosecution or any existing liability to prosecution and punishment therefor, unless expressly provided in the repealing statute that such repeal shall have that effect. (1949 Rev., S. 8872.)

See Sec. 1-1.
Cited. 121 C. 200; 142 C. 29; 152 C. 81.
Cited. 29 CS 132.

Sec. 54-195. Penalty when no penalty provided. Any person who is convicted of a violation of any provision of the general statutes for which violation no penalty is expressly provided shall be fined not more than one hundred dollars. (1949 Rev., S. 8874.)

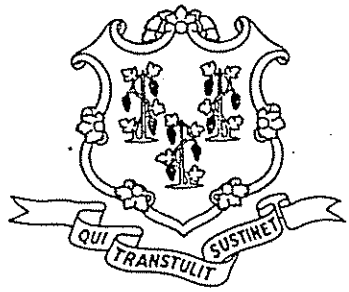
Sec. **54-196. Accessories.** Section 54-196 is repealed. (1949 Rev., S. 8875; 1969, P.A. 828, S. 214.)

See Secs. 53a-8 to 53a-10, inclusive.

THE GENERAL STATUTES OF CONNECTICUT

REVISION OF 1958

Revised to January 1, 1975



VOLUME IX

Published by Authority of the State

Sec. 54-188. **Enforcement of agreement.** All courts, departments, agencies, officers and employees of the state and its political subdivisions shall enforce said agreement and cooperate with one another and with other party states in enforcing said agreement and effectuating its purpose.

(1957, P.A. 404, S. 3.)

Sec. 54-189. **Second or subsequent offense penalty not applicable.** Nothing in this chapter or in the Agreement on Detainers shall be construed to require the application of any penalty for second or subsequent offenses under any provision of the general statutes to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

(1957, P.A. 404, S. 4.)

Sec. 54-190. **Penalty for escape while in another state.** Any person who escapes or attempts to escape from custody while in another state pursuant to said agreement shall be subject to the penalties provided in section 53a-169.

(1957, P.A. 404, S. 5; 1971, P.A. 871, S. 123.)

Sec. 54-191. **Warden to surrender inmate.** The warden or other official in charge of any correctional institution in this state shall give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers.

(1957, P.A. 404, S. 6.)

Sec. 54-192. **Commissioner of correction to make rules and regulations.** The commissioner of correction is designated as the officer provided for in article VII of said agreement.

(1957, P.A. 404, S. 7; 1971, P.A. 116.)

CHAPTER 966

LIMITATION OF PROSECUTIONS

Sec. 54-193. **Limitation of prosecutions for various offenses.** No person shall be prosecuted for treason against this state, or for any crime or misdemeanor of which the punishment is or may be imprisonment in the Connecticut Correctional Institution, Somers, except within five years next after the offense has been committed; nor shall any person be prosecuted for the violation of any penal law, or for other crime or misdemeanor, except crimes punishable by death or imprisonment in the Connecticut Correctional Institution, Somers, but within one year next after the offense has been committed; but, if the person, against whom an indictment, information or complaint for any of said offenses is brought, has fled from and resided out of this state, during the period so limited, it may be brought against him at any time, within such period, during which he resides in this state, after the commission of the offense; and, when any suit, indictment, information or complaint for any crime may be brought within any other time than is limited by this section, it shall be brought within such time.

(1949 Rev., S. 8871.)

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VOLUME IX

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The one-hundred-eighty-day period during which plaintiff was required under Article III to be brought to trial in the other party state having elapsed, plaintiff's habeas corpus petition granted and he is ordered discharged. 26 CS 469.

Sec. 54-187. **Appropriate court defined.** The phrase "appropriate court" as used in the Agreement on Detainers, as provided in section 54-186, shall, with reference to the courts of this state, mean the superior court.

(1957, P.A. 404, S. 2.)

Sec. 54-188. **Enforcement of agreement.** All courts, departments, agencies, officers and employees of the state and its political subdivisions shall enforce said agreement and cooperate with one another and with other party states in enforcing said agreement and effectuating its purpose.

(1957, P.A. 404, S. 3.)

Sec. 54-189. **Second or subsequent offense penalty not applicable.** Nothing in this chapter or in the Agreement on Detainers shall be construed to require the application of any penalty for second or subsequent offenses under any provision of the general statutes to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

(1957, P.A. 404, S. 4.)

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(1957, P.A. 404, S. 6.)

Sec. 54-192. **Commissioner of correction to make rules and regulations.** The commissioner of correction is designated as the officer provided for in article VII of said agreement.

(1957, P.A. 404, S. 7; 1971, P.A. 116.)

CHAPTER 966

LIMITATION OF PROSECUTIONS

Sec. 54-193. **Limitation of prosecutions for various offenses.** No person shall be prosecuted for any offense, except a capital felony or a class A felony for which the punishment is or may be imprisonment in excess of one year, except within five years next after the offense has been committed; nor shall any person be prosecuted for any other offense, except a capital felony or a class A felony, but within one year next after the offense has been committed; but, if the person, against whom an indictment, information or complaint for any of said offenses is brought, has fled from and resided out of this state, during the period

so limited, it may be brought against him at any time, within such period, during which he resides in this state, after the commission of the offense; and, when any suit, indictment, information or complaint for any crime may be brought within any other time than is limited by this section, it shall be brought within such time. There shall be no limitation of time within which a person may be prosecuted for a capital felony or a class A felony.

(1949 Rev., S. 8871; P.A. 76-35, S. 1, 2.)

Qui tam information amendable, notwithstanding no new information for same cause could be brought. 10 C. 472. Grand juror's complaint and information of state's attorney part of same proceeding and prevents running of the statute. 49 C. 437. Statute does not run as to conspiracy until last overt act is committed. 126 C. 85. See note to chapter 926. Cited. 150 C. 229. Cited. 163 C. 230, 231. Prosecution within one year for first offender. Id., 234.

It is not necessary in criminal prosecution to prove the precise day the acts were committed. 4 CS 259. Cited. 6 CS 349; 24 CS 312. After a nolle prosequi has been entered, the statute of limitations continues to run and a prosecution may be resumed only on a new information and a new arrest. 32 CS 504.

CHAPTER 967

GENERAL PROVISIONS

Sec. 54-194. Effect of the repeal of a criminal statute. The repeal of any statute defining or prescribing the punishment for any crime shall not affect any pending prosecution or any existing liability to prosecution and punishment therefor, unless expressly provided in the repealing statute that such repeal shall have that effect.

(1949 Rev., S. 8872.)

See Sec. 1-1.

Cited. 121 C. 200; 142 C. 29; 152 C. 81.
Cited. 29 CS 132. Cited. 29 CS 333.

Sec. 54-195. Penalty when no penalty provided. Any person who is convicted of a violation of any provision of the general statutes for which violation no penalty is expressly provided shall be fined not more than one hundred dollars.

(1949 Rev., S. 8874.)

Sec. 54-196. Accessories. Section 54-196 is repealed.

(1949 Rev., S. 8875; 1969, P.A. 828, S. 214.)

See Secs. 53a-8 to 53a-10, inclusive.

Cited. 165 C. 163.

Sec. 54-197. Conspiracy. Section 54-197 is repealed.

(1949 Rev., S. 8876; 1955, S. 3352d; 1969, P.A. 828, S. 214.)

See Ch. 952, Part III.

Sec. 54-198. Attempt to commit statutory crime. Section 54-198 is repealed.

(1949 Rev., S. 8877; 1969, P.A. 828, S. 214.)

See Secs. 53a-49 to 53a-52, inclusive.

Sec. 54-199. Parent or guardian to accompany minor in court. Representatives of commissioner. Whenever any minor charged with the commission of an offense is to appear in any court, he shall be accompanied by one of his parents, if such parent is physically capable of appearing and is within the jurisdiction ch court, or by his legally appointed guardian, if any. In the case of any

DKT.# DL00-01028 : SUPERIOR COURT

: JUVENILE MATTERS

IN RE MICHAEL SKAKEL : JUDICIAL DISTRICT OF
: STAMFORD/NORWALK

: AT STAMFORD

: JUNE 12, 2000

SHERMAN & RICHICHI
27 FIFTH STREET • STAMFORD, CONNECTICUT 06905 • (203) 324-2296 • JURIS NO. 57104

MOTION FOR DISCOVERY AND INSPECTION

The Respondent in the above captioned action, pursuant to C.G.S. §§54-86a-c, Practice Book (hereinafter "P.B.") §§35-3(a) & (b), and §40-1 et seq. (Chapter 40), the 4th, 5th, 6th, 8th, and 14th Amendments to the United States Constitution, and Article I, §§ 7 through 9 of the Connecticut Constitution, respectfully requests this Court to order the prosecuting authority to disclose in writing the existence of, and permit the Respondent access to, inspect, copy, photograph and have reasonable tests made upon, any and all information, objects, materials and/or locations, enumerated hereinafter, which are within the knowledge, control, possession or custody of the prosecuting authority, or any other governmental agency, or may, by the exercise of due diligence, come therein.

Respondent alleges (1) that the information, objects, materials and/or locations, if the same exist, are necessary to the essential and effective preparation of the Respondent's defense; (2) that the information, objects, materials, and or locations sought herein are not otherwise readily obtainable, and (3) that the acquisition by the Respondent's Attorney of said information will not unduly delay the proceedings in this case.

