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**SUPREME COURT**  
**OF THE**  
**STATE OF CONNECTICUT**

---

JUDICIAL DISTRICT OF NEW HAVEN

---

**S.C. 20447**

**STATE OF CONNECTICUT**

**v.**

**JAMES GRAHAM**

---

SEPARATELY BOUND APPENDIX  
PART 1 AND PART 2

---

ALICE OSEDACH  
ASSISTANT PUBLIC DEFENDER  
JURIS 310039  
OFFICE OF THE CHIEF PUBLIC DEFENDER  
55 W. MAIN STREET, SUITE 430  
WATERBURY, CT 06702  
TEL. (203) 574-0029  
FAX: (203) 574-0038  
[Alice.OsedachPowers@jud.ct.gov](mailto:Alice.OsedachPowers@jud.ct.gov)

COUNSEL OF RECORD  
AND  
ARGUING ATTORNEY

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ORIGINAL INFORMATION:

COURT DATE:

A:

DISPOSITION DATE: 12/12/2019

YES

07/10/2018

GA07 - MERIDEN

DOCKET NO.: NNH -CR18-0296757-T

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

GRAHAM JAMES



99 BASSETT ST, NEW HAVEN, CT 06511

Did commit the offenses recited below:

Count: 1 MURDER-COMMISSION OF FELONY Type/Class: F/A At: HAMDEN

On or About: 11/13/2017 In Violation Of CGS/PA No: 53a-54c

CONSPIRACY TO COMMIT Type/Class: F/B

Count: 2 ROBBERY 1ST DEG-DEADLY WEAPON 53a-134(a)(2) At: HAMDEN

On or About: 11/13/2017 In Violation Of CGS/PA No: 53a-48

Count: 3 CARRYING PISTOL WO PERMIT Type/Class: F/D At: HAMDEN

On or About: 11/13/2017 In Violation Of CGS/PA No: 29-35(a)

SEE OTHER SHEETS FOR ADDITIONAL COUNTS	DATE	SIGNED (PROSECUTING AUTHORITY)
--	------	--------------------------------

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE)	(DATE)	BOND \$2500000	SURETY	<input type="checkbox"/> CASH	<input type="checkbox"/> COURT	<input type="checkbox"/> JURY
<input type="checkbox"/> ATTY. <input type="checkbox"/> PUB. DEFENDER	GUARDIAN	REDUCTION	B.O.	APPEAL	ELECTION WITHDRAWN DATE	<input checked="" type="checkbox"/> SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
1	04/04/19	NG			GY			5 1/2 years
2	04/04/19	NG			GY			20 years concurrent
3	04/04/19	NG			GY			5 years concurrent (1 year is mandatory)

DATE	OTHER COURT ACTION	JUDGE	CONTINUANCES
DATE			DATE PURPOSE REASON
9/9/2019	Voir Dire began before Vitale, J		1. 10/1/19 J
9/20/2019	Voir Dire concluded		2. 12/12/19 DP
9/24/2019	Evidence began before Vitale, J and a jury of 12.		3.
10/3/2019	Trial concluded. Verdict of Guilty on counts 1, 2, 3.		4.
10/3/2019	PST ordered for 12/12/2019 per Vitale, J.		5.
10/3/2019	Conditions removed from mitt per classification by Vitale, J		6.
			7.
			8.
			9.
			10.

FINE PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN.	SEE REVERSE SIDE
PROSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE	
S. Garbarsky / R. Durham	C. Boehman			

Graham, James

NNH-CR18-0296757-T

24/10/19 Motion for New Trial

12/12/2019 Denied per Vitale, J.

25/10/19 Motion for Judgment of Acquittal

12/12/2019 Denied per Vitale, J.

12/12/2019 TES: 52 years to serve, all counts to be served concurrently.

12/12/2019 Defendant advised re: risk reduction credits / parole eligibility per Vitale, J.

12/12/2019 The Court, Vitale, J., ordered the PSI corrected to remove "Alfonso" as the defendant's middle name.

12/12/2019 The defendant refused to sign the Notice of Right to Appeal Judgment of Conviction.

12/12/2019 The defendant was given a carbon copy of the unsigned notice.

12/12/2019 Pardon process paperwork given to the defendant.

12/12/2019 DWOR paperwork given to the defendant.

12/12/2019 NCI/NFI per clarification by Vitale, J.

26) 12/20/2019 Application for Waiver of Fees Costs + Expenses and Appointment of Counsel on Appeal

2/5/2020 Granted per Clifford, J

27) 12/20/2019 Application for Review of Sentence

28) 12/20/2019 Notice of Application

		Graham, James NNH-CE18-0296757-T
18) 8-15-19	Witness List (state)	
19) 8-27-2019	Witness List.	
9/5/19	Offer rejected and withdrawn before Clifford, J.	
20) 9/9/19	Defendant's Proposed Witness List	
9/13/19	Per Vitale, J. defendant is to be kept separate from:	
	Steven Capers, Donovan Lowndes, Jalen Bacote, Robert Moya, Brennen Coleman - to be reflected	
	on mittimus	
21) 9/24/19	State's Response to Defendant's Oral motion to Suppress Tangible Evidence	
22) 9/24/19	Motion in limine to Establish Fair Procedures for Determining the Admissibility of Evidence Concerning Uncharged Crimes or Acts of Misconduct	
23) 10-1-19	Defendant's Request to Charge	

**LONGFORM INFORMATION**  
**DOCKET NUMBER CR18-0296757**  
**IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT**  
**JUDICIAL DISTRICT OF NEW HAVEN**

Seth R. Garbarsky, Senior Assistant State's Attorney for the Judicial District of New Haven,  
hereby accuses **JAMES GRAHAM** as follows:

**COUNT ONE:**

THAT THE SAID **JAMES GRAHAM** did commit the crime of **FELONY MURDER** and charges that, in the City of Hamden, on or about the 13th day of November, 2017, at approximately 3:40 p.m., in the area of 57 Dudley Street, the said **JAMES GRAHAM**, acting either alone or with one or more persons, did commit or attempt to commit robbery, and in the course of and in furtherance of such crime or of flight therefrom, he, or another participant, caused the death of a person other than one of the participants, to wit: Leandre Benton, said conduct being in violation of §53a-54c of the Connecticut General Statutes.

**COUNT TWO:**

THAT THE SAID **JAMES GRAHAM** did commit the crime of **CONSPIRACY TO COMMIT ROBBERY IN THE FIRST DEGREE** and charges that, in the City of Hamden, on or about the 13th day of November, 2017, at approximately 3:40 p.m., in the area of 57 Dudley Street, the said **JAMES GRAHAM**, with the intent that conduct constituting the crime of Robbery in the First Degree be performed, agreed with one or more persons to engage in or cause the performance of such conduct and any one of them committed an overt act in pursuance of such conspiracy, said conduct being in violation of §53a-48(a) and §53a-134(a)(2) of the Connecticut General Statutes

Judicial District of New Haven  
SUPERIOR COURT  
FILED

OCT - 2 2019

CHIEF CLERK'S OFFICE

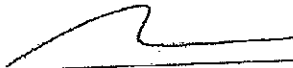


**COUNT THREE:**

THAT THE SAID JAMES GRAHAM did commit the crime of CARRYING A PISTOL WITHOUT A PERMIT and charges that, in the City of Hamden, on or about the 13th day of November, 2017, at approximately 3:40 p.m., in the area of 57 Dudley Street, the said JAMES GRAHAM, did carry a pistol or revolver upon his person, when he was not in his dwelling house or place of business, without a permit to carry the same issued as provided in §29-28 of the Connecticut General Statutes, said conduct being in violation of §29-35(a) of the Connecticut General Statutes.

THE STATE OF CONNECTICUT

BY

  
Seth R. Garbarsky  
Senior Assistant State's Attorney

ORIGINAL INFORMATION:

COURT DATE:

At:

DISPOSITION DATE:

YES

07/10/2018

GA07 - MERIDEN

DOCKET NO.: NNH - CR18-0296757-T

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99 BASSETT ST, NEW HAVEN, CT 06511

Did commit the offenses recited below:

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On or About: 11/13/2017 In Violation Of CGS/PA No: 53a-54c

CONSPIRACY TO COMMIT Type/Class: F/B  
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On or About: 11/13/2017 In Violation Of CGS/PA No: 53a-48

Count: 3 CARRYING PISTOL WO PERMIT Type/Class: F/D At: HAMDEN  
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SEE OTHER SHEETS FOR ADDITIONAL COUNTS	DATE	SIGNED (PROSECUTING AUTHORITY)
--	------	--------------------------------

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE)		BOND \$2500000	SURETY	ELECTION <input type="checkbox"/> CASH <input type="checkbox"/> COURT <input type="checkbox"/> JURY	
<input type="checkbox"/> ATTY. <input type="checkbox"/> PUB. DEFENDER		REDUCTION	B.O.	ELECTION WITHDRAWN DATE <input type="checkbox"/> SEIZED PROPERTY <input checked="" type="checkbox"/>	

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN		VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
			DATE	NEW PLEA				
1	04/04/19	NG						100384SW
2	04/04/19	NG						
3	04/04/19	NG						

DATE	OTHER COURT ACTION	JUDGE	CONTINUANCES		
			DATE	PURPOSE	REASON
			1. 9-5-19	X	9/26/19 J 10/1/19 J
			2. 9-9-19	J	10/2/19 J
			3. 9-11-19	J	
			4. 9-12-19	J	
			5. 9-13-19	J	
			6. 9-17-19	J	
			7. 9-18-19	J	
			8. 9-19-19	J	
			9. 9-20-19	J	
			10. 9-24-19	J	
			10. 9-25-19	J	

FINE PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN	<input type="checkbox"/> SEE REVERSE SIDE
PROSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE	

**LONGFORM INFORMATION**  
**DOCKET NUMBER CR18-0296757**  
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Judicial District of New Haven  
**SUPERIOR COURT**  
**FILED**

**AUG 15 2019**

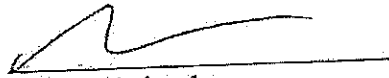
**CHIEF CLERK'S OFFICE**

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THE STATE OF CONNECTICUT

BY

  
Seth R. Garbarsky  
Senior Assistant State's Attorney

ORIGINAL INFORMATION: YES  
COURT DATE: 07/10/2018  
AT: GA07 - MERIDEN

DISPOSITION DATE:  
DOCKET NO.: NNH -CR18-0296757-T

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99 BASSETT ST, NEW HAVEN, CT 06511

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- Count: 3 CARRYING PISTOL WO PERMIT Type/Class: F/D At: HAMDEN  
On or About: 11/13/2017 In Violation Of CGS/PA No: 29-35(a)

SEE OTHER SHEETS FOR ADDITIONAL COUNTS

DATE \_\_\_\_\_ SIGNED (PROSECUTING AUTHORITY) \_\_\_\_\_

**COURT ACTION**

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (DATE) \_\_\_\_\_ BOND \$2500000 SURETY \_\_\_\_\_ ELECTION  CASH  COURT  JURY

(JUDGE) \_\_\_\_\_ REDUCTION \_\_\_\_\_ B.O. \_\_\_\_\_ APPEAL \_\_\_\_\_ ELECTION WITHDRAWN DATE \_\_\_\_\_ SEIZED PROPERTY

ATTY.  PUB. DEFENDER GUARDIAN \_\_\_\_\_ ADDITIONAL DISPOSITION 100384SW

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN		VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
			DATE	NEW PLEA				
1	4-4-19	PC NG						
2	4-4-19	PC NG						
3	4-4-19	PC NG						

DATE	OTHER COURT ACTION	JUDGE	CONTINUANCES	
			DATE	PURPOSE REASON
4-4-19	PRO forma NOT guilty & jury election entered on all counts before Clifford S.		5-14-19	
			5-14-19	
			5-26-19	
			6-9-19	X

FINE PAID \_\_\_\_\_ RECEIPT NO. \_\_\_\_\_ MITTIMUS DATE \_\_\_\_\_ TRIAL TOWN \_\_\_\_\_  SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION \_\_\_\_\_ REPORTER ON ORIGINAL DISPOSITION \_\_\_\_\_ SIGNED CLERK \_\_\_\_\_ SIGNED JUDGE \_\_\_\_\_

**LONGFORM INFORMATION**  
**DOCKET NUMBER CR18-0296757**  
**IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT**  
**JUDICIAL DISTRICT OF NEW HAVEN**

Seth R. Garbarsky, Senior Assistant State's Attorney for the Judicial District of New Haven, and Callum A.F. Sproule, Certified Legal Intern for the State's Attorney for the Judicial District of New Haven accuse **JAMES GRAHAM** as follows:

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Judicial District of New Haven  
SUPERIOR COURT  
FILED

MAR 22 2019

CHIEF CLERK'S OFFICE

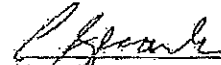
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**COUNT THREE:**

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THE STATE OF CONNECTICUT

BY

  
\_\_\_\_\_  
Callum A.F. Sproule  
Certified Legal Intern

  
\_\_\_\_\_  
Seth R. Garbarsky  
Senior Assistant State's Attorney

**INFORMATION**

JD-CR-71 Rev. 3-11

STATE OF CONNECTICUT  
SUPERIOR COURT

Disposition date
Agency number CT0006200

Police Case number  
**1700046438**

Agency name  
**Hamden Police**

**Title, Allegation and Counts**

State of Connecticut vs. (Name of accused)  
**GRAHAM, James**

Residence (Town) of accused  
**New Haven**

Docket number  
**CR18-296757**

Address  
**99 Bassett St.**

Date of birth  
**01/05/2000**

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that:

Town held at (Town):  
**Meriden**

Geographical area number  
**7**

Court date

Count One — Did commit the offense of:  
**CONSPIRACY TO COMMIT ROBBERY 1ST DEGREE**

At (Town)  
**Hamden**

On or about (Date)  
**11/13/2017**

In violation of General Statute number  
**53a-48/ 53a-134**

Continued to  
**7-17-18**

Purpose  
**X**

Reason

Count Two — Did commit the offense of:  
**MURDER-COMMISSION OF FELONY**

At (Town)  
**Hamden**

On or about (Date)  
**11/13/2017**

In violation of General Statute number  
**53a-54c**

Continued to  
**1-13-18**

Purpose  
**X**

Reason

Count Three — Did commit the offense of:

At (Town)

On or about (Date)

In violation of General Statute number  
**3-2-19 X**

Continued to  
**4-14-18**

Purpose  
**X**

Reason

See other sheet for additional counts

Date  
**7/3/18**

Signed (Prosecuting Authority)

**Court Action**

Defendant advised of rights before plea

(Judge) **Sizemore** (Date) **7/17/18**

Bond **W/O P** Surety  In %  Cash  Ejection (Date)

Attorney  Public defender  Guardian

Bond change **2,500,000 - 7/17/18**

Seized property inventory number

Count	Plea date	Plea	Plea withdrawn		Verdict finding	Fine	Remit	Additional disposition
			Date	New plea				
1	12-21-18	PE				\$	\$	
2	12-21-18	PE				\$	\$	
3						\$	\$	

Date **7/10/18** Other Court Action Judge **Sizemore**

Case ordered transferred to **GAJD** for **7/17/18**

**7-17-18** IPC time folded into **6-20-2018** per clerk's

**7-17-18** Attn: **clerk** (re: **WIT**) appointed per clerk's

Receipt number

Cost  IMP  NCI

Bond information  Bond forfeited  Forfeiture vacated  Forfeiture vacated and bond reinstated

Application fee - receipt number if paid  Circle one **W I Q** Program fee - receipt number if paid  Circle one **W I Q** Probation fee - receipt number if paid  Circle one **W I Q**

Prosecutor on original disposition Reporter/monitor on original disposition: Signed (Clerk) Signed (Judge)



**INFORMATION**

JD-CR-71 Rev. 3-11

Police Case-number  
1700046438

STATE OF CONNECTICUT  
SUPERIOR COURT

Agency name  
Hamden Police

Disposition date

Agency number  
CT0006200

**Arrest Warrant**

Geographical area number 7 State of Connecticut vs. **GRAHAM, James**

To: Any Proper Officer of the State of Connecticut

By Authority of the State of Connecticut, you are hereby commanded to arrest the body of the within-named accused. ("X" all that apply)

A. Accused is ordered to be brought before a clerk or assistant clerk of the Superior Court.

B. Accused is not entitled to bail.

If A, B or both are checked above, you shall without undue delay bring the arrested person before the clerk or assistant clerk of the Superior Court for the geographical area where the offense is alleged to have been committed, or if the clerk's office is not open, to a community correctional center within said geographical area, or the nearest community correctional center if no such center exists in the geographical area, or to the Correctional Institution, as the case may be.

C. Bail set at 2,500,000

D. Non-financial conditions of release;

Extradition boundaries established by prosecutor

E. Conditions of release not determined by court.

By the Court Signed (Judge of the Superior Court) [Signature] Date 7/6/18 Name of Judge (Print or Type) [Name]

**Return On Arrest Warrant**

Geographical area number 7 Town of Hamden Date 7-10-18 State of Connecticut

Then and there, by virtue of the within and foregoing complaint and warrant, I arrested the body of the within-named accused and read the same in the hearing of said accused; and have said accused here in court for examination.

Attest (Officer's signature and Department)

Date	Other Court action	Judge
1) 7-13-18	States Req for Discd + Inspect	
2) 7-13-18	States Demand for Notice of Alibi Defense	
3) 7-13-18	States Notice of Intention to Offer DNA Evidence	
4) 8-1-18	Appearance of Thomas E. Farver	
5) 8-6-18	Motion for Disclosure for Hearing in Probable Cause	
6) 8-6-18	Motion for Disclosure	
7) 8-6-18	Motion for Bill of Particulars	

8) 8-6-18 Request by Defendant for Essential Facts

9) 8-6-18 Motion to Preserve Evidence

9-13-18 Order entered per Plaintiff's

10) 8-6-18 Motion for Disclosure of Unethical Misconduct

9-13-18 Order entered per Plaintiff's

11) 8-6-18 Motion to Suppress Identifications

12) 8-6-18 Motion to Suppress Statements

13) 8-6-18 Motion to Suppress Evidence

14) 8-6-18 Motion to Provide Advance Notice of Any Destructive Testing

8) 8-6-18 Motion for Extension of Time to file Motions.

16) 9-6-18 Motion to Dismiss

8-9-18 HPC time tolled until 9-13-2018 per Plaintiff's

17) 8-2-18 Motion for Appt. of Assigned Counsel

8-9-18 Granted. Tho. Fawer appointed by Plaintiff, J.

9-13-18 HPC time tolled until 10-24-2018 per Plaintiff's

10-24-18 HPC time tolled until 11-21-2018 per Plaintiff's

11-21-18 HPC time tolled until 12-21-2018 per Plaintiff's

12-21-18 HPC waived per Plaintiff's.

NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
VS. : AT NEW HAVEN  
JAMES GRAHAM : AUGUST 2, 2018

**MOTION TO SUPPRESS EVIDENCE**

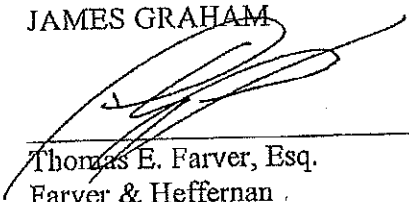
The defendant moves to suppress as evidence in any and all proceedings against him all evidence seized and obtained in the instant matter and any and all evidence, tangible and intangible, directly obtained or indirectly derived from said evidence. The defendant relies on his rights under the Fourth and Fourteenth Amendments to the United States Constitution, Article I, Section 7 of the Constitution of the State of Connecticut and the relevant portion of the Connecticut General Statutes; in one or more of the following respects:

1. The property was seized without a warrant;
2. The warrant is insufficient on its face;
3. The property seized is not adequately described in the warrant;
4. There was not probable cause for believing the existence of the grounds upon which the warrant was issued;
5. The warrant was issued without a sufficient independent judicial determination of probable cause;
6. The warrant was illegally executed;

7. The warrant was not executed and returned with reasonable promptness;
8. The warrant which led to the search was illegal;
9. The allegations contained in the affidavit, which was the basis for the search warrant, are not true; and
10. For such further grounds as may become apparent upon the hearing of this motion.

THE DEFENDANT,  
JAMES GRAHAM

By: \_\_\_\_\_

  
Thomas E. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: (203) 230-2500  
Fax: (203) 288-4702  
Juris #: 370471

**ORDER**

The foregoing motion having been heard by the Court, it is hereby  
ordered: GRANTED / DENIED.

THE COURT,

BY \_\_\_\_\_  
JUDGE

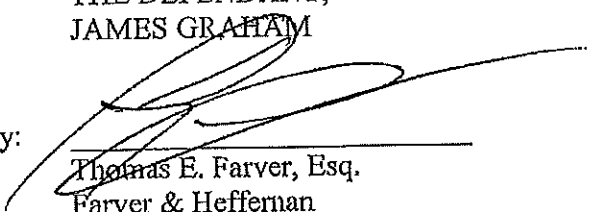
NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
VS. : AT NEW HAVEN  
JAMES GRAHAM : AUGUST 2, 2018

**REQUEST BY DEFENDANT FOR ESSENTIAL FACTS**

Pursuant to the Sixth and Fourteenth Amendments to the Constitution of the United States, Article I, Section 8 of the Connecticut Constitution, and Section 36-19 of the Connecticut Practice Book, the defendant in the above-captioned action hereby moves this court for an order that the prosecuting attorney amend the information by adding or annexing thereto a statement of the essential facts claimed to constitute the offenses charged.

THE DEFENDANT,  
JAMES GRAHAM

By:

  
Thomas E. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: (203) 230-2500  
Fax: (203) 288-4702  
Juris #: 370471

ORDER

The foregoing motion having been heard by the Court, it is hereby ordered: GRANTED / DENIED.

THE COURT,

BY \_\_\_\_\_  
JUDGE

CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on this 2<sup>nd</sup> day of August 2018 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

State's Attorney's Office  
Superior Court  
Judicial District at New Haven  
235 Church Street  
New Haven, CT 06510

  
\_\_\_\_\_  
Thomas E. Farver, Esq.

NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
VS. : AT NEW HAVEN  
JAMES GRAHAM : AUGUST 2, 2018

**MOTION FOR BILL OF PARTICULARS**

Pursuant to the Sixth and Fourteenth Amendments to the Constitution of the United States, Article I, Section 8 of the Connecticut Constitution, and sections 41-20, 41-22 of the Connecticut Practice Book, the defendant in the above-captioned action hereby moves this court for an order compelling the State to file a Bill of Particulars setting forth information needed to enable him to prepare his defense. This information includes, but is not limited to:

1. All of the offenses with which the defendant is charged and their statutory citations;
2. Which specific prohibited conduct, in the language of the statute, the defendant is alleged to have committed;
3. The alleged act or acts of the defendant which allegedly constitute the commission of the offense or offenses;
4. The precise date and time of the alleged commission of the offense;
5. The precise place where the offense was committed.

7

The defendant represents that neither this nor a similar Motion has been previously filed.

No such prior Motion or similar Motion has been filed or ruled upon in the present matter.

The defendant requests this information at a reasonable time prior to trial, but in no event less than 10 days prior to trial.

THE DEFENDANT,  
JAMES GRAHAM

By: 

Thomas E. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: (203) 230-2500  
Fax: (203) 288-4702  
Juris #: 370471

**ORDER**

The foregoing motion having been heard by the Court, it is hereby ordered: GRANTED / DENIED.

THE COURT,

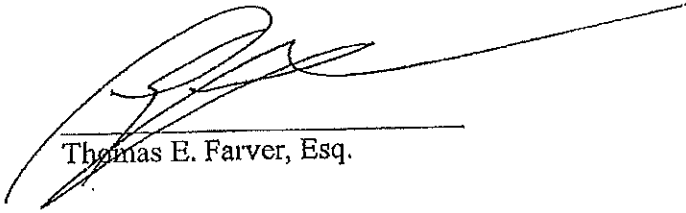
BY \_\_\_\_\_  
JUDGE



**CERTIFICATION**

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on 2<sup>nd</sup> day of August 2018 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

State's Attorney's Office  
Superior Court  
Judicial District at New Haven  
235 Church Street  
New Haven, CT 06510

A handwritten signature in black ink, appearing to read 'T. Farver', is written over a horizontal line. The signature is stylized and extends to the right.

Thomas E. Farver, Esq.

CR18-296757 : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF NEW HAVEN  
V. : AT NEW HAVEN  
JAMES GRAHAM : SEPTEMBER 24, 2019

STATE'S RESPONSE TO DEFENDANT'S  
ORAL MOTION TO SUPPRESS TANGIBLE EVIDENCE

FACTS

On November 13, 2017, Leeandre Benton was shot in the head and back in the vicinity of 57 Dudley St., Hamden, CT, and was pronounced dead on November 14. Surveillance cameras in the vicinity of this location show Benton walking near the Farmington Canal Line ("Canal Line") at 15:35, and then stands just out of camera view near the intersection of Dudley St. and the Canal Line. At 15:38, three black males—including Defendant James Graham—walk into view of the camera, past Benton. Shortly after, they return into view of the camera, and walk towards the area where Benton was standing (off camera). Less than 20 seconds later, Graham and the two males are seen on camera running southbound from the area; Benton is not seen leaving the area.

Ten different video cameras from the area around and at the location of 57 Dudley St and the Canal Line show Graham and two black males walking towards the Canal Line (before the shooting), then running from the Canal Line (after the shooting). The State has created a video compilation of the surveillance camera footage to show the chronological sequence of events where the three males are at the scene of the shooting.

Judicial District of New  
SUPERIOR COURT  
FILED

SEP 24 2019

CHIEF CLERK'S OFFICE

However, some of the cameras have time-stamps (on-screen displays of the times at which the video footage occurred) that are inaccurate (likely due to failure by the civilian camera owners to update the time settings). The authenticity and accuracy of the videos are not disputed, but because the time stamps are inconsistent with the chronology, the admissibility of the video compilation as a whole is challenged here.

The video compilation shows video segments from the following cameras:

- (1) 321 Goodrich St – Hamden (“Camera 1”)
- (2) 35/45 Dudley St – Hamden (“Camera 2a” and “Camera 2b”)
- (3) Farmington Canal and Dudley St – Hamden, Trail 2MP (“Camera 3”)
- (4) Farmington Canal and Dudley St – Hamden, Trail 8MP 2 (“Camera 4”)
- (5) Farmington Canal and Dudley St – Hamden, Trail 8MP 1 (“Camera 5”)

---

- (6) 392 Goodrich St – Hamden (“Camera 6”)
- (7) Shelton Ave and Basset St – New Haven (“Camera 7”)<sup>1</sup>

The sequence of video segments in the video compilation, with the associated cameras, are as follows:

---

<sup>1</sup> Though this is labeled “Camera 7,” this consists of three different city cameras that overlook the same location at the same times.

Segment	Camera(s)	Times in Video Compilation	Surveillance Camera Time Stamps
1	3, 4, 5 (Farmington Canal/Dudley St)	0:14 – 0:38	15:35:09 – 15:35:31 . . .
2	1 (321 Goodrich St)	0:38 – 1:17	04:26:28 PM – 04:27:07 PM
3	2a (35/45 Dudley St)	1:17 – 1:32	03:22:28 PM – 03:22:40 PM
4	2b (35/45 Dudley St)	1:33 – 3:29	12:15:31 PM – 12:17:08 PM
5	5 (Farmington Canal/Dudley St)	3:29 – 4:52	15:38:25 – 15:39:28
6	4 (Farmington Canal/Dudley St)	4:52 – 5:01	15:39:29 – 15:39:37
7	5 (Farmington Canal/Dudley St)	5:01 – 5:57	15:39:37 – 15:40:15
8	4 (Farmington Canal/Dudley St)	5:58 – 6:02	15:40:15 – 15:40:20
9	5 (Farmington Canal/Dudley St)	6:03 – 6:32	15:40:20 – 15:40:41
10	2b (35/45 Dudley St)	6:35 – 6:47	12:18:27 PM – 12:18:37 PM
11	6 (392 Goodrich St)	6:48 – 7:05	15:41:12 – 15:41:29
12	7 (Shelton Ave/Basset St)	7:06 – 8:30	15:45:39 – 15:46:25

## ARGUMENT

- I. The inconsistent time stamps in the videos do not render the video compilation inadmissible, but go to the weight of the evidence.**

The video compilation should be admitted even though the time stamps are incorrect. The jury has the responsibility to judge the accuracy of the times and the accuracy of the compilation's chronological depiction of events.

