DOCKET NO.: CR11-0316060-S	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF NEW LONDON
V.	:	AT NEW LONDON (G.A #10)
ELBERT L. MORGAN, JR.	:	JANUARY 23, 2014

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
DISCLOSURE OF EXCULPATORY INFORMATION OR MATERIALS

The Defendant Elbert L. Morgan, Jr. ("Morgan"), by and through his undersigned counsel and in accordance with Connecticut General Statutes, § 54-86c,[1] and Connecticut Practice Book (P.B.), § 40-11, hereby submits this memorandum in support of his motion to compel disclosure of exculpatory information or materials requested on October 29, 2013, in the above-captioned matter with respect to the February 14, 2013, suspension and November 16, 2013, resignation of the investigating and arresting Department of Emergency Services and Public Protection officer in the above-captioned case.

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[1] Section 54-86c provides, in relevant part: "(a) Not later than thirty days after any defendant enters a plea of not guilty in a criminal case, the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case shall disclose any exculpatory information or material which he may have with respect to the defendant whether or not a request has been made therefor. If prior to or during the trial of the case, the prosecutorial official discovers additional information or material which is exculpatory, he shall promptly disclose the information or material to the defendant…. (c) Each peace officer, as defined in subdivision (9) of section 53a-3, shall disclose in writing any exculpatory information or material which he may have with respect to any criminal investigation to the prosecutorial official in charge of such case."

I. INTRODUCTION

In the course of a trial scheduling conference and other proceedings held on January 16, 2014, in the above-captioned case, further described below in Section II, the State informed Morgan that the arresting officer in Morgan's case, J. Severin Bergeron ("Bergeron"), resigned as a sworn officer from the Department of Emergency Services and Public Protection (DESPP) while one or more Internal Affairs investigations were pending. The State anticipated that were Bergeron to testify at trial he would assert his Fifth Amendment right to remain silent rather than submit to cross-examination.[2] The State intended to enter a *nolle prosequi* with the sole condition that Morgan transfer his 91 firearms to a Federal Firearms Licensee, but in a brief morning discussion between the State and the pretrial judge, in the presence of the undersigned and the victim advocate, the pretrial judge indicated that only a disposition which included a plea would be accepted.

The State and the pretrial judge then offered Morgan during the afternoon of January 16, 2014, entry into the Accelerated Pretrial Rehabilitation (AR) program for a nine month period

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[2] See Olin Corp. v. Castells, 180 Conn. 49, 53 (1980) ("The fifth amendment privilege against self-incrimination not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.") (internal citations omitted).

with the sole special condition that Morgan transfer his 91 firearms to a Federal Firearms Licensee. Morgan's firearms collection, nearly fifty-percent of it transferred to him from his grandfather and father by inheritance, and his reasons for owning 91 firearms were the focus of the State and the Court throughout the prolonged 24 month judicial pretrial discussions and plea negotiations despite the fact that no allegation was ever brought against Morgan in this proceeding that firearms were used, threatened to be used, or possessed at any time by Morgan or any other party at the time of the alleged incident and in no other proceeding has there been such an allegation. Each and every one of the 91 firearms seized from Morgan's possession was legally possessed and registered with the state and federal governments, as required by law. Prior to his arrest Morgan was deemed a suitable person by the State of Connecticut to hold a handgun permit. Morgan's permit was revoked by operation of law when a protective order entered in the above-captioned case.[3]

The undersigned pragmatically advised Morgan on January 16, 2014, to accept the nine month period of AR and to agree to transfer his firearms due to the uncertainty of a trial in any criminal case. A conviction for disorderly conduct would result in a lifetime ban from possessing

[3] See Conn. Gen. Stat. § 29-28(b).

firearms.[4] Whether or not an individual is innocent the potential for conviction is palpable; so palpable that the State of Connecticut, in recognition that innocent individuals are convicted, provides funding for the Connecticut Innocence Project to represent indigent individuals wrongfully convicted.[5]