Received by Melanie M. Smith, Scgm
Date: 6/12/00

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Respondent requests that this Court issue an order granting the discovery requested hereinafter, and order the prosecuting authority take any action necessary for ensuring that appropriate law enforcement and/or other governmental agencies examine and search through their records and files, and undertake, in good faith, to locate, and forthwith thereafter, supply to the Respondent's Attorney, any and all materials and/or information falling within the scope of the materials requested herein, and that the prosecuting authority make appropriate inquiry of his/her witnesses, or, if he/she is unwilling or unable to do so inquire, that this Court order that defense counsel be supplied with the names, dates of birth and addresses of said witnesses, in sufficient advance of the trial that defense counsel might properly undertake his own inquiry of the same.

Respondent further requests that the prosecuting authority disclose any and all materials sought herein, to defense counsel, sufficiently prior to trial, in order that defense counsel might adequately examine, investigate, and research the acquired disclosure for the purposes of preparing effective cross-examination, and in order to develop defense witness prospects and/or any other evidence necessary for the espousal of a proper defense.

And whereas no similar motion has been previously filed in the above captioned action, and the information and materials sought herein are necessary to the assertion of an adequate and proper defense, the Respondent respectfully requests that this Court issue an Order directing the prosecuting authority to furnish Respondent's Attorney with copies, or otherwise permit inspection of the following locations, objects, and/or materials:

I. EXCULPATORY INFORMATION OR MATERIALS

Information and/or material which is exculpatory in nature, because it is inconsistent

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with, or contradictory to, claims made by the prosecuting authority or the prosecuting authority's theory of the case, or because such information and/or material has a propensity to mitigate the offense charged, lessen the sentence in the event of conviction, impeach any potential state witness, or because it might otherwise facilitate discovery and/or development of other exculpatory evidence. C.G.S. §§54-86c; P.B. §§40-11(a)(1),40-11(b), & 40-12; Kyles v. Whitley 514 U.S. 419 (1995); Giglio v. United States, 405 U.S. 1150 (1972); Brady v. Maryland, 373 U.S. 83 (1963); State v. Cohane, 193 Conn. 474 (1984); State v.Colton, 234 Conn. 683 (1995); State v. Doolittle, 189 Conn. 183, 196-197 (1983); State v. Cosgrove, 186 Conn. 476, 489 (1982); State v. Hammond, 221 Conn. 264, 292 (1992); Miller v. Angliker, 848 F.2d 1312 (2nd Cir. 1988); Demers v. State, 209 Conn.143(1988).

In addition to any and all other exculpatory material and/or information requested herein, or otherwise discoverable by operation of law, the Respondent requests the following specific exculpatory information and/or materials, which are known, or with the exercise of due diligence may become known, to the prosecuting authority:

1. Any relevant exculpatory statement or utterance that is contradictory to or otherwise inconsistent with the allegation that the Respondent committed the offense charged, whether oral, written, or otherwise recorded, made by any persons who were interviewed by law enforcement agents in the course of the investigation and preparation of this case, including any other former or present suspect, at any material time, if any, whether or not the prosecuting authority intends to call them as witnesses. C.G.S. §54-86c; P.B. §40-11(a)(1).

2. Any inconsistencies between or among any statements or utterances of any

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persons referred to in paragraph one (1) hereof.

3. Any oral or written statements or utterances by any potential state witness which contain mutually contradictory or inconsistent statements of fact concerning this prosecution, or any mutually contradictory or inconsistent statements of fact concerning this prosecution in any statements or utterances by two or more persons. C.G. S. §54-86c; P.B. §40-11(a)(1); State v. Cohane, 193 Conn. 474 (1984).

4. Any written statements or oral declarations of any person which indicate uncertainty, equivocation, retraction or inconsistency with respect to the Respondent's alleged involvement in the offense charged.

5. Any monetary inducement or reward offered to any witness in return for their testimony, including, monetary rewards offered pursuant to C.G.S. §§54-48; P.B.§§40-11(a)1 & 40-12.

6. A description of any and all rewards which were offered publicly in connection with this case to persons giving information leading to the arrest and conviction of the guilty party, including, but not limited to, offers pursuant to C.G.S. §§54-48 & 49, including the following information:

a) The date on which any reward was publicly offered;

b) The amount of any reward;

c) The source of any reward; and

d) The names and addresses of any persons who made application for any reward. C.G.S. §54-86c;

7. The record of any arrests and/or convictions (felony, misdemeanor and

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infractions), pending cases (including criminal, juvenile, youthful offender, pretrial diversion, accelerated rehabilitation and suspension of prosecution), juvenile delinquency adjudications, youthful offender adjudications, and parole or probationary status of all witnesses and victims. State v. Wilson, 188 Conn. 715 (1982); Davis v. Alaska, 415 U.S. 308 (1974).

8. Any information concerning acts of misconduct or criminal convictions relevant to any state witness' veracity, or lack thereof, that may be used to determine the witness' credibility. State v. Pen, 195 Conn. 505, 523 (1985).

9. Any information which reflects adversely on the credibility or veracity of a state Witness, or shows partiality or favoritism towards the state. Giglio v. United States, 405 U.S. 150 (1972).

10. Any information that any state witness acted as an informant for the state or otherwise had a relationship with the police or the prosecuting authority and his/her agents.

11. Any information that shows that a witness has a special legal, financial or other interest in cooperating with the state in this prosecution and/or testifying against the Respondent.

12. Any information that a witness had any bias or hostile feelings toward the Respondent prior to the alleged offense, or otherwise had a motive to implicate the Respondent, including any prior adverse contacts between the Respondent and any witness, or any other evidence of bias, interest, or prejudice.

13. Any information or materials concerning prior adverse contacts or

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relationships between the Respondent and any potential state witness, including, but not limited to, information such as charging documents, accusatory instruments, arrest warrants and affidavits in support thereof, police or other incident reports, civil complaints, or reports or complaints made by either the Respondent or any potential witness, while the same were incarcerated and/or supervised, in any manner whatsoever, by any state agency, which tend to evidence such adverse contacts and/or relationships, and which tend to show that the contacts or relationships between said parties were affected by brutality, violence, fear, jealousy, hatred, scorn, ridicule, or any other adversity, and which is within the possession, knowledge, or control of the prosecuting authority, or with reasonable diligence could come within the same.

14. Any aliases used by any witness. State v. Dolphin, 195 Conn. 444, 458-459 (1985).

15. Any criminal, administrative, personnel, misconduct, disciplinary, or other records that are relevant to the veracity, reliability, accurracy, or lack thereof, of testimony by any law enforcement or correctional officers that may be called as witnesses.

16. Any records of treatment for drug, alcohol, psychiatric, or psychological, treatment, for any witness, which relates to said witness' ability to perceive, remember or communicate facts and circumstances relevant to the allegations against the Respondent, and which may be used by the Defenseto assess such a witness' credibility, including specific treatment dates, doctors' names, and the names and addresses of any facilities that have provided diagnosis and/or treatment. State v Esposito, 192 Conn. 166 (1984);

State v. Bruno, 197 Conn. 326 (1985).

17. Any medical, military, educational, employment or governmental agency records concerning any witness, that are relevant to the witness' perception, memory, veracity, or ability to communicate.

18. Any promise, offer, inducement, or other incentive, including, but not limited to, payments, expenses, gratuities, in-kind or financial benefits, witness protection, physical protection, grants of immunity or other considerations, or plea bargains, made to any witness or to his/her counsel, by any law enforcement agency or individual agent, or the prosecuting authority or his/her agents, in exchange for cooperation or testimony, which concerns said witness' past, pending, or possible future criminal matters. Merrill v. Warden, 177 Conn. 427 (1979).

19. Any threats of arrest or criminal prosecution, or suggestion of unfavorable action to be taken against a witness, by any employer or governmental agency, which have been communicated to any witness by the prosecuting authority, law enforcement agency, or their agents, in order to obtain their cooperation.

20. The names, addresses and criminal records of all persons, other than the Respondent, who were considered, at any time, suspects, or were detained or arrested in relation to this case; together with any materials and information which document the evidence that caused them to be suspected. Miller v. Angliker, 848 F.2d 1312 (2nd Cir. 1988).

21. Any information that person(s) other than the Respondent were at or near the scene of the offense at the time the state alleges the offense to have been committed.

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22. Any evidence that someone other than, or in addition to, the Respondent, was involved in the commission of the offense, including the time(s) when the information was received, and the identity of the person(s) who provided such information. C.G.S. §54-86c; P.B. §40-11(a)(1).

23. Any and all information received from confidential informants, documented or otherwise, concerning possible suspects in this case prior to the arrest of the Respondent.

24. Any admission or confession by a person other than the Respondent. State v. Gold, 180 Conn. 619 (1980).

25. Any negative, exonerating, inconclusive, inconsistent, exculpatory, or ambiguous findings or results obtained in any scientific tests, experiments, analyses, examinations or comparisons of physical evidence made in connection with this case, which are inconsistent, in any respect, with evidence that the prosecuting authority intends to offer into evidence in this case. C.G.S. §54-86c; P.B. §40-11(a)(l) & (4); United States v. Agurs, 427 U.S. 97 (1976); Brady v. Maryland, 373 U.S. 83 (1 963).

26. Information and materials concerning the physical condition of any person(s), or their clothing, who were present at the scene of the alleged incident which are inconsistent with the testimony of any potential state witness.

