

Trial Transcript Excerpt, 8/15/01
Argument and Court Ruling re: Defendant's Discovery Requests

1 SUPERIOR COURT
2 JUDICIAL DISTRICT OF NORWALK STAMFORD
3 AT STAMFORD
4 STATE OF CONNECTICUT
5 -----X

6 STATE OF CONNECTICUT,

7

8 Plaintiff, Case No. FST CR00-135292T

9 Date: August 15, 2001

10 vs.

11

12 MICHAEL SKAKEL,

13

14 Defendant.

15 -----X

16

17 BEFORE THE HONORABLE JOHN KAVANEWSKY, JUDGE

18

19 A P P E A R A N C E S:

20

21 JONATHAN BENEDICT, ESQUIRE

22 SUSANN GILL, ESQUIRE

23 CHRISTOPHER MORANO, ESQUIRE

24 Attorneys for the State

25

26 MICHAEL S. SHERMAN, ESQUIRE

27 Attorneys for the Defendant

1 THE COURT: I met with the attorneys this
2 morning and told them that I intend to call these
3 motions or hear these pleadings in the order in which
4 they are listed on the schedule so they can ready
5 themselves.

6 The first pleading is the defendant's
7 notice of intent to file application requesting Grand
8 Jury records. From my review of that and my review
9 of the statute, it wouldn't appear to involve or
10 require any action by this Court, at least at this
11 time.

12 Do the attorneys wish to be heard to the
13 contrary, Mr. Sherman?

14 MR. SHERMAN: No, Your Honor. We agree with
15 the Court's interpretation.

16 MR. BENEDICT: The State, of course, agrees and
17 we have no objection for the Grand Jury panel. If
18 any cooperation is needed from the State, as soon as
19 counsel lets us know, we will certainly attend to it.

20 THE COURT: The Court takes no action with
21 regard to this notice of intent at least at this time.

22 * * * * *

23 THE COURT: The next motion is defendant's
24 motion in limine re: the Elan testimony. And from my
25 review of this, I think it is probably appropriate to
26 defer a hearing and ruling on this motion until at or
27 about the time of trial. Again, I will hear the

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1 attorneys. Mr. Sherman.

2 MR. SHERMAN: We basically agree with the
3 Court, Your Honor. The lynch pin in that will be who
4 the witness is and what they will be proffered to
5 testify to. So, that can best be determined when we
6 know exactly what witness will testify.

7 THE COURT: Mr. Benedict

8 MR. BENEDICT: Actually, I think counsel
9 probably has just about all of this information via
10 disclosure, discovery previously complied with. In
11 addition to that, what we will do pursuant to this
12 motion is within the next two weeks give -- supply
13 counsel with a list of the actual people who are
14 associated with Elan who will testify so that we are
15 more able to address the issue later on.

16 THE COURT: Well, I will make that an order of
17 the Court, 15 days to do that and that's without
18 prejudice to the State being heard on defendant's
19 motion, obviously.

20 I think that the State's disclosure of
21 witnesses in response to the discovery request may
22 serve at least to better focus or allow us to hone in
23 on the issues involved in defendant's motion. So, I
24 will enter that as an order and I am deferring further
25 hearing and argument until at or about the time of
26 trial and the defendant can renew that motion then.

27 MR. BENEDICT: Your Honor, if I can say,

1 something was brought to my attention. What I will do
2 is, I think the best avenue is for me to comply as
3 though it is a demand by counsel and make that filing
4 directly to him rather than to the Court file because
5 it just simply puts information in a public file that
6 at this point probably would not be helpful to
7 disclose.

8 THE COURT: Well, I think that's the normal
9 protocol for complying with the discovery motions,
10 that they go to counsel and only if Court intervention
11 is needed would I become involved. So, that's fine.

12 MR. SHERMAN: That works for me. Just as an
13 aside, Your Honor, so the State is going to be
14 furnishing a list of all the Elan connected witnesses
15 within 15 days?

16 THE COURT: It's my understanding, directly to
17 defense counsel and you will just certify that to the
18 Court.

19 MR. BENEDICT: Correct.

20 * * * * *

21 THE COURT: All right. All right; the third
22 matter is defendant's motion for bill of
23 particulars. The State has filed an objection. I
24 have read the motion for bill of particulars. I have
25 read the objection.

26 Mr. Sherman, you have five numbered
27 requests and it would appear that one has been

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1 complied with and five has been complied with so we
2 are really talking about numbers two, three and four;
3 am I right?

4 MR. SHERMAN: Well, actually, Your Honor, I
5 would even concede two, specific conduct is obviously
6 the act of a homicide and three is self explanatory as
7 well. The only thing that I really --

8 THE COURT: Are you claiming anything, then?

9 MR. SHERMAN: No, not on two and three. The
10 State has essentially complied with that by furnishing
11 us with that body of --

12 THE COURT: So, one, two, three and five, you
13 are satisfied that the information in its present form
14 satisfies the bill of particulars.

15 MR. SHERMAN: Yes, Your Honor.

16 THE COURT: All right; as to number four, the
17 motion for bill of particulars is denied.

18 * * * * *

19 THE COURT: The next matter is the State's
20 demand for alibi defense. Give me a moment, please.

21 Now, as to this, no objection has been
22 filed so the first thing I would ask is, Mr. Sherman,
23 is there an objection?

24 MR. SHERMAN: No objection.

25 THE COURT: All right; that's being granted
26 then. The request is being granted and Mr. Sherman,
27 20 days. A294

1 MR. SHERMAN: Fine, Your Honor.

2 THE COURT: All right; per practice book, 20
3 days to comply.

4 Mr. Benedict, how long will it take the
5 State to file any notice it is required to under
6 40-22?

7 MR. BENEDICT: Within whatever required time by
8 the practice book, Your Honor, 10 days.

9 THE COURT: All right; 20 days to comply by the
10 defense, 10 days thereafter. The Court will file its
11 40-22 notice. All right; gentlemen.

12 MR. SHERMAN: Yes, sir.

13 * * * * *

14 THE COURT: All right; the next matter is the
15 State's request for disclosure dated April 25, six
16 numbered items. Again, I note the defendant has not
17 filed an objection here. Is there an objection?

18 MR. SHERMAN: It's not an objection to the
19 motion. It is probably an objection to the timing,
20 Your Honor.

21 The State asks for the names and addresses
22 of all the witnesses that we intend to call in our
23 case in chief and our rebuttal case as well. Given
24 the fact that often in a trial and especially in this
25 trial, we don't know what witnesses we may need to
26 call, certainly in light of the fact that the State's
27 Attorney has indicated that he will be letting us know

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1 within 15 days what Elan witnesses will be called.
2 Based upon his disclosure of that information, we may
3 then call additional people or people that we had not
4 anticipated.

5 So, I have no objection to giving this
6 information but I just can't tell Your Honor that I
7 can do it within 20 days.

8 THE COURT: All right; my thinking was 45 days
9 to comply, Mr. Sherman. That's the practice book
10 rule.

11 MR. SHERMAN: Yes, I have no problem with
12 that. I have no problem with that, with the caveat,
13 Your Honor, that as Your Honor and as the State knows,
14 very often decisions are made to call people at the
15 last moment or shortly before trial. So, whereas we
16 may not intend to call someone now, the trial may
17 develop where in mid trial we may decide to call
18 witness X or Y. But, if there is somebody that we
19 have on our screen right now, I will disclose that.

20 THE COURT: Mr. Benedict, do you want to be
21 heard?

22 MR. BENEDICT: Yeah, this is not an uncommon
23 diversion that we hear, Your Honor. The Court should
24 be aware that the State essentially made an open file
25 of discovery in this case prior to the hearing of
26 probable cause. There are some minimal additional
27 materials that we may get to in a few moments that

1 remain for counsel to see. However, counsel has had
2 the great great bulk of the State's case for two or
3 three months at the very very least and clearly a
4 logical procedure allows for a later on discovery that
5 is generated from the defense, that is generated by
6 later on discovery from the State. But, I think
7 counsel should be able to comply with the motion.
8 Again, everything by a large part at this point --

9 MR. SHERMAN: I agree. I am just letting the
10 Court know that sometimes witness identity is
11 developed later on.

12 THE COURT: And, there are provisions that cover
13 that.

14 MR. SHERMAN: Yes, sir.

15 THE COURT: All right; 45 days to comply.

16 * * * * *

17 THE COURT: All right; the next matter which I
18 assume we will be spending some time on is the
19 defendant's motion for discovery and inspection dated
20 May 21. The State filed an omnibus objection dated
21 May 30. The State also filed an articulation and
22 response to the Court's order. That articulation is
23 dated August 10. Based upon that articulation, the
24 first thing I am going to do is overrule the State's
25 omnibus objection.

26 And, we have a number of items, then, but
27 the way I understand this is by the State's response

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1 here is that except as to the matters, the State has
2 specified in its articulation, the matters that I need
3 to rule on today, except as to those matters, the
4 State has no objection to the defendant's motion for
5 discovery and inspection; is that correct?

6 MR. BENEDICT: That is correct, Your Honor.

7 THE COURT: All right; then that will be an
8 order of the Court that except as to the items
9 objected to, there shall be compliance.

10 Now, let's take these up one at a time.

11 Okay, the first one is number 6. Mr.
12 Sherman, it is your request, names and addresses of
13 witnesses, any witness that has provided information
14 favorable to the defendant who will not be called as a
15 witness by the State at trial along with the substance
16 of the information provided by any such witness.

17 All right; number six is granted.

18 * * * * *

19 THE COURT: Number seven, names and addresses of
20 all persons whom the State has reason to believe have
21 knowledge of the case whom are not intended to be
22 called by the State as witnesses at trial.

23 So, in any event, I think it's overly
24 broad as it is framed. I would deny it in its
25 present form but it's granted as amended to, again,
26 exculpatory information.

27 * * * A298

FST CR00-135-792-T

: SUPERIOR COURT

STATE OF CONNECTICUT

: STATE OF CONNECTICUT

V.

: JUDICIAL DISTRICT OF
: STAMFORD/NORWALK

MICHAEL SKAKEL

: AT STAMFORD

: APRIL 16, 2002

SUPPLEMENTAL DISCOVERY MOTION FOR EXCULPATORY EVIDENCE

Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), United States v. Agurs, 427 U.S. 97 (1976), United States v. Bagley, 105 S. Ct. 3375 (1985), Giglio v. United States, 405 U.S. 150 (1972), Scurr v. Niccum, 620 F. 2d 973 (8th Cir. 1980), Giles v. Maryland, 386 U.S. 66 (1977), and Napue v. Illinois, 360 U.S. 26 (1959), the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article 1, §§7, 8, and 9 of the Connecticut Constitution, Connecticut General Statutes §54-86(c), and Connecticut Practice Book §40-1 et seq., the Defendant, MICHAEL SKAKEL, specifically requests disclosure of the following exculpatory, favorable, and/or impeachment evidence:

SPECIFIC REQUESTS

1. As to Kenneth Littleton:

- (a) An account and description of any consideration received by, given or promised to Kenneth Littleton in exchange for testimony or other services to the State, including, but not limited to any grant(s) of use and/or transactional immunity, total, partial, or otherwise, from prosecution for the murder of Martha Moxley, and/or any other crime in which Kenneth Littleton was considered a suspect by the Government;

Rec'd in court
4/16/02
[Signature]

(b) The results, reports and/or records of any forensic tests, experiments, comparisons, analyses, examinations, or other treatment of Kenneth Littleton's blood, hair, saliva, semen, finger nails, cell tissue, fingerprints, or any personal property, including, but not limited to, clothing, shoes, furniture, blankets or sheets, automobile interiors, kitchen utensils or glassware, and/or any other property, where such results tend to inculcate Kenneth Littleton in connection with the murder of Martha Moxley (the "Victim"), or which may imply his presence at the scene of the crime charged to Defendant, or establish that he, or any part of his body, came into contact with the person and/or clothing of the Victim, or the alleged murder weapon (golf-club). This request would specifically include results recently obtained by the State in connection with scientific testing performed on (i) the alleged murder weapon, (ii) any other item of clothing worn by the Victim or any other person; and (iii) any other items or articles relating to the crime charged or crime scene; and

(c) The results, reports and/or records of any psychological interviews, examinations, treatments or diagnoses of Kenneth Littleton, where such results, reports and/or records tend to inculcate Kenneth Littleton in connection with the murder of the Victim, or which may imply his presence at the scene of the crime charged to Defendant. This request would specifically include, but not be limited to, any results or psychological interviews sponsored or arranged by the Greenwich Police Department since October 30, 1975.

2. As to Gregory Coleman:

(a) The results, reports and/or records of any psychological interviews,

examinations, treatments or diagnoses of Gregory Coleman, where such results, reports and/or records may be materially relevant to the credibility, reliability or trustworthiness of Gregory Coleman's testimony at Defendant's preliminary hearings of this case. This request would specifically include, but not be limited to, any results, reports and/or records regarding Gregory Coleman at any drug or alcohol abuse institution, educational facility (including The Elan School in Poland Spring, Maine), or any medical or mental hospital.

3. As to any other individuals and/or past suspects who have been subject to investigation of the crime charged, all Search Warrant Affidavits and Applications, Arrest Warrant Affidavits and Application, and/or other similar applications or affidavits, regardless of whether any such affidavits or applications were signed by a judge.

4. As to all prior requests for disclosure, the Defendant requests that the Prosecution review its files to comport with its continuing duty to supplement production and disclosure already ordered by this Court.

RESPECTFULLY SUBMITTED,

THE DEFENDANT;
MICHAEL SKAKEL

By


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

FST CR00-135-792-T : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF
VS. : STAMFORD-NORWALK
MICHAEL SKAKEL : APRIL 17, 2002

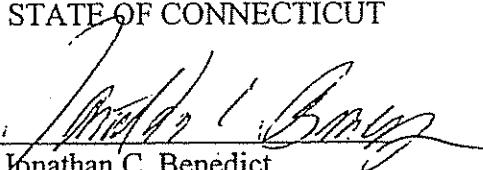
STATE'S COMPLIANCE WITH DEFENDANT'S DISCOVERY MOTION OF 4/16/02

See Court's rulings dated August 15, 2001 and all disclosures to date.

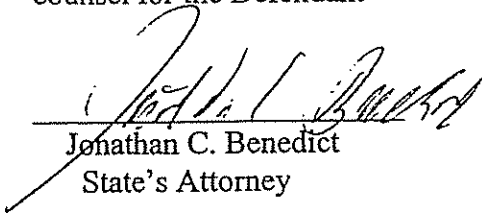
RESPECTFULLY SUBMITTED,

THE STATE OF CONNECTICUT

By


Jonathan C. Benedict
State's Attorney

This is to certify that a copy
of the foregoing was, on the
above date hand delivered to
counsel for the Defendant


Jonathan C. Benedict
State's Attorney

Recd in court
4-17-2002
Wm-M. Carter
Asst Clerk



06/21/02 WED 10:40 FAX 203 382 8401

STATE'S ATTORNEY

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A303

FST CR00-135-792-T
STATE OF CONNECTICUT : **JUDICIAL DISTRICT OF**
: **STAMFORD/NORWALK**
V. : **AT STAMFORD**
: **AUGUST 26, 2002**
MICHAEL SKAKEL :

DEFENDANT'S AMENDED MOTION FOR NEW TRIAL
AND REQUEST FOR AN EVIDENTIARY HEARING

Pursuant to Practice Book § 42-53 and the constitutional and statutory provisions cited herein, the defendant in the above-entitled action respectfully moves this Court to grant a new trial in the interests of justice.

In support of this motion, the defendant asserts that because of the following errors, he is constitutionally entitled to a new trial; or, in the alternative, he is entitled to a new trial because those errors, considered individually and cumulatively, were materially injurious to him. Additionally, the defendant requests an evidentiary hearing on certain issues as indicated herein.

1. The defendant's constitutional and statutory rights were violated by the prosecution's belated disclosure of exculpatory information and material, including: (a) the mid-trial disclosure of the 1976 application for an arrest warrant for Thomas Skakel; and (b) the post-jury selection disclosure of 1992 videotaped police interviews of Kenneth Littleton. *See, e.g., Brady v. Maryland, 373 U.S. 83 (1963).*

2. The defendant's constitutional and statutory rights were violated by a pattern of conduct in which the prosecution failed to disclose exculpatory information and material to (a) the investigatory grand jury (see Conn. Gen. Stat. Section 54-47f(f)); (b) to the defendant prior to the reasonable cause hearing held in the juvenile court; (c) to the defendant prior to the probable cause hearing (see State v. Ortiz, 252 Conn. 533, 544-5, 747 A.2d 487, 498 (2000)): "[t]he constitutional obligation to disclose exculpatory evidence

attaches at the time of the probable cause hearing”); and, (d) to the defendant prior to or during the trial, including, but not limited to, the failure to disclose the following:

- A composite sketch of a person seen walking near the murder scene around 9:30 p.m. or 10:00 p.m. by a security guard.
- Summary Profile Reports of Kenneth Littleton and Thomas Skakel which were referred to Chief John F. Solomon during his testimony. Tr.5/10/02 at 77 (“I know there is a summary report that was written but there is only one page of notes here. I thought I had a lot more notes than that but there was a summary report in there”; at 84 (“...there was a summary thing made of Ken Littleton ... Profile and summary”); Tr.5/13/02 at 77 (“It’s a summary profile that I prepared as we did in several of the individuals in the case and it kind of lays out the incriminating statements, evidence that – it’s kind of a summary of that, why that person is a suspect”); Tr.5/22/02 at 133 (“It’s a summary profile of Kenneth Littleton and all of the facts which made him a suspect” that’s in the possession of the state); Tr.5/13/02 at 81 (referring to summary profile report of Thomas Skakel).

