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ANGELO REYES *v.* STATE OF CONNECTICUT (AC 45529)

Alvord, Prescott and Bishop, Js.

Syllabus

The petitioner, who had been convicted of various crimes in connection with two arsons, filed a petition for a new trial, claiming that newly discovered third-party culpability evidence showed that another individual, V, had been responsible for the arsons of which the petitioner was convicted and that the state had failed to disclose to the petitioner certain impeachment evidence prior to his underlying criminal trial in violation of *Brady* v. *Maryland* (373 U.S. 83). The petitioner had paid O and S to set fire to a residential property, which the petitioner previously had sold to L, after the petitioner became angry when L would not sell the property back to him. The petitioner also enlisted O and S to set fire to a car that belonged to M, an employee of a substance abuse services agency with whom the petitioner had a dispute. Before the petitioner's underlying criminal trial, the petitioner and O and S were tried in federal court on unrelated arson charges. Prior to the federal trial, the petitioner's trial counsel, who also represented the petitioner at the state trial, was provided with a copy of a Federal Bureau of Investigation (FBI) report that referenced a search warrant, a copy of which the state could not locate, that had been executed at L's residential property ten months prior to the arson there where law enforcement personnel seized a cache of weapons. The petitioner alleged in his petition for a new trial, inter alia, that the state had improperly failed to disclose to him both the existence of the search warrant and the search warrant itself, and that the evidence that a cache of weapons had been found at L's property could have been used to impeach L at trial. The trial court, analyzing the petitioner's claims under the standard set forth in *Asherman* v. *State* (202 Conn. 429), concluded that the newly discovered third-party culpability evidence failed to establish the requisite nexus between V and the fires at issue and, accordingly, the result of a new trial would not have been different. The court reasoned that, because it was undisputed that the petitioner's criminal trial counsel had been provided with the FBI report prior to the petitioner's federal trial, and because the report gave notice to the petitioner that a search had been conducted and contraband had been seized by law enforcement personnel, the existence of the search was not newly discovered evidence and the impeachment of L through the existence of contraband at his property sixteen months earlier was not likely to change the result at a new trial. The trial court rendered judgment denying the new trial petition and thereafter denied the petitioner's petition for certification to appeal. On the petitioner's appeal to this court, *held*:

1. The trial court did not abuse its discretion in denying the petition for certification to appeal, the petitioner having failed to demonstrate that his claims involved issues that were debatable among jurists of reason, that a court could resolve the issues in a different manner or that the questions raised were adequate to deserve encouragement to proceed further; the trial court properly concluded that the petitioner's newly discovered third-party culpability evidence failed to establish that the result of a new trial probably would have been different, and, although the court applied an improper legal standard in resolving the petitioner's impeachment evidence claim, the court's undisputed factual findings established that the state did not suppress evidence of the search warrant in violation of *Brady*.
2. The trial court properly determined that the petitioner's newly discovered third-party culpability evidence would probably not have produced a different result in a new trial: the petitioner failed to present any evidence to directly connect V or anyone else to both fire scenes, and the fact that V may have ordered the commission of other arsons in the area during the same time frame did not raise even a bare suspicion that V had committed the arsons at issue; moreover, the petitioner could not prevail on his assertion that V's utilization of S to commit the other

arsons was part of a criminal enterprise to exact revenge against V's enemies, which constituted a signature tactic, as there was no evidence that V had any animus to warrant revenge against L or M, and, even if there were such animus, the arsons V purportedly ordered to be committed and the arsons at issue are merely in the same class and did not constitute a signature sufficient to establish that V had ordered the burning of L's and M's property, as there was nothing sufficiently unique about arsons using gasoline; furthermore, the state presented direct evidence that the petitioner had hired O and S to set the fires at issue, that O and S did set those fires and that the petitioner had the motivation to burn L's residence and M's car.

3. The petitioner could not prevail on his claim that the trial court incorrectly determined that the state did not fail to disclose to him the search warrant for L's property and that the reference to the search warrant in the FBI report was sufficient to satisfy the state's disclosure obligations under *Brady*:

a. The trial court incorrectly applied the *Asherman* standard, instead of the *Brady* standard, in resolving the petitioner's impeachment evidence claim; although the legal basis of the petitioner's claim was initially unclear from his new trial petition, the court recognized during the hearing on the petition and in its decision denying the petition that the petitioner's impeachment evidence claim was founded on *Brady* but nevertheless applied the *Asherman* standard, and, because the parties did not dispute that this court could resolve the issues as a matter of law based on the trial court's undisputed factual findings, it was not necessary to remand the case to the trial court for further proceedings, the trial court having been presented with evidence on the *Brady* claim and both parties having addressed it in their appellate briefs.

b. The state's failure to locate and disclose the search warrant to the petitioner did not amount to a violation of *Brady*, as it was undisputed that the petitioner's criminal trial counsel, prior to the federal trial, had been provided with the FBI report that identified the existence of the warrant, which was sufficient to satisfy the state's obligations under *Brady*; because counsel possessed the FBI report prior to the underlying criminal trial, counsel could have used it to question L or other witnesses, or to further investigate the circumstances surrounding the warrant, and the fact that the reference to the warrant had been made in a mass of other discovery materials the state had disclosed to the petitioner did not compel a different outcome.

Argued September 13—officially released November 28, 2023

Procedural History

Petition for a new trial following the petitioner's conviction of the crimes of arson in the second degree, conspiracy to commit criminal mischief in the first degree and conspiracy to commit burglary in the first degree, brought to the Superior Court in the judicial district of New Haven and tried to the court, *Alander*, *J.*; judgment denying the petition; thereafter, the court granted the petitioner's request for leave to file a late petition for certification to appeal and denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Norman A. Pattis, with whom, on the brief, were *Kevin Smith* and *Zachary E. Reiland*, for the appellant (petitioner).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, were *John P. Doyle*, *Jr.*, state's attorney, and *Craig P. Nowak*, senior assistant state's attorney, for the appellee (respondent).