However, as a Commissioner of the Superior Court there is a duty not only to the client but to the integrity of the court system. Page 8 of the January 20, 2014, edition of The Connecticut Law Tribune juxtaposes two articles. The article above the fold is about an attorney suspended for 120 days for conduct which "undermine[s] the administration of justice." Fry, Ethan, "*Lawyer Suspended After Lashing Out At Judge*," The Connecticut Law Tribune, January 20, 2014. The article below is about a judge who waited until the day after a bribe was offered to him to report the bribe to judicial officials. Associated Press, "*No Punishment for Ex-Judge in*

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[4] See 18 U.S.C. § 922(g)(9); but see United States v. Castleman, 695 F.3d 582 (6th Cir. 2012), cert. granted 134 S.Ct. 149 (2013) (Question presented: "Whether respondent's Tennessee conviction for misdemeanor domestic assault by intentionally or knowingly causing bodily injury to the mother of his child qualifies as a conviction for a "'misdemeanor crime of domestic violence.'"). This case may resolve the ambiguity recognized by the U.S. Supreme Court in granting certiorari; an ambiguity that prevents defense attorneys from stating with any level of certainty how a misdemeanor conviction will affect a client's Second Amendment right to possess firearms in the future which results in pleas that otherwise might not enter were the law clearer.

[5] See Connecticut Bar Foundation Innocence Fund at http://www.ctbarfdn.org/ctinnocencefund ("The Connecticut Innocence Fund was created to assist newly released exonerees who have been recently released from prison based on proof of actual innocence of the crimes for which they were imprisoned. A State statute provides for compensation for such exonerees, but that process is slow and leaves newly released exonerees without support during their first months of freedom."); Connecticut Innocence Project at http://www.ct.gov/ocpd/cwp/view.asp?a=4087&q=479218 ("The Connecticut Innocence Project of the Division of Public Defender Services for the State of Connecticut seeks to assist indigent individuals who are convicted of crimes for which they are innocent.").

Bribery Case," The Connecticut Law Tribune, January 20, 2014.[6] The Judicial Review Council "opted to take no action against former Judge Robert Brunetti, saying the panel has only a year to act on misconduct allegations and Brunetti's actions happened more than a year ago." Id.

On January 16, 2014, the undersigned requested information from the DESPP Legal Affairs Unit with regard to Bergeron's resignation. The DESPP provided a record on January 22, 2014, confirming that Bergeron resigned effective November 16, 2013, in "good standing." The DESPP record of Bergeron's status as a "good standing" resignation does not comport with the representation made by the State on January 16, 2014, that Bergeron would assert his Fifth Amendment right against self-incrimination were he called to testify unless included within the definition of a DESPP "good standing" resignation is the potential for arrest should the former sworn officer testify truthfully.

By advising Morgan to accept AR the undersigned protected Morgan's interests as those interests were understood at that moment in time on January 16, 2014, without further disclosure by the State. However, the administration of justice requires more in this case than Morgan and the undersigned's private law practice has the resources to provide. An inquiry worthy of the government resources allocated and attention paid to the matter of State v. Gerald O'Donnell,

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[6] See online edition of The Connecticut Law Tribune article at http://www.ctlawtribune.com/id=1202638781575/No-Punishment-For-Ex-Judge-In-Bribery-Case#ixzz2r4zs2Dho.

Docket CR12-0101235-T (Jud. Dist. Of Tolland) is warranted to uncover the scope of Bergeron's conduct on behalf of every individual who has been and remains accused of a criminal act on the basis of an investigation conducted by an individual whom the States expects would assert the Fifth Amendment right to remain silent were he to testify.[7]

Wherefore, in the cause[8] and administration[9] of justice, the undersigned has moved to compel disclosure of exculpatory information or materials requested on October 29, 2013, on Morgan's behalf and all other individuals accused of crimes based on any investigation conducted by Bergeron, any incident report sworn to by Bergeron, any statement taken by Bergeron, or any affidavit in support of a search or arrest warrant which relies on the truthfulness of brother officers if one of the brother officers relied upon was Bergeron.[10]

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[7] See Owens, David. "*Former State Investigator Sentenced To Four Years For Witness Tampering, Bribery*," Hartford Courant, January 15, 2014. ("'Of all the things that were done, I find that the most damaging to the cause of justice,'" Graham said.") (quoting The Honorable James T. Graham at sentencing) at http://foxct.com/2014/01/15/former-private-investigator-sentenced-to-4-years-for-witness-tampering-bribery/#ixzz2r5EGuViS.

