UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL C. SKAKEL, Petitioner,	:	Case No. 3:07 CV 1625 (PCD)
v.	:	
PETER J. MURPHY, Respondent.	:	OCTOBER 27, 2008

RESPONDENT'S LOCAL RULE 56(a)1 STATEMENT

Pursuant to Local Rule 56(a)1, and in support of his motion for summary judgment, the respondent submits the following statement of material facts.[1]

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[1] The respondent's statement of material facts is compiled from documents in appendices A through D, which were filed with the respondent's answer on December 21, 2007, and appendices E through R, which were filed with the respondent's motion for summary judgment, memorandum in support of the motion for summary judgment and statement of material facts. These documents are as follows:

Appendix A – Defendant's brief to the Connecticut Supreme Court in State v. Skakel, Case No. SC 16844

Appendix B – State's brief to the Connecticut Supreme Court in State v. Skakel, Case No. SC 16844

Appendix C – Defendant's reply brief to the Connecticut Supreme Court in State v. Skakel, Case No. SC 16844

Appendix D – Decision of the Connecticut Supreme Court, State v. Skakel, 276 Conn. 633, 888 A.2d 985, cert. denied, _ U.S. __, 127 S.Ct. 578, 166 A.2d 428 (2006)

Appendix E – Juvenile Petition/Information – Delinquency, Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk

Appendix F – Motion to dismiss pursuant to statute of limitations, Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk

Appendix G – Memorandum of decision on transfer, In re Michael S., Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk

Appendix H – Decision of the Connecticut Supreme Court, In re Michael S., 258 Conn. 621, 784 A.2d 317 (2001)

(continued...)

A. Procedural Background

On February 8, 2000, the petitioner was charged with murder, in violation of General Statutes § 53a-54a (Rev. to 1975), in connection with the October 1975 death of Martha Moxley.[2] Because the petitioner was fifteen years of age when the crime was committed,

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[1](...continued)

Appendix I – Memorandum of decision on motion to dismiss, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk

Appendix J – Judgment, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk

Appendix K – Defendant's motion for a new trial, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk

Appendix L – Defendant's amended motion for a new trial, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk

Appendix M – State's objection to defendant's amended motion for a new trial, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk

Appendix N – Transcript of the hearing on the defendant's amended motion for a new trial on August 28, 2002

Appendix O – Defendant's motion for reconsideration and reargument en banc in State v. Skakel, Case No. SC 16844

Appendix P – State's opposition to defendant's motion for reconsideration and reargument en banc in State v. Skakel, Case No. SC 16844

Appendix Q – Order of the Connecticut Supreme Court denying defendant's motion for reconsideration and reargument en banc in State v. Skakel, Case No. SC 16844

Appendix R – Order of the United States Supreme Court denying *certiorari*, Skakel v. Connecticut, __ U.S. __,127 S.Ct. 578, 166 L.Ed.2d 428 (2006)

Appendix S – Memorandum of decision on petition for new trial, Skakel v. State, Case No. CV05-4006524-S, Judicial District of Stanford-Norwalk

[2] General Statutes § 53a-54a (Rev. to 1975) provides, in pertinent part, as follows: (continued...)

he was originally referred to the juvenile division of the Superior Court in Stamford. Juvenile Petition/Information – Delinquency, Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk, Appendix E. On June 20, 2000, the petitioner moved to dismiss the charges against him on grounds that their prosecution was barred by the statute of limitations. Motion to Dismiss Pursuant to Practice Book § 41-8(3), Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk, Appendix F.

After a hearing, the juvenile court, *Dennis, J.*, ordered the case transferred to the criminal division of the Superior Court. Memorandum of Decision, In re Michael S., Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk, Appendix G.[3] The petitioner appealed the decision transferring the prosecution to the criminal docket. After briefing and argument, the Connecticut Supreme Court held that the transfer order was not a final judgment and dismissed the appeal. In re Michael S., 258 Conn. 621, 784 A.2d 317 (2001), Appendix H.

On December 11, 2001, the trial court, *Kavanewsky, J.*, issued a memorandum of decision denying the petitioner's motion to dismiss on statute of limitations grounds. Memorandum of Decision Re: Motion to Dismiss, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix I. After trial by jury, the petitioner was found guilty of murder. On August 29, 2002, the trial court sentenced the petitioner to imprisonment for a period not less than twenty years nor more than life. Judgement, State

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[2](...continued)

> (a) A person is guilty of murder when, with intent to cause the death of another, he causes the death of such other person or of a third person. . . .
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> (b) Murder is punishable as a class A felony unless it is a capital felony and the death penalty is imposed, as provided by Section 53a-46a.

[3] The juvenile court transferred the case without taking action on the petitioner's motion to dismiss the charges on statute of limitations grounds. Memorandum of Decision at 7, In re Michael S., Docker No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk, Appendix F.

v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix J. The petitioner appealed to the Connecticut Supreme Court, which affirmed his conviction on January 24, 2006. State v. Skakel, 276 Conn. 633, 888 A.2d 985 (2006), Appendix D.

Thereafter, the petitioner filed a motion for reconsideration and reargument en banc; Motion for Reconsideration, to Reargue and for Reconsideration and Reargument en Banc, State v. Skakel, Supreme Court Case No. 16844, Appendix O; which the state opposed. State's Opposition to the Defendant's Motion for Reargument and Reconsideration or Reargument and Reconsideration en Banc, State v. Skakel, Supreme Court Case No. 16844, Appendix P. The Connecticut Supreme Court denied the petitioner's motion for reconsideration and reargument. Order, State v. Skakel, Supreme Court Case No. 16844, Appendix Q. The petitioner filed a petition for certiorari to the United States Supreme Court which was denied on November 13, 2006. Skakel v. Connecticut, __ U.S. __,127 S.Ct. 578, 166 L.Ed.2d 428 (2006), Appendix R.[4]

B. Evidence of the Underlying Crime Presented at Trial

In State v. Skakel, supra, Appendix D, the Connecticut Supreme Court's decision on the petitioner's direct appeal, the court stated that the following facts could reasonably have been found from the evidence presented at trial:

> Sometime between 6:30 and 7:30 p.m. on the evening of Thursday, October 30, 1975, the victim left her home on Walsh Lane, located in the Belle Haven section of Greenwich, with a friend, Helen Ix, to play and socialize in and around the neighborhood. It was the night before Halloween, commonly referred to as "mischief night," an evening when the neighborhood children were known to engage in playful mischief. The victim and Ix soon were accompanied by other friends who lived nearby. Several times that night, the group stopped by the Skakel home, which was located on Otter Rock Drive.[5] The first time they did so, the [petitioner] was dining at the Belle Haven Club

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[4] On August 25, 2005, the petitioner filed a petition for a new trial pursuant to General Statutes § 52-270 in the Superior Court for the Judicial District of Fairfield. The trial court, *Karazin, J.*, denied the petitioner's petition for a new trial on October 25, 2007. Memorandum of Decision, Skakel v. State, CV05-0006524-S, Judicial District of Fairfield.

[5] "The victim's home was located on Walsh Lane, diagonally across the street from the [petitioner's] home, which faced Otter Rock Drive." State v. Skakel, 276 Conn. at 640 n.4, Appendix D.

with his siblings, Rushton Skakel, Jr., Julie Skakel, Thomas Skakel, John Skakel, David Skakel and Stephen Skakel, their cousin James Dowdle, their tutor Kenneth Littleton, and Julie Skakel's friend Andrea Shakespeare.[6] The Skakel group arrived home from dinner before 9 p.m., at which time the victim and her friends again visited the [petitioner's] house.

Shortly thereafter, the [petitioner], joined by the victim, Ix and Jeffrey Byrne, a friend of the victim, entered one of the Skakel family vehicles, a Lincoln Continental, which was parked on the Skakels' side driveway, to talk and listen to music. Thomas Skakel, the [petitioner's] then seventeen year old brother, soon joined the group. Sometime before 9:30 p.m., the group was interrupted by Rushton Skakel, Jr., and John Skakel, who needed to use the Lincoln Continental to drive Dowdle home, where they planned to watch a television program scheduled to air at 10 p.m. Consequently, Thomas Skakel, Ix, Byrne and the victim exited the car. As Ix began to leave the Skakel property with Byrne, she observed Thomas Skakel and the victim engaging in flirtatious horse play at the other end of the driveway. Feeling "a bit embarrassed by the flirting," Ix left to go home.[7]

The victim's mother, Dorothy Moxley, expected that the victim would be home that evening by 10:30 or 11 p.m. At about 1:30 or 2 a.m., upon discovering that her daughter had not returned home, she sent the victim's brother, John Moxley, out to look for her. Dorothy Moxley thereafter telephoned anyone who she thought might know the victim's whereabouts, including the [petitioner's] family, whom Dorothy Moxley called several times. Dorothy Moxley's efforts to locate the victim were unsuccessful, and she eventually contacted the Greenwich police department, which dispatched an officer to the Moxley home. The officer made a missing persons report and briefly searched the surrounding area. The next morning, at about 8:30 a.m., Dorothy Moxley, believing that the victim may have fallen asleep in the Skakel family motor home that usually was parked in the Skakels' driveway, went to the [petitioner's] house. The [petitioner] answered the door, appearing "hungover" and dressed in jeans and a T-shirt. The [petitioner] informed Dorothy Moxley that the victim was not at his home, and an inspection of the motor home by a Skakel employee confirmed that she was not there either.

Later that day, at about noon, a neighborhood friend discovered the victim's dead body under a large pine tree in a wooded area on the Moxley property. The victim was lying facedown, with her pants and panties pulled down

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[6] "Dowdle also was known as James Terrien." Skakel, supra, 640 n.5, Appendix D.

[7] "The trial testimony was less than definitive as to whether the [petitioner] had accompanied his brothers when they drove Dowdle home or whether he had stayed behind with the victim and the others. For example, Shakespeare testified that the [petitioner] had stayed behind and did not accompany his brothers to Dowdle's home that night. Shakespeare, however, was unable to articulate the basis of her recollection and conceded that she had no specific memory either of the Lincoln Continental leaving without the [petitioner] or seeing the [petitioner] in the house after the car had departed for Dowdle's home. Rushton Skakel, Jr., John Skakel and Dowdle all testified that the [petitioner] had accompanied them to Dowdle's home that evening." Skakel, supra, 641 n.6, Appendix D.

around her ankles. Forensic tests revealed that the victim had died from multiple blunt force traumatic head injuries. A large quantity of blood was discovered in two areas in a grassy region approximately seventy feet from the victim's body, with a distinct drag path leading from the pools of blood to the location where the victim's body was found. The victim likely was assaulted at or near the farther end of her circular driveway and then dragged approximately eighty feet to the pine tree under which her body subsequently was discovered. Remnants of the murder weapon, a Tony Penna six iron golf club, also were found at the crime scene. The head of the golf club and an eight inch section of its shaft were found on the circular driveway, approximately 116 feet from the area where the large accumulation of the victim's blood was found. Another piece of the shaft was discovered on the grassy area near the two large pools of blood. The remaining part of the shaft attached to the club handle never was found.

Harold Wayne Carver II, a forensic pathologist and the state's chief medical examiner, testified regarding the findings of the original autopsy performed by then chief medical examiner Elliot M. Gross, also a forensic pathologist. Carver stated that the victim's injuries appeared consistent with having been inflicted by a golf club. In addition to the fatal head injuries, the victim had been stabbed in the neck with a piece of the golf club shaft. According to Carver, Gross had used an ultraviolet light to detect the presence of semen on the victim's pubic region and also had taken vaginal and anal swabs. No semen was found in those areas, however. Nothing in the autopsy report indicated that the ultraviolet light had been applied to the victim's buttocks or to other parts of the victim's body. With respect to the time of death, Carver testified that the victim had been dead for some time before her body was found. He further opined that the time of death more likely was closer to 9:30 p.m. on October 30, 1975, when she was last seen alive, rather than noon the following day, when her body was discovered. Because the autopsy was conducted twenty-four hours after the discovery of the victim's body, a more precise time of death could not be ascertained.[8]

Henry Lee, a forensic scientist and the former state chief criminalist, reviewed the documents, photographs and physical evidence compiled by the investigators and performed a partial reconstruction of the crime scene. On the basis of his investigation, Lee testified as to the likely nature and sequence of events leading up to the victim's death. In particular, he indicated that the golf club that was used to assault and kill the victim probably had broken into pieces from the force with which the victim had been struck. This force, according to Lee, likely propelled the head of the golf club, and a piece of its shaft, over seventy feet, from the location of the fatal assault to the location inside the circular driveway where those pieces subsequently were discovered. According to Lee, the remaining piece of the

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[8] "The evidence revealed that residents in the neighborhood heard a disturbance between 9:30 and 10 p.m. on October 30, 1975, near the Moxley property. Dorothy Moxley testified that, around that time, she heard a commotion coming from the general direction of the area where the victim's body subsequently was discovered. She recalled hearing dogs barking and what sounded like excited young voices. Ix testified that her dog began to bark incessantly shortly after 9:30 p.m. David Skakel also recalled hearing dogs barking at approximately 10 p.m. that night." Skakel, supra, 643 n.7, Appendix D.

golf club shaft then was used as a sharp weapon to stab the victim. Lee further testified that, in light of the amount of blood found on the inside of the victim's jeans and panties, those garments likely were pulled down before the assault occurred. Lee also stated that the absence of vertical blood drippings on the victim's shoes and jeans indicated that the victim was lying on the ground when the perpetrator inflicted the injuries to her head and neck.

