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DIVISION OF CRIMINAL JUSTICE
OFFICE OF THE CHIEF STATE'S ATTORNEY
CONVICTION INTEGRITY UNIT

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Case: State v. Daryl Valentine, CR91-0347896

CIU #: 2021-0728

Re: Synopsis and Findings

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PART ONE: CIU SYNOPSIS AND FINDINGS

I. Submission and Protocol.

II. Plausible and Verifiable Evidence.

a. Valentine's Initial Claim(s).

- 1. Actual Innocence and False Testimony (Undisclosed Deal).**
- 2. Valentine Initially Failed to Identify Plausible Evidence.**
- 3. Further Review by CIU – Claim of Discredited Eye Witness Evidence.**

III. Relevant Facts of the Case.

IV. Giglio Material.

a. Anthony DiLullo and Golino v. City of New Haven.

b. Joe Greene and Ham v. Greene.

- 1. Relevance of Ham v. Greene.**

V. Sealed Information – Context to Ham v. Greene.

a. The Sealed Memorandum.

VI. The Whalen Statements.

a. The Regina Coleman Statement.

b. The Kristina Higgins Statement.

VII. The Evidence in Comparison to the Whalen Statements.

a. Known Location of the Shooter.

b. Known Clothes of the Shooter – the Hooded Sweatshirt.

c. State's Exhibit #22.

d. Known Distance.

e. CIU Exhibits.

f. Summary of the Evidence.

g. The Whalen Statements are Highly Implausible.

h. Other Specific Issues with the Statements – Stopping of Tape.

- 1. Reluctance and Ambiguity.**

VIII. CIU Investigation.

a. Witnesses the CIU Interviewed are Consistent with Their Testimony Except for Roach.

b. Panel Meeting and Additional CIU Investigation.

c. Tara Brock.

IX. The Prosecutor's Closing Argument.

a. Argued for Credibility of Officers.

X. Additional Considerations and Conclusion.

PART TWO: INDEX OF RECORD AND EVIDENCE

- I. First Direct Appeal.....State v. Valentine, 240 Conn. 395 (1997).**
- II. Second Direct Appeal.....State v. Valentine, 255 Conn. 61 (2000).**
- III. Federal Habeas.....Valentine v. Commissioner, 2008 WL 5263781 (D. Conn. Dec. 17, 2008).**
- IV. State Habeas.....Valentine v. Warden, 2021 WL 1595418 (Conn. Super. Ct. Mar. 19, 2021).**

V. Trial Evidence.....

a. State Witnesses.

- 1. Vaughn Maher.** Tr. 01/06/98 at 28-87. Former New Haven police officer.
- 2. Alejandro Acosto.** Tr. 01/06/98 at 88-129. Employee of Athenian Diner.
- 3. Whitney Epps.** Tr. 01/06/98 at 130-149. New Haven police detective.
- 4. Edwin Ingraham.** Tr. 01/06/98 at 150-156. New Haven police detective.
- 5. Anthony Dilullo.** Tr. 01/06/98 at 158-169. New Haven police detective.
- 6. Christopher Grice.** Tr. 01/06/98 at 170-199; Tr. 01/07/98 at 1-57. Former New Haven police officer.
- 7. Regina Coleman.** Tr. 01/07/98 at 58-132. Recanting witness.
- 8. Arlice White.** Tr. 01/08/98 at 3-11. Witness.
- 9. Peter Carusone.** Tr. 01/08/98 at 65-66. New Haven police officer.
- 10. Claudia Tomassetti.** Tr. 01/08/98 at 67-68. State police trooper.
- 11. Robert Brooks.** Tr. 01/08/98 at 69-70. New Haven police detective.
- 12. Regina Coleman's testimony from first trial.** Tr. 01/08/98 at 74-142.
- 13. Byron McFadden.** Tr. 01/08/98 at 145-190; Tr. 01/15/98 at 19. Witness.
- 14. James Harris.** Tr. 01/09/98 at 118-128. Former New Haven inspector.
- 15. Joe Greene.** Tr. 01/09/98 at 129-153; Tr. 01/12/98 at 22-52. New Haven police detective.
- 16. Christopher Roach.** Tr. 01/12/98 at 53-114. Sole surviving victim.
- 17. Robert Benson.** Tr. 01/12/98 at 116-130. New Haven police detective.
- 18. Rona London.** Tr. 01/13/98 at 6-12. Witness.
- 19. Arkady Katnelson.** Tr. 01/13/98 at 13-33. Medical examiner.
- 20. Edward Jachimowicz.** Tr. 01/13/98 at 34-65. Firearms and toolmark examiner.
- 21. Kristina Higgins.** Tr. 01/13/98 at 66-142; Tr. 01/14/98 at 13-57. Recanting witness.
- 22. Robert Lanza.** Tr. 01/14/98 at 59-66. New Haven police sergeant.
- 23. Robert Coffey.** Tr. 01/14/98 at 67-73. Retired New Haven police detective.
- 24. Anthony DiLullo.** Tr. 01/14/98 at 74-116. New Haven police detective.

b. Defense Witnesses.

- 25. Gerald Antunes.** Tr. 01/15/98 at 21-25. New Haven police lieutenant.
- 26. Joe Greene.** Tr. 01/15/98 at 26-33. New Haven police detective.
- 27. Paul Brock.** Tr. 01/15/98 at 35-52. Correctional officer.
- 28. Ednora Guimares.** Tr. 01/15/98 at 54-67. Mother of defendant.
- 29. Thomas O'Donnell.** Tr. 01/15/98 at 68-92. Former New Haven police officer.
- 30. Carmen Delvalle.** Tr. 01/15/98 at 94-108. Public defender investigator.
- 31. Tara Brock.** Tr. 01/15/98 at 109-153. Witness.
- 32. Crystal Green-Jackson.** Tr. 01/15/98 at 155-168. Witness.

c. Closing Arguments. Tr. 01/20/98 at 4-81.

PART THREE: SUPPLEMENTARY SECTIONS

I. CIU Presumptions and Best Practices.

II. Connecticut Code of Evidence Sec. 6-6. Evidence of Character and Conduct of Witness.

III. Duties of the Prosecutor.

IV. Context of the "Blue Flu."

PART ONE: CIU SYNOPSIS AND FINDINGS

I. Submission and Protocol.

The Conviction Integrity Unit is submitting the case of State v. Daryl Valentine, CR91-0347896, CIU #2021-0728, for consideration by the Conviction Review Panel (Panel). The most relevant sections of the Conviction Integrity Review Protocol (Protocol) are cited below:

CONVICTION INTEGRITY REVIEW PROTOCOL

The adoption of this protocol does not foreclose or preclude any other action a state's attorney may take concerning a conviction in which information is developed that has led that state's attorney to lose confidence in that conviction.

Initial Screen

The Conviction Integrity Unit (CIU) shall (1) Receive requests for review; (2) Confirm that the basic qualifications are met (See "Basic Qualifications" below); (3) If basic qualifications are met, make a recommendation to the CSA, based on priority and resources, to open an investigation; (4) Make this decision as expeditiously as possible given the complexity of the request and available resources. If those criteria prevent opening a case at this time, the CIU will indicate that to the claimant/requestor. If the criteria are not met, the CIU will respond to initial claimant/requestor. Additional information may also be requested from the claimant / requestor.

Basic Qualifications:

1. Claimant/Requestor can be a convicted person, attorney for a convicted person, representative of a convicted person, the Chief State's Attorney, a State's Attorney, the Civil Litigation Bureau, the Appellate Bureau, the Superior, Appellate or Supreme Court.
2. The convicted person must have been convicted in state court in Connecticut by trial or by guilty plea.
3. The convicted person need not be currently incarcerated or serving a sentence imposed in connection with the conviction. However, the CIU will prioritize the claims of convicted persons who are currently incarcerated or serving a sentence imposed in connection with the conviction.
4. The claim must identify plausible and verifiable evidence that, if true, would reasonably support a claim of (1) actual innocence or (2) cause a reasonable person to lose confidence in the conviction due to issues of official misconduct, discredited forensic or eye witness evidence, the misapplication of forensic science, or due process violations...

Conviction Integrity Review Protocol.

II. Plausible and Verifiable Evidence (Findings).

This office presents the following plausible and verifiable evidence that may cause a reasonable person to lose confidence in the conviction due to **discredited eyewitness evidence**.¹ Therefore, this synopsis and findings will set forth this specific information for the Panel's consideration:

(1) In Valentine, two key witnesses, Regina Coleman and Kristina Higgins, recanted at trial and testified that Detective Joe Greene intimidated and bribed them into giving false statements; their statements were subsequently submitted to the jury for substantive purposes under State v. Whalen, 200 Conn. 743 (1986);

(2) Compared to the testimony of other witnesses and the forensic evidence, the Whalen statements of Coleman and Higgins are **highly implausible** and lacking in corroborating details;

(3) After the September 21, 1991 murders of Andrew Paisley and Hury² Poole and the shooting of Christopher Roach at the Athenian Diner, the police received an anonymous tip that the shooter left in a Blue Buick with plates that matched Tyrone Adams' vehicle. The next day Adams confirmed that Valentine was with him. On September 23, 1991, Christopher Roach was interviewed but did not identify the shooter. When the statements of Higgins (9/26/91) and Coleman (9/28/91) were written, no other witness had identified Valentine as the shooter.

(4) The Whalen statements of Regina Coleman and Kristina Higgins were not written by the witnesses, nor were the entire interviews recorded. In addition, the questioning of these witnesses was done in the form of leading questions conducted under a pre-interview procedure, in which the police conduct a pre-interview before the recorded interview (this was common practice at the time but is now not considered best practices.);

(5) Detective Greene excluded exculpatory evidence in the arrest warrant of another case, State v. Ham, in the same year as Valentine, leading to a nolle in State v. Ham and a civil verdict against Detective Greene for false arrest and malicious prosecution. In Ham v Greene, there was some evidence that a witness, Joseph Timothy Davis, was intimidated into making false statements by Det. Greene;

(6) Coleman and Higgins recanted at both trials. Coleman, Higgins, (Tara) Brock and Davis in State v. Ham all stated that Detective Greene's line of questioning was aggressive and that they were otherwise intimidated into making false statements. Arlice White³ and Brian McFadden⁴ were the closest to the scene and stated that they could not identify the shooter; Christopher Roach, the surviving victim, also could not identify the shooter until he was extradited to face his own charges.⁵ Furthermore, McFadden knew Valentine and pointed him out in a photo lineup identification but said the shooter looked more like another person in the photo lineup. Unfortunately, that photo was **not** saved by the police.

¹ Considering the evidence and relevant context, the CIU considered "official misconduct" as a basis; however, this office ultimately determined that this claim was insufficiently verifiable.

² The deceased was commonly referred to as "Harry" by witnesses throughout the original record.

³ See "Part Two: Record and Evidence" in this report and Transcript 01/08/98 at 3-11.

⁴ See "Part Two: Record and Evidence" in this report and Transcripts 01/06/98 at 145-190, 01/09/98 at 2-11, and 01/15/98 at 19.

⁵ See paragraph (8) in this section, "Part Two: Record and Evidence" in this report, and Transcript 01/12/98 at 53-114.

(7) A court sealed, internal memorandum by Supervisory Assistant State's Attorney David Gold indicates that he believed Detective Greene's work in Ham was "misleading" or "intentionally inaccurate" and suggested changing their review procedures to the State's Attorney;

(8) Roach was uncooperative after the shooting and when the police spoke to him on September 23, 1991. He gave a formal statement to the police on September 30, 1991 and gave only the name of Tyrone Adams, the codefendant in the case. Roach also said he was too drunk to see things. Roach was later charged with assault in the first degree, unlawful discharge of a firearm, and reckless endangerment. Tr. 01/12/98 at 81. The complainant in that case was Tyrone Adams; Roach did not identify Valentine until he was extradited from Georgia to face these charges in 1993. His charges were dropped two months after he was released from custody and gave a formal statement to the police identifying Valentine as the shooter in February of 1993. State v. Valentine, 240 Conn. 395, 406 (1997); Tr. 01/12/98 at 84. (No written cooperation agreement was common practice at the time and is now not best practices.) Thereby, the CIU has credibility concerns regarding Roach;

(9) Regarding Roach and current law, in State v Bruny, 342 Conn. 169, 206-07 (2022), our Supreme Court notes that a trial court is free to give a special credibility instruction in the exercise of its discretion in the case of a jailhouse informant who provide testimony regarding **observed events**. The CIU understands that jury instructions for these types of witnesses is a currently evolving aspect of the law; and,

(10) Given all of the above, the CIU has concerns that the Whalen statements of Coleman and Higgins may constitute discredited eyewitness evidence and that the testimony of Roach by itself has insufficient reliability for a reasonable person to maintain confidence in the conviction.

a. Valentine's Initial Claim(s).

1. Actual Innocence and False Testimony (Undisclosed Deal).

In correspondence dated July 28, 2021, Daryl Valentine wrote to then Chief State's Attorney Richard Colangelo. Valentine claimed that he was "innocent of this crime" and "convicted on a fabrication, recantation, coercion, and imminity [sic] testimony." Specifically, Valentine claimed that the victim, Christopher Roach, falsely testified against him, and that sealed information in Roach's file is "under seal to prevent Mr. Roach's deal from being exposed."

2. Valentine Initially Failed to Identify Plausible Evidence.

Valentine's initial claim that a witness in his case testified falsely under an undisclosed deal did not appear to the CIU to identify plausible and verifiable evidence that, if true, would reasonably support a claim of (1) actual innocence or (2) cause a reasonable person to lose confidence in the conviction due to issues of official misconduct, discredited forensic or eye witness evidence, the misapplication of forensic science, or due process violations.

Roach testified and admitted to having self-serving motivations and taking deceptive actions.⁶ All of this information, therefore, was **known** to the jury. If there was a secret or undisclosed deal by the prosecutor, proof of it would **plausibly not** be sealed in his file for the prosecutorial (official) misconduct to be inevitably discovered.

3. Further Review by CIU – Claim of Discredited Eye Witness Evidence.

The CIU, however, continued to review Valentine's case. Ultimately, the CIU, through its own review and investigation, may have identified plausible and verifiable evidence that would cause a reasonable person to lose confidence in the conviction due to discredited eye witness evidence.

⁶ For example, he testified that he didn't tell the police what happened because he was upset at them for not being present because of the "Blue Flu." Tr. 01/12/98 at 76-77. He was "totally uncooperative" when the police came to his house, Id. at 77. He gave a formal statement to the police on September 30, 1991 but gave them the name of Tyrone Adams, the codefendant in the case, even though he did not see him because he was "picking and choosing what information [he] wanted to give." Id. at 78-79. Roach also said he was too drunk to see things. Id. at 79. He then moved to Atlanta in December of 1991 for a "change of life." Id. at 80. He was extradited to Connecticut in 1993 to face charges of assault in the first degree, unlawful discharge of a firearm, and reckless endangerment. Id. at 81. The complainant in that case was Tyrone Adams.⁶ Id. Finally, he gave a statement in 1993 that identified Daryl Valentine as the shooter. Id. at 82. He denied there being "any kind of arrangement" but acknowledged that all the charges were dropped. Id. at 84.

III. Relevant Facts of the Case.

Language from Valentine's second appeal provides a useful starting point for understanding the basic nature of this case. According to the Connecticut Supreme Court, the jury reasonably could have found the following relevant facts:

On September 21, 1991, shortly before 3 a.m., Andrew Paisley, Hury⁷ Poole, and Christopher Roach arrived at the Athenian Diner, located on Whalley Avenue in New Haven. The diner was very busy, and a large crowd of people was waiting outside. As the three men approached the front of the diner, they saw people fighting on the steps of the diner. Bryon McFadden, a witness for the state, heard an individual whom he identified as Tyrone Adams say: "Shoot him, shoot him, [expletive] it, shoot him." Shortly afterward, the defendant came around from the side of the diner and fired several gunshots that hit and fatally wounded both Paisley and Poole. The defendant then ran to a parked car and got into the front passenger seat. Roach chased after him and approached the driver's side of the car. The defendant shot Roach twice in the forearm through the open driver's side window and the car sped away.

...

On September 21, 1991, Tara Brock, Regina Coleman, and Kristina Higgins were sitting in a parked car in the Athenian Diner parking lot when they witnessed the shooting. That same day, [Joseph] Greene, the lead detective in the shooting, spoke to Coleman at her home based on a tip that she may have been present during the shooting. Coleman told Greene that she was at a party at the time of the shooting and did not know what had happened. On September 26, 1991, Higgins provided the police with a tape-recorded statement in which she identified the defendant as the shooter. She also identified the defendant in a photographic array. On September 28, 1991, Greene brought Coleman to the police station for questioning. At the station, Coleman also gave the police a tape-recorded statement in which she identified the defendant as the shooter. She also positively identified the defendant from a photographic array. On October 1, 1991, Higgins signed a typewritten version of her recorded statement. On October 10, 1991, however, Coleman refused to sign a typewritten version of the recorded statement that she had given to the police.

At the defendant's first trial, both Higgins and Coleman recanted their statements. Higgins testified that she and her two companions were not present during the shooting and that she had lied in her tape-recorded statement. Further, she testified that Greene had threatened her with jail time to elicit the recorded statement, and then afterward had bought her some alcohol and cigarettes and had given her \$50 to buy cocaine. The trial court admitted her signed statement for substantive purposes under *State v. Whelan*, 200 Conn. 743... Coleman similarly testified that her statement had been fabricated due to Greene's influence. She testified that she had told Greene that she was not present at the diner during the shooting and had arrived only afterward, but that Greene had continued to interrogate her and had pressured and bribed her to elicit the statement.

