CV-13-

MELVIN JONES	:	**SUPERIOR COURT**
V.	:	**J. D. OF NEW HAVEN**
STATE OF CONNECTICUT	:	**JULY 3, 2013**

PETITION FOR NEW TRIAL

The Petitioner, Melvin Jones (aka Musa Jihad Israel), by and through his undersigned counsel, respectfully petitions this Honorable Court for a New Trial in the above-referenced matter in the interests of justice and under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Sections 8 and 10 of the Connecticut Constitution, Section 52-270 of the Connecticut General Statutes and Section 42-55 of the Connecticut Practice Book. His petition is premised upon the availability of newly-discovered DNA evidence which was not discoverable at the time of his trial and conviction. Said newly-discovered DNA evidence is exculpatory, material to the question of who committed the crime at issue, is not cumulative, and would have likely produced a different result had such evidence been presented at Mr. Jones' trial.

FIRST COUNT

1. The Petitioner, Melvin Jones, was arrested and charged on October 20, 1990 with Murder for the shooting death of Wayne Curtis on October 17, 1990 which occurred at approximately 7:27 a.m. near 358 Howard Avenue in New Haven.

2. Various witnesses observed Mr. Curtis in his parked vehicle at that location arguing with a black male wearing a camouflage-style jacket and braids, and the argument escalated to a physical altercation where Mr. Curtis was shot and killed while

seated in the car.

3. The Petitioner was prosecuted for Capital Felony in violation of C.G.S.§53a-54b(3), on the grounds that he had previously been convicted of Felony Murder in 1976.

4. On July 22, 1992, the Petitioner was convicted by a jury of Capital Felony and Carrying a Pistol without at Permit, and on April 8, 1993, he received a sentence of life imprisonment without the possibility of release (Hadden, J.).

5. Mr. Jones filed a petition for a new trial in 1994 based upon newly-discovered evidence (a witness named Pasquale DeMaio came forward after the guilty verdict with exculpatory information), and after a hearing wherein said evidence was presented, Judge Booth granted a new trial, see, *Memorandum of Decision* dated December 14, 1994, *Melvin Jones v. State*, 1994 Conn. Super. LEXIS 3224, attached hereto as Appendix A.

6. The petitioner also filed a direct appeal to the Connecticut Supreme Court, and that court reversed his conviction on the grounds that the trial court erroneously failed to bifurcate the evidence of the 1976 Felony Murder conviction from the evidence presented on the Curtis homicide, *State v. Jones*, 234 Conn. 324(1995).

7. The petitioner was re-tried in 1996 and was convicted by a jury of Murder and Carrying a Pistol Without a Permit on March 22, 1996, and due to the bifurcated nature of the proceedings, he was subsequently convicted of Capital Felony on March 25, 1996, after which he was sentenced to life imprisonment without the possibility of release (Fracasse, J.).

8. The petitioner filed a pro se direct appeal of his conviction and the

Appellate Court affirmed, *State v. Jones,* 50 Conn. App. 338 (1998); his pro se petition for certification to the Connecticut Supreme Court was then denied, *State v. Jones*, 248 Conn. 915(1999).

9. Since his conviction, the Petitioner has pursued various post-conviction claims of relief in both the state and federal courts, but none have raised the claim of newly-discovered evidence that is raised herein.

10. At both trials, the *sole issue in dispute* was the identity of the perpetrator.

11. The state relied entirely upon eyewitness identification evidence to establish the identity of the shooter, most of which was circumstantial because no witness observed the entire incident and/or could identify the Petitioner as the perpetrator, see, *State v. Jones,* 50 Conn. App at 361-368(detailed discussion of eyewitness identification testimony included as part of ruling on sufficiency claim)[1].

12. The state presented *no forensic evidence* that connected the Petitioner to the shooting; to the contrary, all of the physical evidence that was collected at or near the scene and was available for testing (fingerprints, hair samples and gunpowder residue) either excluded Mr. Jones or was inconclusive.

13. The state presented no motive evidence to connect the Petitioner to the shooting.

14. Since most of the identification witnesses claimed that the shooter was wearing a camouflage-style jacket and had long braided hair—two distinctive characteristics that the state relied upon to establish that the Petitioner was the

[1] When the Supreme Court reviewed the Petitioner's sufficiency claim as to the element of identification, it noted that "[a]lthough the evidence, consisting almost exclusively of identification testimony *was not overwhelming,* it was nevertheless sufficient. 234 Conn. at 332 (emphasis added). The state's identification evidence remained essentially unchanged between the Petitioner's first and second trials.

perpetrator—evidence was presented from several witnesses (Esperanza Ramos, Rosalie Mongillo, Bonaventure Console and Angel Delgado) that Mr. Jones habitually wore that type of jacket and had that hairstyle in order to connect him to the shooting, see, *State v. Jones,* 50 Conn. App. at 366-367.

15. The only piece of physical evidence that the state presented which tied Mr. Jones to the shooting was a camouflage jacket (State's Exhibit 42) that was purportedly removed from a dumpster two blocks from the homicide by a witness named Ms. Frankie Harris.

16. Ms. Harris testified that she was in the vicinity of the shooting, heard shots, observed Mr. Jones running toward her and then saw him discard the camouflage jacket he was wearing into a dumpster.

17. Ms. Harris, a police informant at that time, retrieved the jacket from the dumpster and contacted the New Haven Police to advise them about her observations regarding the dumpster jacket, whereupon it was seized and placed into evidence.

18. In one of the pockets of the dumpster jacket, the police located a work order for a wheel alignment performed on the Curtis vehicle, a piece of evidence that the state relied upon in connecting State's Exhibit 42 to the shooting; that work order was marked as State's Exhibit 45 and introduced as a full exhibit.

19. The state's theory that the dumpster jacket (State's Exhibit 42) was worn by Mr. Jones became a central theme in its prosecution, as according to the state, said evidence provided critical corroboration to the eyewitness identification testimony that Mr. Jones was the shooter.

20. When the Petitioner was arrested at his home on October 20, 1990, he was

wearing a camouflage-style jacket that was seized by the New Haven police and offered into evidence at his first trial to corroborate the state's theory that Mr. Jones habitually wore that style of jacket[2].

