APPELLATE COURT

OF THE

STATE OF CONNECTICUT

Judicial District of Stamford-Norwalk at Stamford

AC 43952

STATE OF CONNECTICUT

v.

TERRANCE POLICE

DEFENDANT'S BRIEF
WITH ATTACHED APPENDIX

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NATURE OF THE PROCEEDING

At 1:40 pm on the tenth of October 2012, Francoise Williams was shot during a robbery while in her car in the parking lot of Stop and Shop at 385 Connecticut Avenue in Norwalk. App. A4-A6. On May 1, 2017, four months before the five-year statute of limitations expired, the Honorable Gary J. White, Judge, signed a "John Doe" arrest warrant containing DNA profiles from the suspect obtained from crime scene evidence. App. A1-A10. On April 6, 2018, almost seven months after the statute of limitations had run, the Honorable Robert F. Comerford Jr, Judge, signed a search warrant to obtain a sample of the defendant's DNA. App. A10-A21. A month later, on May 4, 2018, the police arrested the defendant on the John Doe warrant after his DNA profile matched the one from the crime scene evidence. App. A66.

The State's Attorney for the Judicial District of Stamford-Norwalk charged him with Robbery in the first degree, Conn. Gen. Stat. § 53a-134 (a) (1) (robbery while armed with a deadly weapon), and Assault in the first degree, Conn. Gen. Stat. § 53a-59 (a) (1) (assault causing serious physical injury by means of a deadly weapon). App. A24, A66. On February 8, 2019, he filed a motion to dismiss claiming that the statute of limitations had run. App. A24-A43. In February and March of 2019, the Honorable John Blawie, Judge, held a hearing and on July 19, 2019, filed his written decision denying the motion. App. A24, A44-A64. On November 4, 2019, the Honorable Gary J. White, Judge, accepted the defendant's written plea of nolo contendere reserving his right to appeal the denial of his motion to dismiss pursuant to Conn. Gen. Stat. § 54-94a and Conn. Prac. Bk. § 61-6 (a) (2) (A), and that day sentenced him to concurrent sentences of ten years on each count, five years of which were mandatory. App. A12, A65. On February 21, 2020, he appealed. App. A68.

FACTS OF THE CASE

This case is a cautionary tale about over reliance by police on complex DNA evidence that they did not understand and their misplaced belief that it can always solve a crime. Their misplaced reliance and belief mislead a judge to sign a John Doe arrest warrant in which the DNA profiles did not establish probable cause to believe that a

particular person had committed the crime. As a result, the police did not arrest the defendant within the statute of limitations, and the charges must be dismissed.

The facts found by Judge Blawie were taken from the affidavits for the John Doe arrest warrant (JDW) and the search warrant for the defendant's DNA (SW) and from the testimony of the officer who was in charge of the investigation and of the person from the state forensic lab who was in charge of the state's Combined DNA Index System or CODIS.

1. *The Robbery and Shooting*

The victim parked her white Mercedes Benz at the far end of the Stop and Shop parking lot while she walked her dog. She returned to her car and was responding to an email when a man opened the driver's door and pushed her inside. She described her assailant as a black male, medium build, about five feet eleven inches to six feet tall, between eighteen and thirty years-old, with a light beard. The man wore jeans and a dark hooded sweatshirt with the hood over his head and part of his face, and with the sleeves pulled over his hands. The man pulled out a small silver gun and asked for her jewelry and iPhone. During the ensuing struggle, he fired the gun into her abdomen. After she was shot, she took off her engagement ring, wedding band and two other rings and gave them to him along with her IPhone. The iPhone had a pink flexible Kate Spade case cover. Her assailant ran out of the parking lot, across Connecticut Avenue and into the Best Buy strip mall. Later at the hospital, an officer received a .22 caliber bullet that a doctor had removed from the victim. App. A5-A6 (JDW, ¶ 5, 6, 8), A-11-A14 (SW, ¶3, 4, 8, 9); Memo. 4; App. A30.

As Diane Garrison pulled into the parking lot, to eat a sandwich, she saw a man fifteen feet behind the Mercedes, bent over with his back towards her. He appeared to be taking something out of his sock or shoe and looked directly at her as she drove by. Garrison described him as a lite skinned black male, about six feet tall, in his mid-twenties, slender build, with little to no facial hair, wearing a dark hooded zip-up sweatshirt, jeans, and black canvas slip-on shoes with white soles. She parked her car and as she took a bite of her sandwich, she heard the victim scream. She looked over at the Mercedes and saw

the man's feet dangling out of the open driver's door as he struggled with the victim. Garrison told a couple standing nearby to call 911, and she began hitting her car's horn. She heard a gunshot and saw the man run out of the parking lot and across Connecticut Avenue towards the strip mall. In the mall on the left is the Rio Restaurant, which is at the entrance to the strip mall, which has a T.J. Max and Best Buy. A side of the restaurant faces the street and the front faces into the parking lot. He ran along the side of the restaurant towards the back of the strip mall. She then saw the victim get out of her car and yell, "I've been shot!" App. A5-A6 (JDW, ¶ 6); A12-A13 (SW, ¶ 6); Memo. 5; A48.

2. *The Suspect's Path of Flight*

A waitress at the Rio Restaurant saw a man run along the side of the restaurant to the back of the building. He had his right hand tucked in his pocket, was looking around and appeared suspicious. She described him as a black male, about five feet ten inches tall, weighing about one hundred and seventy pounds, wearing a blue sweatshirt or jacket and jeans. A surveillance video from the restaurant showed a black man with a bald head wearing jeans, dark colored sneakers and a zip-up dark colored sweatshirt over a dark colored V-neck sweater and white shirt. The video showed him running along the side of the restaurant then walking behind the mall, looking back and then he began running behind T.J. Maxx and Best Buy and out of sight. Later that day, images from the surveillance video were given to the news media in an effort to identify the suspect. App. A6-A7 (JDW ¶ 7, 11, 12, 13); App. A13-A14 (SW ¶7, 8, 9); Memo. 5; A48; 3/21 Tr. 25-26.

Dominique Sinclair lived in an apartment in a housing project at 196 Suncreast Road located behind the far end of the mall. Shortly after the shooting, a young thin black man appeared at her front door. She let him in but then noticed blood on his t-shirt and told him to leave. App. A15, A16-A17 (SW, ¶ 16, 19).

3. *The Man on the Bus*

An hour or so after the shooting, a person, who asked to remain anonymous, told police that he boarded a city bus at 493 Connecticut Avenue, a short distance from Stop

and Shop. The person sat opposite, a light skinned black male in his mid-20s to 30s wearing a white t-shirt, jeans and black canvas sneaker, who had a tear drop-like tattoo under his left eye. The man was talking on a cell phone and said, “Meet me at the train station,” and “Well GPS it then.” As the bus went by the crime scene where the police were still investigating, the man bent down as if to tie his shoe so that he would not be seen by the police. He did so again when the bus passed another officer. Police surmised that he was the suspect in the shooting and was on his way to the Norwalk train station. Officers retrieved surveillance video from the station and spotted the suspect. The video was shown to the public through the news media. App. A12-A13, A15 (SW ¶ 6, 15) 3/21 Tr. 32-33.

4. *Officers Find Clothing, an iPhone Cover and a Gun along the Suspect’s Path of Flight.*

On October 13, 2012, three days after the robbery, officers retraced the suspect’s path of flight as shown in the videos. 3/21 Tr. 25-26. Outside the stockade fence that lined the rear of the strip mall, they found a dark blue, zip-up hooded sweatshirt, a sweater and a .22 caliber silver revolver. The bullet retrieved from the victim was matched to the gun. Officers sent the sweatshirt, and swabbings from the gun and the victim’s car to the State Forensic Lab for DNA testing. At the lab, an analyst found in the pocket of the sweatshirt, a pink iPhone cover that was taken from the victim and swabbed it for DNA. The lab tested samples form the victim’s car, the sweatshirt, the iPhone cover and the gun but only the profiles from the sweatshirt and the iPhone cover produced profiles appropriate for entry in the CODIS databases. The database search that day did not turn up any matches. App. A6-A8 (JDW, ¶8-10, 14, 16, 17), A13-A14 (SW ¶9, 10, 11); Memo. 5; App. A48; 3/21 Tr. 26.

5. *The Defendant’s Cousin Identified Him as the Suspect but Norwalk Police Failed to Follow Up on the Lead.*

On December 29, 2012, about two and a half months after the robbery and a week after the DNA data base search did not turn up a match, the defendant’s cousin called Norwalk police and said that the defendant looked identical to the suspect in the video he had seen on TV and told members of his family that he had shot the victim. The lead

Detective David Orr believed that he had "a verifiable DNA profile" from the suspect and had asked the state lab to run a CODIS search. Orr had the cousin's phone number, but did not call him or the defendant and his family. Orr learned the defendant had been convicted of a felony but did not get the defendant's arrest photo to see if he looked like the suspect in the surveillance videos. Orr learned from the state lab that all offender samples through 2012 had been entered into the databases. Therefore, he assumed that the defendant's DNA profile was in the databases that had been searched a week earlier without turning up any matches. "It effectively vetted Mr. Police, in our opinion, as a suspect at that time," Orr said. And so, Orr eliminated him as a suspect without any further investigation. Orr was promoted in 2014 and thereafter, was no longer responsible for the case. 3/21 Tr. 39-40. App. A14 (SW ¶ 12); Def.'s exh. C (December 21, 2012 DNA Data Base Search Report, page 4); App. A77; Memo. 6; App. A49; 3/21 Tr. 24-40.

