

DOCKET NO. CV20-5000731-S

BENNIE GRAY, JR., #259596

V.

COMMISSIONER OF CORRECTION

STATE OF CONNECTICUT SUPERIOR COURT
SUPERIOR COURT
G.A. 19

2024 MAY -9 A 8:30 JUDICIAL DISTRICT
OF TOLLAND

MAY 9, 2023

MEMORANDUM OF DECISION

The petitioner, Bennie Gray, alleges that his constitutional right to due process under the Fourteenth Amendment to the United States constitution and Article First, §§ 8 and 9, of the Connecticut constitution was violated by the state’s failure to disclose material and exculpatory evidence and by the state’s failure to correct false testimony. The respondent’s return denies the petitioner’s material allegations and leaves him to his burden of proof. The court heard evidence on October 23, 2023. For the reasons set forth below, the claims are denied.

I.
FACTUAL AND PROCEDURAL BACKGROUND

The petitioner was convicted, following a jury trial, of possession of narcotics with intent to sell in violation of General Statutes § 21a-277 (a). The petitioner represented himself at trial. The court, *Kwak, J.*, sentenced the petitioner to twenty years of incarceration, execution suspended after twelve years, followed by five years of probation. The Sentence Review Division of the Superior Court subsequently reduced the petitioner’s sentence to twelve years of incarceration, execution suspended after seven years, followed by five years of probation. The petitioner’s conviction was affirmed on appeal. *State v. Gray*, 212 Conn. App. 193, 274 A.3d 870, 872–73, cert. denied, 343 Conn. 929, 281 A.3d 1188 (2022).

Our Appellate Court summarized the evidence presented to the jury as follows:

During the late afternoon hours of May 9, 2018, four plainclothes officers from the vice and narcotics unit of the New London Police Department (police department) were conducting surveillance near the intersection of Broad Street and Ledyard Street in New London. The officers were monitoring two convenience stores, the Gulf station located at 265 Broad Street and the 7-Eleven situated at the corner of Broad Street and Parker Street, which were locations known for narcotics trafficking. The officers were divided into teams of two, with investigators Todd Lynch and Jeremy Zelinski occupying one unmarked vehicle, and investigators Ryan Griffin and Joseph Pelchat occupying another.

At approximately 4:30 p.m., the officers noticed a man, later identified as Brian Drobnak, standing alongside a Volvo sedan parked on the right side of the Gulf station parking lot. The officers observed Drobnak pace back and forth alongside the vehicle and continuously check his cell phone. They did not see Drobnak purchase gasoline, enter the convenience store, or use the air pressure machine near where the Volvo was parked.

Shortly thereafter, a dark blue Toyota Camry, operated by a man later identified as the defendant, drove into the Gulf station and stopped alongside the Volvo. The officers observed Drobnak enter the front passenger seat of the Toyota, remain inside the vehicle for less than one minute, exit the vehicle, and subsequently enter the Volvo through the driver's side door. The officers could not see what transpired between Drobnak and the defendant inside of the Toyota, but the brief nature of the interaction led them to believe that they had just witnessed a narcotics transaction. Accordingly, the officers decided that Lynch and Zelinski would investigate Drobnak, while Griffin and Pelchat would follow the Toyota. Lynch and Zelinski then drove into the Gulf station parking lot at the same moment that the Toyota was exiting the lot, parked their unmarked vehicle behind the Volvo, and exited the vehicle. Lynch walked toward the driver's side door of the Volvo while Zelinski approached the passenger's side.

Through the driver's side window, Lynch observed Drobnak sitting in the driver's seat with a white, rock like substance in his lap. Lynch later testified that Drobnak appeared to be manipulating the rock like substance with the ink cartridge of a ballpoint pen. Lynch identified himself as law enforcement, at which point Drobnak attempted to conceal the ink cartridge and rock like substance in the empty space between the driver's seat and the passenger's seat. Zelinski then opened the passenger side door, placed Drobnak in custody, and took possession of the rock like substance, which had fallen to the floor of the vehicle. Lynch performed a field test on the rock like substance, which returned positive for crack cocaine. Drobnak was arrested and given Miranda warnings. At the scene, Drobnak voluntarily agreed to speak with Lynch and Zelinski. He informed the officers that he had purchased \$50 worth of crack cocaine from the man in the Toyota and showed them the phone number he had contacted to arrange the transaction.