21. During the prosecutor's summation, repeated reference was made as to the significance of the dumpster jacket and its nexus to both the shooter and Mr. Jones, referring to State's Exhibit 42 (and the work order slip in its pocket) as "extraordinarily damning evidence"... "that has to have been connected to this murder because it contained something out of Mr. Curtis' car", trial transcript of 3/21/96 at 54, 59.

22. During deliberations, the jury asked to re-hear testimony from Rosalie Mongillo, whose testimony pertained solely to the uncommonness of camouflage jackets and a braided hairstyle in that neighborhood[3], as well as that of Frankie Harris, whose testimony provided the critical link between the dumpster jacket (State's Exhibit 42) and the crime, trial transcripts of 3/21/96 at 95-96; 3/22/96 at 3.

23. In 2007, the petitioner filed a pro se motion pursuant to C.G.S.§54-102kk requesting the appointment of counsel for assistance in any post-conviction testing of DNA evidence, and counsel was appointed in 2008.

24. Pursuant to an agreement reached with the prosecutor in December of 2009, the state and defense submitted the dumpster jacket (State's Exhibit 42) to the Connecticut Forensics Laboratory for DNA testing of both the cuff and collar areas, in

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[2] The jacket seized at the time of the petitioner's arrest was a different size than the dumpster jacket, as the former was an extra-small, while the latter was a large. The jacket taken from Mr. Jones was tested for bloodstains and gunpowder residue, both of which yielded negative results. That jacket was lost between the first and second jury trials. See, *State v. Jones,* 50 Conn. App. 338 at 356-357.

[3] According to the Appellate Court, Rosalie Mongillo, a local grocery store owner, testified that Mr. Jones frequented her store almost daily in the weeks prior to the homicide, and that he "wore army clothing and braids, and that she had not observed anyone else in that neighborhood with those distinctive trademarks." 50 Conn. App. at 367.

order to discover whether a "wearer" DNA profile could be developed.

25. The DNA Section of the Connecticut was able to extract a sufficient quantity of biological material from the cuff and collar locations of the dumpster jacket in order to conduct STR analysis which rendered DNA profiles.

26. On August 11, 2010, the DNA Section of the Lab provided a report which contained the results of its testing of the dumpster jacket, and it concluded that while both areas of the jacket contained a mixture, both Mr. Jones and Wayne Curtis were excluded as contributors to those DNA profiles, see DNA Section report, attached as Appendix B.

27. This DNA evidence—which could have established that Mr. Jones *did not* wear and/or have contact with the dumpster jacket at the time of the shooting—is highly exculpatory, particularly in light of how much evidentiary significance that exhibit was given throughout the prosecution's case.

28. The forensic evidence from the DNA Section constitutes newly discoverable evidence that was not available to the Petitioner or his counsel at the time of his trial, nor could it have been discovered by the exercise of due diligence; it would be material on a new trial as to the identity of the perpetrator/wearer of the dumpster jacket; is not merely cumulative; and is likely to produce a different result in a new trial.

29. The jury verdict resulted in Mr. Jones suffering an injustice.

30. Therefore, since the verdict and judgment against Mr. Jones are unjust and his imprisonment is illegal, reasonable cause exists for a new trial.

SECOND COUNT

1. Paragraphs 1-13 are hereby realleged and incorporated herein as paragraphs 1-13 of this Second Count.

14. At the Petitoner's trial, at least three witnesses (Nilda Mercado, Larry Hodge and Pasquale DeMaio) placed the perpetrator inside of the Curtis vehicle either prior to or during the altercation that led to the shooting; both Mercado and DeMaio testified that they observed a black male struggling with a white male inside the parked car prior to hearing shots fired.

15. Detectives collected various hair and fiber samples from the front seat, front floor, rear seat and floor (combing) and front seat and floor (combing) areas within the Curtis vehicle, and those evidentiary samples were submitted to the Connecticut Forensics Laboratory for microscopic hair analysis, along with known hair exemplars from Mr. Jones.

16. Robert O'Brien, a trace evidence examiner from the Connecticut State Forensic Laboratory, testified regarding his examination of the submitted hair evidence, and he opined that from three locations within the vehicle (right front seat, right front floor, and left rear seat and floor), human Negroid hairs were identified; only one of those samples (from the left rear seat and floor) was sufficient for comparison, and he concluded that its characteristics were dissimilar to the Petitioner's, trial transcript of 3/14/96 at 125-126.

17. Robert O'Brien further testified that the Negroid hair samples submitted from other areas within the Curtis vehicle could not be further compared, as they were identified as body (versus head) hairs, and the testing procedures were not suited to

that type of analysis.

18. Kiti Settachatgum, the state's expert witness in the area of microscopic hair analysis, testified that he received the one evidentiary sample from Robert O'Brien (the Negroid hair collected from the left rear seat and floor area), and opined that there were some dissimilarities between that sample and Mr. Jones' known, but he could not make a definitive exclusion because there were insufficient characteristics in the known sample for comparison purposes[4], trial transcript of 3/13/96 at 121-136.

19. Kiti Settachatgum further testified that several Negroid-type hairs were submitted for analysis, but that he was not requested to examine those, one of which was located on the passenger seat area, trial transcript of 3/13/93 at 132-133.

20. Pursuant to an agreement reached with the Chief State's Attorney's Office in October of 2012, most of the hair fragments collected from various locations within the Curtis vehicle, including the one testified to at the Petitioner's trial, were submitted for DNA testing at the Connecticut State Laboratory.

21. On October 9, 2012, the Criminalistics Section of the Connecticut Forensics Lab re-examined the evidentiary hair samples that were submitted, and it was determined that Negroid-type hairs were identified from three locations of the Curtis vehicle (right front seat, right front floor, and rear left seat and floor[5]), see attached report, Appendix C.

22. Since there was no cellular material available for DNA/STR testing on any of those submitted hair samples, each was forwarded for examination to the

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[4] In this regard, Mr. Settachatgum's testimony was not consistent with Mr. O'Brien's, as the latter was able to make an exclusion as to the single Negroid at issue. Mr. Settachatgum, however, was presented as the more-qualified expert in the field of microscopic hair examination.

[5] The latter of these three was the same submission that had been testified to at the Petitioner's trial; the

mitochondrial (hereinafter "mtDNA") unit of the DNA Section at the Connecticut Forensics Laboratory.