In *State v. Holmes*, the defendant, who was charged with shooting and killing someone, challenged the admissibility of surveillance videos on the basis of allegedly inaccurate time

stamps. He asserted that the time stamp discrepancies made it impossible for him to have been at the crime scene. The Connecticut Supreme Court ruled that “the jury was free to credit or discredit any of the time stamps on the surveillance videos.” 169 Conn. App. 1, 7 (2016). “It is the . . . absolute right and responsibility of the jury to weigh conflicting evidence and to determine the credibility of the witnesses.” *Id.* at 9 (citing *State v. Vazquez*, 119 Conn. App. 249, 255 (2010)). Moreover, defense counsel has the ability to “argue[] that there was reasonable doubt based on the scientific evidence as well as the time frame of the events”; the jury has the authority, if it chooses, to reject those arguments. *Id.* at 10. The Second Circuit has also recognized that the “slight discrepancy” of video time stamps “does not prove fatal” to admission of evidence. *United States v. Whittingham*, 346 F. App’x 683, 685 (2d Cir. 2009). The time stamp differences may simply “make the evidence less credible to the jury.” *Id.*

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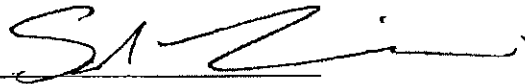
Even video footage that has been modified to show different speeds and different magnifications (i.e., zooms or “enhancements”) have been admitted in the state of Connecticut. The Connecticut Supreme Court has held that modified footage, including slowed-down or enhanced (i.e., magnified) versions, “did not constitute new evidence . . . albeit in an enhanced format. *State v. Melendez*, 291 Conn. 693, 705 (2009).

Here, the surveillance videos show the same three black males, including Defendant Graham, walking towards the Canal Line. Their locations on the videos can and will be matched with the camera locations, thereby showing a logical pattern of movement towards the crime scene. Several of the cameras produce high quality imagery that clearly depict the faces of the same three individuals. Moreover, the different cameras, even though they have different time stamps, show the same events occurring, but from different angles. The credibility of the video compilation should be weighed by the jury, not ruled inadmissible by the court. Finally,

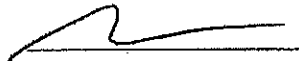
enhancements, or zooms, in the video compilation do not constitute new evidence, and do not undermine admissibility.

### CONCLUSION

Despite the inconsistent time stamps in the State's video compilation, the evidence should be admitted. The jury has the authority and responsibility to judge the credibility of the video compilation. Therefore, the State respectfully requests that the Defense's Motion to Suppress be denied.

By 

Salvatore J. Minopoli  
Legal Intern



Seth R. Garbarsky  
Senior Assistant State's Attorney

NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
VS. : AT NEW HAVEN  
JAMES GRAHAM : SEPTEMBER 27, 2019

**DEFENDANT'S REQUEST TO CHARGE**

The Defendant hereby submits his requests to charge relative to the above-captioned matter.

THE DEFENDANT,  
JAMES GRAHAM

By: 

Thomas E. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: (203) 230-2500  
Fax: (203) 288-4702  
Juris #: 370471

**CERTIFICATION**

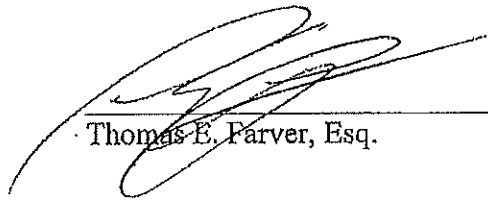
I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on this 27<sup>th</sup> day of September 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Judicial District of New Haven  
SUPERIOR COURT  
FILED

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Seth R. Garbarsky, Sr. Assistant State's Attorney  
State's Attorney's Office  
Superior Court  
Judicial District at New Haven  
235 Church Street  
New Haven, CT 06510



Thomas E. Farver, Esq.



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- III. BURDEN OF PROOF AND DEFENDANT HAS NO OBLIGATION TO PROVE ANYTHING
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- V. REASONABLE DOUBT
- VI. CREDIBILITY OF WITNESSES
- VII. COOPERATING WITNESS TESTIMONY
- VIII. OFFENSES
- IX. QUANTITY OF WITNESSES & EXHIBITS
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**I. PROVINCE OF THE JURY**

a. You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the information and denial made by the “Not Guilty” plea of James Graham. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. It is your job to decide the case solely on the facts and not to be swayed by any natural sympathy you may have for an alleged victim. You are to carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences. Unless the State proves beyond a reasonable doubt that the defendant has committed every essential element of the offenses with which he is charged, you must find him not guilty.

**II. PRESUMPTION OF INNOCENCE**

a. Every defendant in a criminal case is presumed to be innocent. That presumption of innocence was with the defendant when he was first presented for trial. It has continued with him through the trial. As far as you are concerned, at this moment he is innocent. He continues to be innocent unless and until such time as all the evidence produced here in the trial, considered in the light of these instructions and deliberated upon by you, satisfies you beyond a reasonable doubt that he is guilty.

b. Most importantly, this presumption of innocence means that if you can look at a particular piece of evidence in two ways, one of which is consistent with innocence and the other consistent with guilt, then you must look at the piece of evidence as being consistent with innocence. D. Wright, Connecticut Jury Instructions, section 650 (f), (g); District of Columbia Jury Instructions, section 2.08.

c. Our law is settled that the proof of guilt must exclude every reasonable supposition of innocence. The presumption of innocence is overcome if and only if all reasonable suppositions of innocence are excluded by the evidence. State v. Kreske, 130 Conn. 558, 562, 563 (1944). State v. McDonough, 129 Conn. 483, 485, 486 (1942).

### III. BURDEN OF PROOF AND DEFENDANT HAS NO OBLIGATION TO PROVE ANYTHING

a. The State has the burden of proving the defendant guilty of the crime with which he is charged. This burden never shifts; it is always on the State. It is the obligation of the State to prove the charges it has filed. The defendant does not have to prove anything. He does not have to prove that he did not commit the crime. He does not have to prove he is innocent. He is presumed innocent.

In short, it is the State which has the burden of proof at trial. The State has brought charges against James Graham, and it has the burden to prove those charges to you beyond a reasonable doubt. Crimes, under our law, are made up of various parts or elements. It is the obligation, then, of the State to prove each and every element of a charge beyond a reasonable doubt. In other words, after listening to all the evidence and considering these instructions, if there is any reasonable doubt in your mind about whether the State has proven a charge, then you must return a verdict of not guilty on that charge. See, generally, D. Wright, Connecticut Jury Instructions, section 650.

b. James Graham has no obligation to prove anything. As I advised you in the early stages of this case he has no obligation to prove his innocence. He was at the start of this trial and continues through the time when and if there is proof beyond a reasonable doubt, cloaked with

the presumption of innocence. The defendant need not prove or disprove the theories of the case nor is he required to prove other explanations of the evidence. In short, he is entitled to rely on the failure of the prosecution to prove the required elements of the crime charged beyond a reasonable doubt. It would be inappropriate for you to say the defense ought to have called this witness or that witness to prove a particular point because the defense has no obligation to prove anything. This obligation stems from the Constitutions of the United States and the State of Connecticut. It is an important right of every American. To ignore it would be to violate your oaths as jurors.

#### **IV. DEFENDANT'S FAILURE TO TESTIFY**

The defendant has not testified in this case. An accused person has the option to testify or not to testify at the trial. He is under no obligation to testify. He has a constitutional right not to testify. You must draw no unfavorable references from the defendant's failure to testify. A. Ment and R. Fracasse, A Collection of Connecticut Selected Jury Instructions, Third Edition (1996) and (revised 2001), section 2.11.

#### **V. REASONABLE DOUBT**

a. Reasonable doubt is a standard used in our law to define the degree of certainty which the state must meet in proving its case. The State must prove each element to such a degree that it eliminates any reasonable doubt. Reasonable doubt certainly is not met simply by tipping the scales slightly or by a preponderance of the evidence. Reasonable doubt is such a doubt as would cause reasonable persons such as yourselves, after careful, candid and impartial consideration of all the evidence, to hesitate or pause in the graver or more important transactions of life. The certainty which must exist must exclude such doubt. In order to

establish the guilt of the accused beyond a reasonable doubt, there must be enough proof to exclude every reasonable supposition of innocence. State v. Jupin, 26 Conn. App. 331, 342 (1920).

b. At this time, I want to explain the relationship between the presumption of innocence and requirement of proof beyond a reasonable doubt. The presumption of innocence protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L. Ed 2d 368 (1970).

c. It is that axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law. In re Winship, supra, 363, State v. DelVecchio, 191 Conn. 412, 419, (1983).

d. The burden of proof beyond a reasonable doubt is a threshold which the State must pass. This standard symbolizes the significance that our society attaches to the criminal sanction and thus to liberty itself. It is not lightly met and is not reached until and unless you, the fact finders, reach a subjective state of near certitude of the guilt of the accused. Unless each individual juror is convinced to a state of near certitude then you must return a finding of not guilty. Jackson v. Virginia, 443 U.S. 307, 315, 99 S. Ct. 2781, 61 L.Ed. 2d 560, reh. denied, 444 U.S. 890, 100 S. Ct. 195, 62 L. Ed. 2d 126 (1979); State v. DelVecchio, supra.

e. Reasonable doubt may arise from the lack of evidence, from conflicting evidence, or from either circumstantial or direct evidence. It is the obligation of the State to present a clear picture, free from reasonable doubt. If the State's evidence on any particular fact on which it has the burden requires you to speculate or to guess then it has not proved that fact beyond a

reasonable doubt. If, after all the evidence, you have a reasonable doubt, then the law requires you to find this defendant not guilty. D. Wright, Connecticut Jury Instructions, section 650 (g); District of Columbia Jury Instructions, section 2.09.

(The defense requests that this Court not include in its instruction on reasonable doubt and the presumption of innocence language that they are rules "designated to protect the innocent and not the guilty.") U.S. v. Doyle, 130 F.3d 523 (2<sup>nd</sup> Cir. 1997); see also State v. Francis, 228 Conn. 118 (1993)

#### **VI. CREDIBILITY OF WITNESSES**

In performing your function, one of the things which you have to do is to pass upon the credibility of the various witnesses who have appeared before you. In passing on the credibility of each of the witnesses, there are certain considerations you may well have in mind. One of these is the appearance which the witness made when he or she was on the stand. Did the witness appear to be telling the truth? Did the witness appear to be honest? Did he or she appear to be intelligent? That is, did the witness appear to be a person who could have observed accurately what he is telling you about; who would be likely to have remembered it accurately; and who was capable of reporting it to you accurately?

Another question for you to have in mind as regards each witness is the question as to whether the story he or she has told you is plausible. Does it ring true, or are there inconsistencies in it? Was the testimony internally consistent? If a witness could not remember a date, circumstances, or assertion was it a date, or circumstance, or prior assertion one would reasonably expect the witness to remember?

You may well ask yourselves in passing on the credibility of any witness whether that witness has any bias or prejudice as regards any party to the action, and if so, whether he or she has permitted that bias or prejudice to color his or her testimony; and it of course does not follow simply from the fact that a witness does have a bias or prejudice, or does have an interest in the outcome of the case that his or her testimony must be disbelieved.

Where a witness testifies inaccurately, and you do not think that the inaccuracy was consciously dishonest, or from a fear of being contradicted, or a conscious avoidance of commitment to facts, you should bear that in mind and scrutinize the whole testimony of that witness. The significance that you would attach to it would vary, more or less, with the particular fact as to which the inaccuracy existed or the surrounding circumstances which, in your mind, ought to have impressed it upon and have caused a correct retention of it to have been made in the mind or memory of the witness. It is, after all, a question for you ladies and gentlemen to pass upon.

If you find that there has been inaccuracy in one respect upon the part of a witness, remember it in judging the rest of his testimony, and give to it that weight which your own minds lead you to think it ought to have, and which you would attach to it in the ordinary affairs of life where anyone came to you in a matter and you found that in some particular he was inaccurate. If however, you conclude that a witness had not only testified falsely but he or she has done that intentionally or willfully, this in fact casts a very serious doubt upon all their testimony, and you might well conclude that you cannot accept any of it.

There are any number of factors which you may consider in weighing the credibility of each witness. It is impossible to completely list all the factors which may come to bear on a witness'

credibility; however, in balancing the credibility of each witness and their susceptibility to bias or prejudice the following have been raised by the evidence and may properly enter your consideration:

- a. The degree to which any witness' testimony fluctuated, was internally inconsistent, subject to self contradiction, and lacking specific corroborative detail;
- b. The interrelationships of any witnesses and the depth of their loyalty and friendships;
- c. Any witness' proclivity to lie, record of criminal convictions, or past history of untruthfulness.
- d. Any witness' admissions of prior false statements involving their recollections of events testified to at this trial and of any admissions at trial of any witness' untruthfulness in this and other complaints under oath to law enforcement officials;
- e. A witness' assertion to you that he was prepared to lie to you under oath and was going to tell the jury a lie;
- f. Any witness' expressed willingness to lie under oath for personal gain, to protect himself or others, or when he was angry;
- g. The involvement of witnesses in the commission of prior felony offenses and crimes of moral turpitude such as larceny, theft, burglary or false statement.

In summary, you should test the evidence by your own knowledge of human nature and the motives that influence and control human beings. You should bring to bear on the testimony of the several witnesses the same considerations and use the same sound judgment that you would apply to questions of truth and veracity as they present themselves to you in everyday life.



See, generally, D. Wright, Connecticut Jury Instructions, sections 641, 644 and 647. German v. German, 125 Conn. 84, 89 (1938). State v. Segar, 96 Conn. 420, 428 (1921).

## VII. COOPERATING WITNESS TESTIMONY

A witness testified in this case as a cooperating witness. A cooperating witness is someone who is currently incarcerated or is awaiting trial or sentencing for some crime other than the crime involved in this case and who obtains information regarding the crime in this case and agrees to testify for the state. You must look with particular care at the testimony of a cooperating witness and scrutinize it very carefully before you accept it. You should determine the credibility of that witness in the light of any motive for testifying falsely and inculcating the accused.

In considering the testimony of this witness, you may consider such things as:

- the extent to which the cooperating witness's testimony is confirmed by other evidence;
- the specificity of the testimony;
- the cooperating witness's criminal record;
- any benefits received in exchange for the testimony;
- whether the cooperating witness previously has provided reliable or unreliable information; and
- the circumstances under which the cooperating witness initially provided the information to the police or the prosecutor, including whether the cooperating witness was responding to leading questions.

Like all other questions of credibility, this is a question you must decide based on all the evidence presented to you. See generally, Connecticut Criminal Jury Instructions, 2.5-3 Informant Testimony, revised to April 23, 2010)

**VIII. OFFENSES**

- a.       FIRST COUNT:     Felony Murder (C.G.S. section 53a-54c)  
              Standard instruction is requested
  
- b.       SECOND COUNT: Conspiracy to Commit Robbery in the First Degree (C.G.S. section 53a-48 and 53a-134(a)(2))  
              Standard instruction is requested.
  
- c.       THIRD COUNT: Carrying a Pistol Without a Permit (C.G.S. section 29-35(a))  
              Standard instruction is requested

**IX. QUANTITY OF WITNESSES & EXHIBITS**

a. This case should not be decided on either the number of witnesses or the number of exhibits called by each side, the length of time in which either side chose to put its case on or on similar facts. You should look in each instance to the quality of the evidence which is presented, to its internal consistency, its consistency with other evidence in the case and to the logic of each piece of evidence, both standing alone and compared with the other evidence in the case. To do otherwise would be to put form over substance and put a premium on factors which do not provide a basis for sound judgment.

**X. INCONSISTENT STATEMENTS**

a. The testimony of a witness may be discredited or impeached by showing that he or she previously made statements which are inconsistent with his or her present testimony. It is the

province of the jury to determine the credibility, if any to be given the testimony of a witness who has been so impeached.

b. If a witness is shown knowingly to have testified falsely or has admitted lying under oath concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

c. An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. Devitt & Blackman, Federal Jury Practice and Instruction, Third Edition, section 17.08.

## **XI. EXPERT TESTIMONY**

a. I am going to talk for a moment about opinion evidence, expert testimony.

b. In this case, Jill Therriault, Special Agent Emonuel Hazikostos, and Chief Medical Examiner James Gill took the stand and gave opinions as experts. An expert witness may give an opinion even though that opinion is not expressed in terms of certainty, so long as the opinion is expressed in terms of reasonable probability, in terms of what is reasonably probable.

c. No matter what may be the expertise of a particular witness who states to you an opinion upon a fact in a case that opinion is subject to review by you. It is in no way binding upon you. It is for you to consider along with the other circumstances in the case, and using your best judgment, to determine whether or not you will give any weight to it, and, if so, what weight you will give to it.

d. In weighing and considering the testimony of any expert you should apply to him or her the same considerations of credibility that you apply to any other witnesses, such as his

appearance and demeanor on the stand, his interest or lack of interest in the outcome of the case, his ability to recall and relate facts to you, and all the other considerations you use in judging the believability of any other witness. In deciding the weight to be accorded to the testimony of any expert witness, you should consider his education, his experience, his ability in the particular field of knowledge and any other material matters of the sort developed in the course of his testimony. You should consider the proof, or lack of proof, and the completeness, or lack of completeness, of any facts considered by the expert in forming his opinion or reaching his conclusion. You should recall the testimony of the expert witness in this case in the light of the principles which I have just stated to you. Also, where an expert witness has given an opinion based on what we call a hypothetical question - that is, where he is asked to assume or did assume certain facts and then gave an opinion based on those facts - the value of the opinion depends on the truth and completeness of those facts. You should consider whether those facts were proven or not; and you should consider whether or not his opinion was based on the relevant facts or whether some relevant facts were omitted. Connecticut Practice, Vol. 5, Criminal Jury Instructions, Borden and Orland, Section 3.12 (1986).

**XII. FLIGHT:**

**(DEFENDANT OBJECTS TO THE GIVING OF ANY "CONSCIOUSNESS OF GUILT" INSTRUCTIONS; HOWEVER, SHOULD THE OBJECTION BE OVERRULED, DEFENDANT REQUESTS THE FOLLOWING LANGUAGE IN ANY INSTRUCTION ON FLIGHT AS CONSCIOUSNESS OF GUILT; TO WIT):**

a. Flight, when unexplained may tend to prove consciousness of guilt. The flight of a person accused of crime is a circumstance which, when considered together with all the facts of the

case, may justify a finding of the defendant's guilt. However, flight, if shown, is not conclusive. It does not raise a presumption of guilt. It is to be given the weight to which you, the jury, think it is entitled under the circumstances. It is up to you to give the evidence the weight to which you think it is entitled.

See gen., Connecticut Criminal Jury Instructions, Connecticut Practice, vol.5, Borden & Orland, 33.15 West Publishing Co., (1986); Connecticut Selected Jury Instructions Criminal, Ment & Fracasse, Third Edition, section 2.20 (2001).

### **XIII. JUDGING THE EVIDENCE**

a. There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused were proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so as he came before you cloaked with the presumption of innocence.

b. Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence or explanations.

Remember also that the question before you can never be: Will the State win or lose the case: Society always wins and justice is done when our rules of law and Constitutional guaranteed rights are applied, regardless of whether the verdict be guilty or not guilty.

c. If you can, in reason, reconcile the facts in evidence with any reasonable theory consistent with the innocence of the accused, then, of course, you must find him not guilty.

THE DEFENDANT,  
JAMES GRAHAM,

BY 

Thomas E. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: 203-230-2500  
Fax: 203-288-4702  
Juris No. 370471

NNH-CR.18-0296757-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT
VS.	:	AT NEW HAVEN
JAMES GRAHAM	:	OCTOBER 7, 2019

**MOTION FOR JUDGEMENT OF ACOUITTAL**

The Defendant moves this Court pursuant to Section 42-51 of the Connecticut Practice Book for a judgment of acquittal upon the following grounds:

1. That the evidence was insufficient to support the finding of guilty beyond a reasonable doubt made by the jury.
2. That the cumulative effect of the evidence was insufficient to justify the verdicts of guilty beyond a reasonable doubt. State vs. Williams, 202 CONN. 349 (1987).
3. That the Defendant was denied his fundamental right protected by the due process clauses of the Federal and Connecticut Constitution, to be proven guilty of each element of the charged offenses beyond a reasonable doubt. State vs. Hill, 201 CONN. 505 (1986).

WHEREFORE, for these reasons, and for such other reasons as may appear at a hearing hereon, the Defendant prays the Court to grant this Motion.

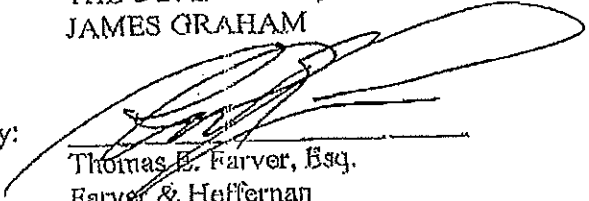
Judicial District of New Haven  
SUPERIOR COURT  
FILED

OCT 07 2019

CHIEF CLERK'S OFFICE

THE DEFENDANT,  
JAMES GRAHAM

By:



Thomas E. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: (203) 230-2500  
Fax: (203) 288-4702  
Juris #: 370471

ORDER

The foregoing motion having been heard by the Court, it is hereby

ordered: GRANTED / DENIED.

12/12/2019

THE COURT, (Vitale, J.)

BY BDJ (clerk)  
~~JUDGE~~

Denied on the record.  
R. Durham, S. Garbarsky, T. Farver, and Defendant present.

CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on this 7<sup>th</sup> day of October 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.



NNH-CR18-0296757-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT
VS.	:	AT NEW HAVEN
JAMES GRAHAM	:	OCTOBER , 2019

MOTION FOR NEW TRIAL

Pursuant to Practice Book Section 42-53, and in accordance with the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and Article First, Sections 8 and 9 of the Constitution of Connecticut, the Defendant, James Graham, respectfully requests that the Court grant the Defendant a new trial.

As grounds for said Motion, the Defendant states that it is required in the interests of justice.

THE DEFENDANT,  
JAMES GRAHAM

By:



Thomas B. Farver, Esq.  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Telephone: (203) 230-2500  
Fax: (203) 288-4702  
Juris #: 370471

Judicial District of New Haven  
SUPERIOR COURT  
FILED

OCT 07 2019

CHIEF CLERK'S OFFICE

ORDER

The foregoing motion having been heard by the Court, it is hereby

ordered: GRANTED

DENIED.

12/12/2019

THE COURT: (Vitale, J.)

BY [Signature] (clerk)

Denied on the Record

R. Durham, S. Garbarsky, T. Farver, and Defendant present.

CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on this 7<sup>th</sup> day of October 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Seth R. Garbarsky  
Senior Assistant State's Attorney  
State's Attorney's Office  
Superior Court  
Judicial District at New Haven  
235 Church Street  
New Haven, CT 06510

[Signature]  
Thomas R. Farver, Esq.

STATE OF CONNECTICUT  
SUPERIOR COURT

No. NNH-CR18-0296757-T // SC20447

State of Connecticut vs. James Graham		Of (Town) New Haven	HELD AT (Town) New Haven	DATE OF PLEA 4/4/2019
DATE OF CHANGE OF PLEA N/A	DATE OF TRIAL 9/9/2019	DATE OF FINDING OR VERDICT 10/3/2019	DATE OF SENTENCE 12/12/2019	PRESIDING JUDGE Vitale, J.

ALLEGATIONS	Upon the complaint of the Assistant State's Attorney for said Court charging the above defendant with the crime(s) of		
	Count:	Crime	Statute No.
	First	Felony Murder	53a-54c
	Second	Conspiracy to Commit Robbery in the First Degree	53a-48(a) // 53a-134(a)(2)
	Third	Carrying a Pistol Without a Permit	29-35(a)
Fourth			
said defendant was presented before said court.			

BOND FORFEITURE	<input type="checkbox"/> Said defendant, having been three times called to appear in court, and the surety, named below, having been three times called to have the defendant in court, made default of appearance, whereupon it was therefore considered and adjudged by the court that the defendant as principal, and the surety named below, did severally forfeit their bonds or recognizances.		
	Name of Surety	Of (Town)	Amount of Bond
Date of Forfeiture			

NOLLE	<input type="checkbox"/> The Assistant State's Attorney entered a Nolle Prosequi on Count(s) No.
-------	--

SECOND OFFENDER	Before the defendant was put to plea on Count(s) No. (s)he was notified in the absence of the court, at the place and time shown below,		
	PLACE	DATE	TIME AM PM
	of the contents of a second part of the information, charging said defendant with having been previously convicted of the crime(s) of	ON (Date)	IN (In Name of Court)

GUARDIAN	<input type="checkbox"/> It appearing that said defendant was a minor, the following person was appointed guardian ad litem, by the court:	
	NAME OF GUARDIAN	Of (Town)

ADVISEMENT OF RIGHTS	Said defendant was advised of his/her constitutional rights according to statute by:	
	JUDGE: _____	ON (Date): _____

PUBLIC DEFENDER	It appearing that said defendant should have counsel, Public Defender _____ (NAME) was appointed to represent the defendant by the court on _____ (DATE).		
	Public Defender _____ (NAME) appeared for the defendant on _____ (DATE).		

PLEA	<input checked="" type="checkbox"/> The defendant, being then and there called upon to answer to said complaint, pleaded		
	<input type="checkbox"/> Guilty, to Count(s) No. _____		
	<input type="checkbox"/> Nolo Contendere in writing, to Count(s) No. _____ and the court entered a finding of Guilty on said count(s).		
	<input checked="" type="checkbox"/> Not Guilty, to Count(s) No. 1, 2, 3		

CHANGE OF PLE	<input type="checkbox"/> Later, the defendant changed the plea to: <input type="checkbox"/> Guilty, to Count(s) No. _____ <input type="checkbox"/> Nolo Contendere in writing, to Count(s) No. _____ and the court entered a finding of Guilty on said count(s). <input type="checkbox"/> Not Guilty, to Count(s) No. _____
ELECTION and FINDING *COURT*	<input type="checkbox"/> Whereupon, the court advised the defendant of his/her right to trial by jury. The defendant then elected to be tried by the Court, on the counts to which (s)he had pleaded Not Guilty. After a full hearing, the court found the defendant: <input type="checkbox"/> Guilty, to Count(s) No. _____ <input type="checkbox"/> Not Guilty, to Count(s) No. _____ <input type="checkbox"/> and ordered the defendant discharged from custody.
ELECTION and FINDING *JURY*	<input checked="" type="checkbox"/> Whereupon, the court advised the defendant of his/her right to trial by jury, on the counts to which (s)he had pleaded not Not Guilty. The defendant then elected to be tried by: Jury: <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 12     and the case having been tried to a jury of said Court, the case was committed to the jury, which returned a verdict of: <input checked="" type="checkbox"/> Guilty, on Count(s) No. <u>1, 2, 3</u> (date) <u>10/3/2019</u> It was therefore adjudged by the court that the defendant was guilty in manner and form as charged in said complaint on said counts. <input checked="" type="checkbox"/> Whereupon, the defendant on <u>10/7/2019</u> duly filed his/her motion to set aside verdict. <input checked="" type="checkbox"/> The court having heard the parties on said motion, denied the same on <u>12/12/2019</u> . <input type="checkbox"/> Not Guilty, on Count(s) No. _____ (date) _____ The court accepted and ordered recorded said verdict. <input type="checkbox"/> and thereupon discharged the defendant from custody.
PROBATION	The court thereupon deferred the imposition of sentence on the defendant pending the filing of the required pre-sentence investigation report by the State Adult Probation Department. The pre-sentence report having been filed and considered.
SENTENCE	<input checked="" type="checkbox"/> The court sentenced the defendant to: <input type="checkbox"/> pay a fine of _____ on Count(s) _____ respectively. and to stand committed until judgment be complied with. <input checked="" type="checkbox"/> be committed to the custody of the Commissioner of Correction and/or the Warden or Administrator on Count(s) <u>1, 2, 3</u> for a term of <u>32 years (count 1), 20 years (count 2), 5 years (count 3). All counts to be served concurrently.</u> <input type="checkbox"/> Execution of said sentence was suspended <input type="checkbox"/> On Count(s) _____ <input type="checkbox"/> after _____ on Count(s) _____ <input type="checkbox"/> and the defendant was committed to the care of the Commission on Adult Probation for a period of _____ on Count(s) _____
MISC. ESSENTIAL PROCEEDINGS	(Specify proceedings and date.)
DATED AT: (Town) <u>New Haven</u> ON (Date) <u>1/24/2021</u> SIGNED (Assistant Clerk)	

APPEAL     JOINT APPEAL     CROSS APPEAL     AMENDED APPEAL     CORRECTED FORM

JD-SC-33 Rev. 7-16  
P.B. Sections 3-8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10  
C.G.S. Sections 31-301b, 51-197f, 52-470

All appeals must be filed electronically unless an exemption from the requirements of electronic filing has been granted or you are an incarcerated self-represented party. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34.