[8] See n. 7, supra, quoting The Honorable James T. Graham.

[9] See Fry, Ethan, "*Lawyer Suspended After Lashing Out At Judge*," The Connecticut Law Tribune, January 20, 2014. (Attorney suspended for 120 days for conduct which "undermine[s] the administration of justice.").

[10] The Connecticut State Division of Criminal Justice condones the submission of warrants for review sworn to and signed by officers who have no involvement in the investigation underlying the probable cause for the warrant, but instead rely entirely on the truthfulness of brother and sister officers. Supervisory Assistant State's Attorney Mary Rose Palmese in a matter pending at the Superior Court in New Britain. According to testimony offered by Berlin Police Department Officer Robert L. Canto during cross-examination by Supervisory Assistant State's Attorney Mary Rose Palmese in a matter pending at the Superior Court in New Britain:

> Q: Now, when you review these search warrants before you sign off as an affiant, you actually -- you read it. Correct?
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> A: Correct, I read it.

Q: And were you aware at the time that it was based on police reports submitted by Officer Bartlett?
A: Yes, ma'am.
Q: Okay. And as a brother officer would -- Officer Bartlett, you rely on information in their reports to be truthful and accurate?
A: Absolutely.
Q: And is that the reason that you are allowed to be an affiant on the document that's submitted to the Court?
A: I believe so.
Q: Okay. And is it typical that, as police officers, you rely on information from brother and sister officers?
A: All the time.
Q: All the time. Okay.

(12/24/2013 H'rg Tr., 64:25-65:14) Officer Canto was an affiant to a Search and Seizure Warrant for firearms (Conn. Gen. Stat. § 29-38c) based on a police response to a home on December 2, 2013. Officer Canto had no knowledge of the December 2, 2013, police response until December 9, 2013, when he signed the warrant. (12/24/2013 H'rg Tr., 60:7-11) He was not one of the four officers at the scene. (Id. at 60:12-15) Prior to signing the warrant he never spoke to any officer who was at the scene, including the single officer, Officer William Bartlett, who wrote a report. (Id. at 60:2-11) Officer Canto never read the report prepared by Officer Bartlett prior to signing the warrant. (Id. at 61:4-11) Officer Canto spoke to one officer, Detective Sean McMahon, who was not one of the four officers at the scene. (Id. at 60:16-20) (The warrant was already drafted when Officer Canto received it. (Id. at 62:4-17) The only action taken by Officer Canto with regard to the investigation underlying the warrant was to read it after it was written. (Id. at 62:13-63:2) The other affiant to the search warrant, Officer David A. Cruickshank, became involved in the December 2, 2013, matter when Detective McMahon entered the office he shared with Officer Canto on December 9, 2013, and Detective McMahon asked Officer Canto and Officer Cruikshank to be co-affiants. (12/27/2013 H'rg Tr., 9:8-12) Officer Cruikshank did not review any documents prior to signing the warrant. (Id. at 9:26-10:8) Detective McMahon has been employed by the Berlin Police Department for 24 years. (Id. at 56:17-21) According to testimony offered by Detective McMahon during cross-examination by Attorney Palmese:

Q: So is it common practice in the Berlin Police Department to draft a warrant from another investigation?
A: Yes, it's happened.
Q: Okay. You're kind of the writer at the department, aren't you?
A: Unfortunately.
Q: You're the best writer, yes, okay. And is it common to rely on information from brother and sister officers when preparing an arrest warrant or a search warrant?
A: It is.
Q: Okay. Because you can rely on truthfulness of your brother and sister officers, correct?
A: That's correct.
Q: All right. And is it common to have two individuals who may not have been involved in the investigation as co-affiants?
A: It is.

II. THE PROCEEDINGS IN STATE V. MORGAN

Elbert "Bud" Morgan, Jr. ("Morgan") is a 49 year old tractor mechanic and life-long resident of North Stonington, Connecticut. Until December 26, 2011, he had never been arrested. On December 26, 2011, Bergeron was a DESPP trooper assigned to Troop E patrol duties in Montville, Connecticut. Bergeron graduated from the Connecticut State Police Academy on November 18, 2010, and originally was assigned to Troop F in Westbrook. He was transferred to Troop E. He resigned while one or more Internal Affairs investigations were pending.