Opinion

BISHOP, J. The petitioner, Angelo Reyes, appeals following the denial of his petition for certification to appeal from the trial court's judgment denying his petition for a new trial. On appeal, the petitioner claims that the trial court (1) abused its discretion in denying his petition for certification to appeal, (2) improperly determined that his newly discovered third-party culpability evidence would probably not produce a different result in a new trial, and (3) improperly determined that the state did not suppress his newly discovered impeachment evidence in violation of *Brady* v. *Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). We disagree and, therefore, dismiss the appeal.

Our Supreme Court's decision in the petitioner's direct appeal sets forth the following relevant facts, which the jury in his criminal trial reasonably could have found.

"At the time of the events in question, the [petitioner] owned a Laundromat and several investment properties in the Fair Haven section of the city of New Haven. In October, 2008, the [petitioner] paid two employees, Osvaldo Segui, Sr., and Osvaldo Segui, Jr., to set fire to 95 Downing Street in New Haven, a single-family residence that the [petitioner] had sold to Robert Lopez [Lopez] and his mother, Carmen Lopez, in 2002. The [petitioner] was angry that [Lopez] would not sell the property back to him and informed Segui, Sr., that, after the fire, he intended to purchase the lot of land on which the residence had stood before the fire. Segui, Sr., and Segui, Jr., both of whom lived rent free in one of the [petitioner's] properties, agreed to set the fire, and, in the early morning hours of October 9, 2008, they did so.

"In May, 2009, the [petitioner] enlisted Segui, Sr., and Segui, Jr., to set another fire, this time to a vehicle belonging to Madeline Vargas, a local businesswoman and employee of a nonprofit substance abuse services agency operating in Fair Haven. Although the [petitioner] did not tell Segui, Sr., why he had had him set fire to Vargas' car, the evidence adduced at trial indicated that the [petitioner] was motivated by spite—the result of an ongoing dispute between him and Vargas over Vargas' attempts, in 2008, to run an outreach program for local drug addicts in an empty parking lot near the [petitioner's] Laundromat.

"The [petitioner], Segui, Sr., and Segui, Jr., were subsequently charged with various offenses related to the 2008 and 2009 arsons. Prior to being tried in state court, the [petitioner] was tried in federal court on unrelated arson charges. Segui, Sr., and Segui, Jr., also were charged in that federal case but agreed to testify against the [petitioner] in exchange for reduced sentences. In the present case, Segui, Sr., and Segui, Jr., entered into

plea agreements pursuant to which, in exchange for their testimony, they received . . . sentence[s] that did not require them to serve any more time than they were required to serve in connection with the federal case." *State* v. *Reyes*, 325 Conn. 815, 818–19, 160 A.3d 323 (2017).

Following a jury trial, the petitioner was convicted of two counts of arson in the second degree in violation of General Statutes § 53a-112 (a) (2), two counts of conspiracy to commit criminal mischief in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-115 (a) (1), and one count of conspiracy to commit burglary in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-101 (a) (1). On January 8, 2015, the court sentenced the petitioner to a total effective term of twenty-five years of incarceration, execution suspended after fifteen years, followed by five years of probation. Our Supreme Court affirmed the judgments of conviction on direct appeal. Id., 833.

On June 23, 2017, the petitioner filed the present petition for a new trial on two grounds.[1] First, he claimed that he discovered new third-party culpability evidence that demonstrated that another individual, Saul Valentin, ordered Segui, Sr., and Segui, Jr., to set fire to 95 Downing Street and Vargas' vehicle, a green BMW. Second, he claimed that the state failed to disclose the existence of a search warrant that was executed at 95 Downing Street months before the fire pursuant to which the police allegedly seized a cache of weapons, which evidence could have been used to impeach Lopez at trial.

More specifically, the petitioner alleged that, in June, 2015, his counsel received an unsolicited letter from an individual residing in Puerto Rico, detailing the involvement of the author's cousin, Valentin, in the fires for which the petitioner was convicted. The petitioner alleged that the letter, as well as subsequent inquiry by his private investigator, revealed that Valentin had ordered Segui, Sr., and Segui, Jr., to set fire to two automobiles belonging to Yeis Kol Leon for Leon's failure to take responsibility for narcotics seized by police at the home of Valentin's mother. The petitioner additionally alleged that Valentin repeatedly admitted this misconduct to his acquaintances and to his fellow inmate while he was in federal prison in New Jersey in September, 2015. The petitioner also alleged that Valentin did not want to return to New Haven to face questioning about crimes that Segui, Sr., and Segui, Jr., had committed for him and that Valentin was worried that Segui, Sr., would testify against him for ordering the burning of the cars belonging to Leon and his mother.

Furthermore, the petitioner alleged that, months before the fire at 95 Downing Street, state and federal law enforcement executed a search warrant and seized a cache of weapons from 95 Downing Street. He alleged

that the search warrant would have materially affected the credibility of Lopez, who would have had to explain to the jury why guns were seized from one of his properties. The petitioner claimed that all of this evidence was not discoverable or available at the time of the original trial and, additionally, that the state concealed the search warrant from the defense.[2] In response to the petition, the respondent, the state of Connecticut, denied all of the substantive allegations and left the petitioner to his proof.

The court held a hearing on the petition over the course of four days in October, 2019. The petitioner called several witnesses to testify, including his former attorneys, Frank Antollino and John Williams; Leon and James Saldana, who both worked with Valentin selling narcotics in the Fair Haven area; then Senior Assistant State's Attorney John P. Doyle, Jr.; Adriene Sosa, an acquaintance of the petitioner; and Nulberto Sullivan, who was incarcerated in federal prison with Valentin. The respondent called multiple witnesses to testify, including Caroline Fargeorge, the deputy chief clerk at geographical area court number 23 in New Haven; former New Haven police Officer Michael Mastropetre; former police Detective Michael Hunter; and Kevin P. Grenier, an inspector for the Division of Criminal Justice. The parties introduced numerous exhibits into evidence, which generally consisted of letters, photographs of Leon's "burned car" and the individuals involved, past trial transcripts, and several reports.

On October 15, 2019, the court issued a memorandum of decision denying the petition for a new trial. The court began its analysis by stating that "[t]he consideration of a petition for a new trial is governed by the standard set forth in *Asherman* v. *State*, 202 Conn. 429, [521 A.2d 578] (1987)." As for the third-party culpability evidence, the court reasoned that "the sum total of the testimony of the petitioner's . . . witnesses is that, on one occasion in 2007 or 2008, Valentin and Segui, Sr., were involved in the burning [of] a white truck in New Haven, and Valentin may have been involved in the arson of [other cars in the same area]. No evidence was submitted that connected Valentin, directly or indirectly, to the burning of the property at 95 Downing Street or the green BMW owned by Vargas. . . .