Meanwhile, Griffin and Pelchat continuously had been monitoring the Toyota operated by the defendant since it had exited the Gulf station. After leaving the parking lot, the defendant traveled down Broad Street and turned into a Sunoco station, where he remained for a few minutes. Griffin and Pelchat observed a woman, later identified as Amanda Barton, emerge from a restaurant next to the Sunoco station and walk toward the

Toyota carrying two plastic bags. Once Barton entered the Toyota, the defendant exited the Sunoco parking lot and turned onto Connecticut Avenue.

As Griffin and Pelchat continued to follow the Toyota, they were informed by the other officers that Drobnak was found in possession of narcotics, was placed under arrest, and had told the officers that he had purchased the narcotics from the operator of the Toyota. Believing this information provided probable cause to conduct a motor vehicle stop, Griffin and Pelchat requested that the police department send a marked police cruiser to assist them in apprehending the Toyota. Sergeant Gregory Moreau, the street sergeant assigned to the patrol shift, responded to the officers' request.

Shortly thereafter, Moreau pulled behind Griffin and Pelchat, who were still following the defendant down Briggs Street. Moreau then maneuvered his police cruiser between the Toyota and the officers' unmarked vehicle, activated his siren and overhead lights, and attempted to initiate a motor vehicle stop. Despite the siren and headlights, the defendant continued to drive forward at a slow speed. Moreau then used his vehicle's public address system to order the defendant to pull the Toyota over to the side of the road. After proceeding an additional two to four hundred feet, the defendant came to a stop. Moreau exited the police cruiser and walked toward the driver's side window of the Toyota, while Griffin, who had exited the unmarked vehicle, began to approach the Toyota on foot.

As Griffin drew closer to the Toyota, he observed Barton and the defendant appear to manipulate their hands near their waists. Concerned that Barton and the defendant could be concealing "weapons" or "narcotics" on their persons, Griffin and Moreau ordered the passengers to raise their hands to where the officers could see them. Barton complied immediately, but the defendant raised his hands only after Griffin issued a second verbal command. The officers removed Barton and the defendant from the Toyota and placed them in investigative detention. Griffin conducted a pat-down search of the defendant for weapons and, after feeling "a bulge in [the defendant's] pocket," uncovered \$1268 in cash. Believing the cash to be the proceeds of narcotics transactions, the officers seized the currency. The officers also noticed three cell phones, including an LG cell phone, in the Toyota's center console. Although Barton and the defendant each claimed ownership of one of the phones, neither claimed to own the LG phone.

Around that time, Pelchat, who had parked the unmarked vehicle a short distance away, approached the defendant's Toyota. Pelchat had been in contact with Lynch, who communicated that Drobnak had provided the officers with the phone number he had used to arrange the narcotics transaction. The officers agreed that Lynch would use his city-issued cell phone to call the number once Pelchat arrived at the motor vehicle stop. When Lynch placed the call, Pelchat observed the unclaimed phone ring in the Toyota's center console and display Lynch's phone number as the incoming caller. The officers seized the phone. The defendant was then placed under arrest and transported to the police department. No narcotics, residue, or paraphernalia were recovered from the scene.

At the station, Lynch asked the defendant why he was involved in selling narcotics, to which the defendant responded, "that's all I know." The defendant was subsequently charged, by way of a substitute information dated March 25, 2019, with one count of possession of narcotics with intent to sell in violation of § 21a-277 (a), and one count of possession of narcotics in violation of General Statutes § 21a-279 (a).

Drobnak was transported to the New London police station, where he provided a written statement indicating that he had purchased \$50 worth of "loose crack cocaine" from "G," and had done so on "at least three different occasions." Drobnak was also shown a photographic lineup consisting of eight photographs and was asked to determine whether one of those photographs displayed the individual from whom he had purchased narcotics. He identified an individual other than the defendant. Later, at trial, Drobnak identified the defendant as the individual from whom he had purchased narcotics and testified that he had purchased the narcotics using two \$20 bills and one \$10 bill. Drobnak explained that he initially misidentified the defendant because his "anxiety was off the wall," he was going through withdrawal, and he "just wanted [the police interview] to be over and to be done with." He then testified that "[t]here is no doubt in my mind that [the defendant] is the man who sold me crack cocaine." Drobnak also testified that he was previously familiar with the defendant and had purchased narcotics from the defendant at least twice before. During cross-examination, Drobnak admitted that "G" was actually the nickname of Greg Williams, a mutual acquaintance of Drobnak and the defendant. Although Drobnak identified "G" in his written statement, he testified that he had intended to refer to the defendant.