The defendant requests a hearing on this matter. A memorandum detailing this issue is being filed herewith.

The State’s failure to provide this exculpatory information to the defendant not only deprived him of valid and fair reasonable cause and probable cause hearings, but it impacted his ability to prepare and present a defense at trial in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution. See also Conn. Gen. Stat. Section 54-86c, Practice Book Sections 40-11 and 40-12; Kyles v. Whitley, 514 U.S. 419 (1995); Giglio v. United States,

405 U.S. 150 (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 (2d Cir. 1988); Demers v. State, 209 Conn. 143 (1988).

3. The Court erred in denying the defendant's motions for judgment of acquittal at the end of the prosecution's case (Tr.5/20/02 at 2-5) and at the close of all the evidence (Tr.6/3/02 at 3).

4. The Court erred in admitting the prior testimony of a deceased witness, Gregory Coleman. That testimony constituted inadmissible hearsay, and deprived the defendant of his federal and state constitutional rights of confrontation, due process and a fair trial pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution. The Defendant incorporates herein the prior arguments contained in his Memorandum of Law In Support Of Defendant's Motion In Limine Re: Exclusion Of Gregory Coleman's Preliminary Hearing Testimony dated April 23, 2002, as well as his arguments presented in court. See, e.g., Tr.5/16/02 at 52-54.

5. The Court erred in admitting irrelevant and highly prejudicial hearsay evidence from the diary of Martha Moxley. See Tr.5/7/02, at 54-60; Tr.5/9/02, at 44-53; State's Exhibit 81; Tr. 6/3/02, Summation of Mr. Benedict, at 6-7 ("Martha Moxley, pretty, athletic, flirtatious 15 year old kid, one who we learned from her diary was as any 15 year old girl, just coming into womanhood"); at 117 ("Michael Skakel was infatuated with Martha Moxley. We learned that from ... the diary. We learned also that Martha's diary brought out the jealousy between Tom and Michael over her"). The admission of this hearsay is in violation of Sections 8-2, 8-7 and 4-3 of the Connecticut Code of Evidence and infringed upon the

defendant's state and federal constitutional rights to confrontation, due process and a fair trial pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

6. The Court erred in admitting triple hearsay testimony through the State's witness Mildred Ix. See Tr.5/15/02 at 106-123; 128; State's Exhibit 87. The State asked Mrs. Ix the following question: "...do you recall a time when Mr. Skakel came to you and confided in you that Michael had told him he may have killed Martha Moxley? Did you have that conversation with Mr. Skakel?" Tr.5/15/02 at 106-107. When Mrs. Ix responded no, the State was permitted to introduce a page from Mrs. Ix's grand jury testimony, State's Exhibit 87, in which she previously testified that the defendant's father said "Michael had come up to him and he said, you know, I had a lot to drink that night and I would like to see, I would like to see if, if I could have had so much to drink that I could have forgotten something and I could have murdered Martha."

Not surprisingly, the prejudicial statement attributed to the defendant through his father to Mrs. Ix was emphasized during the State's closing argument. Tr.6/3/02 at 17 ("...around 1982, the defendant confided in his father ... that he thought he had done it while he was drunk"); Tr.6/3/02 at 118 ("So father Skakel related to Mrs. Ix that the defendant had confided to him, a la Elan, that he thought he might have done it while he was drunk"). The admission of this triple hearsay is in violation of Sections 8-2, 8-7 and 4-3 of the Connecticut Code of Evidence and infringed upon the defendant's state and federal constitutional rights to confrontation, due process and a fair trial pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

7. The Court erred in admitting certain police and autopsy photographs of Martha Moxley which were cumulative and used therefore to shock the jury's conscience. The State introduced at least eighteen photographs taken of the victim either at the crime scene or at the autopsy. See State's Exhibits 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 41, 43, 44, 45, 47, 48, 51, 52; Tr.5/7/02 at 135, 158; Tr.5/8/02 at 81. The admission of all of these eighteen gruesome and shocking photographs was in violation of Sections 4-3 of the Connecticut Code of Evidence and infringed upon the defendant's state and federal constitutional rights to due process and a fair trial pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

8. The Court erred in admitting irrelevant and prejudicial testimony from Matthew Tucciarone and Lawrence Zicarelli, concerning alleged statements made by the defendant, which statements, during their respective proffers to the Court, were never sufficiently connected to the crime charged. See Tr. 5/16/02 at 2-8 (Proffer and argument re: Testimony of Lawrence Zicarelli; Tr.5/15/02 at 153-156 (Proffer and argument re: Testimony of Matthew Tucharoni); Tr.5/15/02 at 166); see also State's Summation, Tr.6/3/02 at 15 ("About six months later in front of the barber, Matt Tuccarone, he said, barber, just minding his own business, I am going to kill him. Why not, I have killed before. Maybe about six months after that, with a gardener chauffeur, Larry Zicarelli, the defendant said, I have done a terrible thing, you wouldn't speak to me again if you knew it. I have to kill myself or get out of the country"); see also Tr.6/3/02 at 120-1 (additional reference to Mr. Tucharoni); Tr.6/3/02 at 131 (additional reference to Mr. Zicarelli). The admission of these statements is in violation of Sections 4-1, 4-3 and 4-5 of the Connecticut Code of Evidence and infringed upon the defendant's state and federal constitutional rights to confrontation, due process and a fair trial pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

9. The State engaged in prosecutorial misconduct by presenting a photograph of the defendant taken in 1979 when he was almost 19 years old and representing that the photograph depicted the defendant in the mid-70s. See State's Exhibits 69 and 89; Testimony of Matthew Tucharoni, Tr.5/15/02 at 160-66; Testimony of Andrew Pugh, Tr.5/20/02 at 145-151. The prosecution and/or its agents were aware of (or should have been aware of) and/or in possession of photographs of the defendant taken in 1975. For example, there is a 1975 photograph of the defendant contained in the book, *Greentown*, by Timothy Dumas, which was published in 1998. See Exhibit A. The 1975 photograph of the defendant depicts a short and slight boy, whereas the 1979 photographs introduced into evidence by the State show a much stronger looking young man. The killer in this case had to have great physical strength in order to deliver the blows to the victim that resulted in the golf club being snapped in several pieces. The admission of these photographs of the defendant taken four years after the crime was misleading and resulted in prejudice. The misleading photographs permitted the jury to make a finding that the defendant had the physical strength to swing a golf club with such force so as to snap the metal when it came into contact with the victim. As a result, the defendant was denied his state and federal constitutional rights to due process and a fair trial pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

10. The Court erred in admitting the tape-recorded conversation between the defendant and Richard Hoffman, which contained inadmissible hearsay as well as irrelevant and prejudicial evidence of the defendant's prior misconduct. See Tr.5/21/02 at 133-137 (proffer and argument); 140-141 (the defendant was a daily drinker by age 13); State's Exhibits 80 and 108. The admission of the tape-recorded conversation between Mr. Hoffman and the defendant, as well as Mr. Hoffman's testimony is in violation of Sections 4-1, 4-3, 4-5 and 8-2 of the Connecticut Code of Evidence and infringed upon the

defendant's state and federal constitutional rights to due process and a fair trial pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

11. The Court erred in excluding, on several occasions, evidence relating to Kim Freehill's residency at The Elan School, which was within the scope of the State's case, as such testimony directly concerned the circumstances under which the defendant made certain statements to fellow residents at Elan. See, e.g., argument during Charles Seigan's testimony, Tr.5/16/02 at 109-113; State's objection sustained during testimony of Sarah Petersen at Tr.5/23/02 at 124. The exclusion of this evidence violated the defendant's state and federal constitutional rights to confrontation, to present a defense, to due process of law and to a fair trial pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

12. The defendant's constitutional rights were violated by the prosecutor's closing and rebuttal arguments. The Connecticut Supreme Court recently noted:

The standards by which we evaluate claims of prosecutorial misconduct are shaped by the unique role prosecutors have in our judicial system. [T]he prosecutor, as a representative of the state, has a duty of fairness that exceeds that of other advocates. [A] prosecutor is not an ordinary advocate. His [or her] duty is to see that justice is done and to refrain from improper methods calculated to produce prejudice and wrongful decisions by the jury [B]y reason of his [or her] office, [a prosecutor] usually exercises great influence upon jurors. His [or her] conduct and language in the trial of cases in which human life or liberty [is] at stake should be forceful, but fair, because [a prosecutor] represents the public interest, which demands no victim and asks no conviction through the aid of passion, prejudice or resentment.

State v. Payne, 260 Conn. 446, 452, 797 A.2d 1088, 1093 (2002) (internal quotations omitted) (quoting State v. Copas, 252 Conn. 318, 336, 746 A.2d 761 (2000)). In this case, the defendant's conviction was obtained through the "aid of passion, prejudice or resentment" in that the prosecutor's summation:

(a) improperly employed prejudicial subliminal messaging techniques during the rebuttal summation, thereby appealing to the emotions, passions and prejudices of the jury. Specifically:

- When the State played and displayed the following words..."I will be bold tonight, you know booze gave me, made me, gave me, courage again.", they displayed the words next to flashing digital photos of Martha's slain body, all photos that were admitted into evidence. See Tr.6/3/02 at 136; Affidavit of Michael Sherman, attached hereto as Exhibit B.
- When the State played the words, "...I remember just like having the feeling of panic like, oh, shit, you know, like my worry of what I went to bed with, I don't know, you know what I mean, I had a feeling of panic," they displayed digital photos of Martha's slain body again, and also blew up in red letters the words "what I went to bed with" as the Defendant was saying them on the recording. See Tr.6/3/02 at 138; Affidavit of Michael Sherman, attached hereto as Exhibit B.

The defendant will be seeking permission to mark as an exhibit a CD that was provided by the State to the defense that contains the images flashed onto the screen during the rebuttal summation. If the State does not agree with Mr. Sherman's representations, then **the Defendant will be requesting a hearing on this issue.** This technique of flashing digital photos of the victim's slain body as the tape recording excerpts of the Defendant's interview with Richard Hoffman were being played constituted subliminal messaging and resulted in prejudice to the defendant, thereby violating the defendant's state and federal constitutional rights to due process of law and to a fair trial pursuant to the Fifth and Fourteenth

Amendments to the United States Constitution and Article I, Section 8 of the Connecticut Constitution.

(b) improperly expressed his personal opinion as to the credibility of the alibi witnesses and as to the defendant's guilt as follows:

- “The importance of that sudden brief one night trip is that the alibi didn’t begin to take shape until some time after the return from Windham.” See Tr.6/3/02 at 97.
- “Not until after their return from Windham did the alibi begin to come up.” See Tr.6/3/02 at 20.
- “It further gives the alibi, *the lie* in this case....”. See Tr.6/3/02 at 104.
- “It started with a simple alibi making accommodations with cousins and brothers.” See Tr.6/3/02 at 133.
- “It is unquestionable that when the defendant repeatedly struck Martha with the golf club, crouched over her to stab her, masturbated on her that he got plenty of her blood on himself.” See Tr.6/3/02 at 112.
- “The answer . . . lies in why his family felt a need to put him in that awful place. Why, because that’s what they decided that they had to do with *the killer* living under their roof.” See Tr.6/3/02 at 131.

See State v. Singh, 259 Conn. 693, 712-13, 793 A.2d 226, 239 (2002) (“The prosecutor may not express his own opinion, directly or indirectly, as to the credibility of witnesses Nor should a prosecutor express his opinion, directly or indirectly, as to the guilt of the defendant Such expressions of personal opinion are a form of unsworn and unchecked testimony, and are particularly difficult for the jury to ignore because of the prosecutor’s special position Moreover, because the jury is aware that the prosecutor has prepared and presented the case and consequently, may have access to matters not in evidence ... it is

likely to infer that such matters precipitated the personal opinions); State v. Yusuf, 70 Conn. App. 594, 800 A.2d 590 (2002) (the prosecutor's reference to the defendant as "the forger" was improper).

(c) made comment on the defendant's failure to testify (Tr.6/3/02 at 139: "However, given the evidence in this case, one thing that is apparent is that the defendant does have a better recollection of that night than anybody who testified before you but then he has great reason to recall"); and repeatedly and improperly characterized the defendant as a "spin master" who was "spinning a tale," despite the fact that the defendant never testified (see Tr.6/3/02 at 94, 124, 132, 133, 134, 135).

It is well settled that "comment by the prosecuting attorney ... on the defendant's failure to testify is prohibited by the fifth amendment to the United States constitution." State v. Brown, 256 Conn. 291, 310, 772 A.2d 1107, 1120 (2001) (quoting Griffin v. California, 380 U.S. 609, 615 (1965)); see also Conn. Gen. Stat. Section 54-84.¹ Even an indirect remark by the prosecutor may violate a defendant's privilege against self-incrimination if it draws the jury's attention to the failure of the accused to testify. State v. Colon, 70 Conn. App. 707, 712-13, 799 A.2d 317, 324 (2002); State v. Arline, 223 Conn. 52, 66, 612 A.2d 755, 762 (1992). "Furthermore, a prosecutor is prohibited from asking

¹ Section 54-84 provides in relevant part:

- (a) Any person on trial for crime ... at his or her option may testify or refuse to testify upon such trial. The neglect or refusal of an accused party to testify shall not be commented on by the court or prosecuting official, except as provided in subsection (b) of this section.
- (b) Unless the accused requests otherwise, the court shall instruct the jury that they may draw no unfavorable inferences from the accused's failure to testify"

for explanations which only a defendant can provide because such questions are an indirect comment on the defendant's failure to testify." Id.

Here, the prosecutor's statement improperly commented on the defendant's failure to explain certain events, naturally and necessarily drawing the jury's attention to the defendant's failure to testify. See State v. Brown, 256 Conn. at 311, 772 A.2d at 1121; State v. Arline, 223 Conn. at 67, 612 A.2d at 762-63. Further, the prosecutor's many references to the defendant as the "spinmaster" who was "spinning a tale" (Tr.6/3/02 at 94, 124, 132, 133, 134, 135) were improper because the defendant never testified. These comments also inappropriately focused the jury's attention on the defendant's failure to testify. See State v. Brown, 256 Conn. at 311, 772 A.2d at 1121. Because of these improper references to the defendant's failure to testify, he was deprived of his state and federal constitutional rights to a fair trial.

(d) appealed to the emotions, passions, and prejudices of the jury, and injected extraneous considerations into the case, by directly or indirectly attempting to put the defendant's *family* on trial and referring to the defendant as a "spoiled brat." See, e.g.:

- Tr.6/3/02 at 92: "Where you are really going to find the truth in this case is in determining what the defendant and his greater family support group have done in this case sometimes with words, sometimes without."
- Tr.6/3/02 at 93: "If this case had come to trial when perhaps it should have some 20 years ago, if the Skakels hadn't managed to keep things under wraps for so long, that Jury's task would have been a simple one"
- Tr.6/3/02 at 97: "Let's stay with the alibi. Why is it so suspect. How was it produced. What did the Skakel family do ... what did the Skakel family do to put this together."

- Tr.6/3/02 at 98: “Consider what the family group did to advance the alibi here in the courtroom.”
- Tr.6/3/02 at 102: “Julie Skakel is the best example of a family support group continuing to this day to do whatever it takes to keep the wraps on Michael Skakel.”
- Tr.6/3/02 at 129: “... clear evidence of a cover up. Why was the defendant at Elan. ...”; at 130: “Why did Ricci confront the defendant with that information. The answer ... lies in why the defendant was there in the first place, lies in why his family felt a need to put him in that awful place. Why, because that’s what they decided they had to do with the killer living under their roof.”
- Tr.6/3/02 at 112: “By the time Detective Lunney arrived at the Skakel home, they had 36 hours to dispose of the evidence. In fact, they were already on their way to Windham..”
- Tr.6/3/02 at 100: the Skakels have “intentionally suppress[ed] their memories and claim a lack of recall. Why, because in their actual recall lies the truth.”.
- Tr.6/3/02 at 16, 126: referred to the defendant as a “spoiled brat.”

See State v. Payne, 260 Conn. 446, 462, 797 A.2d 1088, 1098 (2002) (It is well settled that a prosecutor may not appeal to the emotions, passions and prejudices of the jurors ... We have stated that such appeals should be avoided because they have the effect of diverting the jury’s attention from their duty to decide the case on the evidence When the prosecutor appeals to emotions, he invites the jury to decide the case, not according to a rational appraisal of the evidence, but on the basis of powerful and irrelevant factors which are likely to skew that appraisal”).