During the defendant's second trial, Higgins maintained that Greene had coerced her to fabricate her tape-recorded statement. The trial court again admitted her statement for substantive purposes under *Whelan* and also admitted her prior trial testimony for

⁷ The deceased was commonly referred to as "Harry" by witnesses throughout the original record.

impeachment purposes. Coleman testified that she did not remember the shooting or giving a recorded statement. She also testified that she did not recall testifying in the first trial against the defendant. She did, however, acknowledge that she had identified the defendant in a photographic array. The state introduced her statement as a prior inconsistent statement for impeachment purposes. Coleman testified that she did not remember saying that the tape-recorded statement was untrue nor did she remember whether Greene had told her what to say or had pressured her in any way. She also testified that Greene had not offered her any money, although she wished that he had. The trial court admitted her prior testimony for substantive purposes under *Whelan*. Subsequently, the defendant sought to introduce evidence concerning a judgment against Greene in an unrelated civil case to impeach his testimony on cross-examination. See *Ham v. Greene*, 248 Conn. 508, 729 A.2d 740... In that case, the plaintiff, who had been falsely accused of murder and held in custody for approximately three months, sought damages from Greene and another detective for, inter alia, false arrest, malicious prosecution and violation of his civil rights. *Id.*, at 509, 729 A.2d 740. Part of the plaintiff's claim in that case was that Greene had coerced a witness into making an inculpatory statement against the plaintiff, which Greene had then included in a warrant affidavit. *Id.*, at 516 n. 4, 729 A.2d 740. The jury found in favor of the plaintiff. *Id.*, at 518, 729 A.2d 740.

In the present case, the state filed a motion in limine in the trial court to preclude the defendant from questioning Greene about *Ham*. In response, the defendant argued that the trial court's finding in *Ham* bore on Greene's veracity and thus on the reliability of the tape-recorded statements made by Coleman and Higgins.

The defendant further claimed that, because a judgment had been rendered against Greene in *Ham*, where the facts of the case involved Greene coercing witnesses to make incriminating statements, that judgment should be admissible for impeachment purposes against Greene in the present criminal action, where the defendant similarly claimed that Greene coerced witnesses. The defendant claimed that *Ham* was relevant to establish Greene's pattern of conduct or method of eliciting statements from reluctant witnesses.

In an effort to accommodate the court in ruling on the state's motion in limine, the defense proposed six questions that it would ask Greene... The trial court, however, excluded all evidence regarding the judgment in *Ham*. The court determined that the judgment was irrelevant and concluded that: (1) most of the questions the defendant sought to ask did not pertain to Greene's veracity as a witness; (2) the judgment might confuse the jury; (3) the issues that the defendant wanted to raise, in light of Coleman's testimony in the present case and at the first trial, were collateral; (4) the court would be required to give more extensive instructions that might further confuse the jury; and (5) the parties essentially would have to retry the *Ham* case in order to establish what evidence the parties had presented and what evidence the jury may have relied on.

State v. Valentine, 255 Conn. 61, 64–68 (2000).

IV. Giglio Material.

a. Anthony DiLullo and Golino v. City of New Haven.

The CIU decided to further review the Valentine matter and started by looking into the alleged misconduct of Joe Green and Anthony DiLullo. In a "Giglio" letter February 4, 2022, the CIU requested any information which might reflect on the credibility of Joseph Greene and Anthony DiLullo from the Internal Affairs Division (IAD) of the New Haven Police Department. In a letter dated February 22, 2022, the IAD responded to the CIU request and indicated that "[t]here are no disciplines on file in Internal Affairs for the names listed..." The CIU was able to confirm that DiLullo once had a practice of omitting exculpatory information from his arrest warrant applications. In Golino v. City of New Haven, 950 F.2d 864 (2d Cir. 1991), a murder suspect sued the arresting police officers for malicious prosecution. The Circuit Court affirmed the district court's denial of summary judgment because DiLullo's arrest warrant contained false statements and omitted exculpatory evidence, explaining below:

The present action arises out of an 11-year investigation by the City of New Haven Police Department into the 1973 murder of Concetta ("Penny") Serra. Lillis, a police sergeant, supervised the investigation. DiLullo and Pastore, police detectives, and Fish-MacDonald, a police officer, had primary operational responsibility for the investigation. In July 1984, Golino was arrested pursuant to an arrest warrant and charged with the murder.

In August 1984, following a preliminary evidentiary hearing held pursuant to state law ("1984 state hearing"), Connecticut Superior Court Judge Frank Kinney found probable cause to support the murder charge... In May 1987, just prior to the scheduled start of Golino's trial for murder, a court-ordered blood test revealed that Golino's blood type did not match that of the killer. The charges against Golino were then dismissed.

In January 1988, Golino commenced the present action against appellants and several other defendants. To the extent pertinent here, he asserted claims against appellants under § 1983 for malicious prosecution. After a period of discovery, appellants moved for summary judgment dismissing these claims on the grounds that (1) as police officers, they were entitled to qualified immunity because there existed no genuine issue of fact as to the existence of probable cause to arrest and try Golino, or (2) Judge Kinney's probable cause determination precluded Golino from relitigating that issue in the present case.

...

As to the merits of the probable cause question, the court concluded that there existed genuine issues of material fact because the affidavit leading to the warrant for Golino's arrest, and to his subsequent prosecution, contained false statements and made numerous material omissions. To begin with, Golino was connected to the Serra murder principally by statements that the police attributed to his former wife, Joyce Carasone Lupone (from whom he had separated in 1980, and who testified at the 1984 state hearing that she hated Golino and would do anything she could to keep him from getting custody of their son), whom the police knew to be involved in acrimonious divorce proceedings with Golino. The warrant affidavit quoted Lupone as stating that on more than one occasion Golino had made incriminating remarks to her, *i.e.*, threatening to do to her "the same ... as he had done to Penny Serra." The affidavit did not disclose, however, that Lupone had also made statements to the police that were inconsistent with the statements it attributed to her, and it omitted mention of the fact that at one

time Lupone told the police that Golino never made the quoted statements. The affidavit also stated that an informant, Neil Russo, told police that Golino had dated Serra. The district court noted the probable falsity of this statement in light of Russo's deposition testimony in the present case that he had never made this statement to the police and that when they interviewed him, he would "say one thing and they put down another thing."

The court also noted that a number of other evidently pertinent facts had been omitted from the arrest warrant affidavit. For example, the affidavit described the killer only as "a white male wearing a light colored shirt and dark trousers, carrying a shiney [*sic*] object in his hand," notwithstanding the fact that several eyewitnesses had given descriptions in considerably greater detail. Thus, one eyewitness described the killer as "approximately 5' 8" tall, 150 to 160 pounds [with a] slim build"; another stated that he had a "thin face" and "skinny arms"; a third eyewitness also described the killer as having a "thin face." The significance of these **omissions** was that Golino, at the time of Serra's death, weighed approximately 215 pounds. All three of these eyewitnesses also stated that the killer had no mustache. Golino, at the time, had a mustache. A fourth eyewitness had described the killer as having a mustache; but that eyewitness had, within hours of the murder, affirmatively identified another person, from both a photo array and a lineup, as the killer, and the person identified was Serra's boyfriend. Further, the affidavit did not mention that the killer's blood type was known but that the police had not bothered to seek a court order for a test to determine Golino's blood type. It also failed to mention that fingerprints on Serra's car that the police strongly believed to belong to her killer did not match the fingerprints of Golino. **DiLullo testified at his deposition in the present case that it was his general practice to omit exculpatory information from affidavits submitted in support of applications for warrants...**

(Emphasis added.) *Id.* at 866–68.

Overall, the CIU would not attribute much relevance and materiality to Golino as it relates to the Valentine case. The two recanting witnesses in Valentine primarily blamed Greene and not DiLullo for intimidating and bribing them into giving false statements.

b. Joe Greene and Ham v. Greene.

The CIU was also able to confirm that there was an actual civil jury verdict against Joe Greene for false arrest and malicious prosecution. In that matter, according to the Connecticut Supreme Court, the jury reasonably could have found the following rather lengthy facts:

On January 20, 1991, a light colored station wagon containing two or three African-American males stopped in the vicinity of Sylvan Avenue and Ward and Asylum Streets in New Haven. A black male, approximately five feet five inches to five feet eight inches tall, with a dark complexion and a stocky build, stepped out of the automobile and fired approximately ten shots from a weapon into a crowd of people. He then got back into the vehicle and left the scene. There were two victims of the shooting: Markiest Alexander, age fourteen, who died as a result of the gunshot wounds; and Alfred Brown, age eighteen, who was seriously injured.

New Haven police responded to the scene. Greene was the detective assigned to investigate the shooting and was responsible for coordinating the investigation, locating and interviewing witnesses, retrieving and examining physical evidence, preparing police reports and reviewing reports of other police department members involved in the investigation. Sweeney was the supervisor of the investigation. Numerous witnesses identified through the defendants' investigation were taken to police headquarters that evening and interviewed by the defendants. They recovered, among other items, ten nine millimeter shells from the scene. Among those witnesses who gave separate tape-recorded statements to the defendants within hours of the shooting, were Ronald Hannans, Tashim Thomas, Terry Williams and Troy Carson.

Thomas, who had stood approximately thirty feet away from the shooter, described the shooter to the defendants as a dark skinned black male, approximately five feet eight inches tall, with a stocky build. Hannans told the defendants that he did not recognize the shooter, whom Hannans described as a black male approximately five feet seven inches tall. Carson told the police that, moments before the shooting, he had seen a car with three black males cruising the area. He described the shooter as a dark skinned black male, approximately five feet seven inches to five feet eight inches tall with a stocky build. The male was dressed all in black. He could not identify the shooter beyond that physical description. Carson knew the plaintiff and told the police that he had seen him near the crime scene with a male named Timothy Davis. He stated that he saw the plaintiff and Davis only after the shooting had occurred and the police had arrived, as the two were leaving the area and as the crowd of onlookers was dissipating. Although Carson knew the plaintiff, he neither identified him as the shooter, nor suggested that the plaintiff was involved. Williams, who gave the same physical description of the shooter as the previous three witnesses, identified the weapon used as a "shiny nine millimeter."

On February 6, 1991, Tremaine Ortiz, another witness to the shooting, also described the shooter as a dark skinned black male, approximately five feet five inches tall with a medium build. Ortiz verified that the shooter had a uniquely shiny handgun and that a person named "Joe," who fit the description, was known for robbing drug dealers in the area where the shooting occurred.

Shortly after the evening of the shooting, the defendants interviewed Brown, the surviving victim. He told the police that his assailant was a black male, approximately five feet nine inches tall. Brown, who knew the plaintiff from school and the

neighborhood, told the defendants that he did not recognize his assailant and, in fact, had never seen him before.

Nearly three weeks after the shooting, on February 6, 1991, the defendants interviewed Lynwood Cypress. Cypress described the shooter as a dark skinned black male, five feet five to five feet seven inches tall, with a stocky build. He confirmed Williams' description of the weapon. Additionally, he advised the defendants that the shooter was the same person who had tried to rob him at gunpoint earlier that evening, shoving the same firearm into his stomach. Cypress was then transported to the police department where he gave a tape-recorded statement in which he repeated his earlier description of the shooter. Cypress believed that the shooter's name was Joe, but did not know the man's full identity. Finally, Cypress told the defendants that he had seen the same person two days after the shooting, but had not seen him in a while and therefore assumed that he was not from New Haven.

In contradiction to his earlier statements, on February 11, 1991, in his third statement to the defendants, Cypress stated that he personally knew the plaintiff and that the plaintiff was the shooter. He witnessed the plaintiff get out of a station wagon and open fire into a crowd of people on Sylvan Avenue. According to Cypress, the plaintiff was dressed in black pants, a black jacket, black shoes and a black hat and was carrying a nickel plated nine millimeter gun that he used to shoot the victims. The plaintiff thereafter got back into the car, which sped away. The vehicle was driven by someone named Joe, whom Cypress also recognized. He did not know the person in the back seat. The plaintiff and Joe returned moments later and stood in the crowd of onlookers for three to four minutes. According to this statement by Cypress, he and Carson stood close to the plaintiff and Joe, and Carson conversed with them.

Joseph Timothy Davis also gave a statement to the police in which he incriminated the plaintiff. He described how, on the day of the shooting, he and the plaintiff had been driving around in a station wagon that he had rented from someone in the neighborhood. According to Davis, they had stopped at the corner of Sylvan and Asylum Streets to talk with some friends, when the plaintiff began playing with a nine millimeter gun he was carrying. The plaintiff leaned over Davis, and while he was tapping the weapon on the windowsill of the car, the gun discharged, and bullets ricocheted off the ground, striking two boys whom Davis knew from the neighborhood. Thereafter, they left the scene. In contradiction to every other witness as to the location of the shooter, in that statement, Davis reiterated that the plaintiff was seated in the car when the gun was fired. Following police questioning, Davis changed his story regarding the plaintiff's location, this time placing the plaintiff outside the vehicle during the shooting.

On January 28, 1991, the defendants learned from two inmates, one of whom was a relative of one of the victims, that an individual identified as Joe Covington, who was incarcerated at the New Haven Community Correctional Facility, was claiming responsibility for the shooting of Brown and Alexander. He had boasted to at least five people that he was responsible for the January 20, 1991 shooting. He provided details of the crime and how it had occurred. The defendants sent another policeman to interview two other inmates, George Galberth and Michael Gaetano, but they never interviewed Covington in connection with their investigation. Nor did they assign any other member of the police department to interview him or to show Covington's photograph to any of the witnesses.

On February 11, 1991, the defendants were given information that an individual named Tyrese White had shot Alexander and Brown. On the same date, the defendants

received information from another source that an individual nicknamed "Ears" had had a dispute with Alexander two weeks before the shooting, and had threatened him at that time with a firearm. Neither lead was investigated. The defendants did, however, reinterview Carson that day. He repeated much of what he had already stated to the police on the evening of the shooting. He reiterated that he could not identify the shooter beyond the physical description he had already provided, and that he had seen the plaintiff and Davis leaving the area of the shooting as the crowd of onlookers dissipated, only after the shooting had occurred and the police had arrived.

On February 12, 1991, Greene executed a search warrant at the plaintiff's household. The plaintiff, an eighteen year old black youth, six feet two inches tall, light skinned, and of slim build, weighing 155 pounds, was present at the time of the search. He had extensive contact with Greene, thereby allowing Greene carefully to observe the plaintiff and take note of his physical appearance. Pursuant to the warrant, the defendants seized one black army-type jacket, one brown empty pistol holster and one empty Remington .22 caliber bullet box.

On February 13, 1991, the defendants prepared and submitted an affidavit in support of a request for an arrest warrant for the plaintiff, charging him with murder... Although it did not identify Cypress as the author, the affidavit prepared by the defendants included information obviously taken from Cypress' third statement, the one in which he incriminated the plaintiff. Their affidavit also included the contents of the statement by Davis that he had been with the plaintiff when the plaintiff shot the victims. The warrant did not, however, include that portion of Davis' earlier statement placing the plaintiff inside the vehicle when the weapon discharged.

Additionally, the warrant did not include the fact that Thomas, Carson and Hannans, neutral eyewitnesses to the shooting, had told police that the shooter was five feet seven inches or five feet eight inches in height, with a dark complexion and a stocky build. Nor did the affidavit refer to Brown's statement. Although the warrant referred extensively to Cypress' incriminating statement, it failed to even mention the fact that he had given two previous statements, neither of which included an identification of the plaintiff as the shooter. Nor, therefore, did it include a reference to the fact that Cypress had first described the shooter as being a dark skinned black male, five feet five or six inches in height with a stocky build, or the fact that the shooter, known to him only as Joe, had tried to rob Cypress earlier on the day of the shooting. Further omitted from the affidavit was Cypress' statement that, although he had seen Joe two days after the shooting, he had not seen him for a long time and therefore assumed he was not from the area. Finally, the warrant also failed to mention Covington. Indeed, it did not include any reference to the two prison inmates who had reported to the police that Covington had boasted about being the shooter while providing details about the incident and its victims.

Based upon the affidavit prepared by the defendants, a warrant for the plaintiff's arrest was issued on February 13, 1991. The warrant was executed by the defendants that day, and the plaintiff was arrested and held in custody until May, 1991. On May 9, 1991, the criminal prosecution was nolle by the state because the two witnesses, Cypress and Davis, recanted their earlier statements implicating the plaintiff...

In August, 1991, the plaintiff brought this fifteen count complaint against the defendants, charging them each with federal civil rights claims...

1. Relevance of Ham v. Greene.

The CIU found Ham to be relevant in reviewing Valentine. Ham resulted in a jury award of \$900,000. Id. at 518–19. Both cases happened in 1991. Furthermore, Joe Greene was the lead investigator in both cases. In Valentine, Coleman and Higgins accused Greene of intimidating them into giving false statements. The defense, thereby, attempted to impeach Greene with six proposed questions that were simply tailored to the Ham verdict. The trial court ruled and the Connecticut Supreme Court affirmed that they were not relevant or otherwise too vague as to veracity. State v. Valentine, 255 Conn. 61, 72-73 (2000).

The defense proposed six questions “geared to the ... verdict itself and the judgment that was entered, as opposed to some of the underlying specifics...” Tr. 01/12/98 at 12. There was some evidence that Greene intimidated a witness in Ham,⁸ though the jury apparently did not have to find that in order to reach its verdict. The fact that Greene excluded exculpatory evidence in a warrant that resulted in the nolle of a murder arrest was the clearest factual finding in Ham.

As opposed to the **verdict** in Ham, this panel should consider whether the underlying **facts** in Ham, when compared to the allegations of improper conduct in Valentine create a possible loss of confidence in the conviction of Mr. Valentine.

⁸ Apparently, Davis testified at trial that Greene intimidated him into incriminating Ham:

At trial, Davis described how he had been taken to the New Haven police station where Greene intimidated and threatened him with prosecution. Davis related how Greene had told him falsely that the plaintiff had incriminated him in the shooting. Davis further testified that Greene, in effect, had told him what to say in his tape-recorded statement. Davis testified that in order to ensure his release, Davis had fabricated a story incriminating the plaintiff, which was included in the warrant affidavit. Davis further explained to the jury that on February 18, 1991, he recanted his statement incriminating the plaintiff. There was also evidence that the defendants were aware of the recantation.