27. Information and materials concerning the scene of the alleged offense which are inconsistent with the testimony of any potential state witness.

28. Information and materials concerning any similar crimes or acts of misconduct which occurred in the general vicinity of the alleged incident for the period

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including the one year preceding, and the one year following, the date of the alleged offense. State v. Burge, 195 Conn. 232 (1985); Siemon v. Stoughton, 184 Conn. 547 (1981); State v. Gold, 180 Conn. 619 (1980).

29. Information and documentation regarding the failure of any witness, during the course of events in this case, to make and/or submit to a corporeal, voice, or photographic identification of any thing, object, the Respondent himself, or of the clothing alleged to have been worn by the Respondent at the time of the alleged offense, including any indication or expression of uncertainty by any interviewed person, as to whether the Respondent was the perpetrator of the offense charged, and including any identification of persons other than the Respondent as the perpetrator by any witness.

30. Any inconsistencies in the description of the Respondent or his/her clothing by any witness or between the descriptions given by different witnesses, or any inconsistencies in the description of the physical characteristics of the Respondent or his clothing and his/her actual appearance at the time of the offense or arrest, together with the following information as to each failure of identification, expression of uncertainty, inconsistency, or identification of any another person:

a) The specific date, time and location of each attempted identification;

b) The specific dates, times, locations and circumstances when a potential witness saw the perpetrator or the Respondent at a time other than during the alleged crime or identification procedure;

c) The name and address of the person from whom an identification was sought;

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d) The specific date, time and location at which the potential witness is alleged to have seen or heard the voice of the Respondent or the object sought to be identified;

e) Any description of the Respondent or object that was given by the potential witness prior to the attempted identification procedure;

f) Any description given of the perpetrators of the alleged crime prior to the identification procedure;

g) Whether any potential witness knew the Respondent but did not reveal that fact, and did not accuse the Respondent when questioned by law enforcement agents;

h) The specific words, if any, with which a potential witness characterized his/her ability to make future positive identifications of the person(s) or object(s);

i) Whether the potential witness claims a prior knowledge of the appearance or voice of the Respondent or the object;

j) The specific words uttered by the witness at the time of any attempted identification;

k) Any photographs, videotapes, audio tapes other depiction of the Respondent, his/her voice, his/her clothing, other object presented to the witness, including any signatures or notations made on the items by any potential witness, the prosecuting authority, or law enforcement agent, or any photograph or videotape that depicts any lineup or show-up (as it

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would have appeared to any potential witness who viewed it);

l) The specific procedure followed in the display of any line-ups, show-ups, photographs, videotapes, audio tapes or other depiction that was used, and if a line-up was used, the description of the names, addresses, hair style, facial hair and clothing worn by any and all of the participants;

m) Any inconsistencies in descriptions, if any, given of the Respondent. C.G.S. §54-86c; P.B. §40-11(a)(1);

n) The names, addresses, dates of birth and criminal history of any person, other than the Respondent, who was either identified, or proclaimed to resemble the the perpetrator(s);

o) The names, addresses and titles of all persons who were present and/or participated in the preparation and/or conduct of any identification procedure; and

p) All statements, reports, or memoranda prepared by law enforcement agents documenting such identification procedure.

31. Any evidence that the Respondent was intoxicated and/or under the influence of, or otherwise suffering the effects of, alcohol, chemical, narcotic, and/or controlled substances, or was acting under a diminished mental capacity at the time of the alleged offense, or at any time he/she made oral or written statements concerning the alleged offense. C.G.S. §53a-7.

32. Any evidence that the Respondent was suffering from a mental disease or defect, or lacked the mental state for the offense charged, at the time of the alleged

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offense. C.G.S. §53a-13.

33. Any evidence that the Respondent may have acted under the influence of extreme emotional disturbance, at the time of the alleged offense. C.G.S. §53a-54(a).

34. Any evidence that the Respondent acted in ignorance or mistake, at the time of the alleged offense. C.G.S. §53a-6.

35. Any evidence that the Respondent acted under duress at the time of the alleged offense. C.G.S. §53a-1 4.

36. Any evidence which, if known by the Respondent, would suggest that the Respondent's alleged actions were in self-defense, including but not limited to, any evidence that the victim was armed, or that the Respondent had reason to believe the victim was armed or had threatened the Respondent. C.G.S. §§53a-16 through 53a-21.

37. Any evidence that the Respondent abandoned any alleged efforts to commit, or attempted to prevent, the commission of the alleged offense under circumstances manifesting a total and voluntary renunciation of his/her alleged criminal purpose. C.G.S. §53a-49(c).

38. Any evidence that the Respondent renounced his/her alleged participation in the offense for which he currently stands charged. C.G.S. §53a-10.

39. Any evidence that the Respondent was not armed, and/or had no reasonable ground to believe that any other participant was armed, at the time of the alleged offense. C.G.S. §53a-16b.

40. Any evidence that corroborates statements of the Respondent and other witnesses concerning the Respondent's whereabouts at the time that the offense is alleged to have been committed.

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41. Any evidence that any other person had an antagonistic relationship with, had threatened, argued, or fought with, or otherwise had a motive to physically harm the victim.

42. Any information concerning other instances in which the victim was the intended target of physical harm.

43. Any statements by a potential witness that contain facts or allegations which the prosecuting authority has reason to believe are false and/or contradict, any facts contained in any police or investigative report, or are inconsistent with any other written or oral assertions.

44. Any "leads", "tips", or anonymous calls, concerning the identity of the perpetrator or the nature or circumstances of the offense, received by the prosecuting authority, law enforcement, or any other state agency, during the investigation of this case, which were determined to be false or inconclusive, were not investigated and/or followed up, or which led to information inconsistent with the Respondent's involvement in this case, as alleged by the prosecuting authority.

45. The names, addresses, statements, and/or any other materials documenting the state's contact with other persons concerning the investigation of this case, and whom the state does not plan to call as witnesses in this case.

46. Any information favorable to the Respondent on the question of punishment including, but not limited to, any information from any source or witness concerning the Respondent's character, background or history, or the nature and circumstances of the alleged crime, or which undermines or rebuts evidence of any aggravating factor(s), or evidences any mitigating factor(s), or which, with appropriate

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investigation and development, could lead to such evidence, whether or not the prosecuting authority and/or his/her agents consider the source or the witness reliable. §53a-46a(d); §40-11(a)(1) & 40-12; Lockeft v. Ohio, 438 U.S. 586 (1978).

II. PHYSICAL EVIDENCE

47. Any books, tangible objects, papers, photographs, or documents within the possession, custody, or control, of any governmental agency, which the prosecuting authority intends to offer in evidence at trial, or which are material to the preparation of the defense, or which were obtained from, or purportedly belong to the Respondent, including, but not limited to, physical evidence seized at or near the scene of the alleged offense, and any additional physical evidence that was seized from the body or person of the alleged victim or the Respondent. C.G.S. §54-86a(2); P.B. §40-11(a)(2).

48. A description of any deadly weapon or dangerous instrument alleged to have been used in the commission of the offense. C.G.S. §54-86a(2); P.B. §40-11(a)(2).

49. Whether any weapon or instrument alleged to have been used in the commission of the offense was recovered, and, if so, where, when, and from whom. C.G.S. §54-86a(2).

50. A detailed description of any motor vehicle alleged to have been involved in the course of the commission of the offense, including, but not limited to, the following information:

a) Make, model, body style, and color;

b) Registration and vehicle identification number; and

c) Identity of the title holder and registered owner.

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51. Any slides, photographs (including negatives of undeveloped photographs), or audio or video recordings, which have been made by law enforcement agents or persons acting on their behalf, or received from third parties, in connection with the investigation of this case, together with:

a) The date, time and location of each photograph or recording made;

b) The identity of the subject matter of each photograph or recording;

c) The identity of the person(s) who made the photographs or recordings.

d) The particular film, tape or media, equipment, and specialized techniques used to create the photographs or recordings.

52. Any diagrams, reconstructions, sketches, maps, charts, drawings or other non-photographic renderings made by law enforcement agents or persons acting on their behalf or in connection with the investigation and preparation of this case, together with:

a) The date, time and location at which each sketch, map, chart, drawing or other rendering was made; and

b) The identity of the person(s) who created each sketch, map, chart drawing, or other rendering.

53. Any photographs or other media that depict the likeness or physical attributes of the Respondent.

54. Any audio or other recordings that contain what is alleged to be the voice of the Respondent.

55. Any photograph(s), sketch(es), video tape(s), composite drawing(s) or other items from which a person or object could be identified. that were shown to any

witnesses in an effort to obtain the identification of any person or object.

56. Copies of any seized evidence inventories, search warrant returns, flow charts, logs, receipts, requests for forensic examination, or other information or materials which document the chain of custody of physical evidence in this case.

57. Any teletypes, electronic communications, 911 tapes, audio tape recordings, transcripts, notes, logs or other recording or documentation of any radio transmissions or telephone calls made or received by law enforcement agents, that are relevant to this case, including the date, time and identity of the person from whom the information was received. State v. Williamson, 212 Conn. 6 (1989).

58. Any audio or video recordings of the Respondent and/or any telephone conversations that he had, at any time during which he was in the custody of law enforcement authorities in connection with the case.