According to a December 26, 2011, *Arraignment/Probable Cause Affidavit* ("affidavit") prepared by Bergeron, submitted to the Superior Court in support of probable cause, and placed in the clerk's file for public disclosure, Morgan's wife contacted the state police on December 26, 2011, to report an incident that occurred approximately 15 hours earlier at the North Stonington marital home shared by Morgan, his wife, and their 15 year old daughter. Bergeron's affidavit reports that Morgan was engaged in a verbal argument with his wife when he "came at [his wife] and got into her face and started pointing at her." The affidavit included allegations that Morgan poked his wife in the chest forcing her to move back away from him and that he slapped her hand. According to Bergeron, Morgan's daughter then arrived home and while engaged in a

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Q: And in this case it happened because Canto and Cruickshank happened to be coming to the courthouse that particular morning?
A: That's correct.

verbal argument with his daughter, Morgan's daughter yelled at him and gave him an "angry look." The argument became physical with the daughter slapping Morgan's hand away from her face, Morgan grabbing his daughter by the wrists, pushing her and pinning her down on the bed to restrain her. The daughter freed her right arm and punched Morgan twice in the face at which time Morgan again restrained his daughter.

Bergeron's affidavit was supported by two statements he took from Morgan's wife and daughter on December 26, 2011. The statements were hand-written by Bergeron. Morgan's wife did not sign the second and final page of her statement. Despite the dispatch of at least four other officers to the incident, including Sgt. Heath Ericson, Trooper First Class Thomas Fabian, Trooper Joshua Chivers, and Trooper David Malik, no third-party witness signed in the space provided at the end of the statements hand-written by Bergeron.

Despite the lapse in time between the incident and the report, the state police arrested Morgan without an arrest warrant as the decision was made by Bergeron that "[d]ue to the fact that the accused has firearms including heavy machine guns with ammunition" and "for the safety of all parties involved" the arrest would be an on-site arrest as if there had been a response based on speedy information. The police response was not based on speedy information because Morgan's wife and daughter left the scene and waited approximately 15 hours to file a police report.

All of the firearms were seized, according to Bergeron, "since he [Morgan] was arrested on a domestic related charge … for the safety of all parties involved." State law provides only for the seizure of firearms in the course of a domestic violence arrest when a firearm is in plain view or in the possession of the suspect.[11] No use of a firearm, knife or other dangerous weapon was threatened or alleged. Morgan has never possessed or used his firearms in a threatening manner. Each and every one of the 91 firearms, 8 Upper Receivers, Cross-Bow, and two magazines seized from the basement and gun vault in Morgan's home was legal and properly registered as required with the state and federal governments. Morgan has never been charged nor is there any evidence he could be charged with any offense related to firearms.

Morgan had never been the subject of a restraining or protective order and law enforcement had never been called to his home on a complaint about him. A *Family Violence*

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[11] Section 46b-38b(a) provides, in relevant part: "Whenever a peace officer determines that a family violence crime has been committed, such officer may seize any firearm or electronic defense weapon, as defined in section 53a-3, or ammunition at the location where the crime is alleged to have been committed that is in the possession of any person arrested for the commission of such crime or suspected of its commission or that is in plain view." (emphasis added). When Morgan protested at his AR hearing on January 16, 2014, that he never consented to the firearms being taken, the Court, knowing that there was no allegation that a firearm was possessed or threatened to be used in the course of the December 25, 2011, incident informed Morgan that since it was a domestic arrest his consent did not matter. Neither were the firearms in plain view because Morgan was not even arrested at his home where the incident allegedly took place. He was arrested more than 15 hours later in his vehicle when his wife contacted the police. There were no firearms in his vehicle when he was arrested. No matter, in Connecticut, despite the law and fundamental constitutional rights, police officers take firearms at domestic violence calls even when the law does not permit. More confusing is the fact that Bergeron lists the 91 firearms as "evidence" on the property inventory forms filed with the court clerk.