Ham v. Greene, 248 Conn. 508, 517 n.4 (1999).

V. Sealed Information – Context to Ham v. Greene.

a. The Sealed Memorandum.

In reviewing the record, the CIU noticed that the defense, at trial, argued a motion for supplemental discovery, seeking disclosure of a memorandum by the State's Attorney's Office regarding the Ham case based on finding "potentially exculpatory information." Tr. 01/12/98 at 3. Specifically, the defense requested that the court review the document "in camera and have it sealed" for purposes of determining whether it contains exculpatory information. Id. The state indicated that the memorandum was an internal memorandum written by the Supervisory Assistant State's Attorney David Gold to the State's Attorney Michael Dearington. Id. at 4. The state, therefore, claimed that it was attorney work product or privileged communication between two attorneys written prior to the nolle of the Ham case, Id. at 5, and that, in any event, all of the exculpatory facts were already disclosed to the defense attorney.⁹ Id. at 6.

The court marked the memorandum as Court Exhibit 1, ordered it sealed, and denied the defense motion for supplemental discovery because it found that "there's little in there ... that is not known to the Defense" and that it was an "internal document" that "should be privileged information."¹⁰ Id. at 20. The CIU was in the process of motioning the court to unseal the document so that this office could review it. However, on May 4, 2022, CIU members retrieved the entire state's file and located the memorandum within it. Essentially, the memorandum discusses Attorney Gold's reasons for why he expects to enter a nolle¹¹ in the State v. Ham "in the next few weeks and ask NHPD to reopen their investigation into this homicide." SAO Memo at 4.

The primary reason for the nolle described in the memorandum was that Greene omitted exculpatory evidence in the warrant. Attorney Gold found that Greene's warrant "is at least misleading, if not **intentionally** inaccurate." (Emphasis added.) SAO Memo at 2. The memorandum also details how Greene specially asked a prosecutor to remain late with a judge for an "expedited review." SAO Memo at 1. During this expedited review, Greene was only "armed with the warrant affidavit." SAO Memo at 1. Once the warrant was signed by a judge, the police immediately arrested Ham at his home. SAO Memo at 1. Ham was found "sitting at the kitchen table doing homework." (Citation omitted; internal quotation marks omitted.) SAO Memo at 1. It may be inferred that Attorney Gold believed that Greene did not have a valid reason for seeking the expedited review.

⁹ Attorney Thomas Ullman, Valentine's attorney, also represented the defendant in State v. Ham.

¹⁰ The CIU offers no legal opinion as to this, except that CIU believes potentially exculpatory evidence and information should be disclosed as a general matter and best practice in accordance with Practice Book Sections 40-6, 40-11 (Disclosure by the Prosecuting Authority).

¹¹ Though the memorandum is undated, it must have been drafted prior to the May 1991 nolle of Ham.

Attorney Gold, ultimately, concluded that three matters, in particular, need to be addressed so that the State's Attorney's Office could "minimize the chances that this type of debacle reoccur" –

First, the preparation of affidavits which fail to recite the type of salient facts omitted in this affidavit cannot be condoned. While certain cases may require that we determine what type of "exculpatory" information must appear within the body of the affidavit, the police cannot be permitted to make this crucial decision on their own while keeping us and the judge in the dark. Such an invitation to Franks challenges, if not **civil claims** as well, must be discouraged.

Omissions of this type bring up the second matter which should also be addressed. Some procedure should be implemented whereby the entire police file is presented to our office along with the warrant affidavit and application...

The third concern which is raised by the Ham case surrounds the police perception that nearly every subject is about to flee and that, accordingly, the warrant must be rushed through. Granted, in certain cases, such a perception is warranted. But having "cried wolf" so often in the past, (here, for example, police located Ham at home doing his homework), we should not place ourselves or the judges for that matter, in a position where **mistakes resulting from haste may later jeopardize an important prosecution.**

(Emphasis added.) SAO Memo at 4.

The memorandum ends with Attorney Gold finding that "it is very difficult to formally criticize the police efforts," SAO Memo at 5. "In the absence of fairly compelling evidence," Attorney Gold was "exceedingly reluctant to accept the word of witnesses ... over the word of [police officers], regardless of how the police investigation was conducted." SAO Memo at 5.

On July 11, 2022, State's Attorney John Doyle of the New Haven Judicial District in conjunction with the CIU requested an in-camera review of Court Exhibit 1. Judge Harmon compared the memorandum from the state's file with Court Exhibit 1 and confirmed that the memorandum was a copy of Court Exhibit 1.

On July 11, 2022, Judge Harmon also granted the Motion to Unseal that had been filed by Attorney Alexander Taubes for Valentine with the CIU's concurrence.

VI. The Whalen Statements.

a. The Regina Coleman Statement.

According to Regina Coleman's tape-recorded statement¹², she was seated in a car in the back parking lot of the Athenian Diner and saw "three guys fighting." Id. at 4. She saw Chris Holland and Steve [Roundtree] fighting a "big black guy." Id. at 5. Then Holland and Roundtree went into the diner, and Daryl Valentine "got into it" and was "arguing" with the big black guy. Id. at 6. Valentine left, came back with a gun, and started shooting. Id. at 7. Valentine left in a dark blue getaway car. Id. at 8. She remembered that more than two shots were fired, and "there could have been more than" five shots fired. Id. at 8. She thought Valentine ran around the getaway car before getting in and fleeing. Id. at 9. She did not see anyone else shooting but knew that "cars got shot up" and Chris Roach "got shot in the arm." Id.

At first, in her statement, Coleman initially denied seeing Roach with a gun. Id. However, Greene stopped the tape at this point. Tr. 01/09/98 at 142. When the taping of her statement was stopped, Greene admitted that he "**could have told her**" that he had information that Chris Roach was shooting at the time. (Emphasis added.) Tr. 01/12/98 at 26. When the taping resumed, Coleman changed her statement to say that she saw Roach with a gun and that he was "just mad" and "upset" and shooting "at random." Coleman Statement at 10. She said she didn't want to get him in trouble. Id. A review of the record indicates that Roach almost certainly did not have a gun. Tr. 01/12/98 at 53-114.

At the time, the record seems to indicate that the New Haven Police Department conducted a pre-interview of witnesses before tape recording their statements. Tr. 01/09/98 at 37; Tr. 01/13/98 at 106; Tr. 01/20/98 at 40. (This appears to have been common practice by NHPD at the time and not considered best practices today.) The statements of Coleman and Higgins indicate that this resulted in the extensive use of leading-style questioning. The taped Coleman statement is partly transcribed as:

- Q. I--WHILE AT THE NEW HAVEN POLICE DEPARTMENT, I THEN SHOW[ED] YOU TEN PHOTOGRAPH[S] OF BLACK MALE SUBJECTS, IS THAT CORRECT?
A. YEH.
Q. AND GOING THROUGH THOSE TEN PHOTOGRAPHS OF BLACK MALE SUBJECT[S], DID YOU PICK ANYBODY OUT IN THE PICTURE AS BEING THE SHOOTER?
A. YES DARRYL RIGHT THERE.
Q. AND YOU ARE NOW POINTING A SUBJECT OUT AS DARRYL, IS THIS THE DARRYL THAT YOU KNOWN AS DARRYL VALENTINE?
A. YES.
Q. IS THIS THE DARRYL YOU KNOW FOR HOW LONG?
A. SCHOOL DAYS.
Q. AND THERE'S NO DOUBT IN YOUR MIND IT WAS DARRYL VALENTINE?
A. NO.
Q. REPEAT?
A. NO, NO I GUESS NOT.
Q. THERE'S NO WHAT?
A. NO DOUBT IN MY MIND.

¹² Coleman actually **refused** to sign the transcription of her taped statement, though Joe Greene testified that she said it was true. Tr. 01/09/98 at 147.

Q. AND WAS DARYL VALENTINE ... DOING THE SHOOTING THAT SHOT ANDY PAISLEY AND HU[R]Y POOLE?

A. YES, YES.

...

Q. AS A RESULT OF THE FACT THAT YOU STATED YOU SAW CHRIS ROACH [FIRE] THE GUN, WAS ANYBODY HIT BY THE GUN CHRIS ROCH WAS FIRING?

A. NO.

Q. TO THE BEST OF YOUR KNOWLEDGE?

A. TO THE BEST OF MY KNOWLEDGE NO.

Q. SO THE ONLY PEOPLE THAT GOT HIT THAT NIGHT WAS WHO?

A. WAS ANDY AND HARRY.

Q. AND?

A. AND CHRIS.

Q. AND WHERE [DID] CHRIS G[E]T HIT AT?

A. RIGHT HERE, BELOW HIS ELBOW.

(Emphasis added.) Id. at 11-12.

b. The Kristina Higgins Statement.

According to Kristina Higgins's statement, she was seated in front passenger seat the car, Id. at 4, in the back parking lot of the Athenian Diner. Id. at 3. She observed that Daryl Valentine had a getaway car staged "so he could just take off" and had his gun ready to shoot the deceased victims when they came out of the diner. Id. at 3. She adds that "somehow that boy Chris [Roach] got shot too." Id. She "wasn't too far away" and could tell the getaway car "was just gonna drive off" and that, in fact, Valentine "jumped in the car after he shot them." Id. at 5. She detected "a whole bunch of gunshots." Id. Valentine was the only person she saw with a gun, and she was "not sure" what clothes he was wearing that night. Id. She indicated that she "started duckin' down" when the shooting started. Id. at 6. She did not see any kind of fight or altercation. Id. at 12.

VII. The Evidence in Comparison to the Whalen Statements.

a. Known Location of the Shooter.

The shooter is unequivocally near the corner of the Athenian Diner relative to the front steps. Christopher Roach, the sole surviving victim of the shooting, testified that the deceased victims were near the front steps of the diner and the shooter came from around the corner of diner. Tr. 01/12/98 at 60-62. Byron McFadden, perhaps the most consistent and credible witness in the case, testified that he actively looked for the shooter after he heard Tyrone Adams yell at someone to start shooting and saw the shooter "walk towards the corner of the diner." Tr. 01/08/98 at 153. Arlice White, who was sitting inside the diner, testified that she saw the shooter at the corner of the diner, as well. Tr. 01/08/98 at 6. Finally, the ballistic evidence¹³ also corroborates the location of the shooter as being in the vicinity of the corner of the diner.

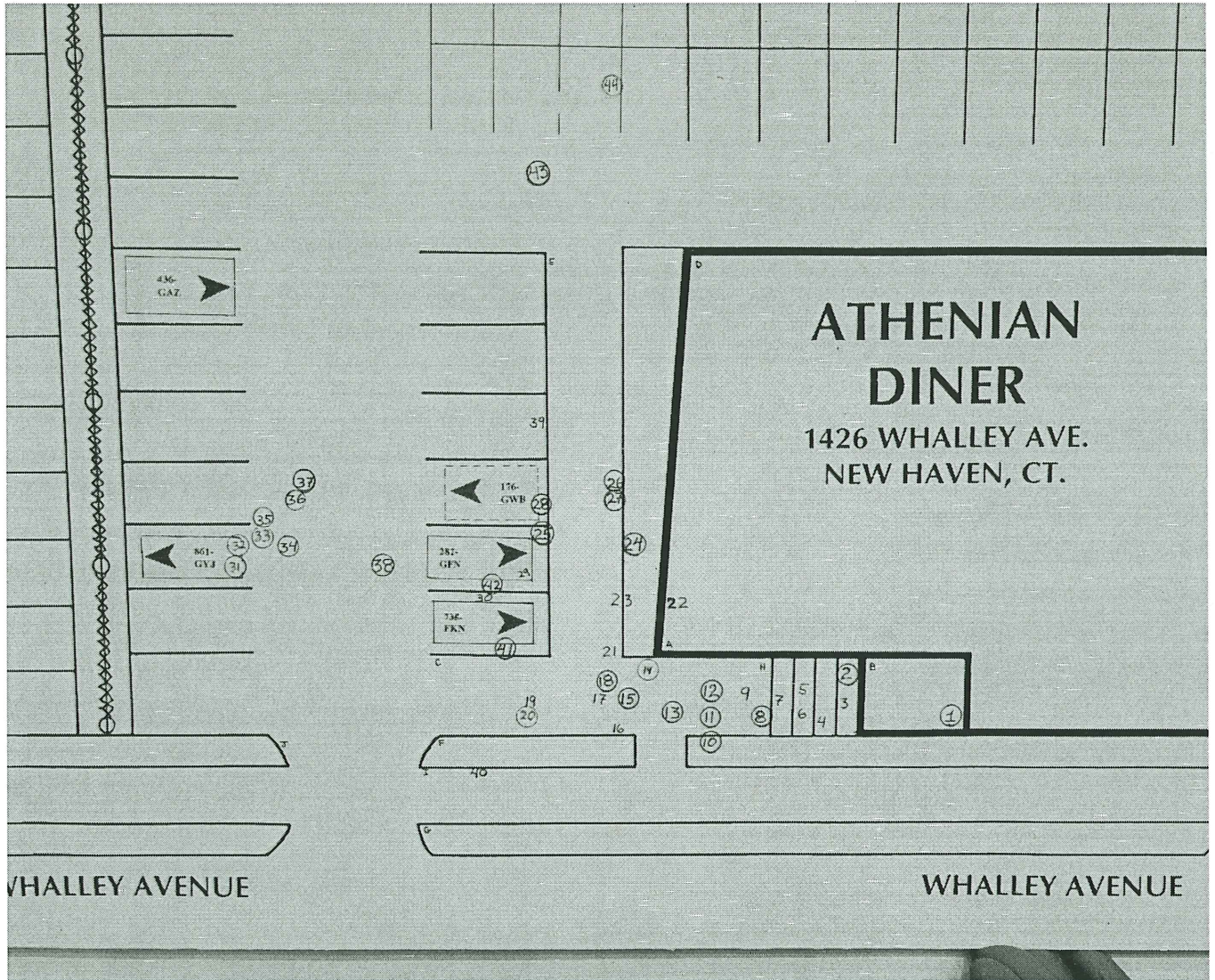
b. Known Clothes of the Shooter – the Hooded Sweatshirt.

The shooter is unequivocally wearing a hooded sweatshirt with the hood on his head. Christopher Roach, the victim who has the most reason to lie, testified that the shooter wore a hood sweatshirt drawn tight around his face. Tr. 01/12/98 at 62. Byron McFadden testified that the shooter wore black jeans, Tr. 01/08/98 at 155, and a burgundy "hoody" over his head. *Id.* at 187. Arlice White testified that the shooter wore a burgundy hooded sweatshirt and black jeans, Tr. 01/08/98 at 7, and that the shooter wore the hood on his head. *Id.* at 11.

¹³ See State's Exhibit #22 and CIU Exhibits ##1-5 (page 23-31 of this memorandum); Tr. 01/06/98 at 170-199; Tr. 01/07/98 at 1-57.

c. State's Exhibit #22.

The state used this exhibit to orient many of the most relevant witnesses at trial.



The circled numbers correspond to various pieces of evidence, including numerous shell casings.

1. Items 1-34.

| | | | | | | | |
|----|---------------------------------|--------|---------|----|---------------------------------|---------|--------|
| 1 | 40 cal. shell casing - 31A/E-5 | 6'0"N | 22'10"W | 18 | 40 cal. shell casing - 31I/E-13 | 2'9"N | 8'5"E |
| 2 | 40 cal. shell casing - 31B/E-6 | 0'8"N | 16'4"W | 19 | Blue packet | 4'6"N | 11'0"E |
| 3 | Red polished fingernail | 3'7"N | 16'7"W | 20 | 9 mm shell casing - 30B/E-20 | 5'1"N | 11'0"E |
| 4 | Guest check receipt | 7'2"N | 16'3"W | 21 | Eyebrow pencil | 0'0"N | 6'0"E |
| 5 | One nickel | 3'3"N | 14'6"W | 22 | Window hole (9' high) | 0'0"N | 3'7"S |
| 6 | "Sharp" watch, food | 5'0"N | 14'6"W | 23 | Jacket | 5'4"S | 4'8"E |
| 7 | Dimes & pennies - 3 each | 4'0"N | 13'5"W | 24 | 40 cal. shell casing - 31J/E-14 | 16'4"S | 4'3"E |
| 8 | 40 cal. shell casing - 31C/E-7 | 6'1"N | 11'11"W | 25 | 40 cal. shell casing - 31K/E-15 | 17'0"S | 11'4"E |
| 9 | Comb | 4'0"N | 9'2"W | 26 | 40 cal. shell casing - 31L/E-16 | 18'10"S | 5'0"E |
| 10 | 40 cal. shell casing - 31D/E-8 | 8'4"N | 8'1"W | 27 | 40 cal. shell casing - 31M/E-17 | 18'7"S | 5'2"E |
| 11 | 40 cal. shell casing - 31E/E-10 | 5'5"N | 8'1"W | 28 | 40 cal. shell casing - 31N/E-18 | 22'2"S | 11'4"E |
| 12 | 40 cal. shell casing - 31F/E-9 | 1'10"N | 7'10"W | 29 | CT-282GFM - RF tire | 11'6"S | 18'6"E |
| 13 | 40 cal. shell casing - 31G/E-11 | 5'3"N | 3'2"W | 30 | Broken glass | 8'10"S | 23'0"E |
| 14 | 9 mm shell casing - 30A/E-19 | 4'8"N | 2'0"E | 31 | 9 mm shell casing - 30C/E-21 | 15'10"S | 60'7"E |
| 15 | 40 cal. shell casing - 31H/E-12 | 5'9"N | 6'0"E | 32 | 9 mm shell casing - 30D/E-22 | 17'2"S | 60'6"E |
| 16 | Lipstick | 8'0"N | 6'6"E | 33 | 9 mm shell casing - 30E/E-23 | 18'8"S | 58'3"E |
| 17 | "A's" cap | 3'5"N | 8'5"E | 34 | copper jacket - 33 #9 | 18'11"S | 57'6"E |

2. Items 35-50.

| | | | |
|-----|---------------------------|------------|----------|
| 35 | Plastic cup | 20°6''S | 57°6''E |
| 36 | Bullet - 34/#8 | 22°0''S | 54°4''E |
| 37 | Bullet - 35/#6 | 22°10''S | 48°1''E |
| 38 | Copper fragment - 36/#10 | 11°6''S | 32°6''E |
| 39 | Keys | 34°11''S | 16°8''E |
| 40 | Copper fragment - 37/#11 | 14°0''N | 17°6''E |
| 41 | Bullet - 38/E-2A | 3°0''S | 16°8''E |
| 42 | Bullet - 39/#7 | 10°2''S | 19°3''E |
| 43 | Bullet - 40/E-3A2 | 66°2''S | 16°4''E |
| 44 | .22 cal. round - 44/#12 | 81°0''S | 4°0''E |
| 44a | Bullet strike | 8°2'' high | 21°0''N |
| 45 | Bullet strike | 7°0'' high | 5°5''N |
| 46 | Ricochet | 3°7'' high | 17°10''N |
| 47 | Bullet strike | 12°1'' H | 4°0''N |
| 48 | Lead fragment - 67A/#48 | 14°9''N | 37°0''W |
| 49 | Copper fragment - 67B/#49 | 17°9''N | 31°7''W |
| 50 | Copper fragment - 67C/#50 | 14°7''N | 27°6''W |

d. Known Distance.