James Lunney, a detective with the Greenwich police department in 1975, testified that, on the day that the victim's body was discovered, he briefly visited the [petitioner's] home and noticed a barrel containing several items, including golf clubs, in a hallway near the rear of the home. Lunney testified that one of the golf clubs, a Tony Penna four iron, later was seized from the property with the written consent of the [petitioner's] father. Thomas G. Keegan, a captain in the detective division of the Greenwich police department in 1975, testified that an examination of the seized golf club and the golf club parts found at the crime scene revealed that the murder weapon came from the [petitioner's] home.[9]

In the days and months following the victim's murder, the Greenwich police conducted numerous interviews in furtherance of its criminal investigation into the victim's death. The [petitioner] and his siblings were among those interviewed in the early stages of that investigation. On November 15, 1975, the [petitioner], who was accompanied by his father, gave a tape-recorded interview to the Greenwich police at the police station. Responding to inquiries concerning his whereabouts on the night of the murder, the [petitioner] explained that he had accompanied his brothers and Dowdle to Dowdle's home, which was about twenty minutes away, and watched the television show "Monty Python's Flying Circus." According to the [petitioner], he returned to his home around 10:30 or 11 p.m., and went to bed about fifteen minutes later.[10] When asked specifically about whether he left the house after he went to his bedroom that night, the [petitioner] responded, "no." The [petitioner] acknowledged, however, that, on other occasions, he had left his home after ostensibly retiring to his room for the night.

In 1977, two years following the victim's murder, the [petitioner] revealed certain feelings of guilt and remorse to Larry Zicarelli, who then was employed by the [petitioner's] family as a driver and general handyman.

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[9] "The seized golf club had two labels affixed to the shaft just below the handle of the grip. One label, from the Greenwich Country Club, indicated that the club had belonged to "Mrs. R.W. Skakel" of "Greenwich, Conn.," the [petitioner's] deceased mother. Keegan testified that, along with the visible similarities between the murder weapon and the club seized from the Skakel home, namely, the brand and the make, a criminalist's examination of the murder weapon and the seized club revealed that the markings on the heads of the clubs were consistent with the two clubs previously having come in contact with one another." Skakel, supra, 644 n.8, Appendix D.

[10] "Dowdle and Rushton Skakel, Jr., corroborated the [petitioner's] statement that he had spent part of that evening at Dowdle's home watching television. Shakespeare, however, recalled seeing the [petitioner] at his home after Dowdle and Rushton Skakel, Jr., departed for Dowdle's home in the Lincoln Continental." Skakel, supra, 645 n.9, Appendix D.

While being driven by Zicarelli to an appointment in New York City, the [petitioner], distraught from an earlier altercation with his father, told Zicarelli that he "had done something very bad" and that he "either had to kill himself or get out of the country." On another occasion, Zicarelli and the [petitioner] were stopped in traffic on the Triborough Bridge in New York on their way home when the [petitioner] "opened the [car] door, started to jump out of the car and ran to the side . . . of the bridge." Zicarelli ran after the [petitioner] and forced him back into the car. As Zicarelli was proceeding to the driver's side door, the [petitioner] again exited the car and ran toward the other side of the bridge. Zicarelli once again hurried toward the [petitioner] and forced him back into the car. Just before Zicarelli and the [petitioner] arrived at the Skakel home, Zicarelli asked the [petitioner], "[W]hy would [you] want to do what [you were] trying to do?" The [petitioner] responded that, "if [you] knew what [I] had done, [you] would never talk to [me] again."[11] Immediately following this incident, Zicarelli terminated his employment with the Skakels.[12]

From 1978 to 1980, the [petitioner] was a resident at the Elan School, a residential facility for troubled adolescents located in Poland Springs, Maine. Several former Elan residents testified about the deplorable conditions at the institution, which employed a behavioral modification approach predicated on controversial techniques of intimidation, confrontation and humiliation of its residents. As a result, Elan residents regularly endured mental and physical abuse at the hands of their peers and Elan staff members. While a resident at Elan, the [petitioner] frequently was confronted and interrogated about his involvement in the victim's murder. For example, Charles Seigen, who was enrolled at Elan with the [petitioner] from 1978 to 1979, testified that he recalled attending two or three group therapy sessions, supervised by a staff member and typically attended by eight residents, during which the [petitioner] was confronted about the victim's murder. According to Seigen, the [petitioner] sometimes responded to such probing with annoyance. On other occasions, however, the [petitioner] became very upset, cried and stated that he did not know if he had done it. The [petitioner] also stated in these group sessions that, on the night of the victim's murder, he was "blind drunk" and "stumbling."[13]

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[11] "On cross-examination, defense counsel asked Zicarelli whether he was aware that, on the night before this incident, the [petitioner] "had slept in his dead mother's dress and felt bad about it ...." Zicarelli responded that he had been unaware of any such incident. Julie Skakel testified that the [petitioner] had contemplated jumping off the Triborough Bridge because he felt guilty about having slept in his deceased mother's dress." Skakel, supra, 646 n.10, Appendix D.

[12] "The state also introduced the testimony of Matthew Tucharoni, who stated that, in the spring of 1976, the [petitioner], accompanied by Rushton Skakel, Jr., and Julie Skakel, came to the barbershop in Greenwich where Tucharoni then was employed and inquired about a haircut. Tucharoni testified that while he was preparing to cut the [petitioner's] hair, he overheard the [petitioner] say, 'I am going to kill him.' According to Tucharoni, Julie Skakel responded, 'you can't do that,' and the [petitioner] replied, 'Why not? I did it before....'" Skakel, supra, 646 n.11, Appendix D.

[13] "Seigen also described the nature of the 'general meetings' at Elan, which were (continued...)

Dorothy Rogers, another former resident of Elan, testified that, on one occasion, when she and the [petitioner] were talking at an Elan social function, the [petitioner] told her that he had been drinking on the night of the murder and that he could not recall whether he was involved in the victim's death. The [petitioner] further explained to Rogers that his family had enrolled him at Elan because they feared that he may have murdered the victim and wanted him in a location far removed from the investigating officers. Gregory Coleman, a resident at Elan from 1978 to 1980, testified about an exchange that he had had with the [petitioner] while Coleman stood "guard" over the [petitioner] following the [petitioner's] failed escape attempt from Elan. During this conversation, the [petitioner] confided in Coleman about murdering a girl who had rejected his advances. According to Coleman, the [petitioner] had admitted killing the girl with a golf club in a wooded area, that the force with which he had hit her had caused the golf club to break in half, and that he had returned to the body two days later and masturbated on it. John Higgins, another former resident of Elan, recounted certain emotional admissions that the [petitioner] had made to him while the two were on guard duty one night on the porch of the men's dormitory at Elan. In particular, Higgins testified that the [petitioner] had told him that, on the night of the murder, there was a "party of some kind or another" at the [petitioner's] home. The [petitioner] also told Higgins that he remembered rummaging through his garage looking for a golf club, running through the woods with the club and seeing pine trees. Higgins further stated that, as the conversation continued, the [petitioner's] acknowledgment of his culpability in the victim's murder progressed from "he didn't know whether he did it" to "he may have done it" to "he must have done it," and finally to "I did it."

Elizabeth Arnold and Alice Dunn, both of whom had attended Elan during the [petitioner's] stay at the facility, also testified about certain inculpatory statements that the [petitioner] had made to them. Both testified that the

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[13](...continued)
convened to confront residents about specific issues. According to Seigen, '[a] general meeting was probably the scariest word that you would hear when you were at Elan.' A typical general meeting, which was attended by 100 or more Elan residents and staff, focused on one or two residents who were singled out for violating Elan rules. Seigen recalled that the [petitioner] was the subject of a general meeting as a result of his failed attempt to run away from the facility. Seigen stated that he first learned of the [petitioner's] possible involvement in the victim's murder when it was announced at a general meeting by Joseph Ricci, Elan's executive director. Elizabeth Arnold, another former Elan resident, testified that, at that particular general meeting, which lasted approximately three hours, Ricci continuously had confronted the [petitioner] about various issues and that four or five Elan residents 'brutalized' the [petitioner] in a boxing ring. Other former residents of Elan also testified about the details of the torment that the [petitioner] had endured at this meeting, including accusations leveled against the [petitioner] that he had killed the victim. The [petitioner's] initial response to this interrogation was to deny his involvement in the murder. After several rounds in the boxing ring, however, the [petitioner] stated, 'I don't know' or 'I don't remember' in response to questioning regarding his involvement in the murder. During the course of his enrollment at Elan, the [petitioner] also was forced to wear a large cardboard sign around his neck, another form of punishment at Elan. The sign read, 'Confront me on why I murdered Martha Moxley,' or words to that effect." Skakel, supra, 647 n.12, Appendix D.

[petitioner] had expressed uncertainty as to whether he or his brother had murdered the victim. Arnold also recalled a group therapy session in which the [petitioner], upon being questioned about the victim's murder, stated that "[h]e was very drunk and had some sort of a blackout" that night, that his brother had "fool[ed] around" with his "girlfriend," and that his brother had stolen her from him. Dunn, who graduated from Elan in 1978 and subsequently became a staff member there, testified that while she was employed at Elan, the [petitioner] stated that he was not in "his normal state" on the night of the murder.

Thereafter, in the summer of 1987, the [petitioner] told Michael Meredith, a former Elan resident who was staying temporarily in the [petitioner's] home, that, on the night of the victim's murder, he had climbed a tree on the Moxley property and masturbated in the tree while watching the victim through her window. According to Meredith, he first learned of the victim's murder in this conversation. The [petitioner] also told Meredith that while he was in the tree, he saw his brother Thomas Skakel walk across the Moxley property toward the victim's home but that Thomas Skakel had not seen him in the tree. The [petitioner] related a similar story to Andrew Pugh, a close childhood friend, when the two saw one another in 1991. The [petitioner] had expressed a desire to renew their friendship, which gradually had faded following the victim's murder. In an effort to ease Pugh's concerns about the [petitioner's] involvement in the victim's death, the [petitioner] assured Pugh that he did not kill the victim but mentioned that he had masturbated in a tree on the night that she was murdered. Pugh understood that the tree to which the [petitioner] referred was the tree under which the victim's body was discovered.

The most descriptive account of the [petitioner's] activities on the night of the murder came in 1997 from an taped-recorded conversation between the [petitioner] and Richard Hoffman, a writer who was collaborating with the [petitioner] on a book about the [petitioner's] life. On that tape, the [petitioner] explained to Hoffman that, earlier in the evening of the victim's murder, he had invited the victim, who was seated with the [petitioner] in his father's car, to accompany him to his cousin's house to watch the Monty Python Flying Circus television show. The victim declined the invitation because of her curfew, and the two instead made plans to go "trick or treating" the next night. The [petitioner] thereafter left for Dowdle's home with his brothers Rushton Skakel, Jr., and John Skakel, as well as Dowdle.

The [petitioner] told Hoffman that, after returning to his own home from Dowdle's house, he had walked through the house in search of various people. Upon observing that the door to his sister's room was closed, he had "remember[ed] that [his sister's friend, Shakespeare] had gone home . . . ." He then indicated that he had gone into "the master bedroom [but] there was nobody there, the [television] was on but nobody was there." The [petitioner] went upstairs to bed shortly thereafter, but he became "horny" and decided to spy on a "lady" who lived on Walsh Lane. The [petitioner] then "snuck out" of his house and went to this person's home, hoping to see her through her window. Unsuccessful in that endeavor, he thought, "[f]uck this ... Martha likes me, I'll go, I'll go get a kiss from Martha." (Internal quotation marks omitted.) The [petitioner] then proceeded to the victim's home, climbed a tree near the victim's front door and masturbated in the tree for about thirty

seconds. Shortly thereafter, "a moment of clarity came into [his] head," and the [petitioner] climbed down from the tree and walked back home. On his way home, he threw rocks into the dark, repeatedly yelling, "Who's in there?" He and his friends previously had done this while shooting BB guns into the dark. The next morning, the [petitioner] awoke to "[Dorothy] Moxley saying 'Michael ... have you seen Martha?' " The [petitioner] thought to himself, "Oh my God, did they see me last night?" At that moment, the [petitioner] told Hoffman, he "remember[ed] just having a feeling of panic."

The state also adduced evidence establishing that the [petitioner], who was infatuated with the victim, had grown resentful of her flirtatious friendship with his older brother Thomas Skakel, whom he considered his nemesis. According to Pugh, who in 1975 was friendly with the victim and the [petitioner], the [petitioner] had "told [him] that he liked Martha quite a bit and had a crush on her." Pugh also testified that the [petitioner] had told him that "he would have liked to have a relationship with her." Pugh testified that he had observed the [petitioner] and the victim engage in "horseplay, roughhousing, fooling around . . . [and] kissing one time in the [Skakel family motor home]." With respect to Thomas Skakel's relationship with the victim, Jacqueline Wettenhall O'Hara, a neighborhood friend of the victim, recounted observing flirtatious conduct between the victim and Thomas Skakel in the months leading up to the victim's death. Entries recorded in the victim's diary in the two months preceding her murder disclosed the victim's friendship with the [petitioner] and Thomas Skakel, and also revealed the sometimes flirtatious nature of her relationship with Thomas Skakel.[14] In addition, Ix testified that she had observed the victim and Thomas Skakel engaging in flirtatious horseplay the last time she saw the victim alive. Moreover, one of the sneakers that the victim was wearing when her body was recovered had the name "Tom" written on it.