6. *The Norwalk Police Closed the Investigation and Drafted the John Doe Warrant.*

In July of 2013, nine months after the robbery, the Norwalk police felt it had exhausted all investigative leads and closed its investigation with the only continuing activity being the ongoing weekly searches of the DNA databases for a match to the profiles from the sweatshirt and iPhone cover. On April 6, 2017, over four years and three months after the offense, Detective Tomasz Podgorski, who had taken over the investigation, drafted a John Doe arrest warrant into which he copied the DNA profile of the suspect from the sweatshirt and iPhone cover. In the warrant, he stated that he "believe[d] there is probable cause for the statute of limitations to be halted until the pending arrest of John Doe, an unknown male identifiable by the above listed DNA profile" for robbery and assault. On May 1, 2017, Judge White signed the warrant. App. A7-A9 (SW ¶ 13, 23); 3/21 Tr. 45-46.

7. *The John Doe Warrant Contained Profiles from a Mixture of Partial Profiles for Which No Match Probability Is Given.*

The results of DNA testing[1] are produced as peaks on a graph called an

[1] For STR testing generally, see *State v .Pappas*, 256 Conn. 854, 866-875 (2001)

electropherogram. Each peak is labeled with the number of STR repeats for the allele,[2] the chromosome on which it is located, the location on that chromosome and the height of the peak, which corresponds to the amount of DNA at that locus. For a single source sample, it will show two peaks for each locus if the person's two alleles from each parent are different (heterozygous), or one larger peak, roughly twice the height of a heterozygous peak, if the person's two alleles are the same (homozygous). The two alleles at a locus are the person's genotype. If a person's two alleles at a particular locus are the same length, for example 14 repeats long, the person's genotype is 14, 14. If the person's two alleles at a particular locus have different lengths, for example, 14 and 19 repeats long, the person's genotype is 14, 19. The scientific community and Congress have chosen 13 core loci for analysis[3] to create a profile for a suspect or any other relevant person, such as a victim who likely contributed to the sample. *Roberts v. United States*, 916 A.2d 922, 926 (D.C.App. 2007). A DNA profile consists of a string of two numbers grouped with their corresponding locus. A profile is widely said to identify an individual when all twenty-six alleles at the thirteen core loci match. Matches can occur at less than the thirteen loci but the statistical weight is less. And with the loss of several loci, the statistical weight rapidly decreases. See discussion page 31-34.

A match requires a second piece of information—the statistical frequency of the profile. A match between two profiles means nothing without statistical evidence as to the likelihood that other individuals in a given population would also match.[4] The significance of

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(explaining the steps in processing DNA samples in the context of mitochondrial DNA).

[2] Allele: "One of two or more alternative forms of a gene or genetic marker" at a specific locus. Rudin, N., Inman, K., *Introduction to Forensic DNA Analysis*, 2d Ed. (2002) at 203. Every person has one allele form each parent, which may be the same or different. Id.

[3] The thirteen core loci are: CSF1PO, FGA, THO1, TPOX, VWA, D3S1358, D5S818, D7S820, D8S1179, D13S317, D16S539, D18S51, D21S11. In 2012, the samples were tested at fifteen loci plus the sex locus. In 2017, the FBI increased the thirteen core loci to twenty core loci for CODIS searches. In 2018, the samples were retested at twenty-six loci plus the sex locus. Because most older offender profiles were tested only at the thirteen loci, these loci are used for matching, even if the known samples was tested at more loci.

[4] See National Research Council, The Evaluation of Forensic DNA Evidence (NRC II) (1996) Chapter 6 DNA Evidence in the Legal System, § Explaining the Meaning of a

a match depends upon how rare or how common the profile is in the relevant population. DNA typing is an exclusionary test; a match means: "[T]he donor of the known sample cannot be conclusively eliminated as the source of the questioned sample." *State v. Whittey*, 821 A.2d 1086, 1094 (N.H.2003). It tries to exclude individuals from profiles until only one person would be expected to have the profile. When an individual cannot be excluded, the analyst must explain what is in the profiles. A match is meaningful if it shows that a particular DNA profile is rare based on its infrequency in the relevant population. "The profile frequency is simply the probability that an unrelated person chosen at random from the population would have the same DNA profile as the unknown sample." (Cit. omtd.) *Roberts v. United States*, 916 A.2d at 927. The statistical evidence gives the match evidence its weight. It is an expression of the rarity of the suspect's profile, the size of the pool of possible suspects, and the likelihood of a random match with the suspect's. The determination of what is often called the "significance of the match" is a statistical assessment of how incriminating it is that the defendant's profile matches the suspect's. The rarer the profile in a population, the more likely the defendant is, in fact, the perpetrator. The state's use of a suspect's profile in a John Doe warrant is like the state's use of a suspect's profile in a cold case where it is the only evidence implicating a person. The profile must *by itself* identify the suspect. It is unlike the state's use of a common profile at trial which is presented along with other incriminating evidence to convict a defendant. See, e.g., *Commonwealth v. O'Laughlin*, 843 N.E.2d 617, 633 (Mass. 2006) (finding DNA tests with random match probability of one in two was sufficient to be admissible because there was plenty of other incriminating evidence). Uniqueness is a question of degree; profiles in John Doe warrants must be unique to the relevant population, here, that of the United States.

Podgorski, the affiant on the John Doe warrant stated that on January 11, 2013,

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Match ("[i]t would not be scientifically justifiable to speak of a match as proof of identity in the absence of underlying data that permit some reasonable estimate of how rare the matching characteristics are") available at https://www.ncbi.nlm.nih.gov/books/ NBK232607/

three months after the shooting, the Norwalk police received a "DNA Database Search Report" from the state lab which "contained the results of the amplified items with Identifiler Plus Alleles Detected." App. A9 (JDW ¶ 20). Podgorski then listed the alleles for the fifteen loci tested plus the male/female locus for a swab from the inside sleeve, cuffs and neck of the sweatshirt (evidentiary sample 6-S1), from the outside of a pink cell iPhone cover (6-S2), and from a cutting from the sweatshirt left pocket (6-S3). Id.; Memo. 5-6; App. A48-A49. The John Doe warrant, def.'s exh. A, sets forth the testing results for these samples and they are arranged here in an allele chart[5] like that in the lab reports, def.'s C & D:

	1	2	3	4	5	6	7	8
locus	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S359
6-S1	12,13, 14, *	30	9, 10	12	15, 16	7	11, 12	9
6-S2	12, 13, 14, 15	30, 31, *	9, 10	10, 12	14, 15, 16	7, 8, *	11, 12	9, 11, *
6-S3	12, 13, 14, 15	28, 30, 30.2, 31, 35	8, 9, 10, 11, 12	7, 10, 11, 12, *	14, 15, 16, 17	6, 7, 8	10, 11, 12	9, 10, 11, 12, 13
	9	10	11	12	13	14	15	16
locus	D2S1338	D19S433	vWA	TPOX	D18S51	AMEL	D5S818	FGA
6-S1	20, 21	11, 15.2	16	11	16, *	X, Y	11	24
6-S2	19, 20, 21, *	11, 15.2, *	15,16, 18	9, 11, 12	16, 17, *	X, Y	9, 10, 11,13	23, 24, 26
6-S3	17, 18, 20, 21, 22, 26	11, 12, 13, 13.2, 14 , 15.2	14,15, 16,17, 18	6, 8, 9, 11, 12	13, 15, 16, 20, 21	X, Y	11, 12, 13	22,23, 24,26, 29, 29

* Additional minor peak(s) detected.[6]

[5] For most of the samples no DNA was detected at many loci and so, the profiles were insufficient for a database search. Def.'s exh. C. Sample 10 was the profile from the victim who was eliminated as a contributor to the samples. For these reasons, the affiant did not set for these results in the warrant affidavit, and so, they are not set forth in this allele chart.

[6] See *State v. Bander*, 208 P.3d 1242, 1247 (Wash.App. 2009) (minor peak heights are below the lab's reporting threshold from its protocols for calling an allele from an electropherogram and may be used to exclude a contributor but not to include one).

Def.'s exh. A, C; App. A74- A83. All three samples are mixtures because there are more than two alleles at two loci. Sample 6-S1, a swab from the sleeve, cuff and neck of the sweatshirt, has four alleles at (1) D8S1179, three called alleles and a minor peak and is likely a simple mixture of two people. Sample 6-S2, a swab from the iPhone cover has four alleles at (1) D8S1179 and (15) D5S818, three alleles at (5) D3S1358, (9) D2S1338, (11) vWA, (12) TPOX, and (16) FGA, and so, is a complex mixture with an unknown number of contributors. Sample 6-S3, a swab from the left pocket of the sweatshirt, has more than two alleles at all loci: six alleles at three loci, five alleles at six loci, four alleles at three loci, three alleles at three loci. It is a very complex mixture with an unknown number of contributors. None of the mixtures were deconvoluted,[7] that is, the component profiles were not parsed out and listed separately for each sample in the warrant. App. A9 (JDW ¶20). The profiles listed do not contain a discrete, unambiguous profile unique to a person, but a mixture of two or more profiles. Importantly, based on the information within the four corners of the warrant it is not possible to determine what the individual profiles are or how many there are. So it is not possible to determine the profile of the suspect—the suspect's profile is likely in the mixture but we cannot determine what it is based on the information contained in the John Doe warrant. Retesting in 2018 showed that the mixed profiles form the iPhone cover and the sweatshirt pocket were too complex for analysis and could not be used in a database search. Def.'s exh. D; App. A79-A80. Importantly, there is no match statistic in the warrant which states how many people in the population of the United States would be expected to be a contributor to the mixtures.