23. On December 28, 2012, the results of mtDNA testing were provided in a report (attached hereto as Appendix D) which contained results and conclusions regarding the testing and comparisons between the submitted evidentiary hair samples and the known DNA profiles of both Melvin Jones and Wayne Curtis.

24. Of the evidentiary Negroid-type hair fragments examined, Melvin Jones was excluded as the source of two hairs, and testing and/or comparison of four other submitted samples was inconclusive due to either an insufficient quantity, or to the presence of a mixture.

25. The Negroid hair fragments collected from the right front floor (referred to in Appendix D as 20BZ1) is particularly material to the identity of the perpetrator, as several witnesses placed him in that area of the Curtis vehicle prior to and/or at the time of the incident.

26. The other Negroid hair sample that generated an mtDNA profile had been collected from the left rear seat and floor area (referred to in Appendix D as 20EZ1), and that profile had the same genetic markers as 20BZ1; had the jury been able to consider that mtDNA evidence, it could have inferred that a black male other than Mr. Jones was in the Curtis vehicle[6].

27. The forensic evidence from the mtDNA Section constitutes newly discoverable evidence that was not available to the Petitioner or his counsel at the time

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other two were not further analyzed for microscopic comparison purposes.

[6] The Petitioner recognizes that in most cases—as here—the science of DNA cannot provide a timeframe as to when the evidence was placed at a crime scene. The fact that here, however, a jury could have inferred that two separate Negroid hair samples were recovered *from the same person and not Mr. Jones*

of his trial, nor could it have been discovered by the exercise of due diligence; it would be material on a new trial as to the identity of the perpetrator within the Curtis vehicle; it is not merely cumulative; and is likely to produce a different result in a new trial.

28. The jury verdict resulted in Mr. Jones suffering an injustice.

29. Therefore, since the verdict and judgment against Mr. Jones are unjust and his imprisonment is illegal, reasonable cause exists for a new trial.

WHEREFORE, the Petitioner requests the following relief:

1. An evidentiary hearing;
2. A new trial; and,
3. Such further relief as this court deems just or equitable.

THE PETITIONER,
MELVIN JONES

BY: _____
BETH A. MERKIN

_____
PATRICK J. CULLIGAN

HIS ATTORNEYS
OFFICE OF THE PUBLIC DEFENDER
235 CHURCH STREET
NEW HAVEN, CT 06510

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makes the probative value of that forensic much greater.

CERTIFICATION

This is to certify that a copy of the foregoing was telefaxed and hand-delivered, this day of July, 2013 to:

Attorney Michael Dearington
State's Attorney
New Haven Judicial District
235 Church Street
New Haven, CT 06510

BETH A. MERKIN, Esq.

*1994 Conn. Super. LEXIS 3224, **

MELVIN JONES v. STATE OF CONNECTICUT

NO. CV93 0354971

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF NEW HAVEN, AT NEW HAVEN

1994 Conn. Super. LEXIS 3224

December 12, 1994, Decided
December 14, 1994, FILED, Judgment Entered

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner sought a new trial pursuant to Conn. Gen. Prac. Book § 904 based on newly discovered evidence after a jury convicted him of capital murder and sentenced him to a mandatory life sentence. Although petitioner had represented himself at the trial, he was assisted throughout the trial by two appointed standby counsel, one of whom specialized in capital cases.

OVERVIEW: Defendant received a copy of a police report in the middle of his trial. The report contained information, which if followed up, would have disclosed the existence of a new witness. The court granted a new trial. The court held that in considering a motion for a new trial based on newly discovered evidence, what was required for due diligence in following up a police report provided in advance of trial was not required when the report was produced in the middle of the trial. The court noted that there was no serious claim that the witness's denial of petitioner's guilt was merely cumulative or that it would not be material at a new trial. The court also noted that a new trial should not be granted because of newly discovered evidence unless an injustice was done or it was probable that on a new trial a different result would be reached. The court found that the petitioner had established by a preponderance of the evidence that if the case were retried, a different result was likely.

OUTCOME: The court ordered a new trial.

CORE TERMS: new trial, murder, diligence, looked, jacket, different result, identification, neighborhood, perpetrator, street, newly discovered evidence, braids, likely to produce, preponderance, courtroom, interview, painting, door, male, new evidence, questioned, recanting, probable cause hearing, evidence presented, capital felony, white man, good look, pro se, deposition, convinced

LexisNexis(R) Headnotes ◆ Hide Headnotes

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

HN1 A new criminal trial is to be granted if petitioner can demonstrate by a preponderance of the evidence that the pre-offered evidence (1) is newly discovered, such that it could not have been

APPENDIX A

discovered earlier by the exercise of due diligence; (2) would be material on a new trial; (3) is not merely cumulative; and, (4) is likely to produce a different result at a new trial. More Like This Headnote

Civil Procedure > Judgments > Relief From Judgment > Motions for New Trials

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

HN2 While there is no authority that a pro se defendant, even an incarcerated pro se defendant, is entitled to any special advantages at trial, an examination of due diligence in the discovery of evidence must be analyzed in a reasonable manner. In considering a motion for a new trial based on newly discovered evidence, what might be required for due diligence in following up a police report provided well in advance of trial may not be required when that report is produced for the first time in the middle of the trial. More Like This Headnote

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

HN3 A new criminal trial should be granted because of newly discovered evidence only if an injustice was done or it is probable that on a new trial a different result would be reached. More Like This Headnote

Civil Procedure > Judgments > Relief From Judgment > Motions for New Trials

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

HN4 In determining the potential impact of new evidence for purposes of deciding a motion for a new trial, the trial court must weigh that evidence in conjunction with the evidence presented at the original trial. More Like This Headnote

JUDGES: Kevin E. Booth, Judge

OPINION BY: Kevin E. Booth

OPINION: MEMORANDUM OF DECISION

FACTUAL BACKGROUND

On July 22, 1992, **Melvin Jones** was convicted of capital felony murder after a jury trial before the Honorable William Hadden in New Haven Superior Court. At that trial Mr. Jones represented himself. Following his conviction Judge Hadden sentenced him to a mandatory life sentence under the capital felony statute. Although Jones represented himself at the trial, he was assisted throughout the trial by two appointed standby counsel one of whom specialized in capital cases.