The [petitioner] raised an alibi defense at trial. In particular, he claimed that the victim had been murdered at approximately 10 p.m. on October 30,

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[14] "For example, the victim made an entry in her diary on September 12, 1975, in which she stated that, while she was out driving in Thomas Skakel's car with several other teenagers, including the [petitioner], 'I drove a little then ... I was practically sitting on [Thomas Skakel's] lap [be]cause I was only steering. He kept putting his hand on my knee.... [T]hen we went to Friendly's [restaurant and] Michael [the petitioner] treated me [and] he got me a double but I only wanted a single so I threw the top scoop out the window. Then I was driving again [and Thomas Skakel] put his arm around me. He kept doing stuff like that.' A diary entry from September 19, 1975, recounted the victim's activities with other neighborhood friends that day. In that entry, the victim stated that 'Michael was so totally out of it that he was being a real asshole in his actions [and] words. He kept telling me that I was leading [Thomas Skakel] on when I don't like him (except as a friend) [and] I said, well how about you [and] Jackie. You keep telling me that you don't like her [and] you are all over her.... Michael jumps to conclusions. I can't be friends [with Thomas Skakel] just because I talk to him, it doesn't mean I like him.' In a subsequent entry, dated October 4, 1975, the victim describes events that had occurred at a school dance and at a party after the dance at a neighbor's home. The entry included the following: 'Afterwards I went to Mouakaud's for a party! I saw everybody. [Thomas Skakel] was being an ass. At the dance he kept putting his arms around me [and] making moves.'" Skakel, supra, 651 n.13, Appendix D.

> 1975, and that he was at Dowdle's home, some twenty minutes away from the murder scene, at that time.[15] The [petitioner] also raised a third party culpability defense, pointing to Littleton as a likely perpetrator of the victim's murder. In fact, Littleton, who had been hired as a part-time tutor by the Skakel family, had taken up residence at the Skakel home on October 30, 1975, the day that the victim was last seen alive, and had slept there with the Skakel children that night. Littleton testified that, after returning home from dinner at 9 p.m., he remained at the house all night, stepping outside briefly at approximately 9:30 p.m. only to investigate a disturbance.[16] In addition, testimony adduced by the [petitioner] revealed that Littleton, who began to manifest serious psychiatric and behavioral problems in the years following the murder, may have made a statement, several years after the killing, in which he implicated himself in the crime. Littleton emphatically denied that he had had anything to do with the victim's death, however.
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> At the conclusion of the trial, the jury found the [petitioner] guilty of murder. The trial court denied the [petitioner's] posttrial motions and, thereafter, sentenced the [petitioner] to a period of incarceration of twenty years to life imprisonment.

State v. Skakel, 276 Conn. at 639-653, Appendix D.

C. The Petitioner's Claims on Appeal

The petitioner appealed his conviction to the Connecticut Supreme Court raising seven claims of error. Brief of the Defendant-Appellant, State v. Skakel, Supreme Court No. 16844, (hereinafter "Petitioner's Supreme Court brief"), Appendix A. For the reasons set forth below, the court rejected the petitioner's claims and affirmed the judgement of the trial court. State v. Skakel, 276 Conn. at 770, Appendix D.

1. The petitioner's prosecution for the murder of Martha Moxley was not barred by the statute of limitations

On October 19, 2000, the petitioner was arrested and charged with murder in connection with the October 1975 bludgeoning death of Martha Moxley. State v. Skakel, 276 Conn. at 639, Appendix D. The petitioner moved to dismiss, claiming that prosecution

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[15] "Defense counsel adduced testimony from Joseph Alexander Jachimczyk, a forensic pathologist from Houston, Texas, who concluded that the time of the victim's death most likely was around 10 p.m. on October 30, 1975. Jachimczyk's testimony was bolstered by the testimony of several people, including Dorothy Moxley, Ix and David Skakel, that they had heard dogs barking in the vicinity of the crime scene at approximately that time. See footnote 7 of this opinion." Skakel, supra, 642 n.14, Appendix D.

[16] "According to Littleton, he was unable to discern the cause of the disturbance." Skakel, supra, 653 n.15, Appendix D.

of the murder charge was barred by General Statutes § 54-193 (Rev. to 1975). Motion to Dismiss Pursuant to Practice Book § 41-8(3), Appendix F.[17] At the time of Moxley's murder, § 54-193 imposed a five-year statute of limitations for all offenses punishable by imprisonment in the state penitentiary at Somers. The petitioner argued that because he was charged with non-capital murder and more than five years had elapsed between the crime and his arrest, his prosecution was barred by the statute of limitations. Petitioner's Supreme Court brief at 16-17, Appendix A.

The trial court, *Kavanewsky, J.*, rejected the petitioner's claim and denied his motion to dismiss. Memorandum of Decision Re: Motion to Dismiss, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix I. The trial court concluded that the application of § 54-193 is determined by the "gravity of the offense charged, [and] not solely its punishment." Id., at 8. Based on the rulings of the Connecticut Supreme Court in State v. Ellis, 197 Conn. 436, 497 A.2d 974 (1985), and State v. Golino, 201 Conn. 435, 518 A.2d 57 (1986), the court found that the legislature had never intended the statute of limitations to bar prosecution of the crime of murder. Memorandum of Decision Re: Motion to Dismiss, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, at 4-7, Appendix I. Accordingly, the trial court held that § 54-193 (Rev. to 1975) did not bar the petitioner's prosecution for Moxley's murder. Id., at 8.

On appeal to the Connecticut Supreme Court, the petitioner claimed that the trial court erred in ruling that his prosecution for Moxley's murder was not barred by the statute of limitations. Petitioner's Supreme Court brief at 16-32, Appendix A. In advancing his

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[17] Section 54-193 (Rev. to 1975) provided, in pertinent part, that:

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

claim, the petitioner relied primarily on the Connecticut Supreme Court's ruling in State v. Paradise, 189 Conn. 346, 456 A.2d 305 (1983). Petitioner's Supreme Court brief at 17-20, Appendix A. In Paradise, the defendants were arrested and charged in 1981 for a murder that took place in 1974. The trial court dismissed the charges on the ground that the prosecution was barred by the statute of limitations. The state appealed, claiming that the the 1976 amendment to § 54-193, which removed the time limitation on prosecution of all class A felonies, should be applied retroactively.[18] The Paradise court ruled that the 1976 amendment did not apply retroactively and upheld the dismissal of the charges against the defendants. State v. Paradise, supra, 350-53. In his appeal, the petitioner argued that Paradise was indistinguishable from his own case and that it compelled the same result. Petitioner's Supreme Court brief at 19-20, Appendix A.

The state offered two arguments in response to the petitioner's claim. First, the state argued that the trial court correctly ruled that the statute of limitations did not bar prosecution of the petitioner for the 1975 murder of Martha Moxley. Brief of the State of Connecticut-Appellee, State v. Skakel, Supreme Court No. 16844, (hereinafter "State's Supreme Court brief") at 13-27, Appendix B. The state contended that Public Act 73-137, which amended Connecticut's murder statute and created the offense of capital felony, did not change the allowable period for the prosecution of non-capital murder. Id., at 17-18. The state argued further that the subsequent enactment of Public Act 76-35, which removed the time limitation on the prosecution of all class A felonies, demonstrated that the legislature had never intended to change the limitation period for murder. State's Supreme Court brief at 21-22, Appendix B.[19] In sum, the state argued that the changes

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[18] See Public Acts 1976, No. 76-35.

[19] Public Act 76-35, § 1, provides, in pertinent part, as follows:

> No person shall be prosecuted for . . . any . . . OFFENSE EXCEPT A CAPITAL FELONY OR A CLASS A FELONY FOR which the punishment is or may be imprisonment . . . IN EXCESS OF ONE YEAR, except within five

(continued...)

in the murder statutes in 1973 reflected a different approach to the death penalty, mandated by the United States Supreme Court's ruling in Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), and not a different view of whether prosecution for murder should be time barred. State's Supreme Court brief at 27, Appendix B.

Alternatively, the state urged the court to overrule its decision in State v. Paradise and apply the 1976 amendment of the statute of limitation to the petitioner's case. State's Supreme Court brief at 27-28, Appendix B. The state argued that the United States Supreme Court's ruling in Stogner v. California, 539 U.S. 607, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003), undermined the logic of the court's holding in Paradise. In Stogner, supra, the court held that a new statute of limitations cannot revive a previously time-barred prosecution without offending the ex post facto clause. Id., 539 U.S. at 620-21. The state argued that the reasoning applied in Stogner strongly suggested that a new statute of limitations may be applied as long as the original time period has not expired. State's Supreme Court brief at 27, Appendix B; see Stogner, 539 U.S. at 613-14. The state argued that it was well-established that violation of a criminal statute does not confer upon the violator a vested right under the then existing statute of limitations. State's Supreme Court brief at 28, Appendix B.[20] Accordingly, the state urged the court to reconsider and overrule the retroactivity analysis of Paradise. Id.

In his reply brief, the petitioner generally assailed the state's claim that General Statues § 54-193 (Rev. to 1975) did not impose a time limitation on the prosecution of non-

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[19](...continued)
years next after the offense has been committed; nor shall any person be prosecuted for . . . ANY OTHER OFFENSE, EXCEPT A CAPITAL FELONY OF A CLASS A FELONY, but within one year next after the offense has been committed . . . .

[20] In support of this proposition, the state cited State v. O'Neill, 796 P.2d 121, 125 (Idaho 1990); Commonwealth v. Johnson, 553 A.2d 897, 900 (Pa. 1989); People v. Hodgson, 740 P.2d 848, 851 (Wash. 1987), cert. denied sub nom, Fied v. Washington, 485 U.S. 938 (1988); People v. Sample, 161 Cal. App. 3d 1053, 1058 (1984). State's Supreme Court brief at 28, Appendix B.

capital murder. The petitioner argued that the plain meaning of § 54-193, as well as the rule of lenity, made clear that the prosecution for a non-capital murder committed prior to the 1976 amendment of the statute of limitations had to be commenced within five years of the commission of the crime. Reply Brief of the Defendant, State v. Skakel, Supreme Court No. 16844 (herein after "Petitioner's Supreme Court reply brief") at 2-4, Appendix C. The petitioner urged the court to reject the state's "flawed effort to disconnect" the statute of limitations from the statutory punishment scheme. Id., at 4-6. The petitioner maintained that the validity of the state's argument was called into question by its failure to recognize "the critical distinction between murder and capital murder for statute of limitations purposes." Id., at 6-13.

The petitioner also urged the court to reject the state's request to reconsider and overrule its decision in State v. Paradise. Petitioner's Supreme Court reply brief at 2, Appendix C. The petitioner argued that the United States Supreme Court's decision in Stogner v. California, supra, lent no support to the state's claim that Paradise was wrongly decided. Moreover, the petitioner pointed out that in State v. Crowell, 229 Conn. 393, 399, 636 A.2d 804 (1994), the court had refused to overrule Paradise. Petitioner's Supreme Court reply brief at 13-14, Appendix C. The petitioner argued that it would be "unfair to [him] . . . to treat Paradise as a massive oversight." Id., at 2. The petitioner, however, made no claim that overruling Paradise would violate his rights under the United States Constitution.

The Connecticut Supreme Court upheld trial court's ruling, but based on reasoning different from that employed by the trial court. State v. Skakel, 276 Conn. at 633, Appendix D. The court concluded, upon reconsideration, that State v. Paradise was wrongly decided and should be overruled. Id., at 666. In Paradise, the court had established a presumption that, in the absence of a contrary indication of legislative intent, an amendment to the statute of limitations should not be applied retroactively. Id.; see State v. Paradise, 189 Conn. at 353. In this case, however, the court concluded that "with respect to those

offenses for which the preamendment limitation period has not expired, it is far more likely that the legislature intended for the amended limitation period to apply to those offenses." State v. Skakel, supra, 666, Appendix D. The court held that because "the five year limitation period of the of the pre-1976 amendment version of § 54-193 had not expired with respect to the October, 1975 murder of the victim when the 1976 amendment . . . became effective . . . [Public Act] 76-35, § 1, is the operative statute of limitations for the purposes of this case." Id., at 666-67. The court further held that because Public Act 76-35, § 1, did not limit the time period within which class A felonies must be prosecuted, the trial court properly denied the petitioner's motion to dismiss. Id., at 667.

2. The state neither violated the trial court's discovery order nor failed to disclose exculpatory evidence

On appeal, the petitioner claimed that the state failed to disclose certain exculpatory evidence in violation of the United States Supreme Court's ruling in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and the trial court's discovery order. Petitioner's Supreme Court brief at 32-33, Appendix A. Specifically, the petitioner claimed that the state failed to disclose a composite sketch that resembled Kenneth Littleton, the Skakel's tutor, and "profile reports" pertaining to Littleton and the petitioner's brother, Thomas Skakel. Id. The Connecticut Supreme Court rejected the petitioner's claims with respect to both the composite sketch and the profile reports. State v. Skakel, 276 Conn. at 693-94, Appendix D.

a. The state supreme court's ruling on the alleged failure to disclose the composite sketch

On May 21, 2001, the petitioner's original trial counsel filed a pretrial motion for disclosure and production requesting any material that was exculpatory in nature. The state did not object and the trial court ordered the state to comply with the request. In response to the court's order, the state provided the petitioner with numerous reports and documents relating to the investigation of the case. Skakel, supra, 694, Appendix D. The

documents disclosed by the state included several reports that included information pertaining to the composite sketch. Id., at 694-97.

One such report stated that on October 31, 1975, investigating officers at the scene of the murder were approached by special officer Charles Morganti, Jr. Morganti informed the investigators that he had been on special patrol duty in Belle Haven the previous evening when, at about 10:00 p.m., he observed a white male walking on Field Point Road and turn onto Walsh Lane. Morganti approached the individual and asked him where he was going. The individual replied that he lived on Walsh Lane and that he was going home. Morganti indicated that he saw the same man a few minutes later walking northbound on Otter Rock Drive, just north of its intersection with Walsh Lane. Skakel, supra, 694-95, Appendix D. A second such report indicates that Morganti was interviewed again the next day and that he agreed to go to the detective bureau to help produce a composite sketch of the individual that he had seen on Field Point Road on the evening of October 30, 1975.