To Supreme Court     To Appellate Court

Name of case (State full name of case)  
**State of Connecticut v. James Graham**

Type of appellate matter  
**Appeal**

<b>Trial Court History</b>	Tried to <b>Jury</b>	Trial court location <b>New Haven JD - 235 Church Street, New Haven, CT 06510</b>		
	Trial court Judges being appealed <b>Hon. Elpedio Vitale</b>	List all trial court docket numbers, including location prefixes <b>NNH-CR18-0296757-T</b>		
	All other trial court judges who were involved with the case <b>Clifford, Sizemore</b>	Judgment for (Where there are multiple parties, specify those for whom judgment was rendered) <b>State of Connecticut</b>		
	Date of judgment(s) or decision(s) being appealed <b>12/12/2019</b>	Date of issuance of notice on any order on any motion that would render judgment ineffective	Date for filing appeal extended to	
	Case type <b>Criminal</b>	For Juvenile Cases <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Order of Temporary Custody		
	For Civil/Family Case Types, Major/Minor code:	<input type="checkbox"/> Other		

<b>Appeal</b>	Appeal filed by (Party name(s)) <b>James Graham</b>			
	From (the action that constitutes the appealable judgment or decision) <b>Judgment of Convictions C.G.S. Sec. 53a-54c, 53a-48, 29-35(a)</b>			
	If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order			
	Statutory Basis for Appeal to Supreme Court <b>C.G.S. Sec. 51-199(b)(3)</b>			
	By (Signature of counsel of record)	Telephone number <b>203-574-0029</b>	Fax number <b>203-574-0038</b>	Juris number (If applicable) <b>401722</b>

<b>Appearance</b>	Type name and address of counsel of record filing this appellate matter (This is your appearance; see Practice Book Section 62-8) <b>CHIEF PUBLIC DEFENDER-LEGAL SERVICES UNIT 55 WEST MAIN ST., SUITE 430, WATERBURY, CT 06702</b>			E-mail address <b>legalservicesunit@jud.ct.gov</b>
	<input type="checkbox"/> "X" one if applicable <input type="checkbox"/> Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court. <input checked="" type="checkbox"/> Counsel or self-represented party who files this appeal is appearing in place of:			
	Name of counsel of record <b>Farver &amp; Heffernan &amp; all previous counsel of</b>			Juris number (If applicable) <b>422385</b>

<b>Certification</b>	I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone and facsimile numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.			
	Date to be delivered <b>02/24/2020</b>	If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered <b>02/24/2020</b>		
	Signed (Counsel of record)			Date signed <b>02/24/2020</b>

<b>Required Documents</b>	To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.			
	1. Preliminary Statement of the Issues	4. Statement for Preargument Conference (form JD-SC-28A)	5. Constitutionality Notice	6. Sealing Order form, if any
	2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary	3. Docketing Statement		

<input type="checkbox"/> Entry Fee Paid <input type="checkbox"/> No Fees Required <input type="checkbox"/> Fees, Costs, and Security waived by Judge (enter Judge's name below)			<i>Court Use Only</i> Date and time filed
Judge <b>Hon. Patrick Clifford</b>	Date waived <b>02/05/2020</b>		

S.C. 20447

STATE OF CONNECTICUT

SUPREME COURT

v.

STATE OF CONNECTICUT

JAMES GRAHAM

OCTOBER 23, 2020

**AMENDED DOCKETING STATEMENT**

Pursuant to Practice Book § 63-4 (a) (3), the defendant-appellant submits the following information:

A. Parties:

State of Connecticut  
Office of the State's Attorney  
J.D. of New Haven  
235 Church Street  
New Haven, CT 06510

Seth R. Garbarsky (trial prosecutor)  
Juris No. 420125  
Office of the State's Attorney  
235 Church Street  
New Haven, CT 06510  
Tel. (203) 503-6823  
Fax (203) 789-6400  
Email: [seth.garbarsky@ct.gov](mailto:seth.garbarsky@ct.gov)

Office of the Chief State's Attorney - Appellate  
Juris No. 401795  
300 Corporate Place  
Rocky Hill, CT 06067  
Tel. (860) 258-5807  
Fax (860) 258-5828  
Email: [DCJ.OCSA.Appellate@ct.gov](mailto:DCJ.OCSA.Appellate@ct.gov)

James Graham (defendant-appellant)  
Inmate # 414529  
MacDougall-Walker Correctional Institution  
1153 East Street South  
Suffield, CT 06080


Alice Osedach (appellate counsel)  
Juris No. 310039  
Office of Chief Public Defender  
55 West Main Street, Suite 430  
Waterbury, CT 06702  
Tel. (203) 574-0029/Fax (203) 574-0038  
Email: [Alice.osedachpowers@jud.ct.gov](mailto:Alice.osedachpowers@jud.ct.gov)

Thomas E. Farver (trial counsel)  
Juris No. 422385  
Farver & Heffernan  
2858 Old Dixwell Avenue  
Hamden, CT 06518  
Tel. (203) 230-2500/Fax (203) 288-4702  
Email: [tom@farverandheffernan.com](mailto:tom@farverandheffernan.com)

- B. None known or reasonably ascertainable, except parties to the appeal, trial and appellate counsel for the state and the defendant and judges of record.
- C. There were no known or reasonably ascertainable criminal protective orders requested or issued during the underlying proceedings.
- D. There were exhibits in the trial court.
- E. Following a jury trial in the Superior Court for the Judicial District of New Haven *Vitale, J.*, the defendant was convicted of one count of felony murder, in violation of Conn. Gen. Stat. § 53a-54c, one count of conspiracy to commit robbery in the first degree, in violation of Conn. Gen. Stat. § 53a-48 and 53a-134 (a) (2), and one count of carrying a pistol without a permit, in violation of Conn. Gen. Stat. § 29-35 (a). The defendant was sentenced to serve 52 years of incarceration, one year mandatory minimum. The defendant currently is incarcerated.

Respectfully submitted,


DEFENDANT-APPELLANT  
JAMES GRAHAM

BY:   
ALICE OSEDACH  
JURIS NO. 310039  
OFFICE OF CHIEF PUBLIC DEFENDER  
55 WEST MAIN STREET, SUITE 430  
WATERBURY, CT 06702  
TEL. (203) 574-0029  
FAX (203) 574-0038  
[Alice.osedachpowers@jud.ct.gov](mailto:Alice.osedachpowers@jud.ct.gov)

HIS ATTORNEY

**CERTIFICATION**

Pursuant to P.B. §§ 62-7 and 66-3 it is hereby certified that a copy of the foregoing was sent electronically this 23rd day of October, 2020 to: Bruce R. Lockwood, Juris No. 401795, Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, tel. (860) 258-5807, fax (860) 258-5828, [DCJ.OCSA.Appellate@ct.gov](mailto:DCJ.OCSA.Appellate@ct.gov), and was sent by mail to the defendant, James Graham # 414529, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080. It is also certified that this document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law. It is also certified that this document complies with all applicable rules of appellate procedure.

  
ALICE OSEDACH  
JURIS NO. 310039



OFFICE OF CHIEF PUBLIC DEFENDER  
55 WEST MAIN STREET, SUITE 430  
WATERBURY, CT 06702  
TEL. (203) 574-0029  
FAX (203) 574-0038  
[Alice.Osedachpowers@jud.ct.gov](mailto:Alice.Osedachpowers@jud.ct.gov)

1/21/2021

Granted for up to 5 pages provided that the extra pages are used for the state constitutional ground only  
Carolyn C. Ziogas  
Chief Clerk



*State of Connecticut*

DIVISION OF PUBLIC DEFENDER SERVICES

OFFICE OF CHIEF PUBLIC DEFENDER  
LEGAL SERVICES UNIT  
55 WEST MAIN STREET-SUITE 430  
WATERBURY, CONNECTICUT 06702

ALICE OSEDACH  
ASSISTANT PUBLIC DEFENDER  
TELEPHONE: (203) 574-0029  
FACSIMILE: (203) 574-0038  
[Alice.Osedachpowers@jud.ct.gov](mailto:Alice.Osedachpowers@jud.ct.gov)

Attorney Carolyn Ziogas, Supreme Court Clerk  
Office of the Appellate Clerk  
231 Capitol Avenue  
Hartford, CT 06106

January 21, 2021

RE: State v. James Graham, S.C. 20447

Dear Attorney Ziogas,

The undersigned counsel hereby requests five additional pages for her brief in the above-referenced case. The brief will not exceed 40 pages. Counsel is including a state constitutional claim as an independent ground for relief and is therefore entitled to be granted those pages pursuant to Practice Book § 67-3.

Thank-you for your attention to this matter.

Sincerely,

/s/ Alice Osedach  
Alice Osedach

CERTIFICATION

It is hereby certified that a copy of the foregoing was sent electronically this 21<sup>st</sup> day of January, 2021, to Bruce Lockwood, Juris NO. 401795, Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, Ct 06067, [DCJ.OCSA.Appellate@ct.gov](mailto:DCJ.OCSA.Appellate@ct.gov), and was sent by mail to the defendant, James Graham, #414529, MacDougall-Walker Correctional, 1153 East Street South, Suffield, CT 06080.

/s/ Alice Osedach  
Alice Osedach

NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : SEPTEMBER 25, 2019

BEFORE THE HONORABLE ELPEDIO N. VITALE, JUDGE

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

Representing the State of Connecticut:

ATTORNEY SETH R. GARBARSKY  
ATTORNEY ANDREW REED DURHAM  
Office of the State's Attorney  
235 Church Street  
New Haven, Connecticut 06510

Representing the Defendant:

ATTORNEY THOMAS E. FARVER  
Farver & Heffernan, LLC  
2858 Old Dixwell Ave.  
Hamden, Connecticut 06518

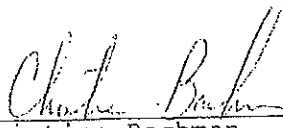
Recorded and Transcribed By:  
Christine Bachman  
Court Recording Monitor  
235 Church Street  
New Haven, Connecticut 06510

NNH-CR18-0296757-T ; SUPERIOR COURT  
STATE OF CONNECTICUT ; JUDICIAL DISTRICT  
NEW HAVEN  
V. ; AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM ; SEPTEMBER 25, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Elpedio N. Vitale, Judge, on the 25<sup>th</sup> day of September, 2019.

Dated this 1<sup>st</sup> day of July, 2020 in New Haven,  
Connecticut.

  
\_\_\_\_\_  
Christine Bachman  
Court Recording Monitor

1 other words, the -- the concern --

2 MR. FARVER: Okay. So the --

3 THE COURT: Not the concern. But the issue  
4 raised by the State is that does that mean the  
5 defendant has -- the witness has to be brought back  
6 simply for the purposes of admitting this particular  
7 photograph that's been marked for I.D., given the  
8 state of the testimony already before the jury with  
9 regard to his recognition generally of who and what  
10 is depicted therein. That's my -- that's my query,  
11 so to speak.

12 ATTY. FARVER: I hadn't thought that through,  
13 your Honor, quite honestly.

14 ATTY. GARBARSKY: Based on the Court's ruling,  
15 we intend to bring him back, because I think it would  
16 not make any sense --

17 THE COURT: Okay.

18 ATTY. GARBARSKY: So I think we're going to -- I  
19 could answer that for Mr. Farver to some extent.

20 THE COURT: Okay. All right.

21 MR. GARBARSKY: One other question, Judge. I  
22 don't want to play musical chairs with the jury. The  
23 next area of inquiry involves a dual inculpatory  
24 statement given by Mr. Moye regarding the homicide to  
25 this individual, Mr. Capers. I'm quite sure there  
26 will likely be an objection to that. So maybe to  
27 save some time, we could do that now.

1 THE COURT: Okay. I appreciate that. That is a  
2 good suggestion. Why don't we --

3 ATTY. FARVER: Well one other thing we had to  
4 address the Court too outside the presence of the  
5 jury, and that's -- and it doesn't have to be done  
6 now, but with regards to impeachment potential. I've  
7 been told that there's 15 -- there were 15 pending  
8 counts plus the VOP.

9 THE COURT: Okay.

10 MR. FARVER: Of which he's pled now to two.

11 THE COURT: Okay.

12 MR. FARVER: Which leaves 13 still pending.  
13 Some of them are misdemeanor. Some of them were  
14 felony. I think that under the circumstances in  
15 cross I'd be able to inquire into that there's a  
16 total of 15, the total amount, even though some are  
17 misdemeanors. I also would address, because they  
18 are -- they involve -- Most of them are either credit  
19 card fraud or credit card theft, burglary, and some  
20 third degree thefts and a larceny four. To what  
21 extent the Court would -- would agree to permit  
22 inquiry into the nature of the charges. Again, some  
23 of them are -- Let's see, the larceny four is  
24 obviously misdemeanor that's pending, but again I  
25 think because it goes -- he has a larceny, to  
26 credibility and honesty, that we would inquire to  
27 just what the Court -- I mean I need a ruling right

1 now before I start cross. That would be something --  
2 That's one of the issues. I just -- I don't' want to  
3 step on toes, you know that, your Honor. But I think  
4 that because it is a -- It could be -- It would be a  
5 named misdemeanor. It's pending. It's not -- it's  
6 not -- I'm not going into convictions for  
7 misdemeanors at all.

8 THE COURT: All right. So, you know I'll --  
9 We'll take that up when you begin cross.

10 MR. FARVER: Okay.

11 THE COURT: But my -- my -- There's multiple  
12 layers there of what you're saying. Obviously, and I  
13 don't know this, and I guess we'll find out, the  
14 agreement was already placed on the record about what  
15 he pled to, and obviously there's some things he  
16 didn't plead to, and whether part of the agreement is  
17 that the other charges are somehow going to be  
18 resolved in another fashion or there's no agreement.  
19 I have no idea.

20 MR. FARVER: And nor do --

21 THE COURT: So and --

22 MR. FARVER: But they are pending.

23 THE COURT: -- I'm going to assume that the --  
24 based on the fact that you say they are pending that  
25 there's been no convictions. I'm going to assume  
26 also that he's represented by counsel. I'm going to  
27 assume if there's been no agreement, he has a Fifth

1 Amendment right with respect to those pending.  
2 There's lots of different things that come up  
3 obviously in connection with that. So but we'll take  
4 that up in due course.

5 MR. FARVER: Yes, your Honor.

6 THE COURT: All right. Rather than have the  
7 jury sit back there, which I guess is not all that  
8 comfortable, we'll bring them through here, and then  
9 I'll take up the issue that you raised, Mr. Garbarsky  
10 and Mr. Farver, on the dual inculpatory statement.

11 (The jury panel entered the courtroom and  
12 proceeded into the deliberation room.)

13 THE COURT: No. No. No. Leave them in there.  
14 Okay. So this is an offer of proof on what the State  
15 anticipates may be something that's objectionable.

16 MR. GARBARSKY: Yes, your Honor.

17 THE COURT: So why don't you go ahead.

18 MR. GARBARSKY: Thank you, your Honor.

19 (The following testimony was given outside the  
20 presence of the jury.)

21 Q Mr. Capers, do you remember a conversation you had  
22 with Mr. Moye after the homicide?

23 A Yes.

24 Q How long after the murder was the conversation with  
25 Mr. Moye?

26 A Like a week.

27 Q Okay. And where would that conversation take place?



1 A In his backyard.

2 Q And who was present? Obviously, you. Who else was  
3 present during that conversation?

4 A Me, Moye, and Fat Cat.

5 Q You, Moye, and Fat Cat?

6 A Yes.

7 Q And how did the topic of conversation come up?

8 A He made me -- he made me do a solemn of oath, like  
9 say on word of my son I wasn't going to tell something. And  
10 I made him do --

11 THE COURT: I'm sorry. I'm sorry. Mr.  
12 Garbarsky, I could not hear a word he just said.

13 Q Yeah. So you said something about a solemn oath.  
14 Start off with that part.

15 A Like saying, swear to God you're not going to say  
16 nothing. And then I told him to say the same thing, and we  
17 both had exchanged things.

18 Q Okay. And when you say -- You said you -- he told  
19 you to take a solemn oath. What did he tell you  
20 specifically?

21 A On the word of my son.

22 Q All right. What did that mean to you when he said  
23 word of my son?

24 A Like say that. Like say -- It's like saying swear to  
25 God.

26 Q But you're like swearing on your son?

27 A Yes.

1 Q And you have a son; right?

2 A Yes.

3 Q Okay. And so he makes you make this oath; right?

4 A Yes.

5 Q And then does he tell you some details about the  
6 murder?

7 A Yes.

8 Q And what does he tell you specifically?

9 A That I'd seen Lee on the bike trail, and they was  
10 going to stain him, and they asked him was he SLB, and he  
11 had punched Brennan in the face, and Brennan pulled out a  
12 gun and tried to shoot him but it jammed, and then the  
13 defendant had shot him.

14 Q Mr. Graham?

15 A Yes.

16 Q And did he say whether or not he had a gun?

17 A No.

18 Q And did he say what gun Brennan, meaning Mr. Coleman,  
19 used or had at the time?

20 A Yes.

21 Q What did he say?

22 A The baby nine.

23 Q And what did he say about Mr. Graham? What kind of  
24 gun did he have?

25 A A .380.

26 Q Did he say who, meaning which individual ended up  
27 shooting Leandre Benton?

1 A Yes.

2 Q Who?

3 A James.

4 Q And did he say where he shot him?

5 A He said something like it came out his head, front of  
6 his head or the side of his head.

7 Q Meaning the shot or the bullet came out of his head?

8 A Yes.

9 Q Did he say whether they shot him anywhere else,  
10 meaning Mr. Graham or anyone else?

11 A No.

12 Q Did he say whether they took anything from him?

13 A No.

14 ATTY. GARBARSKY: Can I just have a moment, your  
15 Honor?

16 THE COURT: Okay.

17 MR. GARBARSKY: That's the gist, your Honor.

18 THE COURT: Can I just, Mr. Garbarsky -- Because  
19 he was speaking a little quickly. There was some  
20 testimony about they had seen Lee on the trail and  
21 then that's where it got a little bit --

22 ATTY. GARBARSKY: Yeah. I'm sorry. He said  
23 they were going to approach him and ask if he was  
24 S --

25 THE COURT: Well why don't you -- why don't  
26 you --

27 MR. GARBARSKY: Fair enough.

1 Q Can you repeat that part, when they saw him on the  
2 trial, what they said to you? Meaning, what did Moye say to  
3 you about when they saw Lee on the trail?

4 A They was going to stain him, and they asked him was  
5 he SLB.

6 Q All right. So let's back up. They said they were  
7 going to stain him?

8 A Yes.

9 Q What's that mean?

10 A Rob him.

11 Q Okay. And when you said they were going to ask him  
12 if he's SLB -- Well, first off, do you know what SLB is?

13 A Uh-huh.

14 Q Is that a particular area -- a group that is in a  
15 particular area in the city?

16 A Yeah.

17 Q Is it a Hamden or New Haven group?

18 A Like Hamden.

19 Q Okay. And did you know whether or not Mr. Benton was  
20 in SLB?

21 A Yes.

22 Q Okay. And so when Moye told you, and correct me if  
23 I'm wrong, was that when they approached him, they were  
24 going to ask him if he was SLB?

25 A Yes.

26 Q And they were intending to rob him?

27 A Yes.

1 MR. GARBARSKY: Okay. I think that may have  
2 cleared up your Honor's request.

3 THE COURT: Okay. Do you want to voir dire the  
4 witness, Mr. Farver?

5 MR. FARVER: Yes, sir.

6 VOIR DIRE EXAMINATION BY ATTORNEY FARVER:

7 Q Now as I understand it, during the -- this line of  
8 conversation, you and Fat Cat and Moye were all smoking  
9 weed?

10 A Yes.

11 Q Marijuana?

12 A You said what?

13 Q Weed, marijuana?

14 A Yes.

15 Q Okay. Weed being the street name for it; right?

16 A Yes.

17 Q And had you been smoking for a period of time prior  
18 to that day?

19 A Yes.

20 Q Do you know about how many joints or -- Well let me  
21 ask you, was it a joint or was it in some other fashion?  
22 Were you using a -- vaping it, or how were you smoking?

23 A Rolled up.

24 Q Rolled up in joints?

25 A Yes.

26 Q Okay. And you're passing it back and forth or --

27 A Yeah.

1 Q -- did you each have your own?

2 A Passing it.

3 Q Okay. And how many joints did you go through, the  
4 three of you, that day?

5 A I'm not sure.

6 Q Well do you know the quantity of marijuana that you  
7 had on you?

8 A Probably like an eighth.

9 Q Okay. An eighth of an ounce?

10 A Yes.

11 Q Okay. And about how many marijuana cigarettes did  
12 that make?

13 A Five, four, six.

14 Q Well it depends on how fat you roll them; right?

15 A Yeah.

16 Q And did you -- did the three of you consume all of  
17 those?

18 A No.

19 Q Okay. How many did you consume then?

20 A Well one and a -- One.

21 Q Okay. And did you feel any effects from it?

22 A High.

23 Q You got high?

24 A I got a -- It was my medical weed though. I got a  
25 card.

26 Q You got a medical weed card?

27 A Yeah.

1 Q Okay. Was that medical weed or was that street weed?

2 A Medical.

3 Q And you had bought that at -- the medical?

4 A Yes.

5 Q Okay. And so you shared it with the other two?

6 A Yes.

7 Q Did they have medical cards?

8 A No.

9 Q Okay. And with regards to -- Do you -- Did you  
10 observe any -- any symptoms of them getting high?

11 A I don't know.

12 Q But you've been around people in the past who were  
13 high; right?

14 A Yes.

15 Q Probably pretty much on a daily basis?

16 A Yes.

17 Q Most of your adult life?

18 A Yes.

19 Q And did they show any effects of getting high?

20 A It's normal when you high. I said when you smoke  
21 weed, it's normal when you high and don't act different.

22 Q Right. So they were high?

23 A Yes.

24 Q Okay. So when this whole conversation took place,  
25 everybody was high?

26 A Yes.

27 Q And when you're high, doesn't that affect your

1 ability to hear certain -- certain of the words being said?

2 A No.

3 Q Well you hear everything?

4 A Yes.

5 Q And does -- does it affect your ability to retain and  
6 remember everything that's done and said?

7 A No.

8 Q It doesn't affect yours?

9 A Not weed, no.

10 Q What?

11 A I said, no. It's just weed.

12 Q Okay. Well were you consuming any other substances?

13 A No.

14 Q Okay. Do you know if any of the others had prior to  
15 this conversation or during this conversation?

16 A No.

17 Q You don't know?

18 A I didn't see them do anything.

19 Q That's what I'm asking you. When you answer no, that  
20 either it could be that they didn't or you don't know if  
21 they did.

22 A I don't know if they did.

23 Q Okay. And, by the way, this is the only conversation  
24 that you claim you ever had with Moye regarding this murder;  
25 is that right?

26 A Yes.

27 ATTY. FARVER: All right. I have no further



1 questions at this time. I do object to the  
2 admission. I think it's -- it's -- As it comes out,  
3 it's a very self-serving statement from Moye. He  
4 distanced himself from the whole process, and what it  
5 really -- Well it's -- Well, one, it's hearsay. We  
6 know that. Two, I realize it's being offered as a  
7 statement against penal interest or will be offered  
8 as a statement against penal interest. I don't know  
9 if those words have been used yet. But -- but what I  
10 think is, when you're looking at these, because it's  
11 a statement of an alleged coconspirator, I think the  
12 more appropriate measure and where the prejudice is  
13 to be found here is that it certainly would not be  
14 admissible as a statement from a coconspirator  
15 because it's not in any way, shape, or form in  
16 furtherance of the conspiracy. And under those --  
17 That's -- And that's the prejudicial value of this.  
18 Allowing it in under an exception for -- against  
19 penal interest where the man is obviously saying I  
20 didn't do it. He doesn't admit to having a gun. And  
21 in fact, I think if the testimony is explored further  
22 with this gentleman, which it was at the HPC, that it  
23 would reflect that he makes -- He backs off. He  
24 didn't want to participate. He didn't want anything  
25 to do with the murder. And it's just -- Again, it's  
26 very, very self-serving under those circumstances. I  
27 don't think it has the reliability that's necessary

1 to put in a statement of this type.

2 THE COURT: Okay. First, the -- the Court would  
3 have to make a finding of unavailability. I'll take  
4 it that Mr. Moye's attorney is not here.

5 ATTY. GARBARSKY: Ms. Papastavros was contacted  
6 this morning by the State. She indicated that she  
7 would further advise her client to take the Fifth  
8 Amendment if in fact called as a witness in this  
9 case, as what previously happened in the HPC hearing  
10 with the similar factors. I indicated that the Court  
11 at some point would take this up. I don't know if  
12 she's still around, but she had indicated, as she had  
13 before, that she would not -- she would advise her  
14 client to take the Fifth.

15 ATTY. FARVER: I accept that, your Honor. I --  
16 I have no reason to believe -- But we would agree to  
17 the non-availability. We don't need to go through  
18 that.

19 THE COURT: All right. So I mean my -- my  
20 belief is that Mr. Moye is in fact a codefendant with  
21 Mr. Graham and that he's represented by Ms.  
22 Papastavros in the Public Defender's Office. There  
23 is some authority to the affect that perhaps the  
24 person should be here to exercise the Fifth in  
25 person; although, I have no reason to doubt that  
26 either of you, as officers of the court, that Ms.  
27 Papastavros represented at the HPC that was held,

1           apparently involving Mr. Moye, that the Fifth  
2           Amendment exercise was taken by Mr. Moye and  
3           apparently accepted by the judge at the HPC, who was  
4           not me. All right. So the Court will get beyond  
5           that then. So the Court will -- Mr. Garbarsky, do  
6           you wish to be heard in support of --

7           ATTY. GARBARSKY: Very briefly, your Honor.  
8           Just in regards to 8-6 subsection 4, statements  
9           against penal interest. The State needs to show the  
10          time, the timing in which the statement was made.  
11          These are factors that the Court considered.  
12          Obviously, this was within a week of the murders. So  
13          timeframe is relatively short. And the person to  
14          whom it was made, Mr. Moye, has indicated that he had  
15          been a lifelong friend of Mr. Capers. He had known  
16          him six plus years, hung out with him on a daily  
17          basis, knew him very well. Being the existence of  
18          corroborating evidence, the Court has already heard,  
19          as well as the jury, corroborating evidence that puts  
20          Mr. Moye and Mr. Graham and Mr. Coleman at the canal  
21          line at the time of the homicide in very short  
22          proximity, plus fleeing from the time of the  
23          homicide. The Court, as well as the jury, also heard  
24          information that all the individuals had access to  
25          guns, and in fact, may have been armed on that very  
26          occasion. And, C, the extent to which the statement  
27          was against the penal interest of a declarant, Mr.

1 Moyer not only implicated himself in a robbery by  
2 saying we were going to, quote, stain the victim, Mr.  
3 Benton, but also implicated himself in a felony  
4 murder, because he was aware that individuals were  
5 armed with firearms. He knew that there was a  
6 likelihood that a death could result as a result of  
7 this robbery. So he implicated himself in two  
8 felonies, the robbery and the felony murder. And so  
9 for all those reasons, I ask that the statement be  
10 admitted under 8-6(4).

11 THE COURT: All right. The Court has reviewed  
12 the Connecticut Code of Evidence 8-6(4), as well as  
13 caselaw. State versus Azevedo, 178 Conn. App. 671,  
14 cert was denied. State versus Camacho, 382  
15 Connecticut 328. The Court will first find that Mr.  
16 Moyer, the declarant, is unavailable based on the  
17 representations of both counsel, with full knowledge  
18 of that -- of the case law in that regard. The Court  
19 must consider the time the statement was made and the  
20 person to whom the statement was made, the existence  
21 of corroborating evidence in the case, the extent to  
22 which the statement was against the declarant's penal  
23 interest. The Court must consider all those factors  
24 and determine whether the totality of the  
25 circumstances suggests the trustworthiness of the  
26 statement. State versus Pierre, 277 Connecticut 42.  
27 A fair reading of the statement viewed through the

1 lens of common sense makes it abundantly clear that  
2 statements attributed to Mr. Moye subject both he and  
3 the defendant to criminal liability; to wit, a  
4 conspiracy or plan to rob the victim. Mr. Graham --  
5 The Court concludes that the statements are  
6 admissible under 8-6(4), State versus Azevedo, State  
7 versus Camacho, State versus Pierre. The declarant,  
8 as I said, is unavailable. With regard to the  
9 factors, the time that the statement was made, it was  
10 made only one week following the commission of the  
11 crime. The person to whom it was made, this witness,  
12 who there's evidence before the jury is a longtime  
13 friend. They hung out together almost on a daily  
14 basis, and the evidence demonstrates that Mr. Capers  
15 is a person in whom based on their relationship would  
16 be likely to confide in. In fact, the testimony is  
17 that Mr. Moye made Mr. Capers swear an oath not to  
18 repeat the statement, and Mr. Capers testified he  
19 told him, in fact, a confidence in return in terms of  
20 corroboration of the evidence. There is the evidence  
21 before the jury with regard to the State's exhibit,  
22 the video, which shows all these individuals  
23 together. And the jury now knows through the  
24 testimony, if they choose to accept it, from Mr.  
25 Lowndes, that at least one of them, as far as the  
26 jury knows at this point, was armed. In terms of  
27 penal interest, Azevedo indicates that whether a

1 statement is against a declarant's penal interest is  
2 an objective inquiry of law rather than a subjective  
3 analysis of the declarant's personal legal knowledge.  
4 Statements are evaluated according to a reasonable  
5 person's standard. To the extent, if any, based on  
6 Mr. Farver's argument that it's self-serving, I don't  
7 think it's self-serving. He -- he implicates himself  
8 in a plan to rob the victim. The declarant's, Mr.  
9 Moye's statements about himself, even if they were  
10 neutral or even to some extent self-servant, they are  
11 still admissible. State versus Bryant, 202  
12 Connecticut 676. And the statement certainly intends  
13 to incriminate Mr. Moye. State versus Bonds, 172  
14 Connecticut. App. 108, cert denied. Okay. So the  
15 Court is going to overrule the objection for those  
16 reasons. Okay. Anything else I need to take up  
17 before the jury is summoned?

18 ATTY. GARBARSKY: Nothing from the State.

19 THE COURT: Mr. Farver, anything else?

20 MR. FARVER: Not that I know of, your Honor.

21 THE COURT: Okay. Bring out the jury.

22 (The jury panel entered the courtroom.)