After less than two hours of deliberation the jury found Jones guilty of capital felony Conn. Gen. Stat. § 53a-54b(3) and carrying a pistol without a permit Conn. Gen. Stat. § 29-35.

THE STATE'S CASE AT TRIAL

During the trial the state presented evidence which showed that on October 17, 1990 at approximately 7:35 A.M. Wayne Curtis was murdered behind the steering wheel of his car while parked on Howard Avenue in New **[*2]** Haven. The medical examiner testified that death was from a gunshot wound to the abdomen. The bullet had entered just to the right of Curtis navel with a bullet path from the victim's right to left and downwards. The victim also had multiple severe lacerations on the left side of his head, consistent with having the car door slammed repeatedly into his head. The evidence supported the

conclusion that a large quantity of blood was found on the door at the head level and that the head injuries were caused before the gunshot wound. The medical examiner further testified that the position of the wounds and the position of the victim's body were consistent with the victim curling his right leg up and turning to his left side in a defensive gesture to avoid more injury by the door.

Witness Bonaventure Console had lived for 33 years directly across the street from where the crime occurred. He regularly went to work around 6:30 to 6:45 A.M. At about that time Console saw Jones walking on Howard Avenue three or four times a week. When Console left for work on the morning of the murder he saw Curtis alive, parked on Howard Avenue near Lamberton. At the same time, Console observed Jones walking **[*3]** toward Curtis' car from the corner of Howard and Lamberton.

Witness Angel Delgado looked out of his window which was across the street from Curtis' car at about 7:25 A.M. on the morning of the murder. He saw the "back of the head of the person...like long braids, and he wore a cammy hat and cammy clothes." The man was a "black male". Delgado recognized the man from seeing him in the neighborhood "three or four times" including "a couple of days before this happened." The man was Jones, whom Delgado identified in court. Delgado was seventeen at the time of the incident and nineteen at the time of the trial. He was in high school at both times. He was nervous when he testified and had difficulty describing what he witnessed chronologically. The white male to whom Jones was talking according to Delgado's testimony was "inside the car." The talking was "an argument, yes, an argument. I didn't hear the words they were saying." After turning back into his room he heard shots, and when he looked back Jones was gone. He saw a "little girl about ten, nine zooming by the car." Delgado was sure that Jones was the man he had seen, although it surprised him that he could be so positive. Delgado **[*4]** stated that he had not seen Jones face clearly but recognized him because he was "the same height, braids, black male" and he "knew they were the same person."

Witness Nilda Mercado was eleven years old and did not testify at the trial because the prosecutor had promised her that she would not have to. Her psychotherapist testified that Ms. Mercado's testifying would have serious psychological consequences. Her statement to the police was admitted as a full exhibit without objection from Jones. Certain other of her statements were admitted as excited utterances. Mercado's statements showed that at approximately 7:35 A.M. while on her way to her cousin's house before school, Mercado witnessed the murder. "I saw him with his head in the car and the other man was screaming and I guess he was choking him because his hand was in the car...he was in the left side [of the car] choking him." Mercado's statement further read "I saw him grab him by his neck and punch him in the face like three times, and I saw him putting the white man head out of the car and the other man hitting him with the -- with the door of the car, right-handed door of the car in his neck and the white man was screaming **[*5]** and then I saw the man carrying something in his hand like a gun, then he shot him twice, and I guess the white man died." Mercado told her aunt that the shooter was black and had "Army clothes on and braids and he had a pretty face." She further said "my aunt knew him." The aunt, Esperanza Ramos, knew only Jones who fit the description given to her by Mercado.

Witness Frankie Howard testified that she heard shots from the area of Howard and Lamberton early on the morning of the murder. A short time later, she saw Jones run from that area and discard a camouflage jacket in a dumpster. Harris retrieved the jacket hoping it contained some cocaine. She returned to her room and told her boyfriend what had happened and who had thrown the jacket. Her boyfriend, who had done some time at Somers with Jones told her "**Melvin Jones** was no joke, he was a killer." Two days later she turned the jacket over to the police. In the jacket was a repair ticket for work done on Curtis' car. Initially Harris had identified pictures of both Jones and another person as looking like the man who threw the jacket. Later when she heard that Jones had been arrested and was in jail, she went back to the police **[*6]** and made a positive oral and photo identification of him alone as the man she had seen. In the courtroom Harris positively identified Jones as the man who threw the jacket in the dumpster.

Harris was an addict in October of 1990 but had not taken any drugs on the day before she saw the defendant discard the jacket. At trial, however, it was undisputed that Harris had been drug free for eight months, was involved in a twelve step program and had left the New Haven area. Harris also admitted that she had at times provided information to police in exchange for money. It was undisputed that she had been told there would be no payment in this case for information. Finally Harris at the time of the trial was

very ill with HIV.

Witness Larry Hodge also testified at the trial. Hodge's testimony was in some respects inconsistent with his pretrial statements. Those statements in both transcribed and tape recorded form were admitted as substantive evidence under State v. Whelan, 200 Conn. 743, 513 A.2d 86, cert. denied 749 U.S. 994 (1986). Hodge testified that he had seen a car at about 3:00 or 4:00 A.M. at the Sunoco Station at Route 80 in New Haven. The victim was putting a dollar and **[*7]** change worth of gas in the car and Hodge offered Curtis a few dollars to give him a ride to Front Street. Hodge left the car at Front Street in front of Anastasio's Garage and began to cross the street. At that point he heard a black male yell "yo, yo" to the Curtis car. The man had a "bunch of braids" and Hodge had "seen [him] around the neighborhood." The man looked "similar" to Jones in the courtroom. Jones was a person Hodge had seen in the neighborhood. Hodge then equivocated about the strength of his identification of Jones. He admitted however, that he had told Detective Maher at the time of the photo identification that "there's no doubt in my mind that was the same guy, that was the same guy seated in the car." Hodge also claimed to be, "high as a kite," on the night of the murder, but he had never mentioned that until the day of his testimony. When questioned directly by Jones, Hodge said Jones was not the person he saw getting in the car. Hodge's earlier statement is unequivocal in its identification of Jones as the man who entered the victim's car several hours before the murder.

