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October 12, 2016

Kevin T. Kane, Chief State's Attorney
Division of Criminal Justice
Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
Email: conndcj@ct.gov

Re: **Brady v. Maryland**
Request for Records Pertaining to DCJ Policies and Procedures

Dear Mr. Kane:

I asked for records responsive to the following request in a letter to you dated January 27, 2014 (attached):

What policies and procedures does the Division of Criminal Justice follow to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence?

Your office responded through Executive Assistant Brian Austin, Jr. by letter dated February 11, 2014 (attached):

The Division does not have any administrative policies or procedures responsive to this request although the Division is currently contemplating the establishment of such policy.

Your letter to the Connecticut Law Tribune dated October 7, 2016, responding to the CLT's October 5, 2016, editorial omitted reference to the absence in February 2014 of policies and procedures to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence and failed to provide an update to the status of any efforts made since then to develop such policies and procedures.

This is a renewed request for policies and procedures followed by the Division of Criminal Justice to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence including any efforts made since February 2014 to develop such policies and procedures.

Sincerely,



Rachel M. Baird, Attorney

c: Michael Lawlor, Under Secretary for Criminal Justice Policy and Planning
Office of Policy and Management
Email: mike.lawlor@ct.gov

Encls: Letter from Rachel Baird to Kevin Kane (January 27, 2014)
Letter from Brian Austin to Rachel Baird (February 11, 2014)
Letter from Rachel Baird to Kevin Kane (September 8, 2014)



KEVIN T. KANE
CHIEF STATE'S ATTORNEY

State of Connecticut
Division of Criminal Justice

OFFICE OF
THE CHIEF STATE'S ATTORNEY

300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 08067
PHONE (860) 258-5800 FAX (860) 258-5858

February 11, 2014

Rachel M. Baird, Attorney
Rachel M. Baird & Associate
Old Post Office Square
8 Church Street, Suite 3B
Torrington, CT 06790-5247

Dear Attorney Baird,

I write to respond to your recent request for documents made pursuant to the Connecticut Freedom of Information Act (FOIA).

As previously noted, for the purposes of FOIA, the Division of Criminal Justice is a public agency in its administrative function only. See Connecticut General Statutes Sec. 1-201. Any documents created or obtained in the exercise of this agency's investigative and/or prosecutorial function are not subject to FOIA disclosure.

The Division of Criminal Justice responds to your numbered requests as follows:

1. The Division does not have any administrative policies or procedures responsive to this request although the Division is currently contemplating the establishment of such policy.
- 2 - 8. These numbered requests pertain to the Division's investigative and/or prosecutorial function and, for the aforementioned reason, the requests are denied.

Please contact me directly if you have any questions regarding this response or any further requests.

Sincerely,

Brian Austin, Jr.
Executive Assistant State's Attorney

BA/jc

cc: Michael Regan, State's Attorney, Judicial District of New London

Rachel M. Baird & Associate

Old Post Office Square
8 Church Street, Suite 3B
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January 27, 2014

Kevin T. Kane, Chief State's Attorney
Division of Criminal Justice
Office of the Chief's State's Attorney
300 Corporate Pl
Rocky Hill, CT 06067
Email: comndcj@ct.gov

Re: State v. Morgan, Docket No. CR11-0316060-S (Jud. Dist. of New London)

Request for Records and Inquiry into Scope of Exculpatory Information in Pending and Closed Cases Involving Former State Trooper J. Severin Bergeron

Dear Mr. Kane:

This letter regards information disclosed to me on January 16, 2014, by Senior Deputy Assistant State's Attorney Mary Jean Kanabis with regard to a trial scheduled to begin jury selection on January 17, 2014, at the Superior Court in New London.

The State informed me on January 16, 2014, that investigating and arresting officer J. Severin Bergeron ("Bergeron") resigned as a sworn officer from the Department of Emergency Services and Public Protection (DESPP) while at least one Internal Affairs investigation was pending and anticipated that were Bergeron to testify at trial he would assert his Fifth Amendment right to remain silent rather than submit to cross-examination.