A jury trial commenced on April 2, 2019. At trial, the defendant, appearing as a self-represented party, testified in his defense that he had previously met Drobnak a few days prior to May 9, 2018, when Drobnak had given the defendant and Williams a ride to Groton. The defendant stated that he had left his son's cell phone—the same unclaimed LG phone recovered from the defendant's center console—in Drobnak's car. He further testified that he had met with Williams on the morning of May 9, 2018, and that Williams had returned the phone to him. The defendant asserted that Drobnak contacted him later that day in order to speak with him about the missing phone. The defendant agreed, and the two arranged to meet at the Gulf station.

The defendant testified that Drobnak briefly entered the defendant's car in the Gulf station parking lot and requested a financial reward for finding the missing cell phone. The defendant told Drobnak that the phone already had been returned to him and asked Drobnak to exit his car. The defendant denied selling narcotics and testified that the seized currency was income he had earned working as a groundskeeper at Lake of Isles golf course in North Stonington. He asserted that he planned to use the money to pay for rent.

(Footnote omitted.) State v. Gray, supra, 212 Conn. App. 196-202.

On August 17, 2020, the petitioner initiated the present habeas petition. In the petition, last amended on October 21, 2022, the petitioner alleges that his due process rights were violated by the state's failure to disclose exculpatory evidence and correct certain testimony the state knew, or should have known, to be false or materially misleading. Specifically, the petitioner alleges the state failed to disclose the following exculpatory evidence in violation of Brady¹ and its progeny: (1) that the state offered consideration to and/or threatened Brian Drobnak for his cooperation in the state's case against the petitioner; (2) evidence that Drobnak refused to cooperate with law enforcement in the petitioner's case prior to the petitioner's trial; (3) dispatch audio recordings and documentary records evidencing that Officer Jeremy Zelinski and members of the Statewide Narcotics Taskforce-East initiated the call and investigation that led to the petitioner's arrest; and (4) computer-assisted dispatch (CAD) logs evidencing that law enforcement officers were untruthful about their locations at the time the offense was alleged to have occurred. Further, the petitioner alleges that the state failed to correct the following testimony in violation of Napue² and its progeny: (1) Drobnak's testimony that he neither received nor expected consideration for his cooperation with the state during the petitioner's criminal trial nor was threatened by the state; (2) Officer Ryan Griffin's testimony that he initiated the call to New London Police Dispatch to stop the petitioner's vehicle; and (3) Officer Todd Lynch's testimony concerning his New London Police Department issued phone number being (860) 772-6015.³ The respondent filed a return on April 4, 2023, leaving the petitioner to his burden of proof.

¹ Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

² Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

³ The petition also alleged claims for actual innocence and that the petitioner's due process rights were violated by the state's failure to disclose the following evidence in violation of Brady and its progeny: (1) video recordings from any dash or body cameras or audio recordings captured by law enforcement during the investigation; (2) evidence that the petitioner's cellphone was not seized and was not sent to the State Lab for testing in accordance with a June 6, 2018 order of the court; (3) evidence of Officer Lynch's actual cellphone number claimed to have been used to

A trial was held on October 23, 2023, at which the petitioner called Jennifer James, Officer Todd Lynch, Officer Ryan Griffin, Officer Jeremy Zelinski, Attorney Sarah Bowman, Brian Drobnak and himself as witnesses. The parties submitted numerous exhibits, including underlying transcripts, CAD reports and dispatch audio recordings. The parties also filed posttrial briefs.

Additional facts will be set forth as necessary.

II DISCUSSION

The petitioner's claims are governed by Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), and Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L.Ed.2d 104 (1972).