23 THE COURT: Welcome back, ladies and gentlemen.

24 Do counsel stipulate to the presence of 12 jurors and  
25 two alternates?

26 MR. GARBARSKY: Yes, your Honor.

27 THE COURT: Mr. Farver, do you stipulate to the

1 presence --

2 MR. FARVER: Oh, yes, your Honor.

3 THE COURT: Okay. We're ready to resume with  
4 the evidence. Why don't you go ahead, Mr. Garbarsky.

5 MR. GARBARSKY: Thank you, your Honor.

6 CONTINUED DIRECT EXAMINATION BY ATTORNEY GARBARSKY:

7 Q Good afternoon, Mr. Capers.

8 A Good afternoon.

9 Q A couple of follow-up questions in regards to Mr.  
10 Benton. Did you know the victim, Leandre Benton?

11 A Yes.

12 Q How did you know him?

13 A I worked with him at Walmart.

14 Q Well when in relation to his -- to the homicide did  
15 you work at Walmart with him?

16 A Months before that.

17 Q Months before that?

18 A Yes.

19 Q And how long did you work with him at Walmart?

20 A A few months, because I had stopped working there.

21 Q Okay. As far as you know, did he continue working  
22 there after that?

23 A I think so.

24 Q Okay. Which Walmart was that?

25 A In Hamden.

26 Q All right. Did you have any problems with Mr.  
27 Benton?

1 A No.

2 Q What -- what do they know him as? I mean what was  
3 his nickname, if he had one?

4 A Lee Bando.

5 Q Lee Bando?

6 A Yes.

7 Q B-a-n-d-o?

8 A Yes.

9 Q Okay. Is that what you would call him or you'd call  
10 him Leandre? How would you call him?

11 A Well we didn't really talk like that. So but I knew  
12 him as Lee Bando.

13 Q All right. And had you seen him around? Meaning,  
14 forget Walmart. But had you seen Mr. Benton around before  
15 his murder in the Hamden area?

16 A Yes.

17 Q Where would he -- would you typically see him if you  
18 saw him hanging around?

19 A The store on Dixwell near --

20 Q The store on Dixwell?

21 A Near Dudley.

22 Q Okay. And so on 78, you could look behind, State's  
23 78, would that be the one that's labeled Sammy's Grocery  
24 Store or is it a different store?

25 A Yes. Sammy's or -- Yeah, Sammy's. Yeah, Sammy's.

26 Q Okay. That's by Dudley and Dixwell; correct?

27 A Yeah.



1 Q Okay. And so when you'd see him in town, that's  
2 where he'd be?

3 A Yes.

4 Q Would you ever see him hanging around the New Haven  
5 part of town?

6 A No.

7 Q Okay. Now at some point in time, Mr. Capers, did you  
8 have a conversation with either Mr. Moyer, Mr. Graham, or Mr.  
9 Coleman about the murder?

10 A Yes.

11 Q Okay. And first I'm going to ask you about Mr. Moyer.  
12 Did you have a conversation with Mr. Moyer about the murder?

13 A Yes.

14 Q In relation to the murder, how long after did you  
15 have a conversation with Mr. Moyer?

16 A Like a week.

17 Q Okay. And where did that conversation take place?

18 A In a backyard.

19 Q Okay. I'm going to ask you to keep your voice up.

20 A In a backyard.

21 Q All right. And whose backyard?

22 A His.

23 Q Where did he live at the time?

24 A On Lander Street.

25 Q Lander?

26 A Yes.

27 Q Is it L-a-n-d-e-r?

1 A Yes.

2 Q Okay. Who else was present for this conversation?

3 A Me and Fat Cat.

4 Q Same Fat Cat that we were talking about before?

5 A Yes.

6 Q So just the three of you?

7 A Yes.

8 Q And what were you guys doing when you were having  
9 this conversation?

10 A Smoking.

11 Q Smoking what?

12 A Weed.

13 Q All right. And all three of you were smoking weed?

14 A Yes.

15 Q Okay. And how did the conversation come up? Can you  
16 tell us?

17 A He told me to say I swear on my son I wasn't going to  
18 say -- say anything, and then I told him to swear he wasn't  
19 going to say anything about something, and then we both  
20 exchanged.

21 Q So you both swore an oath, so to speak?

22 A Yeah.

23 Q And he told you to swear on your son?

24 A Yes.

25 Q Okay. And then at that point did he tell you what  
26 happened the night or the afternoon that Leandre was  
27 murdered?

1 A Yes.

2 Q Can you tell the ladies and gentlemen of the jury  
3 what he said?

4 A They'd seen him and -- on Dudley.

5 Q I got to stop you. Who seen him?

6 A The three of them. They'd seen him on Dudley, and  
7 they approached him, and they was going to ask him -- They  
8 was going to stain him. And they asked him was he SLB, and  
9 he punched Brennan in his face, and he went to pull out the  
10 gun and shoot him but it jammed.

11 ATTY. FARVER: Your Honor, this is going into a  
12 bit of narrative. I think we have --

13 THE COURT: Sustain the objection.

14 Q We'll back up. You said they saw him on Dudley?

15 A Yes.

16 Q Did they say where on Dudley?

17 A At the bike trail.

18 Q By the bike trail?

19 A Yes.

20 Q And you said they were going to stain -- Moyer said  
21 that they were going to stain him?

22 A Yes.

23 Q What does that mean?

24 A Rob.

25 Q That means rob?

26 A Yes.

27 Q Okay. You also said that they went up to him?

1 A Yes.

2 Q And did you say Moye asked if they were SLB?

3 A He was going to ask him was he was SLB.

4 Q Okay. Let me ask you this, is SLB like an  
5 affiliation or a part of town, like a group of people?

6 A Yes.

7 Q And were you aware whether Mr. Benton was part of  
8 that SLB group?

9 A Yes.

10 Q Okay. And so what Mr. Moye told you was they were  
11 going to ask him if he's SLB?

12 A Yes.

13 Q Okay. And then what else did Mr. Moye tell you after  
14 that?

15 A He had punched Brennan in his face.

16 Q Who punched Brennan in the face?

17 A Leandre.

18 Q Okay. Did Mr. Moye say anything about -- Aside from  
19 are you SLB, did they say anything else to Mr. Benton?

20 A No.

21 Q Okay. And then at that point Leandre punched Mr.  
22 Coleman in the face?

23 A Yes.

24 Q Okay. What did Mr. Moye say happened next?

25 A Coleman had pulled out the gun to shoot him but it  
26 jammed, and then the defendant had shot him.

27 Q Okay. So Mr. Coleman pulled out his own gun?

1 A Yes.

2 Q But you said Mr. Moye said it jammed?

3 A Yes.

4 Q And then Mr. Moye said that the defendant pulled out  
5 a gun?

6 A Yes.

7 Q Did he say what gun he had?

8 A The .380.

9 Q The same .380 you were describing before for the  
10 ladies and gentlemen of the jury?

11 A Yes.

12 Q And what did he say the defendant did with the gun?

13 A He shot him.

14 Q Shot Mr. Benton?

15 A Yes.

16 Q Where?

17 A He said it had -- it went in his head and it came out  
18 the front or it went in the front and came the side.

19 Q That's how he described it?

20 A Yes.

21 Q Did he describe one or those scenarios or as you sit  
22 here you're not sure which one he said?

23 A I'm not sure which one, but it was one of those.

24 Q Okay. So he said either it went in the front and  
25 came out the side or came in the side and went out the  
26 front?

27 A Yeah.

1 Q Is that safe to say?

2 A Yeah.

3 Q Okay. Did they tell you -- Did Mr. Moyer tell you  
4 what they did after the defendant shot Mr. Benton?

5 A No.

6 ATTY. GARBARSKY: Okay. Can I just have a  
7 moment?

8 THE COURT: Sure.

9 Q You had said that Mr. -- Mr. Moyer said that Mr.  
10 Coleman tried to shoot but his gun jammed. Did he say what  
11 kind of gun Mr. Coleman had?

12 A The baby nine.

13 Q Okay. And is that the same gun that you had  
14 previously said you saw Mr. Coleman with?

15 A Yes.

16 Q Okay. Did -- And I apologize if I asked you this.  
17 Did Mr. Moyer say he had a gun?

18 A No.

19 Q He didn't say or he said he didn't have a gun?

20 A He didn't say if he had it.

21 Q He didn't say one way or the other?

22 A Yeah.

23 Q Did you ask or did Mr. Moyer tell you -- Withdraw that  
24 question. Did Mr. Moyer tell you if they took anything from  
25 Mr. Benton?

26 A No.

27 Q Okay. When he told you this information, did you ask

1 him any questions about it?

2 A No.

3 Q You just sat there in silence and listened?

4 A He just -- Yeah. And he just kept saying that they  
5 probably was going to get caught.

6 ATTY. GARBARSKY: Okay. I'm sorry, your Honor.  
7 Just another moment, please?

8 THE COURT: Sure.

9 ATTY. GARBARSKY: No further questions.

10 THE COURT: Is there, Mr. Farver, anything we  
11 need to take up at the moment or not?

12 ATTY. FARVER: If I may have, you know a few  
13 minutes to just kind of organize, your Honor?

14 THE COURT: Okay. All right. Ladies and  
15 gentlemen, there's something I need to take up  
16 anyway. So, I'm sorry, but please step into the jury  
17 room for just a few moments. Leave your notebooks  
18 there.

19 (The jury panel exited the courtroom.)

20 THE COURT: All right. So, Mr. Farver, I don't  
21 know whether you want some time now to go over your  
22 notes. What do you mean? I'm not sure what it is  
23 you want.

24 ATTY. FARVER: Well just a few minutes. But  
25 I -- We can take it up right now if you want. First,  
26 is the question of the pending charges.

27 THE COURT: Okay. Since both of you have got,

**AGREEMENT CONCERNING PROSECUTION**

**Parties:**

This agreement is entered into by Seth R. Garbarsky, Senior Assistant State's Attorney for the Office of the State's Attorney for the Judicial District of New Haven, on behalf of the State of Connecticut (hereinafter the "State of Connecticut"), and Steven Capers, who is the defendant in the cases of State v. Steven Capers, and who is represented by Attorney John Bowdren.

**Agreement:** On the understandings specified below:

The State of Connecticut agrees to: (1) Upon Mr. Capers' request, to provide information regarding his cooperation pursuant to his agreement to any local, state, or federal government agency in any matter or to any court in any proceeding. The State will not make a specific sentence recommendation unless required to do so by the Court.

Mr. Capers agrees to: (1) truthfully disclose all information pertaining to his criminal activities, and/or the criminal activities of others, as these activities relate to matters about which the State of Connecticut and any investigating police officer or agency inquires of him; (2) truthfully testify before any investigatory grand jury, and/or at any trial, retrial, or other court proceeding concerning such criminal activity when requested to do so by the State of Connecticut.

Judicial District of New Haven  
SUPERIOR COURT  
FILED

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### **Understandings:**

It is understood that this agreement contemplates the following criminal activities, whether completed, attempted, or conspired: murder and robbery; and that it may include any other criminal activities that may arise upon further information and investigation.

It is understood that this is not an immunity agreement and that, in providing information pursuant to this agreement, Mr. Capers may be subject to prosecution for any applicable state criminal offense.

It is understood that the State of Connecticut, in fulfilling its obligations pursuant to this agreement, makes no promises or representations regarding the actual sentence to be imposed, or the certainty of concurrent time. The disposition of such matters rests entirely with the court. Mr. Capers understands that the charges for which he has entered pleas, Violation of Probation, Identity Theft 3<sup>rd</sup> Degree, and Larceny 4<sup>th</sup> Degree, carry a potential exposure of 3 years of incarceration. It is further understood that the charges for which Mr. Capers has entered pleas encompass activities that he participated on or about December 19<sup>th</sup>, 2017 in the Town of Monroe.

It is understood that Mr. Capers is obligated pursuant to this agreement to at all times give complete and truthful information and testimony. In the event that the State of Connecticut or a judge of the Superior Court reasonably determines that Mr. Capers has given incomplete, false or misleading information, the agreement shall become null and void and of no further effect, and Mr. Capers may be subject to prosecution of perjury and/or any other applicable state criminal offense relating to the giving of such

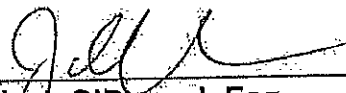
Information. In the event that the agreement is rendered null and void, for any reason, Mr. Capers understands that any information that he has provided pursuant to agreement may be used against him in court and he agrees to waive (1) any claim in law that his statements conveying such information are subject to suppression, and (2) any statutes of limitations defense.

It is understood that this contract embodies the entirety of the agreement between the parties, and that any amendment of, or addition to, the terms hereof shall be executed in writing and signed by the State of Connecticut, Mr. Capers, and his attorney. By signing this agreement, Mr. Capers acknowledges that he has carefully considered each of its provision, discussed each with his counsel, and has no questions or concerns relating to entering into the agreement.

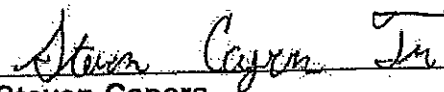
Entered into on this, the 20th day of February, 2019.



Seth R. Garbarsky  
Senior Assistant State's Attorney

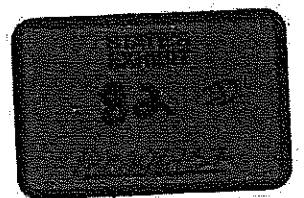


Jack O'Donnell, Esq.  
Attorney for the Defendant



Steven Capers  
Defendant

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## AGREEMENT CONCERNING PROSECUTION

### **Parties:**

This agreement is entered into by Seth R. Garbarsky, Senior Assistant State's Attorney for the Office of the State's Attorney for the Judicial District of New Haven, on behalf of the State of Connecticut (hereinafter the "State of Connecticut"), and Jalen Bacote, who is the defendant in the cases of State v. Jalen Bacote, and who is represented by Attorney Samuel A. Greenberg.

### **Agreement:** On the understandings specified below:

The State of Connecticut agrees to: (1) Upon Mr. Bacote's request, to provide information regarding his cooperation pursuant to his agreement to any local, state, or federal government agency in any matter or to any court in any proceeding. The State will not make a specific sentence recommendation unless required to do so by the Court.

Mr. Bacote agrees to: (1) truthfully disclose all information pertaining to his criminal activities, and/or the criminal activities of others, as these activities relate to matters about which the State of Connecticut and any investigating police officer or agency inquires of him; (2) truthfully testify before any investigatory grand jury, and/or at any trial, retrial, or other court proceeding concerning such criminal activity when requested to do so by the State of Connecticut.

**Understandings:**

It is understood that this agreement contemplates the following criminal activities, whether completed, attempted, or conspired: murder and robbery; and that it may include any other criminal activities that may arise upon further information and investigation.

It is understood that this is not an immunity agreement and that, in providing information pursuant to this agreement, Mr. Bacote may be subject to prosecution for any applicable state criminal offense.

It is understood that the State of Connecticut, in fulfilling its obligations pursuant to this agreement, makes no promises or representations regarding the actual sentence to be imposed, or the certainty of concurrent time. The disposition of such matters rests entirely with the court. Mr. Bacote understands that the charges for which he has entered pleas, Violation of Probation and Larceny 4th Degree, carry a potential exposure of 3 years of incarceration. It is further understood that the charges for which Mr. Bacote has entered pleas encompass activities that he participated on or about March 20<sup>th</sup>, 2018 in the City of New Haven.

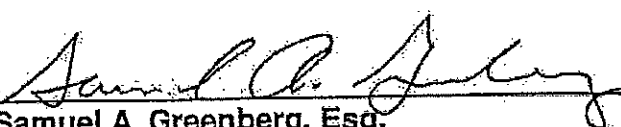
It is understood that Mr. Bacote is obligated pursuant to this agreement to at all times give complete and truthful information and testimony. In the event that the State of Connecticut or a judge of the Superior Court reasonably determines that Mr. Bacote has given incomplete, false or misleading information, the agreement shall become null and void and of no further effect, and Mr. Bacote may be subject to prosecution of perjury and/or any other applicable state criminal offense relating to the giving of such

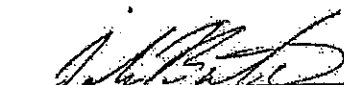
information. In the event that the agreement is rendered null and void, for any reason, Mr. Bacote understands that any information that he has provided pursuant to agreement may be used against him in court and he agrees to waive (1) any claim in law that his statements conveying such information are subject to suppression, and (2) any statutes of limitations defense.

It is understood that this contract embodies the entirety of the agreement between the parties, and that any amendment of, or addition to, the terms hereof shall be executed in writing and signed by the State of Connecticut, Mr. Bacote, and his attorney. By signing this agreement, Mr. Bacote acknowledges that he has carefully considered each of its provision, discussed each with his counsel, and has no questions or concerns relating to entering into the agreement.

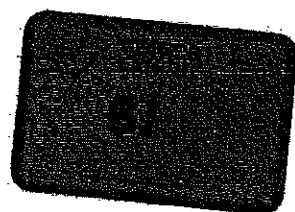
Entered into on this, the 20th day of December, 2018.

  
\_\_\_\_\_  
Seth R. Garbarsky  
Senior Assistant State's Attorney

  
\_\_\_\_\_  
Samuel A. Greenberg, Esq.  
Attorney for the Defendant

  
\_\_\_\_\_  
Jalen Bacote  
Defendant

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NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : SEPTEMBER 25, 2019

BEFORE THE HONORABLE ELPEDIO N. VITALE, JUDGE

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

Representing the State of Connecticut:

ATTORNEY SETH R. GARBARSKY  
ATTORNEY ANDREW REED DURHAM  
Office of the State's Attorney  
235 Church Street  
New Haven, Connecticut 06510

Representing the Defendant:

ATTORNEY THOMAS E. FARVER  
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2858 Old Dixwell Ave.  
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Recorded and Transcribed By:  
Christine Bachman  
Court Recording Monitor  
235 Church Street  
New Haven, Connecticut 06510

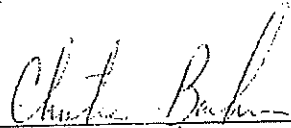


NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : SEPTEMBER 25, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Elpedio N. Vitale, Judge, on the 25<sup>th</sup> day of September, 2019.

Dated this 1<sup>st</sup> day of July, 2020 in New Haven,  
Connecticut.

  
\_\_\_\_\_  
Christine Bachman  
Court Recording Monitor

1 respect to at least one of the witnesses today, which  
2 I've discussed with the marshals. Other than that,  
3 anything I should take up?

4 ATTY. GARBARSKY: It would likely be two of the  
5 witnesses, Judge, and maybe I could just ask for a  
6 brief recess and we could shuffle individuals and the  
7 Court can excuse the jury.

8 THE COURT: Yes.

9 ATTY. FARVER: Your Honor, just to alert the  
10 Court, I understand at least one of the witnesses  
11 today, there's a cooperation agreement. We -- I am  
12 objecting to the offer of the entire agreement, the  
13 written agreement. It's I don't believe that it's  
14 evidence in this case, nor should it be. The fact  
15 that there is a cooperation agreement I fully believe  
16 is grounds that the State could inquire to and I  
17 could inquire to, but I think as to -- to publish the  
18 terms of it, all it does is agree and forces the  
19 State's position that of course if this witness --  
20 that there -- It's almost an endorsement of the  
21 State -- the witness is testifying truthfully. So at  
22 what time you want to take up the arguments on it,  
23 but I just want to alert the Court in advance.

24 THE COURT: All right. We'll take that up when  
25 the witness is called.

26 ATTY. FARVER: Right.

27 THE COURT: And I would ask Mr. Garbarsky if

\* \* \* \* \*

1 this is Mr. Capers; is that right?

2 ATTY. GARBARSKY: Yes, your Honor.

3 THE COURT: And he's represented by counsel?

4 ATTY. GARBARSKY: Attorney Bowdren is here, your  
5 Honor.

6 THE COURT: Counsel, do you want to step  
7 forward, please?

8 ATTY. BOWDREN: Yes, your Honor.

9 THE COURT: Can you just go up to a microphone,  
10 please?

11 ATTY. BOWDREN: Good morning, your Honor.  
12 Attorney John Bowdren with Jack O'Donnell's Office.  
13 I do in fact represent Steven Capers in a number of  
14 matters.

15 THE COURT: All right. My suggestion would be  
16 in the future, counsel, when you have a witness who  
17 is testifying as a cooperating witness, that you  
18 alert the Court if you plan not to be there during  
19 the testimony. It's not really a good practice to do  
20 that.

21 ATTY. BOWDREN: Certainly, your Honor.

22 THE COURT: Okay. I understand there's a  
23 written cooperation agreement; is that right?

24 ATTY. GARBARSKY: Yes, your Honor.

25 THE COURT: Okay. Can you have it marked for  
26 identification, please?

27 ATTY. GARBARSKY: It has been. It's State's 82.

1 THE COURT: Okay. Can you show that to counsel?  
2 Counsel, don't go anywhere. Take a look at that,  
3 please.

4 ATTY. BOWDREN: This is the nature of the  
5 agreement as I understand it, your Honor.

6 THE COURT: All right. That's the entirety of  
7 the agreement between your client, Mr. Capers, and  
8 the State?

9 ATTY. BOWDREN: Yes.

10 THE COURT: There's no other agreements?

11 ATTY. BOWDREN: No.

12 THE COURT: Okay. And you've gone over that  
13 with Mr. Capers?

14 ATTY. BOWDREN: I have.

15 THE COURT: Okay. And that is?

16 ATTY. GARBARSKY: State's 82, your Honor.

17 THE COURT: Okay. State's 82 for I.D. All  
18 right. My understanding is that, Mr. Farver, if the  
19 State attempts to offer that as a full exhibit, you  
20 have an objection; is that correct?

21 ATTY. FARVER: Yes, sir.

22 THE COURT: And what is the nature of the  
23 objection?

24 ATTY. FARVER: I believe that it's self-serving,  
25 your Honor. I believe also that it tends to  
26 indicate, it appears to, that the State is vouching  
27 for the credibility of a witness when the language in

1           it with regards to that he is required to tell the  
2           truth. I think that circumstantially that it could  
3           be also -- it could be vouching that the State  
4           believes in the testimony of the witness because he's  
5           only offering to help if he tells the truth. It's  
6           clearly then -- takes an opinion of the State whether  
7           or not in their opinion this -- this witness  
8           testifies and tells the truth. And obviously, the  
9           reality of that is that if the witness testifies the  
10          way the State wants, well then he's -- then the  
11          opinion is he's telling the truth, and if he differs  
12          from it, then maybe he's not telling the truth, and  
13          that's when he becomes subject to perjury and  
14          everything else. I think the fact that there is a  
15          cooperation agreement can be explored by the State or  
16          by the defense, but I don't think that the document  
17          itself, because much of the language in it again  
18          implies that the State believes that he's being  
19          truthful and would only offer his testimony if he's  
20          truthful, and as a fact we know that ethically any  
21          attorney only had -- can offer a witness if he knows  
22          that he is -- If he -- if he knows that the witness  
23          is lying, he cannot offer that witness. So I think  
24          it's redundant in that effect, because of his ethical  
25          obligations, and I would never suggest that Attorney  
26          Garbarsky would do otherwise. I -- I've known him  
27          for many years, and I believe that he is ethical. I

1 don't question that. But I think that the use of the  
2 actual document takes this all a step further, and if  
3 not excluding the document itself, the paperwork,  
4 that at least I think it should be redacted to remove  
5 information about that. And there's not a lot of law  
6 on this. I know there's a -- there's a case that's  
7 discussing some of it that's pending, that briefs are  
8 out, but it hasn't been ruled on so it's not -- So --  
9 We did find -- There is in Massachusetts, your Honor,  
10 a -- There -- there, 20 Mass. Practice Evidence  
11 Statute, 1104, third edition. It just references  
12 the -- again the process of -- Their practice is it  
13 can't be offered initially until after cross-  
14 examination, and then only if it is redacted to the  
15 point of removing anything that this suggests that  
16 the prosecutor believes in his truthfulness or that  
17 it's suggesting that it's only for truthfulness.  
18 So --

19 THE COURT: Okay. I just want to clarify the  
20 nature of your objection. I think I understand what  
21 you're saying, but maybe I don't. So your objection  
22 is to the actual document itself. You don't claim  
23 that the State is not entitled to explore the nature  
24 of the witness's understanding of the cooperation  
25 agreement. Your objection is to its admission in  
26 written form as being cumulative, I guess.

27 ATTY. FARVER: It would be --

1 THE COURT: Is that an accurate statement of  
2 your --

3 ATTY. FARVER: Yes, your Honor.

4 THE COURT: Okay.

5 ATTY. FARVER: And I think it becomes -- And the  
6 step further is I believe that it ends up appearing  
7 to vouch for the credibility of the witness, and we  
8 know that that's not appropriate for any attorney to  
9 do.

10 THE COURT: Okay. Well the -- the -- I don't  
11 know if that directly answers my question. The  
12 question is that your objection is to the written  
13 document itself, not to the nature of the agreement  
14 and the understanding between the State and the  
15 defendant?

16 ATTY. FARVER: That's correct.

17 THE COURT: Okay. That's all I want to make  
18 sure I understand. Okay. So what's the State's  
19 position?

20 ATTY. GARBARSKY: Your Honor, if the objection  
21 is cumulative I don't agree with that because this is  
22 the agreement. So if anything, this speaks for  
23 itself. It is a written agreement between the  
24 parties, including Mr. Bowdren, as well as Mr. Capers  
25 and the State of Connecticut. It was a clerk file.  
26 It has been filed with the Clerk's Office. It was  
27 gone over on the record in great detail word by word

1 by Judge Clifford. There was a transcript of that  
2 proceeding. There is directive authority, not only  
3 federal but also statewide, that allows these  
4 agreements to be entered. Furthermore, I believe  
5 there's a statute that passes, a week from yesterday,  
6 which requires all cooperators to enter into an  
7 agreement with the State if and when they testify in  
8 a state proceeding. So if anything, the legislature  
9 is promoting transparency in the system. It would be  
10 one thing to require these agreements and then never  
11 put them before a finder of fact. That's seems  
12 counterintuitive. The State -- And quite frankly, if  
13 we're allowed to question a witness about the  
14 agreement, and not offer the agreement, it almost  
15 does the opposite. It seems like there's some kind  
16 of untoward or some type of hidden agenda that the  
17 State has, and I don't agree with that. I think it  
18 should be admitted.

19 THE COURT: Okay. So I don't know that the --  
20 the statute that you're referring to requires that  
21 the document itself be before the jury. Certainly  
22 the -- the witness can be asked if it's been placed  
23 in writing, and it is -- it would be more for I.D. I  
24 am going to sustain the objection at this point to  
25 having it admitted as a full exhibit. Except, Mr.  
26 Farver, if -- I'm alerting you now. If there's  
27 something that occurs that opens the door to that



1 being admitted as a full exhibit based on your cross-  
2 examination, then the Court's ruling may be  
3 revisited. So it will be marked for I.D. The State  
4 will be allowed to inquire fully as to the contents  
5 of the agreement and the understanding of the  
6 witness. The document itself will be marked for I.D.  
7 The Supreme Court in State versus Marquez at 330  
8 Connecticut -- Excuse me. Marquez was the  
9 Commissioner of Corrections. I believe that is 330  
10 Connecticut 575. Suggests that the witness be asked  
11 leading questions about the nature of the witness's  
12 agreement with the State to include anticipated  
13 charges, the maximum and minimum penalties and so  
14 forth and so on. So again, Mr. Farver, I'm  
15 sustaining the objection at this point. If something  
16 happens during the examination that causes it to be  
17 revisited, I'm just alerting -- alerting you now.

18 ATTY. FARVER: I understand, your Honor.

19 THE COURT: Okay. Are we ready to proceed?

20 ATTY. GARBARSKY: Yes, your Honor.

21 THE COURT: Bring out the jury.

22 (The jury panel entered the courtroom.)

23 THE COURT: All right. Thank you for your  
24 patience, folks. Do counsel stipulate to the  
25 presence of 12 jurors and two alternates?

26 ATTY. GARBARSKY: Yes, your Honor.

27 ATTY. FARVER: Yes, your Honor.

1                                   S T E V E N   C A P E R S,  
2   having been first duly sworn, was examined and testified as  
3   follows:

4                   THE COURT: All right. Sir, do me a favor.  
5                   Pull that chair up and try to speak into that  
6                   microphone as loudly as you can. Go ahead, Mr.  
7                   Garbarsky.

8                   ATTY. GARBARSKY: Thank you, your Honor.

9   **DIRECT EXAMINATION BY ATTORNEY GARBARSKY:**

10           Q    Good afternoon, Mr. Capers.

11           A    Good afternoon.

12           Q    I see that you are wearing that orange jumpsuit.  
13   You're incarcerated currently; is that right?

14           A    Correct.

15           Q    And you said you were at Cheshire Correctional?

16           A    Yes.

17           Q    Is it true that you have a number of charges that are  
18   pending here in the State of Connecticut?

19           A    Yes.

20           Q    And is it also true, sir, that you have an attorney,  
21   John Bowdren?

22           A    Correct.

23           Q    And is Mr. Bowdren present in court today?

24           A    Yes.

25           Q    And if at any time you'd like to speak to Mr.  
26   Bowdren, just ask the Court for a recess. Okay?

27           A    Okay.

1 Q Now is it true, Mr. Capers, that you entered into a  
2 cooperation agreement with the State of Connecticut to  
3 testify today?