I learned on or about January 22, 2014, that an email was distributed by the DESPP to its employees notifying them on or about February 14, 2013, that Bergeron was suspended. Apparently the DESPP has a procedure for disseminating information by email to its employees about agency suspensions. The records I then received from the DESPP subsequent to January 22, 2014, indicate that Bergeron resigned in "good standing" effective November 16, 2013.¹

As regards the pending case in New London against my client, I have filed a motion to compel disclosure of exculpatory information. As regards both my client and my role as a Commissioner of the Superior Court, I submit the eight questions below. I am aware that under

¹ There appears to be a discrepancy between the State's representation that Bergeron would assert his Fifth Amendment right not to testify and the records received from the DESPP that he resigned in good standing.

the Freedom of Information Act a state agency is under no obligation to answer questions. Therefore, although I would prefer answers to clarify the position taken by the Division of Criminal Justice with regard to disclosing documented information impacting the credibility of sworn officers involved in the investigation and arrest of criminal defendants, if no answers are forthcoming please consider the following questions as requests for responsive records:

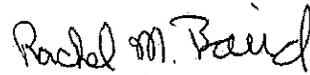
- (1) What policies and procedures does the Division of Criminal Justice follow to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence?
- (2) When did the Division of Criminal Justice learn the date of Bergeron's suspension and resignation?
- (3) What steps has the Division of Criminal Justice taken to review all *Arraignment/Probable Cause Affidavits* submitted by Bergeron to the courts, used by the courts to find probable cause to incarcerate individuals pending trial, and placed in court clerk's files for public access?
- (4) What steps has the Division of Criminal Justice taken to review all pending cases based on investigations conducted by or assisted by Bergeron, incident reports sworn to by Bergeron, and statements taken by Bergeron?
- (5) What steps has the Division of Criminal Justice taken to review all cases ending with convictions based on investigations conducted by or assisted by Bergeron, incident reports sworn to by Bergeron, and statements taken by Bergeron?
- (6) Does the Division of Criminal Justice request and/or maintain warrants submitted for the arrest of sworn officers, Internal Affairs investigation reports pertaining to the conduct of sworn officers, and/or any other documentation pertaining to the conduct of officers on whom criminal prosecutions rely for testimonial and/or tangible evidence?
- (7) What records does the Division of Criminal Justice have pertaining to Bergeron's credibility and when were they received?
- (8) What steps has the Division of Criminal Justice taken to review all affidavits in support of arrest and search warrants which relied on information provided by Bergeron?²

² This question arises from recent comments made by Supervisory Assistant State's Attorney Mary Rose Palmese in a matter pending at the Superior Court in New Britain. According to testimony offered by Berlin Police Department Officer Robert L. Canto during cross-examination by Attorney Palmese:

- Q: Now, when you review these search warrants before you sign off as an affiant, you actually -- you read it. Correct?
- A: Correct, I read it.
- Q: And were you aware at the time that it was based on police reports submitted by Officer Bartlett?
- A: Yes, ma'am.
- Q: Okay. And as a brother officer would -- Officer Bartlett, you rely on information in their reports to be truthful and accurate?
- A: Absolutely.
- Q: And is that the reason that you are allowed to be an affiant on the document that's submitted to the Court?

Please do not hesitate to contact me as my office stands by with additional information and materials, ready to assist.