Regina Coleman and Kristina Higgins are in a car parked or stopped somewhere near the corner of the parking spaces behind number 43 of State's Exhibit 22, Tr. 01/15/98 at 116, approximately 100 feet or more from the corner of the diner and approximately 75 feet from the likely location of the getaway car.





e. CIU Exhibits.

1. CIU Exhibit #1.

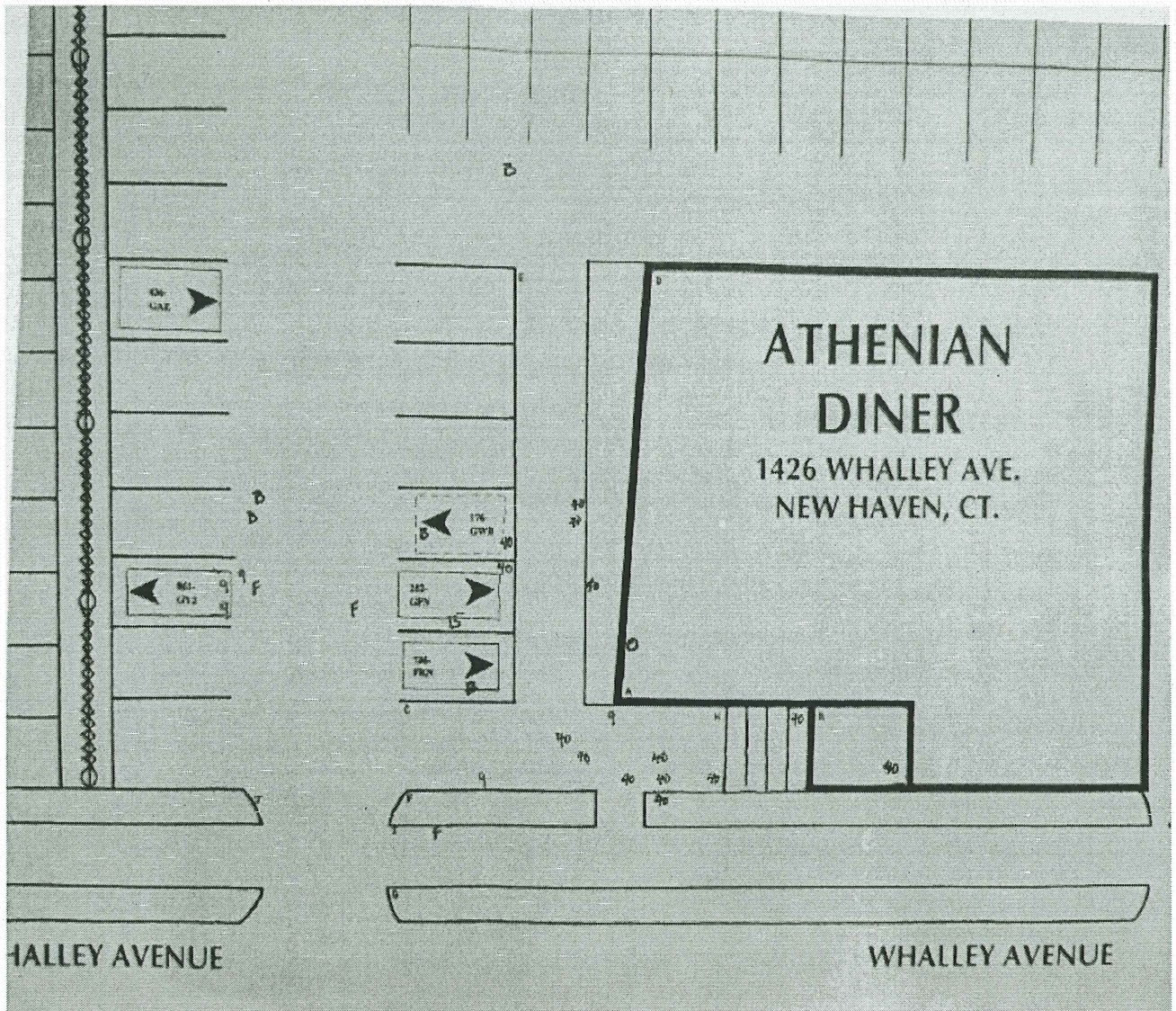
Legend:

"40" - 40 caliber shell casing

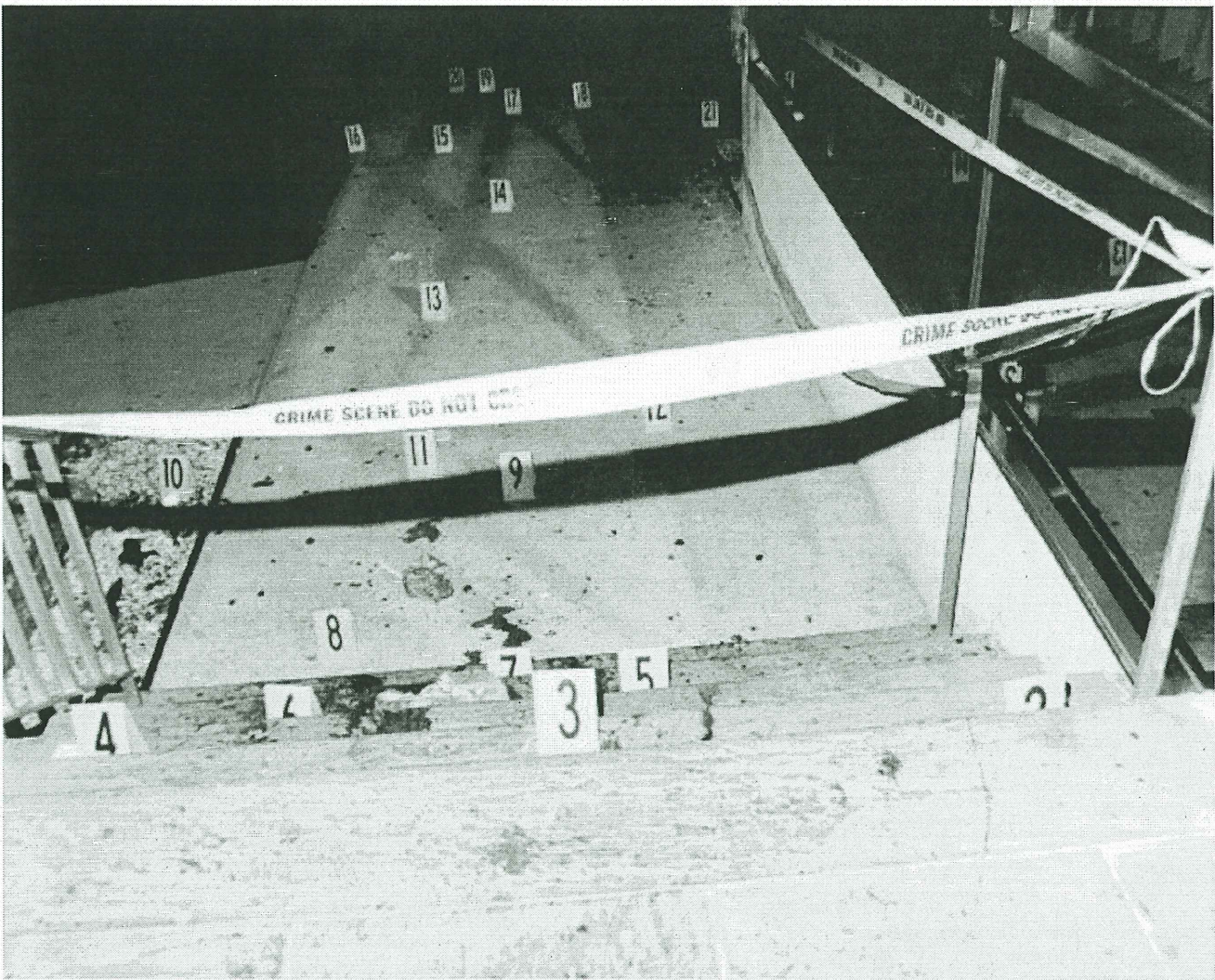
"9" - 9 mm shell casing

"F" - bullet fragment

"B" - bullet

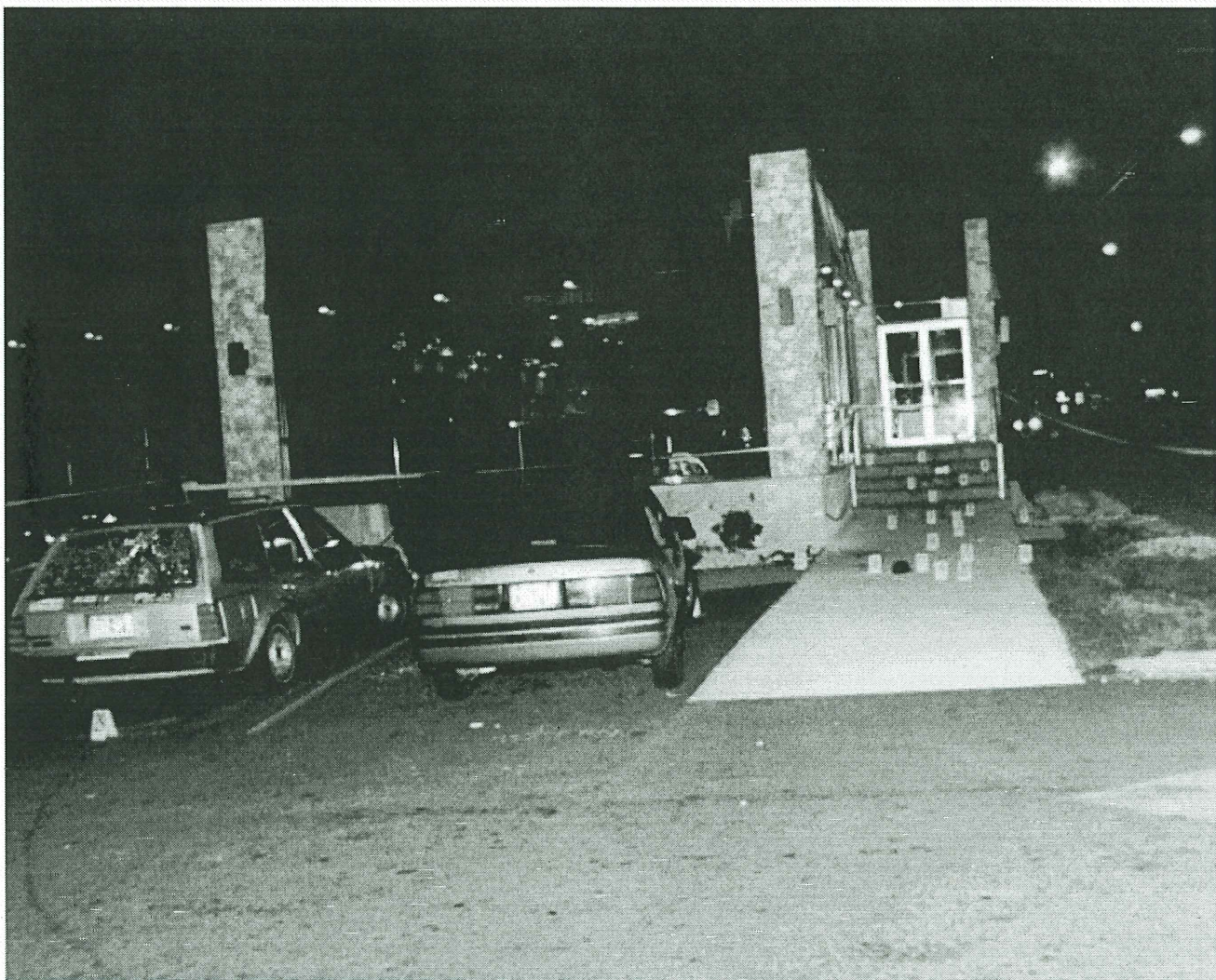


2. CIU Exhibit #2.¹⁴



¹⁴ Original photograph from state's file.

3. CIU Exhibit #3.¹⁵



¹⁵ Original photograph from state's file.

4. CIU Exhibit #4.¹⁶



¹⁶ Original photograph from state's file.

5. CIU Exhibit #5.

WINDOL & SHAW-WALKER
 NEW HAVEN POLICE DEPT.
 WARRANT AFFIDAVIT FOR
 SEARCH

INSTRUCTIONS

121 Elm St. New Haven, Ct.
 6th

96521

| NAME ADDRESS AND TEL. NO. OF DEFENDANT(S) SUBJECT(S) | NAME ADDRESS AND TEL. NO. OF COMPLAINANT(S) OWNER(S) |
|--|---|
| | 1. Hury Poole 3-17-68 (homicide victim) 240 Valley St. 093 |
| | 2. Andrew Fasley 3-4-70 (homicide victim) 83 East Ramadell St. 093 |
| | 3. Christopher Roach 8-17-69 95 Parkside Dr. 093 |

TYPE OF INCIDENT: Shooting (double homicide)

DATE OF SEIZURE: New Haven, Ct. 9-21-91

TYPE OF PROPERTY: STOLEN EVIDENCE LOST/FOUND INVESTIGATION

The following property was seized, in connection with a criminal case: (Describe type, color, serial numbers, etc.)

| PROPERTY SEIZED | REMARKS |
|--|---|
| 1. fourteen (14) .40 caliber spent shell casings | (Items 1, 2, 8, 10, 11, 12, 13, 15, 18, 24, 25, 26, 27, 28 from diagram/photos - CWG) |
| 2. five (5) 9mm spent shell casings | (Items 14, 20, 31, 32, 33 from diagram/photos CWG) |
| 3. one large caliber copper-jacketed bullet (from Volvo hood) | |
| 4. one large caliber copper-jacketed bullet (item 41 from diagram/photos) | |
| 5. one large caliber copper-jacketed bullet (item 43 from diagram/photos) | |
| 6. one copper-jacketed bullet (item 37 from diagram/photos) | |
| 7. one deformed copper-jacketed bullet (item 42 from diagram/photos) | |
| 8. one deformed lead bullet (item 36 from diagram/photo) | |
| 9. one piece of copper-jacketing-bullet fragment (item 34 from diagram/photos) | |
| 10. one small fragment of copper jacketing (item 38 from diagram/photos) | |
| 11. one piece of copper-jacketing-bullet fragment (item 40 from diagram/photo) | |
| 12. one live .22 caliber round (item 44 from diagram/photos) | |

TOTAL AMOUNT OF CASH: \$

SIGNED (Police Officer): Det. Chris Grice ID Tech. 9-21-91 New Haven Police Dept.

PROPERTY ROOM USE ONLY

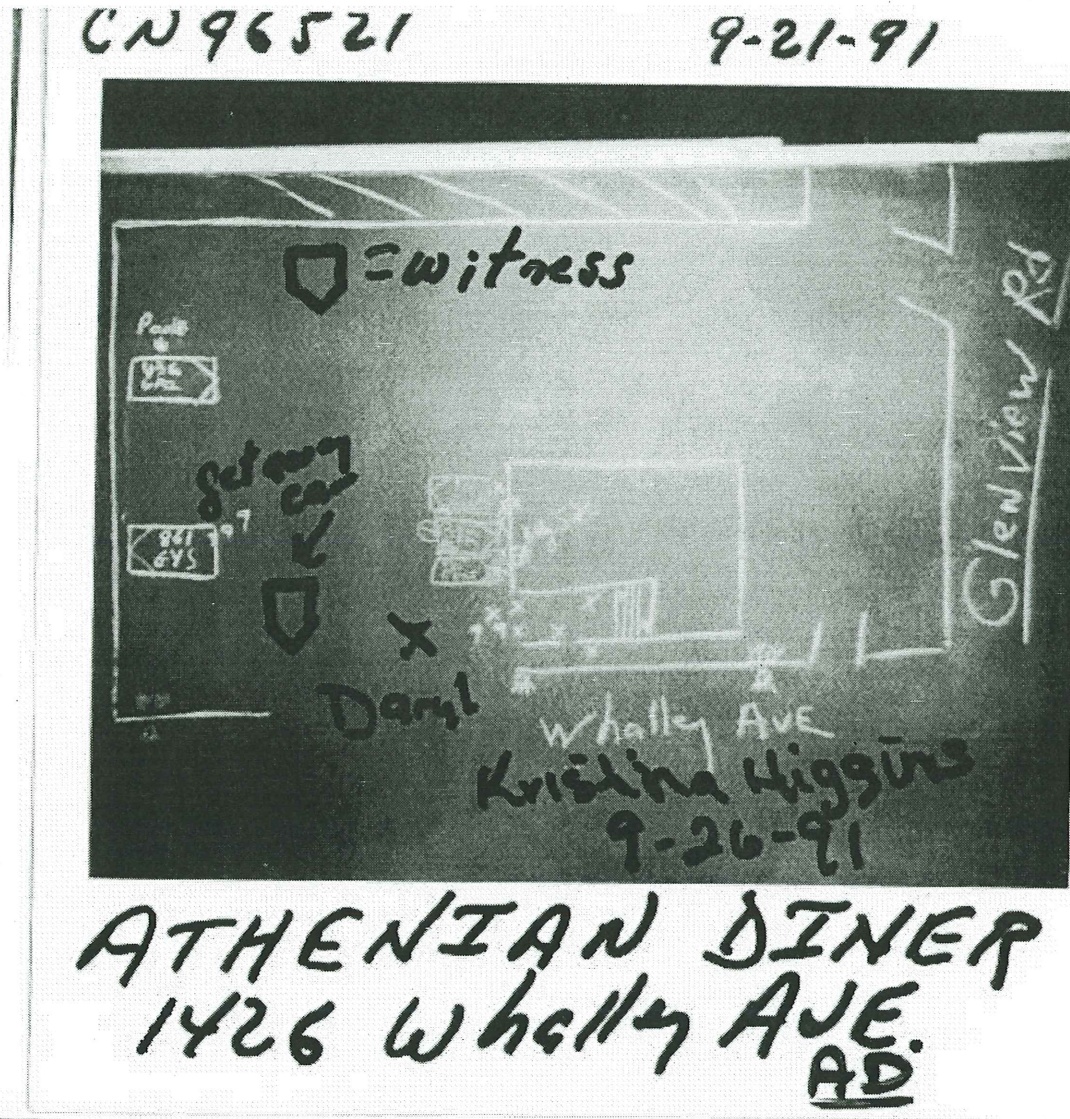
| EVIDENCE PHOTOGRAPHED | DATE | REMARKS | |
|--|--------|---------|---------------|
| <input type="checkbox"/> NO <input type="checkbox"/> YES | | | |
| DATE OUT | REASON | BY | DATE RETURNED |
| | | | |

INVENTORY OF PROPERTY SEIZED

6. CIU Exhibit #6.¹⁷



¹⁷ Original photograph from state's file.