Offense Report prepared by the state police on December 26, 2011, which provides four options for level of injury to a victim, specifically, "Serious Physical Injury," "Minor Physical Injury," "No Physical Injury," and "Fatal," noted that Morgan's wife and daughter received "No Physical Injury." "Physical injury" is defined under state statute as "impairment of physical condition or pain."[12]

Morgan was arrested by Bergeron on December 26, 2011, charged with Risk of Injury and Disorderly Conduct, and held on a $50,000 bond for two weeks until his bond was reduced with an agreement to attend counseling. Morgan pleaded "Not Guilty" on May 7, 2012. Originally represented by the Office of the Public Defender, Morgan retained the undersigned in December 2012 to represent him in court and to prevent the state police from destroying his firearms as had been threatened in a letter dated December 28, 2011. From the commencement of the undersigned's representation in February 2013, Morgan provided detailed responses disputing and denying the statements and allegations set forth by Bergeron in the affidavit filed with the court clerk. Morgan provided a hand-written statement to the State on December 4, 2013, denying Bergeron's allegations and filed it with the court clerk. He pleaded "Not Guilty"

[12] See Conn. Gen. Stat. § 53a-3(3).

on December 4, 2013, again to the charges of Breach of Peace, Unlawful Restraint, and Risk of Injury filed by the State in anticipation of trial.

Previously, the State had offered Morgan a plea to Unlawful Restraint, a Class A misdemeanor, with no incarceration, and a period of probation. A conviction of this charge would have made Morgan ineligible under federal law to possess any firearm or ammunition for the rest of his life.[13] Throughout the course of pretrial discussions the focus was placed on the number and type of Morgan's firearms. Repeatedly, the question was asked why anyone needs to own that many firearms which begged the response of why anyone collects any property. In some instances for investment, in some instances as inheritance, and, in the United States, as long as the property is legal, in some instances just because an individual chooses to, no explanation or justification to the government required.[14] Morgan opted for a trial.

Morgan appeared for trial on October 30, 2013, prepared to proceed with jury selection. He filed a Request for a Bill of Particulars, a Notice of Defense,[15] and motions to preclude

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[13] See 18 U.S.C. § 922(g)(9); see also n. 4, supra.

[14] For example, the State of Connecticut has mandated registration of certain firearms since 1994 but not even the state registration forms ask why the registrant owns the firearms.

[15] Morgan provided notice that he intended to rely on section 53a-18(1) of the Connecticut General Statutes as a defense, which provides: "A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person, except a person entrusted with the care and supervision of a minor for school purposes as described in subdivision (6) of this section, may use reasonable physical force upon such minor or incompetent person when and to the extent that he reasonably believes such to be necessary to maintain discipline or to promote the welfare of such minor or incompetent person."

reference to Newtown or to his collection of firearms as an "arsenal."[16] The State offered as an option on October 30, 2013, two diversionary programs, AR and the FVEP. The Court stated its intention in chambers to order a two year period of AR. The undersigned, absent any knowledge of the Bergeron factor, persuaded Morgan to apply for both programs.[17] Morgan hesitantly applied and agreed to the sale of his firearms. The matter was continued until December 4, 2013, for the Court to consider Morgan's applications for the diversionary programs that would ultimately result in dismissal and the preservation of his right to possess firearms, albeit under the condition that he sell the firearms that were seized on December 26, 2011.

An article by Karen Florin published on October 31, 2013, in *The Day* newspaper online edition entitled "*North Stonington collector agrees to sell guns to resolve domestic charges.*"[18] The article cites to and quotes, absent any knowledge of the Bergeron factor, a "police report" containing allegations that Morgan had indicated from the commencement of the case were false. Morgan, absent any knowledge of the Bergeron factor, reconsidered his AR and FVEP

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[16] Morgan has resided on property in North Stonington previously owned and bequeathed to the next generation from his grandfather to father to son. The estate of Morgan's grandfather, Walter H. Brown, transferred in July 2002 to Morgan 39 firearms, the most valuable a Winchester Model 21 shotgun manufactured at the Winchester Repeating Arms Factory in New Haven, Connecticut, between 1931 and 1959. In total, 16 of the firearms transferred from Morgan's grandfather were Winchester models. The average monetary value of the 39 firearms is $400. A monetary price cannot be placed on the historic and sentimental value. In September 2003, Morgan's father, Elber L. Morgan, Sr., transferred six pistols and revolvers to Morgan.