In the instant case, the prosecutor improperly appealed to the jury’s emotions, passions and prejudices and diverted the jury’s attention by attempting to transform the trial from a case about the Defendant to a case about the entire Skakel family. The Connecticut Appellate Court recently considered a similar situation where a prosecutor improperly diverted the

jury's attention to persons not involved in the case. In State v. Ancona, 69 Conn. App. 29, 797 A.2d 1138, cert. granted, 260 Conn. 928, 798 A.2d 970 (2002), a case in which a police officer was on trial for assault and fabrication of evidence, the prosecutor inappropriately urged the jury, as the community's representatives, to convict the defendant in order to send a message to all police officers. Id. at 39, 797 A.2d at 1145. In that case, the prosecutor's closing and rebuttal arguments were not limited to the conduct of the defendant alone; rather, the prosecutor continually referred to other police officers involved in the incident and to law enforcement in general. Id. The prosecutor referred to a monument in Washington that honored fourteen or fifteen thousand officers who "died to protect us" and to honor their badge. Id. The court held that the prosecutor's comments were an improper and blatant attempt to divert the jurors' attention and appeal to their emotions, passions and prejudices. Id. The court stated:

The prosecutor was attempting to color the jurors' minds with such emotion that they would consider it their duty to convict the defendant, regardless of the evidence. These comments could well have served to undermine the neutrality of the jury by distracting the jury's attention to either irrelevant factors or to matters of emotion and thereby divert the jury's attention from the issues in the case.

Id. at 40, 797 A.2d at 1145.

As in Ancona, where the prosecutor made many references to other police officers who were not on trial in order to inflame the jury's emotions, the prosecutor in the instant case made numerous inappropriate references to various members of the Skakel family and diverted the jury's attention by attempting to put the entire Skakel family on trial. This improper argument deprived the Defendant of a fair trial.

(e) engaged in a pattern of deliberately misrepresenting the facts, arguing facts not in evidence, presenting argument that was factually inaccurate; namely, that the Skakel family and Sutton Associates concocted the masturbation-in-the-tree story after Dr. Henry Lee became involved in order to counter the possibility that the defendant's DNA would be found at the scene. See, e.g.:

- Tr.6/3/02 at 10-11: "This, as you review the evidence, is where the absolutely weird masturbation story acquires significanceHenry Lee presented to you some weeks ago the history of DNA in solving crimes, By 1991 or 1992, it was the real deal in criminal investigation. When this case, this investigation was revived in late 1991, every criminal investigator on the planet was totally attuned to this miraculous new technology and of course that would include the PIs the Skakel family had hired to assist them in the defense, Sutton Associates"; Tr.6/3/02 at 12: "You didn't have to be a fly on the wall when the Sutton Associates came into the picture in 1992 to understand why the defendant soon was serving up his bazaar [sic] tale of masturbation in a tree to his friend, Andy Pugh, and later to Richard Hoffman ... And not knowing what traces may have been recovered from her body and of course the crime scene investigation or from her clothing or exactly who he may have related this horrible tale to, particularly in his years at Elan, he needed some kind of explanation."
- Tr.6/3/02 at 93-4: "So, it is Michael Skakel who has set the buffet menu here. As a result, starting in 1992 with Andy Pugh, the defendant having already consulted with Sutton Associates, has spun a tale of tree climbing, spying and masturbating that occurred after his return from Terriens."
- Tr.6/3/02 at 110: "...that does not mean that you cannot consider the sudden presence of Sutton Associates particularly as it relates to the defendant's Andy Pugh masturbation story. This is simply more evidence of what the defendant was doing to avoid a successful state prosecution."
- Tr.6/3/02 at 113: "The only person on earth who knew the defendant had masturbated anywhere was the defendant so why ever mention it to Andy Pugh – only one conceivable reason, to help explain himself should his DNA ever be discovered."

"[W]hile a prosecutor may argue the state's case forcefully, such argument must be fair and based upon the facts in evidence and the reasonable inferences to be drawn therefrom....

[T]he privilege of counsel in addressing the jury ... must never be used as a license to state, or to comment upon, or even to suggest an inference from, facts not in evidence, or to present matters which the jury [has] no right to consider.” State v. Copas, 252 Conn. 318, 336-37, 746 A.2d 761 (2000).

“A prosecutor, in fulfilling his duties, must confine himself to the evidence in the record [A] lawyer shall not ... [a]ssert his personal knowledge of the facts in issue, except when testifying as a witness Statements as to facts that have not been proven amount to unsworn testimony, which is not the subject of proper closing argument.” State v. Singh, 259 Conn. 693, 717, 793 A.2d 226, 241-42 (2002) (quoting State v. Whipper, 258 Conn. 229, 274, 780 A.2d 53 (2001)).

In the present case, the evidence presented clearly indicated that the defendant had confided the masturbation in the tree story at least five years before either Dr. Lee or Sutton Associates were involved in the matter. The State presented evidence that in the summer of 1987 the defendant had confided to Michael Meredith that he climbed a tree outside of Martha Moxley’s window and masturbated. Tr.5/20/02 at 112; 127. Thus, the State’s argument that the defendant and representatives from Sutton Associates concocted the masturbation story in 1992 following Dr. Lee’s appearance in the case and to counter possible DNA evidence is both an unfair characterization of the evidence and pure conjecture.

In addition to the examples cited above, the prosecutor made the following improper arguments:

- Tr.6/3/02 at 20-21: “You just heard of the events of November 15 a lot last week, how father Rushton took all of his kids, Terrien as well, as a group, to give their stories to the police. By whom it was produced.”
- Tr.6/3/02 at 97: “And then you had the additional fact of two weeks after the murder, father Skakel, father Rushton Skakel, escorting the entire family together plus Jim Terrien almost like leading the VonTrapp family over the alps to the police station to give their recorded but unsworn statements.”
- Tr.6/3/02 at 110: “And then he escorted or rehearsed a group of alibi witnesses down to the police station a few weeks later.”
- Tr.6/3/02 at 129: “And the most amazing thing about these dozen admissions of the defendant, it is not like they were produced as a group. It is not like they were marched down to the Greenwich Police Station by Dad to all give an alibi.”

Once again, these arguments were not supported by the evidence, nor were they supported by the information known to the prosecutor. Detective James Lunney testified that he contacted Rushton Skakel, Sr. to bring his children down to give recorded statements to the police about the events of October 30, 1975. See Tr.5/28/02 at 83. Furthermore, the prosecutor was aware from a police report prepared on November 15, 1975 that Mr. Skakel did not gratuitously “march” his children to the police station to give an alibi, but rather, Mr. Skakel responded to Detective Lunney’s request. The 1975 police report indicates the following:

Detective James Lunney contacted Rushton Skakel and requested that he appear at the detective bureau with his following described children for an interview which would be tape-recorded. Mr. Skakel was agreeable, and appeared at the detective bureau with his children.

.....

The following described youths were also requested to appear at the detective bureau for the tape-recorded interview.

Andrea Shakespeare ...
James Terrien ...

Mrs. Robert Ix, Walsh Lane, Town also appeared at the detective bureau with her following described daughter for an tape-recorded interview.

Helen Ix

All of the aforementioned subjects were interviewed with their knowledge that they were being tape-recorded at this time.

See 11/15/75 Police Report, Exhibit C. According to the police report, Detective Lunney requested James Terrien's appearance at the police department which is contrary to the innuendo created by the prosecutor's remarks that Mr. Skakel dragged Mr. Terrien to the police station in order to provide his son, Michael, with an alibi.

Therefore, since the prosecutor's argument contained a pattern of misrepresenting the evidence, the defendant was deprived of his constitutional rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article First, Section 8 of the Connecticut Constitution.

13. The Court erred when it *sua sponte* interrupted the defense closing argument and advised the jury to disregard defense counsel's inappropriate argument to the effect that "[t]hey would rather have the lousy contaminated diminished memories of 2002 and maybe 1998 than a recorded, a recording of what happened back in 1975." See Tr.6/3/02 at 46.

14. The Court erred in informing the jury "the state has filed a motion for curative instruction concerning certain parts of defense counsel argument to you which I have granted to the following extent" and then in instructing the jury to disregard defense counsel's statements that the defendant "didn't do it" and "doesn't know who did." See Tr.6/3/02 at 141-42.

15. The Court erred in unfairly marshaling the evidence during its charge to the jury, by highlighting the state's case and diminishing the defense case. See, e.g., Tr.6/3/02 at 158-160 (used testimony of defense witness – Georgeann Dowdle – to illustrate legal principal of prior inconsistent statement while using a state's witness – Gregory Coleman – to illustrate a prior consistent statement); at 174 (drew attention to defendant's alleged admissions to Gregory Coleman and John Higgins for consideration on the issue of intent); at 176 (“rivalry ... between the two brothers ... one witness said Thomas was the defendant's nemesis”); at 178 (emphasizing state's witness Andrea Renna's testimony; and, stating the State's alternative theory as to time of death). See State v. Pierce, 69 Conn. App. 516, 535, 794 A.2d 1123, 1135 (2002) (quoting State v. Davis, 255 Conn. 782, 797, 772 A.2d 559 (2001)) (“To avoid the danger of improper influence on the jury, a recitation of the evidence should not be drawn as to direct the attention of the jury too prominently to the facts in the testimony on one side of the case, while sinking out of view, or passing lightly over, portions of the testimony on the other side, which deserves equal attention In marshaling the evidence, the court must be careful not to imply any favor or criticism of either side”).

16. The Court erred in its instructions to the jury on consciousness of guilt, which instructions included the proposition that “the defendant's statements as to his activities and whereabouts on the night in question, if you find them to be false or materially inconsistent, might be offered because such statements tend to show a consciousness of guilt.”

17. The Court erred in its instructions to the jury on motive by informing the jury that “a total lack of evidence of motive does not necessarily raise a reasonable doubt as long as there is other evidence produced that is sufficient to prove guilt beyond a reasonable doubt.” Tr.6/3/02 at 175; see also, Tr.6/3/02 at 176-7 (“Please remember that if the absence of an apparent motive does not raise a reasonable doubt that the accused is guilty,

then the mere fact that the state has been unable to prove what the motive of the accused actually was does not prevent the Jury from returning a verdict of guilty”).

18. The Court erred in its instructions to the jury by inviting the jury to disregard the testimony of the alibi defense witnesses who are family members. See Tr.6/3/02 at 177-8 (“Interested persons sometimes estimate the time of an occurrence when such a time would be favorable to some desirable end or persons may at a later time be led into mistake when their memories are no longer certain with respect to the day and hour”).

19. The Court erred in its instructions and re-instructions to the jury on the concept of reasonable doubt. See Tr.6/3/02 at 146-7. Those instructions were erroneous in that:

(a) they defined a reasonable doubt as “one for which you can in your own mind conscientiously give a reason”;

(b) they defined a reasonable doubt as “a real doubt, an honest doubt”;

(c) they defined reasonable doubt in terms of “hesitation to act”;

(d) they defined reasonable doubt in negative terms, e.g., that a reasonable doubt could not be based on “conjecture” and had to be “something more than . . . surmise,” thereby improperly restricting the jury’s consideration of potentially eligible doubts;

(e) they mandated that the jury “distinguish between a reasonable hypothesis and a possible one . . . a mere possible suspicion of innocence will not suffice”; and,

(f) they suggested that the jury might be required to be able to “reconcile all of the facts proved with any reasonable theory consistent with the innocence of the accused” in order to acquit the defendant.

20. The Court erred in suggesting to the jury that in its deliberations, the jury would be determining the guilt or the innocence of the defendant as opposed to determining

whether the State has proven each and every element of the crime charged beyond a reasonable doubt. In other words, a defendant need not be “innocent” in order for the jury to acquit, yet, the Court instructed the jury it would be determining the defendant’s “guilt” or “innocence.” See Tr.6/3/02 at 180 (“You are to find the fact of guilt or innocence of the accused uninfluenced by the probable punishment or consequences which follow a conviction”); at 182 (“The state is as much concerned in having an innocent person acquitted as having a guilty person convicted”).

21. The Court erred in not *sua sponte* instructing the jury on manslaughter in the first degree pursuant to Conn. Gen. Stat. Section 53a-55(a)(2), a lesser included offense of murder. The Defendant notes that in 1984, the Connecticut Supreme Court rejected a defendant’s claim that the trial court was required to charge on extreme emotional disturbance in the absence of a request to charge. State v. Jacobowitz, 194 Conn. 408, 480 A.2d 557 (1984). The Jacobowitz Court stated: “Failure by the defendant in the present case to request that the trial court charge on extreme emotional distress coupled with the paucity of evidence proffered to substantiate such a charge justified the trial court’s failure to charge. 194 Conn. at 412, 480 A.2d at 559.

However, the defendant in the instant case is requesting the Court to revisit the issue in light of the State’s closing argument in which it argued factors that would have justified a verdict for manslaughter in order to obtain a murder conviction. (See State’s Summation, Tr.6/3/02 at 12: “...he administered the ultimate and sickest of humiliations, clearly not a person in his normal state as he related to Alice Dunn some years later at Elan”; at 16: “he told her ... that he was in a blackout, that he may have done it”; at 17: “...the defendant

said to Higgins, I had a blackout” and “...the defendant confided to his father ... that he thought he had done it while drunk”; at 116: “[w]e are talking about a teenager and we are talking about a clearly troubled teenager. So, what surely wouldn’t motivate anybody in this room to contemplate murdering somebody needs to be viewed from the off kilter perspective of Michael Skakel in 1975”); at 117: (“We also know from Alice Dunn the defendant was not in his normal state that night”); at 124: (The defendant’s admission to Alice Dunn that he was not in his normal state -- “the evidence demonstrates that fact in spades”). Based upon the State’s closing argument, the defendant submits it was incumbent upon the Court to *sua sponte* instruct the jury on the lesser included offense of manslaughter in the first degree.

22. The Court erred in denying the defendant’s motion to excuse Juror H. William Smith on the grounds of flagrant juror misconduct. See Tr.5/23/02 at 2-40.

23. The Defendant’s constitutional rights were violated based on the post-trial comments of one or more jurors, which suggest that the jury had difficulty following all of the Court’s instructions.²

24. The Court erred in denying Defendant’s Statute of Limitations defense during the trial’s preliminary hearings. See Court’s Memorandum of Decision Re: Motion To

² In a June 8, 2002 *Hartford Courant* article, Juror Cathy Lazansky described the jury’s deliberation process: “We worked very, very hard to find *something that would acquit Michael Skakel* . . . We just couldn’t.” *Id.* at A6 (emphasis supplied). In addition, in a June 11, 2002 television interview, which can be provided to the Court upon request, Juror Lazansky further described her deliberation method: “I can’t find anything to acquit this guy.” Additionally, in a Court TV interview with Catherine Crier on or about June 11, 2002, one or more jurors indicated that they were turned off by the defendant’s courtroom body language. The foreperson stated that the defendant appeared to be “patronizing” the panel. Thus, the defendant’s Fifth Amendment right to remain silent was violated if the jurors considered the defendant’s courtroom body language in its deliberations.

Dismiss dated December 11, 2001. The Defendant relies upon the arguments contained in his Memorandum Of Law In Support Of Motion To Dismiss filed on June 20, 2000 and his Supplemental Memorandum Of Law filed on May 21, 2001, as well as any and all oral argument held before the Court during the pretrial proceedings.

25. The case should be dismissed, or a new trial should be required, because the State used materials protected by the attorney-client privilege and attorney work product doctrine in its investigation and prosecution of the defendant. This misconduct, which involved the State's use of the so-called "Sutton Report," affected the investigatory, grand jury, pre-trial and trial phases of this case. These actions violated defendant's rights under the due process clauses of the federal and state constitutions. They are also remediable under the Court's supervisory powers. **Defendant is entitled to an evidentiary hearing to establish the nature and extent of the misconduct at issue.** See United States v. Schwimmer, 892 F.2d 237 (2d Cir. 1989) (ruling that trial court erred by failing to hold evidentiary hearing to determine whether there was any taint arising from government's alleged use of work papers prepared by accountant hired to assist defense attorneys); United States v. Weissman, No. S2 94 Cr 760 (CSH), 1996 WL 751386 (S.D.N.Y. Dec. 26, 1996) (holding Schwimmer hearing to determine if there was any taint arising from government's alleged use of attorney work product).


26. The case should be dismissed as a result of the State's failure to initiate these criminal proceedings by grand jury indictment, as required under the express provisions of the Connecticut Constitution as it existed at the time of the criminal conduct as alleged. See Connecticut Constitution of 1818, Article First, Section 9; Connecticut Constitution of 1965, Article One, Section 8. The State's failure to proceed by way of grand jury indictment

violated defendant's rights under Article One, Section 8 of the Connecticut Constitution, as it existed at the time of the offense charged; the due process clauses of the federal and state constitutions; the ex post facto clauses of the federal and state constitutions; and the equal protection provisions of the state and federal constitutions.³

WHEREFORE, Defendant requests that the foregoing Amended Motion for New Trial And Request For An Evidentiary Hearing be granted.

RESPECTFULLY SUBMITTED,

**THE DEFENDANT,
MICHAEL SKAKEL**

By 

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³ A statutory version of the ex post facto claim raised here was rejected in State v. Rollinson, 203 Conn. 641 (1987) (upholding retroactive application of C.G.S. Sec. 54-46a against ex post facto challenge). However, the Court in Rollinson was not asked to decide, and thus did not address, whether (1) the constitutional amendment abolishing the accusatory grand jury in Connecticut was intended by the voters to apply retrospectively, or (2) if so, whether that amendment, as applied to these facts, violated the due process and/or equal protection rights of defendant. We also expressly reserve the right to challenge the holding of Rollinson under the ex post facto provision of the federal constitution.