¹⁸ Original diagram from state's file.

8. CIU Exhibit #8.¹⁹



¹⁹ This is a screenshot of a cellphone video CIU Inspector Naccarato took on June 29, 2022 from inside of a vehicle at the approximate location of Coleman and Higgins. Attorney Chhay is at the corner of the diner.

9. CIU Exhibit #9.²⁰



²⁰ This is another screenshot of a cellphone video CIU Inspector Naccarato took on June 29, 2022. Attorney Chhay is at the approximate location of the getaway car.

f. Summary of the Evidence.

Key points of the evidence are summarized as follows:

- (1) The shooting is at night;
- (2) The shooter is approximately 75 to 100 feet or more from Coleman and Higgins;
- (3) Coleman and Higgins are inside a car;
- (4) There are several cars in their line of sight;
- (5) The shooter is at the corner facing the entrance or steps;
- (6) The shooter has dark skin and is wearing a hooded sweatshirt;
- (7) Christopher Roach dramatically confronts the shooter at the getaway car;
- (8) The shooter does not leave until he shoots Roach;
- (8) An unidentified shooter fires at the fleeing shooter in the getaway car;
- (9) During the crossfire, several vehicles are struck in the direct line of the sight of the women; and,
- (10) At least 19 rounds of 9 mm and 40 caliber rounds are fired.

g. Comparing the Whalen Statements.

A review of both statements may lead the panel to question their accuracy. Both statements fail to explain how Coleman and Higgins, while sitting inside a vehicle, were able to see a dark-skinned shooter between 75 to 100 feet at night while he is wearing a hood and facing in the opposite direction. There is no explanation for such an extraordinary identification. Furthermore, Higgins specifically says in her statement that she does **not** know what clothes the shooter is wearing. The fact that she does not know the shooter is wearing a hood over his head may lead the Panel to conclude that she did not really see the shooter that night in those particular, extraordinary circumstances.

According to both of their statements, Coleman and Higgins failed to see or notice the most obvious corroborating events that happened that night. Both of their statements repeatedly indicate that they saw the shooter get into the getaway car, which seemed staged and ready for him. However, two key events had to have happened for the shooter to leave. He is confronted by Roach. The shooter cannot leave until he deals with him. He does so by shooting Roach from inside in the car. The shooter immediately leaves when this happens. As the shooter is leaving or immediately thereafter, an unidentified 2nd shooter fires several shots at the first shooter. Three cars near the front of the diner, directly in line of sight with the position of the women, are shot, with windows shattering during the cross-fire. At least 19 rounds of 9 mm and 40 caliber rounds are fired.

Again, in their statements, both Coleman and Higgins say that they saw the shooter flee in the getaway car, which seemed staged and ready to go. However, they both fail to see the dramatic confrontation with Roach getting shot right before the shooter leaves. Higgins said she ducked during the shooting, but that then casts doubts on the remainder of her statement. They also both fail to notice the crossfire that strikes vehicles and shatters windows in their direct line of sight. According to Coleman's statement, she knew that Roach was shot and that cars were shot. Yet, she seems to not have any idea as to **how** they were shot, which seems implausible if she indeed saw the shooter getting into the getaway car.

Coleman also said in her statement that she heard more than two and as many as more than five shots that night. The forensic evidence, however, shows that at least 19 shots were fired.²¹ The amount of shots described in her statement also may cause the Panel to conclude that she did not see the actual events involved in the shooter leaving. The shooter fired 9mm rounds at the victims and then fired more shots at Roach. Someone else fired 40 cal, rounds presumably at the shooter from the sidewalks to the front and left of the diner. It seems implausible that she would not notice the firing of at least 19 shots. (See CIU exhibit 1).

Finally, according to her statement, she saw an altercation happen prior to the shooting. However, her description matches the first fight that Byron McFadden describes.²² The individuals, Christopher Holland and Steven Roundtree, and the unknown individual that she describes as the only individuals being involved can only be described as the first altercation. The second altercation involved more individuals, including McFadden and the deceased victims, and directly led to the shooting.

The first altercation happened 20 to 30 minutes before the second altercation and the shooting. Furthermore, both altercations occurred at the front steps. Coleman could not have seen the altercation from the rear area of the parking lot.²³ The front of the diner was simply beyond her field of vision. Her statement also does not account for that amount of time passing; both statements also suggest that they were there for a short period of time. That second altercation involved several more individuals, including Byron McFadden, who was trying to break up the fight, and the victims themselves. Therefore, according to Coleman, she somehow saw only the first altercation from a distance while sitting in a car in the rear parking lot of the diner from where the front steps of the diner is not visible..

Higgins' statement is also questionable. She does not indicate that any cars are shot. She only adds that "somehow that boy Chris [Roach] got shot too." (Emphasis added.) *Id.* at 3. According to her own statement, she does not know how Roach is shot. Yet her statement describes how she saw the shooter leave in the getaway car that seemed staged and ready to go. Her not seeing the confrontation between Roach and the shooter in light of her recantation and allegations against Greene strongly suggest that her statement is false or otherwise highly inaccurate. She said that she heard many gunshots and that she ducked at one point, which would explain why she missed some events. However, it still does not explain why she would not see the Roach shooting, the return volley of shots, and the crossfire hitting the cars in her direct line of view if she did, in fact, see the shooter leaving in the getaway car. If she did not see these dramatic events, for whatever reason (distance, vantage point ducking or turning away etc.), it makes her statement questionable.

The statements also contradict each other. As discussed, Coleman said that she saw the first altercation from an implausible vantage point at likely the wrong point in time. Higgins said that there was no altercation, that whatever happened was all over. Both statements are inaccurate. The shooting happens during the second altercation. Both altercations happened at the front of the diner, which the two women cannot see from where they were. The fact that the witnesses are recanting, and the credible allegations against Greene, are compounding factors that tend to prove that the statements were either false or otherwise highly implausible.

²¹ See State's Exhibit #22 and CIU Exhibits ##1-4.

²² See McFadden's testimony. Tr. 01/08/98 at 145-190.

²³ See State's Exhibit #22 and CIU Exhibits ##1-4.

h. Other Specific Issues with the Statements – Stopping of Tape.

Greene stops the tape recording of Coleman's statement so that she can say that she saw Roach with a gun shooting at random. Tr. 01/09/98 at 142. That information is inconsistent with the record and evidence. Furthermore, when the taping of her statement was stopped, (this may have been common practice at the time but is now not considered best practices) Greene admitted that he "**could have told her**" that he had information that Chris Roach was shooting at the time. (Emphasis added.) Tr. 01/12/98 at 26.

VIII. CIU Investigation.

a. Witnesses the CIU Interviewed are Consistent with Their Testimony Except for Roach.

During this office's review and investigation of the Valentine matter, CIU Inspectors spoke to, among others, Regina Coleman, Kristina Higgins, Byron McFadden, and Christopher Roach. These four witnesses were the primary witnesses at the criminal trial. Roach was the only live witness to identify the defendant as the shooter at trial.

Regina Coleman, overall, was not inconsistent with her testimony. CIU Inspectors spoke to her on April 1, 2022. She emphatically stated that she was not present at the shooting and otherwise doesn't remember the relevant events. She provided more information in her 2018 interview with a private investigator, which was more consistent with her trial testimony.

Kristina Higgins, overall, was consistent with her testimony. CIU Inspectors also spoke to her on April 1, 2022. Her interview was recorded on video. She stated that her statement was false and coerced by Joe Greene. Higgins, overall, was consistent with her testimony at trial and her 2018 interview with a private investigator.

Byron McFadden, overall, was consistent with his testimony. CIU Inspectors spoke to him on April 11, 2022. He provided information that was consistent with his testimony, including additional details that highlighted how chaotic the scene was and how he was able to identify Tyrone Adams. McFadden also indicated that Joe Greene did not pressure him to try to identify Valentine as the shooter but that the "first prosecutor," did, in fact, pressure him to identify Valentine.

Christopher Roach, however, was inconsistent with his testimony at trial. A CIU Inspector spoke to Roach on the phone²⁴ on May 6, 2022. He was given the chance, as the victim in the Valentine case, to say whether his testimony was true and what his opinion on the defendant's guilt or innocence was. Instead, Roach said that he was still conducting his own investigation, that he had an attorney, and not to contact him again. Of these witnesses,²⁵ Roach may have the least credibility. He also indicated that he intended to arrive in Connecticut with his attorney to provide this office with information and possibly the results of his own investigation.²⁶

²⁴ Roach resides out of state.

²⁵ On May 16, 2022, CIU Inspectors also interviewed codefendant Tyrone Adams. He denied that he and Valentine were involved in the shooting.

²⁶ As of the date of this report, the CIU has not heard back from Roach or his attorney.

• **b. Panel Meeting and Additional CIU Investigation.**

On June 23, 2022, the CIU met with the Panel for the first time to discuss the Valentine matter, including the topics of preliminary issues, case discussion, and further CIU investigation tasks. Upon completion of the meeting, the Panel requested that the CIU complete the following investigation tasks:

- (1) Interview retired Detective Robert Coffey, who was present for the interviews of witnesses Regina Coleman and Kristina Higgins;
- (2) Determine the distance from the witnesses to the likely location of the getaway car as indicated by the location of the applicable 9 mm shell casings;
- (3) Provide and digitize the audio recordings of the statements of Regina Coleman and Kristina Higgins; and,
- (4) Obtain the defense file and review it for any relevant or material information.

As of July 26, 2022, the CIU has determined that retired Detective Coffey is deceased and that the distance from the witnesses to the likely location of the getaway car is 75 feet.

Legal Technology Specialist (“LTS”) Jessica Nocera has digitized the audio trial exhibit recordings of the statements of Regina Coleman and Kristina Higgins. In addition, LTS Nocera has digitized the audio trial exhibit recordings of the statement of Christopher Roach and the 911 call.

CIU has obtained the defense file from Attorney Vishal Garg. At this time, the CIU has finished reviewing Attorney Ullman’s file that originally was kept in 8 banker’s boxes. We looked for any information which might be relevant or material for Panel purposes. There were no surprises in the file and it contained the items provided by the state via discovery as we expected. CIU will provide the defense file in digital format (3.27GB) to the Panel members.

Furthermore, LTS Nocera has digitized audio and video recordings found in the state’s file, including the audio recorded statements of Tyrone Adams, Christopher Roach, Kristina Higgins, and Byron McFadden; video recordings of Kristina Higgins and Tara Brock; and audio recordings of the police dispatch tapes. Some recordings are redundant to the trial exhibits.

Additionally, on Wednesday June 29, 2022, Attorney Chhay and Inspector Naccarato went to the location of the Athenian Diner (“Epik Diner”) on Whalley Avenue at night. Attorney Chhay was dressed in a dark “hoody,” and Inspector Naccarato took video and photographs from the vantage point of the witnesses Coleman and Higgins. The CIU has uploaded this media as file “Night Shoot.”

The relevant information and context resulting from the requested additional CIU investigation is consistent with this office’s earlier findings. The CIU listened to all the recordings and viewed all the videos. For instance, while it is true that Coleman and Higgins, overall, sound credible during their taped statements in identifying Valentine as the shooter, the taped statements of McFadden and Roach²⁷ -- the two closest witnesses -- sound equally just as credible in not being able to identify the shooter.

²⁷ This is in reference to the tape recording of Roach’s first statement on or about September 30, 1991.

c. Tara Brock.

Tara Brock testified that she was driving Regina Coleman and Kristina Higgins and that the incident had already occurred at the Athenian Diner before they got there, providing the most detailed account of their position and vantage point in the parking lot. Tr. 01/15/98 at 114-118. Furthermore, Brock testified that Detective Greene and another detective brought her to the police station and interviewed her on two separate occasions, each time yelling and screaming at her and attempting to get her to identify Valentine as the shooter.²⁸ Id. at 119-123.

The prosecutor argued that Tara Brock was purposely impeding the investigation and lied about not being present at the time of the shooting and being interviewed by the police at the station:

Tara Brock so wants to convey the idea that they were drunk and high that night that she misses completely the absurdity of driving up to a bunch of police officers at a busy crime scene, driving right in while she's got a car that reeks of marijuana with two bags of marijuana in the car. And you know it's interesting too because the only reason that she would have to maintain this myth about how high and drunk they were was if she was trying to say, well, I really couldn't have seen it. But if she's trying to say I really couldn't have seen it that's another indication that she was there. Because she doesn't have to say I couldn't have seen it if, in fact, her story is, I got there an hour later and don't hold me to the hour, I don't know what they -- how long after they claim, all we know is they claimed it was after the yellow lines were there. And then Tara Brock, also on cross-examination, she invented that she went to the police department and was so traumatized by the cops that she cried, broke down, and so on. And then she embellishes further and says and they made me go back a second time. Well, does that make any sense to you[?] They bully her, they scream at her, she stands firm, says I wasn't there, and then she calmly gets in the car again and goes down to the station again a couple of days later. That makes no sense. That wasn't the kind of person you saw up here. The kind of person you saw up here was a person who stonewalled the cops from the beginning just as they told you that she did. Never went down to the police department just as they said. Simply told them, get out of here. I'm not dealing with the absurdity of that claim, she gets into this whole thing about how the police found her in the first place -- some license plate....

Tr. 01/20/98 at 15-16.

Detective Joe Greene testified that he spoke with Tara Brock, Tr. 01/12/98 at 36, but did not take a formal statement from her. Id. at 38. There was no police report of him speaking with Brock.²⁹

²⁸ The CIU also viewed the **video tape interview** of Tara Brock with the Public Defender Investigator. Brock, overall, was consistent with her court testimony and presented credibly, including by providing specific details as to how the police were interviewing her.

²⁹ Defense counsel showed Detective Greene some police reports, and Greene did not see any reference to him speaking to Brock. Tr. 01/12/98 at 38.

IX. The Prosecutor's Closing Argument.³⁰

a. Argued for Credibility of Officers.

Valentine, though it was a close case, turned into a case about the police. The defense, during closing arguments, mainly argued police corruption and misconduct as evidence and the defense theory. For example, the defense argued: "[T]he evidence here would appear more like a script designed to point the finger at Daryl Valentine as the shooter in the case rather than precise evidence proving his guilt beyond any reasonable doubt." Tr. 01/20/98 at 24. In addressing the statement of Regina Coleman, the defense argued that the police took advantage of her outstanding warrant and threatened to "lock her ass up." Id. at 29. The defense specifically argued that Det. Joe Greene constantly harassed her and told her what to say, Id. at 30, suggesting that "the people she had to be afraid of were not Daryl Valentine, his family, or friends ... but rather the police and authorities that were pursuing her," Id. at 30. The defense did argue that the statement did not include a physical description of the shooter, that the vantage angle was not plausible, and that the getaway car was the wrong color. Id. at 32. In addressing the statement of Kristina Higgins, the defense argued that Kristina Higgins was "fed information about the case. She was offered moneys about the case, and, in fact, given moneys." Id. at 34. The defense explained that the police officers would not admit it because it's "criminal conduct." Id. The defense did point out that her statement initially described the shooter as being 6'3". Id.

The defense even attacked the credibility of Byron McFadden, perhaps the most credible and consistent witness in the case, and the propriety of the prosecution itself by arguing that:

[McFadden] under oath [in a prior proceeding], states categorically that ... Daryl Valentine is not the person shooting on the night [at] the diner ... And then, of course, after lunch at some point after some discussions [with the state's attorney], he doesn't admit this but after lunch his testimony changes. Just like Detective Green[e]'s testimony changed after a break in the proceedings from, no preliminary interview, to a preliminary interview.

Id. at 40.