59. Any audio or video recordings, logs, notes, or other documentation concerning any interception of oral communications of the Respondent using any listening or recording device which may have been installed near the Respondent's housing location, in a correctional facility, or on the person of any other individual, who engaged in a conversation with the Respondent.

III. RESPONDENTS'S CRIMINAL RECORD

60. Copies of the Respondent's prior criminal records, if any, which are within the possession, custody or control of the state or any governmental agency, the existence of which is known, or with the exercise of due diligence may become known, to the prosecuting authority. C.G.S. §54-86(a)(4); P.B. §40-11(a)(3).

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IV. FORENSICS

61. The Respondent requests reasonable notice and an opportunity to be present at, and to have an expert observe or participate in, any test or experiment performed in connection with this case, by the state, or any agent of the state, including, but not limited to, any test or experiment which may preclude or impair any further test or experiment on the object of the test or experiment. P.B. §40-11(a)(4). State v. Alfonso, 3 Conn. App.225, 228 (1985).

62. Copies of results including, but not limited to, field tests, final results, reports, work sheets, computation sheets, field notes, laboratory notes, records of observations, graphs, or other records or printouts, produced by any instruments used in the testing, notes on the testing processes and procedures used, computer printouts, reports of scientific tests, experiments, or comparisons, made in connection with this case, which are known to and obtainable by the prosecuting authority, and are within the possession, custody, or control of any agent of the state or governmental agency, which are either material to the preparation of the defense, or are intended for use by the prosecuting authority as evidence at the trial.

63. Copies of standardized laboratory procedures and protocols for any forensic analyses, comparisons, examinations, tests, and/or experiments performed in this case.

64. Copies of records, reports, or statements of experts made in connection with the offense charged including results of physical and mental examinations and of scientific tests, experiments or comparisons which are material to the preparation of the defense, or are intended for use by the prosecuting authority as evidence in chief at the trial, the existence of which is known, or by the exercise of due diligence may become

known, to the prosecuting authority, and which are obtainable with the permission of the Respondent. C.G.S. §54-86(a) (3); P.B. §40-11(a) (4).

65. Any trace forensic evidence including, but not limited to, full or partial fingerprints and foot prints, footwear prints, tire impressions, fibers, hairs, blood samples, bodily fluids, solid, liquid or gaseous substances, which were seized or recovered in connection with this case, together with the results of any analyses, examination, comparison or scientific tests performed on each.

a) The specific date, time, and location of seizure;

b) The names, addresses and titles of the person(s) who seized the evidence,

c) The type of scientific testing or comparison performed. C.G.S. §54-86a(2); P.B. § 40-11(a)(4); and

d) The names, addresses and titles of the person(s) who performed the scientific testing or comparison.

66. The complete reports of the Office of the Chief Medical Examiner including, but not limited to autopsy reports, summaries, notes, autopsy slides and photographs, x-rays, toxicology reports, microscope slides, human biological samples, telephone notice of death, and report of the investigation of death. §40-11(a)(4).

67. Hospital, ambulance or other emergency medical service and/or medical records pertaining to the physical and/or mental condition, and/or any injuries sustained by the victim, or services and treatment rendered to the victim, in the possession of the prosecuting authority. C.G.S. §54-86C.

68. Any composite drawings or photographs of suspects in the case which were

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prepared by law enforcement officers or their agents in connection with the investigation of the alleged offense.

69. Any voice print or similar analyses performed in relation to this case.

70. Reports of the results, recordings, printouts, memoranda, notes, transcripts of interviews of any hypnosis, polygraph, or other scientific, mechanical, medical procedure, test, or examination, administered by law enforcement officers or their agents in the course of the investigation of this case, on the Respondent, any witnesses, or potential witnesses, including, but not limited to the following information:

a). The date, time and place of each procedure, test or examination;

b) The identity of the person examined;

c) The name and address of the individual administering the procedure, test or examination;

d) The names of all individuals present during each procedure, test or examination;

e) The specific questions asked of each examinee;

f) The specific answers given by each examinee;

g) The opinion of the examiner as to the truthfulness of the answers given;

h) Copies of reports, memoranda, or recordings, documenting the procedure, testing, examination, or results. P.B. §40-11(a)(4); Davis v. Alaska, 415 U.S. 308 (1974).

71. Results of any criminal personality profiling that was performed by the F.B.I. Behavioral Science Unit, or other governmental agency or person(s) with similar capability, education , training and/or experience, to develop profiles that would include

possible suspects.

72. Any reports, notes, memoranda or other documentation of the use of tracking dogs and the results of the tracking.

73. Names and addresses of any expert witnesses retained or consulted by the prosecuting authority , whether or not they rendered an opinion or prepared a report, who the prosecuting authority does not intend to call as a witness.

V. SEARCHES

74. A complete list of all occasions on which the person, home, room, business, clothing, papers, effects, motor vehicles, jail cell, or any other place or thing under the custody or control of the Respondent, or in which he had a legitimate expectation of privacy, was subject to a search or seizure by any agents of the state, or any other person acting on behalf of the state, and;

a) The names, addresses and job titles of any and all persons who were present at, and/or participated in the searches and seizures;

b) Copies of any and all notes of observations made by any persons who were present at and/or participated in the searches and seizures;

c) The specific person(s) from whom which the seizure or recovery was made;

d) The specific date, time and location of each search and/or recovery;

e) Any inventories or lists of items seized or recovered during the search;

f) All persons in the chain of custody to whom such items were transferred subsequent to each seizure or recovery;

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g) A description of any tests, analyses, experiments, or comparisons (including ordinary visual comparisons) which were performed on each item, together with an indication if any item was destroyed or diminished in the course of any testing. C.G.S. §§54-33c and 54-36a

h) The current specific location where each item is stored. P.B. §§40-11(a)(2) & (4).

i) Whether any items seized from the Respondent's person or belongings were seized pursuant to search warrants and, if so, a copy of the search warrants, including copies of annexed supporting affidavits, and the return. C.G.S. §§54-33a, 54-33c and 54-86a;

75. A copy of any consent to search executed by the Respondent, and/or Respondent's Guardian.

76. A copy of any additional search or arrest warrants sought, obtained, or executed in connection with the investigation of this case for any person or place, including copies of annexed supporting affidavits, and the return. C.G.S. §54-33a.

VI. STATEMENTS

77. Any written and/or oral statements of the Respondent, whether or not a written memorandum, note or other recording (e.g., audio, video, or electronic) has been made, which were made by the Respondent, before or after his arrest, in response to interrogatories by any person then known to the Respondent to be a law enforcement officer, prosecuting authority, or agent thereof, together with the following information:

a) The specific date(s), time(s) and location(s) when the declaration(s) were

made;

b) The name, address and occupation of all persons present when the declarations) were made,

c) The method of recording (if a recording was made) of the declaration(s).

78. Any written and/or oral statements of the Respondent to persons other than law enforcement officers or their agents, which are known to the prosecuting authority, and which are intended for use by the prosecuting authority as evidence at trial, including:

a) The specific date, time and location of the declaration(s); and

b) The name and address of the person(s) to whom the Respondent allegedly made the declaration;

79. A copy of any waiver of constitutional rights executed by the Respondent.

VII. WARRANTS AND PROBABLE CAUSE

80. Any documents, reports and/or affidavits presented to the court for a determination of probable cause. C.G.S. §54-86a(d); Gerstein v. Pugh, 420 U.S. 103 (1975).

81. Any warrant executed for the arrest of the Respondent for the offense charged, including copies of annexed supporting affidavits or statements, the names of the arresting officers and the return. C.G.S. § 54-86a(d).

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VIII. WITNESSES

82. The names, addresses, professional qualifications, and/or field(s) of expertise, if applicable, of all witnesses, if any, whom the prosecuting authority may call in his/her case-in-chief, or rebuttal, during the guilt or penalty phase. P.B. §40-13.

83. Any information or material concerning any potential state witness which relates to the witness' mental condition at the time of his/her observation of facts, circumstances, and details of which she will testify, including the witness' drug and/or alcohol abuse, capability of accurate observation, comprehension, recollection, communication, and relation of the truth, and the witness' capability of understanding the requirements of an oath or affirmation.

84. Any record of felony or misdemeanor convictions of a witness, or record of felony or misdemeanor charges that are now, or ever were, pending against the witness, which are known to the prosecuting authority, or which, by the exercise of due diligence, may become known to the prosecuting authority. P.B. 40-13(a)(2).

85. Copies of any documentation evidencing that any act or omission of any witness impacts his/her veracity.

86. Any written or otherwise recorded statement of a witness including the field notes of law enforcement agents in the possession of the state or its agents, including state and local law enforcement officers, or any summary or recording of an oral statement which relates to the subject matter about which the witness will testify at trial. C.G.S. §54-86b(a); P.B. §40-13(a)(1).

87. The names and addresses of any persons interviewed by law enforcement officers or their agents in connection with the investigation of this case.

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IX. UNCHARGED MISCONDUCT

88. Any details concerning prior crimes or alleged acts of misconduct of the Respondent (whether prior or subsequent to the alleged offenses) that the prosecuting authority intends to offer as evidence at trial, whether to impeach the Respondent's credibility, or to identify him/her as the perpetrator of the offense charged, or to prove any aggravating factor, or rebut any mitigating factor, including, but not limited to:

a) The nature and circumstances of the act in question;

b) The names and addresses of all persons whose testimony would be relied upon to prove the commission of the act by the Respondent;

c) The date, time and location at which the act is alleged to have been committed;

d) Whether or not the act resulted in an arrest or conviction of a crime. State v. Acquin, 34 Conn. Supp. 152 (1977); P.B. §40-12; and

e) Whether or not any act of the Respondent will be argued by the prosecuting authority to constitute consciousness of guilt.