"In order to offer evidence pointing to a third party's culpability, the defendant must establish a direct connection between the third party and the charged offense, rather than merely raising a bare suspicion that another could have committed the crime. *State* v. *Arroyo*, 284 Conn. 597, 610, [935 A.2d 975] (2007). The fact[s] that Valentin, during the relevant time period, burned a separate motor vehicle with the assistance of Segui, Sr., and may have burned a second motor vehicle fail to connect him in any way to the arson of Vargas' vehicle or Lopez' property. The petitioner presented no

evidence that Valentin knew Vargas or Lopez, had any motive to burn their property or was present at the scene of the fires. The evidence offered by the petitioner was not material to the issues at [the] petitioner's trial and . . . [un]likely to produce a different result in the event of a new trial."

As for the impeachment evidence, the court reasoned that, "[i]ntroduced into evidence at the hearing for a new trial was [a Federal Bureau of Investigation (FBI)] 302 report,[3] dated October 17, 2008, which stated that, approximately ten months previously, a search and seizure warrant had been executed on the property at 95 Downing Street and a cache of weapons was seized. The petitioner conceded that the FBI 302 report was provided prior to the federal trial to . . . Williams. . . . Williams also represented the petitioner at the state trial. The FBI 302 report gave notice to the petitioner that a search was conducted and contraband seized by law enforcement personnel at 95 Downing Street. Accordingly, the existence of the search is not newly discovered evidence. In addition, by the petitioner's own admission, the primary witnesses against him at trial were Segui, Sr., and Segui, Jr. The impeachment of Lopez through the existence of contraband at his property sixteen months earlier is not likely to change the result at a new trial."[4] (Footnote added.)

On November 1, 2019, the petitioner filed an appeal from the trial court's denial of his petition for a new trial. On February 15, 2022, this court dismissed that appeal because the petitioner failed to seek certification to appeal pursuant to General Statutes § 54-95 (a). See *Reyes* v. *State*, 210 Conn. App. 714, 718, 270 A.3d 741, cert. denied, 343 Conn. 909, 273 A.3d 695 (2022). During the pendency of his prior appeal, on September 23, 2021, the petitioner filed a "combined request for leave to file [an] untimely petition for certification to appeal and [a] petition for certification to appeal." On September 30, 2021, the respondent filed a response in which it declined to take a position on the petitioner's request to file an untimely petition for certification and objected to the petition for certification itself. After this court dismissed the petitioner's prior appeal, on May 6, 2022, the trial court granted the petitioner's request to file an untimely petition for certification but denied the petitioner's petition for certification to appeal. This appeal followed. Additional facts will be set forth as necessary.

I

The petitioner first claims that the court abused its discretion in denying his petition for certification to appeal. We disagree.

We begin by setting forth the applicable standard of review. "It is well established that we apply the abuse of discretion standard when reviewing a court's deci-

sion to deny a request for certification to appeal from a denial of a petition for a new trial. . . . Therefore, the threshold issue that we must now decide is whether the court abused its discretion in denying the petition for certification to appeal." (Internal quotation marks omitted.) *Myers* v. *Commissioner of Correction*, 215 Conn. App. 592, 620, 284 A.3d 309 (2022), cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023), and cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023). "A petitioner satisfies that burden by demonstrating: [1] that the issues are debatable among jurists of reason; [2] that a court could resolve the issues [in a different manner]; or [3] that the questions are adequate to deserve encouragement to proceed further." (Internal quotation marks omitted.) *Mitchell* v. *State*, 338 Conn. 66, 96, 257 A.3d 259 (2021). "The petitioner must overcome a high hurdle to establish such an abuse of discretion." (Internal quotation marks omitted.) Id., 97; see also *Toccaline* v. *Commissioner of Correction*, 177 Conn. App. 480, 494, 172 A.3d 821 (habeas court did not abuse its discretion in denying certification to appeal, despite this court's conclusion on appeal that habeas court made improper conclusion, because judgment could be affirmed on alternative ground), cert. denied, 327 Conn. 986, 175 A.3d 45 (2017).

We conclude that the petitioner has failed to demonstrate that his claims involve issues that are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions he raised are adequate to deserve encouragement to proceed further. With respect to his third-party culpability claim, the court properly concluded that the petitioner's evidence failed to establish the requisite nexus between Valentin and the burning of 95 Downing Street and Vargas' green BMW and, accordingly, that the result of a new trial probably would not have been different. See, e.g., *Santana* v. *Commissioner of Correction*, 208 Conn. App. 460, 469–70, 264 A.3d 1056 (2021) (court did not abuse its discretion in denying petitioner certification to appeal because he failed to establish that outcome of his trial would have been different if third-party culpability defense was presented at trial), cert. denied, 340 Conn. 920, 267 A.3d 857 (2022). With respect to his impeachment evidence claim, although the trial court applied an improper outcome-determinative legal standard, the court's undisputed factual findings, analyzed through the lens of well settled standards, established that the state did not suppress the warrant in violation of *Brady*. See, e.g., *Hines* v. *Commissioner of Correction*, 164 Conn. App. 712, 726–27, 138 A.3d 430 (2016) (court did not abuse its discretion in denying petitioner certification to appeal because his *Brady* claim was contingent on evidence that already was known to petitioner or his counsel). Therefore, on the basis of our conclusions in parts II and III of this opinion that the petitioner's claims are meritless, we determine

that the court did not abuse its discretion in denying the petitioner's petition for certification to appeal.

II

The petitioner next claims that the court improperly determined that his newly discovered third-party culpability evidence would probably not produce a different result in a new trial. In particular, the petitioner argues that the testimony of Saldana and Leon established that there was a criminal enterprise between Valentin, Segui, Sr., and Segui, Jr., and that their "signature tactic" was arson. The petitioner contends that he is entitled to a new trial because the third-party culpability evidence of this criminal enterprise sufficiently demonstrated that Valentin, not the petitioner, ordered Segui, Sr., and Segui, Jr., to set fire to 95 Downing Street and Vargas' green BMW. We are not persuaded.