The defense, continuing its theory of wholesale police corruption and misconduct, argued that some witnesses were "less easy to control by the police," Id. at 44, and that the "[p]olice have selected what evidence to present to you and what you shouldn't see. They've decided what documents you should know about and what you shouldn't know about, and they've been able to put into formal statements what they think you should know, not what every witness knows." Id. at 46. The defense finally argued that the police focus on the blue Buick was the "death nail" of the state's case, Id. at 48, and that "the police rushed to judgment about a vehicle and ran with that information flowing from that car in spite of signs pointing in the other directions. Once faced with crisis, the crew men and passengers [of the Titanic] showed the flaws of the profession and their personality characteristics ... much like the key police personnel and witnesses in this case." Id. at 50.

³⁰ The recent habeas court decision found that the prosecutor's closing argument was overall fair and responsive to the defense argument in Valentine v. Warden, 2021 WL 1595418 (Conn. Super. Ct. Mar. 19, 2021), which is currently under appeal and scheduled for argument before the Appellate Court on September 22, 2022.

The state argued in rebuttal that the jury would have to essentially accept the defense theory of widespread police misconduct in order to acquit the defendant. For example, the state argued:

It's his entire claim for the police misconduct that he claims here. And this is serious misconduct he's telling you happened. Perjury on the stand. [T]wenty-seven years. I don't know whether that's supposed to be good or bad. Twenty-seven years on the force. They are going to perjure themselves for one case where you got three odd witnesses? Doesn't seem real likely, does it?

...

And to buy the argument it isn't enough to say the police made mistakes. For his arguments you have to find that they [perjured] themselves... They are evil. That's what you have to find. I don't think you're going to do that. Doesn't make any sense.

Id. at 58-59.

The prosecutor, partly responding to the defense argument, referred to himself: "That's [sic] this evil case that we're all cooking together to trick you in some way into convicting Daryl Valentine ... you got it all because we gave it to you." Id. at 62.

The state also argued or at least strongly suggested that the jury could only acquit the defendant if it believed there was a widespread police and witness conspiracy to convict the defendant:

So if there's no police plot, no police misconduct, and no evidence suggesting the taped statements are wrong as there isn't any credible evidence, then [the defendant has] to be convicted because the Judge is going to tell you that a single identification that you believe of the defendant as the shooter is sufficient...

Id. at 68.

On the other side, remember that everybody has to have lied [to acquit the defendant]. Everybody. All the cops, all the eyewitnesses, Byron McFadden, Christopher Roach, and they all have to have lied with a common purpose, and that is to put this innocent man behind bars for killing two people.

Id. at 79.

Joe Greene, Anthony DiLullo, and Robert Coffey were the primary officers involved in the taking of the statements of Regina Coleman and Kristina Higgins. They all had about 25 years of experience. The prosecutor seemed to have been referring to and arguing the credibility of all three of them.

X. Additional Considerations and Conclusion.

a. CIU Protocols Preamble.

PREAMBLE

The Division of Criminal Justice (DCJ) has no more important obligation than ensuring the integrity of the convictions it has secured. Wrongful convictions are a blight on the moral authority of the criminal justice system, and they cause incalculable damage to the people who are condemned unjustly. A single wrongful conviction is too much for any honorable system to bear.

b. The CIU Perspective based on National Best Practice.

Perhaps the truest measure distinguishing a sincere CIU is its approach to cases that lack both conclusive evidence of guilt and clear-cut evidence of innocence. In such cases, the CIU finds itself in a middle ground, concluding that the conviction lacks strength but recognizing that the facts are far from establishing actual innocence. The CIU considers that the most effective units:

“[E]xamine the case with fresh eyes, considering (a) the likelihood of guilt and (b) the likely sentence for the case if tried today along with (c) the sentence already served by the convicted individual, before deciding upon the best course of action, and communicating his or her decision to defense counsel along with its rationale.”

“Conviction Review Units: A National Perspective” by John Hollway of the Quattrone Center³¹, University of Pennsylvania Law School April (2016), p. 48.

CIU has considered the evidence in a manner that a jury cannot, allowing for thoughtful analysis and reference to evidence, documents, and recordings that were not admitted at trial. This review was done by experienced attorneys and inspectors taking into account the principles set out in the Preamble to the CIU Protocols.

Valentine was always a close case. There was no forensic evidence that inculpated Valentine, including DNA evidence, ballistics evidence, video evidence, phone evidence, and physical evidence. Therefore, the evidence that convicted Valentine was eyewitness testimony of questionable reliability.

³¹ The Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School is a research and policy hub focused on structural improvements to the U.S. criminal justice system that will prevent errors and ensure the fair treatment of all.

c. Changes in the Law

“The life of the law has not been logic; it has been experience... The law embodies the story of a nation's development through many centuries...” The Common Law, by Oliver Wendell Holmes, Jr., Associate Justice of the Supreme Court of the United States (1881), p. 1.

Finally, the CIU suggests, if appropriate, the consideration of changes in the law. The common law evolves because of many reasons, including experiences, public perceptions, and changing societal standards. Changes in the criminal law may be as significant as changes in forensic science and should inform the consideration of the integrity of a conviction. Changes in the law may or may not be material to a CIU analysis depending on the nature of the court's rulings on particular evidentiary issues. In the Valentine matter because the case relies solely on the credibility of eyewitness testimony, changes in the law that could have impacted the juries evaluation of the credibility of these eyewitnesses may be particularly relevant.

1. Changes in the Law as to Jury Instructions Relevant to Witnesses Who Receive a Benefit from the State in Exchange for Their Testimony.

In State v. Bruny, 342 Conn. 169 (2022), the court **declined** to expand the jailhouse informant requirement beyond informants who offer or provide testimony against the defendant to those who offer or provide testimony regarding **observed events**. As the Supreme Court notes, however, a trial court is free to give a special credibility instruction upon request in the exercise of its discretion:

In determining whether to give such an instruction, the trial court may consider the circumstances under which the witness came forward; the seriousness of the [crimes] with which the witness has been charged or convicted [of]; the extent to which the state is in a position to provide a benefit to the witness and the potential magnitude of any such benefit; the extent to which the witness' testimony is corroborated by other evidence; the importance of the witness' testimony to the state's case; and any other relevant factor.

Id. at 206-07.

In Bruny, the court also noted that the defendant had effectively cross-examined the jailhouse witness and presented expert testimony calling into question the reliability of a jailhouse informant. Id. at 208. It was “[i]n light of this record” that the Supreme Court concluded that the trial court acted within its discretion. Id. See also State v. Patterson, 276 Conn. 452 (2005); State v. Arroyo, 292 Conn. 558 (2009); and State v. Jones, 337 Conn. 486 (2020) for discussions on credibility concerns with witnesses who receive a benefit from the state in exchange for testimony.

2. Changes in the Law as to the Defense Theory of Inadequate Police Investigation.

Our Supreme Court “has recognized that defendants may use evidence regarding the inadequacy of the [police] investigation into the crime with which they are charged as a legitimate defense strategy.” State v. Wright, 322 Conn. 270, 282 (2016), citing State v. Collins, 299 Conn. 567, 599–600, cert. denied, 565 U.S. 908 (2011).

“Conducting a thorough, professional investigation is not an element of the government's case.... A defendant may, however, rely upon relevant deficiencies or lapses in the police investigation to raise the specter of reasonable doubt, and the trial court violates his right to a fair trial by precluding the jury from considering evidence to that effect.” Id. at 282.

This right is not unfettered, even if such evidence has some probative weight. The trial court must consider the risk of unfair prejudice and of diverting the jury to collateral matters:

That evaluation necessarily is framed by the theory of the proffering party. It is well settled that [t]he proffering party bears the burden of establishing the relevance of the offered testimony. Unless a proper foundation is established, the evidence is irrelevant.... Relevance may be established in one of three ways. First, the proffering party can make an offer of proof.... Second, the record can itself be adequate to establish the relevance of the proffered testimony.... Third, the proffering party can establish a proper foundation for the testimony by stating a good faith belief that there is an adequate factual basis for his or her inquiry.

(Citations omitted; internal quotation marks omitted.) State v Ramos, Conn. App. 604, 616, cert. denied, 330 Conn. 917 (2018).

In Valentine, there was arguably relevant evidence of a practice of inadequate investigation that corroborated the claims of the recanting witnesses. The two recanting witnesses primarily blamed Greene and not DiLullo for intimidating and bribing them into giving false statements. However, DiLullo testified in Golino v. City of New Haven that it was his general practice to omit exculpatory information from affidavits submitted in support of applications for warrants. In Ham v. Greene, there was a finding that Greene excluded exculpatory evidence in the arrest warrant in State v. Ham. Excluding exculpatory evidence from warrants may also be relevant to the veracity³² of the officers.

In Ham v. Greene, a witness Davis described how he had been taken to the New Haven police station where Greene intimidated and threatened him with prosecution. Davis related how Greene had told him falsely that the plaintiff had incriminated him in the shooting. Davis further testified that Greene had told him what to say in his tape-recorded statement. These statements corroborate the recantations of Coleman and Higgins. This also corroborates the testimony of Tara Brook who describes her interview by the police as being similar to Coleman and Higgins.

Therefore, the Golino and Ham civil cases may provide a basis for the defense to inquire into “the inadequacy of the investigation into the crime with which [he was] charged” under Wright.

³² The CIU considered Connecticut Code of Evidence Section 6-6(b); Evidence of Character and Conduct of Witness:

- (1) General Rule. A witness may be asked, in good faith, about specific instances of conduct of the witness, if probative of the witness' character for untruthfulness.
- (2) Extrinsic Evidence. Specific instances of the conduct of a witness, for the purpose of impeaching the witness' credibility under subdivision (1), may not be proved by extrinsic evidence.

d. Conclusion .

Considering all the relevant reasons, context information, and evidence discussed and summarized above, in State v. Daryl Valentine, CR91-0347896, CIU #2021-0728, the CIU believes this office has presented evidence the panel may consider to be plausible and verifiable evidence that would cause a reasonable person to lose confidence in the conviction due to discredited eye witness evidence.

PART TWO: RECORD AND EVIDENCE DIGEST

I. First Direct Appeal.

a. Claim(s).

Daryl Valentine was first tried and convicted in 1994. At his first direct criminal appeal, he claimed that the trial court improperly excluded extrinsic evidence that had been offered to impeach Roach's testimony identifying the defendant as the shooter. State v. Valentine, 240 Conn. 395 (1997). Specifically, the defendant claimed that a defense witness, Crystal Green, should have been allowed to testify that Roach had told her that he did not know the identity of the shooter. Id. at 399.

b. Reversed and Remanded.

The Connecticut Supreme Court, finding that the exclusion of Green's testimony was harmful, reversed and remanded the case for the following reasons:

First, [Green]'s testimony, if believed by the jury, seriously would have undermined Roach's in-court testimony identifying the defendant as the shooter. Second, Roach, who was shot after he had approached the car and was leaning toward the driver's side window, was the eyewitness who was best situated to identify the shooter. Finally, Roach was the only witness to give live testimony that the defendant was the shooter. The only other identification evidence came from the statements given by Coleman and Higgins to the police, which were recanted at trial. **Roach's credibility on the central issue of the shooter's identity was, therefore, critical to the outcome of the case.**³³

(Emphasis added.) Id. at 404.

II. Second Direct Appeal.

a. Claim(s).

Valentine was tried for a second time in 1998. The jury convicted him of two counts of murder, assault in the first degree, and carrying a pistol without a permit. The sentencing court sentenced him to a total effective sentence of 100 years. At his second direct criminal appeal, he claimed, inter alia, that the trial court improperly precluded the defense from effectively cross-examining Detective Joseph Greene of the New Haven Police Department about having coerced the two recanting witnesses. State v. Valentine, 255 Conn. 61 (2000). Specifically, the defendant claimed that Greene's questioning of a witness in an unrelated civil case, Ham v. Greene, bore on his bias and veracity regarding the questioning of the two recanting witnesses in the defendant's case, Id. at 64-65, and thereby at trial had proposed six questions tailored to the judgment based on the theory that the judgment should be admissible for impeachment purposes. Id. at 67-68.

³³ This decision suggests that Valentine, overall, was a close case.

b. Affirmed.

The Connecticut Supreme Court found that the trial court did not abuse its discretion in deciding that the six proposed questions³⁴ were not relevant with respect to Greene's cross-examination:

Ham involved a fifteen count civil complaint against Greene and another police officer in which the plaintiff had alleged federal civil rights claims pursuant to 42 U.S.C. §§ 1983 and 1988 for false arrest and malicious prosecution, and common-law claims... The fifteen count complaint consisting of numerous allegations of police misconduct was tried to a jury, which returned a verdict in favor of the plaintiff on each claim. The facts presented in that case were that Greene had prepared and had submitted an affidavit in support of an arrest warrant for the plaintiff that included information from two witnesses' statements that incriminated the plaintiff... The affidavit did not include, however, information regarding inconsistencies between the two witnesses' final statements and their prior statements, details concerning statements from other witnesses who knew the plaintiff personally and stated that they could not identify the shooter, or information about two prison inmates who claimed responsibility for the shooting... Greene and the other officer arrested the plaintiff, but the state dismissed the charges after the witnesses, whose statements Greene had included in his affidavit, recanted their earlier statements implicating the plaintiff... In particular, one of the witnesses, Joseph Timothy Davis, testified at trial that Greene had coerced him to make the incriminating statement against the plaintiff...

As the trial court in the present case concluded, admitting evidence of the *Ham* judgment would have created a myriad of problems. First, that judgment does not clearly or directly reflect on Greene's veracity as a witness in the present case. In particular, the defendant's six proposed questions regarding the *Ham* judgment ... did not address the issue of Greene's veracity or bias in a manner that warranted admission of evidence concerning the judgment. Only the final two proposed questions addressed the underlying claims presented in *Ham*, but those questions did not, unambiguously, address the primary issue of Greene's veracity or bias...

Id. at 72-73.

³⁴ The defendant proposed the following questions:

1. On May 8, 1997, was a civil judgment entered against you on one count for violating [the] constitutional rights of Eric Ham by false and unreasonable arrest?
2. On May 8, 1997, was a civil judgment entered against you on second count for violating the constitutional rights of Eric Ham by malicious prosecution?
3. On May 8, 1997, was a civil judgment entered against you on a third count for malicious prosecution?
4. On May 8, 1997, was a civil judgment entered against you on a fourth count for intentional infliction of emotional distress?
5. Were the underlying claims of this judgment involving an incident in February of 1991, where individuals claimed [a] coerced false statement in a murder case which was ultimately dismissed by the state's attorney office?
6. Were the underlying claims additionally asserting the suppression of favorable evidence to the accused?

Id. at 68 n.7.

III. Federal Habeas.

a. Claim(s).

At his federal habeas, Valentine v. Commissioner, 2008 WL 5263781 (D. Conn. Dec. 17, 2008), Valentine again claimed that he was not afforded an effective opportunity to cross-examine Detective Joe Greene. Id. at *1. He even submitted his state appellate brief. Id. at *2.

b. Petition Denied.

The District Court concluded that the Connecticut Supreme Court's analysis of the claim and determination that the trial court did not violate the Confrontation Clause was not an unreasonable application of established federal law. Id. at *6.

IV. State Habeas.

a. Claim(s).

At his state habeas, Valentine v. Warden, No. CV124004939S, 2021 WL 1595418 (Conn. Super. Ct. Mar. 19, 2021), Valentine claimed that he was deprived of the effective assistance of prior counsels and that, more relevantly, he was denied due process by the prosecutor's improper comments during closing arguments. Id. at *6.

b. Dismissed in Part and Denied in Part.³⁵

The habeas court dismissed in part and denied in part Valentine's petition, finding that the prosecutor's comments in closing argument were, overall, fairly responsive to the defense theory:

As presented, the prosecutor's closing argument seems fraught with inflammatory statements ... and, therefore, wholly improper. However, the petitioner's argument as to these statements attempts to divorce the statements from the context of the defense theory advanced that the prosecutor and the police officers engaged in a coordinated conspiracy to falsely convict the petitioner of the double homicide. In context, however, each statement highlights a portion of the closing argument in which the prosecutor argued the credibility of witness testimony that directly refuted testimony favorable to the defense theory.

...

Affording the prosecutor the appropriate latitude for the zeal of closing argument, the claimed improprieties were isolated, sporadic statements made in the heat of the prosecutor's closing arguments of a lengthy and complicated double homicide trial. Considering the totality of the prosecutor's improprieties in the overall context of the trial, the specific incidents of impropriety were not so serious as to deprive the petitioner of his due process right to a fair trial...

Id. at *13-15.

³⁵ This habeas matter is currently under appeal in Valentine v. Commissioner, Docket AC 44745, which is currently scheduled for oral argument on September 13, 2022.

V. Trial Evidence.

a. State Witnesses.

1. Vaughn Maher. Tr. 01/06/98 at 28-87. Former New Haven police officer Vaughn Maher testified that he responded to the shooting at the Athenian Diner.

2. Alejandro Acosta. Tr. 01/06/98 at 88-129. Athenian Diner employee Alejandro Acosta testified that he called the police after he heard gunshots.

3. Whitney Epps. Tr. 01/06/98 at 130-149. New Haven police detective Whitney Epps testified that he immediately responded to the shooting at Athenian Diner and noticed a red BMW and blue Buick traveling at a high rate of speed in the opposite direction.

4. Edwin Ingraham. Tr. 01/06/98 at 150-156. New Haven police detective Edwin Ingraham testified that he attended the autopsies of the victims.

5. Anthony DiLullo. Tr. 01/06/98 at 158-169. New Haven police detective Anthony DiLullo testified that he located and seized the blue Buick.

6. Christopher Grice. Tr. 01/06/98 at 170-199; Tr. 01/07/98 at 1-57. Former New Haven police officer Christopher Grice testified that he processed the blue Buick and matched two latent prints to Daryl Valentine. Tr. 01/06/98 at 176. He also testified that he processed the crime scene, including the ballistic evidence, which included numerous spent shell casings of different calibers. Id. at 185-200.

7. Regina Coleman. Tr. 01/07/98 at 58-132. Regina Coleman testified that she did not know or remember most things of significance. Her testimony is succinctly summarized by the Connecticut Supreme Court, Valentine, 255 Conn. at 64-68, as highlighted in the Relevant Facts of the Case section. She also testified that she arrived in a car that parked in the back lot, Id. at 59-60, and that she knew Daryl Valentine. Id. at 72.