8. *Some of the Defendant's Alleles Have Dropped Out of the Crime Scene Samples*.

A comparison of the defendant's profile (sample 13) to the profile from the sleeve,

[7] "Deconvolute/deconvolution: Separation of the contributors to a mixed DNA profile into major and/or minor contributor profiles. Deconvolution is typically based on quantitative peak height information and may depend on underlying assumptions (e.g., whether the sample has been deemed an intimate sample)." U.S. Department of Justice, DNA for the Defense Bar 17 (2012) available at https://www.ncjrs.gov/pdffiles1/nij/237975.pdf

cuff and neck of the sweatshirt (sample 6-S1) shows that some of his alleles are missing from the sweatshirt.[8] As one would expect, the defendant's buccal swab[9] yielded an unambiguous single source profile with no more than two alleles at any locus. The alleles from the sleeve, cuff and neck of the sweatshirt does not yield an unambiguous single source profile, but a mixture of partial profiles. The sweatshirt sample is homozygous at three loci where the defendant is heterozygous: his 31 allele is missing from (2) D21179; his 12 allele is missing from (4) CSF1PO; his 26 allele is missing from (16) FGA.

	1	2	3	4	5	6	7	8
locus	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S359
6-S1	12,13, 14,*	30	9, 10	12	15, 16	7	11, 12	9
13	12,13	30, 31	9, 10	10, 12	15, 16	7	11, 12	9

	9	10	11	12	13	14	15	16
locus	D2S1338	D19S433	vWA	TPOX	D18S51	AMEL	D5S818	FGA
6-S1	20, 21	11, 15.2	16	11	16, *	X, Y	11	24
13	20, 21	11, 15.2	16	11	16	X, Y	11	24, 26

* Additional minor peak(s) detected.

In a sample with plenty of DNA, the absence of one of the defendant's alleles at any one of these loci would exclude the defendant as a contributor. Here, one of his alleles is missing from three of the fifteen loci (minus the sex locus).

However, the presence of additional minor peaks denoted by an asterisk (the allele

[8] The defendant's profile is not compared to the profiles from the other two samples because when they were retested in 2018 both were found to be too complex to be analyzed and so could not be submitted for database searches. See Def.'s exh. D; App. A80.

[9] The profiles from the samples 6-S1 were generated in 2012 using an AmpF/STR Identifiler kit which tested fifteen loci plus the sex locus. Def.'s exh. C; App. A75. The defendant's profile was generated in 2018 using an Identifiler Plus STR kit which tested twenty-seven loci plus the sex locus. Def.'s exh. D; App. A78. If a database hit occurs, between a crime scene sample tested at the thirteen core loci and the defendant's sample, which is tested at more loci, then the crime scene sample may be retested using the newer twenty-seven loci kit to generate more data points as was done here.

number is left out) shows that the samples contained low levels of DNA. Minor peaks are results below the stochastic threshold, the level at which a lab's protocol states that an analyst cannot call an allele as present because the analyst cannot confidently state that an allele is present in the sample. Results below the stochastic level lead to "allelic dropout," or the failure to detect an allele because the samples have insufficient or degraded DNA. When an allele drops out at a locus, a heterozygous genotype falsely appears to be a homozygous genotype because only one of the two alleles has been amplified. With a minor peak, an allele may or may not be present in the evidentiary sample, the analyst simply cannot tell with certainty. It is like a weak radio signal that leads the listener to question whether he is hearing a radio transmission because the static may have overwhelmed it. Because DNA analysis strives to be conservative, an analyst can use minor peaks to exclude a person as a contributor to the mixture but cannot use minor peaks to include a person as a contributor. Results at the stochastic level produce partial profiles, or a profile that can be matched at less than the twenty-six alleles at the thirteen core loci. As the DNA analyst, Best, would later tell Norwalk police, some of the suspect's alleles may be missing from the crime scene samples because the quantity or quality of the DNA at some loci is insufficient for testing. See page § 10, p. 13. That is exactly what happened with the profiles in the warrant.

Mixed profiles are of two types: resolved and unresolved. In mixtures with few contributors, extreme differences in peak height that remain consistent across all loci allow an examiner to reliably infer that the large peaks came from a "major contributor" who contributed the vast majority of the DNA, and the small peaks came from a "minor contributor" who contributed a tiny fraction of the DNA. In such cases, the examiner may calculate the statistical rarity of each contributor's profile as if it were derived from a single-source sample. Similarly, if one-third of the alleles present in a three person mixture are present in four times the quantity of the rest, the analyst may be able to create a profile for at least one of the contributors. Mixtures may be resolved in another way. A known profile—for example, that from the victim on a stolen item—can be subtracted from the results of a

three person mixture, leaving a single profile that can be discarded and a two person mixture to which the suspect may have contributed. And the analyst may be able to further deconvolute this two person mixture and so, subtracted it from the mixture, generating the three profiles from the mixture. Here, the victim was excluded as a contributor to the mixtures from the crime scene evidence. In unresolvable mixtures, the differences in peak height are not sufficiently pronounced and consistent across all loci for the examiner to reliably discern the individual DNA profiles of the various contributors.

The mixed profiles in the John Doe warrant were unresolved and probably were unresolvable. Each set of mixed profiles contained alleles from more than one contributor, but the alleles could not be reliably divided into individual pairs at all loci. Furthermore, the mixed sample contained partial profiles. As explained later, these two characteristics of the samples worked in tandem to increase the match probability and thereby the number of people who could contribute to the mixture in the relevant population. See § 5.1.3., p. 31-34.

9. *Déjà vu; The Defendant Becomes a Suspect Again.*

On the second of April 2018, five years, five months and twenty-three days after the robbery, Podgorski learned from Bridgeport police that Shakeema Gill, the mother of the defendant's child, told them that the defendant "did the Stop and Shop shooting in October 2012." On April 5, 2018, Podgorski interviewed Gill who said that on the day of the shooting, the defendant's mother called her and told her to watch the news because the video of the suspect looked like the defendant. When she turned on the news, she recognized the suspect in the video as the defendant. When the defendant showed up at their apartment in Ansonia later that day, Gill saw that he was wearing a white t-shirt and not the black sweatshirt and sweater that he was wearing when he left that morning. When Gill confronted him about it, he admitted that he robbed an older white woman in an SUV, and when he asked her for her rings, she fought back and he accidentally shot her in the stomach. During his flight, he told Gill he threw the gun away, ran towards a housing project where an unknown lady let him into her apartment but kicked him out when she saw blood

on his t-shirt, and he then took a city bus to the train station. Sometime after the shooting, the defendant offered her a ring but Gill refused it because she though it was stolen during the robbery, and a couple of weeks after the shooting, Gill said the defendant went to New York City, sold the ring and brought her a present. She refused it because she believed the money had come from the sale of the stolen ring. After the shooting, the defendant let his hair grow out, Gill said. App. A14-A16 (SW, ¶ 14, 15, 16); 3/21 Tr. 46-47.

The police learned that the defendant was a black male, about 170 pounds, five feet nine inches tall with a thin build that matched the description from witnesses to the robbery and shooting and that he had been arrested in 2014 for two armed robberies during which he wore a dark colored sweatshirt with the hood pulled over his head. App. A16 (SW ¶ 17).

10. *The Norwalk Police Learn that the 2012 DNA Test Results from the Sweatshirt and iPhone Cover May Not Have Been Sufficient for a Database Match to the Defendant's Profile Because They Were Low Copy Number Unresolved Mixtures*.

After speaking to Gill, Podgorski called the state lab and asked Forensic Science Examiner Jessica Best why the state and federal CODIS databanks had not turned up a match between the profiles from the crime scene and the defendant, whose profile should be in the databases because he has a 2008 felony conviction. Best said that even though the defendant's profile was in CODIS, the database would not have generated a match to the crime scene profiles if there was too little DNA in the samples or it was of its poor quality. Best also said that the DNA samples were mixtures, and the lab would need to make a direct comparison with the defendant's DNA for a match. App. A16 (SW ¶ 17, 18).

11. *The Police Obtain a Search Warrant for a DNA Sample from the Defendant*.

Based on the information from Gill, on April 6, 2018 Podgorski obtained a search warrant for a buccal swab from the defendant. Noticeably absent from the affidavit is the DNA profiles from the sweatshirt and IPhone cover, although it mentioned that the results were entered into state and national database and no matches turned up even though the defendant's profile should be in these data basses. Def.'s exh. B; 3/21 Tr. 47-48.