X. SURVEILLANCE

89. Information concerning whether any wiretaps, eavesdropping, or electronic surveillance, was conducted in the course of the investigation of this case, and which the prosecuting authority intends to introduce in evidence at the trial, including the following:

a) The identity of the persons who conducted, or were involved in the preparation of, or were present during, the wiretaps or electronic

surveillance;

b) The identity of any and all persons who were the subject of the wiretaps or electronic surveillance;

c) The specific dates, times and locations at which said procedures were conducted and when communications were intercepted and recorded;

d) Whether or not any wire communications of the Respondent were intercepted and/or during the course of any such wiretap or electronic surveillance. P.B. §40-11(a)(6);

e) Recordings, transcripts, or other documentation, of the substance of the information that was obtained.

f) Copies of any application and the Court order under which any interception was authorized. C.G.S. §54-411

90. The results and any documentation of information obtained through the use of any mail cover, or surveillance of any type, that has been used by a governmental agency to determine the source and/or destination of the Respondent's mail.

91. All information gathered or observations made by law enforcement agents through the use of vision enhancing devices including the specific type, make and model of the device and the names, addresses and titles of the persons present when the device(s) were used.

XI. CONFIDENTIAL INFORMANTS

92. The substance of any and all telephone information concerning the alleged offenses received by law enforcement authorities as part of their investigation, in the course of their investigation, including, but not limited to the following:

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a) The time and date the information was received;

b) The identity of the person providing the information;

c) Any logs or tapes documenting and recording the information.

93. The names and addresses of any and all confidential informants who were either participants in or eyewitnesses to the charged offense, together with the following information for each person:

a) The date upon which any confidential informant began providing information to law enforcement officials;

b) Any and all false or inaccurate information ever provided to law enforcement officials by each participating or witnessing informant;

c) Whether or not each confidential informant was ever the source of an arrest in other cases;

d) Any and all compensation, consideration, or reward, ever provided to any informant;

e) The record of any and all arrests and/or convictions for any informant;

f) Whether the informant participated in the offense charged; and

g) The names and addresses of any confidential informants whom the prosecuting authority plans to call as a witness in this case.

The Respondent alleges that all of the information, materials, and objects sought herein are: (1) material and necessary to the preparation of the defense; (2) required by the Respondent's Attorney so as to protect against unfair surprise, save needless labor in the preparation of the defense, and assist the Respondent in the preparation of his defense; (3)

required in order that the Respondent may guard against additional prosecutions based upon the same factual circumstances; (4) reasonable requests which will not unduly delay the proceedings in this case; (5) not the subject of any similar motion filed heretofore; and (6) not the subject of any prior ruling by this Court.

WHEREFORE the Respondent respectfully requests that the foregoing motion be granted in its entirety, or as otherwise ordered by this honorable Court.

THE RESPONDENT

BY _____

Michael Sherman, Esq.
SHERMAN & RICHICHI
27 Fifth Street
Stamford, CT 06905
Tel: (203) 324-2296

Juris No. 57104

I hereby certify service pursuant to the Practice Book.

_____

Michael Sherman, Esq.

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ORDER

The foregoing motion have been heard by the Court, it is hereby GRANTED/DENIED as to the following:

1.	26.	51. a, b, c, d	75.
2	27.	52. a, b	76.
3	28.	53.	77. a, b, c
4	29. 54.		78. a, b,
5		55.	79.
6.a,b,c,d	30. a, b, c, d, e, f, g, h, i J, k, l, m, n, o, p	56.	80.
7.	31.	57.	81.
8.	32.	58.	82.
9.	33.	59.	83.
10.	34.	60.	84.
11.	35.	61.	85.
12.	37.	62.	86.
13.	38.	63.	87.
14	39.	64.	88. a, b, c, d, e
15.	40.	65.	89. a, b, c, d, e, f
16	41.	66.	90.
17.	42.	67.	91.
18.	43.	68.	92. a, b, c,
19.	44.	69.	93. a, b, c, d, e, f, g
20.	45.	70. a, b, c, d, e, f, g, h,	
21.	46.		
22.	47.	71.	
23.	48.	72.	
24.	49.	73.	
25.	50. a, b, c,	74. a, b, c, d, e, f, g, h, i	

THE COURT

BY _____
Judge/Clerk:

DOCKET NO. CR00-135-792-T	**: SUPERIOR COURT**
	:
	:
STATE OF CONNECTICUT	**: JUDICIAL DISTRICT OF**
	: STAMFORD/NORWALK
	:
v.	**: AT STAMFORD (G.A. #1)**
	:
	:
MICHAEL SKAKEL	**: MAY 21, 2001**

MOTION FOR DISCOVERY AND INSPECTION

The Defendant in the above captioned action, pursuant to C.G.S. §§54-86a-c, Practice Book §§35-3(a) & (b), and §40-1 et seq. (Chapter 40), the 4th, 5th, 6th, 8th, and 14th Amendments to the United States Constitution, and Article I, §§ 7 through 9 of the Connecticut Constitution, respectfully requests this Court to order the prosecuting authority to disclose in writing the existence of, and permit the Defendant to inspect, copy, photograph, and have reasonable tests made upon, any and all information, objects, materials and/or locations, enumerated hereinafter, which are within the knowledge, control, possession, or custody of the prosecuting authority, or any other governmental agency, or may, by the exercise of due diligence, come therein.

The Defendant requests that this Court issue an order granting the disclosure requested hereinafter, and requiring the prosecuting authority to take any action necessary for ensuring that appropriate law enforcement and/or other governmental agencies examine and search through their records and files, and undertake, in good faith, to locate, and forthwith thereafter, supply to the Defendant's attorney, any and all materials and/or information falling within the scope of this request. Further, that the prosecuting authority make appropriate inquiry of his witnesses, to the extent necessary for the prosecuting authority to comply with disclosure requests made herein, and if he/she is unwilling or unable to do so, the Defendant requests an order compelling the prosecuting authority to supply the names, dates of birth, and addresses of said witnesses, in sufficient advance of the trial, in order for the defense to undertake its own inquiry of such witnesses.

The Defendant further requests an order requiring the prosecuting authority to disclose any and all other materials sought herein sufficiently prior to trial, in order that defense counsel might adequately examine, investigate, and review the same, in connection with the preparation of the defense.

In support of the Defendant's request the following is alleged: (1) that the information, objects, materials and/or locations, if the same exist, are necessary and essential to the preparation of a defense; (2) that the information, objects, materials, and or locations sought herein to be disclosed, are not otherwise readily obtainable, (3) that the acquisition by the Defendant's attorney of said information will not unduly delay the proceedings in this case, and (4) no similar request has been made in the above captioned matter. Accordingly, the Defendant requests the following:

L EXCULPATORY & FAVORABLE INFORMATION OR MATERIALS

Information and/or material which is exculpatory in nature, because it is inconsistent with, or contradicts, claims made by the prosecuting authority or the prosecuting authority's theory of the case, impeach any potential state witness, favor the Defendant, or because it might otherwise facilitate discovery and/or development of other exculpatory evidence. C.G.S. §§54-86c; P.B. §§40-11(a)(1),40-11(b), & 40-12; Kyles v. Whitley 514 U.S. 419 (1995); Giglio v. United States, 405 U.S. 1150 (1972); Giles v. Maryland, 386 U.S. 66 (1977); Brady v. Maryland, 373 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 26 (1959); State v. Cohane, 193 Conn. 474 (1984); State v.Colton, 234 Conn. 683 (1995); State v. Doolittle, 189 Conn. 183, 196-197 (1983); State v. Cosgrove, 186 Conn. 476, 489 (1982); State v. Hammond, 221 Conn. 264, 292 (1992); Miller v. Angliker, 848 F.2d 1312 (2nd Cir. 1988); Demers v. State, 209 Conn.143(1988).

The Defendant requests the following specific exculpatory and favorable information and/or materials, which are known, or with the exercise of due diligence may become known, to the prosecuting authority:

1. All information favorable to **MICHAEL SKAKEL** on the issue of guilt.

2. Any exculpatory statement or utterance made by any persons who were interviewed by law enforcement agents in the course of the investigation, that contradicts, controverts, or is otherwise inconsistent with, the allegation that the Defendant committed the offense charged. C.G.S. §54-86c; P.B. §40-11(a)(1).

3. Any inconsistencies between or among the statements or utterances of any two or more persons referred to in paragraph two (2) hereof.

4. Oral or written statements made by any potential state witness, or any two or more persons, which contain mutually contradictory or inconsistent statements of fact, regarding the Defendant's involvement in the alleged offense. C.G. S. §54-86c; P.B. §40-11(a)(1); State v. Cohane, 193 Conn. 474 (1984).

5. Written or oral statements made by any person, which indicate uncertainty, equivocation, retraction, or inconsistency, with respect to the Defendant's alleged involvement in the alleged offense.

6. The names and addresses of any witness that has provided information favorable to the Defendant who will not be called as a witness by the state at trial, along with the substance of the information provided by any such witness.