Finally, witness Rosalie Mongillo, a neighborhood convenience store owner, testified that **[*8]** Jones was a regular in the neighborhood at that time. He was the only person in that area who matched the description given by Mercado and Delgado of a person from the neighborhood who had braids in his hair and wore camouflage clothing.

The foregoing evidence is a reasonable summary of the evidence presented to the jury and based upon which the jury returned the guilty verdict.

PETITION FOR NEW TRIAL

Presently before this court is the petitioner's Petition For a New Trial pursuant to Connecticut Practice Book § 904. In the petition Jones claims that one Pasquale DeMaio has "newly discovered evidence" requiring a new trial. At a deposition taken on March 30, 1994, Mr. DeMaio testified that while painting a house in the area he saw or heard part of the incident. He also testified that when questioned by the police a short time after the incident he denied seeing anything and in fact told the police that he was on another street having coffee. Faced with DeMaio's denial of any knowledge of the crime, Detective Vaughn Maher gave DeMaio his business card and told DeMaio to contact Maher if he remembered any additional information. DeMaio was not called to testify at trial **[*9]** by either party.

On the third day of trial, the state's attorney gave **Melvin Jones** a police report signed by Detective Percy Gethers which had not been produced earlier. Other police reports had been provided to the public defender on December 6, 1990 prior to the probable cause hearing. Among other things, Gether's report mentioned an interview with Pat DeMaio. DeMaio told Gethers that he was painting the house at 358-360 Howard Avenue and was there the entire time until the police arrived. Gether's report states

> "I asked him if he observed anything or what did he hear and he said nothing. I asked him if he observed anything unusual, and he said yes...he said, 'I don't want to get involved, I just want to do my painting and get the hell out of here.' The undersigned tried every possible avenue but however to no avail."

In short, the defendant Jones was convicted in July of 1992. In December of 1990, at a time when he was represented by two appointed public defenders, he was given a copy of DeMaio's statement which in effect said that DeMaio was on a coffee break and knew nothing. On the third day of trial, he was given the statement signed by Detective Gethers which could **[*10]** fairly be read to lead one to the conclusion that

DeMaio may have information about the incident but refused to disclose it. It is significant that the same report concerning the DeMaio interview stated that Mercado had reviewed many photographs but was not able to identify anyone as the person she observed at the scene of the crime. There is some evidence that Jones, by now pro se, was more concerned with the report's weakening of the Mercado identification than he was with the possibility of a new witness.

THE AFTER DISCOVERED WITNESS

After the trial, some time prior to July of 1993, an individual named Frank Lo Sacco contacted Mr. DeMaio after seeing his name in police reports that had been disclosed to the defense. Mr. DeMaio was then contacted several times by a woman named Emma Jones. Ms. Jones is not related to the defendant but was an enthusiastic supporter of his, both during the original trial and at this trial. At Mr. Jones' sentencing, she declared that she was in love with him.

According to DeMaio, Ms. Jones explained to him in some detail why she thought the petitioner was innocent. Her reasons included her claim that the state's witnesses were "addicts" **[*11]** paid by the police, that a "valuable" piece of evidence, the coat, was not able to be produced at trial. Ms. Jones then showed DeMaio pictures of the petitioner taken while he was incarcerated which DeMaio decided looked nothing like the black man involved in the shooting.

At a deposition given by Pasquale DeMaio at the law offices of John Williams on March 30, 1994 and again at the trial before this court on September 1, 1994, Pasquale DeMaio unequivocally testified that he got a good look at the murderer and that the murderer was not **Melvin Jones.**

There can be little doubt that on the occasion of the first interview of DeMaio by the police, DeMaio told a false story to the investigator if his current story is to be believed. There also can be little doubt that some of the specifics of DeMaio's story appear to differ from the specifics of other eye witnesses. Thus, DeMaio claims that no one was outside of the car until after the gunshots, that the struggle inside the car was mostly pushing and shoving, that the driver's side door was never opened, that the shooter was never in the street on the driver's side of the car and that no one was in the immediate vicinity of the car during **[*12]** the struggle and shooting.

If one were to evaluate DeMaio's testimony in the light most favorable to **Melvin Jones,** DeMaio initially was afraid to get involved in the matter and denied any knowledge. Subsequently, while he has been reluctant to cooperate with the police in trying to pick out the alleged perpetrator, he would claim that his conscience did not allow him to see an innocent man convicted and accordingly, he tells substantially the same story in both his deposition and at the trial before this court.

The general tenor of Mr. DeMaio's testimony at this trial can be seen from a quotation from page 46 of the transcript of September 1, 1994 in which the questioning is being done by the state's attorney.

> **Question:** Now, I think you testified here today that you looked at this man who got out of the car for two or three seconds and what was the distance between you and him at the time that you had this look at him for two or three seconds?
>
> **Answer:** Any where from thirty to fifty feet. Somewhere in that area.
>
> **Question:** Okay. Farther than the distance from you to the corner of the courtroom, where the young lady is sitting over there, I think **[*13]** you know this person?
>
> **Answer:** Maybe a little bit farther. Yes.
>
> **Question:** Okay, you had never seen that person before, am I correct?
>
> **Answer:** No, I haven't.

Question: Or since?

Answer: No, I haven't.

Question: And, today in the courtroom is the first time you have ever seen Mr. Jones, correct?

Answer: Yes, it is.

Question: According to your testimony?

Answer: Yes, it is.

Question: So he's not a person that you knew before this incident?

Answer: No, I did not.

Question: And, you never saw the black male on the street side of the parked car, correct?

Answer: Well, when he got out, yeah, I did but not beforehand, no.

Mr. DeMaio while subject to contradiction on some details was unequivocal in his testimony that **Melvin Jones** did not commit the murder. A portion of the transcript before this court in which the questioning is being done by Attorney Williams beginning at page 11 of the September 1 transcript fairly summarizes Mr. DeMaio's testimony.

Question: Now, sir, I'll ask you if you would, to tell us what you saw? **[*14]**

Answer: Alright. I was painting and I watched the car pull up just past the house and then I started hearing some yelling and muffled yelling and just a ruckus going on so I looked over to see what was happening and as I looked over I noticed two men struggling in a car and a little while after that I heard a couple of gunshots and then it was silent for a little while and then a man got out of the car and he, we kind of looked at each other for a few seconds and then he just walked through the alleyway.