A. Failure to Disclose

1. Standard

The fourteenth amendment to the United States constitution requires that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const., amend. XIV, § I. Due process principles mandates that the prosecution disclose to the defense evidence that is favorable to the defendant and material to his guilt or punishment. Brady v. Maryland, supra, 373 U.S. 83; State v. Ortiz, 280 Conn. 686, 911 A.2d 1055 (2006). There are three essential components to a claim of improper suppression of evidence: “(1) that the evidence was favorable to the accused; (2) that the evidence was suppressed by the state—either inadvertently or willfully; and (3) that the evidence was material to the case, i.e., that the accused

contact Brian Drobnak; and (4) that investigating law enforcement had failed to adhere to the New London Police Department's General Order 10.4 concerning mobile audio and visual recordings during the investigation in this case. These claims were subsequently abandoned by the petitioner at trial and in his posttrial brief.

was prejudiced by the lack of disclosure.” Marquez v. Commissioner of Correction, 330 Conn. 575, 592, 198 A.3d 562 (2019).

a.

Evidence favorable to the accused

The United States Supreme Court has recognized that “[t]he jury's estimate of the truthfulness and reliability of a . . . witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.” Adams v. Commissioner of Correction, 309 Conn. 359, 369, 71 A.3d 512 (2013), quoting Napue v. Illinois, supra, 360 U.S. 269. Thus, Brady's definition of “evidence favorable to the accused” includes impeachment evidence, which is evidence that could potentially alter the jury’s assessment of a witness’ credibility. State v. Jordan, 314 Conn. 354, 370, 102 A.3d 1 (2014).

b.

Suppression by the State

“The prosecution’s duty to disclose applies to all material and exculpatory evidence that is within its possession or available to it . . . and that the prosecution knew or should have known was exculpatory. . . . [S]ee . . . General Statutes § 54–86c (a). It is irrelevant whether the [s]tate [i.e., the prosecutor,] acted in good faith or bad faith in failing to disclose the evidence; negligent suppression may be sufficient. . . . Where evidence highly probative of [a defendant's] innocence is in [the prosecutor's] file, he should be presumed to recognize its significance even if he has actually overlooked it . . . and he is put on notice to disclose the evidence even in the absence of a request to do so. . . . Demers v. State, 209 Conn. 143, 150–51, 547 A.2d 28 (1988).

Importantly, [t]he [s]tate’s duty of disclosure is imposed not only upon its prosecutor, but also on the [s]tate as a whole, including its investigative agencies. . . . Nonetheless, knowledge on the

part of persons employed by a different office of the government does not in all instances warrant the imputation of knowledge to the prosecutor, for the imposition of an unlimited duty on a prosecutor to inquire of other offices not working with the prosecutor's office on the case in question would inappropriately require us to adopt a monolithic view of government that would condemn the prosecution of criminal cases to a state of paralysis." (Internal quotation marks omitted.) Stevenson v. Commissioner of Correction, 165 Conn. App. 355, 365–66, 139 A.3d 718, cert. denied, 322 Conn. 903, 138 A.3d 933 (2016).

"As the state's representative, the prosecutor has a broad obligation to disclose Brady material because principles of fundamental fairness demand no less.... This obligation extends to evidence favorable to the defense that is not in the possession of the individual prosecutor responsible for trying the case; indeed, the obligation may encompass such evidence even if it is not known to the prosecutor. . . . More specifically, the prosecutor's duty of disclosure extends to Brady material that is known to the others acting on the government's behalf in [the case], including, but not limited to, the police. . . . In other words, the prosecutor is deemed to have constructive knowledge of Brady material possessed by those acting on the state's behalf. . . . Thus, the prosecutor has a duty to learn of exculpatory evidence in possession of any entity that is acting as an agent or arm of the state in connection with the particular investigation at issue." (Citations omitted; internal quotation marks omitted.) State v. Andres C., 208 Conn. App. 825, 857, 266 A.3d 888 (2021), cert. granted, 342 Conn. 901, 270 A.3d 97 (2022).

c.
Materiality

Evidence is material when there would be a reasonable probability of a different result if it were disclosed. A reasonable probability exists if the evidence "could reasonably . . . put the whole case in such a different light as to undermine confidence in the verdict. The question is not

whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A reasonable probability of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial....