7. The names and addresses of all persons whom the state has reason to believe have knowledge of this case, but whom are not intended to be called by the state as witnesses at trial.

8. The names and addresses of any individual whom the state believes may have participated in the alleged offense, but whom the state has not charged in this case.

9. Any information which evidences that any potential witness or informant has, or had, a special legal, financial, or other interest, in cooperating with the prosecution, or testifying against the Defendant in this case, including, but not limited to, evidence of the following:

(a) offers of use or transactional immunity from prosecution in connection with this or any other case, in which any state witness is or was vulnerable to prosecution;

(b) any promise, offer, inducement, or other incentive, including, but not limited to, payment of expenses, gratuities, in-kind or financial benefits, drugs, witness protection

placement, physical protection, plea bargains, and/or any other consideration, given or promised to any state witness or his/her counsel;

(c) threats, promises, or suggestions, that prosecution of a witness will be initiated by any prosecuting authority, whether or not the same is explicitly linked to any arrangement or negotiation for the giving of testimony, or the performance of any other services, in relation to this case;

(d) threats, promises, or suggestions, made by law enforcement officers or the prosecution, regarding any favorable or unfavorable action which might be taken, in relation to the affairs of any state witness, with any public or private agency, organization, or person; and/or

(e) past, present, or future consideration, given or promised by the prosecution, or law enforcement officials, to the family, relatives, friends, or businesses, of any potential witness, in exchange for the witness's testimony or cooperation in this case.

10. The terms and conditions under which any former suspect or witness, including, but not limited to, Ken Littleton, was granted immunity from prosecution by the state or federal government, in connection with this or any other case, as well as a copy of any written agreement(s) related thereto.

11. Any monetary inducement or reward offered directly to any person in return for their testimony or cooperation. C.G.S. §§54-48; P.B.§§40-11(a)1 & 40-12.

12. A description of any and all rewards which were offered publicly in connection with this case to persons giving information leading to the arrest and conviction of the guilty party, including, but not limited to, offers pursuant to C.G.S. §§54-48 & 49, along with the following information:

a) the date on which any reward was publicly offered;

b) the amount of any reward;

c) the source of any reward; and

d) the names and addresses of any persons who made application for any reward. C.G.S. §54-86c.

13. Evidence that any officer, investigator, witness or other agent of the state, did have, or now has, a pecuniary or other interest in the development and/or outcome of this case, including, but not limited to, any contract, agreement, or on-going negotiations, which relate to

the preparation of any book, or the making of any movie, or which relate to contracts or agreements pertaining to future employment based upon such person's knowledge of this case, whether such person's interest is, or has been, negotiated directly or indirectly, via any family member, friend, corporation, or other business entity, in which said person, family member, or friend, has an interest.

14. The record of any arrests and/or convictions (felony, misdemeanor, violations, or infractions), pending cases, juvenile delinquency adjudications, youthful offender adjudications, and the parole or probationary status of any potential state witnesses, including records detailing incidents in which any state witness and/or informant was apprehended, but not convicted. State v. Wilson, 188 Conn. 715 (1982); Davis v. Alaska, 415 U.S. 308 (1974).

15. Any information concerning acts of misconduct or criminal convictions relevant to any state witness's veracity. State v. Pen, 195 Conn. 505, 523 (1985).

16. Any information which reflects adversely on the credibility or veracity of a state witness, or which shows partiality or favoritism towards the state, or the state's theory of the case. Giglio v. United States, 405 U.S. 150 (1972).

17. Information of every kind and description suggesting lack of truthfulness or credibility, on the part of any prospective state witness.

18. Information of every kind and description suggesting an intent, motive, and/or a desire on the part of any prospective state witness, to give false testimony, omit facts material to this case, or otherwise testify untruthfully.

19. The substance of any statement or testimony by any prospective state witness, which the prosecuting authority knows, or has reason to believe, is untruthful, deceptive, or likely to contain omissions of fact material to the determination of this case.

20. The names, addresses, and criminal records of all persons, other than the Defendant, who were at any time considered suspects, or who were detained, questioned, and/or arrested in relation to this case, together with any materials and information which caused them to be suspected, including, but not limited to, any oral and/or written statement, report, narrative, affidavit in support of a warrant, or any other document. This request would include information

and/or evidence that someone other than the Defendant was the focus and/or target of the state's investigation, in particular, Ken Littleton, Frank Wittine, Thomas Skakel, and/or Edward Hammond. Miller v. Angliker, 848 F.2d 1312 (2nd Cir. 1988).

21. Information that any person, other than the Defendant, was at or near the scene of the offense, around the time the state alleges the offense to have been committed.

22. Any evidence that someone other than, or in addition to the Defendant, was involved in the commission of the offense, including the time(s) when the information was received, and the identity of the person(s) who provided such information. C.G.S. §54-86c; P.B. §40-11(a)(1).

23. Any and all information received from confidential informants concerning possible suspects in this case.

24. Information that any state witness acted as an informant for the state, or otherwise had a relationship with the police or the prosecuting authority and his/her agents, during the investigation and/or prosecution of this case.

25. Any information that a witness did have, or now has, any bias or hostile feelings toward the Defendant, or motive to implicate the Defendant, including:

(a) any prior adverse contacts between the Defendant and any witness, as well as any other evidence of bias, interest, or prejudice; and/or

(b) evidence which tends to show that the contact or relationship between the Defendant and any potential witness was affected by jealousy, hatred, envy, scorn, or any other adverse feeling.

26. Aliases used by any witness. State v. Dolphin, 195 Conn. 444, 458- 459 (1985).

27. Any criminal, administrative, personnel, or disciplinary records, that are relevant to the veracity, reliability, or accuracy, of the testimony to be given by any law enforcement officer that may be called as a witness in this case.

28. Any records of the drug, alcohol, psychiatric, or psychological treatment, of any witness, including, but not limited to any witness that formerly resided at the Elan school, which relates to said witness's ability to perceive, remember, or communicate facts and circumstances relevant to the allegations against the Defendant, and which may be used by the defense to assess such witness's credibility. State v Esposito, 192 Conn. 166 (1984); State v. Bruno, 197 Conn. 326

(1985). This includes a request that this Court, undertake an in camera inspection of said records, in order to determine (1) the extent to which said records reveal evidence exculpatory and/or favorable to the defendant, and (2) the extent to which such records demonstrate a witness's motive, bias, prejudice, and/or competence to testify. State v. Pratt, 235 Conn.595 (1995), State v. LeDuc, 40 Conn. App. 223 (1996) (citing Brady v. Maryland 373 U.S. 82 (1963)), State v. Harris, 227 Conn. 751 (1993), and Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

29. Any medical, military, educational, employment or governmental agency records, concerning any witness, which are relevant to said witness's perception, memory, veracity, or ability to communicate.

30. Any admission or confession made by a person other than the Defendant. State v. Gold, 180 Conn. 619 (1980).

31. Any negative, exonerating, inconclusive, inconsistent, exculpatory, or ambiguous findings or results, obtained in any scientific tests, experiments, analyses, examinations, or comparisons performed in this case to date, including the findings and results of toxicology, PCR-DNA, DNA-sequence, or Mt-DNA tests, performed upon blood, fibre, hair, semen, saliva, skin, or any other sample of physical evidence, taken from any person or object, including the victim, the Defendant, and/or any law enforcement personnel, in connection with the investigation of this case. C.G.S. §54-86c; P.B. §40-11(a)(l) & (4); United States v. Agurs, 427 U.S. 97 (1976); Brady v. Maryland, 373 U.S. 83 (1963).

32. Information and materials concerning the physical condition of any person(s), or their clothing, who were present at the scene of the alleged offense, which are inconsistent with the testimony of any potential state witness.

33. Information and materials concerning the scene of the alleged offense which are inconsistent with the testimony of any potential state witness.

34. Information and materials concerning any similar crimes or acts of misconduct which occured in the general vicinity of the alleged offense, for the period including the one year preceding, and the one year following, the date of the alleged offense. State v.

Burge, 195 Conn. 232 (1985); Siemon v. Stoughton, 184 Conn. 547 (1981); State v. Gold, 180 Conn. 619 (1980).

35. Information and documentation regarding the failure of any witness to make and/or assist police in making, a corporeal, voice, or photographic identification, of any thing, object, or article of clothing alleged to have been worn by the Defendant at the time of the alleged offense, including any indication or expression of uncertainty by any witness, as to whether the Defendant was the perpetrator of the offense charged. This request would include information regarding any witness's failure to identify the Defendant as the perpetrator, or any witness's identification of a person other than the Defendant as the perpetrator of the alleged offense.

36. Any and all information received from any "out of state" law enforcement sources concerning possible suspects in this case.

37. Any statement that the Defendant may have made concerning this offense, whether it be oral or written. C.G.S. §53a-7.

38. Any evidence that corroborates statements of the Defendant and/or other witnesses concerning the Defendant's whereabouts, at the time that the offense is alleged to have been committed.

39. Evidence that any other person had an antagonistic relationship with, or had threatened, argued, or fought with the victim, along with evidence that any other person had a motive to physically harm the victim.

40. Any information concerning other instances in which the victim was the intended target of physical harm.

41. Statements made by a potential witness that contain facts or allegations which the prosecuting authority has reason to believe are false, or which contradict facts contained in any police or investigative report, or which are inconsistent with any o
ther written or oral assertions.