We begin with the standard of review and relevant legal principles governing the petitioner's claim. "[T]o obtain a new trial on the basis of newly discovered evidence, the petitioner must establish that the newly proffered evidence (1) is actually newly discovered, (2) would be material in a new trial, (3) is not merely cumulative, and (4) would probably produce a different result in a new trial. *Asherman* v. *State*, supra, 202 Conn. 434. This standard is strict and is meant to effectuate the underlying equitable principle that once a judgment is rendered it is to be considered final, and should not be disturbed by posttrial [proceedings] except for a compelling reason." (Internal quotation marks omitted.) *Jones* v. *State*, 328 Conn. 84, 92–93, 177 A.3d 534 (2018).[5] "To meet the fourth element of *Asherman*, [t]he [petitioner] must persuade the court that the new evidence he submits will *probably*, not merely possibly, result in a different verdict at a new trial . . . . It is not sufficient for him to bring in new evidence from which a jury could find him not guilty—it must be evidence [that] persuades the judge that a jury *would* find him not guilty." (Emphasis altered; internal quotation marks omitted.) *Mitchell* v. *State*, supra, 338 Conn. 97. "This analysis requires the trial court hearing the petition to weigh the impact the new evidence might have on the original trial evidence." *Jones* v. *State*, supra, 93.

We apply de novo review to the trial court's conclusion on the fourth *Asherman* element. Customarily, "a trial court's decision granting or denying a petition for new trial, including on the ground of newly discovered evidence, is a matter of discretion for the trial court and is reviewable only for an abuse of discretion." Id., 93–94. An exception to this rule exists in which de novo review applies "when the judge deciding the new trial petition did not preside over the original trial and the likelihood of a different result does not depend on how credible the new evidence appears . . . ." Id., 101. Under these circumstances, "the fourth *Asherman* element becomes a mixed question of law and fact; we

defer to any factual findings and credibility determinations made by the trial court, but we review the legal import of those findings de novo." Id. We apply de novo review in the present case because Judge Alander, who heard the petition for a new trial, did not preside at the original criminal trial, and the credibility of the new evidence is not at issue,[6] leaving as the only remaining question whether a new jury hearing the case would probably reach a different result. Compare id. (applying de novo review), with *Mitchell* v. *State*, supra, 338 Conn. 97 (applying abuse of discretion review because same judge presided over criminal trial and decided petition for new trial).

We next set forth the standards governing third-party culpability evidence. "It is well established that a defendant has a right to introduce evidence that indicates that someone other than the defendant committed the crime with which the defendant has been charged. . . . The defendant must, however, present evidence that directly connects a third party to the crime. . . . It is not enough to show that another had the motive to commit the crime . . . nor is it enough to raise a bare suspicion that some other person may have committed the crime of which the defendant is accused." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 341 Conn. 279, 313, 267 A.3d 120 (2021).

To sufficiently constitute a direct connection for purposes of third-party culpability, our Supreme Court has determined, for instance, that "proof of a third party's physical presence at a crime scene, combined with evidence indicating that the third party would have had the opportunity to commit the crime with which the defendant has been charged, can be [sufficient] . . . . Similarly . . . the direct connection threshold [is] satisfied for purposes of [third-party] culpability when physical evidence links a third party to a crime scene and there is a lack of similar physical evidence linking the charged defendant to the scene. . . . Finally . . . statements by a victim that implicate the purported third party, combined with a lack of physical evidence linking the defendant to the crime with which he or she has been charged, can sufficiently establish a direct connection for [third-party] culpability purposes." (Internal quotation marks omitted.) *Johnson* v. *Commissioner of Correction*, 330 Conn. 520, 565, 198 A.3d 52 (2019).

To support his third-party culpability claim, the petitioner relies on the testimony of Saldana and Leon, each of whom worked with Valentin selling narcotics in the Fair Haven area. Saldana testified that, between 2006 and 2008, he sold drugs, burned cars, and committed "a lot of arson" on behalf of his "boss," Valentin, and that he used to steal cars and other illegal activities on behalf of his other "boss," Segui, Sr. Saldana further testified that, in 2007 or 2008, Valentin and Segui, Sr.,

picked him up, drove him to an area in proximity to Fair Haven, provided him with a container of gasoline, and directed him to burn a white truck. Saldana burned the white truck as Valentin and Segui, Sr., directed. Saldana was not aware of the identity of the owner of the truck, but he did know that the truck was burned because of money owed as a result of a drug transaction. Saldana testified that this was the only arson he committed for Valentin but that he was aware Valentin had been involved with burning other cars.

Leon testified that he used to deal drugs for Valentin in approximately 2008 and that he knew Segui, Sr., and Segui Jr., also were in Valentin's "circle . . . ." Leon asserted that he got into a dispute with Valentin because Leon refused to falsely tell the police that drugs in his possession did not belong to Valentin. Leon testified that, approximately four to six months after their disagreement, his car and his mother's car were burned. Leon testified that he did not know who burned the cars, but he did see Valentin walking to Segui, Sr.'s Jeep parked in the vicinity of his car shortly after the fire had been extinguished.

Applying the foregoing, we agree with the court that the petitioner failed to establish that his third-party culpability evidence would probably produce a different result in a new trial because his evidence failed to directly connect Valentin to the burning of Lopez' property at 95 Downing Street fire or to the burning of Vargas' green BMW. The petitioner's evidence, at best, demonstrates that Valentin, with the help of Segui, Sr., committed various arsons in New Haven to intimidate or retaliate against antagonists to Valentin's drug operation. The petitioner did not present any evidence to connect Valentin to Lopez or Vargas, including that Valentin knew Lopez or Vargas, that Lopez or Vargas wronged Valentin or his drug operation, or that Valentin had any animus toward Lopez or Vargas that motivated Valentin to burn their property. The petitioner also failed to present any evidence to connect Valentin to the burned property at 95 Downing Street and Vargas' green BMW, including any eyewitness who saw Valentin in the vicinity, any physical evidence connecting Valentin or his associates to both fire scenes, or any other monetary interest Valentin had in the burned property. The fact that Valentin may have ordered the commission of other arsons in the area during the same time frame fails to even raise a bare suspicion that he committed or ordered the commission of the arsons at 95 Downing Street and of Vargas' green BMW. Without any nexus between Valentin and the present fires, the petitioner's third-party evidence would probably not result in an acquittal at a new trial.