12. *The Lab Did Additional Testing Which Produced New Profiles from the Crime Scene Evidence that Implicated the Defendant and Led to His Arrest.*

In the 2018 retesting of the crime scene samples, the state lab used a new more sensitive testing kit that produced results at twenty-six loci and the sex loci, and used new more powerful software to interpret the results and to compare them to the defendant's profile. The new testing, showed additional alleles that were not detected at the loci in the crime scene profiles recited in the 2012 warrant. As a result, two crime scene samples that were too incomplete in 2012 for comparison and were not listed in the 2012 warrant now had enough alleles at enough loci to be compared to the defendant's profile. Most striking, the retesting of samples from the iPhone cover and the sweatshirt pocket produce results that were now too complex for interpretation and could not be loaded into the state and national databases and could not be compared to the defendant's profile. For the first time, the sweater was tested. The analyst concluded that the likelihood that the defendant contributed to mixed profiles from the sleeve, cuff and neck of the sweatshirt, the right handle of the .22 revolver, and the sleeve, cuff and neck of a sweater was in the billions. April 13, 2018 DNA Report II. Def.'s exh. D; App. A79-A80. On May 4, 2018, Norwalk officers arrested the defendant pursuant to the John Doe warrant. App. A66; 3/21 Tr. 48-49.

13. *The Hearing on the Motion to Dismiss*

The hearing focused on why the 2012 database search had not turned up a match between the crime scene samples and the defendant's profile. No one asked the only relevant question: If the defendant's profile had been in the databases, would the crime scene profiles in the warrant have match the defendant's thirteen loci profile and only his profile. Patricia Johannes, a DNA analyst, who administers the CODIS system at the state lab, reviewed records from Corrections that indicated that a sample had been taken from the defendant in May 2008. 3/21 Tr. 9-10. However, she checked the lab's transmittal sheets for that time period and they did not show that the lab ever received it. She put the defendant's name, date of birth, inmate number, etc. through the state database and

nothing came up showing that his DNA profile was in the data base. 3/21 Tr. 3-7. Orr explained why he did not pursue the defendant as a suspect in December 2012. With the benefit of twenty-twenty hindsight, Orr said that if he had known the defendant's profile was not in the databases, "I would have pursued him vigorously as a suspect." 3/21 Tr. 30.

ARGUMENT

Issue 1: An Arrest Warrant Identifying a Suspect with a Partial DNA Profile from a Mixture Found on Crime Scene Evidence for Which No Match Probability Was Given Violated the Constitutional Particularity and Statutory Reasonable Certainty Requirements and So, Did Not Commence the Prosecution within the Statute of Limitation.

Summary: A John Doe warrant works in this way: Police have a suspect's thirteen loci DNA profile from crime scene evidence. When investigative leads are exhausted and the statute of limitations is about to run, they put the profile along with a description of its statistical frequency in the relevant population into the warrant as a unique description of the suspect. The profile is also put into a database to be searched against known offender profiles, which are periodically added. When a match or "hit" occurs, the police get a search warrant for the defendant's DNA sample to confirm the match. When the match is confirmed, the police arrest the defendant on the John Doe warrant.

The warrant in this case failed at almost every step of this process. The crime scene evidence produced partial profiles from an unknown number of people. The profiles were copied into the warrant without any description of their statistical rarity. The police failed to pursue a lead that would have led to the defendant's arrest within the statute of limitations. The database search did not turn up a match and likely could not because of the low quality and quantity of the DNA from the crime scene sample. After the limitations period had run, the defendant was identified as the suspect based on an investigative lead that was unrelated to DNA profiles from the crime scene evidence in the warrant.

Upon retesting in 2018, the profiles from two of the samples, the iPhone cover and the left pocket of the sweatshirt, turned out to be too complex for analysis and so, could not

be compared to profiles from anyone. The one remaining mixture of partial profiles from the sleeve, cuff and neck of the sweatshirt could at best exclude only a portion of the population of the United States and identified a pool of possible suspects that were useless for identifying a suspect through a database search—precisely, what a John Doe warrant was intended to do. Because the warrant did not describe a profile unique to the suspect, it violated the constitutional particularity requirement and the statutory reasonable certainly requirement. U.S. Const., amend. 4; Conn. Const., art. 1, § 7; Conn. Prac. Bk. §§ 36-1 & 36-3; Conn. Gen. Stat. § 54-2a (a). An invalid John Doe warrant did not commence the prosecution within the five-year statute of limitation for robbery and assault.

1. *The Relevant Facts*

1.1. *The DNA Evidence in the Warrant Affidavit*

The affiant on the John Doe warrant, Podgorski, simply copied into the affidavit the alleles from each loci listed in the December 21, 2012, DNA Database Search Report, def's exh. C. That report did not contain a description of the statistical rarity of the profiles. And so, Podgorski had nothing to copy into the affidavit about how rare or common the profiles were. Podgorski knew that the profiles listed in the warrant were mixtures of DNA from two or more people because the 2012 DNA Report so stated, and some loci had more than two alleles. He assumed that the suspect's entire profile was somewhere in the profiles in the warrant. He was unaware that the profiles had low quantity and quality DNA, in which some of the alleles in the profiles were missing, although there was evidence of it in the 2012 DNA Report (the asterisks). He was unaware of how complex the profiles in the warrant were because of the number of contributors and because of the low quantity and quality of the DNA in the crime scene samples. He assumed that the suspect's profile was in the warrant and could be matched to an offender profile at a statistical frequency that it would make it a unique identifier. He had no reason to make this erroneous assumption.

As a result of the lack of a statistical description, the judge signing the warrant had no way of knowing how rare or common were the profiles listed in the warrant. But there

were warning signs in the mixed profiles in the warrant. While the warrant clearly established probable cause to believe a crime had been committed, the judge could not determine from the profiles themselves whether they were a unique descriptor of the suspect and was forced into the unwarranted assumption that they were.

When an officer uses DNA evidence to draft a warrant, when a prosecutor presents that warrant to a judge for his signature, and when the judge signs that warrant after finding probable cause, each has a duty to understand the DNA evidence they are using to arrest a person. Because they did not understand the DNA evidence, the assumptions they made were not reasonable. Appling basic principles of forensic DNA matching, we know that the partial mixed profiles in the warrant are not likely to be a unique identifier of the suspect like those from a complete thirteen loci profile from a single source. It was not until the swabs from the crime scene evidence were retested with more sensitive DNA amplification kits and analyzed with more powerful software that the defendant was identified as a unique contributor to one of the samples listed in the warrant. But the question in this case is whether the three mixed profiles in the warrant could be used to identify the suspect through a database search. That after all is the purpose of a John Doe warrant. At the end of the day, the only relevant question is left unanswered: Would the defendant's profile have matched the 2012 profiles *in the warrant*, and if so, would it have a match probability that would exclude the population of the United States except for him. There is every reason to think the profiles in the warrant would be insufficient for that purpose. The state as the one bearing the burden of proof failed to prove that the suspect's *profile in the John Doe warrant* matched the defendant's profile. At the end of the day, there is no evidence in the record that the mixed partial profiles listed in the warrant would identify the defendant as the only one likely to match the suspect's profile.

1.2. *The Trial Court's Decision*

After reciting the events of the 2012 robbery and shooting, Judge Blawie described how officers found "a sweater and a dark blue zip-up hooded sweatshirt with a pink Kate

Spade cell phone cover located in the pocket" along the suspect's path of flight, and sent them to the state lab which tested them for the suspect's DNA and issued a report. Memo. 5-6; App. A48-A49. The court described how Podgorski drafted the John Doe warrant by coping the fifteen loci and their corresponding alleles[10] from the 2012 DNA Report for the sweatshirt and phone cover. Memo. 9-10; App. A52-A53. The court described the report as containing "specific . . . alleles [that] constituted a DNA profile" that was recited in the John Doe warrant. Id. At other points in its decision, the court referred to the testing results as the suspect's "consistent DNA profile," as "his/her DNA profile" and as a "unique DNA profile." Memo. 2-3; App. A45-A46. Although at one point the court said that the "phone cover [ ] contained a mixture of [the victim's] DNA and the defendant's," memo. 17; App. A-60, the court failed to notice that the Lab DNA reports in evidence stated that all the crime scene samples were mixtures and that the victim was excluded as a contributor to the mixtures. Def.'s exh. C; App. A76; Def.'s exh. D; App. A79-A80.

The court described the statutory scheme that required that DNA samples be collected from all convicted felons and put into state and national databases. Offender profiles are continually added to the databases and compared with crime scene profiles on a weekly basis. Memo.6-7; App. A49-A50. The court recited the unfortunate series of events that led the Norwalk police to believe that the defendant's profile was in the databases, and to exclude him as a suspect when no match with the suspect's profile was generated. Memo. 7-10; App. A50-A51. The court characterized the failure to generate a hit with the defendant as a "false positive" that excluded him as a suspect. Memo. 8-9; App. A51-A52. It went further and said that the database searches "actually worked against the investigating officers and the prompt arrest of the defendant" because the Norwalk police engaged in a "good faith investigation" based on an "entirely reasonable[ ] belief that the

[10] In doing so, Podgorski omitted critical information, the asterisks, indicating minor alleles, which could be used to exclude but not to include a suspect as a potential contributor. Anyone with a basic knowledge of DNA profiles would have recognized the asterisks as a clear sign that the profiles are a result of the low quantity and quality of DNA.

defendant's DNA profile did not match the DNA profile obtained from the crimes scene evidence." Memo. 7, 20; App. A50, A63. "[S]uch an error," the court concluded, "cannot inure to his benefit under the facts of this case, such that a dismissal is warranted." Memo.9; App. A52. All of the court's conclusions are premised on the unreasonable belief that the crime scene samples generated an unambiguous fifteen loci profile from a single person when, in fact, they did not.