8. Arlice White. Tr. 01/08/98 at 3-11. Arlice White testified that she saw the shooter. Specifically, she testified that she was sitting inside the diner by the windows, Id. at 5, that she saw the shooter at the corner of the diner but could not see his face, Id. at 6, that the shooter wore a burgundy hooded sweatshirt and black jeans, Id. at 7, that the shooter was approximately 5'7" and a 160 pounds, Id., that the shooter had brown skin, Id., and that the shooter wore the hood on his head, Id. at 11.

***Defense Motion in Limine Argument. Tr. 01/08/98 at 21-58.** The defense argued a motion in limine to exclude the substantive use of Regina Coleman's statement. Specifically, the defense argued that "circumstances surrounding the taking of [Regina Coleman's] statement at the police department relay corruption, intimidation, and bribery as to render the statements unreliable," Id. at 23, because other cases, particularly the Ham case, involve similar allegations of misconduct by Green. Id. at 32. The state, in response, argued that:

[T]he Eric Ham materials ... prove nothing, and the reason that they prove nothing is because the verdicts in a case are not verdict[s] on whether or not Joe Green[e] paid off a witness... [T]he allegations are that he somehow [coerced] a man named Davis into making a statement which was later recanted, but what the jury was asked to find in a case was whether or not the warrant submitted contained omissions ... and this is made clear by [the] decision ... The verdict has to do with whether there were omissions from that warrant and whether a reasonable officer should have known that there wasn't probable cause. The verdict does not tell us that Joe Green[e] bribed Joseph Davis ... and, therefore, there's no probative value to that verdict because the Court can't reasonably infer what the basis of the verdict was ... It may have had to do with other bad practices by Joe Green[e] but that certainly -- whether he's a good or intelligent cop in terms of how he puts together a warrant is not what's before this Court.

Id. at 42-44.

Denied. The court denied the motion and ruled that the statement met the test for reliability for admission under Whalen. Id. at 58.

9. Peter Carusone. Tr. 01/08/98 at 65-66. New Haven police officer Peter Carusone testified that he seized ballistic evidence.

10. Claudia Tomassetti. Tr. 01/08/98 at 67-68. State police trooper Claudia Tomassetti testified that Daryl Valentine did not have a pistol permit in September of 1991.

11. Robert Brooks. Tr. 01/08/98 at 69-70. New Haven police detective Robert Brooks testified that Daryl Valentine did not have a city pistol permit in September of 1991.

12. Regina Coleman's testimony from first trial. Tr. 01/08/98 at 74-142. Regina Coleman's testimony from the first criminal trial, in which she claimed to not remember most things of significance, was introduced. Consistent with her testimony at the second trial, she testified that she was seated in the back of a car in the back of the parking lot. Id. at 79.

13. Byron McFadden. Tr. 01/08/98 at 145-190; Tr. 01/09/98 at 2-11; Tr. 01/15/98 at 19. Byron McFadden is perhaps the most credible witness to the shooting because he knew Daryl Valentine, made highly specific and relevant observations, and was not afraid to identify the codefendant. McFadden specifically testified that he tried to break up the altercation at the Athenian Diner, Tr. 01/08/98 at 151, that he heard Tyrone Adams saying, “[S]hoot him, fuck it, shoot him, shoot him, shoot him, fuck it,” Id. at 152, and that he knew Adams and described him as about 6’2” to 6’3” and between 300 and 350 pounds, Id. at 153. McFadden testified that he actively looked for the shooter after heard Adams tell someone to shoot the victim. “At that point, I started looking around to see who had a gun ... then the next thing you know I see somebody walk towards the corner of the diner and just started firing.” Id. However, he only got a “glance” at the shooter because his “attention was ... on the gun.” Id. at 153-54. He specifically observed that the shooter had a full beard and dark skin, Id. at 155, wore a burgundy shirt and black jeans, Id., and had a “high low” haircut. Id. at 156. McFadden saw Christopher Roach grab the shooter and say, “Why did you have to shoot us, why did you have to shoot us.” Id. He saw the shooter pull Roach toward a black Cavalier behind Tyrone Adams’ car [blue Buick] before shooting Roach in the forearm. Id. at 157. After the shooting, he went and told police officer Mike Toles what he saw. Id. at 165. He gave a statement to Joe Greene on October 2, 1991. Id. at 166-67. McFadden looked at photographs, including a photograph of Daryl Valentine, but ultimately selected a different photograph³⁶ as “somebody that was similar to the ... shooter.” Id. at 168. He looked at photographs on a second occasion and selected a photograph of Daryl Valentine just as someone he knew. Id. at 170. He testified that no one urged him to say anything, Id., and that the shooter wore a burgundy hoody over his head. Id. at 187. The defense cross-examined him on his prior testimony on April 18, 1994 when he said he had no doubt that Daryl Valentine was not the shooter but then changed his testimony after the lunch break and after going over to the prosecutor’s office. Tr. 01/09/98 at 36-39. The defense and the state also argued and admitted prior inconsistent and consistent statements into evidence related to this issue. Id. at 40-90. On redirect, McFadden explained that he approached the prosecutor in the prior proceeding because he felt that he was tricked by Attorney Ullmann into excluding Daryl Valentine as the shooter. Id. at 91.

14. James Harris. Tr. 01/09/98 at 118-128. Former New Haven inspector James Harris testified that he brought Regina Coleman to court under a material witness warrant. He specifically testified that Coleman said she didn’t come to court because she was frightened of the two defendants. Id. at 126.

15. Joe Greene. Tr. 01/09/98 at 129-153; Tr. 01/12/98 at 22-52. New Haven police detective Jose Greene testified that he did not bribe or coerce Regina Coleman and Kristina Higgins into giving their statements. He specifically testified that Regina Coleman denied knowing anything about the shooting in their first meeting. Tr. 01/09/98 at 133-34. He went back to speak with her after interviewing Kristina Higgins. Id. at 135. He took her to the police station and conducted an “initial interview,” Id. at 137, before tape recording the statement. Id. at 138. She selected a photograph of Daryl Valentine. Id. at 140. Greene stopped the tape to allow her to change her answer as to seeing Christopher Roach with a gun and shooting. Id. at 142. Greene testified that she read the transcription of her statement, said it was true, and still refused to sign it. Id. at 147. He denied offering her any money. Id. at 153.

³⁶ The police failed to preserve this photograph. In the first appeal of the first trial, our Supreme Court, remanding the case on other grounds, held that the police failing to preserve it did not violate Valentine’s constitutional rights to due process. State v. Valentine, 240 Conn. 395, 415-19 (1997).

***State Motion in Limine Argument. Tr. 01/12/98 at 1-22.** The court granted the state's motion in limine concerning the six proposed impeachment questions by the defense. The defense indicated it had tailored the questions to the "verdict itself and the [Ham] judgment that was entered, as opposed to some of the underlying specifics" that were listed in the complaint. Id. at 12. The state argued that the six proposed questions were not relevant to the question of veracity because "[t]here is nothing on the face of [the] judgment that goes to veracity ... Questions five and six might" but are not "supported by the judgment." Id. at 14. The court granted the state's motion and ruled that the Ham matters were not relevant to Joe Greene's veracity, would lead to "great confusion on the part of the jury," and that would either lead to the Ham case being "re-tried somehow" or require "extensive jury instructions." Id. at 18.

16. Christopher Roach. Tr. 01/12/98 at 53-114. Christopher Roach was the sole surviving victim to the shooting who testified that he only identified Daryl Valentine as the shooter years after the shooting and after being extradited to face serious felony charges. He testified that he and his friends, including the victims, were involved in the altercation at the front of the steps of the Athenian Diner. Id. at 60-61. He saw the shooter come around with a "hooded sweatshirt draw[n] tight" around his face. Id. at 61-62. He identified, in court, the shooter as Daryl Valentine. Id. The shooter got into a dark, mid-sized car, the "second car" that was near Tyrone Adams' blue Buick. Id. at 58-63. He continued to testify that he ran up to the car that the shooter was sitting in as a passenger. Id. at 63-64. He was "yelling all kinds of obscenities" at the shooter before getting shot twice in the forearm. Id. at 64-65. Roach was not armed with a gun himself. Id. at 67. He didn't tell the police what happened because he was upset at them for not being present because of the "Blue Flu." Id. at 76-77. He was "totally uncooperative" when the police came to his house, Id. at 77, because he didn't know who else was involved and was concerned about the safety of his family. Id. at 78. He gave a formal statement to the police on September 30, 1991 and gave them the name of Tyrone Adams, the codefendant in the case, even though he did not see him because he was "picking and choosing what information [he] wanted to give." Id. at 78-79. He also said he was too drunk to see things. Id. at 79. Roach then moved to Atlanta in December of 1991 for a "change of life." Id. at 80. He was extradited to Connecticut in 1993 to face charges of assault in the first degree, unlawful discharge of a firearm, and reckless endangerment. Id. at 81. The complainant in that case was Tyrone Adams. Id. Finally, he gave a statement in 1993 that identified Daryl Valentine as the shooter. Id. at 82. He denied there being "any kind of arrangement" but acknowledged that all the charges were dropped. Id. at 84. He also admitted that he gave a false statement to the police when he said that he saw Tyrone Adams being involved in the altercation, Id. at 96, and also had a conversation with Crystal Green about the Athenian Diner shooting. Id. at 105-08.

17. Robert Benson. Tr. 01/12/98 at 116-130. New Haven police detective Robert Benson testified that he responded to the shooting and instructed the owner of the damaged Volvo to return to the Athenian Diner so that he could process it at the crime scene.

18. Rona London. Tr. 01/13/98 at 6-12. Rona London was a credible witness who saw Daryl Valentine at a club prior to the shooting at the Athenian Diner. She specifically testified that he was wearing a dark colored hooded sweatshirt. Id. at 8.

19. Arkady Katnelson. Tr. 01/13/98 at 13-33. Medical examiner Arkady Katnelson testified that he performed the autopsies of the victims.

20. Edward Jachimowicz. Tr. 01/13/98 at 34-65. Firearms and toolmark examiner Edward Jachimowicz testified that he examined the ballistic evidence in the case. He testified that the bullets that killed the two victims were fired from the same firearm. Id. at 42.

21. Kristina Higgins. Tr. 01/13/98 at 66-142; Tr. 01/14/98 at 13-57. Kristina Higgins testified that she did not see the shooting and gave a false statement because of Det. Joe Greene's influence. She testified that she arrived in a car and it parked in the back. Tr. 01/13/98 at 74. She acknowledged that Det. Tony DiLullo asked her the questions on the taped statement, Id. at 105, but Joe Green started talking to her and said the name of Daryl Valentine "before the tape recorder was even played." Id. at 106. She said the police were already at the scene and Chris Roach "was out there with his hands up." Id. at 111. She also said that Joe Greene threatened to lock her up, Id. at 116, and that Greene and DiLullo took her to the package store and gave her money after she gave her statement. Id. at 130. The state attempted to get her to admit that there were no package stores open after she gave her statement. Id. at 131. She also testified that she was sitting in the front seat and Regina Coleman was sitting in the back seat, Tr. 01/14/98 at 19, that the police specifically gave her \$50, Id. at 41, and that she called correctional officer Paul Brock and told him she had lied. Id. at 46-48.

22. Robert Lanza. Tr. 01/14/98 at 59-66. New Haven police sergeant Robert Lanza testified that he responded to the shooting at the Athenian Diner and set up a perimeter.

23. Robert Coffey. Tr. 01/14/98 at 67-73. Retired New Haven police detective Robert Coffey testified that he went with Det. Joe Greene to pick up Kristina Higgins and take her to the police station. He specifically testified that he took her back to her apartment when she was done with her interview and that no one offered her any money or threatened her. Id. at 69-70. His "function basically was to act as a driver and to provide a second person there so that there could be no charges later on about misconduct by a male detective." Id. at 72.

24. Anthony DiLullo. Tr. 01/14/98 at 74-116. New Haven police detective Anthony DiLullo testified that he conducted the interview of Kristina Higgins on September 26, 1991. He specifically testified that Det. Joe Greene and Det. Robert Coffey brought her to the police station and that he primarily conducted the interview, Id. at 74, she left with Greene and Coffey about 10 minutes before he started his report at 8:30 pm, Id. at 87, and no one offered her any money. Id. at 89.

b. Defense Witnesses.

25. Gerald Antunes. Tr. 01/15/98 at 21-25. New Haven police lieutenant Gerald Antunes testified that he preserved the tape of a 24 hour segment of all radio and telephone communications that came to the communications center. Evidence was meant to show that there was a delay in the police response.

26. Joe Greene. Tr. 01/15/98 at 26-33. New Haven police detective Joe Green testified that he spoke to Tara Brock but did not write a report because she was uncooperative. Tara Brock is the driver of the vehicle Regina Coleman and Kristina Higgins were in.

27. Paul Brock. Tr. 01/15/98 at 35-52. Correctional officer (and cousin of Tara Brock) Paul Brock testified that Kristina Higgins told him that she had lied to the police about what had happened at the Athenian Diner.

28. Ednora Guimares. Tr. 01/15/98 at 54-67. Mother of Daryl Valentine Ednora Guimares testified that her son had a high-low haircut back in September of 1991 but did not have a full beard. She testified that he had a "thin" beard and wore some kind of jogging suit on the night he went out to the Athenian Diner. Id. at 62-65.

29. Thomas O'Donnell. Tr. 01/15/98 at 68-92. Former New Haven police officer Thomas O'Donnell testified that he took photographs of Daryl Valentine on October 9, 1991. He testified that he showed a stack of photographs, including one of Daryl Valentine, to Byron McFadden. Id. at 72. McFadden indicated that he recognized that photograph as someone that he knew. Id. at 74.

30. Carmen Delvalle. Tr. 01/15/98 at 94-108. Investigator Carmen Delvalle would have testified that Rona London told her that she did not recall what Daryl Valentine was wearing. However, the court sustained the state's objection to her testimony. Id. at 108. **This issue was appealed and affirmed.**

31. Tara Brock. Tr. 01/15/98 at 109-153. Tara Brock testified that she was driving Regina Coleman and Kristina Higgins and that the incident had already occurred at the Athenian Diner before they got there. She provided the most detailed account of their positioning. They drove down Whalley and turned into Glenn View Terrace, Id. at 114, went towards the back parking lot, Id., entered the entryway on Glenn View Terrace and went along the front of the stores and shops, Id. at 115, stopped close to the last parking space in the parking spaces running across the rear of the Athenian Diner, Id. at 116, circled or went around the other parked cars, Id. at 114, and exited back out on Glenn View Terrace. Id. at 118. Brock testified that Detective Greene and another detective brought her to the police station and interviewed her on two separate occasions, each time yelling and screaming at her and attempting to get her to identify Valentine as the shooter. Id. at 119-123.

32. Crystal Green-Jackson. Tr. 01/15/98 at 155-168. Family friend of Daryl Valentine Crystal Green-Jackson testified that she saw Chris Roach at Union Station in March of 1994 and that he told her that he didn't see the shooter after repeatedly telling her he couldn't talk about the case.

c. Closing Arguments. Tr. 01/20/98 at 4-81.

1. State. Id. at 4-22. The state argued its theory of the case.

2. Defense. Id. at 23-51. The defense, in turn, mainly argued police corruption and misconduct as evidence and the defense theory. For example, the defense argued: "[T]he evidence here would appear more like a script designed to point the finger at Daryl Valentine as the shooter in the case rather than precise evidence proving his guilt beyond any reasonable doubt." Id. at 24. In addressing the Whalen statement of Regina Coleman, the defense argued that the police took advantage of her outstanding warrant and threatened to "lock her ass up." Id. at 29. The defense specifically argued that Det. Joe Greene constantly harassed her and told her what to say, Id. at 30, suggesting that "the people she had to be afraid of were not Daryl Valentine, his family, or friends ... but rather the police and authorities that were pursuing her," Id. at 30. The defense did argue that the statement did not include a physical description of the shooter, that the vantage angle was not plausible, and that the getaway car was the wrong color. Id. at 32. In addressing the Whalen statement of Kristina Higgins, the defense argued that Kristina Higgins was "fed information about the case. She was offered moneys about the case, and, in fact, given moneys." Id. at 34. The defense explained that the police officers would not admit it because it's "criminal conduct." Id. The defense did point out that her statement initially described the shooter as being 6'3". Id. The defense even attacked the credibility of Byron McFadden, perhaps the most

credible and consistent witness in the case, and the propriety of the prosecution itself by arguing that McFadden, "under oath [in a prior proceeding], states categorically that ... Daryl Valentine is not the person shooting on the night [at] the diner ... And then, of course, after lunch at some point after some discussions [with the state's attorney], he doesn't admit this but after lunch his testimony changes. Just like Detective Green[e]'s testimony changed after a break in the proceedings from, no preliminary interview, to a preliminary interview." Id. at 40. The defense, continuing its theory of wholesale police corruption and misconduct, argued that some witnesses were "less easy to control by the police," Id. at 44, and that the "[p]olice have selected what evidence to present to you and what you shouldn't see. They've decided what documents you should know about and what you shouldn't know about, and they've been able to put into formal statements what they think you should know, not what every witness knows." Id. at 46. The defense finally argued that the police focus on the blue Buick was the "death nail" of the state's case, Id. at 48, and that "the police rushed to judgment about a vehicle and ran with that information flowing from that car in spite of signs pointing in the other directions. Once faced with crisis, the crew men and passengers [of the Titanic] showed the flaws of the profession and their personality characteristics ... much like the key police personnel and witnesses in this case." Id. at 50.