Another report indicates that the police interviewed Carl Wold, a resident of Walsh Lane, on November 5, 1975. Wold told the police that he had gone out for his nightly walk at about 7:20 p.m. on October 30, 1975 and that the course he followed had taken him along Field Point Road. He recalled having a short conversation with an officer at the Field Point police both and later, while on his way home, that he had been stopped by another officer on Field Point Road. The officer asked Wold where he was going and Wold informed him that he was returning to his home on Walsh Lane. Wold stated that he returned home at about 8:00 p.m. and remained there the rest of the evening. Wold denied walking on Otter Rock Drive that evening. Skakel, supra, 695-96, Appendix D.[21]

[21] Wold's father, with whom Wold resided, corroborated Wold's account of his activities that evening. In addition, a second special duty officer, John Duffy, stated that he was on duty at the Field Point police booth that evening and that he had observed Wold, whom he knew to be a resident of Walsh Lane, taking his daily walk on Field Point Road. Duffy recalled that he had a brief conversation with Wold and that Wold had told him that he was (continued...)

Another report disclosed to the petitioner indicated that Inspector Frank Garr of the state's attorney's office interviewed Morganti on October 8, 1994, nineteen years after Moxley's murder. Morganti informed Garr that James F. Murphy, a private investigator retained by the Skakel family, had contacted him and questioned him about the individual whom he had stopped on Field Point Road on the evening of October 30, 1975. The report further stated that Morganti had reported the entire incident to the police at the time of the original investigation of the murder and assisted the police in making a composite sketch of the individual. The report also stated that Garr, Morganti and Murphy went together to Otter Rock Drive, the location where Morganti recalled having seen the individual for a second time on the evening of the murder. Skakel, supra, 696-97, Appendix D.

The petitioner's trial commenced on May 7, 2002. The jury returned a verdict of guilty on June 7, 2002. Petitioner's Supreme Court brief at 1, Appendix A; Judgment, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix J. On June 12, 2002, the petitioner filed a motion for a new trial pursuant to Practice Book § 42-53.[22] Defendant's Motion for New Trial, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix K. Two and a half months later, on August 26, 2002, the petitioner filed an amended motion for a new trial and requested that the court hold an evidentiary hearing on the claims set forth in the amended motion. Defendant's Amended Motion for New Trial and Request for an Evidentiary Hearing, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix L.

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[21](...continued)
heading home. State v. Skakel, 276 Conn. at 696 n.55, Appendix D.

[22] Practice Book § 42-53(a) provides, in pertinent part, as follows:

> Upon motion of the defendant, the judicial authority may grant a new trial if it is required in the interests of justice . . . .

In his amended motion for a new trial, the petitioner claimed that the state had violated the United States Supreme Court's ruling in Brady v. Maryland when it failed to disclose the composite sketch of the individual observed by Charles Morganti on the evening of October 30, 1975. Id., at 1-2; State v. Skakel, 276 Conn. at 697, Appendix D. The state opposed the petitioner's motion, claiming that it was untimely under Practice Book § 42-54.[23] State's Objection to Defendant's Amended Motion for New Trial and Request for Evidentiary Hearing, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, at 1, Appendix M. The state also argued that the petitioner had failed to establish a Brady violation because the composite sketch had not been suppressed and because it was not material to the petitioner's defense. Id., at 6-7.

The trial court, *Kavanewsky, J.*, held a hearing on the petitioner's motion on August 28, 2002, the day on which the petitioner was to be sentenced. Transcript of proceedings on August 28, 2002, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk (hereinafter "Transcript, 2/28/02"), Appendix N. In advancing his claim, the petitioner asserted that the state failed to disclose a copy of the sketch to him until August 21, 2002, after the jury had returned its verdict. The petitioner argued that the composite sketch was exculpatory because it buttressed his third party culpability defense. The petitioner claimed that this was especially true in that the sketch resembled Kenneth Littleton, the Skakels' tutor, whom the petitioner had identified as a likely perpetrator. Transcript 2/28/02 at 26, 34-44, Appendix N; Skakel, supra, 697-98, Appendix D.

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[23] Practice Book § 42-54 provides as follows:

> Unless otherwise permitted by the judicial authority in the interests of justice, a motion for a new trial shall be made within five days after a verdict or finding of guilty or within any further time the judicial authority allows within the five-day period.

In this case, the petitioner filed his amended motion for a new trial on August 26, 2002, eighty days after the jury returned its guilty verdict against him on June 7, 2002. See Petitioner's Supreme Court brief at 1, Appendix A; Defendant's Amended Motion for New Trial and Request for an Evidentiary Hearing, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix L.

During the hearing, the court asked petitioner's trial counsel whether, prior to trial, he had received the 1975 report that referred to Morganti's willingness to participate in the production of a composite sketch and the 1994 report that referred to the completed sketch. The petitioner's trial counsel answered in the affirmative with respect to both reports. Transcript, 2/28/02 at 35, Appendix N; State v. Skakel, 276 Conn. at 698-99, Appendix D. After hearing the argument of counsel, the trial court denied the petitioner's amended motion for a new trial. Transcript, 2/28/02 at 86-87, Appendix N; Skakel, supra, 699, Appendix D. The court rejected the petitioner's claim with respect to the composite sketch both on the ground that it was untimely and because it lacked merit. Transcript, 2/28/02 at 89-91, 93-94, Appendix N; Skakel, supra, 699 n.65, Appendix D.

On appeal to the Connecticut Supreme Court, the petitioner claimed that the state's failure to disclose the composite sketch prior to trial deprived him of a fair trial, in violation of Brady v. Maryland. Petitioner's Supreme Court brief at 32-33, Appendix A. In rejecting the petitioner's claim, the court observed that "[t]o establish a Brady violation, the defendant must show that [1] the government suppressed evidence, [2] the suppressed evidence was favorable to the defendant, and [3] it was material [either to guilt or to punishment]." (Alterations in original). State v. Skakel, 276 Conn. at 700, quoting State v. Wilcox, 254 Conn. 441,452, 758 A.2d 824 (2000), Appendix D. The court further noted that "evidence is not considered to have been suppressed within the meaning of *the Brady doctrine if the defendant or his attorney either knew or should have known, of the essential facts permitting him to take advantage of* [*that*] *evidence.*" (Emphasis and alterations in original.) Skakel, supra, 701-702, quoting United States v. Payne, 63 F.2d 1200, 1208 (2nd Cir. 1995), cert. denied, 516 U.S. 1165, 116 S.Ct. 1056, 134 L.Ed.2d 201 (1996), Appendix D. The court concluded that the trial court had properly found that the petitioner and his trial counsel were on notice of the existence of the composite sketch through the investigative reports disclosed to them by the state. Skakel, supra, 702-703, Appendix D.

The court held, therefore, that the petitioner "failed to establish that the state suppressed the composite drawing within the meaning of Brady." Id., at 707.

b. The state supreme court's ruling on the alleged failure to disclose the profile reports

On May 13, 2002, John F. Solomon, a former inspector with the state's attorney's office, testified outside the presence of the jury regarding an issue raised in a motion pending before the court. During his testimony, Solomon made reference to a report that he had prepared in connection with the investigation of Martha Moxley's murder. Solomon characterized the report, which he wrote in 1992, as a profile of Kenneth Littleton summarizing why, at the time the report was written, Littleton was considered a suspect. State v. Skakel, 276 Conn. at 707-708, Appendix D. The petitioner's trial counsel immediately requested a copy of the report, to which the trial court responded: "Not right now. You are talking about examining a witness." Skakel, supra, 708, Appendix D. At the same proceeding the state elicited testimony from Solomon in which he indicated that he had prepared a similar profile report regarding Thomas Skakel. Id.

The petitioner failed to renew his request for the profile reports before the conclusion of the trial and his original motion for a new trial, which was timely filed on June 12, 2002, did not refer to them. Defendant's Motion for New Trial, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix K; State v. Skakel, 276 Conn. at 708, Appendix D. However, in his amended motion for a new trial, which was filed on August 26, 2002, the petitioner claimed that the state improperly withheld the reports in violation of its obligation to disclose exculpatory evidence under Brady. Defendant's Amended Motion for New Trial and Request for an Evidentiary Hearing, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, Appendix L; Skakel, supra, 708, Appendix D.

In its opposition to the petitioner's motion, the state asserted that the claim regarding Solomon's reports was time barred because it had not been raised until long after the

expiration of the five-day time period within which motions for a new trial must be filed. See Practice Book § 42-54. State's Objection to Defendant's Amended Motion for New Trial and Request for Evidentiary Hearing, State v. Skakel, Case No. CR00-135792-T, Judicial District of Stamford-Norwalk, at 1, Appendix M. The state also claimed that the reports were internal office documents and were, therefore, exempt from disclosure under Practice Book § 40-14 and the work product doctrine. Id., at 5-6.[24] Finally, the state argued that it had disclosed all of the factual information contained in the reports prior to trial, in accordance with the court's discovery order. Id., at 5; State v. Skakel, 276 Conn. at 708-709, Appendix D.

After hearing the argument of counsel and reviewing the profile reports in camera, the trial court rejected the petitioner's claim. The court ruled that the petitioner was not entitled to an evidentiary hearing or a new trial because: (1) he waived his claim by not renewing it during trial; (2) he failed to raise the claim within the five-day period prescribed by Practice Book § 42-53; and (3) the reports were exempt for discovery under Practice Book § 40-14. Transcript 8/28/02 at 88-89, 93-94, Appendix N; State v. Skakel, 276 Conn. at 709, Appendix D. The trial court also noted that it had no reason to question the state's assertion that it had provided the petitioner with the factual information upon which the reports were based during pretrial discovery. Transcript 8/28/02 at 89, Appendix N; Skakel, supra, 709, Appendix D.

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[24] Practice Book § 40-14 provides, in pertinent part, as follows:

> Subject to Section 40-13 and except for the substance of of any exculpatory material contained herein, Sections 40-11 through 40-14 do not authorize or require of disclosure or inspection of:
>
> (1) Reports, memoranda or other internal documents made by a prosecuting authority or by law enforcement officers in connection with the investigation of prosecution of the case;
>
> (2) Statements made to prosecuting authorities or law enforcement officers except as provided in Section 40-11(a)(6) . . . .

On appeal, the petitioner claimed that the state's failure to disclose the profile reports pertaining to Littleton and Thomas Skakel violated his rights under Brady. Petitioner's Supreme Court brief at 43-44, Appendix A. The petitioner argued that the reports were not work product and that even if they were, the state would be required to disclose them under the Brady doctrine. Id. The petitioner also contended that the trial court improperly ruled that his amended motion for a new trial was untimely. The petitioner argued that since a Brady violation could be raised in a post-trial proceeding, such as a habeas corpus petition, it served no interest of justice to barr his claim on the ground that it was not raised in a timely manner. Petitioner's Supreme Court brief at 42, Appendix A.

In rejecting the petitioner's claim, the Connecticut Supreme Court, like the trial court, noted that it had no reason to doubt the state's representation that it had provided the petitioner with all of the evidence contained in the reports prior to trial. State v. Skakel, 276 Conn. at 710, Appendix D. But because the record was inadequate to do so, the state supreme court did not resolve the issue on that basis. Instead, the court concluded that the trial court acted within its discretion when it rejected the petitioner's claim on the ground that it had not been raised in a timely manner. Skakel, supra, 710, Appendix D. The court observed that although the petitioner became of aware of the reports during the trial, he did not raise a Brady challenge to the state's failure to produce them until two and a half months after the five-day limitation period of Practice Book § 42-54 had expired. The court noted further that the petitioner had offered the trial court no reason for the delay. Accordingly, the court found that the trial court had not abused its discretion when it rejected the petitioner's claim as time barred. Skakel, supra, 710-711, Appendix D.

3. The juvenile court properly transferred the petitioner's case to the adult criminal docket of the superior court

Because the petitioner was fifteen years old at the time of Martha Moxley's murder, he was originally charged as a delinquent in the Superior Court for Juvenile Matters. The state file a motion under General Statutes § 17-60a (Rev. to 1975) to transfer the petitioner

to the regular criminal docket. State v. Skakel, 276 Conn. at 654, Appendix D.[25] Section 17-60a permits the transfer of children charged with murder to the adult criminal docket, provided that the child was over the age of fourteen at the time of the murder, where the court finds reasonable cause to believe that: (1) the child committed the murder; (2) there is "no state institution designed for the care and treatment of children to which [the] court may commit such child which is suitable to his care or treatment"; or (3) the safety of the community requires that the child continue under restraint after he has reached the age of majority; and (4) the facilities of the criminal court "provide a more effective setting for the disposition of the case and the institutions to which [the criminal] court may sentence a defendant are more suitable for the care or treatment of such child." General Statutes § 17-60a (Rev. to 1975).