“The test for materiality is whether the suppressed evidence in the context of the entire record creates a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. . . . [T]he mere possibility that an item of undisclosed evidence might have helped the defense or might have affected the outcome of the trial, however, does not establish materiality in the constitutional sense.... The question [of materiality] is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A reasonable probability of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. . . . [W]here there is no reasonable probability that disclosure of the exculpatory evidence would have affected the outcome, there is no constitutional violation under Brady.” (Citations omitted; internal quotation marks omitted.) Williams v. Commissioner of Correction, 221 Conn. App. 294, 304–305, 301 A.3d 1136 (2023).

2.

Drobnak's Search Warrant

The petitioner first alleges his due process rights were violated by the state's failure to disclose evidence that Drobnak refused to cooperate with law enforcement in the petitioner's case prior to the petitioner's trial. Specifically, the petitioner claims that the state suppressed a

search warrant for Drobnak's cell phone that contained exculpatory impeachment information that was material to the petitioner's case.

At the habeas trial, Officer Lynch testified that he searched for Drobnak after he failed to appear in court on his narcotics possession charge that stemmed from the incident involving the petitioner. As part of his search efforts, Officer Lynch filed an affidavit and application for a search warrant—the search warrant in question—for Drobnak's cell phone. The search warrant, dated October 3, 2018, detailed the following pertinent information. Drobnak had active arrest warrants for failing to appear in the narcotics case in New London and a case in Derby where Drobnak faced a sixth degree larceny charge. An additional arrest warrant was issued for Drobnak for a violation of probation that resulted after he was arrested for third degree burglary. New London, New Haven, Torrington, Derby, Redding, Milford, and Connecticut State Police Departments were unable to locate Drobnak to serve the warrants. In August 2018, Drobnak was stopped by the New Haven Police Department while operating a motor vehicle. Drobnak provided the police with a false name and eluded apprehension on the arrest warrants. In late September 2018, Drobnak contacted Officer Lynch by cell phone and informed him that he would not turn himself in to the police. The search warrant further noted that Drobnak is a material witness in the petitioner's trial scheduled to begin during the week ending October 12, 2018, and the production of Drobnak's cell phone records would be material and relevant information for the police in determining his whereabouts. The record indicates that Drobnak was subsequently taken into custody and testified at the petitioner's criminal trial.

Attorney Bowman, the prosecutor in the petitioner's criminal case, testified that the evidence the state had against the petitioner consisted of the information received from Drobnak and a large amount of cash found on the petitioner when he was apprehended. Attorney Bowman

testified that she provided the defense with Drobnak's criminal history records that included over sixteen arrests, but she did not provide a copy of the search warrant because she did not believe it was relevant to the petitioner's case. Drobnak testified at the habeas trial that he was an active drug user and on the run from the police prior to testifying in the petitioner's criminal trial. Drobnak testified that during this time he spoke to the New Haven police and provided them with the fake name "Brian Rivers" because he did not want to go to jail.

The petitioner testified that the state did not provide him with a copy of the search warrant and he only obtained a copy through the Freedom of Information Act process after his trial had completed. The petitioner further testified that if he had received the search warrant from the state, he would have used the information contained within indicating that Drobnak lied to the police about his name and evaded capture for months to attack Drobnak's credibility at trial. The transcripts from the petitioner's criminal trial indicate that the petitioner cross-examined Drobnak regarding his prior convictions, including charges for failing to appear, and his pending charges. Drobnak also indicated during the petitioner's cross-examination that prior to his arrest on October 4, 2018, he was on the run from the police for a year because he was "getting high."

In the present matter, the record before this court establishes that the search warrant contains information indicating that Drobnak was not truthful to the police and evaded arrest for several months. This information could have been used to impeach Drobnak's testimony at the petitioner's criminal trial and potentially alter the jury's perception of his credibility. As a result, the search warrant contains evidence favorable to the petitioner and thus satisfies the first Brady prong.

As to the second Brady prong, this court finds that there is sufficient credible evidence in the record to demonstrate that the search warrant was suppressed. Attorney Bowman testified first that she did not believe the information in the search warrant was relevant to the petitioner's case, and then that she did not consider the information. Officer Lynch arrested Drobnak for his involvement in the incident with the petitioner and attempted to locate him for months after Drobnak failed to appear in court. To assist with his efforts in locating him, Officer Lynch filed the search warrant, which referenced both Drobnak's efforts to evade capture, including providing a false name to the police, and Drobnak's role as a material witness in the petitioner's case. Attorney Bowman, as the state's representative, has a broad obligation to disclose Brady material and is deemed to have constructive knowledge of that material possessed by those acting on the state's behalf, including the investigating officers. The court need not find whether wilful or inadvertent suppression occurred to satisfy the Brady standard.