Question: How good a look did you get at the man?

Answer: About a good as look as I'm looking at you.

Question: Alright. Now I'm going to ask you sir to take a look at the gentleman sitting to the left of Attorney Engstrom at counsel table here, can you tell us whether or not that's the man?

Answer: Yeah, he's -- no, that's not him.

Question: Now, sir did there come a time when you were questioned by police officers about this matter?

Answer: Yes, there did.

The man sitting next to Attorney Engstrom pointed out by Attorney Williams and whom the witness unequivocally denied as the murderer was the petitioner **[*15] Melvin Jones.**

STANDARD FOR A NEW TRIAL

Connecticut has long recognized petitions for new trials based upon newly discovered evidence. The HN1 new trial is to be granted if the petitioner can demonstrate by a preponderance of the evidence that the pre-offered evidence: (1) is newly discovered, such that it could not have been discovered earlier by the exercise of due diligence, (2) would be material on a new trial, (3) is not merely cumulative, and (4) is likely to produce a different result at a new trial. Johnson v. State, 36 Conn. App. 59, 63, 647 A.2d 373 (1994).

In the instant case there is no serious claim that Mr. DeMaio's eye witness denial of Mr. Jones' guilt is merely cumulative or that it would not be material at a new trial. The burden which Jones as a plaintiff in a civil case must bear lies in his attempting to show that the evidence could not have been discovered earlier in the exercise of due diligence. If he bears that burden he must demonstrate that the evidence is likely to produce a different result in a new trial.

The court finds that under the specific facts of this case Mr. Jones exercised due diligence in gathering evidence for his defense. **[*16]** The public defender was provided with 21 police reports prior to the probable cause hearing. These reports contain multiple interviews with many individuals who lived in the area, possible witnesses and others who may have had relevant information concerning the victim or the preliminary suspect. It is clear that on June 12, the state's attorney disclosed four additional police reports which had not been available previously. A Gether's report (12/7/90), a Grice report (10/18/90), a Steven's report (10/20/90) and a Smith report (12/11/90). The report which disclosed the possibility that Pasquale DeMaio had knowledge, but would not cooperate, was given to Mr. Jones on July 15, 1992, the third day of trial.

The court finds that there is no failure to exercise due diligence by Mr. Jones or the public defenders failing to follow up on the first statement in which DeMaio says he had gone on a coffee break and had no information. The court is not called upon to decide what the result would be if the second DeMaio statement given to Detective Gethers had been provided to Mr. Jones or his public defenders at the time of the probable cause hearing in 1990 or even at a later date substantially **[*17]** before the trial. However, when that statement is made available to Jones for the first time after the commencement of the trial, the court is not prepared to find that the failure to follow up on the statement equates with a lack of due diligence in discovering evidence.

HN2 While there is no authority that a pro se defendant (even an incarcerated pro se defendant) is entitled to any special advantages at trial, the court is convinced that an examination of due diligence in the discovery of evidence must be analyzed in a reasonable manner. The court is likewise convinced that what might be required for due diligence in following up a police report provided well in advance of trial may not be required when that report is produced for the first time in the middle of the trial. Relying heavily on the late disclosure of the second DeMaio statement, the court finds that Mr. Jones could not have discovered the newly discovered evidence earlier in the exercise of due diligence.

Finally, Mr. Jones must demonstrate by a preponderance of the evidence that the new evidence is likely to produce a different result in a new trial. Asherman v. State, 202 Conn. 429, 434, 521 A.2d 578 **[*18]** (1987). Courts should be guided by the general principle that HN3 a new trial should be granted because of newly discovered evidence only if an injustice was done or it is probable that on a new trial a different result would be reached. Summerville v. Warden, 229 Conn. 397, 641 A.2d 1356 (1994).

Connecticut cases have employed the Asherman standard in several different context involving newly discovered evidence. Lombardo v. State, 172 Conn. 385, 374 A.2d 1065 (1977) (new testimony of two witnesses one of whom did not testify at trial and one of whom invoked the Fifth Amendment at trial); Taborsky v. State, 142 Conn. 619, 624-625, 116 A.2d 433 (1955) (new evidence of mental disease); Krooner v. State, 137 Conn. 58, 75 A.2d 51 (1950) (evidence by friends, doctors and fellow shipmates the defendant was drunk or mentally ill at the time of the murder); Link v. State, 114 Conn. 102, 157 A. 867 (1932) (newly discovered witness).

The court recognizes that at the criminal trial of this matter the burden would be on the state to prove beyond a reasonable doubt that Jones was guilty of the crimes charged. The court further acknowledges that in this civil petition **[*19]** for a new trial the burden is on Jones to prove by a preponderance of the evidence the elements necessary for a new trial and in particular to prove that DeMaio's testimony is likely to produce a different result at that new trial.

This court recognizes that in many ways Mr. DeMaio is somewhat like the witness Wallace in Johnson v. State, 36 Conn. App. 59, 647 A.2d 373 (1994). The difference being that Wallace testified at the Johnson trial while DeMaio, because of the story he told the police, was not called by either party in the Jones trial. Courts are understandably very careful in granting new trials based upon recanting witnesses. The trial court in Johnson characterized Wallace's testimony as having been influenced by meeting with the petitioner's mother and the sympathy associated with realizing that his identification resulted in a man going to prison. Johnson at page 71. A substantial part of the state's argument in the instant case is that DeMaio's testimony was influenced by Lo Sacco and Ms. Jones.

However, unlike the recanting witness Wallace, DeMaio has never recanted or changed his story with regard to identification. On the occasions that DeMaio has **[*20]** made any identification, he has been insistent that while he cannot or will not identify the perpetrator, he got a good look at the perpetrator and the perpetrator was not **Melvin Jones.**

The Appellate Court has recently held:

> HN4"In determining the potential impact of new evidence, the trial court must weigh that evidence in conjunction with the evidence presented at the original trial. Fisher v. State, 33 Conn. App. 122, 124, 634 A.2d 1177 (1993).

Cognizant of this requirement, this court has reviewed in considerable detail the evidence presented at the first trial. This court has also had the opportunity to observe Mr. DeMaio and to exercise its discretion in determining whether the petitioner has established substantial grounds for a new trial.