ORDER

The foregoing motion, Defendant's Amended Motion for New Trial And Request
For Evidentiary Hearing , having been heard, it is hereby ORDERED:

GRANTED / DENIED

So, ORDERED,

BY _____, J.

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been hand-delivered this 26th day of August, 2002 to the following counsel of record:

Jonathan Benedict, Esq.
Susann Gill, Esq.
Judicial District of Fairfield
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HOPE C. SEELEY

EXHIBIT A

GREENTOWN

MURDER AND MYSTERY

IN GREENWICH,

AMERICA'S

WEALTHIEST COMMUNITY

TIMOTHY DUMAS



ARCADE PUBLISHING • NEW YORK

A330

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The back of the Skakel house, showing the path Martha would have taken on her way home on October 30, 1975.



Michael Skakel, third from right, top row, shown with teammates from Brunswick School's ninth-grade soccer team, 1975. (COURTESY GREENWICH LIBRARY)



Ken Littleton, standing at left, in a photograph of Brunswick School's junior varsity basketball team, 1975.

(COURTESY GREENWICH LIBRARY)



with Brunswi.



Eleventh.

*Brunswic
(COURTESY G.*

EXHIBIT B

AFFIDAVIT

STATE OF CONNECTICUT)
) ss. Greenwich August 24, 2002
COUNTY OF FAIRFIELD)

The undersigned, being duly sworn, hereby deposes and says:

1. I am trial counsel to Michael C. Skakel, having represented him continuously from July of 1998 to present.
2. I represented Michael C. Skakel in his trial for Murder which resulted in a Verdict of Guilty on June 7, 2002.
3. The State's Attorney, in his final argument to the jury, employed the use of audiovisuals which were prejudicial to my client, depriving him of a fair trial for the following reasons:

A. Excerpts from an audio narrative of the Defendant were played to the jury and shown on a large screen, wherein certain words and phrases were highlighted. This narrative, in evidence, was the product of an abandoned effort by the Defendant to write a book about his life, collaborating with author Richard Hoffman, whose tapes had been seized by the state for the purposes of this case.

B. When the State played and displayed the following words..."I will be bold tonight, you know booze gave me, made me, gave me, courage again.", they displayed the words next to flashing digital photos of Martha's slain body, all photos that were admitted into evidence.

- C. When the State played the words, "...I remember just like having the feeling of panic like, oh, shit, you know, like my worry of what I went to bed with, I don't know, you know what I mean, I had a feeling of panic," they displayed digital photos of Martha's slain body again, and also blew up in red letters the words "what I went to bed with" as the Defendant was saying them on the recording.
4. It is the understanding and belief of the affiant that the producer of this audiovisual presentation has lectured to several prosecutorial organizations relative to this case and this presentation, BOASTING of the use of SUBLIMINAL MESSAGING in order to produce a finding of Guilty by the jury.



Michael Sherman

Sworn to and subscribed to before
me this 24th day of August, 2002.



Commissioner of the Superior Court

EXHIBIT C

GREENWICH POLICE DEPARTMENT

195

Follow-up Report

Complaint Homicide Complaint No. D-20262
 Complainant Martha Moxley Address Walsh Lane, Greenwich, Conn.
 Additional Persons Arrested _____ Arrest No. _____
 No. _____
 No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

RECEIVED AND NOTED BY
DEPUTY CHIEF OF POLICE

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

9:30 A.M. November 15, 1975-- Det's. rosko- Lunney

Detective James Lunney contacted Mr. Rushton Skakel and requested that he appear at the detective bureau with his following described children for an interview which would be tape-recorded. Mr. Skakel was agreeable and appeared at the detective bureau with his children.

- Steven- DOB- 9-9-68
- David- " 7-24-63
- Michael- " 9-19-60
- John -- " 5-16-59
- Thomas- " 4-14-58
- Julia " 4-21-57

The following described youths were also requested to appear at the detective bureau for the tape-recorded interview.

- Andrea Shakespeare- DOB-1-27-59
- James Terrien-- " 11-8-57

Mrs. Robert Ix, Walsh Lane, Town also appeared at the detective bureau with her following described daughter for an tape-recorded interview.

Helen Ix -DOB- 4-10-60

All of the aforementioned subjects were interviewed with their knowledge that they were being tape-recorded at this time.

The reason for a re-interview with the aforementioned subjects is an attempt to gain further information relative to this investigation.

Tape recordings tagged as evidence.

I recommend this case be closed

- Unfounded
- Resolved by Arrest
- Conditionally Cleared
- Inactive (Not Cleared)

Signed Alvin J. Busho (tjb) Date Nov. 15, 1975
 Investigating Officer
 Signed Capt. Thomas J. Keegan Date Nov. 15, 1975
 Commanding Officer

FORM GPD-010

FST CR00-135-792-T
STATE OF CONNECTICUT

V.

MICHAEL SKAKEL

: JUDICIAL DISTRICT OF
: STAMFORD/NORWALK
: AT STAMFORD
:
: AUGUST 26, 2002

**DEFENDANT'S MEMORANDUM, SUBMISSION AND OFFER
OF PROOF IN SUPPORT OF HIS MOTION FOR A NEW TRIAL
BASED ON THE STATE'S FAILURE TO DISCLOSE A COMPOSITE
DRAWING, THE LITTLETON AND THOMAS SKAKEL PROFILE
REPORTS AND TO HAVE THE DRAWING AND REPORT MARKED
FOR IDENTIFICATION OR AS A COURT EXHIBIT AND FOR A HEARING**

I. Offer of Proof

The State failed to disclose to the defense a composite drawing of a person seen near the homicide scene and the Skakel residence during the evening of October 30, 1975 and profile reports of Kenneth Littleton and Thomas Skakel prepared by former Inspector John Solomon which detail incriminating evidence pointing to Littleton and/or Thomas Skakel as the killer of Martha Moxley.

The defense requests a hearing regarding these issues and that the composite drawing and reports be marked for identification or as a court exhibit.

In support of the motion for new trial and for a hearing, the Defendant submits the following offer of proof:

1. The Defendant filed a motion for discovery and inspection dated June 12, 2000.
2. Part I of the motion is a detailed request for exculpatory information or material.

3. In his request for exculpatory information at paragraph 21, the Defendant moved for: "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."

4. At paragraph 22 the Defendant made the following request: "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..."

5. Section II of the motion, entitled Physical Evidence sought inter alia:

A. "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,..." (Paragraph 47)

B. "Any photograph(s), sketch(es), videotapes(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." (Paragraph 55)

6. Section IV of the motion entitled Forensics sought inter alia:

A. "Any composite drawings or photographs of suspects in the case which were prepared by law enforcement officers or their agents in connection with the investigation of the alleged offense." (Paragraph 68)

7. The Defendant also filed a motion for discovery and inspection dated May 21, 2001.

8. Section I of the motion was a detailed request for exculpatory and favorable information.

9. Section II of the motion was entitled Physical Evidence and sought inter alia:
 - A. "Photographs, composite sketches or other media replications that depict the likeness or physical attributes of the alleged perpetrator of this crime." (Paragraph 55)
 - B. "Any photograph(s), sketch(es), videotape(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." (Paragraph 57)
10. The State filed a specific objection dated August 10, 2001 to the Defendant's motion for discovery and inspection dated May 21, 2001.
11. The State had no objection to Defendant's request for exculpatory and favorable information or material except as to Defendant's paragraphs 6, 7, 13, 14, 20, 23, 24, 27, 28, 29, 36, 43, 46, and 49.
12. The State had no objection to the Defendant's request for physical evidence, which included requests for composite sketches and drawings.
13. Despite its exculpatory nature, and the State's agreement to comply, the State failed to disclose a composite sketch of a person seen near the homicide scene between 9:30 and 10:00 p.m. on October 30, 1975. The sketch is appended hereto as Exhibit A.
14. The sketch was first provided to the Defendant on August 21, 2002.
15. The sketch bears a striking resemblance to Kenneth Littleton.
16. The sketch was material to the Defendant's case because he offered evidence that Kenneth Littleton was the probable killer.

17. The State considered Littleton a suspect in the course of the investigation.

18. The circumstances surrounding the preparation of the sketch are provided in the police reports prepared during the investigation.

19. A report dated October 31, 1975, signed by Detective Michael Powell and Captain Thomas Keegan, relates the following: Special Officer Charles Morganti, Jr. told Detective Powell of the Greenwich Police Department that while on patrol in Belle Haven on October 30, 1975, at around 10:00 p.m. he observed a white male walking northerly on Field Point Road on the east side of the highway. Morganti approached the man and asked him where he was going. The man replied that he lived on Walsh Lane and was going home. Morganti viewed the same man a few minutes later walking northbound on the west side of Otter Rock Drive, just north of the Walsh Lane intersection. Morganti described the individual as a white male, 6' tall, 200 lbs., late 20's to early 30's, dark rimmed glasses, fatigue jacket, tan slacks, blond hair. Morganti viewed a William Edward Hammond and related that he was not the subject he observed. (Exhibit B hereto.)¹

20. Detective Michael Powell and Captain Keegan filed a report dated November 1, 1975. That report related that Morganti was contacted and related that he would appear at the Detective Bureau for the purpose of putting together a composite picture of the suspect he had observed on Field Point Road near Walsh Lane on October 30, 1975. (Exhibit C hereto.)

¹ If Morganti is referring to Carl Wold, his observations are in conflict with the observations of Special Officer John Duffy who told police he saw Wold walking on Field Point Road on October 30, 1975 between 6:00 and 6:30 p.m. Wold told Duffy he was going home. Duffy told police no vehicles stopped Wold for the purpose

21. Detective James Lunney and Captain Keegan signed a report dated November 6, 1975. That report related that on November 5, 1975 at 7:00 p.m. a Carl J. Wold was re-interviewed. Wold was described as 23 years of age. Wold told the detectives that on October 30, 1975 he went out for his nightly walk at approximately 7:20 p.m. He further related that at the Field Point Police Booth he stopped and had a short conversation with the officer on duty. He then entered onto Field Point Circle, walked around the circle, entered onto Smith Road, proceeded to the Simmon's residence, turned and proceeded to walk home. While he was returning home, Mr. Wold was stopped by a special police officer on Field Point Road, just south of the intersection of Walsh Lane. Wold was questioned as to where he was going and told the officer that he was returning to his home on Walsh Lane. He stated that he then entered onto Walsh Lane, walked down to the approximate location of the Ix's driveway, directly across from the Moxley residence. Wold then turned around and walked back towards his home and entered his home sometime around 8:00 p.m.² Mr. Wold (referred to in the report in error as "Mr. Walsh") told the detectives that he was wearing a brown (olive) field jacket, yellow corduroy shirt, tan slacks, top-sider shoes. The report described Mr. Wold as 6'1", 210 lbs., dark brown, straight hair, medium length and wearing silver rimmed glasses. (Exhibit D hereto.)

22. Detective Lunney and Captain Keegan signed another report dated November 6, 1975. That report involves another interview of Mr. Wold. Mr. Wold related that after he returned home, he shot a couple of games of pool, went to his room sometime before 9:00

of conversation while he saw him. (Exhibit B.)

p.m., watched the movie *French Connection* from 9:00 p.m. to 11:00 p.m. and then watched the late news from 11:00 to 11:30 p.m. He retired for the night sometime around midnight. Mr. Wold related that his parents were in their bedroom watching television and he had no contact with them during this time. Mr. Wold told the officers, "emphatically", that he did not leave his home between 9:00 p.m. and midnight. Wold also related that he knew Martha Moxley and did not observe her during his walk. Wold also denied that he was on Otter Rock Drive after 10:00 p.m. (Exhibit E hereto.)

The police also interviewed Carl Wold Jr., the father of Carl J. Wold. Mr. Wold, Jr. confirmed that his son arrived home at approximately 8:00 to 8:15 p.m. He believed that his son shot pool for a short time and watched television. He observed his son in his room shortly after 10:30 p.m. (Exhibit E hereto.)

The same report relates a re-interview of special officer Morganti. Morganti reiterated the same story he had related earlier (i.e. observing a subject while on patrol at around 10:00 p.m.) and that he was positive that the subject he stopped on Field Point Road and Walsh Lane was the same subject he observed on Otter Rock Drive, walking northbound on the west side, opposite the Skakel residence. The report further notes that at the time of the interview of Mr. Morganti and Mr. Wold, Mr. Morganti did not view Mr. Wold. (Exhibit E hereto.)

23. A report dated October 8, 1994, apparently prepared in connection with the Moxley homicide, revisited Morganti's observation of the white male. The report is undated, typed on plain paper, without letterhead, and was presumably authored by Frank Garr, an

² A map of the area is attached. (Exhibit C.)

inspector with the State's Attorney's Office. (Exhibit F hereto.)

On October 8, 1994 Mr. Garr met with Morganti, then a television programmer in Chicago, Illinois. The report notes that Morganti had been previously contacted by James F. Murphy, President of Sutton Associates, a firm that Garr relates was hired by the Skakel family.

Morganti told Garr that Murphy wanted to go over the incident involving the individual that Morganti stopped on Field Point Road in Belle Haven on the night of the homicide. Garr's report states in part that: "Morganti again explained how, at approximately 8:00 p.m. or so he observed an individual, wearing a green Army fatigue jacket, and tan slacks, walking in a northerly direction on Field Point Road." Morganti questioned the individual who informed Morganti that he had been out for a walk, and was returning to his home on Walsh Lane.

Then Garr writes the following: "Mr. Morganti continues to explain that sometime between 9:30 p.m. and 10:00 p.m. that same evening he believes he may have observed the same individual walking in a northerly direction through the front yard of a residence on Otter Rock Drive, across from the Skakel residence."

Morganti explained that he was approximately 100 yards from the individual and replacing a wooden stanchion³ when he made the observation. Morganti told Garr that: "He feels certain that his individual was the same person he observed earlier, walking on Field Point Road."

³ On November 6, 1975 Greenwich police interviewed Cynthia Bjork of Otter Rock Drive. At 9:50 p.m.

The report further relates that Morganti reported the episode to the investigators at the time and assisted in the making of a composite sketch of the individual. Garr concludes that: "A complete investigation into the matter was instigated, and it was determined that the individual was one Carl Wold," and that Wold and his immediate family had been interviewed "satisfactorily" with regards to the incident. In his interview, Mr. Wold reported that he had been stopped by a police officer while walking in Belle Haven that evening. He said that he was stopped just prior to returning home, and did not leave his home again that evening. In addition, Mr. Wold submitted to a polygraph examination, which determined him to be truthful in his answers concerning his actions on the night in question. (Exhibit F).

24. The polygraph examination of Wold was conducted on November 7, 1975. He was asked:

Do you know for sure who killed Martha Moxley?

Did you kill Martha Moxley?

Did you strike Martha Moxley with a golf club?

Do you know for sure where the missing section of the golf club is located?

Are you withholding any information from the police relative to the Martha Moxley murder? (Exhibit G hereto.)

25. Mr. Wold was not asked his whereabouts at 8:00 p.m. or between 9:30 and 10:00 p.m. on October 30, 1975.

on October 30, 1975 she observed Officer Morganti replacing a white road stanchion. (Exhibit G hereto.)

26. Attached hereto are affidavits from John Skakel and Julie Skakel. Both affidavits state that the individual depicted in the composite sketch bears features similar to those of Kenneth Littleton as he appeared in October 30, 1975. (Exhibits H and I hereto.)

27. On October 30, 1975 Kenneth Littleton was 23 years old (Exhibit I) approximately 6'1" tall and weighed about 200 pounds. He wore glasses and had dark wavy hair. A photograph of Littleton as he appeared in 1975, is attached hereto as Exhibits J and K.

28. On October 30, 1975 Carl Wold was 23 years of age, 6'1" tall, 210 pounds, dark brown straight hair and wore silver rimmed glasses. (Exhibit D hereto.)

29. On October 30, 1975 the Defendant was much smaller than Carl Wold and Kenneth Littleton. A photograph of the Defendant as he appeared on that date is appended hereto as Exhibit L.

II. Argument.

A. **The Court Should Conduct An Evidentiary Hearing And Grant A New Trial Because Of The State's Failure To Disclose The Composite Sketch And/Or The Littleton Notebook.**

As early as June 12, 2000 the defense filed requests seeking disclosure of evidence that would support a theory of third party culpability. The defense asked the State to disclose the identity of any person who might have been near the crime scene at the time of the homicide; whether any evidence existed that someone other than the Defendant was involved in the commission of the offense; and whether any composite drawings were prepared in the course of the investigation. The State had no objection to the request regarding the composite drawings and was obligated under Brady to disclose any evidence that a third person

committed the homicide.

One of the defenses pursued at trial involved a claim that Kenneth Littleton may have been the killer. Disclosure of the composite drawing would have been the linchpin for such a defense, and in all likelihood would have resulted in a verdict of not guilty.

The police reports prepared a few days after the homicide and the October 8, 1994 report prepared by Frank Garr present the following scenario that should have been considered by the jury. On October 30, 1975 Special Belle Haven Police Officer Charles Morganti was on duty. Morganti told Detective Michael Powell on October 30, 1975 that "at around 10:00 p.m. he observed a white male, 6' tall, 200 pounds, late 20's to early 30's, dark rimmed glasses, fatigue jacket, tan slacks and blond hair walking northerly on Field Point Road, on the east side of the highway. (Exhibit B). Morganti asked the subject where he was going, and he replied that he was going to his home on Walsh Lane. The subject then turned onto Walsh Lane, and was later observed a few minutes later walking northbound on the west side of Otter Rock Drive, just north of the Walsh Lane intersection. (Exhibit B). Morganti was re-interviewed regarding his observations by Detective James Lunney on November 5, 1975. Morganti reaffirmed his early information, and related that he was positive that the subject he stopped on Field Point Road and Walsh Lane was the same subject he observed on Otter Rock Drive, walking northbound on the west side, opposite the Skakel residence. (Exhibit E).