The juvenile court, *Dennis, J.*, conducted a hearing pursuant to the requirements of § 17-60a to determine whether there was reasonable cause to believe that the petitioner committed the murder with which he was charged. After taking evidence on the issue, the juvenile court concluded that there was reasonable cause to believe that the petitioner had committed the murder. Thereafter, the juvenile court ordered the probation office to conduct an investigation in accordance with General Statutes § 17-66 (Rev. to 1975),

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[25] General Statutes § 17-60a (Rev. to 1975) provides as follows:

> The juvenile court shall have the authority to transfer to the jurisdiction of the superior court any child 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.

which is required by § 17-60a before a transfer to the adult criminal docket can be effectuated. Skakel, supra, 654-55, Appendix D.[26]

After the investigation was complete, the juvenile court conducted a hearing in order to address the remaining requirements of § 17-60a. At the hearing, the parties elicited the testimony Joseph Pacquin, the supervisor of juvenile probation, who had conducted the investigation required by §§ 17-60a and 17-66. Pacquin testified that in conducting the investigation, he had focused primarily on the availability of a state facility that would have met the needs of the petitioner, and not on the petitioner's personal, family and educational background. State v. Skakel, 276 Conn. at 655, Appendix D. Pacquin further testified that the Department of Children and Families (DCF), which is the sole state agency responsible for the detention and treatment of juveniles, cannot lawfully accept for placement persons over the age of eighteen. Skakel, supra, 656, Appendix D.

In it's memorandum of decision, the juvenile court noted that under the circumstances of this case, the provisions of § 17-66 "are not totally applicable . . . ." Memorandum of Decision, In re Michael S., Docket No. DL00-01028, Superior Court for Juvenile Matters, Judicial District of Stamford-Norwalk, at 3, Appendix G. The court further observed that DCF regulations prohibit the placement with DCF of anyone over the age of eighteen. Id., at 6. The court, therefore, found that the petitioner's age foreclosed his

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[26] General Statutes § 17-66 (Rev. to 1975) provides as follows:

> 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.

commitment to DCF. Id. Accordingly, the court concluded that "there [was] no available or suitable state institution designed for the care and treatment of children to which the juvenile court could commit the . . . forty year old [petitioner] that would be suitable for his care or treatment, should he be adjudicated delinquent for the murder of Martha Moxley," and that the facilities of the adult criminal division of the Superior Court afford[ed] and provid[ed] 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 [were] more suitable for the care and treatment of [the petitioner], should he be found guilty of the murder of Martha Moxley." Id., at 6-7.

On appeal, the petitioner claimed that his transfer to the regular criminal docket was invalid because the statutory requirements for transfer had not been met in three ways. Petitioner's Supreme Court brief at 45-48, Appendix A. First, the petitioner claimed that Joseph Pacquin, the probation officer who prepared the report pursuant to § 17-66, failed to investigate the "parentage and surroundings of the child" and the "habits and character of his parents," as required by the statute. Petitioner's Supreme Court brief at 46, Appendix A. Second, the petitioner claimed that the juvenile court improperly relied on DCF regulations that had not been in effect at the time of the murder in determining that there were no state institutions suitable for his care and treatment. Id., at 46-47. Finally, the petitioner claimed that the juvenile court improperly failed to consider placement of the petitioner in an out-of-state institution. Id., at 48.

The Connecticut Supreme Court rejected each of the petitioner's claims challenging the validity of his transfer to the regular criminal docket. State v. Skakel, 276 Conn. at 660-63, Appendix D. First, the court rejected the petitioner's claim that his transfer was unlawful because the investigation required by § 17-66 was incomplete. The court agreed that the probation officer's investigation did not meet the requirements of § 17-66. Skakel, supra, 660, Appendix D. The court concluded, however, that the juvenile court properly held that departmental regulations precluded DCF from accepting the commitment of the

petitioner because he was over the age of eighteen.[27] Consequently, the court ruled that any deficiency in the investigation had no bearing on the juvenile court's ultimate decision to transfer the petitioner to the regular criminal docket. Id.

The state supreme court also rejected the petitioner's claim that the juvenile court improperly relied on DCF regulations that were not in effect at the time of the murder with which he was charged in determining that there were no state institutions suitable for his care and treatment. State v. Skakel, 276 Conn. at 661, Appendix D. The court noted that before the juvenile court could order a transfer to the regular criminal docket under General Statutes § 17-60a (Rev. to 1975), it was first required to find that "there is no state institution designed for the care and treatment of children *to which* [*the*] *court may commit such child* which is suitable for his care and treatment." (Emphasis in original.) Skakel, supra, 661, Appendix D. The court concluded, therefore, that under § 17-60a, the commitment alternatives available to the juvenile court are those alternatives available *at the time of the hearing*. Id., at 662. Accordingly, the court held that the juvenile court properly considered the DCF regulations in effect at the time of the hearing in determining that there were no suitable placements available for the petitioner. Id.

Finally, the court rejected the petitioner's claim that the juvenile court had improperly failed to consider the suitability of placing the petitioner in an out-of-state institution. The court noted that under the provisions of General Statutes § 17-420, the commissioner of DCF may transfer "any person committed, admitted or transferred to the department . . . to any private agency or organization within or without the state under contract with the department," provided that certain circumstances are met. State v. Skakel, 276 Conn. at 662, Appendix D. The court concluded, therefore, that "a necessary prerequisite to the out-of-state transfer of a juvenile found to be delinquent is that the juvenile first must be "committed, admitted or transferred to the department." Id. The court observed, however,

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[27] See Regs., Conn. State Agencies § 17a145-48 (e).

that the juvenile court had properly determined that under state law, no person over the age of eighteen could be committed to the care and custody of DCF. Thus, the petitioner, who was forty years old at the time of the transfer hearing, could not have been placed in an out-of-state institution. Id. The court held, therefore, that the juvenile court had "properly declined to explore out-of-state placement alternatives for the [petitioner]." Id.

4. The allegedly improper arguments of the prosecutor did not deprive the petitioner of his right to a fair trial

The petitioner claimed for the first time on appeal that his right to a fair trial was violated as a result of the prosecutor's misconduct during closing argument. Petitioner's Supreme Court brief at 62, Appendix A. Specifically, the petitioner claimed that the prosecutor engaged in improper argument when he: (1) maintained that the petitioner had fabricated a story to explain any possible discovery of his semen at the crime scene; (2) asserted that the Skakel family had conspired to fabricate an alibi for the petitioner; (3) contended that the Skakel family believed that the petitioner was guilty of the murder; (4) referred to the petitioner as a "killer" and a "spoiled brat"; (5) asserted that the petitioner had masturbated on the victim's body; and (6) misused evidence in an audiovisual presentation to make it appear that the petitioner had confessed to the murder. Id., at 49-61. The Connecticut Supreme Court rejected each of the petitioner's misconduct claims. State v. Skakel, 276 Conn. at 742-69, Appendix D.

a. Prosecutor's argument that the petitioner fabricated a story about masturbating at the crime scene

During the initial investigation of the murder, the petitioner had told investigators that he had not left his house after returning from the home of his cousin, James Dowdle, on the night of the murder. At trial, however, several witnesses testified that the petitioner told them that he had left his house on the night of the murder and masturbated in the vicinity of the location where the victim's body was found. Skakel, supra, 748, Appendix D. Michael Meredith testified that, in 1987, the petitioner told him that on the night of the murder, he had climbed a tree on the Moxley property and masturbated while watching the

victim through her bedroom window. Id. Andrew Pugh testified that in 1992, the petitioner told him that he had masturbated in the tree under which the victim's body was found. Pugh also testified that the petitioner had urged him to talk to investigators from Sutton Associates, an investigative agency that the petitioner had retained. Id. The state also introduced the prior testimony of Gregory Coleman, who testified that while he and the petitioner were residents at the Elan School, the petitioner told him that he had killed the victim with a golf club and that he had returned to her body two days later and masturbated on it. Id. The state also introduced a tape-recorded conversation between the petitioner and Richard Hoffman in which the petitioner stated that he had snuck out of his house on the night of the murder and masturbated in a tree on the Moxley property. Id., at 748-49.

The state also presented the testimony of Henry Lee, the former chief criminalist for the state, who explained that he had published a paper in 1979 about the potential application of DNA technology to forensic science. Lee also testified that DNA technology was being used in criminal investigation in the United States as early as 1989, but that it was still a new and developing technology in 1991. Skakel, supra, 749, Appendix D.

In his closing argument, the prosecutor asserted that the petitioner began telling people that he had masturbated in the vicinity of the victim's body because he feared that "his semen might one day be identified in a crime lab . . . ." Skakel, supra, 749, Appendix D. The prosecutor further argued that by the early 1990s, the petitioner's need to explain the presence of his semen at the crime scene took on particular urgency because, by that time, DNA had become "the real deal in criminal investigation" and because "every criminal investigator on the planet was totally attuned to this miraculous, new technology, and, of course, that would include the [private investigators] that the Skakel family had hired to assist them in the defense, Sutton Associates." (Alteration in original.) Id.

On appeal, The petitioner claimed that the prosecutor had devised "an elaborate story about a forensic 'cover-up' perpetrated by [the petitioner] during the 1990s, more than

15 years after the murder." Petitioner's Supreme Court brief at 51, Appendix A. The petitioner claimed that the prosecutor's argument was improper for two reasons. Id., at 52.

First, the petitioner claimed that the prosecutor intentionally misrepresented the chronology of events to make it appear as though the petitioner and his investigators had devised the masturbation story only after Lee became involved in the investigation in the early 1990s. Petitioner's Supreme Court brief at 51-52, Appendix A. The state supreme court rejected the petitioner's claim as unsupported by the record. The court noted that the prosecutor repeatedly mentioned Meredith's testimony during his closing argument and explicitly stated that the petitioner had related his story to Meredith in 1987, five years before Lee was involved in the case. Moreover, the court stated that, in light of the conduct of the petitioner and his investigators, it was not improper for the prosecutor to argue that the petitioner, or Sutton Associates, or both, considered it urgent for Pugh to repeat the story that the petitioner had told him in 1992. The court concluded that because the prosecutor had merely asked the jury to draw reasonable inferences from the evidence, his argument was not improper. State v. Skakel, 276 Conn. at 750-51, Appendix D.

Second, the petitioner claimed that the prosecutor's assertions that by 1992, DNA was "the real deal" and that "every criminal investigator on the planet was totally attuned to this miraculous new technology" were unsupported by the record. Petitioner's Supreme Court brief at 52-53, Appendix A. The court noted that there was not a great deal of testimony regarding the state of DNA science in 1992. As a result, the court concluded that the prosecutor's comments "might be characterized as something of an overstatement of that testimony." State v. Skakel, 276 Conn. at 751, Appendix D. Nevertheless, the court observed that by 1992, "professional investigators, such as Sutton Associates, undoubtedly were aware of DNA technology and its enormous potential in the forensic arena." Id.[28]

[28] The Connecticut Supreme Court took judicial notice of the fact that DNA technology was being used in criminal investigations in the state as early as 1989. Skakel, supra, 751 n.101, Appendix D; see State v. Hammond, 221 Conn. 264, 278, 604 A.2d 793 (1992).

Noting that the petitioner did not object to the comments at trial and recognizing that advocates must be afford leeway in argument, the court concluded that the prosecutor's comments did not deprive the petitioner of his right to a fair trial. Id., at 751-52.

b. Prosecutor's argument that the Skakel family had created an alibi for the petitioner

At trial the state adduced evidence that, on the day that the victim's body was discovered, Kenneth Littleton was directed to take the petitioner, his brothers Thomas Skakel and John Skakel, and their cousin James Dowdle, to the family's hunting lodge in Windham, New York. Littleton took the children to Windham on the following morning. State v. Skakel, 276 Conn. at 752-53, Appendix D. Littleton testified that on the day following the murder, a number of people to whom he referred as "suits" came to the Skakel home. Littleton testified that he could not have know known about the house in Windham prior to that time, so he believed that one of the "suits" told him about it. Littleton testified that the decision to take the Skakel children to the Windham house was "made as a group" and that he probably volunteered to take the children to the house after he learned about it. Skakel, supra, 753, Appendix D. The petitioner's father, Rushton Skakel Sr., testified that he did not recall directing Littleton to take the children to Windham, but stated that Littleton would not have had the authority to take the children anywhere without his permission. Id.

At trial, the state also adduced the testimony of James Lunney, a former detective with the Greenwich police department. Lunney testified that he contacted the petitioner's father on November 14, 1975, and asked that he bring his children to the police station to provide statements about their activities at the time of the murder. State v. Skakel, 276 Conn. at 753, Appendix D. Lunney testified that the following day, the petitioner's father brought all of his children, with the exception of Rushton Skakel, Jr., who was away at college, to the police station. Lunney also testified that the petitioner's father remained in the room with the petitioner while the petitioner gave his statement. Id.

In his closing argument, the prosecutor asserted that the petitioner's family, and in particular, the petitioner's father, Rushton Skakel, Sr., "had 'produced' an alibi for the [petitioner] after the murder." State v. Skakel, 276 Conn. at 753-54, Appendix D. Specifically, the prosecutor argued that on the day the victim's body was found, someone in the Skakel family, most likely the petitioner's father, had decided to send the petitioner, Thomas Skakel and John Skakel to the Windham house to shield them from the police and give them time to construct a story. Id., at 754. The prosecutor also maintained that if the trip had simply been to protect the Skakel children from a killer on the loose, then all of the children would have gone to Windham. The prosecutor, however, pointed out that the younger Skakel children had remained at home. Id. Finally, the prosecutor asserted that a few weeks after the trip, after the petitioner's alibi witnesses had time to construct a cohesive story, the petitioner's father escorted all of those witnesses to the police station where they gave unsworn statements to the police. Id.

On appeal, the petitioner claimed that the prosecutor "fabricated an elaborate story about a Skakel family 'conspiracy' to falsify evidence that would supply [him with] an alibi . . . ." Petitioner's Supreme Court brief at 53, Appendix A. The petitioner argued that the prosecutor did so "without a shred of evidence" to support his theory. Id. The Supreme Court rejected the petitioner's claim. State v. Skakel, 276 Conn. at 754, Appendix D.