The court now turns to address the third Brady prong: whether the suppression of the search warrant was material to the case so that the petitioner was prejudiced by the lack of disclosure. The information contained in the search warrant indicated that Drobnak gave the police a false name and evaded arrest for several months prior to the petitioner's trial. At the petitioner's criminal trial, the petitioner cross-examined Drobnak on his convictions and pending charges, including his charges for failing to appear. The petitioner also asked Drobnak how long it took him to show up to court, and Drobnak testified that he was homeless, taking drugs and on the run for almost a year prior. The court finds that the petitioner effectively cross-examined Drobnak regarding his evading arrest before the petitioner's trial and thus the only undisclosed impeachment evidence was the fact that Drobnak gave a fake name to the police during a motor

vehicle stop. The court must now determine whether this information constitutes material impeachment evidence or is cumulative of other information that was available to the petitioner.

In Williams v. Commissioner of Correction, supra, 221 Conn. App. 294, the Appellate Court found that a victim's sworn statement to the police that had not been disclosed to the defense constituted material impeachment evidence pursuant to Brady. The petitioner in Williams was convicted by a jury of one count of first degree unlawful restraint and acquitted of two counts of first degree sexual assault. The conviction stemmed from an incident with the victim, the petitioner's former girlfriend, that occurred on February 14, 2013. The petitioner filed a petition for habeas corpus, claiming, inter alia, that the state had violated Brady by failing to disclose the victim's sworn statement to police in which she detailed the chronology of her relationship with the petitioner. The victim's statement described several incidents involving the petitioner that occurred both before and after February 14, 2013, but failed to mention the February 14 incident for which the petitioner was convicted. In finding that the victim's statement was material for purposes of a Brady claim, the Appellate Court concluded that there was a reasonable probability that the outcome of the petitioner's criminal trial would have been different had the state disclosed it because the petitioner's conviction "hinged entirely on the victim's testimony" and the police report "could have significantly undermined the victim's testimony on a critical issue in the case." Id., 324. In noting that the state's case against the petitioner relied entirely on the victim's testimony, the Williams court distinguished itself from "almost every case in which either our Supreme Court or this court has found undisclosed impeachment evidence to be cumulative, and therefore not material, [because] there was other evidence of the defendant's guilt." Id., 317. The Court further noted that the not guilty verdicts

delivered on the sexual assault charges and a note from the jury during deliberations evidenced doubts the jury had regarding the victim's credibility. *Id.*, 323-24.

By contrast, there was other evidence of guilt in the present case. While there is no dispute that Drobnak was an important witness at the petitioner's trial, the state's case did not rely entirely on his testimony. In the direct appeal from his conviction, the petitioner claimed, *inter alia*, that his due process rights were violated when the police department improperly deposited the money seized during his arrest prior to trial. The Appellate Court denied the petitioner's claim, noting that "the direct and circumstantial evidence presented by the state provided strong evidence of the defendant's guilt." *State v. Gray*, *supra*, 212 Conn. App. 215. The Appellate Court went on to describe the state's evidence against the petitioner in the underlying criminal case as follows.

At trial, the state offered Drobnak's testimony that he had purchased crack cocaine from the defendant and had done so on at least two prior occasions.... Moreover, Drobnak's account was corroborated by Lynch and Zelinski, both of whom observed Drobnak enter the Toyota operated by the defendant and testified to finding Drobnak in possession of narcotics immediately after he exited the vehicle. The officers also testified, in light of their training and experience, that the limited exchange between Drobnak and the defendant, which occurred in an area well-known for frequent drug sales, was behavior indicative of a narcotics transaction. In addition, Drobnak provided the officers with the cell phone number of the individual he had contacted to arrange the narcotics transaction, a number belonging to the phone Pelchat recovered from the center console of the defendant's vehicle. Finally, the defendant continued to operate the Toyota for two to four hundred feet after Moreau attempted to conduct a motor vehicle stop and the defendant stated "that's all I know" in response to Lynch's question regarding the defendant's involvement in narcotics trafficking.

(Citation omitted.) *Id.*, 215-16.

Additionally, Attorney Bowman's closing argument did not focus on Drobnak's testimony. Attorney Bowman began her argument by noting that the jurors' memory serves to determine the credibility of the witnesses and the weight given to the evidence presented. Attorney Bowman further informed the jurors to "[s]tick with the facts, stick with what you've

heard, stick with the officers' testimony, and you'll be fine." Attorney Bowman also pointed to the petitioner's response, "that's all I know," to Officer Lynch's question regarding the petitioner role in selling narcotics and the large sum of cash found on the petitioner when he was arrested.

Based on the foregoing, this court finds that, in the context of the entire record, the petitioner failed to meet his burden of proving that there is a reasonable probability that, had the state disclosed the search warrant, the outcome of the petitioner's criminal trial would have been different. The petitioner's conviction did not hinge entirely on Drobnak's testimony, and the undisclosed impeachment information contained in the search warrant—namely the fact that Drobnak gave the police a fake name while he was on the run—would not have undermined his testimony to a significant degree beyond what the petitioner accomplished on cross-examination. Thus, the petitioner failed to prove that the suppressed evidence was material for Brady purposes. As a result, this claim must be denied.

3. Drobnak's Cooperation

The petitioner further alleges that his due process rights were violated by the state's failure to disclose that it had offered consideration to and/or threatened Drobnak for his cooperation in the state's case against the petitioner.

On April 2, 2019, Drobnak took the stand at the petitioner's criminal trial and testified that he was not given any promises when he was interviewed by the police following his arrest. The following day, Drobnak took the stand again and the petitioner presented a video recording of his interrogation which was played to the jury. During the interrogation video, Officer Lynch stated that Drobnak's statement to the police may help him get out of there, but subsequently indicated that there are no promises being given after reading Drobnak his Miranda⁴ rights. After

⁴ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

viewing the video, Drobnak testified that his prior testimony from the day before was incorrect and that he understood the police to mean that his cooperation may help on a promise to appear which he believed to be a promise. Drobnak then testified that he did not expect anything in return for his cooperation.

At the habeas trial, Drobnak testified that his criminal trial testimony indicating that he had understood that a promise was made occurred because he had confused a promise made to him with a promise to appear. Drobnak further testified that he did not have any expectation that his cooperation would be beneficial to him and that nothing was promised to him by the police or prosecutor in exchange for his statement or testimony in the petitioner's case. Officer Lynch testified at the habeas trial that he did not recall threatening Drobnak or indicating to him that his cooperation may benefit him. Officer Lynch further testified that he does not have the authority to set a bond but often provides information to his shift commander who can consider that information when setting the bond. Officer Lynch indicated that cooperating information is part of what is taken into consideration during the bond process for a failure to appear charge.

Attorney Bowman testified that there was no offer extended to Drobnak prior to the completion of the petitioner's trial and that she met with Drobnak and his attorney to be sure that he was aware that no promises were being made to him in exchange for his testimony. Attorney Bowman further testified that she "isolated" herself from the disposition of Drobnak's narcotics charge and did not bring Drobnak's cooperation to anyone's attention after he testified in the petitioner's case.

In the present case, the court finds that the petitioner has failed to sustain his burden of proving that the state suppressed any evidence of consideration offered to Drobnak in exchange for his statement or testimony in the petitioner's case because the petitioner has not proven that

such consideration existed. This court is not persuaded that the video recording of Drobnak's interrogation proves that an agreement existed between the police and Drobnak for consideration in exchange for Drobnak's statement. Moreover, the video recording was disclosed to the defense and the petitioner played it to the jury and used its contents to impeach Drobnak's testimony on cross-examination. The court also credits testimony by Officer Lynch, Attorney Bowman, and Drobnak indicating that no promises were made to Drobnak. As a result, the court finds that the petitioner failed to prove that the state suppressed evidence and this claim must be denied.

4.

Dispatch Audio & CAD Reports

The petitioner also argues that his due process rights were violated by the state's failure to disclose certain dispatch audio recordings and CAD reports from the night the petitioner was arrested. Specifically, the petitioner claims that the state's failure to turn over dispatch information deprived him of a fair opportunity to effectively cross-examine testimony by the reporting police officers.