Mr. Morganti told quite a different story to Inspector Garr on October 8, 1994. Morganti told Garr that he spotted and interviewed the individual wearing a green Army fatigue jacket and tan slacks, walking in a northerly direction on Field Point Road at 8:00 p.m.

(Exhibit F). Morganti had told Detective Powell that this conversation occurred at approximately 10:00 p.m.

Morganti then told Inspector Garr that between 9:30 p.m. and 10:00 p.m. he may have observed the same individual walking in a northerly direction through the front yard of a residence on Otter Rock Drive, across from the Skakel residence while he was replacing a road stanchion. Mr. Morganti made this observation from a distance of approximately 100 yards. Morganti told Garr that he was certain that this was the same individual he had seen earlier walking on Field Point Road. (Exhibit F). The police concluded that the individual was Carl Wold and Mr. Garr so notes in his report. ("At that time Mr. Morganti reported the entire episode to the investigators and assisted in the making of a composite sketch of the individual. A complete investigation into the matter was instigated, and it was determined that the individual was one Carl Wold.") (Exhibit F).

The evidence gathered by the Greenwich Police Department is quite to the contrary. Mr. Wold, who was 23 years of age at the time, 6'1", 210 pounds, dark brown, straight hair, medium length and wore silver rimmed glasses and a brown (olive) jacket, yellow corduroy shirt and tan slacks returned home at 8:00 p.m. and never left. (Exhibits D and E)

The person Morganti saw across the street from the Skakel home between the hours of 9:30 and 10:00 p.m. was not Carl Wold. Wold had not left his house after his arrival at 8:00 p.m. The person Morganti saw, however, looked like Wold. On October 30, 1975, Kenneth Littleton was 6'1" tall, 200-210 pounds, had dark hair and wore silver rimmed glasses. Wold was 6' tall, 210 pounds, had dark brown hair and wore silver rimmed glasses. Both men were

23 years old.

Had defense counsel been given the composite drawing he could have argued that the drawing bore striking resemblance to Kenneth Littleton. He could have called persons who had seen Littleton the day of the homicide, such as Julie Skakel and John Skakel (see attached affidavits, Exhibits H and I) and others to confirm the similarities between the sketch and Littleton. Defense counsel could have called the sketch artist and probed him as to what Morganti had told him during the sketch's preparation. Drafts of the sketch may have been preserved, and if so, examined by defense counsel. Morganti could have been called to explain the sketch. Photographs depicting Littleton in 1975 could have been introduced. (See Exhibits J and K, 1975 photograph of Littleton at the Brunswick School). And, of course, the defense could have pointed out that the person depicted in the sketch was not the Defendant. (Exhibit L).

The non-disclosure of the sketch, not only violated Brady, but also violated the State's duty to produce the sketch in response to Defendant's motion for discovery. The State had no objection to the Defendant's request but did not comply. This is not a case of the defense attempting to resurrect an argument after the fact. The defense that Littleton committed the homicide was very much at issue at trial. The composite drawing would have been central in advancing that defense.

The importance of composite drawings in promoting the interests of justice is best illustrated by the case of Siemon v. Stoughton, 184 Conn. 547 (1981). There, the defendant was convicted of deviate sexual intercourse in the first degree when the 16-year-old victim, her

15-year-old brother, and 10-year-old sister identified the defendant as the assailant. After the Connecticut Supreme Court affirmed the conviction, the defendant filed a petition for new trial and writ of habeas corpus. In ordering a new trial, the Connecticut Supreme Court noted the importance of a composite drawing prepared by the police based on interviews with the three children and a pencil sketch prepared by the victim's brother. The composite matched the description of an unknown nude man seen in the vicinity where the victim was assaulted less than one year before the assault. Although a new trial was ordered, the Defendant spent more than three years in prison.

As we noted, the Court need not reach the issue of whether the composite drawing is exculpatory because the State promised to produce composite drawings and did not. Nevertheless, the non-disclosure of the drawing constitutes a Brady violation because (a) it was suppressed by the State after a request was made for it; (b) it was evidence of favorable character for the defense; and (c) it was material. State v. Ortiz, 252 Conn. 533, 545 (2000). The evidence's favorable character and materiality stems from the fact that it places Littleton near the homicide scene at the time the homicide likely occurred, 9:30-10:00 p.m. At the trial Littleton testified that at about 9:30 p.m. on October 30, 1975 the nanny came and asked him to check out the ruckus that was coming from the left hand side of the house by the Revcon. He went out the front door, followed the circular driveway to the left, heard some scuffling in the leaves which spooked him. Littleton further testified that he did not go past the driveway; that he stayed outside a couple of minutes and then went back inside. (Tr. 5/9/02 at 164-167) If Littleton is the person Morganti saw between 9:30 and 10:00 p.m., Littleton was walking

through the front yard of a residence on Otter Rock Drive, across from the Skakel residence.

At a minimum, the composite drawing, together with the Morganti interview with Garr in 1994 would support the inference that Littleton was walking in a yard across from the Skakel residence between 9:30 and 10:00 p.m. Such evidence would have acted as a significant impeachment of Littleton's testimony that he did not leave the Skakel property when he went outside at 9:30 p.m. The State's obligation to provide evidence to the defense encompasses evidence affecting a state witness' credibility. Giglio v. State, 405 U.S. 150, 154 (1972); see also State v. Floyd, 253 Conn. 700, 737 (2000). "The defendant does have a right under the confrontation clause to expose to the jury the facts from which jurors as the sole triers of facts and credibility, [can] appropriately draw inferences relating to the credibility of the [state's] witness." State v. Morant, 242 Conn. 666, 682 (1997) (citing Davis v. Alaska, 415 U.S. 308, 318 (1974) (internal quotation marks omitted)).

B. The Littleton Profile Report Prepared By Former Inspector John Solomon Should Have Been Disclosed To The Defense.

At trial, former State's Attorney Inspector John Solomon testified. Solomon played a central role over the years in the Moxley investigation. Solomon testified that he had prepared a report that he referred to as a profile summary of Littleton. (Tr. 5/13/02 at 62). Solomon testified that he generated the report and had a copy of it in his car. (Tr. 5/13/02 at 61). The State's Attorney stated that he had the report downstairs "and the defense has that but I have a funny feeling that you can find yours easier than we can find ours." (Tr. 5/13/02 at 62). A recess was taken; Solomon obtained the report and used it to refresh his recollection. (Tr. 5/13/02 at 62-63). On cross-examination from the State's Attorney, Solomon referred to the

report again to refresh his recollection. (Tr. 5/13/02 at 72-73). The report was prepared to show why Littleton was a suspect. (Tr. 5/13/02 at 77). The profile was prepared in 1992 and includes all of the most important information that Solomon had that pointed towards Littleton. (Tr. 5/13/02 at 82). Solomon had reviewed the report a few days before testifying. (Tr. 5/13/02 at 82).

Although the State's Attorney indicated that the defense had the Littleton profile report, it was clear from remarks made by defense counsel that it was not given to the defense. When Mr. Solomon asked defense counsel for a copy of the report, defense counsel responded, "I don't have it." The State's Attorney then stated, "I don't have it now." (Tr. 5/13/02 at 61). It was after this exchange that Mr. Solomon stated that he had a copy of the report in his car. (Tr. 5/13/02 at 61). When Solomon stated that the original report "should be here", the State's Attorney stated, "I don't know what you are even referring to." When Solomon referred to the report as a profile summary of Littleton, the State's Attorney replied, "We have that downstairs and the defense has that but I have a funny feeling that you can find yours easier than we can find ours." (Tr. 5/13/02 at 62).

During examination from the State's Attorney, Solomon used the report to refresh his recollection, and referred to page 30 of the report. (Tr. 5/13/02 at 72). Before he began his redirect examination, defense counsel asked the Court to see the document Mr. Solomon used to refresh his recollection. (Tr. 5/13/02 at 76). The Court granted defense counsel permission to examine that portion of the report Solomon used to refresh his recollection. (Tr. 5/13/02 at 76). Then the following exchange took place between defense counsel and Mr. Solomon:

Q: Chief, what is this that I am holding?

A: I beg your pardon?

Q: What is this?

A: It's a summary profile that I prepared as we did in several of the individuals in the case and it kind of lays out the incriminating statements, evidence that – it's kind of a summary of that, why that person is a suspect.

Mr. Sherman: Can we get a copy of this?

The Court: Not right now. You are talking about examining the witness. (Tr. 5/13/02 at 77).

The Littleton profile document consists of forty-three (43) pages. (Tr. 5/13/02 at 81).

It is obvious from the foregoing that the Littleton profile report was never disclosed to the defense. It is also obvious that the report is filled with exculpatory information. It should be disclosed forthwith, marked for identification or as a Court exhibit. The defense respectfully requests the Court to examine the report and to order a new trial.

Disclosure of the report could have provided an important resource in the examination of Solomon. The Defendant reserves the right to supplement his argument after he has reviewed the report.

C. The Thomas Skakel Profile Report Prepared By Former Inspector John Solomon Should Have Been Disclosed To The Defense.

Former Inspector Solomon also prepared a profile report concerning Thomas Skakel. Like the Littleton profile, the Thomas Skakel report contained the incriminating evidence pointing to Thomas Skakel as the killer of Martha Moxley. (Tr. 5/13/02 at 81). The Thomas Skakel report was not disclosed to defense counsel. Therefore, the Defendant would ask that the report be given to defense counsel forthwith, that it be marked as an exhibit, that the Court

review it and that a new trial be ordered. Defense counsel reserves the right to supplement his argument after he reviews the report.

III. Conclusion.

The Defendant asks that the Court order a new trial based upon the State's failure to disclose the composite sketch and/or the Kenneth Littleton and Thomas Skakel profile reports; that the Court conduct a hearing regarding the non-disclosure of the sketch and the reports; and that the composite sketch and reports be marked for identification or as a Court exhibit.

RESPECTFULLY SUBMITTED,

**THE DEFENDANT,
MICHAEL SKAKEL**

By 

Hubert J. Santos, Esq.
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Michael Sherman, Esq.
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Tel: (203) 324-2296
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ORDER

The foregoing motion having been heard, it is hereby:

GRANTED/DENIED.

BY THE COURT

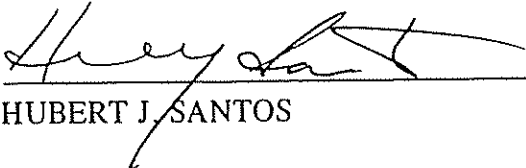
Judge

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been mailed via first class mail, postage prepaid this 26th day of August, 2002 to the following counsel of record:

Jonathan Benedict, Esq.
Susann Gill, Esq.
Judicial District of Fairfield
1061 Main Street
Bridgeport, CT 06604

Christopher Morano, Esq.
Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067



HUBERT J. SANTOS

EXHIBIT A



EXHIBIT B

GREENWICH POLICE DEPARTMENT

17

Follow-up Report

Complaint Homicide Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh La., Greenwich, Connecticut
 Additional Persons Arrested _____
 _____ No. _____
 _____ No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

RECEIVED AND NOTED BY
DEPUTY CHIEF OF POLICE

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

While assisting the State Police Officers in a search of the area the undersigned was approached by the following described subject:

Special Officer Charles Morganti Jr., age 28,
#7 Sherwood Ave., Greenwich, Connecticut, Tel. 531-6169

S.O. Morganti related that he was working the Belle Haven area last evening on a special duty basis and that while on patrol at around 10:00 p.m. he observed the following described subject walking northerly on Field Point Rd. on the east side of the highway:

White, male, 6' tall, 200 lbs., late 20's to early 30's
dark rimmed glasses, fatigue jacket, tan slax, blonde hair

Morganti asked the subject where he was going the the subject replied "I'm going home, I live on Walsh La." with this the subject turned into Walsh La., this same subject was later observed in just a very few minutes walking northbound on the west side of Otter Rock Dr. just north of the Walsh La. intersection.

S.O. Morganti viewed subject William Edward Hammond and related that is not the subject that he had observed the previous evening.

I recommend this case be closed

- Unfounded
- Cleared by Arrest
- Exceptionally Cleared
- ive (Not Cleared)

Signed Det. Michael Powell (MWP) Date 10-31-75
 Investigating Officer
 Signed Capt. Thomas J. Pegan Date 10-31-75
 Commanding Officer

FORM GPD-010

P-0017

GREENWICH POLICE DEPARTMENT

Follow-up Report

112

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh Lane, Belle Haven, Greenwich
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____
 _____ No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____

RECEIVED AND NOTED BY
DEPUTY CHIEF OF POLICE
Date

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

11/6/75 - 10:15 A.M. - Dets. McGlynn - Lunney

Contacted Special Officer, John Duffy, age 69, 44 Pellom Place, Stamford, Conn., Tel: 324-3844 - who is employed as a Special Police Officer for Field Point Park Association and who was on duty 10/30/75 at the police booth located at the intersections of Field Point Drive, Field Point Road, and Field Point Circle.

Mr. Duffy stated through a physical description given him of Carl Wold, age 23, he knows him to be a daily walker who lives on Walsh Lane. On the night of 10/30/75, at approximately 6:00 PM to 6:30 PM, he engaged in conversation with Carl Wold who was walking on Field Point Road. Wold commented to him that he was going home and was going to remove their name sign as a precaution against vandals stealing it as they had done in the past two Halloweens. Wold was observed by Mr. Duffy walking down Field Point Road until he was out of sight, due to a slight curve in the road. Mr. Duffy further stated for the time he had Wold in his observation no vehicles stopped Wold for the purpose of any conversation. Mr. Duffy further indicated that Wold was walking on Field Point Road in the direction of Walsh Lane.

- I recommend this case be closed
- Unfounded
 - Resolved by Arrest
 - Conditionally Cleared
 - Inactive (Not Cleared)

Signed Det. Joseph McGlynn (jmcg) Date 11/6/75
 Investigating Officer
 Signed Capt. Thomas J. Pegan Date 11/6/75
 Commanding Officer

FORM GPD-010

EXHIBIT C

GREENWICH POLICE DEPARTMENT

35

Follow-up Report

Complaint Homicide Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh La., Greenwich, Connecticut
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____ No. _____
 _____ No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____

RECEIVED AND NOTED BY
 DEPUTY CHIEF OF POLICE

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

Special Officer Morganti was contacted and related that he would later appear at the Detective Bureau for the purpose of putting a composite picture of the subject that he had observed on Field Point Rd. near Walsh La. on Thursday, 10-30-75.

Morganti further related that he observed the below described auto on Field Point Rd. at around 10:00 pm on the night of 10-30-75:

Blue Mustang, occupied by two white males, 30's, grubby looking, Ct. registration 533-8??

A check of the motor vehicle listing book revealed a 1971 Mustang, tan Ct. 533-857, listed to one Daniel Lovallo, Box 863, Field Point Park, Greenwich, Conn., tel. 661-1952.

Attempts were made to contact the above number with negative results, see follow-up.