The petitioner also contends that Valentin's utilization of Segui, Sr., to commit arsons as part of their criminal enterprise to exact revenge against his ene-

mies, constituted a signature crime sufficient to establish that it was Valentin who ordered the burning of 95 Downing Street and Vargas' green BMW. This argument requires little discussion. To use this evidence to prove identity,[7] it must be established that "the factual characteristics shared by the charged and uncharged crimes were sufficiently distinctive and unique as to be like a signature and, therefore, it logically could be inferred that if the defendant is guilty of one [crime] he must be guilty of the other." (Internal quotation marks omitted.) *State* v. *DeJesus*, 288 Conn. 418, 464, 953 A.2d 45 (2008). "Evidence of other crimes or misconduct of an accused is admissible on the issue of identity where the methods used are sufficiently unique to warrant a reasonable inference that the person who performed one misdeed also did the other. Much more is required than the fact that the offenses fall into the same class. The device used must be so unusual and distinctive as to be like a signature." (Internal quotation marks omitted.) *State* v. *Campbell*, 328 Conn. 444, 521, 180 A.3d 882 (2018). The petitioner's signature crime argument fails because there was no evidence that Valentin had any animus to warrant revenge against Lopez or Vargas. In short, there is no basis to conclude that those arsons were part of a criminal enterprise on the part of Valentin. Even if we assume that there was such an animus, the arsons Valentin purportedly ordered to be committed and the arsons at issue in the present case are merely in the same class. There is nothing sufficiently unique about arsons using gasoline. This is particularly true in the present case because the FBI 302 report, which describes the "rash of arson fires" since the mid-1990s in Fair Haven; see part III B of this opinion; suggests that there was nothing unusual about an arson in the area during the same time frame.

Our conclusion is further supported by the evidence that the state presented at the criminal trial. See *Jones* v. *State*, supra, 328 Conn. 93, 107. Unlike the speculative third-party culpability evidence advanced by the petitioner, the state at the criminal trial presented direct evidence from Segui, Sr., and Segui, Jr., that they were hired by the petitioner and did set fire to 95 Downing Street and Vargas' green BMW. See *State* v. *Reyes*, supra, 325 Conn. 818–19. Likewise, the state presented evidence at the criminal trial that the petitioner was motivated to burn 95 Downing Street because Lopez would not sell the property back to him and that he was motivated to burn Vargas' green BMW because of their dispute as to her intention to run an outreach program for local drug addicts in a parking lot near the petitioner's Laundromat. Id. In sum, we conclude that the court properly determined that the petitioner's newly discovered third-party culpability evidence would probably not produce a different result in a new trial and that this conclusion is not debatable among jurists of reason.

III

The petitioner finally claims that the court incorrectly determined that the state did not withhold his newly discovered impeachment evidence. Specifically, the petitioner contends that the court incorrectly applied the *Asherman* standard, instead of the *Brady* standard, to his claim founded on the newly discovered impeachment evidence. He alternatively argues that, even if this court applied the *Brady* standard to the undisputed facts, the trial court's judgment should be reversed because the reference to the 95 Downing Street search warrant in the FBI 302 report provided to Williams in connection with the prior federal prosecution was not sufficient to satisfy the state's disclosure obligations under *Brady*. We agree with the petitioner that the court incorrectly applied the *Asherman* standard to his *Brady* claim. Nevertheless, applying *Brady* to the undisputed facts found by the trial court, we conclude that the petitioner's *Brady* claim fails.

A

We first address the petitioner's contention that the court incorrectly applied the *Asherman* standard to his *Brady* claim. The respondent on appeal acknowledges that the petitioner sufficiently raised a *Brady* claim and that the court improperly failed to apply the *Brady* standard to resolve that claim. We agree with the parties that the court applied an incorrect legal standard, but, for the reasons we will discuss, we reach the merits of the petitioner's *Brady* claim on appeal.

We begin with the standard of review and relevant legal principles. The issue of whether the trial court applied the correct legal standard is a question of law subject to plenary review. See, e.g., *State* v. *Manuel T.*, 337 Conn. 429, 453, 254 A.3d 278 (2020). As outlined previously, "to obtain a new trial on the basis of newly discovered evidence, the petitioner must establish that the newly proffered evidence (1) is actually newly discovered, (2) would be material in a new trial, (3) is not merely cumulative, and (4) would probably produce a different result in a new trial." *Jones* v. *State*, supra, 328 Conn. 92. On the other hand, "[i]n order to prove a *Brady* violation, the defendant must show: (1) that the prosecution suppressed evidence after a request by the defense; (2) that the evidence was favorable to the defense; and (3) that the evidence was material." (Internal quotation marks omitted.) *State* v. *Guilbert*, 306 Conn. 218, 271, 49 A.3d 705 (2012). Additionally, "newly discovered *Brady* claims may also be brought by way of a petition for a new trial up to three years after sentencing." *State* v. *McCoy*, 331 Conn. 561, 598, 206 A.3d 725 (2019); see also *Randolph* v. *Mambrino*, 216 Conn. App. 126, 154 n.15, 284 A.3d 645 (2022).

The following additional facts are relevant to our resolution of this claim. In his petition, the petitioner did not clearly delineate the legal basis for his claim

contingent on the 95 Downing Street search warrant, and he did not expressly state whether his claim was governed by *Asherman* and/or *Brady*. For instance, the petitioner alleged, tracking the language of *Brady*, that the warrant was "concealed from trial counsel in the underlying state prosecution" by the state. On the other hand, the petitioner alleged, tracking the language of *Asherman*, that the information of the warrant was "newly discovered evidence" and "was not discoverable or available at the time of the original trial and is material to a new trial." At the subsequent hearing on his petition, it became clear that the petitioner's claim was made pursuant to *Brady*. The petitioner's counsel repeatedly stated that his claim in the petition was that the state withheld the warrant evidence in violation of *Brady*. The respondent's counsel also recognized that the petitioner's warrant claim was founded on *Brady* but argued that the petitioner could not prevail because the warrant was not newly discovered evidence. Indeed, the court itself acknowledged, with respect to the petitioner's warrant claim, that "I think it is a *Brady* issue." In its memorandum of decision, the court described the petitioner's warrant claim as a failure by the state "to disclose evidence which would materially impeach the credibility of a significant witness who testified against him at trial," which is congruent to the standard for a *Brady* claim. Nevertheless, the court, in its memorandum of decision, applied *Asherman* to the petitioner's warrant claim and did not analyze the issues under *Brady*. In its subsequent memorandum of decision denying his petition for certification to appeal, the court stated that, "[a]pparently, in his now dismissed appeal, the petitioner asserted that this court improperly denied this claim by failing to use the appropriate standard in determining claims under *Brady* . . . . The petitioner never asserted orally or in writing before this court regarding his petition for a new trial that he was asserting a *Brady* claim."