[17] See n. 1, supra, and referent text.

[18] See online edition of *The Day* article at http://www.theday.com/article/20131031/NWS02/131039959/1070/nws.

applications knowing that the acceptance of the programs in combination with the allegations taken from police report and distributed by the media to the public, if unopposed, implied guilt.[19]

Morgan, absent any knowledge of the Bergeron factor, withdrew his AR and FVEP applications on December 4, 2013, and his case returned to the trial list. The undersigned, absent any knowledge of the Bergeron factor, received a notice dated January 10, 2014, of a meeting on January 16, 2014, with the trial judge to discuss trial scheduling issues. Prior to January 16, 2014, the State provided a witness list which included Bergeron, Sgt. Ericson, Trooper Fabian, Trooper Chivers, and Trooper Malek, Morgan's wife, and Morgan's daughter. Jury selection was scheduled at the January 16, 2014, meeting to proceed on January 17, 2014. Subsequent to the meeting, the State asked the undersigned to stay for a meeting with the pretrial judge. The undersigned agreed but did not ask for any further information about the purpose of the meeting.

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[19] The undersigned, absent any knowledge of the Bergeron factor, argued in a motion to dismiss the case in its entirety that P.B. § 40-10(a) prohibits defense counsel from disclosing information to a client when such information is disclosed to defense counsel under P.B. § 40-13A. Included within information provided to defense counsel under P.B. § 40-13A are police reports. If defense counsel is prohibited from providing police reports to a client under the superior court rules of practice then by implication police reports may not be provided to the media where not only defendants will view the police reports but anyone and everyone with access to the Internet will be able to view the reports. The Court and State accurately responded that a 2008 amendment to the Practice Book mandates that police reports used to find probable cause at arraignment be filed with the court clerk. P.B. § 37-12(d) provides: "Unless the judicial authority entered an order limiting disclosure of the affidavits submitted to the judicial authority in support of a finding of probable cause, whether or not probable cause has been found, all such affidavits, including any police reports, shall be made part of the court file and be open to public inspection and copying, and the clerk shall provide copies to any person upon receipt of any applicable fee." So, while an attorney cannot provide a document to his or her client without court approval, the client may purchase the same document, along with everyone else, from the clerk.

A conversation took place between the State and the pretrial judge in the hallway between chambers and the courtroom, witnessed by the undersigned and a victim advocate.[20] The undersigned and victim advocate said nothing. After the pretrial judge entered the courtroom the undersigned asked the State if there was any exculpatory information to disclose as it was the undersigned's impression from the hallway conversation with the pretrial judge and a previous comment made by the State in the trial judge's chambers that Bergeron had falsified hundreds of reports and resigned from the DESPP rather than be terminated or prosecuted. The State had a document which appeared to be a fax cover sheet and one page which the undersigned requested but was not provided for the stated reason that it was "work-product." The undersigned left the courthouse contemplating motions related to the newly-discovered exculpatory information about the arresting officer's credibility.

Approximately one hour later the undersigned received a phone call from the State presenting an option of returning to the courthouse to discuss the matter again with the pretrial judge that afternoon or the next morning. The undersigned's understanding was that the *nolle prosequi* would be readdressed with the condition that Morgan sell the firearms seized by the

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[20] The conversation was not transcribed and as the undersigned's perspective of the conversation is negative due to the impact the pretrial judge had on what had I subsequently learned was the State's intent to enter a *nolle prosqequi*, the undersigned declines to describe the conversation or its demeanor any further.

state police on December 26, 2011.The undersigned, already in Hartford, returned to New London and told Morgan to leave work and be present in court at 2 p.m.

The undersigned met Morgan at the courthouse and discussed with him for the first time the morning events and the limited information disclosed concerning Bergeron. In the 2 p.m. meeting the pretrial judge informed the State that the trial could easily move forward without Bergeron as the testimony of Morgan's wife and daughter were sufficient to convict. The State informed the undersigned that the State's position regarding a *nolle prosequi* had changed since the morning. AR was offered as the State's accepted option to a trial. Morgan would not have to apply for the FVEP as he had in October 2013. Morgan agreed to a nine month period of AR with no special conditions other than he sell his firearms.