The court recited Podgorski's call to the analyst at the state lab, Best, who said the crime scene samples were mixtures with low quantity and quality DNA that might not have matched the defendant's profile in the database, but he failed to understand its significance. Memo. 10; App. A53. This was a clear indication that the problem was with the crime scene samples.[11] The 2018 DNA report in evidence, def.'s exh. D,[12] clearly states: (1)

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[11] The court stated that Best said no match may have resulted "because of the low quality of *his* previous sample." (Emph. add.) Memo. 10; App. A53. Best was describing the *crime scene samples*, not the defendant's sample that was believed to be in the database. App. A16 (SW ¶ 18). There should always be more than enough DNA in a buccal swab.

[12] The trial court relied on a Supplemental DNA Report III, dated April 16, 2018 (Report III), which was not in evidence and was not relied on by the parties at the hearing. Nonetheless Judge Blawie used it. Memo at 10; App. A53. In Report III, the analyst compared the defendant's profile to the newly generated profiles from the crime scene evidence at the sixteen loci used in 2012. Defendant's exhibit D compared the new crime scene profiles with the defendant's profile at twenty-six loci. Thus, Report II has more data points for comparison and is, therefore, more accurate. Report II and Report III, significantly differed as follows: (1) As to the iPhone cover, Report II stated it was too complex for comparison while Report III stated the defendant was 1.2 billion times more likely the suspect—a false inclusion; (2) As to the right handle of the gun, Report II stated the defendant was 100 billion times more likely the suspect while Report III stated he was 30,000 more likely the suspect; (3) As to the sleeve, cuff and neck of the sweater, Report II stated the defendant was 100 billion times more likely the suspect while Report III stated he 260 million times more likely the suspect. App. A79. It is manifestly unfair to pick and choose among conflicting test results from the same sample made at different times (the iPhone cover), to rely on the test results from items not tested in 2012 (the sweater), and to rely on the retesting of items that produced insufficient results and could not be put into the state and national databases in 2012 (the gun), but which now can be put into those databases as the result of new testing. The only valid comparison is between the three profiles in the 2012 warrant and the profiles from the 2018 testing of the defendant's buccal swab, a comparison which has never been done. The principle difference between the reports is that Report II used the results of twenty-seven loci testing which showed the true

No match was attempted with the iPhone cover and the pocket of the sweatshirt because the mixtures are “too complex for STRmix interpretation” and could not be compared to known sample; (2) All of the evidentiary samples had been retested in 2018 with more powerful test kits which tested twenty-seven loci, some having eight alleles at one locus, and produced vary different profiles from the 2012 testing of the crime scene samples; (3) For the first time, some of the samples were deconvoluted into individual profiles with different and more powerful software; (4) The matches were given as a likelihood ratio; (5) The sweater the court misdescribed as the sweatshirt was tested for the first time in 2018. Compare def.’s exh. C; App. A74, with def.’s exh. D; App. A78. The John Doe warrant set forth the profiles from the sweatshirt and iPhone cover, and, as it turned out, two of the three profiles were useless for comparisons purposes and the remaining one had to be retested and deconvoluted before it could be compared with the defendant’s profile and a match probability generated.

In its legal analysis, the court adopted the view of courts in other states that a John Doe warrant tolls the limitations period when it contains the thirteen core loci of the suspect which would produce a match probability at least in the hundreds of millions and therefore, met the Fourth Amendment’s particularly and the statutory reasonable certainty requirements. Memo. 12-18; App. A55-A61. But the court’s belief that the three profiles in the warrant here were of the same quality as the profiles in these out of state cases—unambiguous single source profiles containing the thirteen core loci that would have a match probability at least in the hundreds of millions—was not reasonable. Memo. 15-17; App. A58-A60. In fact, as the state analyst said, the 2012 testing showed the crime scene samples generated low quantity partial profiles from as many as six persons that might not match a known profile. The court failed to realize that not all DNA profiles are equally

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complexity of the crime scene samples with some loci having eight alleles and others showed that many alleles had dropped out. Report III, used by the court, masked features which, in the case of the iPhone cover, resulted in the defendant’s false inclusion as a contributor to that mixed sample.

precise identifiers. This incorrect assumption undermined the court's conclusion that "this arrest warrant based on a DNA profile does in fact identify the defendant with 'nearly irrefutable precision,' despite the initial use of the John Doe pseudonym." Memo. 15; App. A58. At no point in its decision did the court ask whether the defendant's profile matched that of a contributor to the profiles described in the warrant, and if so, with what statistical frequency. And the court could not answer this question based on the information within the four corners of the warrant.

2. *The Issue Was Preserved and Is Reviewable on Appeal*.

The issue of whether the John Doe warrant met the constitutional particularity and statutory reasonable certainty requirements was argued in the trial court and decided by the court. Memo at 2-3, 13, 16-17: App. A45-A46, A56, A59-A60. The parties discussed the case of *State v. Belt*, 179 P.3d 443 (Kan. 2008) which rejected the John Doe warrant in that case because it had only two loci and was present in one in 500 people.[13] The trial court concluded that "[the *Belt* warrant] contained insufficiently specific identifying information . . . [and] is readily distinguishable from [the warrants in other case] as well as the instant warrant . . . [which] identified particular unknown defendants with extraordinary precision." Memo at 16 n.2; App. A59. Even though the state and the court were aware that profiles with few loci will not identify a suspect with particularity and knew from analyst Best that the profiles in this case were low quantity DNA mixtures, they assumed the profiles listed in the` warrant had a thirteen loci profile form the suspect.[14] The state bore the burden of proving the prosecution was begun by a constitutionally and statutorily valid warrant and simply failed to prove it.

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[13] See 2/8 Tr. 32; state's memo in opposition at 5; Def.'s motion to dismiss at 14 (pointing out that *Belt* found the warrant had "insufficient identifying information... concluding that the warrants failed to sufficiently set forth identifying information particular to the defendant and dismissed the charges". 179 P.3d at 451); App. A60.

[14] See, e.g., state's 1/17/19 memo at 6 (stating the warrant contained "the genetic information, which contained complete, 15-loci DNA alleles").2/8 Tr. 26-31 (state: "we have a full 13 loci profile," "all three profiles have 13 loci").

If for some reason, the issue is not preserved, it is reviewable under the *Golding* doctrine,[15] and as plain error under Conn. Prac. Bk. § 60-5.[16] The record is adequate because the profile in the John Doe warrant is clearly not a single source profile with twenty-six alleles at the thirteen core loci. When the warrant profiles are properly read in light of basic principles of forensic DNA analysis, it is equally clear that it cannot be assumed to have identified a person with a match probability equal to that from a single source thirteen loci profile. The issue is constitutional: Whether the John Doe warrant complied with the state and federal particularity requirements and establishes probable cause to arrest the defendant so as to toll the five-year statute of limitation. U.S. Const., amend. 4; Conn. Const., art. 1, § 7. See *State v. Saturno*, 322 Conn. 80, 90 (2016); *State v. White*, 195 Conn.App. 618, 652-653 (2020); *State v. McDaniel*, 104 Conn.App. 627, 631 (2007). The reasonable certainty requirement of Conn. Prac. Bk. §36-3 and Conn. Gen. Stat. § 54-2a (a) is bound up with this constitutional issue, and their violation is also grounds for plain error review.

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[15] *State v. Golding*, 213 Conn. 233 (1989) states that a defendant may prevail on an unpreserved claim when ‘‘(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 . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt.’’ (Footnote omitted.) Id., 239–40; see also *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015) (modifying third prong of Golding by eliminating word ‘‘clearly’’ before ‘‘exists’’ and ‘‘deprived’’).

[16] Plain error review under Conn. Prac. Bk. § 60-5 "is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy. . . . The plain error rule is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice." (Inter. quo. mks. omtd.) *State v. Alston*, 272 Conn. 432, 455-56 (2005). The improper use of John Doe warrants to evade the statutes of limitations through noncompliance with Conn. Prac. Bk. § 36-3’s reasonable certainty requirement and Conn. Gen. Stat. § 54-2a (a) (requiring probable cause to believe a person committed the crime) certainly affects the fairness and integrity of and public confidence in the courts and is a matter of great public importance.

3. *The Standard of Review*

"A motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the [state] cannot as a matter of law and fact state a cause of action that should be heard by the court.... A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.... [O]ur review of the trial court's ultimate legal conclusion and resulting [decision to] grant ... the motion to dismiss will be de novo." *State v. Haight*, 279 Conn. 546, 550 (2006). "In determining whether the evidence proffered by the state is adequate to avoid dismissal, such proof must be viewed in the light most favorable to the state." *State v. Kitchens*, 243 Conn. 690, 702 (1998). The state bears the burden of showing that the offense was commenced within the statute of limitations or that the statute of limitations was tolled. *State v. Ward*, 306 Conn. 698, 707 (2012).

4. *The Defendant Was Not Identified as the Perpetrator through a CODIS Search of the Profiles in the John Doe Warrant and Therefore, the Issuance of the Warrant Did Not Toll the Running of the Statute of Limitations*.