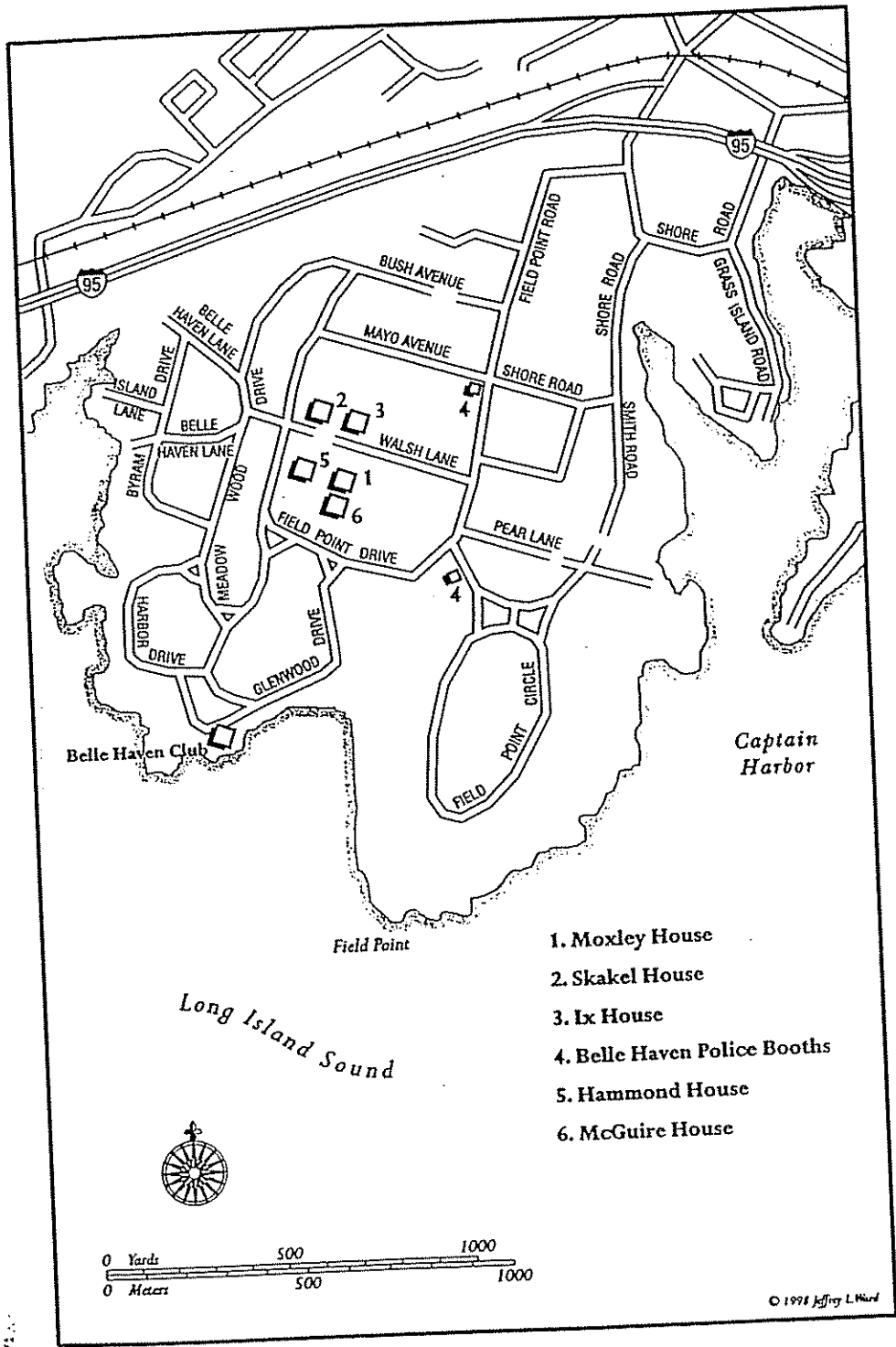
Sgt. Hennessey related that he checked on the above auto and it turned out to be a tan auto as listed with M.V.D., check with M.V.D. to be conducted on the combinations of 533-8??.

- I recommend this case be closed
- Unfounded
 - Cleared by Arrest
 - Exceptionally Cleared
 - Active (Not Cleared)

Signed Det. Michael Powell (MWP) Date 11-1-75
 Investigating Officer
 Signed Capt. Thomas J. Plegan Date 11-1-75
 Commanding Officer

FORM GPD-010

P-0035



- 1. Moxley House
- 2. Skakel House
- 3. Ix House
- 4. Belle Haven Police Booths
- 5. Hammond House
- 6. McGuire House

EXHIBIT D

GREENWICH POLICE DEPARTMENT

105

Follow-up Report

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Morthy Moxley Address Walsh Lane, Belle Haven, Greenwich
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____
 _____ No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

RECEIVED AND NOTED BY
 DEPUTY CHIEF OF POLICE

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

7:00 P.M. - Nov. 5, 1975 - Dets. Lunney - Brosko

At the above time and date the following described subject appeared at the Detective Bureau to be re-interviewed; reference page 17 of this report "unidentified subject":

Carl J. Wold - w/m - 23 years - dob 11/23/52
 Walsh Lane, Greenwich, Conn. 661-9042

Interviewed Mr. Wold in reference to his activities on the night in question and he stated at approximately 7:20 P.M., 10/30/75, he went out for his nightly walk. He stated that he usually takes a walk earlier in the evening, but on this particular night he had had a late supper. Mr. Wold stated upon leaving his driveway he walked east on Walsh Lane, turning right on Field Point Road, walking in a southerly direction towards Field Point Circle. Upon arrival at the Field Point Police Booth he stopped and had a short conversation with the officer on duty. He then entered into Field Point Circle, walked around the circle, entered onto Smith Road, he proceeded down to the Simmon's residence, at which time he turned and proceeded to walk back home.

While returning home he was stopped by a special police officer on Field Point Road, just south of the intersection of Walsh Lane. He stated he was questioned about where he was going and he told the officer that he was returning to his home on Walsh Lane. He stated he then entered onto Walsh Lane, walked down to approximately Ix's driveway, directly across from the Moxley residence. He then turned around and walked back towards his home and entered same, sometime around 8:00 P.M..

Mr. Walsh informed he was dressed as follows:

Brown (olive) field jacket, yellow corduroy shirt, tan slacks top-sider shoes (physical description - 6'1", 210 lbs., dark brown, straight hair, medium length and wears silver rimmed glasses)

I recommend this case be closed

- Unfounded
- Closed by Arrest
- Optionally Cleared
- Inactive (Not Cleared)

Signed Det. James Lunney (JL) Date 11/6/75
 Investigating Officer
 Signed Capt. Thomas J. Keegan Date 11/6/75
 Commanding Officer

FORM GPD-010

EXHIBIT E

GREENWICH POLICE DEPARTMENT

106

Follow-up Report

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh Lane, Belle Haven, Greenwich
 Additional Persons Arrested _____ Arrest No. _____
 No. _____
 No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

RECEIVED AND NOTED BY
 DEPUTY CHIEF OF POLICE

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

Mr. Wold stated to the best of his recollection that when he entered his residence, he shot a couple of games of pool, went to his room sometime before 9:00 P.M. and watched the movie on TV, French Connection, 9:00 PM to 11:00 PM, then watched the late news, 11:00 - 11:30 PM, then retired for the night sometime around 12:00 Midnight. He stated that during this period of time his mother and father were in their bedroom watching TV and he can't remember any verbal or visual contact with his parents during this time.

Mr. Wold stated that during his walk, on Walsh Lane in particular, he observed no youths in the area of the Moxley residence. Upon being questioned to the possibility of his leaving his house between the hours of 9:00 PM and 1:00 Midnight, he emphatically stated that he had not.

Mr. Wold further related he had known Martha Moxley for approximately one and one-half years, through the friendship of his mother and Martha's mother. During his walk on the evening in question he did not observe Martha Moxley.

Investigators questioned Mr. Wold on the possibilities of his presence on Otter Rock Drive, in the vicinity of the Skakel residence, sometime after 10:00 PM, and he again denied same.

At this time Mr. Wold was requested to submit to a polygraph test and he replied that he would be agreeable to same and would be available at our request.

7:15PM - 11/5/75 - Sgt. Hennessey - Det. McGlynn

Interviewed Mr. Carl Wold, Jr., father of Carl J. Wold (above interview) and he stated that his son walks on a nightly basis in Belle Haven on either one of two routes - Field Point Circle, Smith Road and up Broad Rd. other times he will include Otter Rock Drive and Walsh Lane. Mr. Wold, Jr. further stated that his son, Carl, had related the following to him regarding his nightly walk on 10/30/75: His son was walking on Walsh Lane from the direction of Otter Rock Drive and that at an unknown point on

- I recommend this case be closed
- Unfounded
- Closed by Arrest
- Legally Cleared
- Inactive (Not Cleared)

Signed Det. James Dunne (j1) Date 11/6/75
 Investigating Officer
 Signed Capt. Thomas J. Keegan Date 11/6/75
 Commanding Officer

FORM GPD-010

GREENWICH POLICE DEPARTMENT

107

Follow-up Report

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh Lane, Belle Haven, Greenwich
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____ RECEIVED AND NOTED BY
 _____ No. _____ Arrested By _____ DEPUTY CHIEF OF POLICE
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

Walsh Lane, his son was stopped by a special police officer who was operating a private vehicle. The police officer asked his son who he was and where he was going. His son further related to him that he felt the policeman may have thought he was suspicious because he followed his son to their driveway.

Mr. Wold, Jr., further advised that his son, Carl, arrived home on 10/30/75 at approximately 8 to 8:15 PM. Mr. Wold, Jr. was sure of the approximate time as he and his wife had just cleaned up from dinner. Moments after that he and his son began making a jack-o-lantern out of a pumpkin, which took about 1/2 hour to complete. After this his son went to the basement where he played pool; he, (father) and his wife retired to their second floor bedroom where they watched television.

He believes his son shot pool for a short time and then went to his own room, also on the second floor, where he saw lights on and the TV on in his son's bedroom, although he did not see his son at this time, Mr. Wold, Jr. assumed his son was in his room watching television.

At 10:30 PM, 10/5/75, Mr. Wold, Jr. went down stairs for the purpose of taking the family dog out to a kennel to the rear of the home for the purpose of the animal relieving itself. A few minutes later he returned to the House with the dog and proceeded to fix his wife a snack, and then brought it to their bedroom. At this time he observed his son in his room.

8:30 P.M. - Nov. 5, 1975 - Det. Lunney - Brosko

Reinterviewed Special Officer, Charles Morganti, described on page 17 of this report. He again reiterated the same story as noted, and stated he was positive that the subject he stopped on Field Point Road and Walsh Lane was the same subject he observed on Otter Rock Drive, walking northbound on the west side, opposite Skakel residence. At the time of the interview with Mr. Morganti and Mr. Wold, Mr. Morganti did not view Mr. Wold.

I recommend this case be closed

- Unfounded
- Cleared by Arrest
- Provisionally Cleared
- Inactive (Not Cleared)

Signed Det. James Lunney (131) Date 11/6/75
 Investigating Officer
 Signed Capt. Thomas J. Keegan Date 11/6/75
 Commanding Officer

FORM GPD-010

EXHIBIT F

Saturday, October 8, 1994

At approximately 10:00 a.m. the investigator met with Charles Morganti, Jr., a former Belle Haven Police Officer, now residing in the City of Chicago, Illinois. Mr. Morganti is now employed as Product Program Manager for (BTS) Broadcast Television Systems, Inc., 10600 W. Higgins, Suite 500 Rosemont, Illinois 60018. (708) 803-8060 - Fax (708) 803-8607

Mr. Morganti had been previously contacted by James F. Murphy, President of Sutton Associates, One Jericho Plaza, Jericho, New York, 11753. (516) 935-6650 - (212) 765-8575 - Fax (516) 935-6934 Sutton Associates being the investigations firm hired by the Skakel family.

Mr. Morganti informed the investigator that Mr. Murphy wished to go over the incident involving the individual stopped on Field Point Road, in Belle Haven, by Mr. Morganti, who had been on duty that evening of Martha's death.

Mr. Morganti again explained how, at approximately 8:00 p.m. or so he observed an individual, wearing a green Army fatigue jacket, and tan slacks, walking in a Northerly direction on Field Point Road. Mr. Morganti reported that he had been motorized in a police car and was also traveling in a Northerly direction on Field Point Road.

He reports he drove past the individual so as to turn around at the intersection of Mayo Drive, then returned to the subject who was now at the intersection of Walsh Lane. Mr. Morganti questioned the individual as to his reason for being in the area, and was informed by him, that he had been out for a walk, and was returning to his home on Walsh Lane.

Mr. Morganti continues to explain that sometime between 9:30 p.m. and 10:00 p.m. that same evening he believes he may have observed the same individual walking in a northerly direction through the front yard of a residence on Otter Rock Drive, across from the Skakel residence.

Mr. Morganti reports that he had been outside of his police car, just North of the Bjork residence on Otter Rock Drive, replacing a wooden stantion which had apparently been struck by a passing vehicle. Mr. Morganti claims he was approximately 100 yards from the individual when he made the observation. He feels certain that this individual was the same person he observed earlier, walking on Field Point Road.

At that time Mr. Morganti reported the entire episode to the investigators and assisted in the making of a composite sketch of the individual. A complete investigation into the matter was instigated, and it was determined that the individual was one Carl Wold.

Mr. Wold, as well as his immediate family were interviewed, satisfactorily, with regards to the incident. In his interview, Mr. Wold reported that he had been stopped by a police officer while walking in Belle Haven that evening. He reports that he was stopped just prior to returning home, and did not leave his home again that evening. In addition, Mr. Wold submitted to a polygraph examination, which determined him to be truthful in his answers concerning his actions on the night in question.

At approximately 10:45 a.m. Mr. Murphy arrived and all personnel proceeded to Otter Rock Drive, at Walsh Lane. Mr. Murphy produced a not to scale drawing of the murder scene and surrounding area. He also produced an aerial, plotting map. Mr. Murphy's drawing indicates that Martha was murdered in the gravel driveway leading to her house, and then dragged from that location to the trees where her body was discovered.

Mr. Murphy reports that he believes the IX dog was barking at the time of the attack, and that the killer, not being familiar with the dog, and not knowing if the dog would attack, dragged Martha's body under the trees. He further reports that had the killer known the area, he would not have left the body where he did, as there is a path used by neighborhood children that travels past that location.

Mr. Murphy reported he believes that after placing the body under the trees the killer left the area only to return later at which time the stab wound to the neck was inflicted. He attributes this to the lack of blood in that area. Mr. Murphy reported that during an interview, conducted by members of his staff, with Julie Skakel, she reported that the sighting of the figure, in a crouched position by the front of the Skakel house, was made by her, after she returned from bringing Andrea Shakespeare home.

While re-creating the location from where Mr. Morganti was standing, in relation to where the individual who had been walking through the front yard on Otter Rock Drive was when he observed him, the distance was determined to be approximately 100 yards.

Mr. Morganti assured this office of his complete cooperation with any future assistance which may be needed by him.

EXHIBIT G

GREENWICH POLICE DEPARTMENT RECEIVED AND NOTED 121
 Follow-up Report BY CHIEF OF POLICE

Complainant Homicide Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh Lane, Greenwich, Conn.
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____
 _____ No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

November 6th, 1975

Sgt. Ambrose-State Det. J. Solomon

The investigator's interviewed Mrs. Robert (Cythia) Bjork, Otter Rock Drive.

Mrs. Bjork stated that he husband Robert returned home from the Belle Haven Beach Club, around 9:10 PM, Thursday, October 30th, 1975, and then Mr. Bjork and his children went out in the front yard for approximately 20 minutes and then they all came into the house for the rest of the evening, Time 9:30PM. Approximately ten(10) minutes later, Time 9:40PM, Mr. & Mrs. Robert Bjork heard a motor vehicle heading north at a fast rate of speed. Ten minutes later Mr. Bjork observes a police officer out in front of his home and went out to see what had happened. At this time Mr. Bjork observes the officer placing the white road station in it's proper place.

The officer was Charles Morganti, a Special Police Officer, who was on duty in the Belle Haven area on Thursday, October 30th, 1975, and he confirms the above statement.

The white station had red paint on the side post at the travel portion of the highway. (Side). The white station was transported to Headquarters by Detective Stephen X. Carroll and tagged as evidence.

The below is a list of people who were checked by the undersigned who own Red - colored vehicles in the Belle Haven area.

1. Warren Byrnes, 44 Mayo Ave., Age 16yrs, DOB, Dec. 17, 1958.
2. John (Mrs. Lorraine) Lambert, 471 Field Point Rd.
3. Mr. Earl Willis, 87 Mayo Lane, Belle Haven.
4. Mrs. Mouakad, 204 Otter Rock Drive.
5. Michael Coomaraswamy, Age 6yrs, DOB 1-2-59, Glenwood Drive.
6. Judy Sakowicz, Age 19yrs, DOB 10-11-56, % Keefe residence, Belle Haven.

All of the above vehicles checked with negative results.

I recommend this case be closed
 Unfounded
 Closed by Arrest
 Exceptionally Cleared
 Inactive (Not Cleared)

Signed [Signature] Date 11-6-75
 Investigating Officer
 Signed Capt. Thomas J. Keegan Date 11-7-75
 Commanding Officer

FORM GPD-010

GREENWICH POLICE DEPARTMENT

135

Follow-up Report

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh Lane., Greenwich
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____
 _____ No. _____ Arrested By _____
 Value of Additional Property Recovered \$ _____ Recovered By _____ Date _____

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

11:00 A.M. --- November 7, 1975 Dets. Brosko- Lunney

Investigators transported Mr. Carl J. Wold, described on page # 105, in Car #30 to the Connecticut State Police Headquarters, Troop H, Polygraph Unit, Hartford, Connecticut.

The Polygraph examination was conducted by Sgt. Jack Schneider and Trooper Jerry Dyki. The examination was started at 2:00 P.M. and concluded at 4:00 P.M.

Mr. Wold was asked the following questions:

Do you know for sure who killed Martha Moxley

Did You kill Martha Moxley

Did you strike Martha Moxley with a golf club

Do you know for sure where the missing section of the golf club is located.

Are you with-holding any information from the Police relative to the Martha Moxley murder.

The examiners advised the investigators that after Mr. Wold was asked the above question it was their opinion that he answered the questions truthfully, all the answres were "NO".

Examiners advised that their documented opinion would be forwarded to this department.

Mr. Wold was transported home to his residence after being advised by the examiners of the out-come of the examination.

This department in receipt of attached letter from the Polygraph Unit of the examination of Thomas Skakel, no opinion rendered, signed by Sgt. Schneider and Trooper Dyki.