With respect to the prosecutor's remarks regarding the trip to Windham, New York, the court noted that, on the day that the victim's body was discovered, several unidentified persons, whom Kenneth Littleton described as "suits," came to the Skakel residence to help take control of the situation. While the unidentified persons were there, it was decided that Littleton would take the petitioner, his brothers, Thomas and John, and his cousin, James Dowdle, to the hunting lodge in Windham. State v. Skakel, 276 Conn. at 754, Appendix D. Moreover, Rushton Skakel Sr., the petitioner's father, testified that Littleton would not have had the authority to take the children anywhere without his permission. Id. The court concluded, therefore, that the prosecutor's argument that Littleton was directed

to take the petitioner and the other children to Windham in order to keep them from being questioned by the police was based on reasonable inferences drawn from the testimony of Littleton and the petitioner's father. Id., at 754-55.

The court also concluded that it was not improper for the prosecutor to urge the jury to infer that the petitioner's father had been instrumental in orchestrating the petitioner's alibi. State v. Skakel, 276 Conn. at 755, Appendix D. The court noted that after the victim's body was discovered, a number of persons had descended on the Skakel residence apparently for the purpose of taking control of the situation. Furthermore, the petitioner, his older siblings and his cousin had been whisked away to Windham as soon as possible after the murder. Id. The court concluded, therefore, that "it was not unreasonable for the for the [prosecutor] to implore the jury to infer that such an effort had been undertaken on the [petitioner's] behalf." Id.

c. Prosecutor's argument that the Skakel family believed that the petitioner had killed the victim

At trial, the state adduced evidence from former students at the Elan School regarding statements that the petitioner made while he was a student there. Two of these witnesses, Gregory Coleman and Dorothy Rogers, testified that the petitioner told them that his family sent him to Elan to protect him from the authorities investigating the victim's murder. State v. Skakel, 276 Conn. at 756, Appendix D. Other witnesses testified that it was common for Elan students to be confronted regarding the issues that had resulted in their being sent to the school. Alice Dunn, a former Elan student, testified that she attended a meeting at which Joseph Ricci, the director of the school, confronted the petitioner about the victim's murder. Dunn testified that Ricci was referring to a "good sized" file as he confronted the petitioner. Dunn stated that Ricci made reference to the golf club that had been used to kill the victim during his interrogation of the petitioner. Id. Dunn testified that Elan administrators obtained the information used to confront students at the school from institutions that they had previously attended or from their therapists. Id.

Detective Lunney testified that the Greenwich police department had played no role in the petitioner's referral to Elan and never communicated with Elan administrators about the victim's murder. State v. Skakel, 276 Conn. at 756-57, Appendix D. In the grand jury testimony of Mildred Ix, which was admitted into evidence, she indicated that the petitioner's father had confided to her that the petitioner stated that he had been drinking on the night of the murder and might have been involved in the victim's death. Id., at 757.

In his closing argument, the prosecutor outlined the reasons why the petitioner had been sent to Elan, underscoring the evidence demonstrating that the petitioner's family had sought to shield him from the police and that Elan administrators routinely confronted him about the victim's murder. State v. Skakel, 276 Conn. at 757, Appendix D. He stated that:

> "You heard from Rogers and Coleman [that] he was being hidden from the police is probably part of it. It is likely, also, if it was a private juvenile justice system, basically a family's response is what we can do to make sure this doesn't happen again. And where does that ring the truest? At the horrible general meeting with the monster himself, Joe Ricci."

Skakel, supra, 757-58, Appendix D. The prosecutor emphasized the actions of Joe Ricci, the director of Elan, in confronting the petitioner regarding the murder. Id. The prosecutor then made the following argument:

> "Where did Ricci get that information? Clearly, he didn't get it from the police. Why did Ricci confront the [petitioner] with that information? The answer, the only one that makes sense, 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."

Skakel, supra, 758, Appendix D.

On appeal, the petitioner claimed that the prosecutor's argument was improper because it was based on statements that the Skakel family allegedly made to Ricci. The petitioner argued that if the out-of-court statements made by the Skakel family had been offered at trial, they would have been excluded as hearsay. The petitioner claimed, therefore, that the prosecutor's argument was improper because it was based on inadmissible hearsay evidence. Petitioner's Supreme Court brief at 57-58, Appendix A. The Connecticut Supreme Court rejected the petitioner's claim. The court concluded that

the prosecutor's argument was not based on the presumed hearsay statements of the Skakel family, but, rather, was based on the testimony of Dorothy Rogers and Gregory Coleman, both of whom testified that the petitioner told them that his family had sent him to Elan to shield him from the police. State v. Skakel, 276 Conn. at 757, Appendix D.

The petitioner also claimed that the prosecutor's argument was improper because he "asked the jury to conclude that [the petitioner] was guilty of murder *because even his own family thought that he was the 'killer.'*" (Emphasis in original.) Petitioner's Supreme Court brief at 57, Appendix A. The petitioner argued that "any belief of the Skakel family concerning the [petitioner's] guilt is irrelevant and inadmissible as evidence." Id., citing Arpan v. United States, 260 F.2d 649, 658 (8th Cir. 1958) (reversing conviction based, in part, on testimony of defendant's mother that she believed her son had shot victim). The Supreme Court rejected the petitioner's argument. The court concluded that the focus of the prosecutor's argument was not on the opinion of Skakel family regarding the petitioner's guilt, but, rather, was on "the likelihood that the [petitioner] had disclosed his involvement in the murder to one or more members of his family." State v. Skakel, 276 Conn. at 759, Appendix D. The court found that the inference that the prosecutor asked the jury to draw was well supported by the evidence, including testimony that the petitioner was repeatedly confronted about the murder by Elan staff members and evidence that the petitioner had intimated to his father that he was involved in the victim's murder. Id. Accordingly, the court found that it was not improper for the prosecutor to argue that "Elan administrators likely had learned from the [petitioner's] family about the [petitioner's] involvement in the victim's murder . . . ." Id.

d. Prosecutor's use of the terms "killer" and "spoiled brat" to refer to the petitioner

In his closing argument, the prosecutor asserted that the petitioner's family had sent the petitioner to Elan "[b]ecause that's what they decided that they had to do with the killer living under their roof." State v. Skakel, 276 Conn. at 759, Appendix D. On two other

occasions, the prosecutor described the petitioner as a "spoiled brat." In his initial closing argument, the prosecutor asserted that "before any resident in Elan had an inkling of the [petitioner's] having committed this murder, the spoiled brat smugly boasted, I can get away with anything and continued to describe to Coleman how he had beaten [the victim's] head in with a golf club . . . ." Id., at 760. The prosecutor made a similar statement during his rebuttal argument, again referring to the petitioner as a "spoiled brat." Id.

On appeal, the petitioner characterized the prosecutor's use of the terms "killer" and "spoiled brat" to describe him as "highly prejudicial name-calling." Petitioner's Supreme Court brief at 58, Appendix A. The state supreme court rejected both of the petitioner's claims. The court concluded that when viewed in context, the prosecutor's use of the word "killer" was "neither gratuitous nor inflammatory." State v. Skakel, 276 Conn. at 759-60. Rather, the court found that the prosecutor had merely "used the term as a shorthand for 'the person who had killed the victim.'" Id., at 760. The court concluded, therefore, that "the challenged reference was benign." Id.

The state argued that the prosecutor's reference to the petitioner as a "spoiled brat" was not inappropriate because it was reasonably intended to explain the petitioner's "smug bravado in confessing to Coleman." State's Supreme Court brief at 55, Appendix B. The court observed that, "[n]otwithstanding the evidentiary basis for the [prosecutor's] remarks . . . it would have been preferable for the [prosecutor] to have avoided using the moniker, "spoiled brat" in referring to the [petitioner]." State v. Skakel, 276 Conn. at 761, Appendix D. Nevertheless, the court stated that "[w]hen the objectionable references are viewed in the context of the entire trial . . . it is apparent that they were isolated, relatively innocuous and not unduly prejudicial to the [petitioner]." The court concluded that "[b]ecause there [was] no likelihood that the challenged comments affected the fairness of the [petitioner's] trial, his claim of a due process violation [was] clearly without merit. Id.

e. Prosecutor's argument that the petitioner had masturbated on the victim's body

At trial, the state introduced into evidence the prior sworn testimony of Gregory Coleman, who had been a student at the Elan School with the petitioner.[29] Coleman testified that while they were students at Elan, the petitioner had confessed to killing the victim and returning to her body two days later and masturbating on it. State v. Skakel, 276 Conn. at 761, Appendix D. In his testimony, Coleman acknowledged that he was addicted to drugs and that his addiction affected his memory. Coleman also acknowledged that there was a discrepancy between his testimony that the petitioner had returned to the victim's body two days after her death and the fact that the victim's body was discovered the day after she was murdered. Id.

The state also presented the testimony of Henry Lee, the state's former chief criminalist. Lee testified that the two reddish marks discovered on the upper portion of the victim's inner thighs were consistent with bloody hands attempting to push the victim's legs apart. State v. Skakel, 276 Conn. at 762-63, Appendix D. Finally, the state presented the testimony of several witnesses who stated that the petitioner had admitted to masturbating in a tree on the victim's property. One of these witnesses, Andrew Pugh, testified that the petitioner stated that he had masturbated in the same tree under which the victim's body was found. Id. at 763.

In his closing argument, the prosecutor urged the jury to conclude that, after killing the victim, the petitioner had pushed her legs apart and masturbated on her dead body. State v. Skakel, 276 Conn. at 762-63, Appendix D. The petitioner claimed that the prosecutor's argument was improper because "[t]here was no semen found on the victim's body or at the scene of the crime, and the state knew it . . . ." Petitioner's Supreme Court

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[29] In April 2001, Coleman testified at the petitioner's hearing in probable cause held pursuant to General Statutes § 54-46a. Coleman died on August 10, 2001, before the petitioner's trial began. The state introduced a transcript of his testimony from the probable cause hearing into evidence at the petitioner's trial pursuant to § 8-6 of the Connecticut Code of Evidence. State v. Skakel, 276 Conn. at 711, Appendix D.

brief at 58, Appendix A. The petitioner argued that it was improper for the state to base its argument on Gregory Coleman's testimony because it was inherently unreliable. Id., at 59 n.78. Coleman had stated that the petitioner told him that he masturbated on the victim's body two days after he had killed her. In fact, the victim's body was found the day after she was killed. The petitioner claimed, therefore, that Coleman's "story was not true and could not have been true." Id. The petitioner also maintained that the prosecutor's argument that the blood smears on the victim's thighs supported his claim that the petitioner had masturbated on her body was "groundless and highly prejudicial." Id., at 59 n.79. Finally, the petitioner claimed that the prosecutor's argument was improper because it was inconsistent with the results of the autopsy, which had failed to disclose the presence of semen. Id., at 58-59.

The Connecticut Supreme Court rejected the petitioner's claim. The court noted that the jury was free to credit one aspect of a witness's testimony while discrediting other portions of that testimony. State v. Skakel, 276 Conn. at 763, citing State v. Meehan, 260 Conn. 372, 381, 796 A.2d 1191 (2002), Appendix D. The court concluded, therefore, that it was not improper for the prosecutor to base his argument on Coleman's testimony. Skakel, supra, 763, Appendix D. The court also indicated that Lee's testimony regarding the blood smears on the victims thighs, when coupled with Coleman's testimony, supported the conclusion that the petitioner had masturbated on the victim. Id.

The court also stated that the evidence regarding the petitioner's numerous admissions that he had masturbated in the victim's yard provided support for the prosecutor's argument that the petitioner had fabricated the story in order to explain the presence of any of his semen on the victim's body. State v. Skakel, 276 Conn. at 763, Appendix D. Finally the court observed that Dr. Wayne Carver, the Chief Medical Examiner, testified that although the pathologist who performed the autopsy failed to detect the presence of semen in the victim's pubic region, there was nothing in the autopsy report to suggest that any attempt had been made to determine whether semen was present on

any other part of the victim's body, including her buttocks. The court ruled that "[b]ecause the autopsy did not rule out the possibility of the existence of semen on those other parts of the victim's body, the [prosecutor's] argument underscoring that possibility was not improper. State v. Skakel, 276 Conn. at 763-64, Appendix D.

f. Prosecutor's use of an audiovisual display in his closing argument

During the rebuttal portion of the state's closing argument, the prosecutor played for the jury approximately two minutes of the thirty-two minute tape-recorded interview that the petitioner had given to Richard Hoffman. State v. Skakel, 276 Conn. at 764, Appendix D.[30] The state played the two-minute portion of the audio tape in three separate segments. As each segment was played, the state displayed a transcript of that segment on a screen so that the jury could read the transcript while listening to the tape recording. Id., at 764-65.

After playing the first segment of the tape recording, the prosecutor argued that the petitioner's statements in that segment contradicted his claimed alibi. State v. Skakel, 276 Conn. at 765, Appendix D. [31] In the second segment of the tape, the petitioner described his decision to go to the Moxley's house to "get a kiss from Martha." Id., at 765-66.[32]

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[30] Hoffman, a writer who collaborated with the petitioner on a book about his life, interviewed the petitioner in 1997. State v. Skakel, 276 Conn. at 650, Appendix D. The tape of the entire interview was introduced into evidence and played for the jury during the state's case in chief. Id., at 764.

[31] The petitioner claimed that the victim had been murdered at approximately 10:00 p.m. on October 30, 1975, and that he was at the home of his cousin, James Dowdle, at that time. State v. Skakel, 276 Conn. at 652, Appendix D. The petitioner claimed that he and his brothers Rushton Skakel, Jr. and John Skakel had gone to Dowdle's house to watch the television program Monty Python's Flying Circus with Dowdle. Id., at 650. In the first segment of the interview that was played, the petitioner stated that when he returned home from Dowdle's house, he "remembered" that his neighbor, Andrea Shakespeare, had already left. The prosecutor argued that the evidence showed that Shakespeare had not left the Skakel house until after Rushton Skakel, Jr., John Skakel and Dowdle had gone to Dowdle's house. The prosecutor argued, therefore, that the petitioner could not have "remembered" that Shakespeare had gone home if he had accompanied his brothers and Dowdle to Dowdle's house. Id., at 765.