On the basis of the foregoing, we conclude that the court incorrectly failed to apply the *Brady* standard to the petitioner's newly discovered *Brady* claim. Although it was initially unclear from the petition, it became apparent from the parties' contentions at the hearing—as confirmed by the court's characterization of the claim at the hearing and in its memorandum of decision denying the petition—that the petitioner's warrant claim was founded on *Brady*. The court, however, did not analyze whether the petitioner's newly discovered evidence satisfied the *Brady* standard. Therefore, we conclude that the court applied an incorrect legal standard.

Ordinarily, "[w]hen an incorrect legal standard is applied, the appropriate remedy is to reverse the judgment of the trial court and to remand the matter for further proceedings." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, 181 Conn.

App. 743, 759, 187 A.3d 1163 (2018). The respondent nonetheless asserts that this court should not remand the matter and, instead, requests that we reject the petitioner's *Brady* claim as a matter of law on appeal. The respondent contends that the petitioner's *Brady* claim fails under the suppression prong on the basis of the court's undisputed factual finding that the petitioner had actual notice of the search warrant. The petitioner does not dispute that this court has the ability to resolve his *Brady* claim as a matter of law on appeal, and he analyzed in both his principal and reply briefs to this court whether the state suppressed the warrant evidence under *Brady* as a matter of law.[8]

In accordance with the parties' submissions, we will determine whether the court's undisputed factual findings satisfy the suppression prong of *Brady*. A remand to the trial court for a legal determination is not necessary if an appellate court can resolve that issue as a matter of law on appeal on the basis of the undisputed factual record. See, e.g., *Lopez* v. *William Raveis Real Estate, Inc.*, 343 Conn. 31, 57, 272 A.3d 150 (2022) ("if the evidence necessary for resolution is undisputed, then this court can decide the issue as a matter of law without need for a remand for factual findings"); *McDermott* v. *State*, 316 Conn. 601, 611, 113 A.3d 419 (2015) (although remand is generally required when trial court applies incorrect legal standard, remand is not necessary if appellate court concludes, on basis of record, remand "would be pointless"); *State* v. *Ebron*, 219 Conn. App. 228, 240, 295 A.3d 112 ("we conclude that the defendant's claims in this case fail as a matter of law and that a remand for consideration of the merits of those claims would serve no useful purpose"), cert. denied, 347 Conn. 902, 296 A.3d 840 (2023); *State* v. *Turner*, 214 Conn. App. 584, 591 n.5, 280 A.3d 1278 (2022) ("because the defendant's claim fails as a matter of law, a remand for further consideration of the merits would serve no useful purpose"); *Designs for Health, Inc.* v. *Miller*, 187 Conn. App. 1, 14 n.9, 201 A.3d 1125 (2019) ("remand unnecessary where record on appeal sufficient to make determination as matter of law").

Here, the question of whether the petitioner satisfied *Brady*'s suppression prong is a pure legal question that we can resolve on appeal on the basis of the court's undisputed factual findings. See, e.g., *Jones* v. *Commissioner of Correction*, 212 Conn. App. 117, 142, 274 A.3d 237 ("'[w]hether the [defendant] was deprived of his due process rights due to a *Brady* violation is a question of law, to which we grant plenary review'"), cert. denied, 343 Conn. 933, 276 A.3d 975 (2022); *State* v. *Rosa*, 196 Conn. App. 490, 500, 230 A.3d 677 (resolving petitioner's unpreserved *Brady* claim on appeal on basis of undisputed facts), cert. denied, 335 Conn. 920, 231 A.3d 1169 (2020). Although not dispositive, additional considerations support our conclusion that a remand is not necessary, particularly the fact that both

parties understood the petitioner's claim to be founded on *Brady*, presented evidence with respect to the petitioner's *Brady* claim before the trial court, and extensively addressed the merits of the petitioner's *Brady* claim in their appellate briefs. Accordingly, we conclude that, although the court applied an incorrect legal standard, we need not remand the matter to the trial court.

B

We now address the merits of the petitioner's *Brady* claim. The petitioner argues that the court's decision should be reversed because the reference to the 95 Downing Street search warrant in the FBI 302 report provided to Williams in connection with the prior federal prosecution was not sufficient to satisfy the state's disclosure obligations under *Brady*. The petitioner further argues that the state violated *Brady* by not affirmatively disclosing the actual search warrant referenced in the FBI 302 report to the petitioner. We are not persuaded.

We begin with the standard of review and relevant legal principles. "In *Brady* . . . the United States Supreme Court held that the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. . . . [T]he *Brady* rule applies not just to exculpatory evidence, but also to impeachment evidence . . . which, broadly defined, is evidence having the potential to alter the jury's assessment of the credibility of a significant prosecution witness. . . . In order to prove a *Brady* violation, the defendant must show: (1) that the prosecution suppressed evidence after a request by the defense; (2) that the suppressed evidence was favorable to the defense; and (3) that the evidence was material." (Internal quotation marks omitted.) *State* v. *Gray*, 212 Conn. App. 193, 225, 274 A.3d 870, cert. denied, 343 Conn. 929, 281 A.3d 1188 (2022). The petitioner has the burden to establish each of the three essential components of a *Brady* claim. See *State* v. *Rosa*, supra, 196 Conn. App. 497–98.