42. Any "leads", "tips", or anonymous calls, concerning the identity of the perpetrator, or the nature and circumstances of the offense, received by the prosecuting authority, law

enforcement officials, or any other state agency, during the investigation of this case, which (1) were determined to be false or inconclusive, (2) were not investigated and/or followed up, or (3) which led to information inconsistent with the Defendant's involvement in this case, including:

> (a) transcripts, notes, reports, statements, or other records, made in connection with tips, calls, and/or leads, received by the television show "Unsolved Mysteries," in connection with this case; and/or
>
> (b) leads, information, or tips, received by any other person, or any other television show, including, but not limited to information given to law enforcement officials by John Higgins.

43. The names, addresses, statements, and/or any other materials documenting the state's contact with persons concerning the investigation of this case, and whom the state does not plan to call as witnesses in this case.

44. Any items seized by the state or its agents from the residences or living quarters of any person investigated in connection with this case, including, but not limited to, the residences or living quarters of Ken Littleton, Frank Wittine, and/or Edward Hammond, and including items such as clothing, linens, shoes, hair samples, blood samples, fibers, condoms, or any other items. This request extends to any record of scientific testing performed on such seized items, including any notes or reports made as a result of such testing.

45. Notes, logs, police reports, documents, records, statements, or other information, which pertains to any lost, misplaced, or destroyed evidence in relation to this case.

46. Notes, logs, police reports, documents, records, statements, or other information which pertains to, describes, or details, any physical evidence, which, although collected and available to law enforcement officials, was not subjected to scientific testing.

47. Information, police reports, statements, notes, accusatory instruments, or any other records which relate to the investigation of Ken Littleton, in connection with this case, or any other case involving a crime of violence.

48. Information, reports, notes, or other records which pertain to the results of any polygraph taken by Ken Littleton or any other person subjected to a polygraph in relation to this case.

49. Statements of any witness who will testify at the trial, and statements of any person which may be used to impeach any witness at trial, including, but not limited to, statements made by said witness or any other person, and including any statement made before the Grand Jury in this case.

II. PHYSICAL EVIDENCE

50. Any books, tangible objects, papers, photographs, audiotapes,, videotapes or documents within the possession, custody, or control, of any governmental agency, which the prosecuting authority intends to offer in evidence at trial, or which are material to the preparation of the defense, or which were obtained from, or purportedly belonged to the Defendant, including, but not limited to, physical evidence seized at or near the scene of the alleged offense, and any additional physical evidence that was seized from the body or personal belongings of the victim, or the Defendant, including:

(a) clothing, shoes, sticks, hair, cans, fiber, blood, semen, saliva, or any other physical evidence taken from, or alleged to be the Defendant's;

(b) fiber, blood, saliva, semen, hair, or any other sample of physical evidence taken from the victim's body;

(c) the Defendant's Elan School file and records;

(d) tapes, writings, and other records, pertaining to the Defendant's book proposal which were taken by police from Richard Hoffman;

(e) copies of any and all documentation prepared by Sutton Associates Information Services, including information compiled and commonly referred to as the "Sutton Report,"made in connection with its investigation into facts and circumstances which pertain to this case; and

(f) any papers, books, transcripts, recordings, video-tapes, notes, or other information, given to law enforcement officials by anyone else.

51. Whether any weapon or instrument alleged to have been used in the commission of the offense was recovered, and, if so, where, when, and from whom. C.G.S. §54-86a(2).

52. A description of any motor vehicle alleged or suspected to have been involved in the course of the commission of the offense, including, but not limited to, the following information:

a) make, model, body style, and color;

b) registration and vehicle identification number; and

c) identity of the title holder and registered owner.

53. Any slides, photographs (including negatives of undeveloped photographs), or audio or video recordings, which have been made by law enforcement agents or persons acting on their behalf, or received from third parties, in connection with the investigation of this case, including autopsy photographs, photographs taken of the victim's body, and photographs taken of any location or object relevant to this case, and including photographs taken by Dr. Henry Lee, or any other scientist, doctor, or criminalist, together with:

a) The date, time and location of each photograph or recording made;

b) The identity of the subject matter of each photograph or recording;

c) The identity of the person(s) who made the photographs or recordings.

d) The particular film, tape or media, equipment, and specialized techniques used to create the photographs or recordings.

54. Any diagrams, reconstructions, sketches, maps, time lapse charts, drawings, or other non-photographic renderings made by law enforcement agents, or persons acting on their behalf, in connection with the investigation of this case, together with:

a) the date, time and location at which each sketch, map, chart, drawing or other rendering was made; and

b) the identity of the person(s) who created each sketch, map, chart drawing, or other rendering.

55. Photographs, composite sketches or other media replications that depict the likeness or physical attributes of the alleged perpetrator of this crime.

56. Any audio or other recordings that contain what is alleged to be the voice of the Defendant.

57. Any photograph(s), sketch(es), video tape(s), composite drawing(s) or other items from which a person or object could be identified, and which were shown to any person by the police in an effort to obtain the identification of any person or object.

58. Copies of any seized evidence inventories, search warrant returns, flow charts, logs, receipts, requests for forensic examination, or other information or materials which document the chain of custody of physical evidence in this case.

59. Any teletypes, electronic communications, 911 tapes, audio tape recordings, transcripts, notes, logs, or other recording or documentation, of any radio transmissions or telephone calls, made or received by law enforcement agents in connection with this crime and the investigtion thereof, including the date, time and identity of the person from whom the information was received. State v. Williamson, 212 Conn. 6 (1989).

60. Any audio or video recordings of the Defendant and/or any telephone conversations that he had, at any time during which he was in the custody of law enforcement authorities in connection with the case.

61. Any audio or video recordings, logs, notes, or other documentation, concerning the interception of any oral communications of the Defendant using any listening or recording device, which may have been installed in or near the Defendant's residence, or on the person of any other individual who engaged in a conversation with the Defendant.

III. DEFENDANT'S CRIMINAL RECORD

62. Copies of the Defendant's prior criminal records, if any, which are within the possession, custody or control of the state or any governmental agency, the existence of which is known, or with the exercise of due diligence may become known, to the prosecuting authority. C.G.S. §54-86(a)(4); P.B. §40-11(a)(3).

IV. FORENSICS

63. The Defendant requests reasonable notice of, and an opportunity to be present at, and to have one or more experts observe, participate in, or review, any test or experiment performed in connection with this case, by the state, or any agent of the state, including, but not limited to, any test or experiment which may preclude or impair further testing of any relevant evidence. P.B. §40-11(a)(4). State v. Alfonso, 3 Conn. App.225, 228 (1985).

64. Field tests, reports, work sheets, computation sheets, field notes, laboratory notes, records of observations, graphs, or other records, used in gathering data, or performing any scientific testing, experiments, or comparisons, upon any physical evidence which pertains to this case.

65. Copies of standardized laboratory procedures and protocols for any forensic analyses, comparisons, examinations, tests, and/or experiments performed in this case, including, but not limited to, toxicology, DNA, Mt- DNA, DNA sequence, and/or PCR-DNA testing procedures and protocols.

66. Copies of records, reports, notes, or statements of experts made in connection with this case, which are related to the results of any examination, scientific test, experiment, or comparison, and which are material to the defense, or are intended for use by the prosecuting authority as evidence in chief at the trial, including, but not limited to records, reconstruction reports, notes, and/or any other statement made by Dr. Henry Lee, Dr. Michael Baden, Dr. David Bing, Dr. John Reffner, Dr. Elliot Gross, Dr. Joseph Jachimczyk, Dr Peter Deforest, Dr. Abraham Stolman, Richard Bisbing, and all persons employed by Lifecodes Corp., Cellmark Diagnostics, or any law enforcement agency. C.G.S. §54-86(a) (3); P.B. §40-11(a) (4).

67. The description of any trace forensic evidence including, but not limited to, full or partial fingerprints and foot prints, footwear prints, tire impressions, fibers, hairs, blood, semen, saliva, bodily fluids, or any solid, liquid or gaseous substances, which were seized, or otherwise recovered in connection with this case, together with the results of any analyses, examinations, comparisons, or scientific tests performed on each, including:

a) the specific date, time, and location where such evidence was collected;

b) the names, addresses and titles of the person(s) who collected such evidence;

c) the type of scientific testing or comparison performed. C.G.S. §54-86a(2); P.B. § 40-11(a)(4); and

d) the names, addresses and titles of the person(s) who performed the scientific testing or comparison.

68. The complete reports of the Office of the Chief Medical Examiner including, but not limited to autopsy reports, summaries, notes, autopsy slides and photographs, x-rays, toxicology reports, microscope slides, human biological samples, telephone notice of death, report of time of death, and any report of the investigation of death. §40-11(a)(4).

69. Hospital, ambulance, or other emergency medical service records pertaining to the physical and/or mental condition of the victim, and/or pertaining to any injuries sustained by the victim, as well as any services or treatment rendered to the victim in connection therewith. C.G.S. §54-86C.