4 A Yes.

5 ATTY. GARBARSKY: May I approach, your Honor?

6 THE COURT: You may.

7 Q Showing you what's been marked for identification  
8 purposes as 82, State's 82. Do me a favor. Take your time  
9 and look through that document. I believe it's three pages.  
10 And let me know when you're done.

11 A Finished.

12 Q All set?

13 A Yes.

14 Q Is that the agreement that you entered into with the  
15 State of Connecticut?

16 A Yes.

17 Q Now did you go over this agreement with your attorney  
18 before you entered into the agreement?

19 A Yes.

20 Q Did you -- I don't need to know what these questions  
21 were, but if you had any questions, did you go over them,  
22 and did your attorney answer those questions for you?

23 A Yes.

24 Q And did you in fact sign this agreement back in  
25 February of 2019?

26 A Yes.

27 Q And did your attorney sign the agreement as well?

1 A Yes.

2 Q And did I, as a representative of the State of  
3 Connecticut, did I sign that agreement?

4 A Yes.

5 Q Now at the time you entered into the agreement, did  
6 you also plead to some of the charges that you have pending  
7 in this court?

8 A Yes.

9 Q And at the time, did a judge go over this agreement  
10 with you on the record?

11 A Yes.

12 Q And it wasn't this judge; right?

13 A No.

14 Q It was Judge Clifford, upstairs?

15 A Yes.

16 Q Okay. And I'm going to read a couple of sections of  
17 this, and just tell me if this is your understanding of the  
18 agreement. Okay?

19 A Yes.

20 Q Is it --

21 ATTY. FARVER: Your -- your Honor --

22 THE COURT: Is there an objection?

23 ATTY. FARVER: Yes, your Honor.

24 THE COURT: Overruled. Go ahead.

25 Q Is it your understanding, Mr. Capers, that the State  
26 of Connecticut agrees upon your request to provide  
27 information regarding your cooperation to the agreement to

1 any local, state, or federal government agency in any matter  
2 or to any court in any proceedings?

3 A Yes.

4 Q Okay. Is it your understanding that you, Mr. Capers,  
5 agrees to; one, truthfully disclose all information  
6 pertaining to your criminal activities and the criminal  
7 activities of others as those activities relate to matters  
8 which the State of Connecticut and any investigating police  
9 officer or agency asks you?

10 A Yes.

11 Q Two, truthfully testify before any investigatory  
12 Grand Jury and/or any trial, retrial, or other court  
13 proceeding concerning such activity when requested to do so  
14 by the State of Connecticut?

15 A Yes.

16 Q It's further understood that this is not an immunity  
17 agreement, and that in providing information pursuant to the  
18 agreement you, Mr. Capers, may be subject to prosecution for  
19 any applicable state or criminal offense?

20 A Yes.

21 Q Do you understand that?

22 A Yes.

23 Q Is it also your understanding that the State of  
24 Connecticut in fulfilling its obligation makes no promises  
25 or representations regarding the actual sentence to be  
26 imposed upon you or the certainty of concurrent time? Do  
27 you understand that?

1 A Yes.

2 Q And that dispositioning or the dispositioning of your  
3 cases is entirely to the Court, meaning the judge?

4 A Yes.

5 A Do you understand that?

6 A Yes.

7 Q All right. And you understand that the charges that  
8 you entered pleas, a violation of probation, identity theft  
9 in the third degree, and larceny in the fourth degree carry  
10 a potential exposure of three years of incarceration? Do  
11 you understand that?

12 A Yes.

13 Q That you could be sentenced up to three years for  
14 those particular offenses that you pled guilty to?

15 A Yes.

16 Q And it's further understood that the charges that you  
17 entered guilty pleas involve activities that you  
18 participated in on December 19, 2017 in the Town of Monroe?

19 A Yes.

20 Q It's further understood that Mr. Capers, meaning  
21 yourself, is obligated pursuant to the agreement to give  
22 complete and truthful information and testimony at all  
23 times. Do you understand that?

24 A Yes.

25 Q And in the event the State of Connecticut or a judge  
26 of the Superior Court reasonably determines that you have  
27 not given -- or that -- sorry -- you have given complete --

1 incomplete, false, or misleading information, this agreement  
2 becomes null and void and of no further effect?

3 A Yes.

4 ATTY. FARVER: Your Honor, may I again object at  
5 this point?

6 THE COURT: You may. Grounds for the objection?

7 ATTY. FARVER: Well I think what we're doing  
8 here is exactly what we just argued outside the  
9 presence of the jury.

10 THE COURT: Okay. I disagree. Overruled.

11 Q And further, Mr. Capers, in the event that this  
12 agreement is rendered null and void for any reason, you  
13 understand that any information that you had provided  
14 pursuant to the agreement may be used against you in court.  
15 Do you understand that?

16 A Yes.

17 Q And you also agree to; one, waive any claim of law  
18 that the statements that have such information are subject  
19 to suppression. Do you understand that?

20 A Yes.

21 Q And; two, you also waive any statute of limitation  
22 defenses. Did you understand that?

23 A Yes.

24 Q And finally, I think we went over this, but by  
25 signing the agreement you acknowledge that you've carefully  
26 considered each of the provisions. You've discussed them  
27 with counsel, and you had no further questions or concerns

1 about entering into the agreement?

2 A No.

3 Q Okay. Now, Mr. Capers, you're locked up now. Was  
4 there a point in time that you would spend time hanging out  
5 in the Hamden, Newhallville, New Haven area?

6 A Yes.

7 Q When was that?

8 A Before I was locked up. Like 2017 and before that.

9 Q Okay. So it was starting maybe two years ago and  
10 then before that for a while?

11 A Yes.

12 Q All right. And when --

13 THE COURT: All right. Just a second, Mr.  
14 Garbarsky. Mr. Capers, pull your chair up to that  
15 microphone. Go ahead.

16 Q And when you were hanging out in that area, Mr.  
17 Capers, was there a particular area or street, you know  
18 streets or something, that you could tell us where you guys  
19 would hang out?

20 A In the Ville, Bassett, Shelton, Read, Starr.

21 Q Okay. And Starr, you said?

22 A Yeah.

23 Q Is that a street?

24 A Yes.

25 Q And you said in the Ville. And just so we're clear,  
26 what's the Ville?

27 A Newhallville.



1 him any questions about it?

2 A No.

3 Q You just sat there in silence and listened?

4 A He just -- Yeah. And he just kept saying that they  
5 probably was going to get caught.

6 ATTY. GARBARSKY: Okay. I'm sorry, your Honor.  
7 Just another moment, please?

8 THE COURT: Sure.

9 ATTY. GARBARSKY: No further questions.

10 THE COURT: Is there, Mr. Farver, anything we  
11 need to take up at the moment or not?

12 ATTY. FARVER: If I may have, you know a few  
13 minutes to just kind of organize, your Honor?

14 THE COURT: Okay. All right. Ladies and  
15 gentlemen, there's something I need to take up  
16 anyway. So, I'm sorry, but please step into the jury  
17 room for just a few moments. Leave your notebooks  
18 there.

19 (The jury panel exited the courtroom.)

20 THE COURT: All right. So, Mr. Farver, I don't  
21 know whether you want some time now to go over your  
22 notes. What do you mean? I'm not sure what it is  
23 you want.

24 ATTY. FARVER: Well just a few minutes. But  
25 I -- We can take it up right now if you want. First,  
26 is the question of the pending charges.

27 THE COURT: Okay. Since both of you have got,

1 and I don't, the paperwork on that. Can you just go  
2 through, Mr. Farver, what it is you've got there in  
3 terms of pending cases, dates, and so forth, and  
4 jurisdictions and so forth.

5 ATTY. FARVER: It might be easier if just hand  
6 you what the State had produced. This is --

7 THE COURT: All right. All right.

8 MR. FARVER: That's what he planned to do. I  
9 don't know which counts, but there's the two. The  
10 larceny four and the --

11 THE COURT: Mr. Farver, what are the -- The  
12 things that are highlighted, what -- what is that?

13 MR. FARVER: That -- Those are -- We're not --  
14 It's just the one page is what we're concerned with,  
15 your Honor. Well the other that's flagged, that's  
16 the VOP.

17 THE COURT: Well why -- I -- Why don't we do  
18 this. Here, let me hand that back to you. Why don't  
19 you just tell me what it is you want to ask about,  
20 and get in front of a microphone. I'm sorry.

21 ATTY. FARVER: Your Honor, the disclosure from  
22 the State reflected that this gentleman was arrested  
23 on January 26 of 2018 by Monroe Police Department.

24 THE COURT: I'm sorry. 18 or 19?

25 MR. FARVER: 18.

26 THE COURT: I'm sorry. Go ahead.

27 MR. FARVER: On 15 separate counts. The first

1 two are -- were misdemeanors, criminal impersonation.  
2 The third and fourth were payment -- payment card  
3 fraud, A misdemeanors. The next group are two more  
4 counts -- two counts of credit card fraud, A  
5 misdemeanors. Then two counts of payment -- credit  
6 card theft again, felony B. A burglary three for two  
7 counts, being D felonies. Criminal trespass, a  
8 misdemeanor B, and identity theft two counts, which  
9 were D felonies, and then two larceny fours, which  
10 are misdemeanors A. And my --

11 THE COURT: Well hang on. So the counts to  
12 which, Mr. Garbarsky, the witness has entered pleas  
13 to arise out of which -- what jurisdiction?

14 ATTY. GARBARSKY: Monroe. It's a larceny fourth  
15 and I.D. theft third, and I believe there was a sub  
16 filed.

17 THE COURT: Larceny fourth and?

18 MR. GARBARSKY: Identity theft third.

19 THE COURT: All right. So that was my next  
20 question. So these, Monroe. And I'm sorry, I don't  
21 know this. Goes to what court?

22 ATTY. FARVER: It was transferred I believe --

23 ATTY. BOWDREN: Bridgeport.

24 ATTY. FARVER: -- to New Haven.

25 ATTY. BOWDREN: Bridgeport, your Honor.

26 THE COURT: All right. So originally they go to  
27 Bridgeport, but then they all got transferred here?

1           ATTY. BOWDREN: Correct.

2           THE COURT: All right. So the cases would have  
3           been pending in Bridgeport. They then got  
4           transferred to New Haven. Handled here in part A or  
5           handled in the GA?

6           ATTY. GARBARSKY: Handled here in Part A in  
7           conjunction with the cooperation agreement, your  
8           Honor.

9           THE COURT: All right. So as was part of the  
10          cooperation agreement. The 15 counts he had been  
11          facing, a substitute Information was filed charging  
12          two counts; is that accurate?

13          ATTY. GARBARSKY: In addition to the VOP, yes.

14          THE COURT: In addition to the VOP.

15          ATTY. GARBARSKY: And on that Monroe file, yes,  
16          the two counts.

17          THE COURT: All right. So and I'm not going to  
18          do this math, Mr. Farver. So I'm sure you probably  
19          did. He went from facing whatever the maximum  
20          possible penalties would have been on all those  
21          counts, 15, to now facing, as I understand the  
22          testimony, three years.

23          ATTY. FARVER: Correct.

24          THE COURT: Okay. So what is it exactly do  
25          you -- that you want to ask about?

26          ATTY. FARVER: The --

27          THE COURT: The -- the original 15 counts, which

1           apparently no longer exist because a sub Info was  
2           filed. I mean certainly, in fact, that there had  
3           been 15 counts and there are now only three, and he  
4           had been facing whatever that added to and then now  
5           he's facing three, that's all fair game. But I mean  
6           other than that what else --

7           ATTY. FARVER: It was -- You know, that there  
8           was originally 15 counts.

9           THE COURT: Right.

10          ATTY. FARVER: Plus the VOP.

11          THE COURT: Right.

12          ATTY. FARVER: That I would be asking to be able  
13          to reference what they were.

14          THE COURT: All right.

15          ATTY. FARVER: Even the misdemeanor ones that  
16          involve -- Not the -- not the criminal trespass by  
17          name, but the others I think I can inquire to by  
18          name. Again, because they go to his credibility.  
19          They go to his honesty. Fraud always goes to  
20          honesty, and larceny goes to honesty. Theft goes to  
21          honesty. I think that would be -- Burglary goes to  
22          honesty. So just every one of these charges except  
23          for the criminal trespass. I don't need to name that  
24          one.

25          THE COURT: All right. So I don't -- I don't  
26          want to conflate, you know, different -- the legal  
27          concepts here. So obviously where you know there was

1 a conviction with a regard to a crime of what we  
2 generally call dishonesty. The fact of conviction  
3 certainly is admissible, and if there had been, I  
4 suppose, a conviction on a misdemeanor, the facts,  
5 not the conviction, but the fact related to the  
6 underlying offense under State versus Martin, the  
7 witness can be asked about. But in a situation  
8 though when there is no conviction, I -- I don't know  
9 that -- Well I'm not certain what it is you want to  
10 ask about.

11 ATTY. FARVER: Again, I --

12 THE COURT: So I don't know how far you want to  
13 take this, I guess, I will say.

14 ATTY. FARVER: I wasn't going to go into the  
15 actual describing circumstances, no.

16 THE COURT: Okay.

17 ATTY. FARVER: That was not -- I was just -- I  
18 was going to just, what they are and what the charges  
19 were. I was not intending to -- to try to then  
20 inquire into --

21 THE COURT: All right. In the absence of a --  
22 in the absence of a conviction, what is the relevance  
23 of what the name of the charges were?

24 ATTY. FARVER: Well again, until the stage is  
25 set that there's a sub Info, which I was not aware  
26 that there was a sub Info. I thought he pled to  
27 two -- two counts plus the VOP, and that the

1 remaining were still pending. So that's news to me.  
2 If those are now subbed down and he's not going to be  
3 charged at all, I think that that should have been  
4 part of -- well brought out. It's not stated anywhere  
5 in the cooperation agreement.

6 THE COURT: Right. As I said, that's all fair  
7 game. I think I started out this by saying that. So  
8 but my question is, what is it specifically you want  
9 to ask about the --

10 ATTY. FARVER: I want to ask if he was charged  
11 with credit card theft. I want to ask if he was  
12 charged with burglary third.

13 THE COURT: Let me do this this way.

14 ATTY. FARVER: Yep.

15 THE COURT: Mr. Garbarsky, what's your position  
16 on what does he -- what he wants to do?

17 ATTY. GARBARSKY: I agree with almost everything  
18 that Mr. Farver wants to do. I think he's well  
19 within his right to say you were charged with 15 and  
20 now it's down to three and the crimes of moral  
21 turpitude. My only hesitation or my only objection  
22 is the naming offenses that he's not been convicted  
23 of for the mere pretense of saying that they were  
24 moral turpitude crimes. He's not been charged with  
25 those crimes as of now. He's not been convicted of  
26 those crimes, and he didn't even plead to those  
27 crimes. So I think he's well within his right to

1 talk about how many there were and how they were  
2 reduced down, and you were facing 60 years and now  
3 it's down to three years. I think that's all grist  
4 for the mill, to quote another judge here. But I  
5 don't believe he can name crimes for which he's not  
6 been convicted.

7 THE COURT: Basically, Mr. Farver, that's my --  
8 my -- My issue is, you could certainly ask him you  
9 were originally charged with 15 offenses, including  
10 however how many felonies there were, how many  
11 misdemeanors there were. But to name them, what is  
12 the probative value of naming them when he has not  
13 been convicted of them? And that's my -- my  
14 question.

15 ATTY. FARVER: Well again, because this is a  
16 situation where he's a cooperating witness. I think  
17 that it goes more to --

18 THE COURT: But let me ask -- do it this way.

19 ATTY. FARVER: It's --

20 THE COURT: What are you going to be able to  
21 argue from if those names come in? What is it you  
22 think about that you think you're going to be able to  
23 argue to the jury in connection with those names?

24 ATTY. FARVER: His dishonesty.

25 THE COURT: But based on what?

26 ATTY. FARVER: Well based --

27 THE COURT: He hasn't -- he hasn't been



1 convicted of it.

2 ATTY. FARVER: But I think then I could argue  
3 that -- that what a sweet deal. I mean there --

4 THE COURT: You can certainly argue what a sweet  
5 deal --

6 ATTY. FARVER: And but it's --

7 THE COURT: -- when his 15 got reduced to three,  
8 but you don't -- You're not answering my question.  
9 So in other words, if he has not been convicted of  
10 those offenses, how is it relevant to argue to the  
11 jury that he committed -- You're going to essentially  
12 argue that he was charged and therefore was convicted  
13 of those.

14 ATTY. FARVER: I think it --

15 THE COURT: That doesn't -- Basing the argument  
16 you're making, that well he's -- he's -- these  
17 names -- these named offenses for which he was not  
18 convicted mean he is dishonest without the benefit of  
19 a conviction.

20 ATTY. FARVER: Well it's both -- I think it's --  
21 More, it's to the -- the sweetness of the deal. But  
22 these are -- these are charges for which, as the  
23 State indicated, he was facing over 60 years.

24 THE COURT: Mr. Farver, maybe I'm not making  
25 myself clear. Okay. I'm -- I'm agreeing that you  
26 should be able to indicate that he had been facing 15  
27 counts. He had been facing whatever the -- the

1 number of felonies they were, how many misdemeanors,  
2 the maximum possible penalty on each he could have  
3 received and so forth. The simple issue right now is  
4 what is the relevance of naming those when those --  
5 naming them? That's the question. What do you think  
6 you're going to be able to argue from evidence of  
7 their names to the jury as to what the name --  
8 Putting aside you're going to be able to argue he had  
9 much more exposure earlier and had other felony  
10 charges pending earlier than he does now. That you  
11 could certainly argue. The limited issue right now  
12 is the names of those offenses. What is the  
13 relevance of the names?

14 ATTY. FARVER: I believe that the relevance of  
15 the names goes to the cooperation agreement's  
16 contents, and that this is what's part and parcel of  
17 it.

18 THE COURT: Okay. The objection is sustained.  
19 So to that portion of what it is you want to do.

20 ATTY. FARVER: So and just so I understand the  
21 Court then, I will be able to say there were 15  
22 charges?

23 THE COURT: Absolutely.

24 ATTY. FARVER: I will be able to say that it's  
25 now been reduced from those 15 to two of which --

26 THE COURT: Actually, three.

27 ATTY. FARVER: Well the VOP is a 16<sup>th</sup> charge.

1 It's a separate case. So it --

2 THE COURT: Okay. All right. Go ahead.

3 ATTY. FARVER: So and I can -- Obviously I can  
4 inquire to the VOP, and then I would not -- Again,  
5 I'm not planning on going into details, your Honor.  
6 That's --

7 THE COURT: Okay.

8 ATTY. FARVER: And is the I.D. theft -- That's a  
9 felony as well. So it's two felonies he pled out to.  
10 And just to the fact -- And I can name those then --

11 THE COURT: Absolutely.

12 ATTY. FARVER: -- as felonies?

13 THE COURT: Yep.

14 ATTY. FARVER: All right.

15 THE COURT: He's been convicted of those.  
16 The -- You can -- you can also inquire about the fact  
17 that he had -- you know, did he have four or five  
18 pending felony charges where he was facing whatever  
19 he was facing, maximum -- I mean you can go through  
20 all that. The only issue is the names.

21 ATTY. FARVER: All right. No, I understand the  
22 Court's ruling. I just want to be sure.

23 THE COURT: Okay. All right. Anything else?

24 ATTY. GARBARSKY: No, your Honor.

25 ATTY. FARVER: Not on this, no.

26 THE COURT: Okay. But on anything else?

27 ATTY. FARVER: Not -- If I could have a few

1 minutes to organize before I start the cross? I  
2 would -- I would appreciate the Court's indulgence.

3 THE COURT: Okay. Recess, five -- five minutes.  
4 Okay.

5 (Whereupon a brief recess was taken.)

6 THE COURT: Good afternoon. Thank you, marshal.  
7 All right. Okay. Mr. Farver, are you all set?

8 ATTY. FARVER: Yes, your Honor.

9 THE COURT: Okay. Bring out the jury.

10 (The jury panel entered the courtroom.)

11 THE COURT: Do counsel stipulate to 12 jurors  
12 and two alternates?

13 ATTY. GARBARSKY: Yes, your Honor.

14 ATTY. FARVER: Yes, your Honor.

15 THE COURT: Okay. We're ready to proceed with  
16 the cross-examination. Mr. Farver.

17 ATTY. FARVER: Thank you.

18 **CROSS-EXAMINATION BY ATTORNEY FARVER:**

19 Q Mr. Capers, --

20 A Yes.

21 Q -- you have been interviewed a number of times by law  
22 enforcement officials now about this case, haven't you?

23 A Yes.

24 Q Do you recall how many times, perhaps?

25 A Twice.

26 Q Only twice?

27 A Yes.

1 Q Have you had interviews with any of the inspectors  
2 from the State's Attorney's Office?

3 A Yes.

4 Q How many times have you had interviews with  
5 inspectors from the State's Attorney's Office?

6 A Twice.

7 Q And have you had interviews with any of the State's  
8 Attorney's, whether it be Mr. Garbarsky, Mr. Reed, or anyone  
9 else who represent themselves as an Assistant or Senior  
10 Assistant State's Attorney?

11 A Yes.

12 Q And how many times have you had occasion to meet with  
13 them?

14 A About twice.

15 Q Okay. And all of this started on January 26 of 2018,  
16 didn't it?

17 A Yes.

18 Q While you were sitting in the Monroe Police  
19 Department; correct?

20 A Yes.

21 Q And you had been picked up on a number of offenses;  
22 is that correct?

23 A Correct.

24 Q Ultimately, you were being charged with 15 different  
25 offenses; is that correct?

26 A Correct.

27 Q Plus a violation of probation?

1 A Correct.

2 Q For which you owed additional time?

3 A Yes.

4 Q Do you remember how much additional time you owed on  
5 the violation of probation, sir?

6 A No, I'm not sure.

7 Q Was it three years?

8 A Yeah. Three.

9 Q Okay. And amongst these 15 charges, a number of them  
10 were felonies, were they not?

11 A Yes.

12 Q And by the way, you know that with felonies there's  
13 enhanced punishment levels over misdemeanors; right?

14 A Yes.

15 Q So you'd been charged with, one, two, three, four,  
16 five -- Six of those were -- 15 were felonies; is that  
17 correct?

18 A Correct.

19 Q So you knew ultimately that you were facing a risk of  
20 over 60 years of incarceration, weren't you?

21 A I didn't know it was 60 years, no.

22 Q Well since that time you've had an -- you've had an  
23 attorney?

24 A Yes.

25 Q And you've discussed it with him?

26 A Yes.

27 Q And you discussed the cooperation agreement with him?

1 A Yes.

2 Q And in the course of that -- That cooperation  
3 agreement, by the way, you -- I think you indicated you  
4 ended up pleading only to the violation of probation and to  
5 a larceny four and an identity theft, which are both  
6 felonies; right?

7 A Yes.

8 Q With a cap of three years; is that correct?

9 A Yes.

10 Q Instead of -- And you knew that you could have been  
11 facing, you discussed with your attorney, over 60 years?

12 ATTY. GARBARSKY: I'd object as to what he  
13 discussed with his attorney. That's attorney,  
14 client --

15 THE COURT: Overruled.

16 Q Well do you know that you were facing over --  
17 potentially over 60 years of incarceration?

18 A No.

19 Q How much time did you think you were facing of  
20 incarceration?

21 A I don't know how many years I was facing.

22 Q Well you were willing to take three and you didn't  
23 know that you could have gotten less or more? Is that what  
24 you are trying to tell us?

25 A Yes.

26 Q So you just picked three out -- out of the air and  
27 said, okay, I'll take that? And that's -- By the way, that

1 is a cap; is that right?

2 A Yes.

3 Q Which means that you could get less, isn't it? Is  
4 that your understanding?

5 A Yes.

6 Q You could walk away potentially with zero time to  
7 serve, couldn't you?

8 A Yes.

9 Q So there was -- there was quite an incentive for you  
10 to enter into this agreement, wasn't there?

11 A Yes.

12 Q The cooperation agreement.

13 A Yes.

14 Q It's very self-serving, isn't it?

15 A What do you mean?

16 Q Well I mean it's in your best interest, isn't it, all  
17 the way around?

18 A Yes.

19 Q Okay. Let me ask you. You said you didn't know it  
20 was over 60. Did you know you had the potential for double  
21 digits?

22 A Yes.

23 Q Did you know that it could have been over 30?

24 A Yes.

25 Q Over 40?

26 A I don't -- I told you already I don't know how many  
27 years --



1 Q But you knew --

2 A -- it could have been.

3 Q But you knew it could have been over 30 years, and  
4 now you're walking away with a deal for three or maybe none;  
5 right?

6 A Right.

7 Q Now and this all started, as you said, when you were  
8 already arrested and incarcerated; right?

9 A Yes.

10 Q So when you allegedly went to -- I think you said it  
11 was Goodrich and near -- turned onto Saint Mary's to pick  
12 up, you say, these three individuals, you didn't report that  
13 afterwards to the police, did you, until January 2018; is  
14 that right?

15 A Correct.

16 Q You didn't go in November and call them, did you?

17 A No.

18 Q By the way, you had been approached on the street by  
19 the police shortly after that murder, hadn't you? You  
20 didn't stop?

21 A No, I didn't get approached by the police about that  
22 murder after.

23 Q Weren't -- weren't you approached about a .380?

24 A I didn't get approached by no police after that.

25 Q And so your decision -- By the way, when you were  
26 picked up by the Monroe police, they didn't ask you any  
27 questions initially about -- about knowing anything about a

1 murder, did they?

2 A No.

3 Q You volunteered that?

4 A Yeah.

5 Q Because you were trying to get yourself bonded out;  
6 right?

7 A I bonded out.

8 Q You were trying to get yourself bonded out, weren't  
9 you?

10 A No. I had already spoke to the bondsman after I got  
11 processed. He said he would be there at 4:00. I spoke to  
12 them about 12:00.

13 Q And you spoke to the police at midnight?

14 A I spoke to the police after I bonded out. When I was  
15 leaving, he was there for me.

16 Q Well you didn't walk out the door, did you? You  
17 didn't have the bond paper signed, did you?

18 A Yes.

19 Q Before the police arrived?

20 A Yes.

21 Q Before you spoke to Monroe police?

22 A Yes.

23 Q And before -- And didn't you also then -- Hamden  
24 police were summoned?

25 A Hamden police came, but I was already bonded out from  
26 my -- We were already leaving, and the Hamden police was  
27 waiting for me.

1 Q So they took you into the interview room; right?

2 A Yes.

3 Q Same interview room that Monroe police had been in  
4 with you?

5 A Yes.

6 Q And by the way, wasn't Monroe police in that first  
7 interview with you?

8 A Yes.

9 Q And didn't you end up subsequently going to Hamden  
10 and being re-interviewed?

11 A I didn't go to Hamden.

12 Q Oh, it's just two interviews in -- in the Monroe  
13 Police Department?

14 A Yes.

15 Q Okay. One was by the Monroe detective primarily?

16 A Yes.

17 Q And the second was then by Detective Crawford?

18 A Yes.

19 Q All right. And do you know about how long those  
20 interviews lasted? Well let --

21 A Like 20, 30 minutes.

22 Q Let's see -- And let me see. You also while you were  
23 at the Monroe Police Department, trying to offer evidence on  
24 some other offenses that you knew about out on the street?

25 A Yes.

26 Q Yes?

27 A Yes.

1 Q Do you remember how many other offenses that you knew  
2 about that you were trying to get information?

3 A One.

4 Q Just one. And you said that, I believe originally,  
5 that you had known Mr. Graham, and you didn't know him as  
6 well as Mr. Coleman or Mr. Moye; right?

7 A No.

8 Q And you'd known him maybe a year or two before this?

9 A Yeah.

10 Q And I think at that point in time you said you maybe  
11 met with him about 20 times in that year or two years?

12 A Yeah.

13 Q You weren't close friends?

14 A No.

15 Q You weren't being loyal to him, were you? He wasn't  
16 your close friend?

17 A No.

18 Q Now again, you said you -- I think you said you  
19 weren't certain of the time that you were contacted for this  
20 ride; right?

21 A Right.

22 Q But you believe -- Had it already -- The sun had  
23 already gone down?

24 A It was -- The sun -- It wasn't sunny, but the light  
25 was still low, like dusk.

26 Q Well we know -- Well maybe we don't know it. But as  
27 the sun drops below the horizon, there's still some

1 sunlight; right?

2 A Yes.

3 Q So do you recall whether the sun had already dropped  
4 below the horizon when you got the call or do you think it  
5 was still up in the air?

6 A I don't the remember the exact --

7 Q I'm not saying it was pitch black.

8 A It was -- I don't remember it exact, if it was above  
9 or below the horizon. I wasn't paying attention. I just  
10 know the sky was light blue still. It wasn't dark.