[32] In the second segment of the tape recording that was played, the petitioner stated the following:

(continued...)

At the end of his rebuttal argument, the prosecutor stated the following in regard to the petitioner's interview with Hoffman:

> "And then, the [petitioner] does the most amazing thing . . . . He takes us on his staggering walk down memory lane. He first avoids the driveway oval where the club head was found and, more likely, [where] he first caught up with [the victim], given [Henry] Lee's testimony about blood in the driveway where the whole terrible thing started. Then he has himself under a street light throwing rocks and yelling into that circle with the exact same motion that had to have been [sic] used to beat [the victim] to death.
>
> "Why this explanation. It's kind of obvious. As he explained to Hoffman, what if somebody saw me that night and then . . . ."

State v. Skakel, 276 Conn. at 766, Appendix D.

At this point, the prosecutor stopped talking, the transcript of the third segment appeared on the screen and the the tape recording of the segment was played for the jury. State v. Skakel, 276 Conn. at 766, Appendix D. In the third segment of the interview, the petitioner stated the following:

> "And then I woke up, went to sleep, woke up to [the victim's mother Dorothy] Moxley saying "Michael, have you. . . seen Martha?'"

Skakel, supra, 766, Appendix D. Just as the petitioner finished saying "'Michael, have you . . . seen Martha," a photograph of the victim, smiling, appeared in the lower right hand corner of the screen, beneath the written text. Id. After a short pause, the recording continued, as follows:

> "I'm like, 'What?' And I was still high from the night before, a little drunk, then I was like 'What?' 'Oh my God, did they see me last night?' And I'm like, I don't know,' I'm like, and I remember just having a feeling of panic."

Skakel, supra, 766, Appendix D. At this point, a photograph, previously introduced into evidence, depicting the victim's body lying under the tree, appeared in the lower right hand

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[32](...continued)

> "I said, 'Fuck this, [y]ou know why should I do this, you know, Martha likes me, I'll go get a kiss from Martha.' 'I'll be bold tonight." [Y]ou know booze gave me, made me, gave me courage again."

State v. Skakel, 276 Conn. at 765-66, Appendix D.

corner of the screen, to the side of the written text. Id., at 766-67. After a few seconds, the photograph disappeared and the recording continued, as follows:

> "Like 'Oh shit.' You know. Like my worry of what I went to bed with, like maybe . . . I don't know, you know what I mean. I just had, I had a feeling of panic."

Skakel, supra, 767, Appendix D. At this point, another photograph, which also had been introduced into evidence, depicting the victim's badly beaten body, then appeared in the lower right hand corner of the screen, next to the written text. Id. The prosecutor then continued his argument, as follows:

> "How could the sight of Dorothy Moxley possibly produce a feeling of panic in an innocent person, in a person who had gone to sleep knowing nothing of [the victim's] murder. The evidence tells you that the only person who had experienced that poor girl lying under the tree, not in his dreams but firsthand, would have cause to panic on awakening that morning."

Skakel, supra, 767, Appendix D.

On appeal, the petitioner claimed that the state's "manipulative use of the of prejudicially edited evidence during the summation was improper." Petitioner's Supreme Court brief at 61. The petitioner argued that the state had "literally produced an audio-visual confession by flashing huge six-foot high gruesome images of the victim's body at the murder scene while simultaneously playing an edited audiotape of [the petitioner's] admission of 'guilt' – *about a different event*. (Emphasis in original.) Id., at 59-60. The petitioner complained that "[t]he prosecutor turned [the petitioner] into a narrator of the murder by splicing together a deceptively edited version of his taped interview . . . in which the [petitioner] described his guilty feelings about masturbation, as a voice-over to horrific photographs of the murder scene." Id., at 60.

The state supreme court concluded that it was not improper for the prosecutor to play for the jury two minutes of the petitioner's tape-recorded interview with Richard Hoffman and to display photographs of the victim while the tape was being played. State v. Skakel, 276 Conn. at 767-68, Appendix D. The court noted that the presentation consisted of the written transcript of the interview, which the jury had already seen, the

corresponding audio and three unaltered pictures of the of the victim that had been admitted into evidence. Id., at 769. The court stated that by juxtaposing the photographs of the victim with the petitioner's statements, the prosecutor "sought to convey to the jury in graphic form what the state believed was the real reason for the [petitioner's] panic, that is, that he had killed the victim." Id. The court, therefore, was not persuaded that there was a reasonable likelihood that the state's presentation confused the jury or prejudiced the [petitioner] in any way. Id.

The court also rejected the petitioner's claim that "the state 'splic[ed] together a deceptively edited version of his [taped-recorded] interview with Hoffman' so as to omit critical portions of the [petitioner's] comments indicating that the reason he woke up in a panic was that he feared that someone may have seen him masturbating the night before." State v. Skakel, 276 Conn. at 769 n.106, Appendix D, quoting Petitioner's Supreme Court brief at 60, Appendix A. The court found that, contrary to the petitioner's claim, "the segment of the interview that the state played for the jury, in which the [petitioner] described his feelings of panic upon waking up the morning after the murder, was not altered or spliced in any way." Skakel, supra, 769 n.106, Appendix D. Accordingly, the court rejected the petitioner's claim that the prosecutor's use of audiovisual aides during closing argument violated his right to a fair trial. Id., at 769.

5. Admission of Gregory Coleman's prior testimony did not violate the petitioner's right to confrontation

In April 2001, Gregory Coleman, a former student at the Elan School, testified at the petitioner's hearing in probable cause.[33] Coleman testified that in 1978, when he and the

[33] General Statutes § 54-46a, provides, in pertinent part, as follows:

> No person charged by the state . . . shall be put to plea or held to trial for any crime punishable by death or life imprisonment unless the court at a preliminary hearing determines there is probable cause to believe that the offense charged has been committed and that the accused person has committed it.

petitioner were both students at Elan, the petitioner told Colman that he had killed the victim with a golf club. State v. Skakel, 276 Conn. at 711, Appendix D. At the hearing, the petitioner's trial counsel vigorously cross-examined Coleman regarding his struggle with drug addiction, his prior acts of misconduct, his prior inconsistent statements about the subject of his testimony, his lack of recollection due to the passage of time, his ongoing drug abuse and his failure to report the petitioner's confession to either Elan administrators or law enforcement authorities. Id., at 714. Under cross-examination, Coleman admitted that he was suffering from withdrawal symptoms during his testimony. Id., at 711. Coleman died in August, 2001, before the petitioner's trial. At trial, over the petitioner's objection, the state introduced Coleman's testimony at the probable cause hearing into evidence under the former testimony exception to the hearsay rule. Id.; see Conn. Code Evid., § 8-6(1).

On appeal, the petitioner claimed that the admission of Coleman's prior testimony violated his right to confrontation under both the state and federal constitutions. Petitioner's Supreme Court brief at 65, Appendix A. The petitioner maintained that the admission of Coleman's testimony violated his right to confrontation because it "lacked the requisite 'indicia of reliability' under Ohio v. Roberts, [448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980)], and State v. Outlaw, [216 Conn. 492, 582 A.2d 751 (1990)]." Petitioner's Supreme Court brief at 64-65, Appendix A. The petitioner argued that "the reliability requirement under Outlaw is *not* automatically satisfied merely because the former testimony was given under oath and was subject to cross-examination . . . ." (Emphasis in original.) Id., at 65-66. Rather, the petitioner argued that "courts must look beyond these factors [and] consider other circumstances in determining whether [the admission of the prior testimony of an unavailable witness violates] the confrontation clause." Id., at 66, citing State v. Outlaw, 216 Conn. at 506; State v. Rivera, 221 Conn. 58, 61, 602 A.2d 571 (1992). In this case, the petitioner claimed that Coleman's prior

testimony bore none of the "indicia of reliability" required by the constitution to permit its admission at trial. Petitioner's Supreme Court brief at 66-67, Appendix A.

The Connecticut Supreme court rejected the petitioner's claim. The court stated that under Ohio v. Roberts, supra, "all hearsay statements were admissible if (1) the declarant was unavailable to testify, and (2) the statement bore adequate indicia of reliability." State v. Skakel, 276 Conn. at 712, citing Roberts, 448 U.S. at 66, Appendix D. The court noted, however, that "the United States Supreme Court overruled Roberts to the extent that it applied to testimonial hearsay statements" in Crawford v. Washington, 541 U.S. 36, 68, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). The court observed that under Crawford, "such testimonial hearsay may be admitted as evidence against an accused at a criminal trial only when (1) the declarant is unavailable to testify, and (2) the defendant had a prior opportunity to cross-examine the declarant . . . ." Skakel, supra, 712, Appendix D.

The court concluded that "[t]he testimony at issue in the present case . . . falls squarely within Crawford's core class of testimonial evidence" and that the confrontation clause, therefore, "bars the state's use of that testimony unless Coleman was unavailable to testify at trial and the [petitioner] had a full and fair opportunity to cross-examine Coleman at the probable cause hearing." State v. Skakel, 276 Conn. at 714, Appendix D. The court noted that, as a result of Coleman's death, his unavailability at trial was undisputed. Id. After reviewing the record, the court found that the petitioner's trial defense counsel "fully availed himself of the opportunity to attack Coleman's credibility at the probable cause hearing." Id., at 714-15.

The state supreme court rejected the petitioner's contention that the trial court should, nevertheless, have excluded Coleman's prior testimony because it was inherently unreliable. The court noted that while the "ultimate goal [of the confrontation clause] is to ensure reliability of evidence . . . it is a procedural rather substantive guarantee." State v. Skakel, 276 Conn. at 715, quoting Crawford v. Washington, 541 U.S. at 61, Appendix D.

The court stated, therefore, that the confrontation clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." Id. The court observed that "[w]ith respect to testimonial evidence . . . Crawford, makes clear that the *opportunity* for cross-examination satisfies the requirements of the confrontation clause." Skakel, supra, 715, Appendix D. The court, therefore, concluded that "[t]o the extent that Coleman's probable cause hearing testimony was not worthy of belief . . . the [petitioner] had ample opportunity to challenge Coleman's credibility at that hearing." Id. Accordingly, the court held that admission of the Coleman's probable cause hearing testimony at trial did not violate the petitioner's constitutional right to confrontation. Id., at 715-16.

6. Admission of statements made by the petitioner while he was an Elan student did not violate his due process rights

From 1978 to 1980, the petitioner attended the Elan School, a residential school for troubled adolescents located in Poland Springs, Maine. Evidence adduced at trial indicated that the atmosphere at the school was extremely harsh and oppressive. Residents at the school were subjected to a behavior modification program that was based on ridicule and fear. State v. Skakel, 276 Conn. at 717, Appendix D. Residents at Elan were required to attend "general meetings" the purpose of which was to confront and humiliate residents whom the Elan staff believed to be in need of discipline. At the general meetings, the residents who were being disciplined were subjected to physical and psychological abuse from the staff and other residents. Id.

While a student at Elan, the petitioner made statements to other residents of the school in which he implicated himself in the victim's murder. State v. Skakel, 276 Conn. at 718, Appendix D. At trial, the former Elan students to whom the petitioner had made these inculpatory statements testified regarding his admissions. Id., at 718-19. John Higgins, a former Elan resident, testified that the petitioner told him that he had taken a golf club from his garage and that he remembered running through the woods with it. Higgins testified

that the petitioner eventually admitted that he had committed the murder. Id., at 718. Gregory Coleman, another former resident of the school, testified that the petitioner said that he was going to "get away with murder because [he was] a Kennedy." Id. Coleman also testified that the petitioner told him that he had made romantic advances toward the the victim, that she had spurned his advances and that he had beaten her to death with a golf club. Id. Dorothy Rogers, another former Elan resident, testified that the petitioner told her that he had been drinking on the night of the victim's murder and could not remember what he had done. She also testified that the petitioner told her that his family had sent him to Elan because they believed that he had committed the murder. Id., at 718-19. Finally, two other former residents, Elizabeth Arnold and Alice Dunn, testified that the petitioner told them that he had been drinking on the night of the victim's murder and that he did not know whether he or his brother had committed the murder. Id., at 718-19.

At trial, the petitioner raised no claim that the inculpatory statements that he made while a student at Elan were inadmissible because they were involuntary. State v. Skakel, 276 Conn. at 716, Appendix D. On appeal, however, the petitioner claimed that admission of the testimony regarding those statements violated his right to due process under both the state and federal constitutions. Petitioner's Supreme Court brief at 67-68, Appendix A.[34] The petitioner argued that admission of the statements violated due process because "they were extracted while [he] was subjected to "an atmosphere of physical and psychological torture and intimidation." Id., at 72. The Connecticut Supreme Court rejected both the petitioner's state and federal due process claims. Skakel, supra, 719-22, Appendix D.

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[34] Because the petitioner did not raise this claim at trial, he sought review under the Connecticut Supreme Court's ruling in State v. Golding, 213 Conn. 233, 567 A.2d 823 (1989). In Golding, the court held that "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless to analysis, the state has failed to demonstrate harmlessness of alleged of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original.) Id., at 239-40.