3. State Rebuttal. Id. at 53-81. The state argued in rebuttal that the jury would have to essentially accept the defense theory of widespread police misconduct in order to acquit the defendant. The state, furthermore, bolstered the credibility of the police. For example, the state argued: "it's his entire claim for the police misconduct that he claims here. And this is serious misconduct he's telling you happened. Perjury on the stand. [T]wenty-seven years. I don't know whether that's supposed to be good or bad. Twenty-seven years on the force. They are going to perjure themselves for one case where you got three odd witnesses? Doesn't seem real likely, does it?" Id. at 58-59. The prosecutor, partly responding to the defense argument, referred to himself in bolstering the credibility of the police: "That's [sic] this evil case that we're all cooking together to trick you in some way into convicting Daryl Valentine ... you got it all because we gave it to you." Id. at 62. The state also argued or at least strongly suggested that the jury could only acquit the defendant if it believed there was a widespread police and witness conspiracy to convict the defendant. "So if there's no police plot, no police misconduct, and no evidence suggesting the taped statements are wrong as there isn't any credible evidence, then [the defendant has] to be convicted because the Judge is going to tell you that a single identification that you believe of the defendant as the shooter is sufficient..." Id. at 68. "On the other side, remember that everybody has to have lied [to acquit the defendant]. Everybody. All the cops, all the eyewitnesses, Byron McFadden, Christopher Roach, and they all have to have lied with a common purposes, and that is to put this innocent man behind bars for killing two people." Id. at 79.

PART THREE: SUPPLEMENTARY SECTIONS

I. CIU Presumptions and Best Practices.

CIU review is a post-conviction procedure where **civil rules of evidence** apply. Thereby:

- As a post-conviction procedure, there is no presumption of innocence; privileges are respected by CIU but appropriate adverse inferences may be drawn by claims of privilege³⁷;
- As in civil matters, there can be adverse inferences drawn for failure to comply with appropriate and expected discovery and fact-finding procedures³⁸; and,
- The CIU may draw a negative inference from the exercise of a legally valid privilege, and from the failure to produce evidence that would naturally be favorable³⁹.

a. Standards for Acceptance of Petitions for Review.

Most CIUs agree on the standard for a case to get through the initial intake phase: the petitioner must assert a claim of innocence, supported by something testable or objectively credible in the eyes of the CIU. As one prosecutor put it, “We don’t just review closed cases – we need the petitioner to tell us **why** he’s innocent.”

Virtually all CIUs require some new evidence that has not been previously disclosed to accept a case for further review: some new evidence is needed so that CIUs aren’t just rehashing cases that have already been decided closer in time and with more manpower. CIUs want to be respectful of the jury, their verdict, and generally CIUs are not going to look at a case where there’s nothing new.

b. Legal Standards for Case Review.

In a departure from appellate litigation requirements, however, many CIU take a more flexible view of what it means for the newly discovered evidence to have been “available” at the original trial. This is a key difference. The Asherman test, that “the proffered evidence is newly discovered, such that it could not have been discovered earlier by the exercise of due diligence,” should not be our standard. The CIU should consider all available evidence.

c. Cases Alleging Both Factual Innocence and Due Process Violations.

CIUs embracing a “totality of the circumstances” standard in assessing factual innocence must often evaluate claims that are justified by, or overlap with, claims of violations of due process. An ineffective assistance of counsel claim, for example, does not necessarily incorporate a claim of actual innocence, though the two are often interconnected. Due process claims are also the vehicle for discussing a claim of factual innocence in convictions based on scientific testimony where the scientific literature has evolved since the underlying conviction (e.g., arson, shaken baby syndrome, bite mark or hair follicle comparisons).

³⁷ CIU Protocol at 2.

³⁸ Colin C. Tait and Eliot D. Prescott, Tait’s Handbook of Connecticut Evidence Section 4.3.2, p 140 (4th ed. 2008); Civil Jury Instructions Section 2.3.4 (Spoliation of Evidence).

³⁹ Colin C. Tait and Eliot D. Prescott, Tait’s Handbook of Connecticut Evidence Sections 5.5.29(a) (Privilege Against Self-Incrimination) pp 222-223, 5.5.2(b) (Attorney Client Privilege) p223 (4th ed. 2008); Civil Jury Instructions Section 2.5-7 (Exercise of Privilege Against Self-Incrimination).

d. “Conviction Integrity” and Cases That Lack Conclusive Evidence of Guilt.

Perhaps the truest measure distinguishing a sincere CIU is its approach to cases that lack both conclusive evidence of guilt, and clear-cut evidence of innocence. In such cases, the CIU finds itself in an uncomfortable middle ground, conceding that the conviction lacks strength and may not add up to conclusive guilt, but recognizing that the facts are far from establishing actual innocence. In such a situation, should the CIU move to vacate the conviction?

e. Collaborative Case Review.

CIUs have reached widely varying conclusions about whether to include petitioner or petitioner’s counsel in the conduct of a case review. On one extreme are the jurisdictions that simply take a petition and conduct an internal investigation, reach a conclusion, and inform petitioner of the result. On the other, a few CIUs will conduct joint witness interviews with petitioner’s counsel under certain circumstances. Most CIUs fall somewhere between these two extremes.

f. Attorney-Client Privilege.

One of the more contentious policies adopted by a small group of CIUs is the requirement that petitioner waive his or her attorney/client privilege as a prerequisite to CIU review. Offices requiring a waiver see a fundamental fairness directed to ascertaining the truth that corresponds well to the stated goal of the CIU, since the waiver is requested in the service of allowing the CIU investigators to speak to anyone, including petitioner’s attorneys, who can help in the search for the truth – which may be different than a search to prove the petitioner’s innocence. One CIU head whose jurisdiction requires a waiver of attorney/ client privilege explained their position this way: “We [ask for] a waiver to make it easier for us to look into it, because it would be unlikely that a trial defense attorney would talk to us unless the attorney client privilege is waived. The waiver is not for the purpose of investigating more crimes. The purpose is to help us look into the claim presented by that person. So it’s a combination, that works well is to get a notarized document from [petitioner] consenting to the waiver of privilege.” **A third approach**, embraced by multiple CIUs, is that the CIU is to request but not require a waiver of attorney/client privilege, while noting that the petitioner’s refusal to waive the privilege may be viewed by the CIU as a negative factor or inference when reviewing petitioner’s case for actual innocence. Whatever the rationale, requiring a waiver of attorney/ client privilege is likely to have a chilling effect on the willingness of some petitioners to engage with the CIU.

See: “*Conviction Review Units: A National Perspective*” by John Hollway of the Quattrone Center⁴⁰, University of Pennsylvania Law School April (2016)

⁴⁰ The Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School is a research and policy hub focused on structural improvements to the U.S. criminal justice system that will prevent errors and ensure the fair treatment of all.

II. Connecticut Code of Evidence Sec. 6-6. Evidence of Character and Conduct of Witness.

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be impeached or supported by evidence of character for truthfulness or untruthfulness in the form of opinion or reputation. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been impeached.

(b) Specific Instances of Conduct.

(1) *General Rule.* A witness may be asked, in good faith, about specific instances of conduct of the witness, if probative of the witness' character for untruthfulness.

(2) *Extrinsic Evidence.* Specific instances of the conduct of a witness, for the purpose of impeaching the witness' credibility under subdivision (1), may not be proved by extrinsic evidence.

(c) Inquiry of Character Witness. A witness who has testified about the character of another witness for truthfulness or untruthfulness may be asked on cross-examination, in good faith, about specific instances of conduct of the other witness, if probative of the other witness' character for truthfulness or untruthfulness.

COMMENTARY

Section 4-4(a)(3) provides for the admission of evidence addressing the character of a witness for truthfulness or untruthfulness to support or impeach the credibility of such witness. Section 6-6 addresses when such evidence is admissible and the appropriate methods of proof.

(a) Opinion and Reputation Evidence of Character.

The first sentence of subsection (a) reflects common law. See, e.g., *State v. Gould*, 241 Conn. 1, 19, 695 A.2d 1022 (1997); *State v. Gelinas*, 160 Conn. 366, 367-68, 279 A.2d 552 (1971); *State v. Pettersen*, 17 Conn. App. 174, 181, 551 A.2d 763 (1988). Evidence admitted under subsection (a) must relate to the witness' character for truthfulness, and thus general character evidence is inadmissible. See, e.g., *Dore v. Babcock*, 74 Conn. 425, 429-30, 50 A. 1016 (1902).

The second sentence of subsection (a) also adopts common law. See *State v. Ward*, 49 Conn. 429, 442 (1881); *Rogers v. Moore*, 10 Conn. 13, 16-17 (1833); see also *State v. Suckley*, 26 Conn. App. 65, 72, 597 A.2d 1285 (1991).

A foundation establishing personal contacts with the witness or knowledge of the witness' reputation in the community is a prerequisite to the introduction of opinion or reputation testimony bearing on a witness' character for truthfulness. See, e.g., *State v. Gould*, supra, 241 Conn. 19-20; *State v. George*, 194 Conn. 361, 368-69, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 963, 83 L. Ed. 2d 968 (1985). Whether an adequate foundation has been laid is a matter within the discretion of the court. E.g., *State v. Gould*, supra, 19; *State v. George*, supra, 368; see Section 1-3 (a).

(b) Specific Instances of Conduct.

Under subdivision (1), a witness may be asked about his or her specific instances of conduct that, while not resulting in criminal conviction, are probative of the witness' character for untruthfulness. See, e.g., *State v. Chance*, 236 Conn. 31, 60, 671 A.2d 323 (1996); *State v. Roma*, 199 Conn. 110, 116-17, 513 A.2d 116 (1986); *Martyn v. Donlin*, 151 Conn. 402, 408, 198 A.2d 700 (1964). Such inquiries must be made in good faith. See *State v. Chance*, supra, 60; *Marsh v. Washburn*, 11 Conn. App. 447, 452-53, 528 A.2d 382 (1987). The misconduct evidence sought to be admitted must be probative of the witness' character for untruthfulness, not merely general bad character. E.g., *Demers v. State*, 209 Conn. 143, 156, 547 A.2d 28 (1988); *Vogel v. Sylvester*, 148 Conn. 666, 675, 174 A.2d 122 (1961).

Impeachment through the use of specific instance evidence under subdivision (1) is committed to the trial court's discretionary authority. *State v. Vitale*, 197 Conn. 396, 401, 497 A.2d 956 (1985). The trial court must, however, exercise its discretionary authority by determining whether the

specific instance evidence is probative of the witness' character for untruthfulness and whether its probative value is outweighed by any of the Section 4-3 balancing factors. *State v. Martin*, 201 Conn. 74, 88-89, 513 A.2d 116 (1986); see Section 4-3.

Inquiry into specific instances of conduct bearing on the witness' character for untruthfulness is not limited to cross-examination; such inquiry may be initiated on direct examination, redirect or recross. See *Vogel v. Sylvester*, supra, 148 Conn. 675 (direct examination). Although inquiry often will occur during cross-examination, subsection (b) contemplates inquiry on direct or redirect examination when, for example, a calling party impeaches its own witness pursuant to Section 6-4, or anticipates impeachment by explaining the witness' untruthful conduct or portraying it in a favorable light.

Subdivision (1) covers only inquiries into specific instances of conduct bearing on a witness' character for untruthfulness. It does not cover inquiries into conduct relating to a witness' character for truthfulness, inasmuch as prior cases addressing the issue have been limited to the former situation. See, e.g., *State v. Dolphin*, 195 Conn. 444, 459, 488 A.2d 812 (1985). Nothing in subsection (b) precludes a court, in its discretion, from allowing inquiries into specific instances of conduct reflecting a witness' character for truthfulness when the admissibility of such evidence is not precluded under this or other provisions of the Code.

Subdivision (2) recognizes well settled law. E.g., *State v. Chance*, supra, 236 Conn. 60; *State v. Martin*, supra, 201 Conn. 86; *Shailer v. Bullock*, 78 Conn. 65, 69, 70, 61 A. 65 (1905). The effect of subdivision (2) is that the examiner must introduce the witness' untruthful conduct solely through examination of the witness himself or herself. *State v. Chance*, supra, 61; *State v. Horton*, 8 Conn. App. 376, 380, 513 A.2d 168, cert. denied, 201 Conn. 813, 517 A.2d 631 (1986).

(c) Inquiry of Character Witness.

Subsection (c) provides a means by which the basis of a character witness' testimony may be explored and is consistent with common law. *State v. McGraw*, 204 Conn. 441, 446-47, 528 A.2d 821 (1987); see *State v. DeAngelis*, 200 Conn. 224, 236-37, 511 A.2d 310 (1986); *State v. Martin*, 170 Conn. 161, 165, 365 A.2d 104 (1976). Subsection (c) is a particularized application of Section 4-4 (c), which authorizes a cross-examiner to ask a character witness about specific instances of conduct that relate to a particular character trait of the person about which the witness previously testified. As with subsection (b), subsection (c) requires that inquiries be made in good faith.

The cross-examiner's function in asking the character witness about the principal witness' truthful or untruthful conduct is not to prove that the conduct did in fact occur; *State v. Turcio*, 178 Conn. 116, 126, 422 A.2d 749 (1979), cert. denied, 444 U.S. 1013, 100 S. Ct. 661, 62 L. Ed. 2d 642 (1980); or to support or attack the principal witness' character for truthfulness; *State v. McGraw*, supra, 204 Conn. 447; but to test the soundness of the character witness' testimony "by ascertaining [the character witness'] good faith, his [or her] source and amount of information and his [or her] accuracy." *State v. Martin*, supra, 170 Conn. 165. Because extrinsic evidence of untruthful or truthful conduct is inadmissible to support or attack a witness' character for truthfulness; e.g., *State v. McGraw*, supra, 204 Conn. 446; questions directed to the character witness on cross-examination concerning the principal witness' conduct should not embrace any details surrounding the conduct. *State v. Martin*, supra, 170 Conn. 165; accord *State v. Turcio*, supra, 178 Conn. 126. The accepted practice is to ask the character witness whether he or she knows or has heard of the principal witness' truthful or untruthful conduct. See *State v. McGraw*, supra, 447.

a. Additional Notes.

(1) The CIU notes that one method for impeaching a witness' credibility as evidence of a witness' character for untruthfulness allows a party to cross-examine a witness about the witness' prior misconduct, other than a felony conviction, subject to certain limitations: first, cross-examination may only extend to specific acts of misconduct other than a felony conviction if those acts bear a special significance upon the issue of veracity, second, whether to permit cross-examination as to particular acts of misconduct lies largely within the **discretion** of the trial court, and third, extrinsic evidence of such acts is inadmissible. (Emphasis added.) Manson v. Conklin, 197 Conn. App. 51, 60 (2020) (conclusions within police department internal affairs (IA) reports were inadmissible as extrinsic evidence of officer's alleged prior misconduct).

(2) Generally, therefore, case law does not permit a party to introduce findings or determinations by a third party that a witness has engaged in misconduct or dishonesty. Id. at 60-62; see also C. Tait & E. Prescott, Connecticut Evidence (4th Ed. 2008) § 6.32.5, p. 362.

(3) In Valentine itself, evidence of **civil judgment** against police detective which was based in part on detective's prior alleged coercion of witness in unrelated criminal case was not relevant with respect to cross-examination of detective, in murder case in which defendant claimed that detective coerced two State witnesses to fabricate statements identifying defendant as shooter; judgment did not clearly or directly reflect on detective's veracity as a witness, and judgment, in light of witnesses' testimony during defendant's trials regarding how detective allegedly coerced taped-recorded statements, was collateral and did not link detective's acts in prior case to those alleged in present case. (Emphasis added.) State v. Valentine, 255 Conn. 61, 71-74 (2020).

III. Duties of the Prosecutor.

For over 100 years this has been our standard:

We are mindful throughout this inquiry, however, of the unique responsibilities of the prosecutor in our judicial system. A prosecutor is not only an officer of the court, like every other attorney, but is also a high public officer, representing the people of the state, who seek impartial justice for the guilty as much as for the innocent...

The prosecutor's conduct and language in the trial of cases in which human life or liberty are at stake should be forceful, but fair, because he [or she] represents the public interest, which demands no victim and asks no conviction through the aid of passion, prejudice or resentment. If the accused be guilty, he [or she] should none the less be convicted only after a fair trial, conducted strictly according to the sound and well-established rules which the laws prescribe....

Paraphrasing a quote from State v. Ferrone, 96 Conn. 160, 168–69 (1921).

IV. Context of the "Blue Flu."

Valentine happened during a historic moment for the New Haven Police Department. During the weekend Valentine happened, three people were killed and at least seven people were wounded by gunfire as many police officers called in sick to protest disciplinary action by the department. This was known as the "Blue Flu," as the department was operating at almost half strength on some shifts. Valentine was known as a Blue Flu case and it had a significant impact on the case as stated in the New York Times:

The shootings, including two deaths that resulted from a noisy gang fight outside a restaurant, brought the toll of slayings this year in New Haven to at least 26, compared with 16 in the comparable period of 1990. Some residents were asking yesterday if some of the violence over the weekend might have been prevented if more officers had been on duty.

"I'm sure if a police officer had been there they would have just gone out, or called for a backup or something and stopped it," said Chris Papanikolaou, co-owner of the Athenian Diner on Whalley Avenue, where the gang fight broke out early Saturday. Two people were shot to death and one person was wounded, the police said.

Mr. Papanikolaou said he routinely paid the city to have a uniformed officer assigned to the restaurant from midnight to 5 A.M. Friday through Sunday. But on Friday, as talk of the possible sickout protest swept the department, he said, he was told that no officers would be available....

"Because of the blue flu they didn't have any extra officers," Mr. Papanikolaou said in a telephone interview.

...

Sergeant Cavalier of the union said the officer who was to have worked at the diner on overtime had been instructed instead to work in a patrol car.

The two men killed in the melee in the parking lot at the diner were Hury Poole, 23 years old, and Andrew Pasley, 22, both of New Haven. In the other fatal shooting, a man was killed Saturday night as he apparently tried to rob a Sunoco gas station on Goffe Street. Two of the station's employees were wounded, one of them critically.

Johnson, Kirk. "Three Killed in New Haven during a Sickout by Police," The New York Times, September 23, 1991, <https://www.nytimes.com/1991/09/23/nyregion/three-killed-in-new-haven-during-a-sickout-by-police.html>.