Ultimately, the defendant was identified through family who called the police, not by a CODIS search, but by then it was too late. The rationale for a John Doe warrant is that the police have a DNA profile from crime scene evidence that can identify the suspect and have entered it into a database where it is continually searched against offender profiles, and it is hoped that a search will one day generate a match with an offender profile. Only in these circumstances does the John Doe warrant toll the limitations period. As an exceptions to general rules governing the statutes of limitations, the John Doe tolling exception must be strictly construed in favor of the accused and limited to identification through DNA testing. *State v. Swebilius*, 325 Conn. 793, 813 (2017). A John Doe warrant does not stop the clock so that the police can continued to investigate the crime through other means that lead to the defendant's arrest. New Jersey's DNA-tolling statute applies only where the police have a DNA profile from crime scene evidence that directly connects the defendant to the crime. The policy rationale justifying DNA-tolling does not apply where the DNA profile matched a

codefendant who implicated the defendant after the statute had run. *State v. Twiggs*, 187 A.3d 123, 135-140 (N.J. 2018). This policy limitation applies with equal force to John Doe warrants recognized by case law. Our Legislature has adopted a similar limitation for sexual assault cases with DNA evidence. Conn. Gen. Stat. § 54-193b. Because the John Doe warrant did not lead to the discovery of the defendant's identity as the suspect, it did not toll the statute of limitations.

5. *The Issuance of an Arrest Warrant Naming "John Doe" and Identifying Him with a Suspect's DNA Profile for Which No Match Probability Is Given Did Not Constitute the Initiation of a Prosecution that Tolls the Statute of Limitation*.

A John Doe warrant must meet constitutional and statutory requirements to initiate a prosecution that tolls the statute of limitations. The prerequisites for issuance of an arrest warrant are: application by the prosecutor accompanied by affidavit and a judicial determination that the affidavit establishes probable cause that the offense has been committed and that the suspect committed it. U.S. Const., amend. 4; Conn. Const., art. 1, § 7; Conn. Prac. Bk. §§ 36-1, 36-3; Conn. Gen. Stat. §§ 54-2a (a) & 54-193.

5.1. *The DNA Profile in the John Doe Warrant Was Not the Best Description Available and Did Not Identify Anyone with Particularity or Reasonable Certainty.*

A match between single source profiles at all thirteen core loci is the gold standard for DNA identification because "DNA tests can, *in certain circumstances*, establish to a virtual certainty whether a given individual did or did not commit a particular crime." (Ital. add.) *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 80 (2009). However, "DNA testing—even when performed with modern STR technology, and even when performed in perfect accordance with protocols—often fails to provide 'absolute proof' of anything." Id. 80-81. "' [F]orensic DNA testing rarely occurs [under] idyllic conditions. Crime scene DNA samples do not come from a single source obtained in immaculate conditions; they are messy assortments of multiple unknown persons, often collected in the most difficult conditions. The samples can be of poor quality due to exposure to heat, light,

moisture, or other degrading elements. They can be of minimal or insufficient quantity, especially as investigators push DNA testing to its limits and seek profiles from a few cells retrieved from cigarette butts, envelopes, or soda cans. And most importantly, forensic samples often constitute a mixture of multiple persons, such that it is not clear whose profile is whose, or even how many profiles are in the sample at all. All of these factors make DNA testing in the forensic context far more subjective than simply reporting test results ....' Murphy, *The Art in the Science of DNA: A Layperson's Guide to the Subjectivity Inherent in Forensic DNA Typing*, 58 Emory L.J. 489, 497 (2008) (footnotes omitted)." Id.

5.1.1. *The arrest warrant did not satisfy the particularity requirement of the Fourth Amendment and the statutory reasonable certainty requirement*.

An arrest warrant protects an individual from an unreasonable seizure and may only be issued upon a showing of probable cause to believe a suspect is committing or has committed an offense. U.S. Const., amend. 4; Conn. Const. art. 1, §§ 7, 9; see Conn. Prac. Bk. §36-1, Conn. Gen. Stat. § 54-2a (a). The Fourth Amendment requires that an arrest warrant describe with "particular[ity] . . . the persons . . . to be seized." U.S. Const., amend. 4; Conn. Const., art. 1, § 7 (requiring arrest warrant to describe the person to be seized "as nearly as may be"); Conn. Prac. Bk. § 54-2a (a); see Conn. Prac. Bk. § 36-1 & 36-3 (requiring that an arrest warrant "contain the name of the accused person, or if such name is unknown, any name or description by which the accused can be identified with *reasonable certainty*" (Emph. add.)). The purpose of the constitutional particularity rule is to avoid general warrants by which police have discretion to arrest anyone. This limitation safeguards the individual's privacy interest against "the wide-ranging exploratory searches the Framers [of the Constitution] intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987); see *Andresen v. Maryland*, 427 U.S. 463, 480 (1976) (stating particularity requirement "prevents the seizure of one thing under a warrant describing another" (quoting *Marron v. United States*, 275 U.S. 192, 196 (1927)). Thus, a John Doe DNA arrest warrant must meet the constitutional particularity requirement and the statutory reasonable certainty requirement.

In circumstances where it is not possible to name the person to be arrested, the police may seek a John Doe arrest warrant. Such warrants are without the name of the suspect but have information identifying a particular person. Professor LaFave has stated that a warrant satisfies the particularity requirement of the Fourth Amendment if it describes the person's "occupation, his personal appearance, peculiarities, place or residence or other means of identification." (Cit. omtd.) Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, Vol. 3 § 5.1(h) Arrest Warrants (5th ed.).

The execution of an arrest warrant requires evidence extrinsic to the warrant to locate the person described therein. If a name is given, it must be attached to a particular individual, say by a driver's license or by an admission from the defendant that that is his name. If a description is given, it must make the person recognizable, such that an officer can compare the description to the defendant and identify him with reasonable certainty. *People v. Montoya*, 63 Cal.Rptr. 73, 77 (Cal.App. 1967) (holding that warrant describing defendant as "white male adult, 30 to 35 years, 5 10, 175 pounds, dark hair, medium build' was too general because it applied to too many people in Oakland). A warrant must contain a description of the suspect "sufficient[ ] to identify" him or her. *West v. Cabell*, 153 U.S. 78, 85 (1984). "Clearly, a police officer with a DNA profile in hand could not walk up to an individual and arrest him/her on that basis. Rather, the officer would need to obtain a DNA sample from the individual to compare it with the one identified in the arrest warrant." *State v. Dabney*, 663 N.W.2d 366, 372 (Wis.App. 2003). That comparison would have to be done by a skilled forensic DNA analyst.

All the courts that have considered the sufficiency of a John Doe warrant containing a DNA profile as a charging document that would toll the statute of limitations, have found it sufficient.[17] However, these cases involve single source profiles that contain the twenty-six

[17] *State v. Neese*, 366 P.3d 561, 562, 565 (Ariz.2016) (holding a thirteen loci match sufficient); *State v. Gulley*, 2015 WL 5155579 (Ohio App. 2015) (recognizing that John Doe warrant can toll statute of limitation but finding it inapplicable where defendant was a suspect before warrant issued); *State v. Carlson*, 845 N.W.2d 827, 831-834 (Minn.App. 2014); *State*

alleles of the suspect at all thirteen core loci.[18] All but two were sexual assault cases involving intimate samples with the exceptions being a burglary case involving blood left at the scene when the suspect cut himself on broken window glass, *State v. Carlson*, 845 N.W.2d at 828-829, and *State v. Neese*, 366 P.3d at 562 (involving a burglary with DNA "from crime scene" without identifying it). None of these cases involve touch DNA samples containing a mixture of two or more people with results in the stochastic range in which allelic drop out has occurred resulting in partial profiles.

A single source full thirteen loci profile "is arguably the most discrete, exclusive

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v. Younge, 321 P.3d 1127, 1131-1133 (Utah 2013); *State v. Burdick*, 395 S.W.3d 120, 128-129 (Tenn. 2012); *People v. Robinson*, 224 P.3d 55, 60 & n.7, 75-76 (Cal. 2010) (holding that the filing of a John Doe DNA arrest warrant containing "the 13-loci DNA profile of the defendant, that has essentially no chance of being duplicated in the human population" sufficient); *Commonwealth v. Dixon*, 938 N.E.2d 878, 883-885 (Mass. 2010); *People v. Martinez*, 855 N.Y.S.2d 522, 525-528 (N.Y.App. 2008); *State v. Danley*, 853 N.E.2d 1224, 1227-1228 (Ohio App. 2006); *State v. Dabney*, 663 N.W.2d at 372 ; cf. *State v. Belt*, 179 P.3d 443, 450 (Kan.2008) (finding a DNA John Doe arrest warrant insufficient to identify the defendant where it listed only two DNA loci common to all people and would match one out of every 500 person without describing the alleles found at those loci and another insufficient because it stated only that "a banding pattern" would be unique but not describing it in any way; court agreed "in the abstract that an arrest warrant couple with a description of the person's unique DNA profile can satisfy constitutional and statutory requirements").