70. Any voice print or similar analyses performed in relation to this case.

71. Information regarding the use of hypnosis, polygraphs, or any other scientific, mechanical, or medical procedure, test, or examination, which was administered by law enforcement officers, or their agents, including those performed upon the Defendant, any potential witness, or any suspect, along with the following:

a) the date, time and place of each procedure, test or examination;

b) the identity of the person examined;

c) the name and address of the individual administering the procedure, test or examination;

d) the names of all individuals present during each procedure, test or examination;

e) the specific questions asked of each examinee;

f) the specific answers given by each examinee;

g) the opinion of the examiner as to the truthfulness of the answers given; and

h) copies of reports, memoranda, or recordings, documenting the procedure, testing, examination, or results. P.B. §40-11(a)(4); Davis v. Alaska, 415 U.S. 308 (1974).

72. Results of any criminal personality profiling that was performed by the F.B.I. Behavioral Science Unit, or other governmental agency or person(s) with similar capability, employed or enlisted by law enforcement officials to develop profiles that would include possible suspects in this case.

73. Any reports, notes, memoranda or other documentation pertaining to the use of tracking dogs and the results, if any, of tracking undertaken during the investigation of this case.

74. Names and addresses of any expert witnesses retained or consulted by the prosecuting authority, whether or not they rendered an opinion or prepared a report, and from whom the prosecuting authority does not intend to elicit testimony at trial.

V. SEARCHES

75. A complete list of all occasions on which the person, home, room, business, clothing, papers, effects, motor vehicles, or any other place or thing under the custody or control of the Defendant, or in which he had a legitimate expectation of privacy, was subject to a search or seizure by any agents of the state, or any other person acting on behalf of the state, along with the following:

a) the names, addresses and job titles of any and all persons who were present at, and/or participated in the searches and seizures;

b) copies of any and all notes of observations made by any persons who were present at and/or participated in the searches and seizures;

c) the specific person(s) from whom the seizure or recovery was made;

d) the specific date, time and location of each search and/or recovery;

e) any inventories or lists of items seized or recovered during such a search;

f) all persons in the chain of custody to whom seized or recovered items were transferred subsequent to each seizure or recovery;

g) a description of any tests, analyses, experiments, or comparisons (including ordinary visual comparisons) which were performed on each item, together with an indication of whether any item was destroyed or diminished in the course of any testing. C.G.S. §§54-33c and 54-36a;

h) the current specific location where each item is stored. P.B. §§40-11(a)(2) & (4); and

i) whether any items seized from the Defendant's person or belongings were seized pursuant to search warrants and, if so, a copy of the search warrants, including copies of annexed supporting affidavits, and the return. C.G.S. §§54-33a, 54-33c and 54-86a;

76. Information and records seized by law enforcement officials from the Elan School, pursuant to a search conducted at said facility, on or about October 5, 1997, including, but not limited to the Defendant's Student File, correspondence sent by Elan to the Defendant's family, student rosters, student class and activity schedules, meeting minutes, log books or records maintained by "night owls" or "night watchmen," reports detailing the Defendant's status and progress at the Elan School, and records detailing or confirming general meetings, "haircuts," "primal scream sessions," "boxing ring" sessions, "cowboy ass-kicking sessions," or any other written, audio taped, or video- taped record of any meeting, session, activity, or event, which took place at the Elan School. C.G.S. §54-86a(2); P.B. §40-11(a)(2).

77. Any consent to search executed by the Defendant and/or the Defendant's guardian.

78. A copy of any other additional search or arrest warrants sought, obtained, or executed in connection with the investigation of this case, for any person or place, including copies of annexed supporting affidavits, and the return. C.G.S. §54-33a.

VI. STATEMENTS

79. Any written and/or oral statements made by the Defendant, before or after his arrest, in response to interrogatories by any person then known by him to be a law enforcement officer, the prosecuting authority, or agent thereof, together with the following information:

a) the specific date(s), time(s) and location(s) when the declaration(s) were made;

b) the name, address and occupation of all persons present when the declarations were made; and/or

c) the method, if any, of recording the declaration(s).

80. Any written and/or oral statements of the Defendant made to persons other than law enforcement officers or their agents, which are known to the prosecuting authority, and which are intended for use by the prosecuting authority as evidence at trial, including, but not limited to statements alleged to have been made by the Defendant to Margot Skakel, Richard Hoffman, or any resident or staff member of the Elan School, along with the following:

(a) the specific date, time and location of such statements;

(b) the name and address of the person(s) to whom the Defendant allegedly made the statements; and

(c) the substance of such statements.

81. A copy of any waiver of constitutional rights executed by the Defendant in connection with any statement alleged to have been made by him.

VII. WARRANTS AND PROBABLE CAUSE

82. Any documents, reports and/or affidavits presented to the court for a determination of probable cause. C.G.S. §54-86a(d); Gerstein v. Pugh, 420 U.S. 103 (1975).

83. Any warrant executed for the arrest of the Defendant for the offense charged, including copies of annexed supporting affidavits or statements, the names of the arresting officers and the real names of each of the affiants, along with the return. C.G.S. § 54-86a(d).

VIII. WITNESSES

84. The names, addresses, professional qualifications, and/or field(s) of expertise, of any witnesses whom the prosecuting authority may call in his/her case-in-chief, or rebuttal. P.B. §40- 13.

85. Information or material concerning any potential state witness which relates to the witness's mental condition, including information pertaining to any witness's drug and/or alcohol abuse, capacity for accurate observation, comprehension, recollection, communication, and/or relation of the truth, as well as the witness's capacity for understanding the nature and requirements of an oath or affirmation.

86. Any record of felony or misdemeanor convictions of a witness, or record of felony or misdemeanor charges that are now, or ever were, pending against any witness, which are known to the prosecuting authority, or which, by the exercise of due diligence, may become known to the prosecuting authority. P.B. 40-13(a)(2).

87. Copies of any statement evidencing that an act or omission of any witness impacts his/her veracity.

88. Any written or otherwise recorded statement of a witness, including the field notes of any law enforcement agents, or any summary or recording of an oral statement which relates to the subject matter about which any witness will testify at trial. C.G.S. §54-86b(a); P.B. §40-13(a)(1).

89. The names and addresses of any persons interviewed by law enforcement officers or their agents in connection with the investigation of this case.

IX. UNCHARGED MISCONDUCT

90. Any details concerning prior crimes or alleged acts of misconduct of the Defendant that the prosecuting authority intends to offer as evidence at trial, in order to impeach the Defendant's credibility, to identify him/her as the perpetrator of the offense charged, and/or to prove any aggravating factor, or rebut any mitigating factor, including, but not limited to, details such as:

a) the nature and circumstances of the act in question;

b) the names and addresses of all persons whose testimony would be relied upon to prove the commission of the act by the Defendant;

c) the date, time and location at which the act is alleged to have been committed;

d) whether or not the act resulted in an arrest or conviction. State v. Acquin, 34 Conn. Supp. 152 (1977); P.B. §40-12; and

e) whether or not any act of the Defendant will be argued by the prosecuting authority to constitute consciousness of guilt.

X. SURVEILLANCE

91. Information concerning whether any wiretaps, eavesdropping, or electronic surveillance, was conducted in the course of the investigation of this case, and which the prosecuting authority intends to introduce in evidence at the trial, including the following:

a) the identity of the persons who conducted, or who were present during any phase of such wiretapping or electronic surveillance;

b) the identity of any and all persons who were the subject of the wiretaps or electronic surveillance;

c) the specific dates, times, and locations where wiretapping or other electronic surveillance was conducted by the state;

d) whether or not any communications of the Defendant were intercepted. P.B. §40-11(a)(6);

e) recordings, transcripts, or other documentation, pertaining to the substance of the information that was obtained via wiretap, or any other electronic surveillance; and

f) copies of any application and the Court order under which any interception was authorized. C.G.S. §54-41l

92. Information and or records pertaining to any observations made by law enforcement agents through the use of visual or audio enhancement devices, including the specific type, make and model of the device, along with the names, addresses and titles of the persons present when the device(s) were used.

XI. CONFIDENTIAL INFORMANTS

93. The substance of any and all telephone information concerning the alleged offense

received by law enforcement authorities from confidential informants as part of their investigation, including, but not limited to the following:

a) the time and date the information was received;

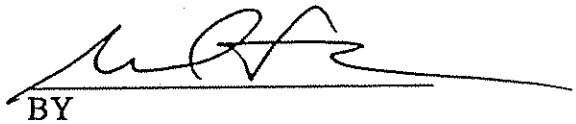
b) the identity of the person providing the information; and

c) any logs or tapes documenting and recording the information.

The Defendant alleges that all of the information, materials, and objects sought herein are: (1) material and necessary to the preparation of the defense; (2) required by the Defendant's attorney so as to protect against unfair surprise and save needless labor in the preparation of the defense; (3) required in order that the Defendant may guard against additional prosecutions based upon the same factual circumstances; (4) reasonable requests which will not unduly delay the proceedings in this case; (5) not the subject of any similar motion filed heretofore; and (6) not the subject of any prior ruling by this Court.

WHEREFORE the Defendant respectfully requests that the foregoing motion be granted in its entirety, or as otherwise ordered by this honorable Court.

THE DEFENDANT



BY
MICHAEL SHERMAN
Sherman & Richichi
27 Fifth Street
Stamford, CT 06905
Tel: (203) 324-2296
Juris No. 57104

I hereby certify service pursuant to the Practice Book.

MICHAEL SHERMAN

ORDER

The foregoing motion have been heard by the Court, it is hereby GRANTED/DENIED as to the following requests:

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Dated at Stamford Connecticut, this day of , 2001.

THE COURT

BY
Judge/Clerk: