IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY

CASE NO.: 2010CF005829AMB

STATE OF FLORIDA,

Plaintiff,

v.

JOHN B. GOODMAN,

Defendant.
_____/

JUDGE JEFFREY COLBATH

DEFENDANT'S SUPPLEMENT TO MOTION FOR NEW TRIAL AND/OR TO VACATE HIS CONVICTION BASED ON JURY MISCONDUCT AND INCORPORATED MEMORANDUM OF LAW

The Defendant, JOHN B. GOODMAN, through undersigned counsel, respectfully supplements his pending motion for new trial with the following new information concerning former juror Dennis DeMartin. In addition to documenting Mr. DeMartin's divorce and his first ex-wife's DUI arrest, this new information establishes *inter alia* that:

- Mr. DeMartin lied both in his newest book and in his April 1, 2013, letter to this Court about the dates and circumstances surrounding the arrest and the divorce, including the dates of these events and the reason for the divorce;
- Mr. DeMartin lied to this Court in his letter by stating that he had forgotten his wife's arrest when, in fact, he telephoned her several times *during the trial* to actually discuss her DUI;

- Mr. DeMartin lied to this Court and the parties during *voir dire* when he failed to disclose, in response to unambiguous questions to the entire panel about whether any family members had ever been the victims of crimes, that his daughter had been the victim of a vicious armed rape, kidnaping and home invasion *and* that it was that incident which led his wife's drinking; and
- Mr. DeMartin also told his wife during the trial that he was writing a book about the trial and urged her and his children to watch the publicity about the case on the news. Plainly he was doing so as well.

As demonstrated below, these new revelations confirm that Mr. DeMartin willfully withheld the information about his ex-wife's DUI arrest during voir dire and demonstrate two additional forms of misconduct: (1) that he willfully failed to disclose in voir dire that his daughter had been the victim of a serious crime – an armed rape, kidnaping and home invasion robbery; and (2) that he willfully disobeyed this Court's instructions to (a) not discuss the case with anyone during the trial and (b) not follow media reports about the case during the trial.

MEMORANDUM

I. THE NEWLY DISCOVERED INFORMATION

The Fourth District Court of Appeal relinquished jurisdiction to this Court to investigate the new allegations of jury misconduct committed by Mr. DeMartin which came to light for the first time with the publication of his latest book in March 2013, *Will she Kiss Me or Kill Me*, including that he failed to disclose during voir dire that one of his two ex-wives had been arrested for DUI (and then allegedly had an affair whicht led to their divorce), that he lied to this Court during the hearing

on May 11, 2012, about his knowledge about hydrocodone and that he lied to this Court on April 30, 2012, about *when* he began writing his book about the trial. Shortly after filing his motion to relinquish in the Fourth District Court of Appeal, Mr. Goodman, through counsel, also retained Jimmy N. Mantrozos, a Florida licensed private investigator with Mantos International, Inc., to investigate the disclosures in the book about the DUI arrest and divorce. With only the clue from Mr. DeMartin's book that suggested that the DUI arrest had occurred in Connecticut and that the arrest had led to a divorce, Mr. Mantrozos eventually identified and interviewed Mr. DeMartin's first ex-wife, JoEllen Johnston, and located public records concerning both the arrest and divorce. Attached hereto as **Exhibit 1** is an affidavit from Mr. Mantrozos concerning his interview with Ms. Johnston. The interview establishes the following:

1. Mr. DeMartin's first wife was JoEllen Johnston. They were married in Connecticut on March 23, 1969 but legally separated in 1994. The marriage was finally dissolved on March 6, 1995.

2. Mr. DeMartin and Ms. Johnston bore two children, a son and a daughter. The daughter, Regina, married Francis Rogers in 1991.

3. Police records establish that Ms. Johnston was arrested for DUI by the Woodbridge, Connecticut Police Department on February 15, 1997. *See* **Exhibit 2**. According to the arrest report, during questioning Ms. Johnston told the officers that "her daughter was raped in Ansonia[, Connecticut] and she 'just lost it' tonight." *Id.*

4. During her interview with Mr. Mantrozos, Ms. Johnston reiterated that her daughter, Regina, had been sexually assaulted and the trauma had led her to drink too much. *See* **Exhibit 1**. Mr. Mantrozos searched for the police records of the assault and discovered that it had occurred

during a home invasion robbery and subsequent armed kidnaping of Regina and her husband. So far, Mr. Mantrozos has only located records for one of the three assailants, Marcus Gregory. In affirming Gregory's conviction and 90-year sentence, the Appellate Court of Connecticut described the incident as follows:

> On the night of January 9, 1997, Regina Rogers returned from her place of employment to her home at Wakelee Avenue in Ansonia. As Regina Rogers entered her garage, she was accosted by the defendant [Marcus Gregory], who forced her into the garage. Francis Rogers heard his wife scream and went to investigate. As he opened the garage door, he was accosted by the defendant, who was holding a pistol. Francis Rogers later identified the defendant as the man who pointed the pistol at his head and ordered him to the ground. The defendant was accompanied by two other men who proceeded to ransack the Rogers' home.
>
> The defendant and one of the other intruders forced Francis Rogers into his wife's car and drove him to an automatic teller machine where, at gunpoint, they made him withdraw $ 600. Upon their return, the defendant and the other men bound both victims and removed several items from their home including a Derby High School class ring and a distinctive cable wire.

See **Exhibit 3**, *State v. Gregory*, 56 Conn. App. 47, 49-50, 741 A.3d 986, 988 (1999).[1]

5. Despite their divorce, Ms. Johnston and Mr. DeMartin remained in close contact, as she eventually moved to South Florida, as well. Indeed, she stated that "whenever he gets into trouble, he always calls her or someone in the family." *See* **Exhibit 1**, at p. 7. DeMartin apparently had told her about his plan to write a book about the trial before hand and Ms. Johnston and their two children had unsuccessfully tried to convince him not to. *See* **Exhibit 1**.

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[1] This opinion does not refer directly to the sexual assault, but Gregory was also convicted of another sexual assault committed a few days before the home invasion. *See* **Exhibit 4**, *State v. Gregory*, 74 Con. App. 248, 812 A.2d 102 (2002). That opinion notes that the Ansonia home invasion had included a "sexual assault." Whether it was committed by Gregory himself or one of his accomplices (or both) is unclear. *See* 74 Conn. App. at 253, 812 A.2d at 107.

6. Ms. Johnston also revealed how Mr. DeMartin had violated this Court's instructions to not talk about the case with anyone or follow the media while the trial was still going on. Thus, she told Mr. Mantrozos that *during the trial*, Mr. DeMartin called her "several times" and wanted her to refresh his recollection about *her* DUI. He also called their children *during the trial* and discussed her DUI with them, as well. She also told Mr. Mantrozos that Mr. DeMartin seemed "obsessed" with what was going on and his notoriety. "He was very excited about being in the case and on the news" and would repeatedly call her and their children to encourage them to "watch the news tonight." *See* **Exhibit 1**.

7. Mr. DeMartin came uninvited to her mother's funeral in June, 2012, and again brought up her DUI. *Id.*

II. THE SIGNIFICANCE OF THE NEWLY DISCOVERED INFORMATION

A. Mr. DeMartin's Concealment of His Wife's DUI Arrest and False Statements to the Court and Media About It

In his book, Mr. DeMartin claimed that his first wife's DUI arrest occurred while they were still married and that the arrest resulted in her committing adultery, leading to their divorce. In his April 1, 2013, letter to this Court, Mr. DeMartin reaffirmed the purported accuracy of this story: "I **did not** lie regarding my ex wife's DUI and details of how she ended up with another alcoholic man. It was blocked out of my memory since a stroke I had around 1988."[2] Motion For New Trial, Exhibit 6 (bold and underlining by Mr. DeMartin). He further told this Court that he did not remember Ms. Johnston's DUI arrest until he attended her mother's funeral. *Id.*

[2] Since the DUI arrest occurred in 1997, the alleged stroke in 1988 could not possibly have interfered with his memory of it.

In response to learning about Mr. Goodman's motion to relinquish jurisdiction from the media, Mr. DeMartin told a reporter from WPTV News the same fable, claiming that he had simply forgotten about his wife's arrest and had allegedly "blocked [the arrest] out" of his mind "when she left me for another man and everything." *See* Motion For New Trial, Exhibit 5. Finally, he again claimed that he did not talk to his former wife "until December [2012] when her mother died and they went visiting...." *Id*.

Through Mr. Mantrozos' investigatory work, we now know that, other than the fact of Ms. Johnston's DUI arrest, virtually nothing else in Mr. DeMartin's story – in his book, in his interviews with the media and in his letter to this Court – was true. The public records establish beyond any doubt (or need to make a "credibility" finding by the Court, as the State has suggested) that the arrest and the divorce were completely unconnected.

Also completely false was Mr. DeMartin's attempted alibi for not disclosing the DUI arrest during voir dire. He was not so traumatized by the arrest and Ms. Johnston's alleged subsequent affair that he "blocked out" all memory of it until his memory was allegedly refreshed at the December, 2012, funeral of Ms. Johnston's mother. In fact, Mr. DeMartin repeatedly telephoned both Ms. Johnston and his children *during the trial* to discuss her DUI arrest and encouraged them to "watch the news" to see how famous he had supposedly become as a juror in Mr. Goodman's trial..

Interestingly, *both* Mr. DeMartin's fabricated version of these events and the actual true one belie the State's theory that Mr. DeMartin did not disclose the DUI arrest because he might not have considered his "ex" wife as either a "close friend or family member or someone that affects you." If that was the reason for not making the disclosure, it would have been far simpler to say so rather

than concocting the elaborate story about the arrest having led to his divorce which so traumatized him that he "blocked [it] out" of his memory. Apparently Mr. DeMartin did not yet know at the time that imprecise questioning can sometimes excuse a failure to disclose material information, so he resorted to making up the more complicated fib linking the arrest to the divorce.[3]

B. Mr. DeMartin's Failure To Disclose that His Daughter Had Been the Victim of a Vicious Armed Rape, Kidnapping and Robbery

Ms. Johnston's statements, fully corroborated by published court opinions, also demonstrates beyond dispute that Mr. DeMartin also failed to disclose that his own daughter had been raped by one or more armed home invasion robbers and that both she and her husband where then kidnaped and ordered to give the robbers cash from a bank machine. During voir dire, ASA Collins asked the entire panel, and many jurors individually, about relatives who had been victims of crimes – none nearly as serious as Mr. DeMartin's own daughter. *See* Trial Transcripts, Vol. 8, pp. 879-895, 941-42. ASA Collins then this line of inquiry with the following:

> MS. COLLINS: .... All right. Now, I've just asked the whole panel ***has anyone every been a victim of a crime***, has anyone ever been charged or themselves, ***a close family member been a victim*** or charged with ***a crime***. And many of you were very candid. And I appreciate that. Is there anyone that was uncomfortable answering in a group, maybe who fits in one of those categories and would like to approach to talk about it? ***Anyone? No. Great***. Thank you so much.

Id. at 946 (emphasis added). Mr. DeMartin did not respond.

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[3] The State's "confusion" theory is also belied by ASA Collins' own questioning. During the voir dire on March 8, 2012, Ms. Collins noted on the record that Mr. Ellsworth had four wives. *See* Trial Transcripts, Vol. 8, p. 912. Then later during her questioning about arrests of family members, Mr. Ellsworth volunteered "My wife." *Id.* at 944. ASA Collins then asked: "Which one." When Mr. Ellsworth explained that it was his current wife who had a DUI 9-10 years ago, Ms. Collins stated: "I'm sorry, I had to say it." *Id.* Thus, the entire panel understood that the questioning could encompass prior spouses.

Mr. DeMartin not only failed to disclose that his wife had been arrested for DUI and that his daughter and son-in-law had been the victims of extremely serious and traumatic crimes, he also went out of his way to portray himself as a clean slate worthy of being selected for that reason: "Listening to all this, I must have had a very boring life." *Id.* at 938. By "[l]istening to all this," Mr. DeMartin was obviously referring to the sometimes lengthy descriptions by jurors about friends and relatives who had either been arrested for or had been the victims of crimes. After ASA Collins then told the panel that she "really appreciate[d] all of you just speaking up and sharing it with us," Mr. DeMartin could not resist trying to guild the Lilly again:

> MR. DeMARTIN: I know. I'm even trying to think of my family. I don't think any of my family had any problems.
>
> MS. COLLINS: Thanksgiving must be boring at your house.
>
> MR. DeMARTIN: I never heard so much.

Id. at 939.

Now that we and the Court know the truth, such statements by Mr. DeMartin show just how desperate he was to get on the jury. He was willing to say anything to cast himself as having lived a completely uneventful life with zero contacts with the criminal justice system that might trigger his removal from the jury by either side. His failure to disclose the violent crimes committed against his own daughter and son-in-law surely cannot be attributed to "forgetfulness." And any attempt by him to do so could not be accepted because it would be patently unreasonable.[4]

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[4] Although Missouri courts use a different standard than Florida courts, focusing on the juror's intent to withhold information, they have uniformly rejected a juror's subjective claim of forgetfulness about prior litigation when "a reasonable venire person" could not have forgotten the episode. *See Williams v. Barnes Hosp.*, 736 S.W.2d 33, 38 (Mo. 1987) (en banc) (rejecting juror's assertion that he had forgotten about a personal injury claim and finding that his failure to disclose was intentional (continued...)

C. Mr. DeMartin's Repeated Disregard For the Court's Instructions

In addition to repeatedly instructing the jurors not to conduct experiments and out-of-court tests, the Court instructed them on virtually a daily basis not to follow the media and not to talk about the case with anyone. Since the Court already knows that Mr. DeMartin violated the former instructions by conducting his "drinking experiment," it should hardly come as a surprise to learn from Ms. Johnston that he was also flagrantly violated the latter instructions by talking to her and their children during the trial and encouraging them to watch the news about the case. If Mr. DeMartin was following the media's coverage of the trial, as now seems obvious, he would have learned a laundry list of prejudicial information or accusations that were never presented in court, including, for example, allegations that Mr. Goodman had been a "cocaine addict" and that he had settled the civil suit brought by the Wilson family for millions of dollars. *See* **Composite Exhibit 5**. As the Supreme Court of Florida established in *Marshall v. State*, 854 So.2d 1235, 1241-42 (Fla. 2003), "an allegation that jurors read newspapers contrary to the court orders [does] not inhere in the verdict" but rather constitutes the "receipt by jurors of prejudicial nonrecord information" which "constitutes an overt act subject to judicial inquiry." *See also Baptist Hosp. v. Maler*, 579 So.2d 97, 100-01 (Fla. 1991); *Sentinel Communications Co. v. Watson*, 615 So.2d 768, 772 (Fla. 5th DCA 1993). *See generally Simmons v. Blodgett*, 910 F. Supp. 1519 (W.D. Wash. 1996) (noting that state court had held an evidentiary hearing on juror misconduct based on a statement by a juror that she had read numerous newspaper articles about the case during the trial), *aff'd*, 110 F.3d 39 (9th Cir. 1997).

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[4](...continued)
because the juror's story "unduly taxed its credulity"). *See also Fielder v. Gittings*, 311 S.W.3d 280, 289 (Mo. App. 2010); *Hatfield v. Griffin*, 147 S.W.3d 115 (Mo. App. 2004).

Ms. Johnston also confirmed counsels' earlier accusations (based on some of Mr. DeMartin's own comments to the media) that he planned to and was writing a book about the case *during* the trial. Mr. DeMartin himself conceded as much in his new book, stating even more ominously that some unidentified third party or parties had "encouraged" him "to write a book on being involved in the trial." *See* Motion For New Trial, Exhibit 1, Prefix. At the very least, these additional instances of misconduct and mendacity should convince the Court that its assessment of Mr. DeMartin's credibility was mistaken when it found credible his testimony, without questioning any other jurors, that he did not discuss his book writing with other jurors until after the trial.

III. A NEW TRIAL IS REQUIRED UNDER THE *DE LA ROSA* TEST

As both parties agree, in analyzing the impact on a verdict of a juror's concealment of material information during voir dire, the Court must follow the three part test established by the Supreme Court of Florida in *De La Rosa v. Zequeira,* 659 So. 2d 239, 241 (Fla. 1995). First, the withheld information must be material and relevant. Second, the juror must have concealed the information during questioning. Third, the concealment must not be attributable to a lack of the moving party's diligence. *See State Farm Fire and Cas. Co. v. Levine,* 837 So. 2d 363, 364 (Fla. 2002).

A. Materiality

Counsel have already represented that they would have used a peremptory to strike Mr. DeMartin had they learned what he claimed in his book – that his wife had an undisclosed DUI which allegedly led to her adultery and their ultimate divorce. The full scope of the undisclosed information is now far wider. Mr. DeMartin concealed that his wife was arrested for DUI in February 1997 *and* that she attributed her drinking problem to the trauma of learning about her

daughter's armed rape and kidnaping only a month earlier – crimes that he also failed to disclose during voir dire, despite precise questions about any family members who were victims of crimes. He also never disclosed that he had been "encouraged" by third parties to write a book about the trial and that he was, in fact, doing so during the trial itself. He then lied to this Court by denying any knowledge about hydrocodone – the narcotic that the State argued at trial contributed to Mr. Goodman's impairment – when, according to his book, his "New Love Interest" had been addicted to and was abusing the same drug.

Singly, but most certainly together, this information, had it been disclosed during voir dire, would have led to, first, additional questioning about both the details of the wife's DUI and his daughter's tragic experience as a crime victim, and, second, his removal from the jury, either for cause or with a peremptory challenge. The fact that counsel did not use peremptory challenges to strike other jurors who *honestly* disclosed prior DUIs or being victims of crimes was because followup questions established that these events had not strongly affected the jurors. However, if Mr. DeMartin had been honest about disclosing his wife's DUI, the followup questions would presumably have revealed that the drinking that led to the DUI was caused by the trauma of her daughter's armed rape and kidnaping a month before. Similarly, if DeMartin had been honest in disclosing that his daughter and son-in-law had been the victims of the armed home invasion and multiple crimes arising from it, the followup questions would presumably have revealed that this episode was so traumatic that it led to his wife's excess drinking and the eventual DUI arrest. Mr. DeMartin was the *only* prospective juror whose life was so seriously influenced by the *combination* of a DUI arrest and prior crimes committed against a family member, including the rape of his own daughter. The crimes against Mr. DeMartin's daughter and son-in-law were also far more serious

than *any* crime revealed by other jurors. Counsel would never have risked keeping such a person on the jury. Nor, of course, would counsel have kept Mr. DeMartin had he disclosed that he had been contacted by unidentified third parties and "encouraged" to write a book about his experience on the jury. Such conduct could very well amount to jury tampering.

B. Concealment

As to the second, concealment prong, we now know beyond dispute that Mr. DeMartin deliberately concealed both the information about his wife's arrest and his daughter's armed rape, kidnaping and robbery. The phrase "victim of a crime" is not ambiguous. And, no father could possibly "forget" that his daughter had been raped and kidnaped at gunpoint.

The State attempts to explain Mr. DeMartin's failure to disclose Ms. Johnston's DUI arrest by suggesting that he could either have been confused by the question or believed that an "ex" wife did not qualify as a "family member." There are several defects with the State's hypothesis – the main one being that *Mr. DeMartin himself did not use it* when he tried to explain the reason for his nondisclosure to the media and to the Court in his April 1st letter. Instead, he fabricated an elaborate lie, concocting the demonstrably false story about how her DUI led to her affair and their divorce.

Moreover, even if it could be unclear whether an "ex" spouse is a "family member," Ms. Johnston nonetheless remained a "close friend" or at least "someone that affect[ed]" him. They remained in contact over the years and he frequently called her and their daughters "whenever he [got] into trouble." He even called her during the trial itself to discuss the DUI arrest.

C. Due Diligence

When Mr. DeMartin failed to disclose the heinous crimes committed against his daughter and son-in-law, there was nothing counsel should have done to independently learn of the incident. And,

contrary to the State, counsel cannot be blamed for not discovering the concealed information about the DUI arrest through questions the State now claims could have been asked. Indeed, the State completely misses the point about Mr. DeMartin's statement: "I'm even trying to think of my family. I don't think any of my family had any problems." Mr. DeMartin was not struggling with memory that more questioning could (and, according to the State, should) have resolved. No. Mr. DeMartin was embellishing the fictional portrait of himself ("the boring, jovial senior citizen") that would guarantee a spot for him on the jury and help him attain his hoped for fame and fortune.

CONCLUSION

Florida law does not require Mr. Goodman to prove that Mr. DeMartin's failure to disclose material information was deliberate or willful. *See State Farm Mut. Auto. Ins. Co. v. Lawrence*, 65 So.3d 52, 55 (Fla. 2d DCA 2011); *Taylor v. Magana*, 911 So.2d 1263, 1268 (Fla. 4th DCA 2005); *Smiley v. McCallister*, 451 So. 2d 977, 978 (Fla. 4th DCA 1984). However, when a juror *does* act intentionally, the law presumes that the juror is biased. *Williams*, 736 S.W.2d at 37-39. A juror, like Mr. DeMartin, "who lies materially and repeatedly in response to legitimate inquiries about [his] background introduces destructive uncertainties into the process." *Dyer v. Caledron,* 151 F.3d 970, 983 (9th Cir. 1998).[5] A conviction based on such a juror's participation creates "a clear perception of unfairness, and the integrity and credibility of the justice system is patently affected." *Lowrey v. State*, 705 So.2d 1367, 1369-70 (Fla. 1998). *See also* Note, *Satisfying the Appearance of Justice When a Juror's Intentional Nondisclosure of Material Information Comes to Light*, 35 U. MEM. L

[5] Among other things, the juror in *Dyer* "lied when she said she had never been a victim of crime" when in fact she had been she had been sexually assaulted by a cousin. *See Dyer*, 151 F.3d at 980.

REV. 315, 341 (Winter 2005) ("A court's finding that a juror intentionally failed to disclose material information during voir dire creates an incurable appearance of injustice.").

It is now quite clear that Mr. DeMartin was "so eager to serve" that he "court[ed] perjury to avoid being struck." *Dyer*, 151 F.3d at 982. "Obsessed" with the potential for notoriety, Mr. DeMartin ignored the entreaties of Ms. Johnston and his daughter to not use his jury service as fodder for a book and did whatever he could to be selected, including deliberately concealing background facts that he knew would have led to his elimination from the jury. He then repeatedly violated the court's instructions by following the media's coverage of the trial, talking about the case to third parties during the trial and conducting a forbidden out-of-court experiment. As his misconduct began to emerge, Mr. DeMartin then made up elaborate lies to the media and to this Court in an effort to avoid the consequences. Enough is enough. If the State will not confess error, as we submit it should, then this Court must act by granting Mr. Goodman a new trial.

Respectfully submitted,

/s/Roy Black
ROY BLACK
[Fla. Bar No. 126088]
BLACK, SREBNICK, KORNSPAN & STUMPF, P.A.
201 South Biscayne Blvd., Suite 1300
Miami, FL 33131
Telephone: (305) 371-6421

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 24, 2013, my office e-mailed and mailed a true copy of the foregoing to:

Sheri Collins
Assistant State Attorney
West Palm Beach State Attorney's Office
Traffic Homicide Unit
401 North Dixie Hwy.
West Palm Beach, FL 33401

By: _____
Roy Black, Esq.

STATE OF FLORIDA \

|

COUNTY OF PALM BEACH /

AFFIDAVIT

- Your affiant, Jimmy N. Mantrozos, is over the age of eighteen and not personally involved with this matter.
- Your affiant has undergraduate and graduate degrees in fields related to social sciences (Sociology, Psychology and Counseling)
- Your affiant is a State of Florida licensed private investigator and has been licensed since 2000.
- Your affiant is the owner and lead investigator of a Florida licensed private investigative agency; Mantos International, Inc. which was opened in 2003.
- Your affiant deposes and swears that the statements contained in this affidavit are true and accurate.
- During the week of April 17-19, 2013 your affiant spoke personally with JoEllen Johnston, the former wife of Dennis DeMartin.
- Specifically, on Thursday, April 18, 2013 at 9:26am JoEllen Johnston called Investigator Mantrozos and asked when would be a good time to meet. We agreed to meet at the food court at the **Town Center Mall in Boca Raton, Florida, and at 10:55am** met and began discussions.
- I, Jimmy N. Mantrozos confirmed my identity as a private investigator showing JoEllen Johnston my State of Florida Licensed Private Investigator issued ID and also gave JoEllen my business card.
- JoEllen Johnston is a short lady about 5'2" in her 60s with salt and pepper short hair and was wearing a pink outfit at the time of our interview.

In this interview JoEllen Johnston affirmed the following:

- That she in fact is JoEllen Johnston, Date of Birth 3/18/1949.
- That she is the former 1st wife of Dennis Charles DeMartin aka Dennis DeMartin.
- That she and Dennis Charles DeMartin were married on 3/23/1969 and divorced in 1995 Investigator Mantrozos confirmed this date of marriage with the Palm Beach County Clerk's office and that divorce records show they were divorced in March 6, 1995.

Concerning JoEllen Johnston's knowledge of Dennis DeMartin's alleged stroke.

- JoEllen Johnston stated that in 1974 or 75 Dennis DeMartin his first major health issue was when they were told that by the doctors that Dennis DeMartin's "Optic Nerve exploded" and he permanently lost his peripheral vision. They were told by the doctors that damage would most likely continue to increase over the years and in fact would slowly affect his memory.
- JoEllen Johnston stated that these health issues never affected his accounting / tax business, but he would be forgetful of things like birthdays and anniversaries of his family members. They went to a hospital in the northeast and were told that the damage would continue to increase over the years and in fact would slowly affect his memory. JoEllen Johnston stated that they just never made a big deal out of it, but over time it progressed and became more noticeable. JoEllen stated that Dennis DeMartin was an accountant and it never seemed to affect his accounting abilities, but he would always write things down. JoEllen said Dennis would always forget birthdays and anniversaries of his family members, but would simple blame it on tax season stress.
- JoEllen Johnston had owned a liquor store in Connecticut from 1977-87.
- JoEllen Johnston stated that over time she became the primary bread

winner in the family with her store. Dennis quit the accounting firm he worked for to go on his own. His success was limited. His problems grew over time, as she stated: "he was making $5.00 and spending $15." She had been working 72 hours a week in her store.

- JoEllen Johnston also affirmed that in 1988 or 89 Dennis DeMartin suffered a "small stroke." She stated that while Dennis was at work, one or two of his colleagues (a Jeff and/or a Trudy) took him to the hospital. She was told that Dennis had suffered a small stroke known as TIA.

Events leading up to the divorce of Dennis DeMartin and JoEllen Johnston (DeMartin)

- In 1991 the entire family was living in Orange, CT; except for their one son who was living in Florida.

- In June 1991 their daughter Regina was getting married. After the wedding JoEllen discovered that Dennis DeMartin had put their Orange, CT house up for sale without her knowledge just prior to the wedding. So she asked Dennis for a divorce, but he refused as he did not want to divorce at that time.

- So, with her money from her liquor store sale she invested in a condo in Boca Raton, FL.

- Shortly after the wedding the house sold. They both moved to a condo they both owned in Milford, CT. His parents who had been living with them moved to the west coast at that time.

- Dennis DeMartin would then also purchase a condo in Boca Raton and moved there. While they were still legally married he would subsequently take his old high school girlfriend there to live with him for some 4-5 months. He would also join a "singles club" even though they were still married. He eventually sold this condo after he married Lillian Court.

- Dennis met Lillian Court and even introduced her to his wife JoEllen Johnston; all of this prior to their divorce in 1995.

Divorce of Dennis DeMartin and JoEllen Johnston (DeMartin)

- JoEllen affirmed that she and Dennis DeMartin were legally separated in 1994. Investigator Mantrozos confirmed this to be true through Palm Beach County Clerk's records.

- JoEllen DeMartin also stated that in 1994 Dennis DeMartin introduced Lillian Court to her.

- Investigator Mantrozos confirmed with the Palm Beach County Clerk records that in fact their marriage was formally dissolved on 3/6/1995 in Palm Beach County, Florida.

- JoEllen stated that Dennis DeMartin had already asked Lillian Court to marry him before their divorce, but when Lillian Court found out that Dennis DeMartin was only separated and not legally divorced Lillian got upset and demanded that Dennis DeMartin get the divorce. It was only then did Dennis finally want to go through with a divorce. JoEllen Johnston stated that she told Dennis DeMartin that she was tired of it all and he could go file papers, which in fact he did.

- Earlier research by Investigator Mantrozos confirms that Dennis Charles DeMartin in fact as "petitioner" filed on 2/7/95 in Palm Beach County, Florida and that the marriage was formally dissolved on 3/6/1995. JoEllen DeMartin's legal name was restored to JoEllen Johnston at that time.

- Investigator Mantrozos also confirmed that Dennis Charles DeMartin in fact about 8 months later married Lillian Court on 11/25/1995 in Palm Beach County, Florida

- Lillian Court DeMartin filed a divorce petition on 6/8/2006 and a final judgment for dissolution was issued on 10/24/2006 also in Palm Beach County, Florida.

Concerning a DUI that Dennis Charles DeMartin writes about in his book(s):

- JoEllen Johnston affirmed that she in fact did have a DUI arrest in Woodbridge, CT on "Valentine's Day" Feb 14, 1997 and that she was assigned to classes for 4 or 5 weeks and she was then cleared of any further action. (Note: Woodbridge is a town in New Haven County, Connecticut.)

- When asked about a man that JoEllen Johnston allegedly had an affair with in DUI class that Dennis DeMartin says led to their divorce. JoEllen Johnston stated that it did not happen that way; that they were divorced in 1995 and the DUI was two years later in 1997.

- It is her belief that Dennis is making this up to justify his jealousy and paranoid beliefs due to her being the first and only female Lion's club member that she must have been having affairs. She denies that she was ever unfaithful to him during their marriage.

- JoEllen Johnston went on to say that it was after their divorce in 1995 that she moved back to Connecticut. It was then that she briefly dated a man, named "Rick" that she had known from back in her "Lion's Club Days", she lived with him briefly, but that did not work out and she ended it. JoEllen Johnston stated that she was the first woman to be given membership to the local Lion's Club.

- JoEllen Johnston also stated that the DUI accident was not an accident involving another vehicle, but due to her loss of control of her vehicle.

- JoEllen Johnston stated emphatically that she never was unfaithful to Dennis DeMartin during their marriage.

Home Invasion / Sexual Assault of Daughter Regina Rogers

- JoEllen Johnson went on to state that she was drinking excessively at the time and had just "lost it" due to the fact that her daughter, Regina Rogers, had been "raped" during an armed home invasion a few weeks prior to her DUI. This statement was confirmed by the police report obtained by Investigator Mantrozos.

- JoEllen Johnston stated that three (3) men were convicted and sent to

prison as a result of these crimes.

- Investigator Mantrozos subsequently confirmed from the report which he obtained from Woodbridge Connecticut Police Department that it states that *"01 (referring to JoEllen DeMartin) informed us that her daughter was raped in Ansonia and she 'just lost it' tonight."*

- Investigator Mantrozos also confirmed through the Connecticut Appellate website that Regina Rogers, her husband Francis and two children were the victims of three (3) armed intruders who invaded their Ansonia, CT home on January 9, 1997; about 4 weeks prior to JoEllen Johnston's DUI on February 14, 1997. The report states:

From: State vs Gregory 12/14/1999

"The jury reasonably could have found the following facts: On the night of January 9, 1997, Regina Rogers returned from her place of employment to her home at Wakelee Avenue in Ansonia. As Regina Rogers entered her garage, she was accosted by the defendant, who forced her into the garage. Francis Rogers heard his wife scream and went to investigate. As he opened the garage door, he was accosted by the defendant, who was holding a pistol. Francis Rogers later identified the defendant as the man who pointed the pistol at his head and ordered him to the ground. The defendant was accompanied by two other men who proceeded to ransack the Rogers' home.

The defendant and one of the other intruders forced Francis Rogers into his wife's car and drove him to an automatic teller machine where, at gunpoint, they made him withdraw $600. Upon their return, the defendant and the other men bound both victims and removed several items from their home including a Derby High School class ring and a distinctive cable wire."

- JoEllen Johnston recalled that they got 99, 45 and 25 years in prison.

- JoEllen Johnston also recalled that one of the defendants got less time because he talked the one with the guy and got 99 years out of killing Regina and Francis Rogers because they had children, who were also present during these crimes.

Continued Relationship between Dennis DeMartin and JoEllen Johnston;

his books and the John B. Goodman Case:

- On Friday, April 19, 2013 in a phone call with JoEllen Johnston, stated that she and the family have maintained a civil relationship with Dennis DeMartin, but is in fact very stressful.

- That during the Goodman trial in the spring of 2012 Dennis contacted her several times to talk about her DUI; asking her for details to fill in his memory.

- When JoEllen Johnston was asked; "To your knowledge when Dennis DeMartin called you during the trial, was he aware of the DUI or had he forgotten it?" JoEllen Johnston responded; "He called during trial about the (her) DUI... he wanted clarification if it happened or not." JoEllen Johnston went on to say that "Dennis has a tendency to hear what he wants to hear."

- JoEllen Johnston went on to say that she was mad that he brought it (the DUI) up in his book and that he wanted to talk about it at her mother's funeral which took place on July 15, 2012.

- JoEllen Johnston was asked "Did Dennis DeMartin seem concerned at any time about the matter being brought up in court?" She responded "Yes". JoEllen Johnston went on to say that Dennis DeMartin called recently to tell her she might be called about the accident.

- Investigator Mantrozos asked JoEllen Johnston if she knew about his drinking experiments during the trial, and she confirmed that her daughter (Regina) told her about it when the trial was taking place.

- JoEllen Johnston went on to say; "Whenever he (Dennis DeMartin) gets into trouble, he always calls her or someone in the family. He needs to vent, he needs to clarify stuff. I listen. He has a tendency to write his letters."

- JoEllen Johnston was then asked her about these "letters" she says Dennis DeMartin wrote to her and if she had any of them; and she said no, she threw them all away. She said that he wrote her about the book, the DUI issue, and the trial by she threw them away.

- JoEllen Johnston said she and her children all warned him about writing

the book; none of them thought it was a good idea.

- JoEllen Johnston also stated that during the trial "He (Dennis DeMartin) was very excited about being on the jury and on the news."

- Investigator Mantrozos then again asked JoEllen Johnston again about her DUI. JoEllen responded that "I ran the stop sign, I saw it too late. Stopped really quick and pulled over upset. The guy behind pulled over... asked if I was OK. The police were called. I was arrested. They took my car. After the court hearing I was sentenced to 6 weeks of classes... 6 classes and then I was cleared."

- Investigator Mantrozos asked JoEllen Johnston again if Dennis DeMartin knew about the DUI during the trial and she said yes, and that he called her several times for details... to "refresh his memory."

- JoEllen Johnston again stated that he (Dennis DeMartin) called her several times during the trial and would bring up her DUI. JoEllen said Dennis also called their children as well to discuss her DUI during the trial. He seemed obsessed with what was going on and his notoriety. He would repeatedly call and encourage them to "watch the news tonight".

- JoEllen Johnston could not say exactly when, but he definitely called during the trial.

- Investigator Mantrozos also asked JoEllen Johnston about Dennis DeMartin's claims that he had not remembered about the DUI until after the trial when he saw her and the family at her mother's funeral. JoEllen states that in fact she and her children asked him not to come to the funeral, which took place in July 2012, but he came anyway. While at the funeral JoEllen DeMartin states that it was her ex-husband, Dennis DeMartin, who kept trying to bring up the DUI in that setting and everyone was upset with him.

Further your affiant sayeth naught.

_____

Jimmy N. Mantrozos

Sworn to and subscribed before me this 24TH day of April, 2013

Monica A. Victoria

MONICA A. VICTORIA
Notary Public - State of Florida
My Comm. Expires Jan 21, 2017
Commission # EE 866483

Personally known _____ or

Produced ID ✓ FL. DL. M536-434-53-4590

9702526

WOODBRIDGE POLICE DEPARTMENT

PG 1 OF 4 5 (MKH)

CRIS CASE REPORT

This CRIS data entry form should detail the administrative, offense and circumstantial information about the incident. Use the coding and description standards as published by the department to properly answer each prompt.

Report ID	9702526. AMH
Case Number	9702526
Report Date	02-15-97
Referrals–Detective Bureau	
Other Ref.	

Report Type: A Subject: DUI - ALCOHOL

OCCURRED ON/OR BETWEEN:
DAY 6 DATE 02,14,97 TIME 2121 HRS.
DAY ___ DATE __,__,__ TIME ___
LOCATION RT. 243 & JOHNSON RD. WOODBRIDGE, CT

*Division Reporting	USD
Officer Reporting (P#)	MKH
Assisting Officer(s)(P#)	MDO, ECH
Connecting Report(s)	

CHECK BOXES
Original Rpt. ✓
Follow–up Rpt.
Source of Activity: (Choose One)
Office | Phone
Field ✓ | Info.

*NCIC	OFFENSE DESCRIPTION	*A/C	*HATE	*USING	*LOCATION	*ACTIVITY	#ENTERED	*DOM. VIOL	GANG
5404	DUI - ALCOHOL	C	88	A	13	1	1	NO	NO
5434	MOTOR VEHICLE ACCIDENT	C	88	A	13	1	1	NO	NO

*NCIC	*F/N	*WEAPON TYPE	*TYPE SECURITY	*TOOLS USED
/	/	/	/	/

*Means: 4
*Motive: 1
Vehicle Activity: MOTOR VEHICLE ACCIDENT

*Disposition/Clearance: 2
*Exceptional Clearance Reason:
Exceptional Clearance Date:

Traveling:
X–Streets:
Notified?

*Status	Last Name	First Name	*Sex	*Race	DOB	Address	CSZ	Tel#
A1	JOHNSTON	JOELLEN	F	W	03-19-49	1060 NEW HAVEN AVE.	MILFORD, CT 06460	UNK
01	GWATKIN	RICHMOND	M	W	UNK	42 DEER RUN RD.	TOWN CODE 167	203-387-4563
C1	DOROSH	JOSEPH	M	W	07-25-53	97 SOUTH CLIFF ST.	ANSONIA, CT	203-732-5843

CRIS NARRATIVE DETAIL

ON 02-14-97, 2121 HRS., OFF. M. O'NEILL AND I, OFF. M HASS WERE DISPATCHED TO RT. 243 AND JOHNSON RD. ON A MOTOR VEHICLE ACCIDENT. UPON ARRIVAL WE MET WITH OFF. E. HOLSTROM WHO HAD ALREADY ARRIVED ON THE SCENE AND WAS INVESTIGATING THE ACCIDENT. WE MET WITH JOSEPH DOROSH (C1) WHO CAME ACROSS THE ACCIDENT FIRST. HE STATED THAT JOELLEN JOHNSTON (01) HAD HER CAR SIDEWAYS ON THE ROAD WITH THE BUMPER

THIS REPORT IS SIGNED UNDER THE PENALTIES PROVIDED BY STATE LAW FOR MAKING A FALSE STATEMENT.
SIGNED: Mark K. Hass
DATE: 02-15-97 PAGES: 1 - 4
SUBSCRIBE AND SWORN TO BEFORE ME
THIS 16 DAY OF FEB 19 97
SIGNED: [signature]
NOTARY PUBLIC 1-24 COB

* SEE LIST ON KEY SHEET
ITEMS IN BOLD PRINT, MUST BE COMPLETED.

REF: WPDCR1(USERS)

Report ID 9702526.AMH

Case Number 9702526

Report Date 02-15-97

CRIS NARRATIVE DETAIL

This CRIS data entry form should detail the incident in a narrative manner. Include the source of activity, officer's observations, people and property involvement, action taken, and disposition. Follow the department requirements for specific header style.

AGAINST THE GUIDERAIL. UPON OUR ARRIVAL THE CAR WAS MOVED TO THE SIDE OF THE ROAD. C1 STATED THAT IT WAS OBVIOUS O1 WAS DRUNK.

OFF. E. HOLSTROM ASKED O1 IF SHE HAD ANY MEDICAL CONDITIONS OR INJURIES, IF SHE WAS DIABETIC AND IF SHE WORE CONTACTS. O1 ANSWERED NO TO ALL 3 QUESTIONS (ALTHOUGH SHE WAS WEARING GLASSES). O1 WAS NOT GIVEN FIELD SOBRIETY TESTS BECAUSE SHE HAD OBVIOUS DIFFICULTY STANDING. OFF.'S M. O'NEILL AND E. HALSTROM DETECTED A STRONG ODOR OF ALCOHOLIC BEVERAGE ON O1'S BREATH. O1 WAS ASKED IF SHE HAD BEEN DRINKING. O1 DID NOT RESPOND TO THE QUESTION.

OFF. M. O'NEILL LOOKED INTO HER VEHICLE AND AN 8 OZ. WATER BOTTLE WAS SITTING ON THE FRONT RIGHT SEAT CONTAINING APPROX. 2 OZ. OF AN ORANGE JUICE MIXTURE (O1 LATER SAID IT HAD VODKA IN THE O.J.). O1 GRABBED THE BOTTLE FROM THE ROOF OF THE CAR WHERE OFF. M. O'NEILL HAD PLACED IT AND STATED "YOU DON'T NEED THAT", THEN THREW IT IN THE WOODS. THE BOTTLE WAS RETREIVED AND LOGGED INTO EVIDENCE AND GIVEN WPD PROP. ROOM RECEIPT #4087.

O1 HAD DIFFICULTY STANDING AND COULD NOT ANSWER QUESTIONS AS TO WHERE SHE WAS GOING OR COMING FROM. AN AMBULANCE RESPONDED TO CHECK O1 FOR INJURIES

O1 REFUSED TREATMENT AND WAS DEEMED UNINJURED BY AMR.

THIS REPORT IS SIGNED UNDER THE PENALTIES PROVIDED BY STATE LAW FOR MAKING A FALSE STATEMENT.
SIGNED [signature]
DATE 02-15-97 PAGES 2-~~4~~ 5 (MKH)
SUBSCRIBE AND SWORN TO BEFORE ME
THIS 16 DAY OF Feb 19 97
SIGNED [signature]
NOTARY PUBLIC 1-24 CCS

* SEE LIST ON KEY SHEET

ITEMS IN BOLD PRINT MUST BE COMPLETED.

REF: WPOCRIS\USERS\JAT\AN132

Report ID 9702526.AMH

Case Number 9702526

Report Date 02-15-97

CRIS NARRATIVE DETAIL

This CRIS data entry form should detail the incident in a narrative manner. Include the source of activity, officer's observations, people and property involvement, action taken, and disposition. Follow the department requirements for specific format style.

01 WAS THEN ARRESTED, HANDCUFFED AND SEARCHED. AFTER 01 WAS SAFELY SEATED IN THE POLICE CRUISER, OFF. E. HOLSTROM READ HER MIRANDA WARNINGS AND TRANSPORTED 01 TO H.Q.

UPON ARRIVING AT H.Q. 01 WAS ASKED NUMEROUS TIMES IF SHE WANTED TO CALL AN ATTORNEY OR ANYONE ELSE AND CONSISTENTLY REFUSED. I READ 01 HER NOTICE OF RIGHTS SEVERAL TIMES AND ASKED HER IF SHE UNDERSTOOD. 01 WOULD NOT ANSWER AND ALSO REFUSED TO SIGN FORM.

OFF. M. O'NEILL EXPLAINED TO 01 THAT WE WERE REQUESTING HER TO SUBMIT TO A BREATH TEST AND READ THE IMPLIED CONSENT ADVISORY FROM THE A-44 FORM.

01 REFUSED TO TAKE THE BREATH TEST AND WAS OFFERED THE BLOOD OR THE URINE TEST. WHICH SHE ALSO REFUSED TO SUBMIT TO

01 WAS ISSUED MISDEMEANOR / M.V. SUMMONS NO. MX.

FOR D.U.I. (14-227a) AND RELEASED TO RICHARD GWATKIN ON A $100.00 BOND WITH A COURT DATE OF 02/28/97 AT G.A.6.

01 WAS INITIALLY UNCOOPERATIVE THROUGH HER SILENCE AND AS TIME WENT ON SHE BECAME MORE COOPERATIVE AND ABLE TO ANSWER QUESTIONS. 01 INFORMED US THAT HER DAUGHTER WAS RAPED IN ANSONIA AND SHE "JUST LOST IT" TONIGHT.

01'S CAR WAS TOWED TO ORANGE AUTO.

01 WAS VERBALLY WARNED TO OBTAIN A CONNECTICUT LICENSE AND VEHICLE REGISTRATION.

THIS REPORT IS SIGNED UNDER THE PENALTIES PROVIDED BY STATE LAW FOR MAKING A FALSE STATEMENT.

SIGNED Mari K. Hans

DATE 02-15-97 PAGES 3-4 5 (MKH)

SUBSCRIBE AND SWORN TO BEFORE ME

THIS 16 DAY OF FEB 19 97

SIGNED [signature]

NOTARY PUBLIC 1-34 CCI

* SEE LIST ON KEY SHEET

ITEMS IN BOLD PRINT MUST BE COMPLETED.

REF: WPCCPD(USERS)...

(MCH)

5

WOODBRIDGE POLICE DEPARTMENT

Report ID: 9702526.AMH

Case Number: 9702526

Report Date: 02-14-97

CRIS PROPERTY DETAIL

This CRIS data entry form should detail each piece or grouping of like property items. Use the coding and description standards as published by the department to properly answer each prompt. Detail the items in order of most expensive to least expensive with Stolen and Recovered items listed first.

ITEM NO. 1

VALUE $ N/A

*STATUS E

*IBR CATEGORY 02

COUNT 1

MANUFACTURER UNK

MODEL N/A

SERIAL NO. N/A

COLOR/DESC. POLAND SPRING W/ ORANGE JUICE VODKA MIXTURE

LICENSE NO./STATE N/A /

DATE RECOVERED N/A

OWNER A1

DISPOSITION TAKEN AS EVIDENCE

EVIDENCE ID 4087

*DRUG CODE ____ *QUAN. ____ *MEASURE ____

ITEM NO. ____

VALUE $ ____

*STATUS ____

*IBR CATEGORY ____

COUNT ____

MANUFACTURER ____

MODEL ____

SERIAL NO. ____

COLOR/DESC. ____

LICENSE NO./STATE ____ / ____

DATE RECOVERED ____

OWNER ____

DISPOSITION ____

EVIDENCE ID ____

*DRUG CODE ____ *QUAN. ____ *MEASURE ____

ITEM NO. ____

VALUE $ ____

*STATUS ____

*IBR CATEGORY ____

COUNT ____

MANUFACTURER ____

MODEL ____

SERIAL NO. ____

COLOR/DESC. ____

LICENSE NO./STATE ____ / ____

DATE RECOVERED ____

OWNER ____

DISPOSITION ____

EVIDENCE ID ____

*DRUG CODE ____ *QUAN. ____ *MEASURE ____

ITEM NO. ____

VALUE $ ____

*STATUS ____

*IBR CATEGORY ____

COUNT ____

MANUFACTURER ____

MODEL ____

SERIAL NO. ____

COLOR/DESC. ____

LICENSE NO./STATE ____ / ____

DATE RECOVERED ____

OWNER ____

DISPOSITION ____

EVIDENCE ID ____

*DRUG CODE ____ *QUAN. ____ *MEASURE ____

* SEE LIST ON KEY SHEET

ITEMS IN BOLD PRINT MUST BE COMPLETED.

*56 Conn. App. 47, *; 741 A.2d 986, **;*
*1999 Conn. App. LEXIS 492, ****

STATE OF CONNECTICUT v. MARCUS GREGORY

(AC 19726)

APPELLATE COURT OF CONNECTICUT

56 Conn. App. 47; 741 A.2d 986; 1999 Conn. App. LEXIS 492

September 29, 1999, Argued
December 14, 1999, Officially Released

PRIOR HISTORY: [*1]** Amended informations charging the defendant with the crimes of larceny in the second degree, conspiracy to commit kidnapping in the first degree, kidnapping in the first degree, conspiracy to commit burglary in the first degree, burglary in the first degree, conspiracy to commit robbery in the first degree and aiding robbery in the first degree, brought to the Superior Court in the judicial district of Ansonia-Milford, where the cases were consolidated; thereafter, the court, Thompson, J., denied the defendant's motions to suppress certain evidence; subsequently, the defendant was tried to the jury; verdicts and judgments of guilty, from which the defendant appealed to this court.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant appealed from his convictions of conspiracy to commit kidnapping, kidnapping in the first degree, conspiracy to commit burglary, burglary in the first degree, conspiracy to commit robbery, aiding robbery, and larceny in the third degree, entered in the Superior Court in the Judicial District of Ansonia-Milford (Connecticut).

OVERVIEW: Defendant was convicted of a number of offenses, including kidnapping and burglary, after his motion to suppress evidence seized in a Terry stop was denied. On appeal, defendant claimed that there was not reasonable suspicion to justify a pat-down during an investigatory stop, and that his U.S. Const. amend. V right against self-incrimination was violated because of the failure by the police to advise him of his Miranda rights. The court found that defendant's presence in a high-crime area, his attempt to conceal himself from the police officers, and his refusal to follow the officers' directions heightened the officers' fear for their safety and adequately supported the decision to perform the pat-down search. Additionally, the court found that the officers' single inquiry, as to what defendant was doing in the area, was not restrictive enough to constitute an interrogation so as to require a Miranda warning.

OUTCOME: The convictions were affirmed. Defendant's presence in a high-crime area and his refusal to follow the officers' directions adequately supported the decision to perform a pat-down search. The officers' single inquiry, as to what defendant was doing in the area, was not restrictive enough to constitute an interrogation.

CORE TERMS: weapon, pat-down, arrest, articulable suspicion, interrogation, suspicion, warning, detain, alley, armed, investigatory, hiding, frisk, marijuana, garage, conspiracy to commit, reasonable suspicion, police officer, search incident to arrest, articulable facts, surrounding circumstances, self-incrimination, identification, investigative, handcuffing, kidnapping, custodial, detention, burglary, suppress

LEXISNEXIS® HEADNOTES Hide

Criminal Law & Procedure > Search & Seizure > Search Warrants > Affirmations & Oaths > Sufficiency Challenges

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Search Incident to Lawful Arrest > General Overview

HN1 A lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant whether or not there is probable cause to search. More Like This Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > Appeals > Standards of Review > Clearly Erroneous Review > Motions to Suppress

HN2 When reviewing the denial of a motion to suppress, the court will not disturb the trial court's ruling if the factual findings are not clearly erroneous and the trial court's conclusions are legally and logically consistent with the facts. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

HN3 The court conducts a "careful examination" of the validity of a Terry search for weapons because the validity of the stop implicates the defendant's constitutional rights. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Reasonable Suspicion

HN4 During a Terry detention, the police may conduct a pat-down search to locate weapons if they reasonably believe that the suspect may be armed and dangerous. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Reasonable Suspicion

HN5 Where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous regardless of whether he has probable cause to arrest that individual for

a crime or the absolute certainty that the individual is armed. Once a reasonable and articulable suspicion exists, an officer may detain a suspect to conduct an investigative stop to confirm or dispel such suspicions. Suspicious conduct during a Terry stop, including flight at the approach of officers and a refusal to comply with officers' instructions, are other integral factors that will justify a pat-down for weapons. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

HN6 In the context of a Terry Stop, Connecticut courts apply a test that weighs the totality of the circumstances. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

HN7 Under state and federal constitutions, police may detain individual for investigative purposes if there is reasonable and articulable suspicion that individual is engaged or about to engage in criminal activity. The officer's decision must be based on more than hunch or speculation. Reasonable and articulable suspicion is objective standard that focuses not on actual state of mind of police officer but on whether reasonable person, having information available to and known by police, would have that level of suspicion. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

HN8 An officer may conduct a pat-down frisk for weapons if the officer possesses a reasonable suspicion that the person possesses a weapon. More Like This Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

HN9 To determine whether an investigatory detention and pat-down are permissible a two part inquiry is utilized: (1) was the officer justified in initially detaining the individual based on specific and articulable facts, and (2) did specific and articulable facts exist that suggested that the individual presented a harm to the officers or others so as to justify the pat-down. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

Criminal Law & Procedure > Scienter > Recklessness

HN10 In the context of a Terry Stop, wanton and reckless conduct by the defendant to avoid detection by the police suggests a strong consciousness of guilt. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Interrogation > Miranda Rights > Custodial Interrogation

Criminal Law & Procedure > Interrogation > Miranda Rights > Notice & Warning

HN11 Miranda warnings must be given once a person is placed in custody and before questioning begins. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

Criminal Law & Procedure > Interrogation > Miranda Rights > General Overview

HN12 As a general rule, Miranda rights are not required to be given before asking a Terry detainee to explain his presence in the area. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

Criminal Law & Procedure > Interrogation > Miranda Rights > Notice & Warning

HN13 During the course of a Terry stop, the police may request identification or inquire about a suspect's activities without advising the suspect of his Miranda rights. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: Norman A. Pattis, for the appellant (defendant).

Kevin Doyle, deputy assistant state's attorney, with whom, on the brief, were Mary Galvin, state's attorney, and Carolyn K. Longstreth, senior assistant state's attorney, for the appellee (state).

JUDGES: Spear, Mihalakos and Daly, Js. In this opinion the other judges concurred.

OPINION BY: MIHALAKOS

OPINION

[987]** **[*48]** MIHALAKOS, J. The defendant, Marcus Gregory, appeals from the judgments of conviction, rendered **[**988]** after a jury trial, of conspiracy to commit **[***2]** kidnapping in the first degree in violation of **[*49]** General Statutes §§ 53a-92 (a) (2) (B) and 53a-48, kidnapping in the first degree in violation of General Statutes §§ 53a-92 (a) (2) (B) and 53a-8, conspiracy to commit burglary in the first degree in violation of General Statutes §§ 53a-101 (a) (2) and 53a-48, burglary in the first degree in violation of General Statutes §§ 53a-101 (a) (2) and 53a-8, conspiracy to commit robbery in the first degree in violation of General Statutes §§ 53a-134 (a) (4) and 53a-48, aiding robbery in the first degree in violation of General Statutes §§ 53a-134 (a) (4) and 53a-8, and larceny in the third degree in violation of General Statutes § 53a-124 (a) (1) as a lesser included offense of larceny in the second degree under General Statutes § 53a-123 (a) (1). The defendant moved to suppress physical evidence that had been seized from his person on January 9 and 10, 1997, arising from his arrest in Bridgeport. This motion was denied by the trial court.

On appeal, the defendant claims (1) that there was not reasonable suspicion to justify a pat-down during an investigatory stop pursuant to *Terry* v. *Ohio,* 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), **[***3]** and (2) that the defendant's fifth amendment right against self-incrimination was violated because of the failure by the police to advise him of his *Miranda* rights. [1] We affirm the judgments of the trial court.

FOOTNOTES

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

The jury reasonably could have found the following facts: On the night of January 9, 1997, Regina Rogers returned from her place of employment to her home at Wakelee Avenue in Ansonia. As Regina Rogers entered her garage, she was accosted by the defendant, who forced her into the garage. Francis Rogers heard his wife scream and went to investigate. As he

opened the garage door, he was accosted by the defendant, who was holding a pistol. Francis Rogers later identified the defendant as the man who pointed the pistol at his **[*50]** head and ordered him to the ground. The defendant was accompanied by two other men who proceeded to ransack the Rogers' home.

The defendant and one of the other intruders forced Francis **[***4]** Rogers into his wife's car and drove him to an automatic teller machine where, at gunpoint, they made him withdraw $ 600. Upon their return, the defendant and the other men bound both victims and removed several items from their home including a Derby High School class ring and a distinctive cable wire.

While conducting a drunk driving investigation on Route 25 southbound at exit 2 in Bridgeport, Troopers Richard Gregory and Edward Wooldridge of the state police observed a red Subaru station wagon without illuminated headlights. When Wooldridge attempted to stop the car, the operator sped up and made several turns. Subsequently, the operator of the vehicle jumped out of the vehicle. At that point Wooldridge briefly observed the operator of the vehicle, whom he described as a black male with short hair wearing a dark jacket, jeans and dark sneakers. Officer Orlando Lanzante of the Bridgeport police department, along with Gregory and Wooldridge, spotted the defendant hiding behind a couch in an alley. This alley was known by the police to be located in a high crime area. Lanzante and Wooldridge drew their weapons and ordered the defendant to the ground. The defendant did not comply **[***5]** but protested his innocence and claimed harassment. After the defendant refused a second order to get on the ground, Gregory forced him to the ground and handcuffed him. The defendant was brought out of the alley and patted down for weapons by Wooldridge after the defendant failed to produce identification. When asked what he was doing in the area, the defendant replied that he had been smoking marijuana. Upon initially patting the man down, Wooldridge discovered a plastic package of marijuana in the defendant's front shirt **[*51]** pocket. Wooldridge **[**989]** then placed the defendant under arrest for possession of marijuana and conducted a full search incident to arrest. [2] Subsequent to the arrest, the defendant was again searched and was found to be in possession of a class ring, a beeper, a cable wire and cash.

FOOTNOTES

2 "Our constitutional preference for warrants is overcome only in specific and limited circumstances." *State* v. *Miller*, 227 Conn. 363, 383, 630 A.2d 1315 (1993); see *State* v. *Delossantos*, 211 Conn. 258, 266-67, 559 A.2d 164, cert. denied, 493 U.S. 866, 110 S. Ct. 188, 107 L. Ed. 2d 142 (1989) (recognizing exception for search incident to arrest as matter of state constitutional law). *State* v. *DaEria*, 51 Conn. App. 149, 165, 721 A.2d 539 (1998), recognized the rule that "[HN1 a] lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant . . . whether or not there is probable cause to search." (Internal quotation marks omitted.)

[*6]** The red Subaru station wagon was later searched and found to contain several household items, all of which were later determined to have been removed from the victims' home. At about 2:20 a.m., Officer Robert Novia of the Bridgeport police department and a police dog tracked the route that the driver of the Subaru had taken to determine if the defendant had been in the vehicle. The dog was able to pick up a scent in the car and tracked the scent to the spot in the alleyway where the defendant was apprehended. The defendant was identified as the assailant by both victims.

I

The defendant's first claim is that there was no articulable suspicion to justify a pat-down search for weapons during the investigatory stop. We disagree.

HN2 When reviewing the denial of a motion to suppress, this court will not disturb the trial court's ruling if the factual findings are not clearly erroneous and the trial court's conclusions are legally and logically consistent with the facts. See *State* v. *Wilkins*, 240 Conn. 489, 496, 692 A.2d 1233 (1997). HN3 This court conducts a "careful **[*52]** examination" of the validity of a *Terry* search for weapons because the validity of the stop implicates **[***7]** the defendant's constitutional rights. *Terry* v. *Ohio*, supra, 392 U.S. 27. HN4 During a *Terry* detention, the police may conduct a pat-down search to locate weapons if they reasonably believe that the suspect may be armed and dangerous. See id., 24. According to *Terry* v. *Ohio*, 392 U.S. at 20-27, HN5 where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous regardless of whether he has probable cause to arrest that individual for a crime or the absolute certainty that the individual is armed. Once a reasonable and articulable suspicion exists, an officer may detain a suspect to conduct an investigative stop to confirm or dispel such suspicions. [3] Suspicious conduct during a *Terry* stop, including flight at the approach of officers and a refusal to comply with officers' instructions, are other integral factors that will justify a pat-down for weapons. HN6 Our courts apply a test that weighs the totality of the circumstances. See id., 21-22.

FOOTNOTES

[3] See *State* v. *Groomes*, 232 Conn. 455, 467-68, 656 A.2d 646 (1995) (under HN7 state and federal constitutions, police may detain individual for investigative purposes if there is reasonable and articulable suspicion that individual is engaged or about to engage in criminal activity); *State* v. *Cofield*, 220 Conn. 38, 45, 595 A.2d 1349 (1991) (officer's decision must be based on more than hunch or speculation); *State* v. *Torres*, 230 Conn. 372, 379, 645 A.2d 529 (1994) (reasonable and articulable suspicion is objective standard that focuses not on actual state of mind of police officer but on whether reasonable person, having information available to and known by police, would have that level of suspicion).

HN8

[*8]** An officer may conduct a pat-down frisk for weapons if the officer possesses a reasonable suspicion that the person possesses a weapon. See **[**990]** *Ybarra* v. *Illinois*, 444 U.S. 85, 93, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979). HN9 To determine whether an investigatory detention and pat-down **[*53]** are permissible a two part inquiry is utilized: (1) was the officer justified in initially detaining the individual based on specific and articulable facts, and (2) did specific and articulable facts exist that suggested that the individual presented a harm to the officers or others so as to justify the pat-down. See *State* v. *Wilkins*, supra, 240 Conn. 489; see also *United States* v. *Holzman*, 871 F.2d 1496 (9th Cir. 1989). The HN10 wanton and reckless conduct by the defendant to avoid detection by the police suggests a strong consciousness of guilt. See *United States* v. *Brown*, 159 F.3d 147, 149-50 (3d Cir. 1998), cert. denied, 525 U.S. 1184, 119 S. Ct. 1127, 143 L. Ed. 2d 120 (1999). The trial court found that the *Terry* stop was justified and the length and intrusiveness of the stop were lawful pursuant to *Terry*. **[***9]** [4] The defendant's presence in a high crime area, his attempt to conceal himself from the police officers and his refusal to follow the officers' directions heightened the officers' fear for their safety and adequately supported the decision to perform the pat-down search. [5] The trial court weighed all of the surrounding circumstances, including the defendant's conduct, the nature of the investigation and the time and area of the stop in determining that the officers had reasonable suspicion to conclude that the defendant might have been armed and dangerous. Further, the defendant was uncooperative, and the surrounding circumstances increased the officers' suspicions and allowed them to detain the suspect and to conduct the pat-down in accordance with the law.

FOOTNOTES

4 See *Terry* v. *Ohio*, supra, 392 U.S. 21.

5 See *United States* v. *Sanders*, 994 F.2d 200, 207-208 (5th Cir.), cert. denied, 510 U.S. 955, 114 S. Ct. 408, 126 L. Ed. 2d 355, cert. denied, 510 U.S. 1014, 114 S. Ct. 608, 126 L. Ed. 2d 572 (1993) (suspect's noncompliance with order to get to ground justified handcuffing and frisk for weapons); *State* v. *Wilkins*, supra, 240 Conn. 496 (defendant's failure to keep hands in sight after twice being requested to do so by officer supported frisk for weapons).

[*10]** II

The second claim is that the defendant's fifth amendment right against self-incrimination was violated when **[*54]** an officer asked him why he was hiding in the alley without reading him his *Miranda* rights. The defendant concedes that the officers could lawfully detain and question him, but argues that because the officers restricted his movement by handcuffing him, any questions that were posed to him constituted a custodial interrogation thus requiring that the defendant be given *Miranda* warnings. We disagree with the defendant's contention and affirm the trial court's ruling.

HN11 *Miranda* warnings must be given once a person is placed in custody and before questioning begins. [6] The trial court ruled that the single inquiry by the officers as to why the defendant was hiding did not constitute an interrogation that would require a *Miranda* warning. [7] HN12 As a general rule, *Miranda* rights are not required to be given before asking a *Terry* detainee to explain his presence in the area. See *Berkemer* v. *McCarty*, 468 U.S. 420, 439-40, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). HN13 During the course of a *Terry* stop, the police may request identification **[***11]** or inquire about a suspect's activities without advising the suspect of his *Miranda* rights. See *State* v. *Torres*, 197 Conn. 620, 628, 500 A.2d 1299 (1985). In this case, the officers' single question was not restrictive **[**991]** enough to constitute an interrogation so as to require a *Miranda* warning.

FOOTNOTES

6 See *Miranda* v. *Arizona*, supra, 384 U.S. 467-68.

7 See *State* v. *Dixon*, 25 Conn. App. 3, 9, 592 A.2d 406 (1991) (after defendant's arrest, officer's question, "what are you doing here?" found not to be interrogation).

The judgments are affirmed.

In this opinion the other judges concurred.

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In

*74 Conn. App. 248, *; 812 A.2d 102, **;*
*2002 Conn. App. LEXIS 646, ****

STATE OF CONNECTICUT v. MARCUS GREGORY

(AC 22337)

APPELLATE COURT OF CONNECTICUT

74 Conn. App. 248; 812 A.2d 102; 2002 Conn. App. LEXIS 646

September 25, 2002, Argued
December 24, 2002, Officially Released

SUBSEQUENT HISTORY: Appeal denied by State v. Gregory, 262 Conn. 948, 817 A.2d 108, 2003 Conn. LEXIS 79 (2003)
Writ of habeas corpus denied Gregory v. Warden, 2007 Conn. Super. LEXIS 1117 (Conn. Super. Ct., Apr. 23, 2007)

PRIOR HISTORY: [*1]** (Appeal from Superior Court, judicial district of Fairfield, O'Keefe, Thim, Js.). Information, in the first case, charging the defendant with the crimes of sexual assault in the first degree, robbery in the first degree, burglary in the first degree, kidnapping in the first degree, larceny in the first degree and assault in the third degree on a victim sixty years of age or older, and information, in the second case, charging the defendant with the crimes of kidnapping in the first degree, robbery in the first degree, burglary in the second degree with a firearm and larceny in the third degree, and with the commission of a class A, B or C felony with a firearm, brought to the Superior Court in the judicial district of Fairfield, where the court, O'Keefe, J., denied the defendant's motion to suppress certain evidence; thereafter, the defendant was presented to the court, Thim, J., on conditional pleas of nolo contendere; judgments of guilty of sexual assault in the first degree, burglary in the first degree, burglary in the second degree with a firearm and two counts of kidnapping in the first degree, from which the defendant appealed to this court.
State v. Gregory, 56 Conn. App. 47, 741 A.2d 986, 1999 Conn. App. LEXIS 492 (1999)

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: The Superior Court, Judicial District of Fairfield (Connecticut), denied defendant's motion to suppress blood and boot print evidence that was acquired after a Terry stop led to defendant's arrest for drug possession. Defendant conditionally pleaded nolo contendere to burglary in the first degree, burglary in the second degree with a firearm, sexual assault in the first degree, and two counts of kidnapping in the first degree.

Defendant appealed.

OVERVIEW: At 1:53 a.m., a state trooper signaled the driver of a station wagon whose headlights were not on to stop. A chase ensued. The driver jumped from the moving station wagon and ran away. The station wagon crashed into a parked vehicle. Police soon found defendant in the area, conducted a patdown search, and eventually arrested him for drug possession. Defendant argued that the blood and boot print evidence should have been suppressed as the fruit of an illegal search because the police lacked reasonable articulable suspicion to believe that he was the driver and to accordingly detain and search him. The appellate court held that the police had reasonable, articulable suspicion to detain defendant given that he matched the driver's physical characteristics, was found hiding behind an abandoned couch at 2:00 a.m. in an alley a few houses away from where the station wagon crashed and without a coat in midwinter, and disobeyed commands to get on the ground. The circumstances also justified a patdown search for weapons, and the marijuana that was found in defendant's possession during the patdown search was lawfully seized under the plain feel exception to the warrant requirement.

OUTCOME: The appellate court affirmed the judgment.

CORE TERMS: driver, trooper, weapon, marijuana, police officer, articulable suspicion, cruiser, probable cause to arrest, quotation marks omitted, searching, patdown, wearing, hiding, scene, alley, alleyway, street, couch, abandoned, detention, suspicion, detain, ring, sexual assault, patdown search, dispatcher, burglary, station wagon, robbery, minutes

LEXISNEXIS® HEADNOTES Hide

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Criminal Law & Procedure > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > Appeals > Standards of Review > Clearly Erroneous Review > Motions to Suppress

HN1 An appellate court's standard of review of a trial court's findings and conclusions in connection with a motion to suppress is well defined. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record. Where the legal conclusions of the trial court are challenged, the appellate court must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision. More Like This Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN2 Because a trial court's determination of the validity of a Terry patdown search implicates a defendant's constitutional rights, an appellate court engages in a careful examination of the record to ensure that the trial court's decision was supported by substantial evidence. However, the appellate court will give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses. More Like This Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

HN3 Under the Fourth Amendment to the United States Constitution and Conn. Const. art. I, §§ 7, 9, a police officer is permitted in appropriate circumstances and in an appropriate manner to detain an individual for investigative purposes if the officer believes, based on a reasonable and articulable suspicion, that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest. Reasonable and articulable suspicion is an objective standard that focuses not on the actual state of mind of the police officer, but on whether a reasonable person, having the information available to and known by the police, would have had that level of suspicion. In justifying a particular intrusion, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. In determining whether a detention is justified in a given case, a court must consider if, relying on the whole picture, the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity. When reviewing the legality of a stop, a court must examine the specific information available to the police officer at the time of the initial intrusion and any rational inferences to be derived therefrom. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

HN4 A recognized function of a constitutionally permissible investigative stop is to maintain the status quo for a brief period of time to enable the police to investigate a suspected crime. More Like This Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

HN5 In determining the legality of a Terry stop, a court does not look at each fact in isolation, but at the totality of the circumstances presented to the police at the time they detain an individual. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

HN6 The nature of the crime under investigation, the degree of suspicion, the location of the stop, the time of day, and the reaction of the suspect to the approach of police are all facts which bear on the issue of the reasonableness of an investigative stop. Proximity in the time and place of the stop to the crime is highly significant in the determination of whether an investigatory detention is justified by reasonable and articulable suspicion. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

HN7 The purpose of a Terry stop is to investigate whether a suspect committed, or was in the process of committing, a criminal offense. The purpose of the stop is to confirm or dispel the officer's suspicions that an individual has committed or is about to commit a crime. The police are therefore not required to confirm every detail of a description of the perpetrator before that person can be detained. Rather, what must be taken into account when determining the existence of a reasonable and articulable suspicion is the strength of those points of comparison which do match up and whether the nature of the descriptive factors which do not match is such that an error as to them is not improbable. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

Criminal Law & Procedure > Interrogation > Miranda Rights > General Overview

HN8 The police may ask some questions during a Terry stop without giving Miranda warnings. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Criminal Offenses > Weapons > Possession > Elements

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

HN9 If an officer possesses a reasonable suspicion that the individual stopped is in possession of a weapon, the officer may conduct a patdown frisk. More Like This Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

HN10 A court uses an objective standard in determining whether a police officer had a particularized basis for suspecting whether an individual should be patted down for weapons. When conducting a patdown search of a suspect, the officer is limited to an investigatory search for weapons in order to ensure his own safety and the safety of others nearby. The officer cannot conduct a general exploratory search for whatever evidence of criminal activity he might find. However, in order to justify the reasonableness of an investigatory search, an officer need not be absolutely certain that an individual is armed; rather the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Reasonable Suspicion

HN11 During a Terry detention, the police may conduct a patdown search to locate weapons if they reasonably believe that the suspect may be armed and dangerous. According to Terry, where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous regardless of whether he has probable cause to arrest that individual for a crime or the absolute certainty that the individual is armed. Once a reasonable and articulable suspicion exists, an officer may detain a suspect to conduct an investigative stop to confirm or dispel such suspicions. Suspicious conduct during a Terry stop, including flight at the approach of officers and a refusal to comply with officers' instructions, are other integral factors that will justify a patdown for weapons. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

HN12 To determine whether an investigatory detention and patdown are permissible, a two-part inquiry is utilized under which one asks (1) whether the officer was justified in initially detaining the individual based on specific and articulable facts and (2) whether specific and articulable facts existed that suggested that the individual presented a harm to the officers or others so as to justify the

patdown. More Like This Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > General Overview

Criminal Law & Procedure > Scienter > Recklessness

HN13 Wanton and reckless conduct by a defendant to avoid detection by the police suggests a strong consciousness of guilt relevant to the issue of whether an investigatory detention and patdown are warranted. More Like This Headnote

Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Plain View

Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Plain View

HN14 A police officer acting without a warrant may seize contraband that the officer detected through the sense of touch during a lawful patdown search. If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Criminal Offenses > Weapons > Use > General Overview

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Stop & Frisk > Detention

HN15 In appropriate circumstances, the police may take such reasonable steps as using drawn guns and handcuffs during a Terry investigative stop to protect themselves. More Like This Headnote

COUNSEL: Kent Drager, senior **[***2]** assistant public defender, for the appellant (defendant).

Susann E. Gill, senior assistant state's attorney, with whom, on the brief, were Jonathan C. Benedict, state's attorney, and John C. Smriga, supervisory assistant state's attorney, for the appellee (state).

JUDGES: West, Landau and McDonald, Js. In this opinion the other judges concurred.

OPINION BY: MCDONALD

OPINION

[105]** **[*249]** MCDONALD, J. The defendant, Marcus Gregory, appeals from the judgment of conviction rendered upon his entering conditional pleas of nolo contendere to two counts of kidnapping in the first degree in violation **[*250]** of General Statutes § 53a-92 (a) (2), one count of burglary in the first degree in violation of General Statutes § 53a-101 (a) (2), one count of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (1)

and one count of burglary in the second degree with a firearm in violation of General Statutes § 53a-102a (a). In his conditional plea, the defendant reserved the right to appeal from the denial of his motion to suppress seized evidence. See Practice Book § 61-6 (2). We affirm the judgment **[***3]** of the trial court.

After an evidentiary hearing on the motion to suppress, the court found the following facts in its memorandum of decision. "In the early morning hours of January 10, 1997, Troopers Edward Wooldridge and Richard Gregory of the state police were 'backing up' another trooper who was engaged in a stop of a suspected drunken driver on the Route 25 connector in Bridgeport. At approximately 1:53 a.m., they observed a red Subaru station wagon operated by a black male with no apparent passengers traveling southbound on the connector without headlights on. Trooper Wooldridge, who was already in his cruiser, immediately pursued the vehicle with emergency lights and siren activated for a short distance, pulling within one-half car length of the vehicle, where he managed to obtain the license plate number and reported that via radio to the Troop G dispatcher.

"At exit one, the vehicle abruptly exited the highway after the driver attempted an evasive maneuver, driving over an area between the highway and the exit ramp. At the bottom of the exit ramp, the vehicle took a right onto Prospect Street, then made a right turn onto Park Avenue heading north. After traveling a short **[***4]** distance, the vehicle appeared to be making a U-turn at the intersection of Hancock and Park Avenues. At this point, the driver **[**106]** jumped out of the vehicle while the vehicle continued down Hancock Avenue until it came to rest **[*251]** after striking a parked vehicle. The driver began running southbound on Park Avenue. Trooper Wooldridge attempted to observe the driverless car heading down Hancock Avenue as well as the driver running down Park Avenue at the same time.

"Wooldridge then reversed his direction and traveled southbound on Park Avenue, and began to travel the perimeter of the block consisting of Park Avenue, Cottage Street, Seeley Street and Hancock Avenue in an attempt to locate the driver of the vehicle. During this search, Wooldridge was informed by the Troop G dispatcher that the vehicle was registered to a white male from Ansonia. As Wooldridge began traveling back toward Park Avenue on Hancock Avenue, Trooper Gregory arrived in the area. While looking in his rearview mirror, Wooldridge observed a person appear from an alleyway and then disappear. This alleyway, formed by 91 and 99 Hancock Avenue, is approximately ten feet wide and is divided down its length by a chain-link fence. **[***5]** It is approximately four or five houses away from where the Subaru came to rest after being abandoned. Trooper Gregory, along with Trooper Wooldridge, walked down the alleyway along 91 Hancock Avenue, searched the backyard area, found nothing and returned to the street.

"At this point, the two troopers were joined by Officer Orlando Lanzante, a Bridgeport police officer. At Lanzante's suggestion, the three returned to the backyard in an effort to locate the driver of the Subaru. On their way back to the street from the backyard, Lanzante noticed the defendant hiding next to a couch, which was standing on end against 91 Hancock Avenue, an abandoned building. The officers had walked by this couch on their way into the backyard both prior to and after the arrival of Lanzante, and although the two troopers were carrying flashlights, the defendant remained unnoticed. Upon being seen by Lanzante, [the **[*252]** defendant] was ordered at gunpoint several times to get on the ground and he failed to comply. He was then physically placed on the ground by Trooper Gregory and handcuffed behind his back. The area where this confrontation took place was closely confined by the house, couch and chain-link **[***6]** fence. After being handcuffed, the defendant was then assisted to his feet and led out to the street to the rear of Lanzante's cruiser where the lighting conditions were better.

"The defendant initially denied any wrongdoing. As he was being led out of the alleyway, he indicated that he had been smoking marijuana and was attempting to avoid the police for that reason. All three officers testified that they did not observe anyone else on the street prior to the detention of the defendant. Trooper Wooldridge indicated that he did not smell the odor of

marijuana in the area. The defendant also was unable to produce any form of identification.

"At the rear of Lanzante's cruiser, the defendant was patted down by Wooldridge to determine if he had any weapons in his possession. Wooldridge found no weapons, but testified that in the course of the patdown, he felt what he believed to be a plastic bag with some substance in it in the right front pants pocket of the [defendant]. Upon removing the item from the pocket, Wooldridge discovered a plastic bag containing a green, plant-like substance, which he believed to be marijuana. At that time, Wooldridge considered the defendant to be under **[***7]** arrest and read him his rights. He was then placed into the back of Lanzante's police cruiser. Approximately five minutes had elapsed from the time the **[**107]** Subaru was first seen on the Route 25 connector until the time that the defendant was placed into the cruiser.

"Within minutes, [Wooldridge] began to receive additional information from [his] dispatcher relating to the **[*253]** vehicle, including the fact that the car was recently stolen from Ansonia and may have been involved in a home invasion and sexual assault, which had occurred in that city approximately twenty minutes earlier. After being informed that a Derby class ring had been stolen in the Ansonia robbery, the troopers recalled that they had seen a Derby class ring in the possession of the [defendant] when they seized the marijuana and had returned it to him. The troopers then took the [defendant] out of the vehicle to look for the ring. The defendant no longer had possession of the ring, but it was located under the seat cushion of the police vehicle, where he had been sitting. The troopers found that the ring bore the initials of the victim of the Ansonia robbery. The red Subaru was packed with items that matched those **[***8]** reportedly stolen in the Ansonia robbery.

"Wooldridge had broadcast a description over the radio immediately after catching a fleeting glimpse of the [driver] as he ran away from him. Wooldridge initially described the driver as a black male with gray pants and a black jacket. Shortly thereafter, when asked by his radio dispatcher to repeat his description, [Wooldridge] responded: 'Black male in a gray jacket, black hoody, gray pants, short hair, they look like black sneakers.' When the defendant was found hiding in the couch, he was wearing a black hoody, blue jeans and dark brown shoes. His hair was almost shoulder length and was worn in thinly stranded, tight braids. The defendant, however, appeared to be the same race, about the same height, the same overall build and was wearing the same kind of black hoody that Wooldridge had seen earlier under a jacket. [Wooldridge] further noted that the color of the blue jeans was not clearly distinguishable from gray when viewed under streetlights.

"Since Wooldridge perceived differences in the appearance of the [defendant] compared to what he **[*254]** recalled seeing as the man from the Subaru, efforts were initiated to bring a dog capable **[***9]** of tracking human scent to the scene in order to attempt to track the path of the driver of the vehicle. The officers tried to locate an available K-9 unit through the state police and then through the West Haven police department. Eventually, at 2:20 a.m., Officer Robert Novia of the Bridgeport police department was summoned from his home. At 2:35 a.m., he arrived at the scene on Hancock Avenue with his dog, Timmy, approximately thirty seven minutes after the defendant was originally detained. After meeting with the officers at the scene, the dog began his track from the front seat of the abandoned Subaru and followed an apparent scent trail down Hancock Avenue, which eventually led to the area of the couch where the defendant had been discovered. Officer Novia testified that in his opinion, the driver of the Subaru, after leaving the vehicle, eventually went to the couch, where a 'pool scent' was left, indicating that the driver had been standing in that particular location.

"As a result of the investigation which followed the original detention of the defendant, he was arrested for possession of marijuana and for various charges, including robbery, burglary and sexual assault relating **[***10]** to the Ansonia home invasion. A search warrant including information obtained by this investigation was obtained for a sample of the defendant's blood. A subsequent DNA analysis and comparison of the defendant's blood led the police to conclude that the defendant was responsible **[**108]** for a sexual assault that had occurred in Bridgeport several days prior to the Ansonia incident. The defendant was arrested . . . . Also,

the boots [that the defendant] was wearing at the time of his arrest were subsequently matched with footprints found at the scene of a robbery for which the defendant was arrested."

[*255] The defendant was charged with kidnapping in the first degree, sexual assault in the first degree and burglary in the first degree in relation to crimes that occurred in Bridgeport on January 6, 1997, and kidnapping in the first degree and burglary in the second degree with a firearm in relation to crimes that occurred in Bridgeport on January 5, 1997. Upon his conviction, the defendant was sentenced to a total effective term of 100 years imprisonment to run concurrently with the ninety year sentence he was serving as a result of his conviction arising out of the crimes that occurred in Ansonia. **[***11]** [1]

FOOTNOTES

1 For a description of those crimes, see ***State* v. *Gregory*, 56 Conn. App. 47, 741 A.2d 986 (1999)**, cert. denied, 252 Conn. 929, 746 A.2d 790 (2000).

The defendant had sought to suppress the blood and boot print evidence, claiming that they were the fruits of an illegal search. He contended that because the police did not have a warrant or probable cause to arrest him, nor did they have a reasonable and articulable suspicion to conduct a *Terry* [2] stop, his seizure was improper and any evidence that resulted, his DNA and the boot print, should have been suppressed.

FOOTNOTES

2 *Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

The court found that the defendant's arrest was proper because there was probable cause to support an arrest for the motor vehicle offenses. In **[***12]** the alternative, the court found that there were sufficient facts for the police to detain the defendant temporarily for investigative purposes and to conduct a patdown, which revealed that the defendant had a bag of marijuana in his pocket and supported his arrest for drug possession.

The crux of the defendant's argument rests on his proposition that the court improperly determined that there was probable cause or, in the alternative, a reasonable and articulable suspicion, that he was the driver of the Subaru station wagon. Although the defendant **[*256]** concedes that the police had probable cause to stop the driver of the station wagon, he claims that at the time the police first encountered him in the alley, they had no justification either to arrest him or to conduct a temporary stop. We disagree.

HN1 "Our standard of review of a trial court's findings and conclusions in connection with a motion to suppress is well defined. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . Where the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether **[***13]** they find support in the facts set out in the memorandum of decision . . . .

HN2 "Because a trial court's determination of the validity of a [*Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)] patdown search implicates a defendant's constitutional rights . . . we engage in a careful examination of the record to ensure that the court's decision was supported by substantial evidence. . . . However, we [will] give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility **[**109]** of witnesses." (Citations omitted; internal quotation marks omitted.) *State* v. *Clark*, 255 Conn. 268, 279-80, 764 A.2d 1251 (2001); see ***State* v.**

***Gregory*, 56 Conn. App. 47, 51-52, 741 A.2d 986 (1999)**, cert. denied, 252 Conn. 929, 746 A.2d 790 (2000).

HN3 "Under the fourth amendment to the United States constitution and article first, 7 and 9§§, of our state constitution, a police officer is permitted in appropriate circumstances and in an appropriate manner to detain an individual for investigative purposes if the officer believes, based **[***14]** on a reasonable and articulable suspicion that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest. . . . **[*257]** Reasonable and articulable suspicion is an objective standard that focuses not on the actual state of mind of the police officer, but on whether a reasonable person, having the information available to and known by the police, would have had that level of suspicion. . . .

"In justifying [a] particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. . . . In determining whether a detention is justified in a given case, a court must consider if, relying on the whole picture, the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity. When reviewing the legality of a stop, a court must examine the specific information available to the police officer at the time of the initial intrusion and any rational inferences to be derived therefrom. . . . HN4 A recognized function of a constitutionally permissible stop is to maintain the status **[***15]** quo for a brief period of time to enable the police to investigate a suspected crime." (Citations omitted; internal quotation marks omitted.) *State* v. *Lipscomb*, 258 Conn. 68, 75-76, 779 A.2d 88 (2001).

The court concluded that the police had the authority to detain the defendant temporarily when they found him hiding in the alley. HN5 In determining the legality of a *Terry* stop, we do not look at each fact in isolation, but at the totality of the circumstances presented to the police at the time they detain an individual. ***State* v. *Gregory*, supra, 56 Conn. App. at 52**. On the basis of the totality of the circumstances presented to the officers and applying an objective standard, we agree with the court's conclusion that the officers had a reasonable and articulable suspicion.

HN6 "The nature of the crime under investigation, the degree of suspicion, the location of the stop, the time **[*258]** of day, the reaction of the suspect to the approach of police are all facts which bear on the issue of reasonableness." (Internal quotation marks omitted.) *State* v. *Wylie*, 10 Conn. App. 683, 687, 525 A.2d 528, cert. denied, 204 Conn. 807, 528 A.2d 1154 (1987). **[***16]** "Proximity in the time and place of the stop to the crime is highly significant in the determination of whether an investigatory detention is justified by reasonable and articulable suspicion." (Internal quotation marks omitted.) *State* v. *DaEria*, 51 Conn. App. 149, 158, 721 A.2d 539 (1998).

After a careful review of the record, we conclude that the court's factual findings were supported by substantial evidence. The court found that when Wooldridge attempted to stop the driver of a Subaru station wagon being operated at night without its headlights turned on, the driver did not stop. The trooper began a chase, using his cruiser's siren and flashing lights, which ended in Bridgeport when the driver jumped from the still moving **[**110]** vehicle and ran. When the trooper began searching the area for the driver, a person appeared in an alleyway and then disappeared. The alleyway was four or five houses away from the location where the Subaru came to rest. After once searching that alleyway with another trooper and not finding anyone, the troopers were joined by a Bridgeport police officer, and, in a second search, found the defendant hiding behind a couch next to an abandoned **[***17]** building. The defendant was found there less than five minutes after the car chase began at 2 a.m. He was alone in the alley and without a coat in midwinter. Furthermore, when discovered, the defendant refused to abide by the officers' requests to get on the ground. Considering the facts together, the officers were justified in temporarily detaining the defendant.

The defendant argues that because the clothing description that Wooldridge provided to his radio dispatcher differed from what the defendant was wearing **[*259]** when he was found in the alley, the police had no basis to conclude that he was the driver of the vehicle. When Wooldridge saw the driver fleeing, he reported that the driver had short hair and was wearing gray pants, black sneakers, a gray jacket and a black hooded sweatshirt. The defendant was found wearing jeans, brown boots, a black hooded sweatshirt and with a tightly braided cornrow hairstyle. Wooldridge testified that the physical characteristics of the individual he saw fleeing the scene matched the defendant's physical characteristics. The officer wanted to determine if the defendant was the driver of the vehicle. That was a proper goal of a *Terry* stop. The **[***18]** courts have pointed out that HN7 the purpose of a *Terry* stop is to investigate whether a suspect committed, or was in the process of committing, a criminal offense. See *Terry* v. *Ohio*, 392 U.S. 1. As our Supreme Court has stated, the purpose of the stop is to "confirm or dispel [the officer's] suspicions [that an individual has committed or is about to commit a crime.]" *State* v. *Kyles*, 221 Conn. 643, 660, 607 A.2d 355 (1992).

The police are therefore not required to confirm every detail of a description of the perpetrator before that person can be detained. *State* v. *DaEria*, supra, 51 Conn. App. at 158. Rather, "what must be taken into account [when determining the existence of a reasonable and articulable suspicion] is the strength of those points of comparison which do match up and whether the nature of the descriptive factors which do not match is such that an error as to them is not improbable . . . ." (Internal quotation marks omitted.) Id. Wooldridge's description came after he saw the defendant jumping from a moving vehicle at 2 a.m. Given the limited amount of time that Wooldridge had to view the driver **[***19]** and the lack of lighting in the area, combined with the fact that the description provided was similar, although not identical, to what the defendant was found wearing, **[*260]** and that the defendant's physical characteristics were the same as the individual Wooldridge saw fleeing the vehicle and the circumstances under which the defendant was found, we conclude that there was a reasonable and articulable suspicion for the police to detain him. [3]

FOOTNOTES

3 We reach that conclusion without the need to consider the defendant's statement to the police that he was hiding in the alley to smoke marijuana, which would strengthen the suspicion. The defendant now claims on appeal that this statement was elicited by the police in violation of *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). He did not, however, raise that issue before the trial court. The absence of any finding by the court as to the circumstances surrounding the statement prohibits review under *State* v. *Golding*, 213 Conn. 233, 239-40, 567 A.2d 823 (1989). Furthermore, HN8 the police may ask some questions during a *Terry* stop without giving *Miranda* warnings. See *Berkemer* v. *McCarty*, 468 U.S. 420, 439-40, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984); ***State* v. *Gregory*, supra, 56 Conn. App. at 53-54.**

[*20]** **[**111]** Having found that the police properly stopped the defendant, we now turn to the propriety of the patdown search that followed. It is the defendant's contention that because Wooldridge testified that when he patted the defendant down, he was searching for drugs, as well as weapons, the search exceeded the scope of a patdown under *Terry*. We disagree.

HN9 If an officer possesses a reasonable suspicion that the individual stopped is in possession of a weapon, the officer may conduct a patdown frisk. See *Ybarra* v. *Illinois*, 444 U.S. 85, 93, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979). HN10 We again use an objective standard in determining whether a police officer had a particularized basis for suspecting whether an individual should be patted down for weapons. See *State* v. *Clark*, supra, 255 Conn. at 282. "When conducting a patdown search of a suspect, the officer is limited to an investigatory search for weapons in order to ensure his . . . own safety and the safety of others nearby. . . .

The officer cannot conduct a general exploratory search for whatever **[*261]** evidence of criminal activity [he] might find." (Citations omitted; internal quotation marks omitted. **[***21]**) Id. However, "in order to justify the reasonableness of an investigatory search, [an] officer need not be absolutely certain that [an] individual is armed; [rather] the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his . . . safety or that of others was in danger." (Internal quotation marks omitted.) Id., at 284-85.

In ***State* v. *Gregory*, 56 Conn. App. 47**, we stated: HN11"During a *Terry* detention, the police may conduct a pat-down search to locate weapons if they reasonably believe that the suspect may be armed and dangerous. . . . According to *Terry* v. *Ohio*, [supra, 392 U.S. 1 at 20, 20 L. Ed. 2d 889, 88 S. Ct. 1868], where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous regardless of whether he has probable cause to arrest that individual for a crime or the absolute certainty that the individual is armed. Once a reasonable and articulable suspicion exists, an officer **[***22]** may detain a suspect to conduct an investigative stop to confirm or dispel such suspicions. Suspicious conduct during a *Terry* stop, including flight at the approach of officers and a *refusal to comply with officers' instructions*, are other integral factors that will justify a pat- down for weapons. . . .

HN12**Id., 56 Conn. App. at 52-53**."To determine whether an investigatory detention and pat- down are permissible a two part inquiry is utilized: (1) was the officer justified in initially detaining the individual based on specific and articulable facts; and (2) did specific and articulable facts exist that suggested that the individual presented a harm to the officers or others so as to justify the pat-down. . . . HN13The wanton and reckless conduct by the defendant to avoid **[*262]** detection by the police suggests a strong consciousness of guilt." (Citations omitted; emphasis added.)

Although Wooldridge testified that he also was searching for drugs when he patted the defendant down, he also **[**112]** testified that he was searching for a weapon. The fact that Wooldridge stated that he also was searching for drugs does not invalidate the officers' conduct. The officers were searching for an individual **[***23]** who fled a car that was being driven without its headlights on after ignoring the police siren and flashing lights of the police cruiser following him. Rather than stop for the pursuing cruiser, the driver, whose description did not match that of the vehicle's owner, leaped from the moving vehicle and ran from the scene. That vehicle then crashed into a parked vehicle. When the police encountered the defendant, who generally matched the driver's description, hiding in a nearby dark alley at 2 a.m. next to an abandoned building, he refused to adhere to repeated requests by the police to get on the ground. We conclude that the defendant's headlong and reckless flight from the police, considered with his hiding in a darkened alley near abandoned buildings, justified the patdown. Viewed by the objective standard we apply, a reasonably prudent person would have been warranted in the belief that either his safety, or the safety of others, was in jeopardy. See id., **56 Conn. App. at 52**.

"In *Minnesota* v. *Dickerson* [508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993)], the United States Supreme Court established the plain feel exception to the warrant requirement, as **[***24]** a matter of federal constitutional law. Under *Dickerson*, HN14a police officer acting without a warrant may seize contraband that the officer detected through the sense of touch during a lawful patdown search. . . . Specifically, the United States Supreme Court held that, if a police officer lawfully pats down a suspect's outer clothing and feels an object **[*263]** whose contour or mass makes its identity *immediately apparent*, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." (Citation omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Clark*, supra, 255 Conn. at 287-88. We

conclude that Wooldridge properly seized the marijuana in the defendant's possession when he recognized its presence during the patdown search. Accordingly, we conclude that Wooldridge's patdown of the defendant and the seizure of the marijuana were proper.

The defendant also argues that the officers' use of drawn guns and handcuffs went beyond their authority under **[***25]** *Terry*. HN15 In appropriate circumstances, however, the police may take such reasonable steps during a *Terry* investigative stop to protect themselves. See *State* v. *Wilkins*, 240 Conn. 489, 495-504, 692 A.2d 1233 (1997); *State* v. *Casey*, 45 Conn. App. 32, 41-44, 692 A.2d 1312, cert. denied, 241 Conn. 924, 697 A.2d 360 (1997); *United States* v. *Jordan*, 232 F.3d 447, 449-50 (5th Cir. 2000); *United States* v. *Vega*, 72 F.3d 507, 515-16 (7th Cir. 1995), cert. denied sub nom. *Early* v. *United States*, 518 U.S. 1007, 116 S. Ct. 2529, 135 L. Ed. 2d 1053 (1996); *Allen* v. *Los Angeles*, 66 F.3d 1052, 1056-57 (9th Cir. 1995); *United States* v. *Alexander*, 907 F.2d 269, 272-73 (2d Cir. 1990), cert. denied, 498 U.S. 1095, 111 S. Ct. 983, 112 L. Ed. 2d 1067 (1991).

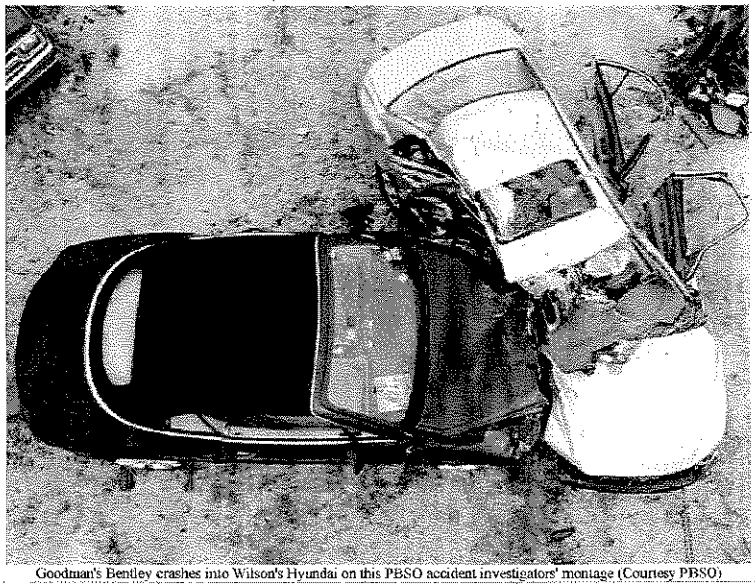
The court also found that there was probable cause to arrest the defendant as the driver of the vehicle who had refused to stop when pursued by a police vehicle and fled the scene as the car crashed driverless into another vehicle. We need not consider that conclusion because, **[***26]** upon finding the marijuana during the patdown of the defendant, the officers had independent **[*264]** probable cause to arrest him for possession of a controlled **[**113]** substance. Following the defendant's arrest, the officers also found the Ansonia victim's ring that had been concealed by the defendant in the backseat of the police cruiser. Additionally, in the victim's stolen Subaru station wagon, the officers found the remainder of the property that had been stolen from the Ansonia victim. That also constituted probable cause.

The judgment is affirmed.

In this opinion the other judges concurred.

Trial Shocker: Addictive Pain Pills Found in John Goodman's Car After Fatal Accident!

Posted by Jose Lambiet , March 16, 2012 Print



Goodman's Bentley crashes into Wilson's Hyundai on this PBSO accident investigators' montage (Courtesy PBSO)

BREAKING NEWS In a trial that's been as much about what the jurors have and haven't heard, the judge in the DUI manslaughter case against Wellington polo big **John Goodman** dismissed the five men and woman of the jury before lunch then heard a shocker: A bottle of powerful, addictive pain killers was found in a backpack in Goodman's wrecked Bentley months after the accident!

Prosecutor **Ellen Roberts** told Judge **Jeffrey Colbath** that a Palm Beach County Sheriff's deputy sent to retrieve Goodman's passport in his car when he was finally arrested three months after the crash also found a bottle of hydrocodone. That's the type of pain killer that addicts who frequent the area's infamous pill mills are prescribed illegally.

– *Keep up with the Goodman trial: Click here to register for the Gossip Extra dirt alerts*

Goodman apparently admitted during the investigation that he took a pill in the morning before the crash. Hydrocodone, however, is known to enhance the effects of booze.

The toxicologist who analyzed Goodman's blood was on the stand when Roberts made her revelation. The toxicologist, **Tate Yeatman**, told the judge that the amount of hydro he found in Goodman indicated Goodman either took a higher dose than first believed, or closer to the time of the crash. Roberts said Goodman had a prescription for the pills because of a chronically painful back.

Goodman is accused of being drunk when, early on Feb. 12, 2010, he blew through a stop sign at what possibly could be 63 mph and plowed into the car of 23-year-old **Scott Wilson**, killing him. Goodman is accused of leaving the scene as Wilson drowned in his car, flipped upside down in a canal. Goodman's defense just argued against telling the jury that Goodman had hydrocodone in his blood, but Colbath just decided the juy would hear it because it could prove impairment.

At one point, Goodman was also a cocaine addict. During his divorce in the early 2000s, he was ordered to undergo cocaine testing in order to be able to see his children. The jury isn't supposed to hear about it.

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– *John Goodman shocker: Is it incest?*
– *John Goodman paid $200 for 16 shots of tequila, Grey Goose and Johnnie Walker Red before fatal crash*
– *Source: Players Club insurance paid DUI victim Wilson's estate $6 million*

Civil suit against Wellington polo tycoon John Goodman has been settled

Sources tell NewsChannel 5

Video | Photo

Posted: 03/09/2012

By: WPTV Web Team

WEST PALM BEACH, Fla. - Sources tell NewsChannel 5 that a settlement in the wrongful death civil suit against Wellington polo tycoon John Goodman has been reached.

Those sources say the settlement was reached last week, but all parties agreed to keep terms confidential.

According to published reports, the parents of Scott Wilson, who filed the suit, sought up to $100 million dollars in damages.

Sources say the settlement is beyond ten million dollars, but how far beyond they would not confirm.

"I don't think it's a surprise that the civil case is settled, and I don't think the timing is a shock, because you know both cases - the civil and the criminal - were both set for trial in March," said NewsChannel 5 legal analyst Michelle Suskauer. "It's not a surprise that the terms are confidential, but it's a surprise that it hasn't come out and leaked."

Goodman is charged with DUI manslaughter and vehicular homicide after allegedly running a stop sign and crashing into Scott Wilson on Feb. 12, 2010. Investigators said Goodman was driving with a blood alcohol level twice the legal limit in Florida when he slammed into Wilson's car, sending him into a nearby canal where he drowned.

On Thursday, a six-member jury was seated in the criminal trial against Goodman. Opening statements by lead defense attorney Roy Black and lead prosecutor Ellen Roberts are slated to begin Tuesday, March 13th.

"This will come into play if he is found guilty and restitution is ordered," said Suskauer . "Obviously the judge is going to take into consideration that restitution has been paid via a civil settlement."

If convicted, Goodman could face 30 years behind bars.


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The Palm Beach Post NEWS

Will settlement leak affect John Goodman's criminal trial?

Reporter Jane Musgrave's live updates from court: Type in your comments and questions below

John Goodman trial - Day 4

Tuesday March 13, 2012

8:33 **Jane Musgrave:** Judge Jeffrey Colbath has entered the courtroom. John Goodman and his attorneys are in the courtroom. Lili and William Wilson, the parents of the 23-year-old Goodman is accused of killing in a DUI crash, and their attorneys are looking on.

8:33 **Jane Musgrave:** Judge Colbath is going to ask jurors if they heard or read news over the weekend that a settlement has been reached in the civil suit filed by the Wilsons.

8:37 **Jane Musgrave:** Judge Colbath: "Has anybody seen anything or read anything about this case? Was everybody successful in avoiding the media."
One juror said she heard about the case over the weekend.
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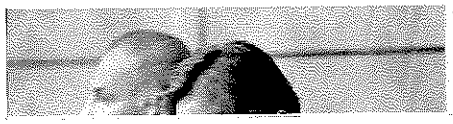
8:37 

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By JANE MUSGRAVE AND DAPHNE DURET
Palm Beach Post Staff Writer

Updated: 8:55 a.m. Tuesday, March 13, 2012

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ENLARGE PHOTO

Opening statements in the criminal trial of John Goodman are slated for Tuesday, March 13, 2012.

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Posted: 11:07 p.m. Saturday, March 10, 2012

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Like a story line plucked from the pages of a John Grisham novel, on the eve of John Goodman's closely watched DUI manslaughter trial, word is leaked that there's been a settlement in the civil case filed by the parents of the young man who died in the crash with the Wellington polo mogul.

Could it be a deliberate attempt to taint the jury and derail the criminal trial?

Attorneys on Saturday, for the most part, scoffed at the notion that Friday's leak to ABC News was an orchestrated effort to influence the criminal trial that is set to begin Tuesday in Palm Beach County Circuit Court.

However, all agreed the timing of the leak was curious.

"It's certainly a coincidence," said attorney Michael Salnick.

"I think the timing is bizarre," said attorney Gerald Richman. "To release the information on the eve of the trial is more than coincidental."

Attorneys in the case aren't confirming or denying that there is a settlement.

Scott Smith, who represents Lili and William Wilson in the multi million-dollar civil lawsuit against Goodman, said, "Due to the pendency of the current criminal trial, Mr. and Mrs. Wilson have no comment about the civil trial at this time."

Christian Searcy, who also represents the couple who lost their 23-year-old son Scott in the February 2010 crash, said he had no comment.

Goodman's defense team, led by famed Miami attorney Roy Black, was also mum. Even Black's longtime publicist, Tony Knight, didn't return phone calls or emails for comment.

However, defense attorneys said, it is likely the leak will be discussed in court before either side gives opening statements on Tuesday.

Palm Beach County Circuit Judge Jeffrey Colbath will probably ask jurors whether they followed his instructions not to read or listen to any news reports about the case over the long weekend, Salnick said. He said he wouldn't be surprised if jurors were quizzed individually to determine whether they heard anything and, if so, did it influence them.

Depending on what the jurors say, either side could ask for a mistrial. To grant the request, Colbath would have to find that it would be a "manifest injustice" to allow the case to be decided by the jury that was selected Thursday after three days of grilling.

Learning about the settlement could hurt either the prosecution or the defense, Salnick said.

"It cuts both ways," he said. Jurors could think that the family has been compensated so they might let Goodman off easy. On the other hand, some might think that the settlement is an admission of guilt and could make up their minds before the first witness takes the stand.

Richman agreed. "That the family is taken care of, that could win him some sympathy," he said. "However, they could also think, this guy must be guilty."

Such varying and unpredictable prejudices are why it would be dangerous for either side to leak the information, both said.

Conspiracy theories have abounded since the February 2010 crash on 120th Avenue at Lake Worth Road. Goodman was quickly identified as the driver of the car that sent Wilson's Hyundai into a ditch, where Wilson drowned. Goodman, seen earlier drinking at The Player s Club, left the scene but registered a blood-alcohol level twice the level at which a person is legally presumed to be impaired when he was tested three hours later, police said. The founder of the International Polo Club Palm Beach and heir to a Texas air conditioning empire wasn't arrested until May, causing critics to say he was being treated differently because he's rich.

Then, this year, it was announced that he had adopted his girlfriend, potentially giving her access to some of the $300 million his attorneys said is held in trust for his two children. Again, critics protested, viewing it as a ploy to keep Wilson's parents from getting the money they deserved.

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The leak in the criminal case comes just days before Palm Beach County State Attorney Michael McAuliffe leaves office to accept a job with Palm Beach billionaire Bill Koch's Oxbow Carbon energy firm. Peter Antonacci, a former statewide prosecutor and assistant attorney general was tapped Friday as McAuliffe's replacement. Now in private practice, Antonacci said he won't seek the office in November's election.

That would mean he would be free of political pressure and so might be open to negotiating a plea deal with Goodman, one that could be far more lenient than the maximum 30 years in prison he now faces.

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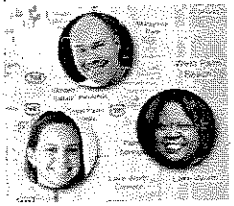

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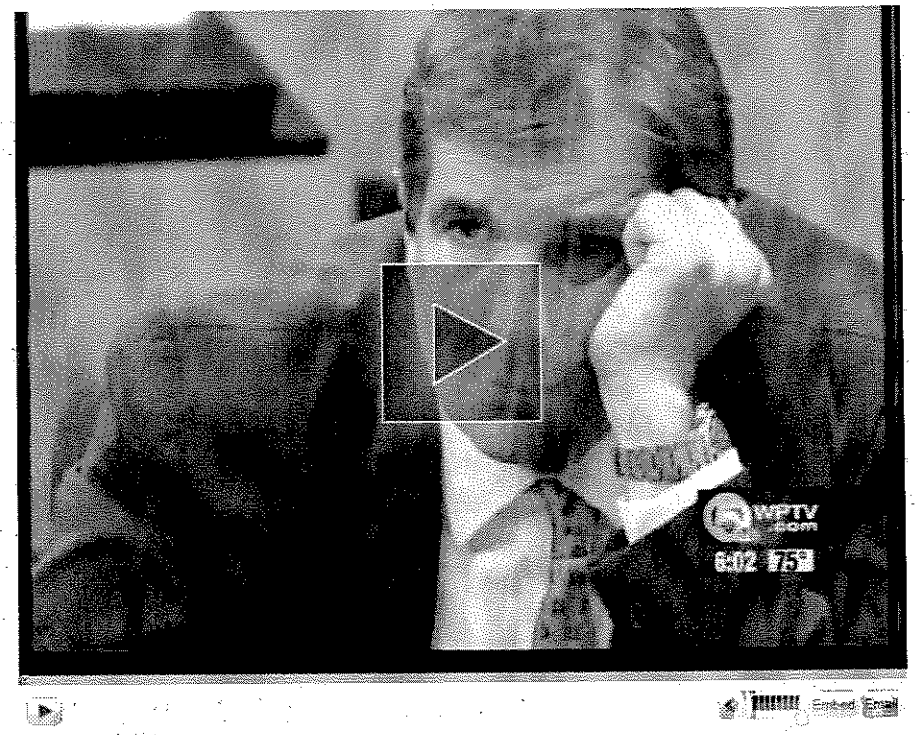
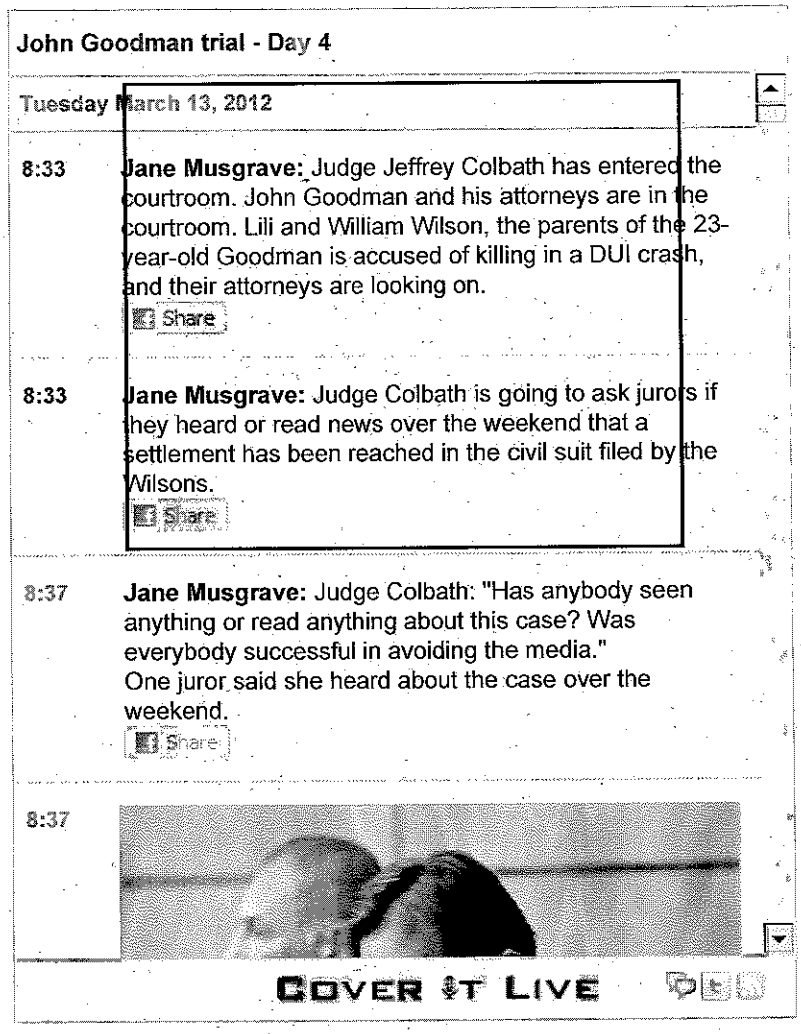
Will settlement leak affect John Goodman's criminal trial?



Reporter Jane Musgrave's live updates from court: Type in your comments and questions below



By**JANE MUSGRAVE AND DAPHNE DURET**

Palm Beach Post Staff Writer

Updated: 8:55 a.m. Tuesday, March 13, 2012
Posted: 11:07 p.m. Saturday, March 10, 2012

Like a story line plucked from the pages of a John Grisham novel, on the eve of John Goodman's closely watched DUI manslaughter trial, word is leaked that there's been a settlement in the civil case filed by the parents of the young man who died in the crash with the Wellington polo mogul.

Could it be a deliberate attempt to taint the jury and derail the criminal trial?

Attorneys on Saturday, for the most part, scoffed at the notion that Friday's leak to ABC News was an orchestrated effort to influence the criminal trial that is set to begin Tuesday in Palm Beach County Circuit Court.

However, all agreed the timing of the leak was curious.

"It's certainly a coincidence," said attorney Michael Salnick.

"I think the timing is bizarre," said attorney Gerald Richman. "To release the information on the eve of the trial is more than coincidental."

Attorneys in the case aren't confirming or denying that there is a settlement.

Scott Smith, who represents Lili and William Wilson in the multi million-dollar civil lawsuit against Goodman, said, "Due to the pendency of the current criminal trial, Mr. and Mrs. Wilson have no comment about the civil trial at this time."

Christian Searcy, who also represents the couple who lost their 23-year-old son Scott in the February 2010 crash, said he had no comment.

Goodman's defense team, led by famed Miami attorney Roy Black, was also mum. Even Black's longtime publicist, Tony Knight, didn't return phone calls or emails for comment.

However, defense attorneys said, it is likely the leak will be discussed in court before either side gives opening statements on Tuesday.

Palm Beach County Circuit Judge Jeffrey Colbath will probably ask jurors whether they followed his instructions not to read or listen to any news reports about the case over the long weekend, Salnick said. He said he wouldn't be surprised if jurors were quizzed individually to determine whether they heard anything and, if so, did it influence them.

Depending on what the jurors say, either side could ask for a mistrial. To grant the request, Colbath would have to find that it would be a "manifest injustice" to allow the case to be decided by the jury that was selected Thursday after three days of grilling.

Learning about the settlement could hurt either the prosecution or the defense, Salnick said.

"It cuts both ways," he said. Jurors could think that the family has been compensated so they might let Goodman off easy. On the other hand, some might think that the settlement is an admission of guilt and could make up their minds before the first witness takes the stand.

Richman agreed. "That the family is taken care of, that could win him some sympathy," he said. "However, they could also think, this guy must be guilty."

Such varying and unpredictable prejudices are why it would be dangerous for either side to leak the information, both said.

Conspiracy theories have abounded since the February 2010 crash on 120th Avenue at Lake Worth Road. Goodman was quickly identified as the driver of the car that sent Wilson's Hyundai into a ditch, where Wilson drowned. Goodman, seen earlier drinking at The Player s Club, left the scene but registered a blood-alcohol level twice the level at which a person is legally presumed to be impaired when he was tested three hours later, police said. The founder of the International Polo Club Palm Beach and heir to a Texas air conditioning empire wasn't arrested until May, causing critics to say he was being treated differently because he's rich.

Then, this year, it was announced that he had adopted his girlfriend, potentially giving her access to some of the $300 million his attorneys said is held in trust for his two children. Again, critics protested, viewing it as a ploy to keep Wilson's parents from getting the money they deserved.

The leak in the criminal case comes just days before Palm Beach County State Attorney Michael McAuliffe leaves office to accept a job with Palm Beach billionaire Bill Koch's Oxbow Carbon energy firm. Peter Antonacci, a former statewide prosecutor and assistant attorney general was tapped Friday as McAuliffe's replacement. Now in private practice, Antonacci said he won't seek the office in November's election.

That would mean he would be free of political pressure and so might be open to negotiating a plea deal with Goodman, one that could be far more lenient than the maximum 30 years in prison he now faces.

Salnick said that theory is interesting, but absurd.

"You're giving everyone way too much credit," he said. "If you go with that theory you don't understand Mr. Antonacci. He's a fine lawyer and excellent prosecutor."

Further, he said, defense attorney Black, who has built a reputation on beating what appeared to be unbeatable cases, would not stoop to leaking in an effort to benefit his client. "I would never, ever think anybody of Roy Black's caliber would do something like that," he said. "He's not going to cross an ethical line like that."

Other attorneys agreed, describing Black as tough, methodical, skilled and the consummate professional. He is best known for winning an acquittal in 1991 for William Kennedy Smith, who was accused of raping a woman at the Kennedy estate in Palm Beach. More recently, in 2009, he worked the same magic for two-time Indianapolis 500 champion Helio Castroneves who was charged with evading taxes on $5.5 million in income.

In Palm Beach County, he made headlines in 2006 when he persuaded prosecutors to drop felony doctor-shopping charges against Palm Beach resident Rush Limbaugh if the conservative radio talk show host completed 18 months of substance abuse treatment. In 2004, he crafted a plea deal for Jay Levin, who fatally shot his 16-year-old neighbor in suburban Boca Raton after the teen, who was pulling a prank, knocked on his door and ran away. Black arranged for Levin, who was facing a possible 30-year prison term, to serve weekends in jail for a year and 10 years of probation.

If the trial goes on, Black will have many more issues to deal with than whether the jurors are reading media accounts.

As for the leak, other than for the timing, it is not unusual that someone would spill secret information. Long the lifeblood of the news business, leaks have only become more pervasive in the current hyperactive 24/7 news climate.

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