After listening to Mr. DeMaio, this court is convinced that Mr. DeMaio honestly believes that the perpetrator of the murder was not **Melvin Jones.** While Mr. DeMaio may have been less than candid in his cooperation with the police, perhaps because of fears of involvement in a drug related crime as perceived by him, the court does not believe that DeMaio is lying when he says Jones did not commit the crime. Further, the court **[*21]** does not believe that DeMaio is lying when he says he witnessed the crime and got a good look at the perpetrator. The court is somewhat more concerned whether Mr. Lo Sacco and Ms. Jones may have intentionally or unintentionally planted doubt in Mr. DeMaio's mind. Nevertheless Mr. DeMaio is not a recanting witness, but a witness who was never heard at the trial. Given this fact the court finds that **Melvin Jones** has shown by a preponderance of the evidence that if the case is retried a different result is likely at the new trial.

For the foregoing reasons, the court orders a new trial in the matter of State v. **Melvin Jones.** Nothing in this opinion should be interpreted as indicating any intention on the part of the court that Mr. Jones be released from confinement unless (1) all charges against him are dismissed or (2) he post bond if such bond is set by an appropriate court or (3) he is acquitted following a new trial.

The court by,

Kevin E. Booth, Judge

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF SCIENTIFIC SERVICES
FORENSIC SCIENCE LABORATORY

Kenneth B. Zercie
Director

Major William R. Podgorski
Division Administrator

DNA SECTION
DNA REPORT

LABORATORY CASE #:	**ID90J1802C2**
SUBMITTING AGENCY:	**Public Defender's Office**
AGENCY CASE #:	**114015**
TOWN OF INCIDENT:	**New Haven, CT**
DATE OF REQUEST:	**06-11-10**
DATE OF REPORT:	**08-11-10**
REPORT TO:	**Attorney Beth A. Merkin**

EVIDENCE EXAMINED:

#A	Known bloodstain, W. Curtis
#1-S1	Swabbing – collar of jacket
#1-S2	Swabbing – cuffs of jacket
#101	Known bloodstain, M. Jones

RESULTS OF EXAMINATION:

1. DNA was extracted from items #A, #1-S1, #1-S2 and #101. DNA was purified according to standard laboratory protocols.

2A. Extracted material obtained from items #A, #1-S1, #1-S2 and #101 was amplified by the AmpF*l*STR Identifiler procedure as described in laboratory protocols. STR alleles were separated and detected by standard laboratory protocols.

APPENDIX B

DNA REPORT

RESULTS OF EXAMINATION CONTINUED:

2B. The following results were obtained on the amplified items:

Identifiler Alleles Detected

Item #	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S539	D2S1338
A	12,13	29,30	8,12	10,11	14,16	6,9	11,12	11,13	24
1-S1	11,12,13,14,15	28,30,31,*	10,11	11	16,*	9.3,*	*	10,11,*	18,23,25
1-S2	11,13,14	NR	NR	NR	*	8	NR	NR	NR
101	15,16	30,32.2	9,10	7,10	15,17	8,9	11,12	9,11	21,24

Item #	D19S433	vWA	TPOX	D18S51	AMEL	D5S818	FGA
A	14	15,17	8	13,17	X,Y	11,13	19,24
1-S1	11,12,13,14,14.2	15,17,19	8	14	X,Y	8,11,12,13	21
1-S2	11,12,13	*	NR	NR	X,Y	11	NR
101	13,14	16,18	8,10	16,17	X,Y	11,12	22.3,23

* = additional minor peak(s) detected. NR = no results.

3. Items #1-S1 and #1-S2 were consumed in testing. Items #A and #101 were retained at the laboratory.

4. The results demonstrate that items #1-S1 (swabbing – collar of jacket) and #1-S2 (swabbing – cuffs of jacket) are mixtures. W. Curtis (item #A) and M. Jones (item #101) are eliminated as contributors to the DNA profiles from items #1-S1 and #1-S2.

Heather H. Degnan, Ph.D.
Forensic Science Examiner 1

Patricia M. Johannes
Forensic Science Examiner 1

STATE OF CONNECTICUT

DEPARTMENT OF
EMERGENCY SERVICES and PUBLIC PROTECTION
DIVISION OF SCIENTIFIC SERVICES
FORENSIC SCIENCE LABORATORY
CRIMINALISTICS SECTION

SUPPLEMENTAL TRACE REPORT #4

Michael Wolf
Interim Division Director

Major William R. Podgorski
Division Administrator

LABORATORY CASE #: ID90J1802C2

SUBMITTING AGENCY: SAO Post-Conviction DNA Unit
300 Corporate Place
Rocky Hill, CT 06067

AGENCY CASE #: 114015

TOWN OF INCIDENT: New Haven

DATE OF REQUEST: 10/9/2012

DATE OF REPORT: 10/10/2012

REPORT TO: Chief of Police

EVIDENCE EXAMINED:

1B Trace Material from hat
20A Trace Material from rt. front seat
20B Trace Material from rt. front floor
20E Trace Material from lt. rear seat and floor

RESULTS OF EXAMINATION:

**For a complete list of evidence submitted and results obtained, See Criminalistics Reports dated 01/09/1991, 08/21/1991, 04/23/1992 and 09/25/2012.

1. A human Negroid-type hair located in item #1B was examined microscopically.

   A. No tissue was located on this hair.

   B. This hair was forwarded to the Mitochondrial DNA Section of the Laboratory for analysis.

   C. No other trace material was located in item #1B.

278 Colony Street, Meriden, Connecticut 06451
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APPENDIX C

RESULTS OF EXAMINATION CONTINUED:

2. Trace materials located in item #20A were examined microscopically.

   A. A human Negroid-type hair and a human Caucasian-type head hair were located in item #20A.

      1. No tissue was located on these hairs.

      2. These hairs were forwarded to the Mitochondrial DNA Section of the Laboratory for analysis.

   B. Other trace materials from item #20A were retained at the Laboratory.

3. Trace materials located in item #20B were examined microscopically.

   A. Two (2) human Negroid-type hair fragments were located in item #20B.

      1. No tissue was located on these hairs.

      2. These hairs were forwarded to the Mitochondrial DNA Section of the Laboratory for analysis.

   B. Other hairs and trace material in item #20B were retained at the Laboratory.

4. Trace materials located in item #20E were examined microscopically.

   A. A human Negroid-type hair and a human Negroid-type hair fragment were located in item #20E.

      1. No tissue was located on these hairs.

      2. These hairs were forwarded to the Mitochondrial DNA Section of the Laboratory for analysis.

   B. Other hairs and trace material in item #20E were retained at the Laboratory.

RESULTS OF EXAMINATION CONTINUED:

**Further analysis upon request.

This report reflects the test results, conclusions, interpretations and/or findings of the Analyst and Technical Reviewer as indicated by their signatures below.