11 Q It wasn't completely dark?

12 A Yes.

13 Q Okay. And you said that after the call it took you  
14 15, 20 minutes to -- to drive to Goodrich Street?

15 A Yes.

16 Q And by the time you reached Goodrich Street do you  
17 recall what the lighting conditions were?

18 A Still the same.

19 Q Well 15 to 20 minutes later they were the same, when  
20 it's dusk?

21 A It wasn't dark. It was --

22 Q Well were the street lights weren't on?

23 A No.

24 Q The street lights weren't on yet?

25 A I don't think so.

26 Q Well you indicated -- You estimated that the time of  
27 day, I thought you said, when you got the call, was

NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : SEPTEMBER 26, 2019

BEFORE THE HONORABLE ELPEDIO N. VITALE, JUDGE

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

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NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : SEPTEMBER 26, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Elpedio N. Vitale, Judge, on the 26<sup>th</sup> day of September, 2019.

Dated this 8<sup>th</sup> day of July, 2020 in New Haven,  
Connecticut.

  
\_\_\_\_\_  
Christine Bachman  
Court Recording Monitor

1                                   J A L E N   B A C O T E,  
2 of New Haven, Connecticut, having been first duly sworn, was  
3 examined and testified as follows:

4                   THE COURT: Okay. Mr. Bacote, do me a favor.  
5 Pull your chair way up to that microphone and speak  
6 into that microphone. Okay. Thank you. All right.  
7 Go ahead. Yep. Okay. Ladies and gentlemen, there  
8 is one matter that I need to take up. I promise,  
9 very briefly. Just step into the jury room.

10                   (The jury panel exited the courtroom.)

11                   THE COURT: All right. My understanding is that  
12 the witness is represented by counsel. Counsel, just  
13 identify yourself.

14                   ATTY. GREENBERG: That's right, your Honor. My  
15 name is Attorney Sam Greenberg. I'm a public  
16 defender in New Haven.

17                   THE COURT: All right. Mr. Greenberg, thank you  
18 for appearing. My understanding is that the witness  
19 is here pursuant to a cooperation agreement; is that  
20 right?

21                   ATTY. GREENBERG: That's my understanding. Yes.

22                   THE COURT: All right. Mr. Garbarsky, are you  
23 going to be marking that for identification?

24                   ATTY. GARBARSKY: It's already marked,  
25 although -- Yep. It's already marked, Judge. It's  
26 81 for I.D.

27                   THE COURT: All right. Attorney Greenberg, just



1 take a look at State's 81, I believe he just said,  
2 for I.D., and I want you to acknowledge that that is  
3 the entirety of the agreement between the defendant  
4 and the State in connection with his testimony here  
5 today.

6 ATTY. GREENBERG: It is, your Honor.

7 THE COURT: All right. And there have been no  
8 other agreements made between the defendant and the  
9 State other than the cooperation agreement that you  
10 have identified?

11 ATTY. GREENBERG: Not to my knowledge.

12 THE COURT: Well you're the only one who would  
13 have the knowledge. So that's why I'm asking you.

14 ATTY. GREENBERG: I have no knowledge of  
15 anything else. This -- this is the agreement.

16 THE COURT: So that's the entirety of the  
17 agreement; is that right?

18 ATTY. GREENBERG: That's right.

19 THE COURT: Okay. Okay. Thank you. You can  
20 have a seat and we can proceed.

21 ATTY. FARVER: Again, your Honor, I would make  
22 the same objection to the actual paperwork.

23 THE COURT: I assume you have the same objection  
24 with the same ruling. Correct. Okay. Go ahead.

25 (The jury panel entered the courtroom.)

26 THE COURT: Thank you, folks. Do counsel  
27 stipulate to 12 jurors and two alternates?

1           ATTY. GARBARSKY: Yes, your Honor.

2           ATTY. FARVER: Yes, your Honor.

3           THE COURT: Okay. Mr. Garbarsky, go ahead.

4           ATTY. GARBARSKY: Thank you.

5           **DIRECT EXAMINATION BY ATTORNEY GARBARSKY:**

6           Q Good morning, Mr. Bacote.

7           A Good morning.

8           Q How are you today?

9           A Fine. How are you?

10          Q I'm doing well. Thank you for asking. But I'm going  
11 to stand way back here. All right. I want to make sure the  
12 jury can hear you. So you got to speak up, and to the  
13 extent you can, speak right into the microphone. Okay.

14          A Yeah.

15          THE COURT: Okay. Now pull that chair up even  
16 more, Mr. Bacote. There you go. All right.

17          Q All right. Mr. Bacote, in 2017 or thereabouts, where  
18 were you living?

19          A 40 Carmel Street.

20          Q And where was that?

21          A In the Tre.

22          Q All right.

23          A In New Haven, Connecticut.

24          Q Okay. So when you say the Tre, is that a particular  
25 neighborhood in the City of New Haven?

26          A Yeah.

27          Q Okay. And what area does that encompass, meaning

1 what streets or what have you?

2 A What streets are considered that area?

3 Q Yeah.

4 A Whalley, the street I just named. A lot of streets.

5 Q Okay. So Carmel, Whalley? In that general area?

6 A Yeah.

7 Q All right. And how long were you living in the Tre  
8 for?

9 A I don't remember.

10 Q A couple of years? Ten years? More?

11 A Almost a -- almost a year.

12 Q Okay. And when you were living in the Tre -- Well  
13 let me ask you this. Did you know someone name Robbie Moye?

14 A Yeah.

15 Q Is that someone that you were friendly with?

16 A Yeah.

17 Q And how did you know Mr. Moye?

18 A We grew up around each other.

19 Q You grew up around each other?

20 A Uh-huh.

21 Q And where was that? In the Tre?

22 A No. In the Ville.

23 Q In the Ville?

24 A Yeah.

25 Q And so just tell the ladies and gentlemen of the jury  
26 what -- what the Ville is? What's that area?

27 A It's another neighborhood like the Tre. Just a

1 different part of town.

2 Q Can you give us a couple of streets that are in the  
3 Ville that are kind of well known?

4 A Shelton, Division, Dixwell.

5 Q Okay. And so you grew up with Mr. Moye from the  
6 Ville?

7 A Yeah.

8 Q And what would you call him?

9 A Robbie.

10 Q All right. And what do they call you? What was your  
11 nickname?

12 A Chop.

13 Q Chop, C-h-o-p?

14 A Yeah.

15 Q Okay. How about Brennan Coleman, did you know him?

16 A Yeah.

17 Q What did you call him?

18 A B Rock.

19 Q And how did you know Mr. Coleman?

20 A Same way I knew Robbie, Robert Moye.

21 Q Okay. I'm sorry?

22 A Same way I knew Robert.

23 Q So did you grow up in Newhallville with Mr. Coleman  
24 as well?

25 A Yeah.

26 Q And he was known as B Rock?

27 A Yeah.

1 Q And how about James Graham, do you know James Graham?

2 A Yeah.

3 Q What did you call James Graham?

4 A Crazy J.

5 Q How did you know James Graham?

6 A The same way I knew the other two.

7 Q Growing up in Newhallville?

8 A Yes.

9 Q Okay. Is James Graham here today?

10 A Yes.

11 Q Can you tell us where he's sitting and something he's  
12 wearing?

13 A He's sitting right there with the blue, button down  
14 shirt.

15 ATTY. GARBARSKY: May the record reflect the  
16 witness has identified the defendant?

17 THE COURT: It may.

18 Q Now, Mr. Bacote, you're here subject to a subpoena  
19 from the State of Connecticut; correct?

20 A Uh-huh.

21 Q And you just have to say yes or no. Sorry.

22 A Yes.

23 Q All right. And you entered into a cooperation  
24 agreement with the State of Connecticut?

25 A Yes.

26 Q And you have an attorney representing you on your  
27 charges that you have before the Court; is that correct?

1 A Yes.

2 Q And your attorney is Sam Greenberg?

3 A Yes.

4 Q And he's in this courtroom right now seated over  
5 there; correct?

6 A Yes.

7 Q Okay. And the agreement that you've entered into --

8 ATTY. GARBARSKY: May I approach, your Honor,  
9 first?

10 THE COURT: Okay.

11 Q This is State's 81. I'd ask you to just take a look  
12 at this. Take some time and look at all the pages and let  
13 me know if you're familiar with that document when you're  
14 done. Are you all set with that?

15 A Yes.

16 Q Do you recognize that document?

17 A Yes, I do.

18 Q Is that the agreement that you entered into with the  
19 State of Connecticut?

20 A Yes, it is.

21 Q All right. I'm going to go over a bit of it with  
22 you. Is that all right?

23 A Uh-huh.

24 Q First off, it says you enter into this agreement with  
25 myself as a representative of the State of Connecticut.  
26 You, obviously, and your attorney, Sam Greenberg; is that  
27 right?

1       A    Yes.

2       Q    Okay.  And it says that the agreement says the State  
3 of Connecticut agrees upon your request to provide  
4 information regarding your cooperation to any local, state,  
5 or --

6                ATTY. FARVER:  Your Honor, may I at this point  
7 object.  This is not a question in a sense.  It's  
8 reading from a document that's not in evidence.

9                THE COURT:  The objection is overruled for the  
10 reasons indicated yesterday.  Go ahead.

11               ATTY. FARVER:  Yes, sir.

12       Q    I'm going to start it again, Mr. Bacote.  The State  
13 of Connecticut agrees that upon your request to provide  
14 information regarding your cooperation to any local, state,  
15 or federal government agency in any matter.  Did you  
16 understand that?

17       A    Yes.

18       Q    And the State is not going to make any specific  
19 sentence recommendation about your sentence unless required  
20 to do so by the Court.  Do you understand that?

21       A    Yes, sir.

22       Q    And in exchange you agree to; one, truthfully  
23 disclose all information pertaining to your criminal  
24 activities, the criminal activities of others, as those  
25 activities relate to matters upon which the State or any  
26 investigating police officer inquire of you.  Do you  
27 understand that?

1 A Yes.

2 Q And; two, you agree to truthfully testify before any  
3 investigatory Grand Jury, any trial, retrial, or any court  
4 proceeding concerning the criminal activity as requested to  
5 do so by the State of Connecticut?

6 A Yes.

7 Q Okay. And you understand that this is not an  
8 immunity agreement, and anything -- information that you  
9 provide, you could be subject to prosecution? Do you  
10 understand that?

11 A Yes.

12 Q And furthermore, the State of Connecticut makes no  
13 promises or representations about the actual sentence that  
14 you are going to receive or the certainty that you'll  
15 receive concurrent time. Do you understand that?

16 A Yes.

17 Q Do you understand that the sentencing is going to  
18 come entirely from the judge that canvassed you; is that  
19 right?

20 A Yes.

21 Q And just so we're clear, it's not this judge, right?

22 A Uh-huh. Yes.

23 Q It's Judge Clifford in a different courtroom?

24 A Yes.

25 Q Okay. And you understand that you entered pleas in  
26 regards to this agreement; right?

27 A Yes.



1 Q And those pleas were to a violation of probation and  
2 larceny in the fourth degree; is that correct?

3 A Yes.

4 Q And the potential exposure, meaning the potential  
5 incarceration you face, is up to three years in prison. Do  
6 you understand that?

7 A Yes.

8 Q And do you understand that those charges are based on  
9 activities that you participated in back in March the 20<sup>th</sup>  
10 of 2018 in the City of New Haven?

11 A Yes.

12 Q Do you further understand that at all times you are  
13 obligated to provide complete and truthful information and  
14 testimony?

15 A Yes.

16 Q And do you understand that if you don't, if a judge  
17 or if the State reasonably determines that you have given  
18 incomplete, false, or misleading information, this agreement  
19 becomes null and void? Do you understand that?

20 A Yes.

21 Q And then you may be subject to further prosecution  
22 for perjury or any other state criminal offense relating to  
23 the giving of that information. Do you understand that?

24 A Yes.

25 Q Okay. And this is the only agreement that you  
26 entered into; is that right?

27 A Yes.

1 A I don't remember.

2 Q Could it have been January 24 of 2018?

3 A I don't believe so. I believe it was before that.

4 Q Okay. Do -- How long before that?

5 A Like a month before that.

6 Q So sometime in perhaps December or late December of  
7 2018?

8 A Yeah.

9 Q And at that point in time did you give them any  
10 information?

11 A Yes.

12 Q And who was the officer that interviewed you?

13 A Joe Crawford.

14 Q Okay. And you were also interviewed on June 6 of  
15 2018?

16 A I don't remember.

17 Q Well do you recall being interviewed on July 2 of  
18 2018, while you were incarcerated?

19 A I don't remember like the specific days.

20 Q Okay. Well do you recall being interviewed while you  
21 were incarcerated?

22 A Yeah.

23 Q And is it at that time, point in time, that you gave  
24 some statements?

25 A Yeah.

26 Q That were recorded?

27 A Yeah.

1 Q And were you also then interviewed, well prior to a  
2 hearing in the courthouse?

3 A Yes.

4 Q Okay. And you also came into the courthouse  
5 previously to testify about this matter?

6 A Yes.

7 Q Now and you also -- Do you remember in November of  
8 2018, a point in time when officers came to your mother's  
9 house to try to interview you?

10 A Excuse me. What was the date you said?

11 Q In November of 2018.

12 A Well I think so. Yeah.

13 Q Okay. And so you had multiple exposures to law  
14 enforcement with regards to this matter; is that fair to  
15 say?

16 A Yes.

17 Q Could you estimate how many times you've been  
18 approached by law enforcement about this matter?

19 A No.

20 Q Well you can't estimate? Would it be -- You've just  
21 listed at least, what, half a dozen; right?

22 A I don't know the specific number.

23 Q I didn't ask specific. I said estimate. Is it --  
24 Was it more than six?

25 A Yeah.

26 Q Could it be more than a dozen times?

27 A No.

1 Q And, sir, when -- the time you came to reach this  
2 cooperation agreement, I believe there may have been -- On  
3 December 20 of 2018? Yes?

4 A Yes.

5 Q Do you recall that?

6 A Yes.

7 Q And there had been some negotiation period prior to  
8 that with regards to reaching that cooperation agreement; is  
9 that fair to say?

10 A Yes.

11 Q Negotiations as to what kind of maximum sentence you  
12 could be receiving?

13 A Three years.

14 Q Right. And that was what was being negotiated;  
15 right?

16 A Yes.

17 Q And that's a cap; right?

18 A Yes.

19 Q With a right to argue for nothing?

20 A Yes.

21 Q And what you pled out to, I'll make sure, is a  
22 felony, was it not?

23 A No.

24 Q Well, excuse me. It's a violation -- You were facing  
25 a -- you were facing a felony charge, were you not?

26 A Yes. Yes.

27 Q And so what happened was that with the negotiations

1 it was subbed down to a lesser offense; right?

2 A Yes.

3 Q Okay. So that you could get a lesser sentence;  
4 right?

5 A Yes.

6 Q And you also indicate that you pled out to a  
7 violation of probation?

8 A Yes.

9 Q And that's part of the deal; is that right?

10 A Yes.

11 Q And you still have another matter pending; is that  
12 true?

13 A Yes.

14 Q Okay. And so when you were facing a felony, that was  
15 a substantial amount of time that you were at risk, wasn't  
16 it?

17 A Yes.

18 Q More than double digits?

19 A Yes.

20 Q And so your deal now is no more than three?

21 A Yes.

22 Q And maybe none?

23 A Yes.

24 Q And by the way, when you signed the cooperation  
25 agreement, when you came to court on 12-20 of 2018, --

26 A Yes.

27 Q -- you were brought in by correction officers? You

1 were still -- You were incarcerated that day?

2 A Yes.

3 Q And after you were then canvassed and the cooperation  
4 agreement was approved, you were released?

5 A Yes.

6 Q And you've been released since?

7 A Yes.

8 Q Was that part of the promise?

9 A Yes.

10 Q Oh, just one other -- And you're certain that you  
11 were told by Mr. Graham that they had taken money off of Lee  
12 Bando?

13 A Yes.

14 Q And you're certain he told you that they had stripped  
15 clothing off of Lee Bando?

16 A Yes.

17 Q And you're certain, just as certain as everything  
18 else, that they also took his cell phone?

19 A Yes.

20 ATTY. FARVER: No further questions.

21 THE COURT: Any redirect?

22 ATTY. GARBARSKY: Just very briefly.

23 REDIRECT EXAMINATION BY ATTORNEY GARBARSKY:

24 Q Mr. Bacote, when your bond was lowered -- First off,  
25 you were locked up for a period of time?

26 A Yes.

27 Q And did you get credit for that time that you were

1 locked up for?

2 A Yes.

3 Q Okay. When your bond was lowered, was it a judge  
4 that lowered your bond?

5 A Yes.

6 Q Okay. I didn't lower your bond?

7 A No.

8 Q Mr. Durham didn't lower your bond?

9 A No.

10 ATTY. GARBARSKY: Okay. No further questions.

11 **RE-CROSS-EXAMINATION BY ATTORNEY FARVER:**

12 Q Does the -- When your bond was lowered, sir, was  
13 there a State's Attorney in the courtroom?

14 A I don't remember.

15 Q Well a State's Attorney, someone such as Mr.  
16 Garbarsky?

17 A Yes.

18 Q All right. Not necessarily him personally. And when  
19 it came time to lower your bond, did the State object to  
20 lowering your bond?

21 A No.

22 Q In fact, they agreed to it, didn't they?

23 A Yes.

24 Q And you got, what, a promise to appear?

25 A Yes.

26 Q Which is what you're on now; right?

27 A Yes.

NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : OCTOBER 2, 2019

BEFORE THE HONORABLE ELPEDIO N. VITALE, JUDGE

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

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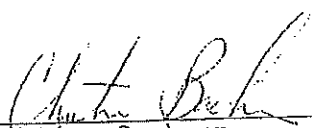


NNH-CR18-0296757-T : SUPERIOR COURT  
STATE OF CONNECTICUT : JUDICIAL DISTRICT  
NEW HAVEN  
v. : AT NEW HAVEN, CONNECTICUT  
JAMES GRAHAM : OCTOBER 2, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Elpedio N. Vitale, Judge, on the 2<sup>nd</sup> day of October, 2019.

Dated this 27<sup>th</sup> day of July, 2020 in New Haven,  
Connecticut.

  
Christine Bachman  
Court Recording Monitor

**State's Closing Argument 10/02/19TR pp. 20-36**

1           ATTY. DURHAM: Yes, your Honor. Thank you.

2           ATTY. FARVER: Yes. Yes, your Honor.

3           THE COURT: All right. Ladies and gentlemen,  
4           this is the part of the trial called closing  
5           argument, as you heard me say. Each of the lawyers  
6           now has an opportunity to make their arguments to  
7           you. Each side has the same total amount of time for  
8           argument. The State's argument, however, is divided  
9           into two parts because the State has the burden of  
10          proof. The reason why all your notebooks were  
11          collected is because, as you may recall me telling  
12          you at the beginning of the trial, the arguments of  
13          the attorneys are not evidence. They are intended to  
14          assist you in evaluating the evidence, but they are  
15          not evidence. That's why your notebooks were  
16          collected. Okay. With that, we're ready to proceed.

17          ATTY. DURHAM: Thank you, your Honor.

18          **CLOSING ARGUMENT BY ATTORNEY DURHAM:**

19                 And good morning, ladies and gentlemen. First off, I  
20                 want to thank you for your time, for your service to the  
21                 court, and sitting on this jury. We all recognize that it's  
22                 frustrating at times when you're -- you're up and down.  
23                 You're in and out of the courtroom. There's long delays in  
24                 the hallway. That's all done with the hope of presenting  
25                 the fairest case possible to all of you. Now you heard  
26                 evidence in this case, the State of Connecticut versus James  
27                 Graham. That on November 13, 2017, at 3:35 in the

1 afternoon, in the Town of Hamden, Leandre Benton was walking  
2 westbound -- excuse me -- eastbound on Dudley Street. He  
3 turns slightly north to the opening to the canal line and  
4 walked to the right to the eastern portion, the grassy area,  
5 to the side of the canal line. He doesn't leave that area  
6 until he's on a stretcher with a gunshot wound to his head  
7 and a gunshot wound to his back. The State presented video  
8 evidence showing that area, which shows no other person goes  
9 to that grassy area while Mr. Benton is alive and well  
10 except for this defendant and his two friends, Mr. Brennan  
11 Coleman and Robert Moyer. They are the only ones in that  
12 area. I would submit the State has presented evidence  
13 through the course of this trial that establishes beyond a  
14 reasonable doubt that it is those three men and no one else  
15 that is responsible for his death. And when we're finished  
16 discussing all of the evidence, we're going to be asking you  
17 to hold Mr. Graham accountable for that, for that taking of  
18 life, and find him guilty. Now there are three charges  
19 facing Mr. Graham. So there's felony murder, there's  
20 conspiracy to commit robbery in the first degree, and  
21 carrying a pistol without a permit. We're going to take  
22 these in reverse order. Carrying a pistol without a  
23 permit -- Well, first of all, I should note that the judge  
24 is going to give you a thorough instruction on the law when  
25 we're done with argument, and if I should say anything that  
26 is in any way different than the Court's instruction, it's  
27 the Court's instruction that you are to follow. I'm merely

1 setting forth the elements so that we can discuss them as it  
2 pertains to the evidence. There is three elements that you  
3 will need to find for the charge of carrying a pistol  
4 without a permit. The first that he carries a pistol upon  
5 his person; second, it's not within his home or place of  
6 business; and third, he does not possess a permit to  
7 actually carry that pistol. The defense has and the State  
8 issued a stipulation that was read to you yesterday whereby  
9 the defendant agrees he did not have a permit. That element  
10 is really not in question. The second element there, he's  
11 not in his home or place of business. The allegation is  
12 that this incident occurred on the canal line or just to the  
13 right of the canal line on a public street in the City of  
14 New Haven. Clearly, not within the defendant's home.  
15 Clearly, not within his place of business. And now the  
16 first of those elements, the defendant had a gun in his  
17 possession. You saw evidence, State's 35. This is a  
18 screenshot of the defendant holding the silver handgun. You  
19 heard testimony from Manny Hatzikostas regarding the  
20 download of that video from which that screenshot was taken,  
21 and that that was dated November 11, 2017. Two days before  
22 the homicide he's in possession of that gun. Mr. Capers and  
23 Mr. Bacote both indicated to you that the defendant was  
24 known to carry a .380, and they saw him with that .380, and  
25 they saw him on multiple occasions, and that gun is the  
26 .380. Now the Court is going to give you an instruction  
27 about how that evidence is to be used, and we're not

1 suggesting that he should be found in violation of that  
2 statute for possessing the gun two days before. The  
3 allegation is that he possessed it on November 13, 2017. So  
4 the Court will indicate that that evidence can be used by  
5 you to show that he had the means and the opportunity to  
6 possess that weapon on the 13<sup>th</sup>, because he had it just two  
7 days prior. Additionally, Mr. Capers has indicated, he told  
8 you, that he frequently saw Mr. Graham with that particular  
9 .380. The same with Mr. Bacote. He had seen him with that  
10 .380 on multiple occasions. In fact, Mr. Bacote looked at  
11 the gun and saw .380 stamped in the side of the barrel. The  
12 testimony from Mr. Bacote also indicates that the defendant  
13 admitted to him that he was the shooter. He was the one  
14 responsible for shooting and killing Mr. Benton, and he knew  
15 that the gun that Mr. Graham carried was the .380. Now I do  
16 need to back up to the first element regarding what  
17 constitutes a pistol. And again, the judge will instruct  
18 you that a pistol is a firearm with a barrel less than 12  
19 inches. The State didn't present any evidence as to an  
20 exact length of that gun, but you have the picture available  
21 to you, and you can use your common sense to infer the  
22 length of this barrel is clearly less than a foot long,  
23 given the size of his hand and the small distance between  
24 his fist and the end of that gun. Clearly, it's less than  
25 12 inches. Now the second charge is conspiracy to commit  
26 robbery in the first degree, and the judge again is going to  
27 give you a very thorough and lengthy explanation of that,

1 but there are three elements, and the first is that there  
2 has to be an agreement between the defendant and one or more  
3 persons. So in this case you have two other people. You  
4 have Mr. Moye and Mr. Coleman. That those individuals agree  
5 to engage in a robbery, and that someone, any one of them  
6 takes a step towards completing that robbery. It doesn't  
7 have to be a successful robbery. They don't have to get  
8 away with a lot. They don't have to get away with anything.  
9 They just have to form an agreement to do it. And when the  
10 defendant enters into that agreement, he has the intent to  
11 commit a robbery. So again, the agreement itself, this does  
12 not have to be a contract. This is not a handshake. It  
13 doesn't have to be memorialized in any way. And the Court  
14 will instruct you that these types of arrangements are  
15 typically done in secret. So you can find that they had  
16 this agreement through circumstantial evidence. It can be  
17 inferred from the evidence that you have before you. So  
18 what evidence did you have? Well you have three men walking  
19 in tandem from New Haven to Hamden to an area where Mr.  
20 Benton was known to spend his time. All three wearing  
21 hoodies. All three carrying guns. You have the video of  
22 them on the sidewalk, looking in the area where Mr. Benton  
23 is just moments before, and then they walk again as a group  
24 together in that direction, and then they run away together.  
25 They go back to Bassett Street together and they run, or  
26 rather, they take a ride to Waterbury together. You can  
27 find from all of that evidence that these men were working

1 together. There was an agreement to rob Leandre Benton, and  
2 you heard that from Mr. Capers and Mr. Bacote. The plan was  
3 to stain him, and they both defined stain him to you. And  
4 that is, of course, to commit a robbery. Now as I said, an  
5 overt act just means anybody took a step, picking up a gun.  
6 Mr. Coleman saying let's go, and then they all approach Mr.  
7 Benton, that's an overt step. And as I indicated, any one  
8 of them can take that step. And again, the defendant had to  
9 have had the intent to commit the robbery, and we know he  
10 had intent to commit a robbery because that's what he told  
11 Mr. Bacote. The plan was ask him if he's SLB, and we're  
12 going to rob him, but it went sour. And that takes us to  
13 the most serious of the charges, the felony murder. Much of  
14 the evidence for the felony murder is things that we've just  
15 discussed. The first element that you need to find is that  
16 the defendant committed or attempted to commit the robbery.  
17 In the course of and in furtherance of that robbery, he or  
18 another one of his cohorts killed Mr. Benton. And the Court  
19 is going to instruct you he can be convicted even if he  
20 didn't have an intent to commit murder that day, even if  
21 he's not the one who physically pulled the trigger. If Mr.  
22 Moye or Mr. Coleman committed that murder during the course  
23 of their agreement to rob Mr. Benton, this defendant is  
24 still guilty. Of course, that's not the evidence that's  
25 before you. The evidence is before you, is that Mr. Graham  
26 is the one who shot and killed Mr. Benton, and that comes  
27 from all the evidence we discussed regarding the .380

1 handgun. That he had a .380. He was known to carry a .380.  
2 Mr. Capers and Mr. Bacote both saw him with this .380. And  
3 lo and behold, the ballistics evidence from Ms. Therriault  
4 was that there's a .380 projectile lodged in Mr. Benton's  
5 chest, and that is consistent with Mr. Bacote's testimony  
6 that shortly after this homicide when he's with Mr. Maysonet  
7 and this defendant, the defendant tells him that he shot  
8 Benton. Now I want to talk to you a little bit about the  
9 timeline that you have before you from the evidence. To  
10 some extent this is moot, given that the defendant got on  
11 the stand and basically conceded all of this information.  
12 But you have before you records from the electronic  
13 monitoring company that shows Mr. Graham left his residence  
14 at 99 Basset Street at 3:24 in the afternoon. He doesn't  
15 dispute that. You have him on camera at 321 Goodrich Street  
16 walking again with Mr. Moye and Mr. Coleman with their  
17 hoodies headed westbound. They are next picked up on Dudley  
18 Street, still headed west, and then to the canal line. And  
19 the canal line camera shows you that at 3:35 Mr. Benton  
20 walks essentially northeast to the grassy area. He is never  
21 seen on any of those cameras leaving that area. He doesn't  
22 go anywhere but right there where you saw the body camera of  
23 the location where the EMT's attempted to save his life. At  
24 3:38, you see Mr. Graham, Mr. Moye, and Mr. Coleman walk  
25 into view from the canal line entrance. They are stopped by  
26 Mr. Donovan or Mr. Lowndes rather, who you heard testify  
27 regarding his brief interaction with these men. He



1 indicated to you that he knows Mr. Coleman very well. He  
2 identified him, and he knew Mr. Moye and identified him. He  
3 didn't know this defendant. And he indicated to you that  
4 Mr. Coleman was armed with a firearm. It was silver and  
5 black. He showed it to him. He looked at it and gave it  
6 back and put it in his pocket and he went on his way. Two  
7 minutes after that, Mr. Graham, Mr. Moye, and Mr. Coleman,  
8 after briefly walking off screen to the west, turn around,  
9 come back and head to the exact same location at the head of  
10 the canal trail where Mr. Benton had just walked minutes  
11 before. You see them walk off camera, and then you see them  
12 run back in the direction from which they came. Nobody  
13 else. Nobody else enters that area. And then you have the  
14 electronic monitoring that shows that Mr. Graham returns  
15 back to his residence at 99 Bassett Street at 3:46. Mr.  
16 Bellamy came in and testified regarding the fact that he was  
17 contacted by Mr. Moye indicating he needed a ride. He went  
18 to Bassett Street and picked them up and brought them to  
19 Waterbury. And then again, the electronic monitoring shows  
20 that Mr. Graham eventually came back to his residence at  
21 11:30. But this timeline doesn't have sandwiched between  
22 there -- Between 4:25 and 11:19 is a video that Mr.  
23 Hatzikostas testified to, again from Mr. Moye's cell phone.  
24 This was the download from the apartment which showed Mr.  
25 Moye filming everybody, with Mr. Coleman, this defendant,  
26 and a fourth person who may be going by the nickname Fetty.  
27 That video is at 9:30, during the period of time after Mr.