Two dispatch audios recordings exist from the night of the petitioner's arrest. The petitioner testified that he did not receive either recording but subsequently learned that Attorney Koch, his standby counsel during trial, received a copy of the shorter call. The petitioner testified that he received the second longer dispatch audio recording on March 29, 2021, following an order from the court, *Kwak, J.* Additionally, the petitioner received one four-page CAD report in advance of his trial but did not receive four additional CAD reports until after the trial ended. The petitioner testified at the habeas trial that if he had the dispatch information, he would have used it to cross-examine the officers concerning their purported locations when the calls were coming to dispatch and the identities of the officers making the calls.

At the habeas trial, Jennifer James, a dispatcher for the New London Police Department, testified that the dispatch uses a CAD system, wherein dispatchers log calls that are transferred through the 9-1-1 system and police radio transmissions. James testified that the calls are assigned numbers sequentially as they are received and written reports are automatically generated. James further testified that the address information on the reports is relayed to dispatch verbally by the caller. Attorney Bowman testified at the habeas trial that she turned over the CAD reports and the dispatch audio recordings to the petitioner. Attorney Bowman testified further that the petitioner referenced the dispatch audio recordings in his posttrial motions.

The petitioner points to discrepancies in the dispatch information and certain testimony of the arresting police officers in the petitioner's criminal trial as evidence that the undisclosed dispatch information was material to his case in violation of Brady. The petitioner first notes that the initial CAD report (Exhibit 12), which the state disclosed to the petitioner prior to his trial, indicates that a self-initiated call received by dispatch at 16:27:22 regarding a suspicious person recorded the incident location as Eschals Sunoco gas station (Sunaco) at 265 Broad Street, but officer testimony and the incident report identify the location of the alleged drug transaction and Drobnak's subsequent arrest as the Gulf gas station (Gulf), a block away from Sunaco.

Officer Lynch testified at the petitioner's criminal trial that the two teams of investigating officers—Officers Griffin and Pelchat, and Officer Zelinski and himself—were set up on different vantage points to see both the Gulf gas station (Gulf) on Broad Street in New London, and the 7-Eleven diagonally across the street at the intersection of Broad Street and Parker Street. Both Officers Lynch and Griffin mistakenly testified that the Gulf address is 265 Broad Street, but its actual location is 290 Broad Street. Sunaco is located at 265 Broad Street. Officer Lynch testified that during the incident leading up to the petitioner's arrest, Officer Zelinski and he

stayed in the Gulf parking lot and arrested Drobnak while Officers Pelchat and Griffin followed the petitioner's vehicle as it traveled toward Sunaco and down Mohegan Parkway where he was ultimately apprehended. During his habeas trial testimony, Officer Griffin acknowledged that he incorrectly identified the Gulf address as 265 Broad Street.

Officer Lynch also testified at the criminal trial that the narcotics division of the New London Police Department communicated with each other during their undercover surveillance operations with Zello, an encrypted cell phone application that only allows persons in the chat group to participate in communications. Officer Lynch testified that, due to the nature of their operations and the safety of the officers, it is too risky to have their communications broadcasted over dispatch.

The petitioner also points to a second CAD report (Exhibit 10) for a subsequent call at 16:28:42 for a motor vehicle violation with an identified location of 13 Mohegan Parkway, at which time Officers Zelinski and Lynch were at the Gulf station apprehending Drobnak. The petitioner notes that dispatch audio indicates that it was Pelchat, not Griffin, who called dispatch with the petitioner's license plate number, to request a marked cruiser to assist with a motor vehicle stop and to inform Sergeant Gregory Moreau that there were narcotics charges related to the petitioner's vehicle. The record indicates that Officers Pelchat and Griffin were riding in the same unmarked police cruiser following the petitioner's vehicle as it traveled away from Gulf and onto the Mohegan Parkway. Officer Griffin testified at the criminal trial as to his role in arresting the petitioner with Officer Pelchat and Sergeant Moreau. Officer Griffin further indicated that he could not recall if he called to relay the petitioner's vehicle license plate number through dispatch or if it was one of the other officers.