III. IMPLICATIONS FOR THE CAUSE AND ADMINISTRATION OF JUSTICE

In finding probable cause on December 27, 2011, to hold Morgan on a $50,000 bond the Court relied on an affidavit prepared by a sworn officer who according to the State would now assert his Fifth Amendment right to remain silent rather than be cross-examined concerning his credibility at trial.[21] After finding probable cause based on Bergeron's affidavit the Court, in

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[21] In the course of chambers discussion with the pretrial judge at the 2 p.m. January 16, 2014, meeting, the pretrial judge accurately commented that Bergeron is innocent until proven guilty. A police officer who resigns to avoid prosecution will remain forever innocent. Morgan is innocent too so it is unclear why the focus was on a forced sale of his 91 firearms which had no involvement in the alleged incident any more than the forced sale of his home because that is where the alleged incident occur. The only admission made by Morgan is that he owns 91 firearms,

accordance with a practice required under a 2008 amendment to the Practice Book, ordered the affidavit placed in the clerk's file for public access. *The Day* newspaper, absent any knowledge of the Bergeron factor, obtained the affidavit on or about October 29, 2013, cited it and quoted it in preparing a story that was published the next day. Morgan withdrew his AR and FVEP applications at his next court appearance on December 4, 2013.

Arguably, Bergeron's affidavit cast Morgan in a light that met expectations which result in a focus placed by the State and the Court on the confiscation of firearms, whether or not there has been a conviction or any allegation that the firearms were used, threatened to be used, or possessed at the time of the incident, or ever. In his affidavit Bergeron reports that Morgan "is obsessed with his guns," "sits and watches TV holding a rifle in his arms and subscribes to 'Soldier of Fortune' and numerous other types of gun and survival magazines." It can be confirmed that Morgan never subscribed to 'Soldier of Fortune' magazine.[22] Morgan denies the other conduct attributed to him by Bergeron[23] although the work involved in maintaining the value of 91 firearms as an asset requires care and frequent attention which requires that the owner hold the firearms.

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conduct that is not illegal and which his wife of more than 20 years condoned while she raised their daughter for 15 years.

[22] Although, it is not a magazine forbidden by the government. See U.S. Const., amend. I; Conn. Const., art. 1, § 4.

[23] Morgan does not deny watching television in his home.

Knowing that Bergeron resigned during the pendency of at least one Internal Affairs investigation and believing that Bergeron would assert his Fifth Amendment right to remain silent rather than submit to cross-examination, the State still relied upon Bergeron's written investigation report to present the facts of the case to the Court without any caveat placed on the record of the concerns the State clearly had about Bergeron's credibility.[24] The State then placed on the record its intent to order a transcript of the proceedings, including the State's rendition of the facts provided by Bergeron, to forward to the DESPP Special Licensing and Firearms Unit facilitating the distribution of questionable information to travel full circle back to the DESPP for continued use by the DESPP, to be relied upon by fellow officers in the performance of their official duties. So a written investigation report prepared by a former DESPP sworn officer forced by DESPP to resign was read in court by the State with the intent to provide a transcript of the State reading Bergeron's written investigation back to the DESSP.

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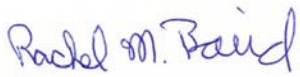
[24] See State v. Smith, 289 Conn. 598, 609, 960 A.2d 993, 1003 (2008) ("It long has been the practice that a trial court may rely upon certain representations made to it by attorneys, who are officers of the court and bound to make truthful statements of fact or law to the court. See Rules of Professional Conduct 3.3(a)(1).").

IV. CONCLUSION

For the forgoing reasons, undersigned counsel and this matter cannot rest. The exculpatory information and materials must be disclosed.

DEFENDANT
ELBERT L. MORGAN, JR.

BY: 

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum was transmitted by email on January 23, 2014, as follows:

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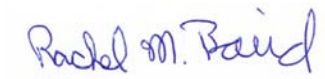

Rachel M. Baird
Commissioner of the Superior Court