1 Bellamy indicated he took them to Waterbury, before the GPS  
2 shows that Mr. Graham came home. Now in a few minutes when  
3 I'm done, Attorney Farver is going to have a chance to  
4 address you, and I don't know exactly what he's going to  
5 say, but I anticipate these are going to be a few of the  
6 things. One is going to be regarding the stipulation that  
7 was read to you yesterday showing that the defendant's DNA  
8 is not on the victim, and that is certainly true, but  
9 there's also no evidence that Mr. Graham ever touched the  
10 victim, none. The evidence is that Mr. Benton punched  
11 Brennan Coleman, B Rock, and it's at that point that Mr.  
12 Graham pulled his gun and shot him and ultimately killed  
13 him. So there would be no reason for you to suspect to find  
14 this defendant's DNA on Mr. Benton. Additionally, he  
15 doesn't dispute that he's the person on camera. His own  
16 mother came in here and identified him as the person on the  
17 surveillance camera. I suspect counsel is then going to  
18 argue that there was no robbery here because Mr. Benton had  
19 \$10 in his pocket. He had two cell phones. He had a small  
20 amount of powder suspected to be illegal drugs. Clearly,  
21 this wasn't a robbery. That doesn't explain why a dying man  
22 was clutching his watch in his hand. And it's also  
23 irrelevant for the purposes of the statutes that you need to  
24 find, because for a conspiracy only -- you only need to find  
25 the elements that I indicated. An agreement to commit a  
26 robbery, someone takes and overt act. It doesn't have to be  
27 successful. And for the felony murder, attempted robbery is

1 sufficient. It doesn't have to be successful. And clearly,  
2 this was not. As Mr. Bacote said, it went sour. And I  
3 suspect counsel will indicate there's no eye witnesses. You  
4 don't have anybody who comes in here and says specifically I  
5 saw Mr. Graham do the shooting, and that's true. But  
6 there's no one there, because you have the surveillance  
7 camera. There is no other witness there other than Mr.  
8 Graham, Mr. Coleman, and Mr. Moyer. So ultimately counsel is  
9 going to have to argue to you, don't believe Mr. Capers,  
10 don't believe Jalen Bacote. They've got skin in the game,  
11 so to speak. They have cooperation agreements. They are  
12 trying to get a deal from the State. I'm sure you're going  
13 to hear that. And it's unquestionably true that there are  
14 agreements. You heard about them. Attorney Garbarsky  
15 questioned both of those individuals about the conditions of  
16 their cooperation agreements. One of which was to testify  
17 truthfully or the deal is void. But counsel is going to  
18 tell you not to believe them. I'd ask you to consider a few  
19 factors. These are two different people speaking with two  
20 different codefendants at two different times. There's no  
21 evidence to suggest they ever had an opportunity to speak to  
22 one another. Their stories are not exactly the same. Both  
23 get slightly different pieces of information from Mr. Moyer  
24 and Mr. Graham, but it overlaps a great deal. And I'd also  
25 ask you to consider how much of the information that Steven  
26 Capers and Jalen Bacote told you is corroborated by another  
27 source. One example, Mr. Capers indicated to you that Mr.

1 Moye contacted him and said they needed a ride. He kicks  
2 them out of the car. Ultimately, he talks to them later  
3 when he's with Fat Cat on the cell phone and says they are  
4 in Waterbury. Well Shyquan Bellamy came in here and told  
5 you that he drove them to Waterbury. The video from Mr.  
6 Moye's phone shows a video at 9:30 where they literally  
7 print Waterbury on it. And then of course, the electronic  
8 records show the timeframe when Mr. Graham left the house  
9 and when he returned. How could Mr. Capers have known all  
10 of those things when he tells the police what he tells them.  
11 He says that Mr. Graham was the one that shot Leandre Benton  
12 and he did it with a .380. Well the ballistics evidence  
13 shows there's a .380 lodged in Mr. Benton's chest. How  
14 could Mr. Capers know that? Mr. Capers tell you that Robert  
15 Moye describes the gunshot going through the victim's head.  
16 He doesn't recall if it was in the front and out the back or  
17 out the -- or from the back to the front, but he recalls Mr.  
18 Moye saying there was definitely two holes. And you saw the  
19 picture from the autopsy. There's an entrance wound in the  
20 front of the head, an exit wound in the back of the head.  
21 Again I ask you, how could Mr. Capers know that unless the  
22 information that he's being given from Mr. Moye was first-  
23 hand information? Mr. Capers indicated that Coleman, B  
24 Rock, was armed with a baby nine, being a smaller caliber .9  
25 millimeter handgun. Donavan Lowndes came in and he  
26 indicated to you he would rather not have been involved, but  
27 he came in and he told you that Mr. Coleman showed him a

1 semiautomatic handgun. Again, how could Mr. Capers know  
2 that Donavan Lowndes would have seen a gun in Mr. Coleman's  
3 hand and a semiautomatic handgun in his hand? Mr. Capers  
4 tells you that Robert Moye was holding a .38 revolver during  
5 the course of this event. The video that you saw from the  
6 two days prior, November 11, 2017, with Mr. Moye waving the  
7 revolver back and forth, he clearly had access to a  
8 revolver. How could Mr. Capers know that? Capers, again,  
9 he tells you on the date he goes to pick up Mr. Moye, Mr.  
10 Coleman, Mr. Graham, they come running to the car and they  
11 are out of breath, saying go, go, go. Well you have video  
12 which shows these two men running from the north -- the  
13 northern side of Dudley Street, across Dudley Street, down  
14 the canal line, and then across Goodrich Street running  
15 through backyards. So is it consistent given that  
16 essentially undisputed information that these men were  
17 running, that they would get to the car out of breath? And  
18 then Ms. Avery, Kristen Avery came in, and she corroborated  
19 Mr. Capers' testimony in large part. She indicated they  
20 were together at Bob's. He drove to that location to pick  
21 up some people. She identified two of them. She didn't  
22 know Mr. Graham, but she knew Mr. Moye and she knew Mr.  
23 Coleman. And she indicated that they all got into the car  
24 and that Mr. Capers kicked them out. This is an ex-  
25 girlfriend, who she indicated knew Mr. Capers two years ago.  
26 But she comes in and tells you essentially the exact same  
27 thing that he did. Now Mr. Bacote. He told you that Mr.

1 Graham was with Robert Moye and Brennan Coleman at the time  
2 of this murder, and that he got that information directly  
3 from Mr. Graham. Well Detective Crawford came in and  
4 identified Mr. Moye and Mr. Crawford (as stated) from the  
5 video for you. Donavan Lowndes came in and testified and  
6 identified them both from the video. And ultimately, the  
7 defendant took the stand and acknowledged that these two men  
8 were with him. So again, Mr. Bacote just happens to know  
9 this information? Now Mr. Bacote indicated that when he  
10 talked to Graham, again this is in the days following the  
11 homicide when he's with Mr. Maysonet at his house, that he  
12 raises the subject with Mr. Graham based on the stuff that's  
13 being put out on Facebook as to what happened to Lee Bando,  
14 Mr. Benton. And Graham says that's their work, and he says  
15 I shot him, and then he changes it and says well we shot  
16 him. This information is consistent with what Mr. Moye  
17 tells Mr. Capers. Again, these are two different people  
18 coming in at two different times, speaking with law  
19 enforcement, giving the same information and coming from two  
20 different sources, two different codefendants. That being  
21 that Mr. Graham is the one that shot Mr. Benton. And again,  
22 the indication that Mr. Graham had a .380 semiautomatic  
23 pistol that was shiny and was silver, that's consistent with  
24 the video that you see that's again coming from an  
25 independent source of Robert Moye's cell phone. Mr. Capers,  
26 there's no evidence that he would have ever had any access  
27 to any videos contained within Mr. Moye's cell phone. He

1 also tells you that when Graham is reciting the story, he  
2 says they ran back down the bike trail towards the Ville.  
3 Entirely consistent with the camera footage recovered by the  
4 police, and that's been shown to you. And then he says they  
5 went to Gap's house in Waterbury. Again, consistent with  
6 information you get from another source, from Mr. Moye's  
7 phone and from Mr. Bellamy. So counsel can ask you to  
8 question their motives based on whether they were hoping  
9 maybe to get a favorable disposition of their cases based on  
10 the testimony, but you can't disregard their testimony  
11 entirely because it's supported by too many independent  
12 pieces of evidence. But again, that's what's going to be  
13 asked of you, not to believe Mr. Bacote, not to believe Mr.  
14 Capers, because if you do it's contrary to the defendant's  
15 testimony. It's contrary to the story that we heard  
16 yesterday whereby Mr. Graham indicates that it wasn't him.  
17 It was a masked man in a track suit who came in from  
18 somewhere, not anywhere on camera, not from the north, not  
19 from the south, not from the east, not from the west, but  
20 from somewhere in the trees and aimed this gun at them and  
21 fired. If you believe that story then you can't believe Mr.  
22 Capers and you can't believe Mr. Bacote. Now the defendant  
23 indicated to you that when they were running off camera at  
24 approximately -- I believe it was 3:40 and 35 seconds. Only  
25 about 35 seconds after they walked to the grassy area  
26 they're running away. And his indication is well we were  
27 just running because we saw -- or he saw a man with a gun

1 crouched down pointing at them, so he ran. He took off  
2 running, then he hears boom, boom, boom. So I'm going to  
3 ask you to take a look at that portion of the video as these  
4 three men run southbound across Dudley Street.

5 (The video was played.)

6 Do you see any of those men duck? Do you see any of  
7 them scatter, dive behind a car, get behind a tree, try to  
8 get anywhere away from the shooter? Do you see them running  
9 with arms pumping like an Olympic sprinter or do they have  
10 their hands in their pockets, jogging, like they are trying  
11 to get away from a crime scene? Additionally, if that was  
12 the case, if they are just trying to get away from this  
13 masked gunman in the trees, why are they still running  
14 blocks away on Goodrich Street? It's 392 Goodrich when you  
15 see them running through the yard. Again, hands in pockets.  
16 And does it make sense to you that if you were in the  
17 unfortunate circumstance of finding yourself in Hamden with  
18 a gun pointed at you, that your first order of business upon  
19 getting home would be to order up a ride to go to Waterbury  
20 to go buy guns? That's why they had guns in their  
21 possession in the video he says, because they went to buy  
22 guns, not because they already had guns. I'd ask you  
23 whether that makes any sense? Similarly, as we discussed in  
24 the context of the robbery, if the defendant's story were  
25 true, and that they were merely waved over by this person  
26 that he didn't know because that person wanted to buy some  
27 drugs, why do the firefighters or the EMT's and the police



1 officers who arrive on scene find Mr. Benton clutching his  
2 watch in his hand? There's one portion of this incident  
3 that you don't get to see. You see what happens before.  
4 You see the three men walk to the grassy area and you see  
5 the three men run away. There's only one portion that you  
6 don't see, and that's the portion that Mr. Bacote and Mr.  
7 Capers explain to you of what happened. It was an attempted  
8 robbery. It went bad because Mr. Benton was not going to  
9 give in, and he punched Mr. Coleman, and then they shot him,  
10 and they killed him. The defendant sat here throughout the  
11 course of the trial. He heard all the testimony. And I'd  
12 submit to you, he had an opportunity to decide which pieces  
13 of evidence he wanted to disagree with and which pieces of  
14 evidence he was going to concede. He heard his own mother  
15 come in here and testify that it was him on the camera on  
16 Goodrich Street. His own mother identifies him from a  
17 picture at the very head of the canal line. So he admits  
18 it's him. We have GPS records of showing him leaving his  
19 house at 3:24 and getting back there 22 minutes later. He  
20 can't dispute those electronic records so he concedes it.  
21 Mr. Bellamy, he didn't have a dog in this fight. He comes  
22 in and says, yeah, I gave some guys a ride. The defendant  
23 can't dispute that, so he concedes it. It says Waterbury on  
24 the video in Mr. Moyer's phone. There's a picture of him two  
25 days prior pulling a weapon. He can't dispute that, so he  
26 says I don't know the caliber of that gun. But Mr. Capers  
27 and Mr. Bacote know the caliber of that gun, and that was a

1 .380. So the one portion of the evidence where the  
2 defendant has an opportunity to give a piece of information,  
3 it can't easily be challenged because it's not on camera, is  
4 the moments of the shooting. So the moments of the  
5 shooting, he tells you the story that we've been talking  
6 about. That just by happenstance, the exact moments where  
7 he, Mr. Coleman, and Mr. Moyer are walking up to Mr. Benton  
8 there is a masked man in a track suit who aims at them,  
9 fires at them without provocation, just by coincidence. So  
10 I'd ask you, ladies and gentlemen, is it that easy to get  
11 away with this crime, to get away with murder, to come in  
12 here and take the stand and say it wasn't me, it was the  
13 masked man in the bushes? If it's that easy, then find the  
14 defendant not guilty. Thank you.

15 THE COURT: Okay. Mr. Farver.

16 ATTY. FARVER: Yes, sir. Your Honor, I need to  
17 get a couple of the exhibits. I don't need a -- I  
18 can do it right now.

19 THE COURT: Okay.

20 ATTY. FARVER: I don't need a brief recess or  
21 anything.

22 THE COURT: Okay. All right.

23 ATTY. FARVER: I just want to get a little bit  
24 organized here.

25 THE COURT: All right.

26 ATTY. FARVER: Let me move this, your Honor.

27 It's going to --

1 THE COURT: All right. No problem.

2 ATTY. FARVER: Otherwise things fall on the  
3 floor. Your Honor, I'm not sure where to position  
4 it. I have a small diagram that I wanted to use. Do  
5 you want me to put it front of the T.V. monitor there  
6 or whatever it is? Is that --

7 THE COURT: Wherever you'd like to put it, Mr.  
8 Farver, --

9 ATTY. FARVER: Well I know that --

10 THE COURT: -- that is of use to you and the  
11 jury.

12 ATTY. FARVER: -- the Court likes to view it  
13 usually as well, but I don't know --

14 THE COURT: If the jury can see it, that's the  
15 main thing.

16 ATTY. FARVER: All right. I think it's good  
17 here. All right. We'll see if this works now.

18 **CLOSING ARGUMENT BY ATTORNEY FARVER:**

19 Good morning, ladies and gentlemen. As you can see I'm  
20 a little lower tech than the State is. And but I think one  
21 of the points that they made to you is really the whole  
22 point of this case, and that's what we know of verified  
23 timeframes. We know from the GPS, we know from the cell  
24 phone record, and we know from the stipulation when sunset  
25 was as well. This case is really pretty simple. It is  
26 about credibility. That's all it's about. We know that the  
27 State attempted to find DNA evidence. We know that they

1 swabbed all the pockets or multiple pockets I should -- I  
2 don't -- There's no evidence it was all the pockets.  
3 Multiple pockets in areas from clothing of the deceased in  
4 an attempt to collect DNA evidence. You know from the  
5 stipulation that they found evidence of DNA. You know that  
6 they found evidence that that DNA was from multiple  
7 contributors. You know that that evidence when it's  
8 compared to known samples taken from my client and his two  
9 codefendants, they could not match. And in fact, with  
10 one -- only one part of an exception, every one of the times  
11 they were eliminated as having been a contributor. All  
12 three of them. And the only time they didn't was because  
13 they said the sample size wasn't sufficient to be able for  
14 one of the individuals. I think it was Leandre Benton, to  
15 be compared one way or the other with the finger. So again,  
16 there is absolutely no supporting DNA evidence despite -- If  
17 there's a robbery or if there was an attempted robbery, and  
18 you have someone down on the ground having had a shot put  
19 through his head, do you think there's any resistance left  
20 in that individual to having his pockets run? Yet, you know  
21 from the testimony you heard there was no evidence of any  
22 inside-out pockets. You know that no one went through them  
23 that we know of, because the three people we know of didn't  
24 leave any trace evidence. Now is it arguable that someone  
25 can -- can touch something and -- or run through pockets and  
26 not leave trace evidence? Certainly, it's arguable. But  
27 the multiple attempts here, the multiple pockets, and the

1 multiple people who are contributors that were defined by  
2 the lab when they did their DNA testing certainly raises  
3 strong, strong probability that these three gentlemen did  
4 not have any participation in that. Now we also know no --  
5 no fingerprints. There's been no evidence whatsoever of  
6 that. We know there were no shell casings, despite  
7 attempts -- They said that they went out with -- even with  
8 metal detectors, the police, to try to collect shell  
9 casings, which normally if a semiautomatic is involved are  
10 found on the scene. Nothing was found, despite several  
11 attempts, and they said they went back in the daylight as  
12 well. It wasn't just at night. And you can even see on the  
13 body cam one of the officers looking around right --  
14 immediately. Now all -- And they searched through the  
15 clothing to see if a shell casing got caught up in the  
16 clothing and they found none. So there was a -- there was a  
17 valiant attempt to collect that evidence, but it doesn't  
18 exist. If it wasn't a semi. Okay. That also is an  
19 explanation why it's not there, why it's not found. As  
20 again, repeatedly by witnesses telling you how with a  
21 revolver the shell casings remain in the weapon. We don't  
22 know what the individual who came from the side of the trail  
23 and came out and shot at my client and his friends and  
24 unfortunately at the victim. The State obviously is  
25 claiming that their star witnesses, their cooperating  
26 witnesses, their witnesses who have multiple felonies in  
27 their past or multiple felonies in their future probably,

1 but who have now a cooperation agreement, whereby the one  
2 gentleman I believe admitted that he was facing over 60  
3 years of potential punishment, now he gets three with the  
4 right to argue for nothing. Wow. The other gentleman  
5 wasn't sure how much time he was facing. It was certainly  
6 in double digits. He gets three with the right to argue for  
7 none. And, and as a bonus the State doesn't object to  
8 picking out and reducing a bond to making it a promise to  
9 appear on the same day the cooperation agreement is done.  
10 Coincidence? Do you think so? The State really wants to --  
11 expects us to believe that. No. These gentlemen were  
12 making great deals. And on this point it was said about,  
13 oh, and how does he know it matches his information? How  
14 does Mr. Capers know? How does -- Well Mr. Capers -- By the  
15 way, we can put in -- Let's see. Defense exhibits. The  
16 Defendant's Exhibit B just happens to -- What we put it in  
17 for, obviously, was when Mr. Capers couldn't recall the time  
18 he had told to the officer that he had come to Goodrich  
19 Street to make this pickup, and so there's -- there's the  
20 piece of the transcript. January 26, 2018. Do you know how  
21 long it was after this event? Yeah, you do. Three months.  
22 Two months. Almost three. And we know, repeatedly we've  
23 heard testimony, and we just heard argument this morning,  
24 that there was information floating all over the street and  
25 allegations on Facebook and just craziness going on. We  
26 know that Officer Crawford repeatedly went to Mr. Lowndes  
27 and bullied Mr. Lowndes. And Mr. Lowndes who initially said

1 what happened was I saw a cell phone. I saw a cell phone.  
2 I saw a cell phone. Eventually capitulated after he was  
3 told repeatedly by the detective that he could see a gun.  
4 Well I am going to ask you, when you go back and you review  
5 the video from Goodrich Street, you -- you tell me you can  
6 see a gun. You tell me that. Because I've watched that  
7 video. It's up to you to watch it, and you look and you see  
8 what it is. And now if that's the tactic that we know is  
9 used with Lowndes, what do you think the tactics are with  
10 others, that the other witnesses received? Now let's go  
11 back to why I question the credibility, starting with Mr.  
12 Capers. As we know from the GPS, my client left his  
13 residence at Bassett Street at 15:24 hours military time,  
14 meaning 3:24. We know he returned at 15:46, 3:46. We know  
15 that there was a 911 call about this event at 15:49. None  
16 of us are in dispute, anyone. We know from the cell phone  
17 dump that the FBI did that Mr. Moyer made a call or a  
18 Facebook to Mr. Bellamy at 16:05, 4:05. We know that the  
19 cell phone data from cell phone data, also at 16:21, Bellamy  
20 sent Moyer a text that he was at Bassett Street, and we know  
21 that a minute later Moyer responded to him. And then we know  
22 that at 16:25, based on the GPS and also from his testimony,  
23 of course, but that's -- I'm going just on what we know,  
24 verified here, my client left Bassett Street. How  
25 convenient to go with Mr. Bellamy. Of course, that's the  
26 logicalness, but that testimony didn't go through him.  
27 That's from Mr. Bellamy. Now Mr. Bellamy, then took -- He

1 said he estimated, because he stopped at a gas station,  
2 about 45 minutes to get to Waterbury. But guess what?  
3 Sunset was at 16:34 that day. We've reached a stipulation.  
4 We've agreed that that's what the US Scientific, whatever,  
5 Oceanographic, whoever they are, society says it was. That  
6 was sunset on November 13, 2017, 16:34. Just after 4:30.  
7 Now here we get into the interesting part. Mr. Capers says  
8 he got a call, it was getting dark. It wasn't dark out yet,  
9 but it was getting dark when he got a call about a ride. He  
10 says when he got there it was dusk. It was after dark.  
11 Well that means it had to be after 16:34 because the sun was  
12 still up. Who is in Waterbury? They are on their way. How  
13 did Capers show up on Goodrich Street and it's not on any of  
14 the videos? We've got a Goodrich Street video from that  
15 general timeframe. Where is his car? Where is three people  
16 approaching his car? Where is the girlfriend in the car?  
17 We don't have any of that, do we? Because Mr. Capers never  
18 got there. Mr. Capers had nothing to do with it. And the  
19 longshot, he's just going to say, that when my client left  
20 at 16:25 on Bassett Street, he decided to go back to Dudley  
21 Street with his two friends. Does that defy all rationale?  
22 He's going to go back, back up. And you see it on State's  
23 Exhibit 78. He's going to come all the way back from  
24 Bassett Street, go all the way back up to Dudley if he was  
25 involved in a murder and there's a body. And you know the  
26 police sirens are heard all over the place that night. Come  
27 on. That makes no sense. But here, somewhere, Dudley,



1 Dudley, Dudley, Dudley. Goodrich, Saint Mary's. Goodrich  
2 is one way he said. You got to go this way. You got to go  
3 what amounts to from east to west. It's a one-way street.  
4 And he pulled over on the corner of Saint Mary's. We know  
5 where Kools place, where the camera was. You got to go past  
6 it even if you come down Edward, which I don't believe was  
7 this route. I don't recall exactly, but I don't -- Oh, and  
8 even better, where had he been shopping? Do you remember?  
9 Bob's in Milford, and he gave us the route on 95 and around  
10 and how he got back to this place, to Goodrich Street,  
11 didn't he? What did Kristen Avery say? Bob's in Hamden.  
12 And we just think like down Dixwell Avenue area. Doesn't  
13 that tell you that somebody got their story wrong, and all  
14 the other little details, but that doesn't support. That's  
15 just critical. You don't catch people usually in the big  
16 lie. You catch them on the little detail. That's where  
17 this falls apart. It falls apart on the timing completely.  
18 It falls apart on being at Bob's in Hamden. That's not the  
19 route Steven Capers drove. Now let's see. So that's Mr.  
20 Capers pretty much. As I said, two and a half almost three  
21 months later when he's being interviewed. Jalen Bacote.  
22 Again, someone who is under arrest, looking to make bond,  
23 looking to volunteer any information he can about any crime  
24 he's ever heard, smelled, touched, felt, whatever in his  
25 life. He's talking to the Monroe police. He's talking.  
26 He's talking. He gets to Hamden police. He's talking. But  
27 he said, oh, well I already made bond. I had my bondsman

1 there. But they let him go. He was there for another --  
2 Your memory is probably better than mine, but I think he  
3 said another two to three hours that he interviewed. Again,  
4 it's two felony convictions. And he also -- Again, his  
5 cousin. Because these kids hear things on the street. They  
6 hear things when the police are investigating. They hear  
7 things on the news. But the problem with Mr. Bacote is he  
8 came in here and he tried to guild the lily. And why do I  
9 say that, folks? Because after claiming that my client made  
10 all these confessional statements to him and implicated  
11 everybody in it and who -- mean -- said he was the shooter  
12 and everything else, that they were committing a robbery,  
13 and that they didn't only take -- let's see -- Mr. Benton's  
14 cell phones, which we know the police retrieved from his  
15 clothing, they took his watch, which we know the police  
16 retrieved from his hand. No. They took the cell phones.  
17 He's telling him he took the cell phones. He took money,  
18 and they took his clothes off him. They took the jacket and  
19 the pants off they said. And we know from the EMT officer  
20 who came in here that these clothes are the clothes which  
21 are cut, were cut off his body by treating personnel, not by  
22 somebody robbing him and removing them. And that's where  
23 this whole story falls apart by Mr. Bacote. Because why  
24 would my client say they took the clothes off if they  
25 didn't. Why? Where's the sense in that? Is there any?  
26 But that's again why you can sit here and say, do I have  
27 doubts about the credibility of the State's witnesses? It's

1 not just because they are cooperating. It's not just  
2 because they cut the deals of the century. It's not. It's  
3 because they are caught in lies. They can't be put any  
4 other way but lies. Is Mr. Graham an angel? I don't  
5 believe so. I don't believe you'll find so. But that  
6 doesn't mean that he's a murderer. He told you he grew up  
7 in New Haven in a tough section of town. He grew up around  
8 crime. He grew up with a mother who was in and out of his  
9 life. He was raised by his grandmother. He was raised from  
10 the street. He was shot when he was 15 years old. He'd  
11 been shot at before. And he came in here and he told you,  
12 yes, I have possessed guns at times in the past. When I've  
13 been in fear of my life, I've had guns before, yes. And  
14 when I was shot at on November 13, I went to Waterbury to  
15 get a gun. Now you'll get a charge from the Court about  
16 that flight can be used as consciousness of guilt, someone  
17 leaving the scene. You can also have flight because of  
18 fear, because you're scared for yourself, because someone  
19 saw you, shot at you, and may not want a witness. And so  
20 why would you no longer -- And if -- if you're fleeing to  
21 get away from a crime, why would you come back? Come back  
22 because -- So he's not an angel. No. But the State has  
23 charged him with having a gun on one specific day on this  
24 incident on Dudley Street. The State has charged him with  
25 being involved in a conspiracy to commit robbery on Dudley  
26 Street where nothing was taken from the victim. Nothing.  
27 And the State has charged him with being involved in a

1 felony murder. Based on what? On the testimony of Bacote  
2 and the testimony of Capers, who have both come in here and  
3 are proven, proven to be false. Now with that said, again  
4 you will hear a charge. And if there is a witness, and if  
5 you find that they were untruthful in some matters, you can  
6 still find other matters truthful, or you can just believe  
7 everything if you'd like. And I urge you, when it comes to  
8 the burden of proof, beyond a reasonable doubt, our standard  
9 as applied to those two men, Capers and Bacote, will have  
10 you believing that they lied in everything. They are not  
11 credible witnesses. They are not to be believed. And that  
12 doesn't even mention the amount of marijuana that is  
13 consumed daily by Mr. Capers, and he told us when -- the  
14 first thing when he gets up in the morning, he lights up.  
15 All day long he lights up. The last thing he does before he  
16 goes to bed, he lights up. How credible do you believe his  
17 recollections and perceptions to be when everyday that's  
18 what he does all day. Is that the witness that you want to  
19 hang somebody's hat on? Oh, and by the way, again just on  
20 the -- on the sunset, we also know Detective DePalma, his  
21 report, when he first arrived it was -- he said 5:30 and it  
22 was dark. So again, just to get in with the question of Mr.  
23 Capers. And Officer Sheppard when he arrived, he was the  
24 first police officer on scene. It was within five to ten  
25 minutes or so of the 911 call. He said it was light out  
26 then. And you see, you will see from the body cam photos  
27 that were pieced together how it was still light when they

1 first got there, and then progressively it got darker  
2 obviously as the investigation continued. Is there any  
3 question why Mr. Graham would not go to the police. He  
4 doesn't trust him. He fears them too. He said it. He  
5 doesn't trust them. The police never helped him. He's not  
6 going to go. He's going to try to avoid the conflict when  
7 the person who may have got a good look at him, he doesn't  
8 know, and who shot at him. They don't know if they were the  
9 intended target. They don't know if the deceased was the  
10 intended target. They do know that they were shot at. One  
11 little thing as well. Again, you'll see a number of videos  
12 when you go through the evidence again, and all of those  
13 videos that you see of the canal line, Dudley Street, the  
14 intersection, Goodrich Street, the residential one, the ones  
15 where the -- where the three boys are running away, tell me  
16 if you ever see a gun in one of their hands, any one of  
17 them. Tell me in all those videos. And in the timing here,  
18 as the videos pick up, from -- from when we know that there  
19 was the crossing of the bike path, going toward the right as  
20 you go north, and everyone is out of sight, to the time that  
21 you see down near the intersection of Dudley where the three  
22 boys come back into sight, is less than 30 seconds. Tell me  
23 you got time. Are you going to -- are you going -- If  
24 there's guns out and firing and flying around and you're  
25 running, there's no gun in your hand? There's no gun in  
26 your hand? Now the State said well their hands were in  
27 their pockets. I don't know what's wrong with having your

1 hand in your pocket. You can still run. But there's no gun  
2 in the hand. And again, I urge you to look carefully at  
3 every one of these videos, the canal line videos before and  
4 after of the Dudley Street, before and after of the  
5 Goodrich, tell me if you can see a gun in anybody's hand.  
6 With that, as I said, it is the position of the defense that  
7 my client did not commit these offenses. I'm not saying  
8 he's an angel. But not here. Not now, not these. And we  
9 ask that you return a verdict that is appropriate of not  
10 guilty, not proven, not credible. Thank you.