[18] *Dabney*, 663 N.W.2d at 372 (upholding an arrest warrant that identified the defendant as "John Doe" and set forth *a specific DNA profile* sufficient); *Neese*, 366 P.3d at 562, 565 (describing matching DNA profile at thirteen locations followed by a string of numbers, but recognizing that "a less comprehensive recitation of genetic markers may not sufficiently describe the defendant with reasonable certainty"); *Robinson*, 224 P.3d at 75-76 (describing an "unknown male with Short Tandem Repeat (STR) Deoxyribonucleic Acid (DNA) Profile at the following Genetic Locations, using the Cofiler and Profiler Plus Polymerase Chain Reaction (PCR) amplification kits: D3S1358 (15, 15), D16S539 (9, 10), THO1 (7, 7), TPOX (6, 9), CSF1PO (10, 11), D7S820 (8, 11), vWa (18, 19), FGA (22, 24), D8S1179 (12, 15), D21S11 (28, 28), D18S51 (20, 20), D5S818 (8, 13), D13S317 (10, 11), with said Genetic Profile being unique, occurring in approximately 1 in 21 sextillion of the Caucasian population, 1 in 650 quadrillion of the African American population, 1 in 420 sextillion of the Hispanic population"); *Burdick*, 395 S.W.3d at 121 (holding "a detailed DNA profile" sufficient); *Dixon*, 938 N.E.2d at 882 n.9 (describing the profile as "D8S1179 (12, 16); D21S11 (28, 29); D7S820 (8, 12); CSF1PO (11, 12); D3S1358 (15, 18); TH01 (7, 9); D13S317 (11, 13); D16S539 (10, 11); vWA (18, 21); TPOX (9, 9); D18S51 (13, 18); AMEL (X, Y); D5S818 (8, 11); FGA (21, 23)" and as "having virtually no chance of duplication in the human population").

means of personal identification possible. ‘A genetic code describes a person with far greater precision than a physical description or a name.’ Meredith A. Bieber, *Comment, Meeting the Statute or Beating It: Using “John Doe” Indictments Based on DNA to Meet the Statute of Limitations*, 150 U. Pa. L.Rev. 1079, 1085 (2002).” *Dabney*, 663 N.W.2d at 372. “A DNA profile is not merely a word ‘of description,’ it is ... metaphorically, an indelible ‘bar code’ that labels an individual’s identity with nearly irrefutable precision.” *Dixon*, 938 N.E.2d at 885. But not all DNA profiles are unique identifiers.

In *State v. Belt*, 179 P.3d 443, the John Doe warrants violated the particularly requirement of the Fourth Amendment and the description requirement of state statutes. Id. 449-451. One warrant described the suspect as “deoxyribonucleic (DNA) analysis as LOCI D2S44 and D17S79.” Id. 444. It did not describe the suspect’s alleles at the two loci which loci are common to all humans. Id. 448. And even if the warrant had said that the two loci matched or described the alleles, the warrant would be insufficient because the two loci profile would be found in one out of every 500 persons. Id. 448-450. A description of fourteen different loci, an expert opined, “[W]ould be sufficient to describe someone who would be the only person that has ever been on Earth with this profile.” Id. 448. A second warrant described the suspect as having loci “D2S44, D10S28, D1S7, D4S139,” without describing the alleles at those loci, and was insufficient for that reason. Id. 445-446. A third warrant stated that a profile was generated that would be unique to the suspect without describing any loci or alleles and referring to radiographs kept in the state lab. Id. 447. The court rejected the idea “that references to the existence and location of unique DNA autoradiographs in supporting affidavits cured the warrants' lack-of-particularity problems.” Id. 450. The warrant was insufficient because it did not contain any description of the profile within the four corners of the warrant affidavit. And it did not incorporate the radiographs into the warrant because they were not attached to it. Id. 450-451. Thus, the judge signing the warrant had no way to decide if probable cause existed to arrest a particular person. The court stated: “That genetic information was necessary to provide an evidentiary

baseline for probable cause. The fact that it would need to be verified scientifically once defendant was seized did not eliminate the need for this baseline to be drawn in the warrant in the first place." Id.

Thus, a sufficient description must include the thirteen core loci with their twenty-six alleles along with the statistical frequency of the profile in a relevant population in order to narrow down the number of persons who would match the suspect's profile to a single person. A proper DNA warrant limited by the unique DNA profile of the suspect is not a general warrant because there is almost no likelihood that a description so specific will lead to an erroneous arrest or prosecution. The FBI's standard for entry of a profile into its CODIS national and state offender database requires a full genotype at ten of the thirteen core loci otherwise the profile will generate too many hits and the search is counterproductive. [19] With respect to mixed samples a profile must occur in not less than one in ten million people for entry into the databases because otherwise the search would generate too many hits and the results would be useless.[20] The FBI flatly prohibits profiles from complex mixtures or touch DNA into its databases because they generate too many hits.[21] One authoritative text on forensic DNA by Justice Ming W. Chin, Associative Justice of the Supreme Court of California, states that a John Doe warrant must contain the following elements:

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[19] In order to upload a profile into the national database an attempt to type all thirteen loci must have yielded results for at least ten, and known profiles generally require all thirteen core loci. David Faigman, et al., 4 Modern Scientific Evidence: The Law and Science of Expert Testimony § 30:4 (Nov. 2019 Update). "A minimum of 10 of the CODIS core loci is required for searching forensic DNA profiles at the National DNA Index System level." Otherwise the profile will generate too many hits and its results worthless for investigative purposes. Recommendation 3 in Scientific Working Group on DNA Analysis Methods Ad Hoc Committee on Partial Matches (October 2009) (SWGDAM). Available at https://archives.fbi.gov/archives/about-us/lab/forensic-science-communications/fsc/oct2009/standard_guidlines/swgdam.html

[20] National DNA Index System (NDIS) Operational Procedures Manual (2019) Standard 4.2.1.7. Available at https://www.fbi.gov/file-repository/ndis-operational-procedures-manual.pdf/view

[21] National DNA Index System (NDIS) Operational Procedures Manual (2012) Standard 4.2.1.10. Available at https://static.fbi.gov/docs/NDIS-Procedures-Manual-Final-1-31-2013-1.pdf

1) The actual DNA alleles possessed by the perpetrator should be listed on the face of the warrant on a locus-by-locus basis.

2) The rarity of the perpetrator's DNA profile should be expressed statistically on the face of the warrant, as well as in the warrant affidavit, to establish the particularity of the identification and assure the magistrate that there will be no discretion on the part of law enforcement in the execution of the warrant.

Ming W Chin, et al., Forensic DNA Evidence: Science and the Law (2020 Update) § 9:8. Elements of DNA Doe warrants. This Court should adopt this standard.

5.1.2. *Partial profiles generate partial matches that exclude fewer people because there are fewer data points for comparison.*

A DNA profile can be irrefutably probative of identity when it contains the twenty-six alleles at the thirteen core loci because the random match probability is frequently vanishingly small, one chance in billions or trillions or quadrillions. In such cases a very strong inference arises that the matching known and unknown crime scene profiles came from the same person. *Young v. State*, 879 A.2d 44, 57-58 (Md. 2005). However, "[t]he discriminating power of DNA evidence is directly proportional to the number of loci where there are identical genotypes between two samples." *State v. Bander*, 208 P.3d at 1247.

When crime scene samples do not yield a full thirteen loci profile, the incomplete pattern of alleles is referred to as a partial profile. For a single-source partial profile, the statistical probability of a match "will be more favorable to the defendant . . . because fewer loci are obtained; thus fewer frequencies are multiplied together and the final statistic is less rare.[22]" DNA for the Defense Bar, page 68. *Commonwealth v. Mattei*, 920 N.E.2d 845, 853- 858 & n.21, 26 (Mass. 2010); *Young*, 879 A.2d at 50-52. Each allele missing from the thirteen core loci in the crime scene samples lowers the statistical significance of the DNA evidence and increases the number of people who would match the profile. When a

[22] If, for example, the defendant's profile matched one of the profiles in the mixed sample at ten of the thirteen core loci and generated a match probability of one in ten million, there would be 33 people in the United States who would be expected to match the suspect's profile. A match probability of one in a million would identify a pool of suspects of 330 people in the United States population who would match the crime scene profile. And so on. Thus, it was critical to know how many people in the relevant population would be expected to match the partial profiles in the warrant. See *Young*, 879 A.2d at 51-52.

comparison is made between a suspect's partial profile from crime scene evidence and a known offender, "the odds of a random march can be much higher and the inference that the source of the known sample was also the source of the unknown sample much weaker." Id. 855-856. Thus, partial profiles generate more matches than thirteen loci profiles.

The warrant in this case clearly has partial profiles because the number of alleles was not consistent across all loci and the more sensitive 2018 testing generated more alleles. Nothing in the warrant explained the rarity of the partial profiles or warned the judge signing it that partial profiles exclude fewer people than a full thirteen loci profile. As it turns out, the 2018 testing showed that the profiles from two of the samples, the pocket of the sweatshirt and the iPhone cover, were too complex for analysis and cannot be compared to known offenders. The 2018 testing showed that the defendant would not have matched the suspect at all loci in the sample from the sleeve, cuff and neck of the sweatshirt, because three of his alleles are missing from the profiles in the warrant. As a result, we do not know if the defendant's profile had it been in the databases whether it would have been matched to the crime scene samples and, if so, at what statistical frequency. The trial court in this case made the unwarranted assumption that, had the defendant's profile been in the state and national databases, it would have turned up a unique hit with the suspect. Hence, the court's false analogy to a false positive on which Norwalk police allegedly relied when they did not follow up on a lead from a relative who implicated the defendant in the crime. While the more sensitive 2018 retesting did find the defendant's alleles that were missing from the profiles in the warrant, it occurred after the statute of limitations had run. The state cannot now go back and fixed the profiles or redraft the warrant.