With respect to the second *Brady* component, "it is well established that evidence is not considered to have been suppressed within the meaning of *the Brady doctrine if the defendant or his attorney either knew, or should have known, of the essential facts permitting him to take advantage of* [*that*] *evidence*." (Emphasis in original; internal quotation marks omitted.) *State* v. *Skakel*, 276 Conn. 633, 701, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006); see also *State* v. *Guilbert*, supra, 306 Conn. 272 (same); *Young* v. *Commissioner of Correction*, 219 Conn. App. 171, 189, 294 A.3d 29 (same), cert. denied, 347 Conn. 905, 297 A.3d 567 (2023). "The rationale underlying this exception to the state's disclosure obligation under

Brady is obvious: *Brady* is designed to assure that the defendant is not denied access to exculpatory evidence known or available to the state but unknown or unavailable to him. . . . It is not intended either to relieve the defense of its obligation diligently to seek evidence favorable to it or to permit the defense to close its eyes to information likely to lead to the discovery of such evidence." (Citations omitted; internal quotation marks omitted.) *State* v. *Skakel*, supra, 702. Thus, evidence "will not be deemed to have been suppressed by the state . . . if the [petitioner] or the [petitioner's] trial counsel reasonably was on notice of [its] existence but nevertheless failed to take appropriate steps to obtain it." Id. "In other words, the state must disclose the [evidence] which is potentially exculpatory but is not constitutionally obligated to connect the dots for the defense." *Lopez* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-12-4004836-S (May 1, 2019) (reprinted at 208 Conn. App. 519, 536, 264 A.3d 1111 (2021), aff'd, 208 Conn. App. 515, 264 A.3d 1097 (2021), cert. denied, 340 Conn. 922, 268 A.3d 77, cert. denied sub nom. *Lopez* v. *Quiros*, U.S. , 142 S. Ct. 2730, 212 L. Ed. 2d 790 (2022).

In the present case, the petitioner's *Brady* claim was that the state suppressed a search warrant that was executed at 95 Downing Street months before the fire pursuant to which the police allegedly seized a cache of weapons. The petitioner became aware of this warrant from a statement contained in the FBI 302 report, which was authored by Mastropetre and admitted into evidence at the hearing. The FBI 302 report is titled "information regarding arsons in the Fair Haven section" and generally provides a summary of the status of investigations of fires that occurred in that area since the mid-1990s. In the section describing the investigation of the fire at 95 Downing Street, the FBI 302 report stated that "[New Haven Police Officer Joseph] Pettola, was approached by New Haven Police Department Lieutenant, Luis Casanova, who told Pettola that approximately ten months ago, members of the ATF,[9] FBI, and State Wide Narcotics Task Force . . . executed a search and seizure warrant on the vacant property located at 95 Downing Street. Casanova said as a result of the search warrant and seizure warrant there was a cache of weapons that were seized from the property." (Footnote added.)

The trial court found, and the petitioner does not contest on appeal, that the petitioner's criminal trial counsel, Williams, was provided the FBI 302 report prior to trial. In particular, the court found that the FBI 302 report "was provided prior to the federal trial to . . . Williams," who "also represented the petitioner at the state trial," and that "the FBI 302 report gave notice to the petitioner that a search was conducted and contraband seized by law enforcement personnel at 95 Downing Street." This finding is dispositive of the petitioner's

Brady claim because it establishes that the petitioner's criminal trial counsel had possession, prior to trial, of the information he claimed was suppressed. See, e.g., *Hines* v. *Commissioner of Correction*, supra, 164 Conn. App. 726–27 (concluding that state did not suppress evidence in violation of *Brady* on basis of court's factual finding that petitioner's counsel was informed of that material evidence prior to trial). Because the petitioner's counsel had the FBI 302 report, he could have taken advantage of the representation that a search warrant was executed at 95 Downing Street to question the officers or Lopez regarding the warrant, to engage in a search for a copy of the search warrant itself, or to investigate the circumstances of the warrant further. See, e.g., *State* v. *Skakel*, supra, 276 Conn. 701–703 (state did not suppress composite drawing of potential suspect in violation of *Brady* because petitioner was on notice drawing existed from references in state's investigative reports and failed to take steps to obtain it); *Lopez* v. *Commissioner of Correction*, supra, 208 Conn. App. 534–36 (state did not suppress evidence of investigative file materials of earlier shootings in violation of *Brady* because state provided to petitioner list of specific incidents and case numbers identifying existence of those earlier shootings). The fact that the reference to the warrant was made in a mass of other discovery materials does not compel a different outcome. See, e.g., *State* v. *Skakel*, supra, 704 (rejecting claim that state violated *Brady* because evidence was "buried" in 1806 pages of other documents produced by state). Therefore, because it is not disputed that the petitioner's criminal trial counsel had been provided information identifying the existence of the warrant, the state did not suppress that evidence in violation of *Brady*.

The petitioner further contends that *Brady* imposed an affirmative duty on the state to disclose a copy of the actual warrant to the petitioner[10] and that the reference to the warrant in the FBI 302 report was not sufficient to absolve the state of its *Brady* obligations. To support his argument, the petitioner relies on a statement from the United States Supreme Court in *Banks* v. *Dretke*, 540 U.S. 668, 696, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004), that "[a] rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process." We do not agree that *Banks* is applicable to this case for both legal and factual reasons.

Legally, the general proposition in *Banks* that a prosecutor cannot hide exculpatory evidence is not contrary to the established rule that *Brady* is not violated when the petitioner previously had been informed of the information he claimed was suppressed. Indeed, our Supreme Court in *Skakel* recognized the propriety of this exact quotation from *Banks*, but held that, "[n]evertheless, when, as in the present case, a defendant is on notice of the existence of *Brady* material that the state

has failed to turn over, the defendant is required to make reasonable efforts to obtain the exculpatory evidence. . . . [A]ny other rule would create a strong incentive for the defendant to await the outcome of the trial before seeking the evidence from the state." *State* v. *Skakel*, supra, 276 Conn. 706 n.73. Factually, the claim at issue in *Banks* was that the state suppressed evidence that one of its witnesses was a paid police informant, and that the witnesses' testimony was coached by prosecutors and law enforcement officers. *Banks* v. *Dretke*, supra, 540 U.S. 675. The court concluded that the state's withholding of these facts violated *Brady* and that, in light of the state's persistent representations that it had complied in full with its *Brady* obligations, it was not incumbent on the petitioner in *Banks* to investigate the witnesses' backgrounds. Id., 692–96. Here, in contrast, the petitioner's trial counsel was in possession of the FBI 302 report identifying the search warrant, and, thus, he had the ability to investigate the circumstances surrounding the search warrant and to attempt to locate it. In other words, the state in the present case did not play hide-and-seek with the disclosure of the warrant because the petitioner indisputably had a report that asserted the existence of the warrant. In contrast to the petitioner's argument, the state's failure to locate and disclose the actual warrant referenced in the FBI 302 report does not amount to a violation of *Brady*. In sum, we conclude, on the basis of the court's undisputed factual findings, that the petitioner's *Brady* claim fails and is not debatable among jurists of reason.