- I recommend this case be closed
- Unfounded
 - Resolved by Arrest
 - Conditionally Cleared
 - Inactive (Not Cleared)

Signed DET. James Lunney JJJ Date 11/8/75
 Investigating Officer
 Signed Chor. Thomas J. Fegan Date 11/8/75
 Commanding Officer

FORM GPD-010

EXHIBIT H

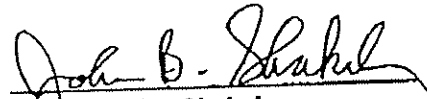
AFFIDAVIT

STATE OF OREGON)
COUNTY OF Washington) ss. 046-60-0542 August 24, 2002

The undersigned, being duly sworn, hereby deposes and says:

1. I am over the age of eighteen years old and I understand the obligation of an oath.
2. In the fall of 1975, I was sixteen years old.
3. In the fall of 1975, Kenneth Littleton was hired by my father as a tutor for our household.
4. I had the opportunity to observe Kenneth Littleton's physical features in the fall of 1975.
5. I have been shown a composite sketch of a male and I have been told that it is a sketch that was prepared by law enforcement authorities in 1975.
6. In my opinion, the male depicted in the composite sketch has features that are similar to the features of Kenneth Littleton in 1975.
7. Specifically, I believe the person in the drawing has the same general physical appearance as Kenneth Littleton, as well as having a similar jaw, hair and glasses.

8. I also believe that Mr. Littleton was around 6' tall in 1975 and weighed about 200 lbs.


John Skakel

Sworn to and subscribed to before
me this 14 day of August, 2002.

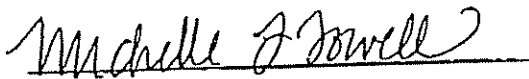

Notary Public



EXHIBIT I

AFFIDAVIT

STATE OF CONNECTICUT)
) ss.
COUNTY OF FAIRFIELD)

Darien, CT, August 25, 2002

The undersigned, being duly sworn, hereby deposes and says:

1. I am over the age of eighteen years old and I understand the obligation of an oath.
2. In the fall of 1975, I was eighteen years old.
3. In the fall of 1975, Kenneth Littleton was hired by my father as a tutor for some of my brothers.
4. I had the opportunity to observe Kenneth Littleton's physical features in the fall of 1975.
5. I have been shown a composite sketch of a male and I have been told that it is a sketch that was prepared by law enforcement authorities in 1975.
6. In my opinion, the male depicted in the composite sketch has certain features that resemble the features of Kenneth Littleton in 1975; namely, the jaw line, hair, glasses and the overall shape of the head.

7. I also believe that Mr. Littleton was around 6' tall in 1975.


Julie Skakel

Sworn to and subscribed to before
me this 25th day of August, 2002.



Commissioner of the Superior Court
Or Notary Public
Stephen E. Seeger, Esq.
27 Fifth St.
Stamford, CT 06905

GREENWICH POLICE DEPARTMENT

159

Follow-up Report

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Dorthy Moxley Address Walsh Lane, Belle Haven, Green
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____
 _____ No. _____ Arrested **RECEIVED AND NOTED**
 Value of Additional Property Recovered \$ _____ Recovered **BY CHIEF OF POLICE** Date _____

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

10:00 A.M. - November 10, 1975 - Det. J. Lunney

Responded to the Nancy Ziluca residence, 410 Old Church Road, Greenwich and interviewed Mrs. Nancy Ziluca. Mrs. Ziluca was advised that her son, Peter, had been scheduled for a polygraph test on November 12, 1975 at 1:00 P.M., at Bethany, Conn. At this time Mrs. Ziluca signed a consent form agreeing to allow Peter to take this examination.

11:00 A.M.--reinterviewed Ronald Waicul mentioned on page 79 of this report, and he related that on the night in question, sometime around 4:00 P.M., he left his home in Greenwich and picked up this brother, Thomas Waicul of 291 Harold Avenue, Bridgeport, Conn. (no telephone number) at which they proceeded to Syosset, Long Island and attended the wake of his grandmother at the Benny Funeral Home.

He then related he returned to Greenwich sometime around 11:00 P.M. and went to the John Gentri residence, Meadowwood Drive, at which time he picked up Lisa Gentri and returned his brother to Bridgeport, Conn. Further stated that he then returned the Gentri girl to her home sometime around 1:00 A.M., 10/31/75. He again could give no pertinent information relative to this investigative. Thomas Waicul and Lisa Gentri to be interviewed.

At 12:00 Noon, a background check was conducted on the following descr. subject:

Ken Littleton, c/o Skakel residence, w/m age 23
 DOB 7/20/52, Otter Rock Drive

Interviewed Mr. Littleton relative to the investigation and he related that his family was from Pomfret, Conn. Contacted local PD, 928-6565 for a record check - results negative.

He further related he had spent time as a teacher and a student in Belmont, Mass. Contacted local PD - 617-484-1212, record check, result negative.

- I recommend this case be closed
- Unfounded
 - red by Arrest
 - optionally Cleared
 - Inactive (Not Cleared)

Signed Det. James Lunney JJL Date 11/10/75
 Investigating Officer
 Signed Capt. Thomas J. Pegan Date 11/10/75
 Commanding Officer

FORM GPD-010

GREENWICH POLICE DEPARTMENT

160

Follow-up Report

Complaint HOMICIDE Complaint No. D-20262
 Complainant Mrs. Dorothy Moxley Address Walsh Lane, Belle Haven, Green
 Additional Persons Arrested _____ Arrest No. _____
 _____ No. _____
 _____ No. _____
 Arrested By RECEIVED AND NOTED
 Recovered By BY CHIEF OF POLICE Date _____
 Value of Additional Property Recovered \$ _____

Additional Details of Complaint, Progress of Investigation, Property Recovered, Etc.

Investigator contacted Major John Regan, Mass State Police, Bureau of Investigative Services, and he was appraised of the investigation, and he related that he would run a complete check on Mr. Littleton and advise this department of his findings.

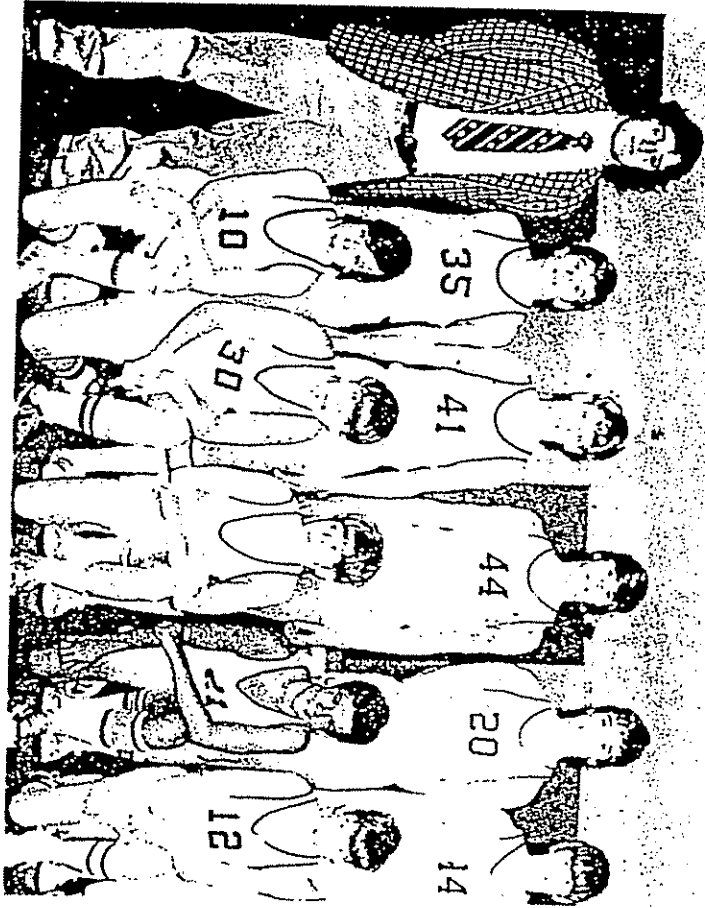
Contacted Connecticut State Police, Bureau of Identification, CSBI - no criminal record on the aforementioned subject.

- I recommend this case be closed
- Unfounded
 - Cleared by Arrest
 - Conditionally Cleared
 - Inactive (Not Cleared)

Signed Det. James P. Runney (jpr) Date 11/10/75
 Investigating Officer
 Signed Capt. Thomas J. Regan Date 11/10/75
 Commanding Officer

FORM GPD-010

EXHIBIT J



*Ken Littleton, standing at left,
in a photograph of Brunswick
School's junior varsity basketball
team, 1975.*
(COURTESY GREENWICH LIBRARY)

EXHIBIT K



A386

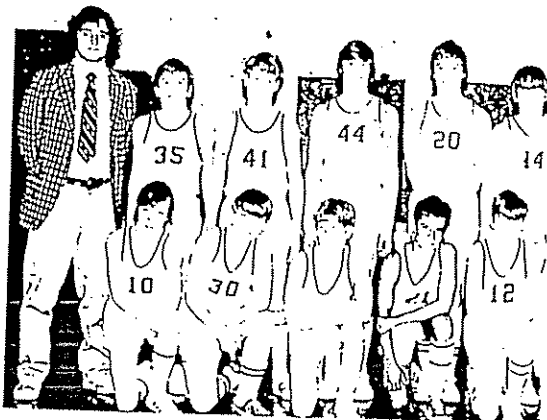
EXHIBIT L



The back of the Skakel house, showing the path Martha would have taken on her way home on October 30, 1975.



Michael Skakel, third from right, top row, shown with teammates from Brunswick School's ninth-grade soccer team, 1975. (COURTESY GREENWICH LIBRARY)



Ken Littleton, standing at left, in a photograph of Brunswick School's junior varsity basketball team, 1975.

(COURTESY GREENWICH LIBRARY)



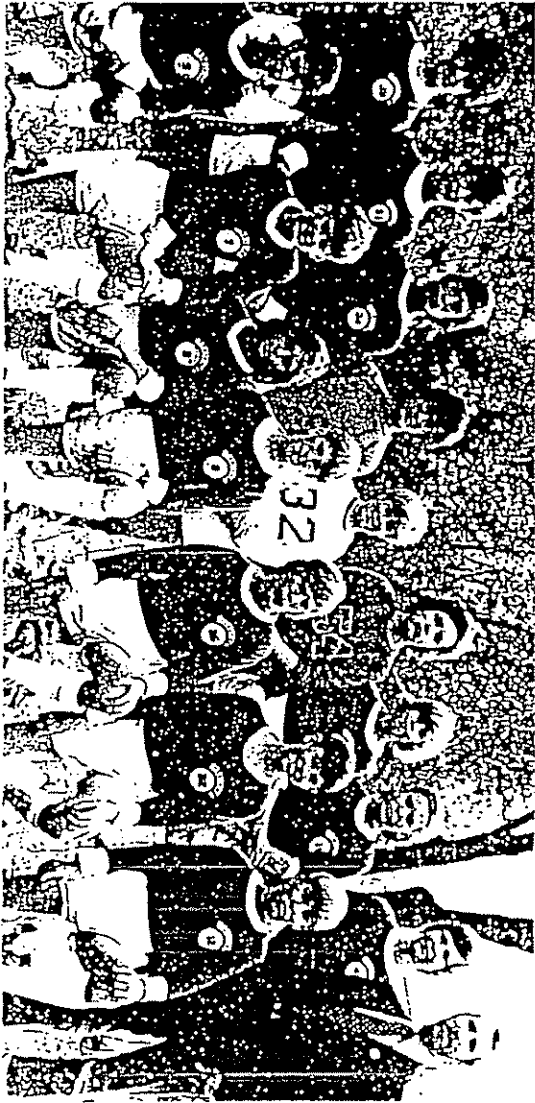
with Brunswick.



Eleventh

Brunswick
(COURTESY GI)

EXHIBIT M



Michael Skakel, third from right, top row, shown with teammates from Brunswick School's ninth-grade soccer team, 1975. (COURTESY GILL SWARTH LIBRARY)

PETITION/INFORMATION - DELINQUENCY

JD-JM-111EL Rev. 1-98
C.G.S. 46b-120, 128

**STATE OF CONNECTICUT
SUPERIOR COURT
JUVENILE MATTERS**



ADDRESS OF COURT SCJM 91 Prospect Street., Stamford, CT		DOCKET NO. DL00-01028	
NAME OF CHILD Michael Skakel	ADDRESS OF CHILD 7950 S.E. Dock Street. Hobe Sound Fl	SEX M	DATE OF BIRTH 09/19/60
NAME OF MOTHER Deceased	ADDRESS OF MOTHER		
NAME OF FATHER Rushton Skakel, Sr.	ADDRESS OF FATHER Hobe Sound, Fl.		
NAME OF GUARDIAN, IF ANY	ADDRESS OF GUARDIAN		

The Juvenile Prosecutor/Probation Officer has reason to and does believe under oath of office that said child has violated laws, ordinances, and court orders as follows:

COUNT 001 - DID COMMIT DELINQUENT ACT: Murder	DOCKET NUMBER DL00-01028	COUNT 004 - DID COMMIT DELINQUENT ACT:	DOCKET NUMBER
AT (Town) Greenwich	ON OR ABOUT (Date) 10/30/75	IN VIOLATION OF C.G.S. 53a-54a	
COUNT 002 - DID COMMIT DELINQUENT ACT:	DOCKET NUMBER	COUNT 005 - DID COMMIT DELINQUENT ACT:	DOCKET NUMBER
AT (Town)	ON OR ABOUT (Date)	IN VIOLATION OF C.G.S.	
COUNT 003 - DID COMMIT DELINQUENT ACT:	DOCKET NUMBER	COUNT 006 - DID COMMIT DELINQUENT ACT:	DOCKET NUMBER
AT (Town)	ON OR ABOUT (Date)	IN VIOLATION OF C.G.S.	

WHEREFORE, Your Petitioner prays that process may issue in due course to bring the above-named child and parents, or legal custodian, of said child before the Court to be dealt with according to law.

SEE OTHER SHEET(S) FOR ADDITIONAL COUNTS

DATE: 1/28/2000 SIGNED (Juvenile Prosecutor/Probation Officer): [Signature]

ORDER FOR HEARING AND SUMMONS

Upon the foregoing petition, it is hereby ORDERED, that said petition be heard and determined at the Court Location shown below on the Hearing Date and time indicated, AND FURTHER ORDERED, that the child and parent/guardian named in this petition be and hereby are summoned to appear before the court on the Hearing Date and at the Court Location shown below by having a proper officer leave a true and attested copy of this order and summons with said respondent(s) or at the usual place of abode, or if so ordered, by mail on or before the date for service shown below and return same to the court:

HEARING DATE →	DATE 02/08/2000	TIME OF HEARING 3:30 P.M.
COURT LOCATION →	NO., STREET AND TOWN 91 Prospect Street	PHONE 203-348-7355
	SERVICE BY (Date) 02/01/2000	1ST CLASS/RESTRICTED MAIL, RETURN RECEIPT:
	BY ORDER OF THE COURT (Signed - Judge/Clerk) <u>[Signature]</u>	DATE SIGNED <u>1/28/00</u>

NOTICE TO PARENTS AND GUARDIANS

An appearance in court as a result of mail notice may subject the appearing party to court jurisdiction. Since said child is a minor he or she must be accompanied by a parent or an adult guardian. Failure to appear and obey court orders may result in your being held in contempt and you may be FINED or JAILED or both. See C.G.S. § 46b-121 and § 51-33.

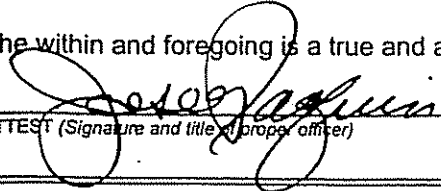
RIGHT TO COUNSEL: You have a right to be represented by an attorney, and, if you wish an attorney but are unable to pay for one, upon proof that you qualify, the court will provide one for you. Any such request should be made immediately at the court office where your hearing is to be held.

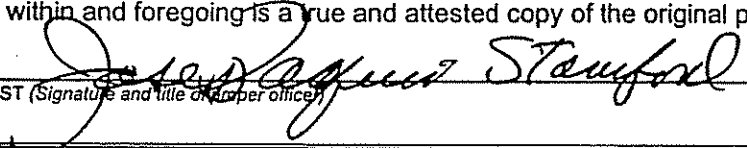
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the Americans with Disabilities Act (ADA). If you need a court clerk at the number listed above.