Sincerely,



Rachel M. Baird, Attorney

Enclosures

-
- A: I believe so.
- Q: Okay. And is it typical that, as police officers, you rely on information from brother and sister officers?
- A: All the time.
- Q: All the time. Okay.
- (12/24/2013 H'rg Tr., 64:25-65:14) Officer Canto was an affiant to a Search and Seizure Warrant for firearms (Conn. Gen. Stat. § 29-38c) based on a police response to a home on December 2, 2013. Officer Canto had no knowledge of the December 2, 2013, police response until December 9, 2013, when he signed the warrant. (12/24/2013 H'rg Tr., 60:7-11) He was not one of the four officers at the scene. (Id. at 60:12-15) Prior to signing the warrant he never spoke to any officer who was at the scene, including the single officer, Officer William Bartlett, who wrote a report. (Id. at 60:2-11) Officer Canto never read the report prepared by Officer Bartlett prior to signing the warrant. (Id. at 61:4-11) Officer Canto spoke to one officer, Detective Sean McMahon, who was not one of the four officers at the scene. (Id. at 60:16-20) (See Detective McMahon's report) The warrant was already drafted when Officer Canto received it. (Id. at 62:4-17) The only action taken by Officer Canto with regard to the investigation underlying the warrant was to read it after it was written. (Id. at 62:13-63:2) The other affiant to the search warrant, Officer David A. Cruickshank, became involved in the December 2, 2013, matter when Detective McMahon entered the office he shared with Officer Canto on December 9, 2013, and Detective McMahon asked Officer Canto and Officer Cruickshank to be co-affiants. (12/27/2013 H'rg Tr., 9:8-12) Officer Cruickshank did not review any documents prior to signing the warrant. (Id. at 9:26-10:8) Detective McMahon has been employed by the Berlin Police Department for 24 years. (Id. at 56:17-21) According to testimony offered by Detective McMahon during cross-examination by Attorney Palmese:
- Q: So is it common practice in the Berlin Police Department to draft a warrant from another investigation?
- A: Yes, it's happened.
- Q: Okay. You're kind of the writer at the department, aren't you?
- A: Unfortunately.
- Q: You're the best writer, yes, okay. And is it common to rely on information from brother and sister officers when preparing an arrest warrant or a search warrant?
- A: It is.
- Q: Okay. Because you can rely on truthfulness of your brother and sister officers, correct?
- A: That's correct.
- Q: All right. And is it common to have two individuals who may not have been involved in the investigation as co-affiants?
- A: It is.
- Q: And in this case it happened because Canto and Cruickshank happened to be coming to the courthouse that particular morning?
- A: That's correct.

Piaseczynski, Richard

From: Condon, Bette
Sent: Thursday, February 14, 2013 4:30 PM
To: Meraviglia, Brian; Norton, Brian D; Lemieux, Carol; DPS.Collect:Unit; Zaepfel-Melanson, Gail; Janik, Joseph; Rosa, Jason; Pace, Jayme; McGinley, Jim; Hilliard, Joan; Jones, Versie; Natrass, Julia; Henry, Kathleen; LeRoy, Eileen; Droz, Lourdes; Corona, Robert; DPS, MessageCenter; SpecDuty.Clerk, DPS; Nettis, Philip; Bistany, Chick; Piaseczynski, Richard; Leonard, Scott; Samataro, Jack; Lundquist, Warren; Zaprzalka, Brenda; Zeoli, Greg; Canon, James; DPS, LRU; Henion, Ed; Puska, Charlene; Schlitter, Elizabeth
Cc: Darcy, Michael; Grega, Robert; Kewer, William; Fox, Alaric
Subject: Bergeron Suspension

Effective immediately, February 14, 2013, Trooper Severin Bergeron #1221, employee number [REDACTED], police powers have been suspended until further notice.

While Trooper Bergeron's police powers are suspended, he is not authorized to hold himself out as a member of the Department of Emergency Services & Public Protection, and is not authorized to access or utilize any COLLECT/NCIC or CAD/RMS or any other law enforcement computer database(s).

MESSAGE CENTER: Upon receipt of this e-mail, please send out the attached teletype.

COLLECT UNIT: Please refer to the above teletype information and suspend COLLECT privileges.

CAD/RMS & MDT : Please refer to the above teletype information and suspend CAD/RMS & MDT privileges.

Overtime Unit: Please treat the above referenced teletype as a For Your Information.

Computer Services: Please refer to the above teletype information and suspend computer privileges.

HR – Gail: Please treat the above referenced teletype as a For Your Information.

Should you have any questions or concerns, please call extension 8233.

Bette J. Condon
Executive Secretary to:
Colonel Danny R. Stebbins
Department of Emergency Services & Public Protection
1111 Country Club Road
Middletown, CT 06457-2389
(860) 685-8233 Fax (860) 685-8354

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STATE OF CONNECTICUT
DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION
OFFICE OF THE COMMISSIONER

September 2, 2014

Mr. Edward Peruta
American News and Information Services Inc.
c/o Attorney Rachel M. Baird
8 Church Street
Torrington, CT 06790

RE: Your Freedom of Information Act Request

Dear Mr. Peruta:

Enclosed is a CD containing the records you requested on June 27, 2014. Please be advised that it does not appear that Trooper Bergeron was assigned to Troop B, so we have received no records regarding him from that troop. This compilation includes infraction tickets from Troops F and K (2), a name search of all cases in which Trooper Bergeron was involved (1, 3), notice regarding the suspension of Trooper Bergeron's police powers (4) and such ticket inventory information as has been provided to the Legal Affairs Unit by the two troops (5). Redactions: CGS § 1-210(b)(2) (DOB, OLN); CGS § 14-10 (DOB, OLN)

Very truly yours,

A handwritten signature in black ink that reads "Janet K. Ainsworth".