The appeal is dismissed.

In this opinion the other judges concurred.

[1] On July 31, 2020, the petitioner filed a separate petition for a new trial in which he claimed that he discovered new material evidence establishing that, (1) just prior to the 95 Downing Street fire, Lopez had met with an unlicensed broker and had a physical altercation with another individual, (2) the petitioner had extended a line of credit to Lopez for improvements to 95 Downing Street, and (3) there were improprieties with the chain of custody of several cans containing accelerant samples that were collected from 95 Downing Street. On May 31, 2022, the court dismissed this petition for a new trial for lack of subject matter jurisdiction because it was filed beyond the three year limitation period of General Statutes § 52-582, and no exception to the limitation period or tolling doctrine applied. In a separate decision also released today, we affirmed in part and reversed in part the trial court's judgment dismissing the petitioner's July 31, 2020 petition, and we remanded the case to the trial court for a new evidentiary hearing before a different judge to determine whether the petitioner had established that the three year limitation period of § 52-582 was tolled by General Statutes § 52-595 and for further proceedings according to law. See *Reyes* v. *State*, 222 Conn. App. , A.3d (2023).

[2] The petitioner also contended that he discovered an invoice from East Haven Building Supply that evinced that the petitioner had extended a line of credit to Lopez for improvements to 95 Downing Street. The petitioner abandoned this claim at the evidentiary hearing on the present petition, and, accordingly, it is not at issue in this appeal. We observe that the petitioner asserted a congruent claim in his subsequent July 31, 2020 petition for a new trial. See footnote 1 of this opinion.

[3] An FBI 302 report generally is composed by an FBI agent to memorialize an interview with an individual and is designed to contain a record of statements made by the individual, not the FBI agent's opinion or contextual comments. See, e.g., *American Oversight* v. *United States Dept. of Justice*, 45 F.4th 579, 584 n.6 (2d Cir. 2022).

[4] The petitioner subsequently filed a habeas petition, claiming that his criminal trial counsel, Williams, rendered ineffective assistance by failing to request and obtain pertinent documents, including, but not limited to, the search warrant that had been executed at 95 Downing Street. See *Reyes* v. *Commissioner of Correction*, Superior Court, judicial district of Tolland, Docket No. CV-19-4009918-S. The habeas court denied the petitioner's habeas petition, and his appeal therefrom currently is pending before this court. See *Reyes* v. *Commissioner of Correction*, Connecticut Appellate Court, Docket No. AC 46987 (appeal filed October 10, 2023). Nothing in this opinion should be construed to express any view on the merits of that appeal.

[5] The court in the present case concluded that the petitioner's newly discovered third-party culpability evidence failed under both the second and fourth *Asherman* elements. We need address only the fourth *Asherman* element because it is dispositive of this appeal.

[6] The respondent does not contend on appeal that the petitioner's newly discovered third-party culpability evidence was not credible; rather, it contends that, even assuming the maximum import of that evidence, it would not have produced a different result in a new trial.

[7] The petitioner has not directed us to any case in which the signature crime theory was used in support of a third-party culpability defense. See *State* v. *Randolph*, 284 Conn. 328, 351, 933 A.2d 1158 (2007) ("The signature test ordinarily is used to determine whether evidence of uncharged misconduct is admissible under an evidentiary exception separate and distinct from the common scheme or plan exception, namely, the identity exception. . . . Specifically, the test is used to discern whether evidence of uncharged misconduct is admissible to prove the identity of the defendant as the perpetrator of the crime charged." (Citation omitted.)); see also Conn. Code Evid. § 4-5 (c). We thus assume, without deciding, for purposes of our analysis, that the signature test applies in the third-party culpability context.

[8] The petitioner did not file a motion to reargue, a motion for clarification, or a motion for articulation seeking to have the trial court expressly rule on his *Brady* claim. See, e.g., *D2E Holdings, LLC* v. *Corp. for Urban Home Ownership of New Haven*, 212 Conn. App. 694, 715, 277 A.3d 261, cert. denied, 345 Conn. 904, 282 A.3d 981 (2022).

[9] Although the initialism ATF is not clearly defined by the FBI 302 report, we presume it refers to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

[10] The respondent contends that the petitioner failed to establish that the warrant ever existed because neither party has been able to locate a copy of it, and, accordingly, the state could not have violated *Brady* by failing to produce a warrant that does not exist. In response, the petitioner corroborated the existence of the search warrant by introducing into evidence an exhibit constituting a press release issued by the Department of Emergency Services and Public Protection on May 25, 2007, which the petitioner's counsel discovered through a Google search conducted in between hearing dates on his petition. The press release states, in part, that "[t]he State Police Urban Violence Task Force working with New Haven Police Officers simultaneously executed three separate search warrants at 124 East Pearl Street . . . two residential homes located at 95 Downing Street and 422 Bletchley Avenue all in the City of New Haven. A combined seizure from all three search warrant locations consisted of cocaine, marijuana, cash, a rifle and drug paraphernalia."

We do not resolve this issue because there are no factual findings by the trial court on this point; see part III A of this opinion; and it is not necessary for the resolution of the petitioner's claim on appeal. To be clear, the petitioner raised a *Brady* claim that the state suppressed the existence of the warrant, not a *Morales* claim that the state failed to preserve a copy of the warrant. See *State* v. *Morales*, 232 Conn. 707, 726–27, 657 A.2d 585 (1995) (outlining legal standards governing claim that state destroyed or lost evidence).