In rejecting the petitioner's federal claim, the state supreme court noted "[u]nder the due process clause of the fourteenth amendment . . . in order for a confession to be deemed involuntary and thus inadmissible at trial, [t]here must be police conduct, or official coercion, causally related to the confession . . . ." State v. Skakel, 276 Conn. at 720, quoting State v. Reynolds, 264 Conn. 1, 54, 836 A.2d 224 (2003), Appendix D. "Therefore, 'the most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause . . . [because] suppressing [such] statements would serve absolutely no purpose in enforcing constitutional guarantees. The purpose of excluding evidence seized in violation of the [federal] [c]onstitution is to substantially deter future violations . . . .'" Skakel, supra, 720, quoting Colorado v. Connelly, 479 U.S. 157, 166, 107 S.Ct. 515, 93 L.Ed. 473 (1986), Appendix D.

The Connecticut Supreme Court also rejected the petitioner's state due process claim. The court noted that in order the petitioner to prevail on his unpreserved claim, he must meet all four prongs of the test set forth in State v. Golding, 213 Conn. 233, 567 A.2d 823 (1989). State v. Skakel, 276 Conn. at 716 n.86, Appendix D. The court concluded that the record was inadequate for review of the petitioner's claim and that it, therefore, failed under the first prong of Golding. Skakel, supra, 723, Appendix D.

7. The trial court did not abuse its discretion in the evidentiary rulings challenged by the petitioner on appeal

On appeal, the petitioner claimed that the trial court abused its discretion in three evidentiary rulings. Petitioner's Supreme Court brief at 72-75, Appendix A. The Connecticut Supreme Court rejected each of the petitioner's evidentiary claims. State v. Skakel, 276 Conn. at 723, Appendix D.

a. Admission of the grand jury testimony of Mildred Ix

In proceedings before the grand jury investigating the victim's murder, Mildred Ix, a neighbor of the petitioner's family and friend of the petitioner's father, Rushton Skakel,

Sr., testified that the petitioner's father had confided in her that the petitioner had admitted that he may have been responsible for the victim's death. State v. Skakel, 276 Conn. at 726, Appendix D.[35] The state subsequently call Ix as a witness at trial. On direct examination, the prosecutor asked Ix whether she recalled a conversation with the petitioner's father in which he had confided in her that the petitioner had admitted that he had killed the victim. Ix responded that she did not recall such a conversation. Id., at 725.

At that point, the state offered the transcript of Ix's grand jury testimony into evidence under the Connecticut Supreme Court's ruling in State v. Whelan, 200 Conn. 743, 513 A.2d 86, cert. denied, 479 U.S. 994, 107 S.Ct. 597, 93 L.Ed.2d 598 (1986). State v. Skakel, 276 Conn. at 725, Appendix D.[36] Petitioner's counsel objected to the admission of the grand jury testimony on the ground that it included hearsay that did not fall under any recognized exception to the hearsay rule. The trial court overruled the petitioner's objection, concluding that although the grand jury testimony included three levels of hearsay, each level was admissible under a clearly established exception to the hearsay rule. Accordingly, the court admitted Ix's grand jury testimony into evidence. Id., at 726.[37]

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[35] Before the grand jury, Mildred Ix testified, in pertinent part, as follows:

> I can't remember who told me that, but it was – oh, it was . . . [the petitioner's father]. He said . . . [the petitioner] had come up to him and he said, you know, I had a lot . . . to drink that night and I would like to see . . . if I could have had so much to drink that I would have forgotten something, and I could have murdered [the victim], and I would like to make sure at that night knowing something like that happened. So he asked to go under Sodium Pentothal or whatever it was.

Skakel, supra, 726, Appendix D.

[36] In State v. Whelan, supra, the Connecticut Supreme Court approved the "substantive use of prior written inconsistent statements, signed by the declarant, who has personal knowledge of the facts stated, when the declarant testifies at trial and is subject to cross-examination." Id., 200 Conn. at 753.

[37] The trial court determined that the first level of hearsay, the grand jury testimony itself, was admissible under the hearsay exception recognized by the Connecticut Supreme Court in Whelan. State v. Skakel, 276 Conn. at 726; see Conn. Code Evid. § 8-5 (1), Appendix D. The court determined that the second level of hearsay, the statement of the (continued...)

On appeal, the petitioner did not challenge the trial court's conclusion that the first and third levels of hearsay contained in Ix's prior grand jury testimony were admissible under the hearsay exceptions identified by the court. The petitioner, however, claimed that the trial court abused its discretion with regard to its conclusion that the second level of hearsay, the statement of the petitioner's father to Ix, was admissible under the residual exception to the hearsay rule. Petitioner's Supreme Court brief at 72-74, Appendix A.

In rejecting the petitioner's claim, the state supreme court noted that "[a] hearsay statement that does not fall within one of the traditional exceptions to the hearsay rule nevertheless may be admissible under the residual exception to the hearsay rule provided that the proponent's use of the statement is reasonably necessary and the statement itself is supported by guarantees of trustworthiness and reliability that are essential to other evidence admitted under traditional exceptions to the hearsay rule." State v. Skakel, 276 Conn. at 727, quoting State v. Aaron L., 272 Conn. 798, 812, 865 A.2d 1135 (2005); see Conn. Code Evid. § 8-9. The court concluded that the use of the prior grand jury testimony was reasonably necessary because the petitioner's father, the only other person who participated in the conversation, testified that he did not recall making such a statement to Mildred Ix. Skakel, supra, 727-28, Appendix D. The court also concluded that, under the circumstances of this case, the statement by the petitioner's father bore sufficient indicia of reliability for admission under the residual exception to the hearsay rule. Id., at 728-30.

b. Admission of newspaper articles to impeach the credibility of a witness

At trial, Geranne Ridge testified that the petitioner attended a gathering at her home in 1997. Ridge testified that, at the gathering, she overheard the petitioner say "[A]sk me why I killed my neighbor." State v. Skakel, 276 Conn. at 730, Appendix D. Ridge stated,

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[37](...continued)
petitioner's father to Mildred Ix, was admissible under the residual exception to the hearsay rule. Skakel, supra, 726, see Conn. Code Evid. § 8-9. Finally, the court determined that the petitioner's alleged statement to his father was admissible as an admission by a party opponent. Skakel, supra, 726, see Conn. Code Evid. § 8-3 (1).

however, the the petitioner made the comment in jest and that she could not recall him making any further statements about his involvement in the murder. Id. Thereafter, the state introduced into evidence a tape recording of a telephone conversation between Ridge and a friend, Matthew Attanian, that had taken place in 2002. In that conversation, Ridge told Attanian of an individual, whom she refused to identify by name, who had admitted to a crime that was virtually identical to the murder of the victim in this case. Id.[38]

On cross-examination, Ridge maintained that the petitioner had not made any admissions to her about the victim's murder other than his "off the cuff" comment, "[A]sk me why I killed my neighbor." State v. Skakel, 276 Conn. at 731, Appendix D. Ridge further maintained that she had lied to Attanian in order to satisfy his curiosity about the murder and to make herself appear more knowledgeable about the crime than she actually was. Id. Ridge also claimed that the information that she had conveyed to Attanian had come primarily from newspapers and magazines. Id.

On redirect examination, the prosecutor asked Ridge whether the newspaper articles that her attorney had brought to court that day were the source of the information that she had conveyed to Attanian. She replied that they were "'[m]ost of the source, yes . . . ." State v. Skakel, 276 Conn. at 731, Appendix D. The prosecutor then questioned Ridge about each specific factual statement that she had attributed to the petitioner in he

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[38] In their tape recorded conversation, Ridge told Attanian, in pertinent part, the following:

> "[T]his story is real. Um, [an unintelligible] name is used from now on, okay? . . . Um, John Doe was, was, um, watching this particular girl at her bedroom window, changing. And he was up in a tree masturbating, [be]cause he liked her. She went and had sex with his brother Tommy that same night, while he was outside smoking pot and doing LSD and acid and really big-time drugs, mind, you know, altering drugs. After he found out that, that his, that John Doe's brother had sex with this girl, he got so violent and he was so screwed up, he did that to her."

State v. Skakel, 276 Conn. at 730-31, Appendix D. Attanian replied "Wow. And he told you he did that?" Ridge responded "Yes." Ridge also told Attanian that the petitioner had told her and the guests at her house that, "I did hit her with a golf club . . . . Id., at 731.

conversation with Attanian, inquiring as to whether the fact was mentioned in the three newspaper articles. Ridge indicated that each such fact was contained in one or more of the articles. Id., at 732-33. At that point, the prosecutor sought to introduce the three news paper articles into evidence. The trial court admitted the articles over the objection of the petitioner's defense counsel. Id., at 732.[39] The prosecutor then asked Ridge to examine the articles and to point out the portions of the articles that contained the information she had related to Attanian. Ridge replied that she had not thoroughly reviewed the articles, but they did not contain some of the details that she had related to Attanian in their telephone conversation. Id.

On appeal, the petitioner claimed that the trial court abused its discretion in admitting the newspaper articles into evidence. Petitioner's Supreme Court brief at 74-75, Appendix A. The Connecticut Supreme Court rejected the petitioner's claim. The court concluded that the articles were relevant to the state's contention that Ridge did not, in fact, obtain the information that she conveyed to Attanian from the newspaper articles, but, rather, from the petitioner himself, as Ridge had represented to Attanian. State v. Skakel, 276 Conn. at 735, Appendix D. The court also noted the petitioner was unable to show any prejudice from the admission of the articles that was so substantial that it required a new trial. Id., at 737. Accordingly, the court held that the trial court did not abuse its discretion when it admitted the newspaper article into evidence. Id., at 737-38.

c. Exclusion of evidence of prior convictions of a prosecution witness

At trial, Kenneth Littleton was called as a witness by the state. During his cross-examination, counsel for the petitioner attempted to impeach Littleton with evidence of his

[39] After admitting the articles into evidence, the trial court instructed the jury that they were not being admitted for the truth of the information contained in them, but, rather, were for the limited purpose of impeaching Geranne Ridge's testimony that they had been the source of the details that she had related to Attanian. State v. Skakel, 276 Conn. at 732. At the conclusion of the trial, the court again instructed the jury regarding the limited purpose for which the articles had been admitted. Id., at 733.

three burglary convictions from 1977. The trial court sustained the state's objection to admission of the evidence of the burglary convictions because they were too remote in time to have any meaningful bearing on Littleton's veracity as a witness. State v. Skakel, 276 Conn. at 738-40, Appendix D. On appeal, the petitioner claimed that the trial court abused its discretion in excluding the evidence of Littleton's prior convictions. Petitioner's Supreme Court brief at 75, Appendix A.

In rejecting the petitioner's claim, the Connecticut Supreme Court observed that "evidence that a witness has been convicted of a crime is admissible to impeach his credibility if the crime was punishable by imprisonment for more than one year." State v. Skakel, 276 Conn. at 738, citing General Statutes § 52-145(b); Conn. Code Evid. § 6-7(a), Appendix D.[40] The court noted that "[i]n determining whether to admit evidence of a conviction, the court shall consider: (1) the extent of the prejudice likely to arise; (2) the significance of the particular crime in indicating untruthfulness; and (3) the remoteness in time of the conviction." Skakel, supra, 738, citing Conn. Code Evid. § 6-7(a); State v. Nardini, 187 Conn. 513, 522, 447 A.2d 396 (1982) (recognizing same three part test at common law prior to adoption of Connecticut Code of Evidence), Appendix D. The court further noted that "[t]he trial court has wide discretion in this balancing determination and every reasonable presumption should be given in favor of the correctness of the court's ruling . . . ." Skakel, supra, 738, Appendix D.

The state supreme court concluded that "[e]ven though the crimes reflect a lack of honesty, their probative value was minimal, at best, in view of the long span of time between the convictions and Littleton's testimony." State v. Skakel, 276 Conn. at 730-40. Moreover, the court concluded that because the petitioner's third party culpability defense focused on Littleton, the state expressed legitimate concern that introduction of evidence

[40] Under Connecticut law, there are three degrees of burglary, each of which is a felony punishable by imprisonment for more than one year. General Statutes §§ 53a-101, 53a-102 and 53a-103.

of Littleton's convictions would divert the jury's attention from the important issues of the case. Id., at 741-42. Accordingly, the court found that the trial court did not abuse its discretion in excluding evidence of Littleton's prior felony convictions. Id., at 742.

D. Federal Petition for Writ of Habeas Corpus

In November 8, 2007, the petitioner filed a petition for writ of habeas corpus in the United States District Court for the District of Connecticut. On December 21, 2007, the respondent filed his Answer as well as relevant portions of the state record. See Appendices A through D described in footnote 1, supra.

In the habeas corpus petition pending before this court, the petitioner claims that: (1) the Connecticut Supreme Court's reinterpretation of the law governing application of the statute of limitations violated his right to due process and his right against prosecution under ex post facto laws; (2) the trial court violated his right to due process and to present a defense when it refused to hold an evidentiary hearing regarding his claim that the state had withheld exculpatory evidence in violation of the United States Supreme Court's ruling in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); (3) the trial court violated his right to due process of law when permitted his case to be transferred to the adult criminal docket; (4) the misconduct of the prosecutor deprived him of due process of law and a fair trial; (5) the trial court violated his right to confrontation when it admitted the prior testimony of a witness; and (6) the trial court violated his right to due process when it admitted evidence of confessions that were the product of coercion. Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254 by a Person in State Custody (hereinafter "Habeas Corpus Petition"), paragraph 19.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing document was mailed, first class postage prepaid, to Attorney Hope C. Seeley, Attorney Hubert J. Santos, and Attorney Sandra L. Snaden, Santos & Seeley P.C., 51 Russ Street, Hartford, Connecticut 06106, Tel. No. (860) 249-6548, Fax No. (860) 724-5533, on October 27, 2008.

/s/ Michael E. O'Hare
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