Janet K. Ainsworth, Esq.
Legal Affairs Unit

File No.: 14-526; FIC 2014-419

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September 8, 2014

Kevin T. Kane, Chief State's Attorney
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Email: conndcj@ct.gov

Re: State v. Morgan, Docket No. CR11-0316060-S (Jud. Dist. of New London)

**Inquiry into Scope of Exculpatory Information in Pending and Closed Cases
Involving Former State Trooper J. Severin Bergeron**

Connecticut Brady List

Dear Mr. Kane:

This letter follows my initial request for records and inquiry dated January 27, 2014.¹ In response I received a February 11, 2014, letter from Attorney Brian Austin.² In his letter Attorney Austin represents that the Division of Criminal Justice does not have policies and procedures to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence "although the Division is currently contemplating the establishment of such policy."³

My office submitted FOIA requests to the Department of Emergency Services and Public Protection (DESPP) and just received in response a log of incidents listing Trooper J. Severin Bergeron as the primary officer.⁴ One of these incidents, specifically the arrest of my client Elbert J. Morgan on December 26, 2011, and perhaps many more tickets and arrests were prosecuted after Trooper Bergeron's suspension date of February 13, 2013, without disclosure of the exculpatory information to defense counsel. As stated in my January 27, 2014, request and inquiry, I learned on or about January 22, 2014, that an email was distributed by the DESPP to its employees notifying them on or about February 14, 2013, that Bergeron was suspended. I received a copy of this email today from the DESPP in response to my FOIA requests.⁵ The

¹ See enclosed Letter from Rachel M. Baird to Kevin T. Kane, dated January 27, 2014.

² See enclosed Letter from Brian Austin, Jr. to Rachel M. Baird, dated February 11, 2014.

³ See footnote 2, above.

⁴ See enclosed Letter from Janet K. Ainsworth to Edward A. Peruta, dated September 2, 2014.

⁵ See enclosed Email from Bette Condon to DESPP Personnel, dated February 14, 2013.

email from the office of Division of State Police Commander Danny R. Stebbins suspended Trooper Bergeron's police powers until further notice and denied Trooper Bergeron the authority to "hold himself out as a member of the Department of Emergency Services & Public Protection ... or "to access or utilize any COLLECT/NCIC or CAD/RMS or any other law enforcement computer database(s)." ⁶ Regardless, the Division continued prosecutions based on statements signed by an individual whose police powers had been suspended without disclosing that suspension to defense counsel.

The February 14, 2014, email from the state police commander's office notifies more than 30 individuals of Trooper Bergeron's suspension and is subject to disclosure under the FOIA. There is no reason for the omission of the Division of Criminal Justice from the list of email recipients. In fact, General Statutes § 54-86c(c), titled "Disclosure of exculpatory information or material," mandates the following:

Each peace officer, as defined in subdivision (9) of section 53a-3, shall disclose in writing any exculpatory information or material which he may have with respect to any criminal investigation to the prosecutorial official in charge of such case.

The state police failed to follow this mandate in the *Morgan* case. The absence of Division policies or procedures to enforce and track compliance with this statutory mandate signals that the Division is not concerned about such disclosure. Police departments and peace officers are encouraged to ignore the law as the DESPP did in the *Morgan* case.

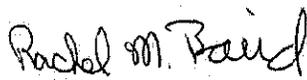
Request for Records

In conclusion, this letter is a renewed FOIA request for:

(1) Records concerning any and all policies and procedures followed by the Division of Criminal Justice to track and document issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence.

(2) Records concerning any and all policies and procedures followed by the Division of Criminal Justice to ensure that police departments and peace officers comply with General Statutes § 54-86c(c).

Sincerely,


Rachel M. Baird, Attorney

Enclosures

⁶ See footnote 5, above.