11 THE COURT: All right. Thank you, Mr. Farver.  
12 All right.

13 ATTY. GARBARSKY: I'll just wait for Mr. Farver  
14 to -- Are done with that evidence? Are you done with  
15 that evidence?

16 ATTY. FARVER: Yes, I am. Do you want me to  
17 move it?

18 ATTY. GARBARSKY: If you don't mind.

19 ATTY. FARVER: No problem.

20 ATTY. GARBARSKY: The watch?

21 ATTY. FARVER: Oh, the watch. Back to -- I'm  
22 sorry. I'm sorry.

23 **CLOSING ARGUMENT BY ATTORNEY GARBARSKY:**

24 Good afternoon, ladies and gentlemen. I assure you  
25 were in the home stretch here. I just want to go over a  
26 couple of things that Mr. Farver just eluded to, and before  
27 I do, I just wanted to point out a couple of things the

1 judge is likely to tell you. The standard in all criminal  
2 cases, beyond a reasonable doubt. All right. I talked to  
3 all of you when you were up there in that box for the voir  
4 dire interview to sit on this jury panel. Beyond a  
5 reasonable doubt, you'll get that instruction from the  
6 judge. It is not proof beyond all possible doubt. It is  
7 not proof to 100 percent certainty. And perhaps more  
8 importantly, it's not conjecture. It's not surmise. It's  
9 not guesswork. It's not maybe this happened. Throw it  
10 against the wall and see if it sticks. It's not that. It's  
11 a real doubt, an honest doubt, a doubt that's grounded in  
12 the evidence or the lack of evidence. DNA, there's a  
13 stipulation, no DNA. All right. These are the three  
14 individuals that were at that scene and had DNA, with the  
15 victim, Mr. Benton. Would you expect DNA? As the defendant  
16 just conceded, the entire interaction from beginning to end  
17 is approximately 27, 28 seconds. Would you expect that  
18 these three individuals within that time, pull out their  
19 guns, approach Mr. Benton, ask if he's SLB, tell him to run  
20 his pockets, shoot him, all that, and still have time to run  
21 through his pockets, still have time to go through his  
22 clothing, strip off his clothing? Would you expect that  
23 their DNA was there? Or is this, as Jalen Bacote said, a  
24 robbery gone sour, and once it did, they hightailed it out  
25 of there? Shell casings. There's no shell casings. Does  
26 that mean there were never any at the scene? Does that mean  
27 someone, one of the three individuals didn't pick a shell

1 casing or two? Was it kicked? Was it moved by the EMT's?  
2 Was it taken to the hospital with Mr. Benton? There's no  
3 evidence of any shell casings, but that doesn't mean that  
4 Mr. Graham didn't shoot his .380 into the back of Mr.  
5 Benton. Because we do know one thing, there is a .380  
6 lodged in the stomach, chest area of Mr. Benton, and we know  
7 that Mr. Graham is the only one alleged to have carried a  
8 .380 at the time of the shooting. How about the timing of  
9 this shooting? Mr. Farver made a lot about, was it dusk?  
10 How late was it? 4:00. Sundown 4:30. Could it have been  
11 6:00? Could it have been 7:00? Mr. Ferrucci, the EMT, he  
12 had no idea when this was. He is a professional EMT,  
13 working for the Town of Hamden. He had no idea. I asked,  
14 somewhere in the afternoon? Could have been afternoon.  
15 Could have been evening. Do you expect Mr. Capers, when he  
16 is driving to pick these three individuals up and they jump  
17 in his car, out of breath, smelling of gunpowder, do you  
18 think he looked at his clock, checked his watch, recorded  
19 the exact time that that happened? He did say anywhere  
20 between 4:00 and 7:00. He did say that there was still  
21 light out. And does it make sense, as Mr. Farver said, that  
22 these individuals would come all the way down to Bassett and  
23 then go all the way back up? We know that's not true. The  
24 EMS, the electronic monitoring on Mr. Graham's bracelet,  
25 shows that he stayed in the house. He didn't leave. So the  
26 only logical inference is that Mr. Capers, in the vicinity  
27 of Saint Mary's and Goodrich, which is where he said he



1 tried -- where he picked them up, that happened immediately  
2 after the shooting when it was still light out, and you also  
3 know that because they are still out of breath and they  
4 smell of gunpowder. What about hearing things on the news  
5 or on the street? Hey, these kids talk; right? Crazy kids.  
6 Stuff on the news. You heard Detective Crawford, there was  
7 no press releases about this; right? They heard it on the  
8 street. They heard on the street that Mr. Benton's head was  
9 shot in the front and went out the side. That was on the  
10 street? Or is that testimony from someone who was there and  
11 saw that bullet go through his head? Mr. Moyer. Is that  
12 something they heard on the street? I want to talk briefly  
13 about the credibility of the witnesses because I know Mr.  
14 Farver made an issue of that as well, and I want to take Mr.  
15 Capers and Mr. Bacote together because they are the two  
16 cooperators. Both of those individuals signed cooperation  
17 agreements with the State of Connecticut. Are they looking  
18 for an incentive? Of course they are. Would you expect  
19 them to come in here and testify if they didn't look for  
20 something? Does that mean that they are lying? Does that  
21 mean what they have to tell you is in any way untrue because  
22 they are looking for a benefit? Do you think two  
23 individuals, who have arguably no relationship to each other  
24 whatsoever, come up with the exact same story and tell law  
25 enforcement, for what, to rat on their own friends, people  
26 that they grew up with in the community? Does that make any  
27 sense? And when you look at those two individuals and you

1 think about the stories they told, again one from Mr. Moye  
2 and one from Mr. Graham, would you expect their stories to  
3 be exactly the same or do you expect there would be little  
4 differences; right? Think back to the two people that saw  
5 an event that you're talking to, two completely different  
6 individuals. Wouldn't you be suspicious if their stories  
7 were exactly the same. These two individuals tell you  
8 stories that are remarkedly similar, but Jalen Bacote in  
9 particular tells you that the defendant stripped down Mr.  
10 Benton. That's what he said Graham told him. Maybe Graham  
11 told him that. Maybe something was lost in translation.  
12 Does it mean Mr. Bacote is making that up, that he just  
13 added that little detail? We know that's not true. Mr.  
14 Benton was found fully clothed, money in his pocket, et  
15 cetera. We know that that fact is not true. But does that  
16 mean Mr. Bacote is a liar? You heard Mr. Bacote say just  
17 this morning that those individuals that grew up together  
18 were members of the Starr Block, Read Street affiliation.  
19 For four years they hung out every day. They were deeply  
20 entrusted with each other. You heard Mr. Capers say Mr.  
21 Moye told him to swear on his son's life before he told him  
22 what he did that day. He told him they would share secrets  
23 and they would share swears, and at that particular time  
24 that is when Mr. Moye confessed to this crime, not before.  
25 How about Donovan Lowndes? No cooperation agreement there.  
26 Do you think Mr. Lowndes is happy to be here testifying in a  
27 homicide case? But he got up there and he told you what

1 happened. He told you Mr. Graham showed him -- I'm sorry --  
2 Mr. Coleman showed him a gun right there on the canal line.  
3 He's on video; right? I agree with Mr. Farver, I can't see  
4 a gun in that. But you do see Mr. Coleman pull something  
5 out of his pocket, and you do see him hand something in a  
6 very furtive fashion. It doesn't look like a cell phone,  
7 but that's up to you. You watched the evidence. Now Mr.  
8 Lowndes did say one thing. Yeah, I said it was a cell phone  
9 for a while and I was lying. He said that. Oh, Detective  
10 Crawford berated him, and he went at him. He was not. He  
11 was just doing his job. He was playing good cop, bad cop.  
12 But eventually he told the detectives the same thing he told  
13 you here. Coleman handed him a handgun and it was a  
14 semiautomatic handgun consistent with both what Jalen Bacote  
15 and Capers say about who carries what; right? Mr. Coleman  
16 is known to carry a .9 millimeter. Mr. Moyer is known to  
17 carry a .38 revolver. Mr. Graham is known to carry a .380  
18 automatic, silver Lorcin.

19 (A video was played.)

20 And that's the gun right there, ladies and gentlemen.  
21 Two days, less than two days actually before the homicide,  
22 Mr. Graham is holding the .380 that's described by multiple  
23 witnesses that he always carries. He's on video two days  
24 before and he's wearing the same sweatshirt and he's wearing  
25 the same mask, slash hat, depending on what you credit as  
26 far as testimony is concerned. Can you imagine the  
27 coincidence that has to be incurred where these three

1 individuals had nothing to do with this? They both happen  
2 to have -- Mr. Graham happened to have a gun that was  
3 responsible for the death of Mr. Benton; right? They all  
4 three happen to be in the canal line at the exact same time  
5 where someone comes out of the woods and shoots Mr. Benton.  
6 They both happen to be on cell phones before and after the  
7 incident flashing guns and wearing the same exact clothing  
8 as they did at the time of the homicide. They just happen  
9 to leave the scene running down the canal line, jump into an  
10 Uber, and go to Waterbury that night. Mr. Graham happens to  
11 have a sweatshirt seized from his room at 99 Bassett Street.  
12 That's the same sweatshirt that's seen on the canal line  
13 video. And he just happens to be on electronic monitoring  
14 which shows exactly his to and from going. Can you imagine  
15 those coincidences? I'm not going to spend a lot of time on  
16 this. You'll have this evidence before you. But he, Mr.  
17 Graham, has made a very tight window. It's approximately 20  
18 minutes or so where he's leaving and returning back to  
19 Bassett Street. That's it. And the other times are on the  
20 videotapes as well. Some of them, as you can find, are not  
21 fine or not accurate. But the canal line, there's testimony  
22 that the canal line near Goodrich Street, as well as the  
23 Bassett Street cams are accurate. There is a video of the  
24 canal line -- Just as an aside, ladies and gentlemen, you'll  
25 have an opportunity to review this back in the deliberation  
26 room. You'll have an opportunity to review all the canal  
27 line evidence as well as the conglomeration video which

1 shows all the videos, the Goodrich Street down to Bassett  
2 Street. Take a look at this particular video. When this  
3 happens the victim is already down in that grassy area.  
4 They've already seen him. They go over. They show Mr.  
5 Lowndes a firearm. Mr. Coleman shows him. They walk off  
6 Dudley Street, as Mr. Reed -- Mr. Durham said moments  
7 before, and then they go back to see the victim. Why is  
8 that?

9 (A video was played.)

10 From the moment the last individual, Mr. Graham, walks  
11 off camera is approximately 25 seconds before they are seen  
12 running again back down the canal line. So this entire  
13 incident, ladies and gentlemen happens in a very short  
14 window. And furthermore, on the other video you could  
15 see -- Well here he is right now. You can see Mr. Coleman.  
16 What's Mr. Coleman doing here? He appears to be looking  
17 out, doesn't he? I thought Mr. Coleman was doing a drug  
18 deal; right? You heard the defendant testify it was Mr.  
19 Coleman he was dealing with. Mr. Coleman is the one that  
20 reached into his pocket to pull out the marijuana. And  
21 there he is. You see him standing on the canal line looking  
22 up and down the canal line. And if this was a drug deal, if  
23 this was something that Mr. Graham has testified to being a  
24 drug deal, and someone came out the woods and shot Mr.  
25 Benton, then why again is Mr. Benton clutching a watch in  
26 his hand when he's found or is that indicative of a robbery  
27 gone wrong? You'll have these videos, ladies and gentlemen.

1 So I'm not going to play the entirety, but you can see them  
2 run across the canal line and head down towards Bassett  
3 Street. Now the only thing of note in regards to these  
4 videos as they play is there are no videos from Goodrich  
5 Street where Mr. Capers said they were cutting through  
6 yards, all the way down to when they get down to Bassett  
7 Street. So the timeframe for which Mr. Capers says he's  
8 picking them up, he's not on that particular video, nor are  
9 they on any video after this until they get all the way down  
10 to Bassett Street, and there they are on the video, as you  
11 could see. The sweatshirt that is seized from Mr. Graham's  
12 room is the same sweatshirt that he's seen both before and  
13 after on the Snapchat videos. And although Mr. Graham said,  
14 oh, I have several sweatshirts, you can see the non-tapered  
15 nature of the drawstrings, and you'll have that exact  
16 sweatshirt. It's a very distinct Nike sweatshirt with  
17 squared off drawstrings. The three -- the three individuals  
18 beforehand right outside Kools place, wearing the exact same  
19 jackets. Mr. Graham wearing the exact same jacket as he  
20 has -- as he's wearing in the Waterbury video that was taken  
21 that night. And by the way, the Waterbury video, first off,  
22 there's the hat that he's seen wearing. You heard testimony  
23 where he was pulling down a mask. Why was he doing that,  
24 ladies and gentlemen?

25 (A video was played.)

26 I'm going to pull this shit on right now. No, you're  
27 straight. And the fourth individual, the one who has been

1 described as Fetty, you hear Mr. Moyer say Gap. You hear  
2 that name. Why didn't the defendant want to admit that that  
3 was Gap in that video? What about Mr. Graham's story?  
4 Let's take a few of the more assailable characteristics of  
5 his testimony. One, he denied he was op hunting that day;  
6 right? That wasn't me. I didn't -- I wasn't op hunting.  
7 He was kind enough to explain to you what op hunting is  
8 though; right? It's when someone from a rival group goes  
9 looking for members of another rival group to rob or do harm  
10 to them. And if you later remember I asked him, as an  
11 example, if someone from Read or Starr Block was going up to  
12 cause trouble in Hamden, would that be op hunting? Yeah,  
13 that's op hunting. I didn't do that. But that would be an  
14 example of op hunting. He vowed that he had a gun 48 hours  
15 before the murder, as Attorney Durham said. Suspiciously he  
16 just doesn't recall the nature of that gun, what kind of  
17 caliber it was. He said it wasn't my gun. It wasn't the  
18 gun that everyone else in this trial is describing him with  
19 every single day, this silver .380 Lorcin. He describes a  
20 drug interaction with someone that he had no idea. They are  
21 walking the canal line. They find a random guy who just  
22 waves them over, to deal drugs, in Hamden, an area they are  
23 not even from. Does that make any sense to you, ladies and  
24 gentlemen? You'll have the videos, particularly the video  
25 of the first responder, Officer Sheppard, when he arrives at  
26 the scene. That paints kind of a nice picture of the entire  
27 layout, a little more so than the canal line video. There's

1 no grassy knolls there. There's nowhere where someone could  
2 be hiding behind a tree or come out of the bushes. And if  
3 there were, wouldn't you expect them to be in the Dudley  
4 cams, both 35 and 45, facing east and west, but you know,  
5 the ones that captured the three guys walking as they go to  
6 the canal line, or how about north and south in the canal  
7 line? When I asked the defendant where this unknown masked  
8 shooter came from, if you recall he originally pointed at  
9 the canal line and then went just a little over to the side,  
10 because the canal line captures that footage going  
11 northbound. How about the flight after the fact? His  
12 testimony was they were scared and running. But as, again  
13 Attorney Durham noted, they are not pumping arms and trying  
14 to keep feet. They are looking back. Their hands are in  
15 their pocket, and they're briskly moving. They are running.  
16 But are they running because of something they just did or  
17 are they running from some unknown assailant who was  
18 shooting at them?

19 (A video was played.)

20 You just saw that video. That was on Jalen Bacote's  
21 phone, taken shortly before the murder. And once again, we  
22 see the defendant, once again, wearing the same sweatshirt  
23 and holding the exact same gun that everyone has said he  
24 carries. Now if you remember, when I showed him that  
25 picture, Mr. Graham said that was the only time I held that  
26 gun. I don't know what caliber it is. I don't know  
27 anything about it. Well clearly now, he's holding the gun



1 in this video as well, and he's been described to carry it  
2 on multiple occasions. Time has kind of been an issue in  
3 this particular case. It's been brought up by the defense  
4 attorney multiple times. I suspect my time is running  
5 short, so I'll wrap up. But this was the watch, ladies and  
6 gentlemen, that was taken off the body of Mr. Benton as he  
7 was breathing his last breaths on that canal line. Do you  
8 think Mr. Benton knew his time was up? Do you think Mr.  
9 Benton suspected at 3:40 p.m., November 13, 2017, his life  
10 would be snuffed out by three individuals? His time was up.  
11 Now it's your time. It's you're time to go back there and  
12 deliberate. It's your time to hold Mr. Graham responsible  
13 for the murder of Leandre Benton. Thank you.

14 THE COURT: Okay. Thank you, Mr. Garbarsky.  
15 All right. Ladies and gentlemen, the next part of  
16 the trial is the instructions of the Court. Due to  
17 the time right now, what we are going to do is take  
18 an early lunch. There's some matters I need to  
19 discuss with counsel. You'll hear my instructions of  
20 law in connection with this case starting at 2:00.  
21 So please now -- I'm going to excuse you for a little  
22 bit of an earlier lunch. Report back upstairs no  
23 later than ten of two. We're going to start promptly  
24 at 2:00. Please, particularly at this point, don't  
25 do anything at all that will prevent you from being  
26 fair and impartial and rendering a decision based  
27 only on what happens in the courtroom and nothing

1 else. Do not discuss this case with anyone. Do not  
2 allow anyone to do so with you. I mean discuss and  
3 communicate in all possible manners, including any  
4 form of social media, including among yourselves. If  
5 there's anything in the newspaper, radio, T.V.,  
6 Internet, social media about this case you must avoid  
7 it. Don't listen to it, watch it, or read it. Have  
8 a pleasant lunch. Report back upstairs no later than  
9 ten of two.

10 (The jury panel exited the courtroom.)

11 THE COURT: All right. Counsel, just a couple  
12 of housekeeping things. The clerk will be available  
13 presumably between now and 1:00 to make sure all the  
14 exhibits are in order. In connection with the  
15 exhibits and pursuant to State versus Jones at 314  
16 Connecticut, I just want to make sure with respect to  
17 the electronic evidence, I'll call it, meaning the  
18 various DVD's, thumb drives, et cetera, that have  
19 been introduced here, and I don't have the exhibit  
20 numbers handy, but has counsel made arrangements and  
21 discussed among themselves the means by which, should  
22 the jury desire, to view those items and can do so in  
23 the jury room?

24 ATTY. GARBARSKY: The jury has a multimedia  
25 presenter, which is a Blu Ray player, that they can  
26 play all the disk exhibits in, except the 911 call.  
27 In addition, we have a clean laptop that was provided

1           that we have a Blu Ray disk player attached to, which  
2           they can play the 911 call and use the USB device to  
3           play Exhibit 4, which is the canal line video. That  
4           does require a modicum of tech savviness to play, but  
5           that is the only way we could supply that video.

6           THE COURT: All right. So the -- So I guess the  
7           short answer is then, they have what they need at  
8           their disposal. Presumably they will be able to work  
9           it. If they can't, I guess they'll send a note out.

10          ATTY. GARBARSKY: Yes, your Honor.

11          THE COURT: Okay. Mr. Farver, anything you need  
12          to say in respect to that?

13          ATTY. FARVER: No, your Honor.

14          THE COURT: Okay. The Court is going to --  
15          Counsel has copies of the Court's instructions. In  
16          view of the testimony this morning on rebuttal from  
17          Mr. Bacote, the Court is going to additionally give  
18          the jury in writing something similar to what I  
19          already said orally to them in connection with the  
20          limited purpose for which that testimony this morning  
21          was offered. Hopefully, I'll have that available  
22          before we start at 2:00 for counsels' review, but I  
23          don't see that it will be substantially different  
24          than what I already said. Mr. Garbarsky or Mr.  
25          Durham, anything you wish the Court to consider  
26          adding to that or --

27          ATTY. GARBARSKY: No, your Honor.

## CONSTITUTIONAL PROVISIONS

**U.S. Const. Amend. V.** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U.S. Const. Amend. VI.** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

**U.S. Const. Amend. XIV.** Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## CONNECTICUT CONSTITUTION

**Conn. Const. art. I, sec. 8.** In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. No person shall be held to answer for any crime, punishable by death or life imprisonment, unless on a presentment or an indictment of a grand jury, except in the armed forces, or in the militia when in actual service in time of war or public danger.

## STATUTES

### **Sec. 53a-54c Felony Murder (Effective October 1, 2015)**

A person is guilty of murder when, acting either alone or with one or more persons, such person commits or attempts to commit robbery, home invasion, burglary, kidnapping, sexual assault in the first degree, aggravated sexual assault in the first degree, sexual assault in the third degree, sexual assault in the third degree with a firearm, escape in the first degree, or escape in the second degree and, in the course of and in furtherance of such crime or of flight therefrom, such person, or another participant, if any, causes the death of a person other than one of the participants, except that in any prosecution under this section, in which the defendant was not the only participant in the underlying crime, it shall be an affirmative defense that the defendant: (1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and (2) was not armed with a deadly weapon, or any dangerous instrument; and (3) had no reasonable ground to believe that any other participant was armed with such a weapon or instrument; and (4) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

### **Sec. 53a-134(a)(2) Robbery in the First Degree**

(a) A person is guilty of robbery in the first degree when, in the course of the commission of the crime of robbery as defined in section 53a-133 or of immediate flight therefrom, he or another participant in the crime: (1) Causes serious physical injury to any person who is not a participant in the crime; or (2) is armed with a deadly weapon; or (3) uses or threatens the use of a dangerous instrument; or (4) displays or threatens the use of what he represents by his words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm, except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a weapon from which a shot could be discharged. Nothing contained in

this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree, robbery in the third degree or any other crime.

(b) Robbery in the first degree is a class B felony provided any person found guilty under subdivision (2) of subsection (a) shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.

#### **Sec. 53a-48(a) Conspiracy**

(a) A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

(b) It shall be a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

#### **Sec. 29-35(a) Carrying a Pistol Without a Permit**

(a) No person shall carry any pistol or revolver upon his or her person, except when such person is within the dwelling house or place of business of such person, without a permit to carry the same issued as provided in section 29-28. The provisions of this subsection shall not apply to the carrying of any pistol or revolver by any parole officer or peace officer of this state, or any Department of Motor Vehicles inspector appointed under section 14-8 and certified pursuant to section 7-294d, or parole officer or peace officer of any other state while engaged in the pursuit of official duties, or federal marshal or federal law enforcement agent, or to any member of the armed forces of the United States, as defined in section 27-103, or of the state, as defined in section 27-2, when on duty or going to or from duty, or to any member of any military organization when on parade or when going to or from any place of assembly, or to the transportation of pistols or revolvers as merchandise, or to any person transporting any pistol or revolver while contained in the package in which it was originally wrapped at the time of sale and while transporting the same from the place of sale to the purchaser's residence or place of business, or to any person removing such person's household goods or effects from one place to another, or to any person while transporting any such pistol or revolver from such person's place of residence or business to a place or individual where or by whom such pistol or revolver is to be repaired or while returning to such person's place of residence or business after the same has been repaired, or to any person transporting a pistol or revolver in or through the state for the purpose of taking part in competitions, taking part in formal pistol or revolver training, repairing such pistol or revolver or attending any meeting or exhibition of an organized collectors' group if such person is a bona fide resident of the United States and is permitted to possess and carry a pistol or revolver in the state or subdivision of the United States in which such person resides, or to any person transporting a pistol or revolver to and from a testing range at the request of the issuing authority, or to any person transporting an antique pistol or revolver, as defined in

section 29-33. For the purposes of this subsection, "formal pistol or revolver training" means pistol or revolver training at a locally approved or permitted firing range or training facility, and "transporting a pistol or revolver" means transporting a pistol or revolver that is unloaded and, if such pistol or revolver is being transported in a motor vehicle, is not readily accessible or directly accessible from the passenger compartment of the vehicle or, if such pistol or revolver is being transported in a motor vehicle that does not have a compartment separate from the passenger compartment, such pistol or revolver shall be contained in a locked container other than the glove compartment or console. Nothing in this section shall be construed to prohibit the carrying of a pistol or revolver during formal pistol or revolver training or repair.

(b) The holder of a permit issued pursuant to section 29-28 shall carry such permit upon one's person while carrying such pistol or revolver. Such holder shall present his or her permit upon the request of a law enforcement officer who has reasonable suspicion of a crime for purposes of verification of the validity of the permit or identification of the holder, provided such holder is carrying a pistol or revolver that is observed by such law enforcement officer.

#### **Sec. 54-84 Testimony or silence of accused**

(a) Any person on trial for crime shall be a competent witness, and at his or her option may testify or refuse to testify upon such trial. The neglect or refusal of an accused party to testify shall not be commented upon by the court or prosecuting official, except as provided in subsection (b) of this section.

(b) Unless the accused requests otherwise, the court shall instruct the jury that they may draw no unfavorable inferences from the accused's failure to testify. In cases tried to the court, no unfavorable inferences shall be drawn by the court from the accused's silence.

#### **Sec. 54-86o. Jailhouse witnesses in a criminal prosecution Effective (October 1, 2019)**

(a) In any criminal prosecution, upon written request by a defendant filed with the court, but not requiring an order of the court, the defendant may request of the prosecutorial official whether such official intends to introduce testimony of a jailhouse witness. The prosecutorial official shall promptly, but not later than forty-five days after the filing of such motion, disclose to the defendant whether the official intends to introduce such testimony and, if so, the following information and material:

(1) The complete criminal history of any such jailhouse witness, including any charges pending against such witness, or which were reduced or dismissed as part of a plea bargain;

(2) The jailhouse witness's cooperation agreement with the prosecutorial official and any benefit that the official has provided, offered or may offer in the future to any such jailhouse witness;

(3) The substance, time and place of any statement allegedly given by the defendant to a jailhouse witness, and the substance, time and place of any statement given by a jailhouse witness implicating the defendant in an offense for which the defendant is indicted;

(4) Whether at any time the jailhouse witness recanted any testimony subject to the disclosure and, if so, the time and place of the recantation, the nature of the recantation and the name of any person present at the recantation; and

(5) Information concerning any other criminal prosecution in which the jailhouse witness testified, or offered to testify, against a person suspected as the perpetrator of an offense or defendant with whom the jailhouse witness was imprisoned or otherwise confined, including any cooperation agreement with a prosecutorial official or any benefit provided or offered to such witness by a prosecutorial official.

(b) The prosecutorial official may move for an extension of time to make any disclosure pursuant to subsection (a) of this section. The court may agree to such extension of time if the court finds that the jailhouse witness was not known to the prosecutorial official at the time the defendant filed the written request under subsection (a) of this section, and that information or material required to be disclosed pursuant to subsection (a) of this section could not be disclosed with the exercise of due diligence within the period of time required under subsection (a) of this section. Upon good cause shown, the court may set a reasonable extension of time or may, upon the court's own motion, allow such extension.

(c) If the court finds that a disclosure pursuant to subsection (a) of this section may result in the possibility of bodily harm to the jailhouse witness, the court may order that such information or material may only be viewed by the defense counsel, and not by the defendant or other parties.

(d) For the purposes of this section, "benefit" means any plea bargain, bail consideration, reduction or modification of sentence or any other leniency, immunity, financial payment, reward or amelioration of current or future conditions of incarceration offered or provided in connection with, or in exchange for, testimony that is offered or provided by a jailhouse witness; and "jailhouse witness" means a person who offers or provides testimony concerning statements made to such person by another person with whom he or she was incarcerated, or an incarcerated person who offers or provides testimony concerning statements made to such person by another person who is suspected of or charged with committing a criminal offense.



## CODE OF EVIDENCE

### **Sec. 6-11(a) Prior Consistent Statements of Witnesses; Constancy of Accusation by a Sexual Assault Complainant**

(a) General Rule. Except as provided in this section, the credibility of a witness may not be supported by evidence of a prior consistent statement made by the witness.

(b) Prior Consistent Statement of a Witness. If the credibility of a witness is impeached by (1) a prior inconsistent statement of the witness, (2) a suggestion of bias, interest or improper motive that was not present at the time the witness made the prior consistent statement, or (3) a suggestion of recent contrivance, evidence of a prior consistent statement made by the witness is admissible, in the discretion of the court, to rebut the impeachment.

### **Sec. 8-6(4) Hearsay Exceptions**

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(4) Statement against Penal Interest. A trustworthy statement against penal interest that, at the time of its making, so far tended to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. In determining the trustworthiness of a statement against penal interest, the court shall consider (A) the time the statement was made and the person to whom the statement was made, (B) the existence of corroborating evidence in the case, and (C) the extent to which the statement was against the declarant's penal interest.

## FEDERAL RULES OF EVIDENCE

### **Rule 804. Exceptions to the Rule Against Hearsay--When the Declarant Is Unavailable as a Witness**

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

**(b) The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

**(3) Statement Against Interest.** A statement that:

**(A)** a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

**(B)** is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.