Analyst
Maria G. Warner
Forensic Science Examiner 1

Technical Reviewer
Anita M. Vailonis
Forensic Science Examiner 2

STATE OF CONNECTICUT

DEPARTMENT OF
EMERGENCY SERVICES and PUBLIC PROTECTION
DIVISION OF SCIENTIFIC SERVICES
FORENSIC SCIENCE LABORATORY

Michael Wolf
Interim Division Director

Major William R. Podgorski
Division Administrator

DNA SECTION
MITOCHONDRIAL DNA REPORT

LABORATORY CASE #:	**ID90J1802C2**
SUBMITTING AGENCY:	**New Haven Police Department One Union Avenue New Haven, CT 06519**
AGENCY CASE #:	**114015**
TOWN OF INCIDENT:	**New Haven, CT**
DATE OF REQUEST:	**10/23/12**
DATE OF REPORT:	**12/28/12**
REPORT TO:	**Chief of Above**

EVIDENCE SUBMITTED:

#A	Known bloodstain- W. Curtis
#1B	Hair
#20AZ1	Hair
#20AZ2	Hair
#20BZ1	Hair
#20BZ2	Hair
#20EZ1	Hair
#20EZ2	Hair
#101	Known bloodstain- M. Jones

RESULTS OF EXAMINATION:

1. DNA was extracted from items #1B, #20AZ1, #20AZ2, #20BZ1, #20BZ2, #20EZ1, #20EZ2 and submissions #A and #101. DNA was purified according to standard CT Forensic laboratory protocols.

2. Extracted material obtained from items #1B, #20AZ1, #20AZ2, #20BZ1, #20BZ2, #20EZ1, #20EZ2 and submissions #A and #101 was amplified and sequenced at hypervariable region 1

mtDNA REPORT

RESULTS OF EXAMINATION CONTINUED:

(HV1) and hypervariable region 2 (HV2). The quality and quantity of the DNA obtained from each sample was analyzed according to standard CT Forensic Laboratory protocols.

3. The mtDNA sequencing results are detailed below. Results are listed as differences from the published revised Cambridge Reference Sequence (rCRS).

Item	#20AZ2 (Hair)	#20BZ1 (Hair)	#20EZ1 (Hair)	#A (Known bloodstain- W. Curtis)	#101 (Known bloodstain- M. Jones)
Range (bp)		16000-16389	16000-16389	16004-16389	16000-16390
HV1	No Data	16093 C 16223 T 16265 T	16093 Y(T/C) 16223 T 16265 T	No differences	16129 A 16223 T 16278 T 16294 T 16309 G 16390 A
Range (bp)	50-284	50-284	50-404	50-405	50-405
HV2	152 C 263 G	73 G 150 T 195 C 263 G	73 G 150 T 195 C 263 G 315.1 C	152 C 263 G 309.1 C 309.2 C 315.1 C	73 G 143 A 152 C 195 C 263 G 309.1 C 315.1 C

mtDNA REPORT

RESULTS OF EXAMINATION CONTINUED:

4. Items #1B, #20AZ1, #20AZ2, #20BZ1, #20BZ2, #20EZ1 and #20EZ2 were consumed in testing. Submissions #A and #101 were retained at the laboratory.

CONCLUSIONS:

5. Mitochondrial DNA (mtDNA) sequences were obtained from items #1B (hair), #20AZ1 (hair), #20AZ2 [at nucleotide positions 50-284 only, (hair)], #20BZ1 [at nucleotide positions 16000-16389 and 50-284 only, (hair)], #20BZ2 (hair), #20EZ1 (hair), #20EZ2 (hair) and submissions #A (known bloodstain- W. Curtis) and #101 (known bloodstain- M. Jones). The mtDNA sequences obtained from item #20AZ2 and submission #A are the same. Therefore, W. Curtis (or another member of the same maternal lineage) cannot be excluded as the source of item #20AZ2.

Searching the mtDNA population database (CODIS + mito Popstats version 1.4, CODISmpPop_4000v2 containing 4000 individuals, at positions 73 – 284) the mtDNA sequence obtained from item #20AZ2 and submission #A has been observed in African American, Caucasian, and Hispanic populations as follows:

Group	Number of Observations	Individuals in Group	Upper Bound Frequency Estimate
African-American	0	643	0.46%
Caucasian	91	1742	6.27%
Hispanic	4	618	1.28%

In a search of population groups of limited size, this sequence was also seen 1 time in a population of 44 individuals from Egypt.

The mtDNA sequences obtained from items #20BZ1, #20EZ1 and submission #A are different. Therefore, W. Curtis is excluded as the source of items #20BZ1 (hair) and #20EZ1 (hair).

The mtDNA sequences obtained from items #20AZ2, #20BZ1, #20EZ1 and submission #101 are different. Therefore, M. Jones is excluded as the source of items #20AZ2 (hair), #20BZ1 (hair) and #20EZ1 (hair).

mtDNA REPORT

CONCLUSIONS CONTINUED:

The mtDNA sequence obtained for item #20AZ1 was not of requisite quality. Therefore, no comparisons could be made for this item.

The mtDNA sequences obtained from items #1B, #20BZ2 and #20EZ2 indicate the presence of a mixture of mtDNA from more than one individual. Therefore, no conclusions can be made for these items.

The mtDNA sequences obtained from items #20BZ1 and #20EZ1 are concordant at nucleotide positions 16000-16389 and 50-284 only. Therefore, items #20BZ1 and #20EZ1 cannot be excluded as coming from a common source.

This report reflects the test results, conclusions, interpretations, and/or the findings of the analyst as indicated by their signature below.

Kristen A. Madel (Analyst)
Forensic Science Examiner 1

Kristin M. Sasinouski (Technical Reviewer)
Forensic Science Examiner 1