5.1.3. *Unresolved mixtures generate profiles that exclude fewer people.*

Not all mixtures are created equal. The crime scene profiles in the warrant are unresolved mixtures. Unresolved mixtures are not deconvoluted or picked apart into individual profiles by, for example, subtracting a known profile from a victim or using peak heights to distinguish contributors. When a simple mixture is resolved, each profile from the

mixture can be treated like a single source profile. With single source samples, the analyst uses the product rule. DNA for the Defense bar, 68, 176; *Young*, 879 A.2d at 50-51. This rule holds that "if two events are independent of each other, the probabilities of each event occurring can be multiplied, and the resulting product is the probability of both events occurring." *State v. Link*, 25 S.W.3d 136, 144 (Mo.2000) (en banc). Applying the product rule, the frequencies of the genotype for each loci are multiplied together to calculate an overall expression of the rarity of the profile in a population.[23] Id.; *Roberts v. United States*, 916 A.2d at 927; *United States v. Jenkins*, 887 A.2d 1013, 1018 n.6 (D.C.App. 2005). See generally, Forensic DNA Evidence, Chap. 6. DNA mixtures, § 6.2; 7 Jones on Evidence § 60:25 Partial profiles; partial matches (7th ed.); 4 Mod. Sci. Evidence § 30:12 (2019-2020).

With unresolvable mixtures," the examiner must use a more conservative statistical formula [to calculate the match statistic] that does not require identification of individual contributors, or any knowledge about the number of contributors. . . . However, for a mixed DNA profile, in which the number of alleles at a locus indicates the presence of two or more contributors and there is no way to distinguish among the contributors, the FBI essentially adds the frequencies of all possible combinations of alleles observed at the locus to obtain a combined frequency for that locus. Then the combined frequencies of the alleles at all examined loci are multiplied together to obtain the match statistic for the entire DNA profile. This statistical formula does not require identification of individual contributors and thus produces a ratio much more conservative than if the frequency of alleles were determined for a single-source profile." *Roberts v. United States*, 916 A.2d at 927-928. When a loci has more than two alleles it lowers its exclusionary value.[24] When the number of loci with extra

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[23] For example, if locus 1 has alleles 14, 15, which appears in 20% of the population and locus 2 has alleles 12, 17, which occurs in 10% of the population, then .20 x .10 = .02 gives a frequency for that two loci profile of 2% and 98% of the population would not have this two loci profile. DNA for the Defense Bar, pages 50, 68. Then .02 is multiplied against the frequency of the next loci and so on. See *Young*, 879 A.2d at 51-52.

[24] Thus, if a loci has alleles 14, 15, 16, 17 then the possible combinations are: 14, 15; 14, 16; 14, 17; 15, 16; 15, 17; 16, 17. The frequency of each pair is added together to

alleles increases, the profile quickly loses much of its power to eliminate other offenders and uniquely describe an offender. Forensic DNA Evidence: Science and the Law § 6:3 Mixture Statistics, 3 Combined Probability of Exclusion/Inclusion; *People v. Bander*, 208 P.3d 1242, 1248 (Wash.App. 2009). The difference can be several orders of magnitude. *Roberts*, 916 A.2d at 928 n.4.[25] This task is complicated when allelic dropout occurs in unresolved mixtures which can incorrectly lead to the false inclusion of an innocent person. *Bandar*, 208 P.3d at 1248-1249. Complex mixtures can quickly become too complicate to interpret as shown by the 2018 testing of the iPhone cover and left pocket of the sweatshirt. Def.'s exh. D. Thus, unresolved mixtures exclude fewer people as potential contributors and increases the number of people who could be contributors. In this case, the failure of the warrant to contain deconvolute mixed profiles substantially lower the statistical probability that a match at less than all loci will exclude the vast majority of people and that a matching profile will be unique. Nothing in the warrant alerted the judge signing it to this problem.

Partial profiles in unresolved mixtures work in tandem to exclude even fewer people. Partial profiles exclude fewer people because they have fewer loci for comparison. Mixtures that are not deconvoluted exclude fewer people because the extra alleles at a locus generate more possible genotypes, which increases the number of people who could match at that locus. Acting together, they quickly increase the number of people who would match the crime scene profile, rendering a match meaningless for identifying a suspect. See *United States v. Hagler*, 700 F.3d 1091, 1095 (7th Cir. 2012) (describing mixed partial

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get the frequency for the loci. Thus, if 14, 15 occurs in 50% of the population; 14, 16 occurs in 10%; 14, 17 occurs in 15%; 15, 16 occurs in 12%; 15, 17 occurs in 5%; and 16, 17 occurs in 2%, then the frequency is .50 + .10 + .15 + .12 + .05 + .02 = .92 or 92% of the population would match at this locus and only 2% of the population will be excluded. The .92 is multiplied against the frequency of the next loci, and so. See *Roberts*, 916 A.2d at 927-928.

[25] See, *State v. Forde*, 315 P.3d 1200, 1218 (Ariz. 2014) (describing a partial DNA profile generated from a ring stolen from the victim that matched defendant's DNA profile with a match probability of "1 in 2000 Caucasians, 1 in 1290 African-Americans, and 1 in 791 Hispanics. [The expert] explained he would be confident of the accuracy of a match if the profile would be expected in only 1 in 280 billion people."). Clearly, these partial profiles could not be used in a John Doe warrant.

profile that generated forty hits and had to be removed from CODIS).

The reason for having a statute of limitations is to prevent trial on stale evidence. When DNA evidence is available these reasons are significantly attenuated because it is uniquely precise. But this is true only if it implicates a single person. Mixed partial profiles that are not deconvoluted lack this precision and cannot be the basis for a John Doe warrant.

5.2. *A John Doe Warrant Tolls the Statute of Limitations Only When the Police Act with Due Diligence in Investigating the Case.*

For a John Doe warrant to toll the statute of limitations the police must investigate with reasonable diligence to identify the suspect, and only after all attempts have failed, may they resort to such a warrant. *State v. Pettry*, 2017 WL 1506092 (Ohio App. 2017). A John Doe warrant must be a *necessary* placeholder because police acting in good faith have exhausted all leads and have not found the suspect. The state may not seek a John Doe warrant for a *known* suspect.

Had the Norwalk police exhausted all investigative leads, officers would have arrested the defendant within the statute of limitations. Two and a half months after the robbery, Norwalk police learned from a relative that the defendant committed the robbery. Orr, however, failed to investigate this lead because he erroneously believed a CODIS search exonerated him. The failure to make a simple phone call to learn the details of the defendant's confession, like the call Podgorski made the second time around, or to get his mugshot to see if he looked like the suspect in the surveillance video, was inexcusable. These facts vitiate Podgorski's need to resort to a John Doe warrant. The officers' over reliance on the DNA evidence and their lack of understanding of its limitations led them not to undertake basic investigative steps that would have timely solved this case. When law enforcement use DNA evidence to identify and arrest a suspect, it has a responsibility to understand it, just as a prosecutor has when he uses DNA evidence to convict and just as defense counsel has when he defends a client against incriminating DNA evidence. Here, the police and the trial court used ignorance of the basic principles of forensic DNA typing

and of the requirements for a John Doe warrant to shield themselves from responsibility for resorting to when it was not necessary. In a word, police *negligence* necessitated resort to a John Doe DNA warrant.[26] The decision nine months after the robbery by the Norwalk police to close its investigation and to rely only on the ongoing weekly database searches was also not reasonable.[27] Our statute of limitations is intended to discourage inefficient or dilatory law enforcement and operates to protect defendants from overly stale criminal charges. *United States v. Marion*, 404 U.S. 307, 322 (1971). The police cannot make an end run around the statute of limitations in this way.

CONCLUSION

This Court should hold that a John Doe warrant must contain at least a complete single source thirteen core loci profile with a match probability equal to the likelihood that one person in 330 million (the population of the United States) would match the profile. A judge signing such a warrant can assume that such a profile is unique. The warrant in this case did not contain any statistical description of the rarity of the mixed partial profiles. It, therefore, violated the constitutional particularity and statutory reasonable certainty requirements and was not the best description available. U.S. Const., amend. 4; Conn. Const., art. 1, § 7; Conn. Prac. Bk. §§ 36-1 & 36-3, Conn. Gen. Stat. § 54-2a (a). Had the police acted with due diligence, they would have arrested the defendant within the limitations period. Ultimately, the John Doe warrant played no part in identifying the defendant as the perpetrator. Because the warrant was invalid it did not commence the prosecution within the five-year statute of limitation. The motion to dismiss must be granted.

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[26] See, e.g., *Danley*, 853 N.E.2d at 1228-1229 (listing the reason for the delay as a factor for allowing a John Doe DNA warrant to toll the statute of limitations). *State v. Gulley*, 2015 WL 5155579 *3-*4(Ohio App. 2015) (holding John Doe DNA warrant improper where the police knew the suspect's name but failed to investigate him because sexual assault victim did not show for interview); *State v. Pettry*, 2017 WL 1506092 (Ohio App. 2017)(same).

[27] See *State v. Woodtke*, 130 Conn.App. 734, 744 (2011) (holding that delay of two years and ten months in serving arrest warrant was not reasonable and did not toll the statute of limitations where the police relied on checking names at traffic stops and during unrelated criminal investigations as the primary means of locating the defendant).

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CERTIFICATION

The defendant certifies pursuant to Conn. Prac. Bk. § 62-7 that: (1) A copy of the foregoing was sent electronically and by U.S. mail, postage prepaid, this 8th day of September 2020 to:

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(2) The brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically pursuant to Conn. Prac. Bk. § 67-2 (g);

(3) The brief and appendix has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;

(4) The brief and appendix complies with Conn. Prac. Bk. §67-2 and all other applicable rules of appellate procedure.

Mark Rademacher