STATE OF CONNECTICUT

RETURN OF SERVICE

DOCKET NO. DL00-01028

COUNTY OF FARFIELD	SS. STAMFORD	NAME OF PERSON(S) SERVED. ATTY Michael Sherman (for Michael Skakel)	DATE OF SERVICE 1/28/2000
Then and there, I duly served the foregoing petition, order and summons on the above-named respondent(s), by either (check one): <input type="checkbox"/> leaving with (for in hand); or <input checked="" type="checkbox"/> leaving at the usual place of abode (for abode) at Law offices of Michael Sherman PEN arrangement.			FEES COPY ENDORSEMENT SERVICE TRAVEL TOTAL N/A
The within and foregoing is a true and attested copy of the original petition, order, and summons.  Supervisor ATTEST (Signature and title of proper officer)			

COUNTY OF Fairfield	SS. STAMFORD	NAME OF PERSON(S) SERVED. ATTY Michael Sherman (for Michael Skakel, SR)	DATE OF SERVICE 1/28/2000
Then and there, I duly served the foregoing petition, order and summons on the above-named respondent(s), by either (check one): <input type="checkbox"/> leaving with (for in hand); or <input checked="" type="checkbox"/> leaving at the usual place of abode (for abode) at LAW OFFICES OF Michael Sherman PEN arrangement			FEES COPY ENDORSEMENT SERVICE TRAVEL TOTAL N/A
The within and foregoing is a true and attested copy of the original petition, order, and summons.  ATTEST (Signature and title of proper officer)			

COUNTY OF	SS.	NAME OF PERSON(S) SERVED.	DATE OF SERVICE
Then and there, I duly served the foregoing petition, order and summons on the above-named respondent(s), by either (check one): <input type="checkbox"/> leaving with (for in hand); or <input type="checkbox"/> leaving at the usual place of abode (for abode) at _____			FEES COPY ENDORSEMENT SERVICE TRAVEL TOTAL
The within and foregoing is a true and attested copy of the original petition, order, and summons. ATTEST (Signature and title of proper officer)			

STATE OF CONNECTICUT			FOR MAIL SERVICE	
COUNTY OF	SS.	UNITED STATES POST OFFICE AT (Town)	DATE OF SERVICE	
Then and there, by virtue hereof, I made service of the within petition, order and summons by depositing a true and attested copy by United States Post mail, postage prepaid, addressed to _____, by (check one): <input type="checkbox"/> restricted delivery, return receipt requested; or <input type="checkbox"/> first class mail; or <input type="checkbox"/> certified mail, return receipt requested.			FEES COPY ENDORSEMENT SERVICE TRAVEL TOTAL	
The within and foregoing is the original petition, order and summons with my doings thereon endorsed. ATTEST (Signature and title of proper officer)				

TITLE, ALLEGATION, AND COUNTS

STATE OF CONNECTICUT VS (Name of Accused)
Michael Skakel

G.A. **2** DOCKET NO. **135792**

ADDRESS
LKA Hobe Sound, Florida

TO BE HELD AT (TOWN)
Bridgeport

COURT DATE

The undersigned, Deputy Assistant State's Attorney of the Superior Court of the State of Connecticut, in said Geographical Area, on his oath of office complains, deposes, and alleges that he has reason to believe and does believe that

FIRST COUNT—DID COMMIT THE CRIME OF			CONTINUED TO	PURPOSE	REASON
Murder					
AT (TOWN) Greenwich	ON OR ABOUT 10/30/75	IN VIOLATION OF GENERAL STATUTE NO. 53a-54a(a)			
SECOND COUNT—DID COMMIT THE CRIME OF					
AT (TOWN)	ON OR ABOUT	IN VIOLATION OF GENERAL STATUTE NO.			
THIRD COUNT—DID COMMIT THE CRIME OF					
AT (TOWN)	ON OR ABOUT	IN VIOLATION OF GENERAL STATUTE NO.			
<input type="checkbox"/> SEE SECOND SHEET FOR ADDITIONAL COUNTS					
	DATE 1/19/80	SIGNED (DEPUTY ASSISTANT STATE'S ATTORNEY) <i>[Signature]</i>			

SUPERIOR COURT
 JUVENILE HALL
 STAFF OFFICE
 JAN 20 12 37

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA

JUDGE: _____ (DATE) _____

ATTY: _____ PUB DEFENSE: _____ GUARDIAN: _____

BOND: _____ SURETY: _____

CASH COURT JURY
 APPEAL ELECTION WITHDRAWN DATE: _____ SEIZED PROPERTY

DATE OF PLEA	PLEA	PLEA WITHDRAWN		VERDICT FINDING	FINE	DAYS IN JAIL	ADDITIONAL DISPOSITION
		DATE	NEW PLEA				
FIRST COUNT							
SECOND COUNT							
THIRD COUNT							

STATE'S ATTY ON ORIG DISP: _____ REPORTER ON ORIG. DISP.: _____ SIGNED (CLERK ON ORIG DISP): _____ SIGNED (JUDGE ON ORIG DISP): _____

DATE	OTHER COURT ACTION	JUDGE (OTHER THAN ORIG. DISP.)

FINE PAID: _____ RECEIPT NO: _____ MITTIMUS ISSUED (DATE): _____ TOTAL TOWNSHIP: _____

SEE REVERSE SIDE

DL00-01028

: JUVENILE MATTERS

IN RE MICHAEL S.

: JUDICIAL DISTRICT OF:

: STAMFORD/NORWALK

: AT STAMFORD

: JANUARY 31, 2001

MEMORANDUM OF DECISION

The respondent, currently forty years of age, has been referred to the Superior Court for Juvenile Matters, charged as a delinquent for the alleged commission of the murder of Martha Moxley in 1975.

The statute in effect at the time of the murder, which controls the transfer assessment in this matter, provides:

Transfer to superior court of child referred for commission of murder. The juvenile court shall have the authority to transfer to the jurisdiction of the superior court any child¹ referred to it for the commission of a murder, provided any such murder was committed after such child attained the age of fourteen years. No such transfer shall be valid unless prior thereto the court has caused a complete investigation to be made as provided in section 17-66 and has found, after a hearing, that there is reasonable cause to believe that (1) the child has 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 or 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.

General Statutes (Rev. to 1975) § 17-60a.²

¹ General Statutes (Rev. to 1975) § 17-53 defines a "child" as "any person under sixteen years of age."

² Further references to the General Statutes will be to those in effect at the time of the murder, revised to 1975.

Two conditions precedent to any such transfer – the age of the respondent and reasonable cause – were addressed, by the state and the respondent, during a three-day evidentiary hearing in late June, 2000. In a written memorandum of decision issued on August 17, 2000, this court held that there was reasonable cause to believe that the respondent committed the murder of Martha Moxley in 1975 and that he was fifteen years of age on the date of said murder.

These two conditions precedent having been established, for the court's further consideration in assessing any such transfer request, §17-60a directs the court to order "a complete investigation to be made as provided in [General Statutes (Rev. to 1975)] § 17-66."³ Generally, such an investigation is only ordered post adjudication, i.e., after a finding of delinquency, and would include physical and/or mental evaluation(s), if appropriate to the full disposition of the case. Here, however, there has been neither acknowledgement of responsibility by the respondent nor adjudication of the respondent as a delinquent⁴ for the murder of Martha Moxley. Accordingly, the

³ General Statutes (Rev. to 1975) § 17-66 provides:
Investigations by probation officer prior to disposition of delinquency case. Prior to the disposition of the case of any child found to be delinquent, investigation shall be made of the facts as herein specified by the probation officer, and until such investigation has been completed and the results thereof placed before the judge, no disposition of the child's case shall be made. Such investigation shall consist of an examination of the parentage and surroundings of the child, his age, habits and history, and shall include also an inquiry into the home conditions, habits, and character of his parents or guardians. Where a child is or legally should be in attendance at school, it shall further contain a report of the child's school adjustment, which shall be furnished by the school officials to the court upon its request. The court shall, when it is found necessary to the disposition, cause a complete physical or mental examination, or both, to be made of the child by persons professionally qualified to do so.

⁴ A "delinquent" is defined in General Statutes (Rev. to 1975) § 17-53 as a child "(a) who has violated any federal or state law or municipal or local ordinance, or (b)

transfer assessment in this matter is only dispositive of the issue of the forum, juvenile versus adult, in which the adjudicatory phase will occur.⁵ Hence, this court is without authority to order that the respondent submit to any such physical and/or mental evaluation(s).⁶

Recognizing that the provisions of §17-66 are not totally applicable to the instant matter, but in furtherance of, and in accordance with the mandatory language of General Statutes (Rev. 10 1975) § 17-60a, this court ordered an investigation by the probation office, albeit limited given the respondent's circumstances. The completed report was filed on September 27, 2000. Pursuant to the applicable rules of practice,

who has without just cause run away from his parental home or other properly authorized and lawful place of abode, or (c) who is beyond the control of his parent, parents, guardian or other custodian, or (d) who has engaged in indecent or immoral conduct, or (e) who has been habitually truant or who, while in school has been continuously and overtly defiant of school rules and regulations, or (f) who has violated any lawful order of the juvenile court.”

⁵ See In re Ralph M., 211 Conn. 289, 308, 559 A.2d 179 (1989) (the only purpose of the juvenile transfer hearing is the determination of the uses of one of the two possible forums, which will then hold the adjudicatory hearing).

⁶ See Practice Book, 1963 § 1125 (1974 Sup.).

Physical and Mental Examinations

- (1) Pursuant to Gen. Stat. 17-66, and as a part of the investigation therein authorized of any child who has acknowledged responsibility for delinquent behavior in accordance with paragraph (5) of Sec. 1102, the court may, in its discretion, cause a complete physical and/or mental examination to be made of the child by persons properly qualified professionally to do so.
- (2) No such examination or examinations by any physician, psychologist, or psychiatrist shall be made of any child denying responsibility for delinquent behavior prior to the adjudication by the court of his responsibility for the behavior in question, except (a) with the written permission of the child's parent, or attorney, or (b) when the court finds that there is a question of the child's competence to understand the nature of the proceedings or to participate in his own defense, or of his having been mentally capable of unlawful intent at the time of the commission of the alleged act, or (c) where the child has been detained and as an incident of detention is administered a physical examination to establish his freedom from any contagious or infectious conditions prejudicial to himself or others.

Practice Book, 1963 § 1125 (1974 Sup.).

upon request, the author of the report shall be present at the "dispositive" hearing and be subject to cross-examination on the contents of the report.⁷

The state and respondent each had already presented some evidence with respect to the issues set forth in § 17-60a (2)-(4) in the course of the initial portion of the transfer hearing in late June 2000. However, pursuant to a request by respondent's counsel, the transfer hearing was reconvened on October 20, 2000, to address the contents of the probation investigation report. Joseph Paquin, the author of the report, was sworn as a witness and questioned by counsel for the respondent and the state. In accordance with the rules of practice, the respondent also had the right to produce witnesses on behalf of any dispositive plan he wished to offer.⁸ Although no specific dispositive plan was presented, the respondent did produce additional witnesses at this hearing.

Central to this court's consideration of the probation investigation report and assessment of the remaining factors of § 17-60a, specifically sections (2)-(4), is a review of the dispositional authority of the Juvenile Court, as set forth in General Statutes (Rev. to 1975) § 17-68. Section § 17-68 provides:

Commitment. Reports. (a) The court, if it finds that the child is delinquent and needs the care, discipline or protection of the state, may adjudge him delinquent and place him in the care of any institution or agency which is permitted by law to care for children, order the child to remain in his own home or in the custody of a relative or any other fit person subject to the supervision of the probation officer or withhold or suspend execution of any judgment. (b) If the court further finds that its probation services or other services available to the court are not adequate for such a child, the court shall commit such child to the department of children and youth services in accordance with the provisions of section 17-69. (c) Any child coming within the jurisdiction of the court, who is found to be mentally ill, may be committed by said court to a hospital or other institution empowered by law to treat mentally ill children: and, if the court adjudges a child to be delinquent and finds him to be mentally deficient, it may

⁷ See Practice Book, 1963 § 1114 (5) (1974 Sup.).

⁸ See Practice Book, 1963 § 1114 (6) (1974 Sup.).

commit him to an institution for mentally deficient children or defective delinquents. Whenever a child adjudged by the court to be delinquent is fourteen years of age or older and is further found to be either mentally deficient or too educationally retarded to benefit from continued school attendance, the court may order him to be placed on vocational probation if such court finds that he may properly be employed for part or full time at some useful occupation and that such employment would be more favorable to his welfare than commitment to an institution and the probation officer shall supervise such employment. For the purposes of this section the limitations of subsection (a) of section 31-23 on the employment of minors under the age of sixteen years shall not apply for the duration of such vocational probation. (d) Whenever the juvenile court commits a child to the department of children and youth services or to any institution, public or private, there shall be delivered with the mittimus a copy of the results of the investigations made as required by section 17-66. The court may, at any time, require from the department, person, institution or agency in whose care a child has been placed such report as to such child and his treatment as it may direct.

Section 17-68 presents a range of dispositional alternatives for an adjudicated delinquent. Pursuant to the provisions of the transfer statute, § 17-60a, this court must, however, narrowly focus on the availability and suitability of state institutions “designed for the care and treatment of children” to which the Juvenile Court has authority to “commit such child.”⁹ Commitments are the most restrictive of the available dispositional alternatives in the juvenile system.¹⁰ Sections 17-68 (b) and (c) essentially provide the only two possible commitment options in a delinquency matter.

Upon commitment to the department of children and youth services (DCYS) under § 17-68(b),¹¹ said department then places the child in the appropriate state institution. Any such commitment of a delinquent child¹² to DCYS would be for an indeterminate time up to a maximum of two years, with the possibility of an extension

⁹ See General Statutes (Rev. to 1975) § 17-60a.

¹⁰ See generally In re Tyvonne M., 211 Conn 151, 159, 166, 558 A.2d 661 (1989).

¹¹ The department of children and youth services is now known as the department of children and families (DCF).

¹² See footnotes 1 and 4.

of the commitment for an additional period of not more than two years.¹³ Consistent therewith, Judith Kallen, the Program Director of the Bridgeport office of the department of children and families, testified that the licensing regulations of the department prohibit placement of anyone over the age of eighteen, either on a custodial or non-custodial basis. The respondent's age forecloses a commitment by the Juvenile Court to the department.

The remaining commitment alternative under § 17-68 (c) provides for the commitment of a child directly to a hospital or other appropriate institution for an indefinite time,¹⁴ if the child is found by the court to be mentally ill or a mentally deficient delinquent¹⁵ who would require, for his protection or for the protection of others, special care, supervision and control.¹⁶ The issue of mental illness was never raised at any time by the respondent. Nothing approaching the above specified level of mental deficiency was ever articulated or expressed. In fact, the witnesses presented by the respondent essentially testified to the contrary when they referenced the respondent's past diagnoses of, and treatment for, dyslexia and substance abuse. Moreover, they opined that the respondent was neither dangerous nor a threat to the community. Accordingly, based on the respondent's age in conjunction with the lack of evidence of mental illness and/or mental deficiency, neither commitment option is available or appropriate in this matter.

From the evidence presented, this court finds that there is no available or suitable state institution designed for the care and treatment of children to which the

¹³ See General Statutes (Rev. to 1975) § 17-69(a)-(b).

¹⁴ See General Statutes (Rev. to 1975) § 17-69(c).

¹⁵ See General Statutes (Rev. to 1975) § 17-53.

¹⁶ See General Statutes (Rev. to 1975) § 17-53.

Juvenile Court could commit the, now forty year old, respondent that would be suitable for his care and treatment, should he be adjudicated delinquent for the murder of Martha Moxley. This court further finds that the facilities of the adult criminal division of the Superior Court afford and provide a more effective setting for the disposition of this case, and the institutions to which the adult criminal division of the Superior Court may sentence a defendant are more suitable for the care and treatment of this respondent, should he be found guilty of the murder of Martha Moxley.

Therefore, this matter is transferred to the adult criminal division of the Superior Court for the judicial district of Stamford-Norwalk at Stamford. Although, in 1975, this judicial district did not handle criminal matters, effective October 1, 1981, criminal jurisdiction was officially established in the judicial district of Stamford-Norwalk.¹⁷ This district is the most appropriate venue¹⁸ at this time in that the murder of Martha Moxley was committed in the town of Greenwich, which falls within the judicial district of Stamford-Norwalk.


Lastly, this court takes no action with respect to the respondent's motion to dismiss, filed June 20, 2000, as it is based upon a challenge to a statute of limitations provided in General Statutes (Rev. to 1975) § 54-193, and is therefore premature. Section 54-193 was enacted as part of title 54 of the General Statutes, which governs criminal procedure.¹⁹ The language of the statute, upon which the respondent relies,

¹⁷ See Public Act No. 81-303, entitled "An Act Establishing Criminal Jurisdiction In The Judicial District of Stamford-Norwalk," which was codified at General Statutes § 51-344.

¹⁸ See 1 Wharton, Criminal Procedure, (13th Ed. Torcia 1989) § 34, p. 183 ("[i]n essence, venue means the neighborhood from which jurors are to be selected, and the neighborhood is ordinarily the place where the crime was committed").

¹⁹ See In re Jose M., 30 Conn. App. 381, 392, 620 A.2d 804 cert. denied, 225 Conn. 921, 625 A.2d 821 (1993).

applies only to a criminal prosecution, which prosecution would begin with the filing of a charge in the adult division of the Superior Court. By contrast, a "child" charged as a delinquent is neither prosecuted nor stands trial for an offense until effectuation of a transfer to the regular docket of the adult criminal division of the Superior Court.²⁰



DENNIS, J

²⁰ See In re Prudencio O., 229 Conn. 691, 698-699, 643 A.2d 265 (1994).

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FST - CR00-135792 - T

: SUPERIOR COURT

STATE OF CONNECTICUT ... JUDICIAL DISTRICT OF STAMFORD/
NORWALK

VS.

: NORWALK AT STAMFORD

MICHAEL S.

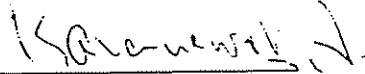
: FEBRUARY 5, 2001

ORDER

The court enters the following orders:

1. The defendant is ordered to appear before the Superior Court for the Judicial District of Stamford/Norwalk at Stamford, Criminal Division, on February 21, 2001 at 10:00 a.m., for arraignment and further proceedings according to law.
2. The file shall remain sealed until the time of arraignment; this order, only, is not sealed.

So Ordered.


KAVANEWSKY, J.
Presiding Judge, Criminal Division