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November 30, 2022

Chief John Helfant  
Northfield Police Department  
110 Wall Street  
Northfield, Vermont 05663

**In re: Sgt. Aaron Cochran**

Dear Chief Helfant,

Earlier this month my office received notice of issuance of a *Brady/Giglio* letter by Caledonia County State's Attorney Jessica Zaleski, dated October 24, 2022, relating to Sergeant Aaron Cochran. My understanding is that Sergeant Cochran was hired by your department in October 2022. This letter serves to memorialize my office's assessment of the materials and position on the matter.

In pertinent part, the letter issued by State's Attorney Zaleski states that:

An independent investigation by an outside agency was conducted into HWPD, specifically then Chief Cochran, regarding policy violation allegations in reference to former Sgt. Darin Barber. Then-Chief Cochran handled the departmental internal investigation into former Sgt. Barber's actions with respect to mishandling of evidence.

The undersigned has reason to believe Aaron Cochran was dishonest during the HWPD review of Sgt. Barber's actions and subsequent inquiries into the incident.

Subsequently, my office requested and was provided the underlying investigation completed by a member of the Williston Police Department.

### *Background*

The investigation is centered on the handling, or mishandling as it may be, of former Chief Cochran's response to a subordinate officer's taking of a bottle of liquor home instead of entering it into evidence or otherwise disposing of the contraband. The seizure stemmed from a juvenile incident occurring on or about March 31, 2021; the incident was adjudicated via issuance of a ticket rather than through a

delinquency proceeding in the Family Division of Superior Court. The procedural history may be summarized as follows:

a. The seized liquor was taken home by a member of the Hardwick Police Department;

b. On May 11, 2021, a member of the Hardwick Police Department, serving as the evidence officer, reported that he heard about the liquor being taken home by another officer several days earlier, and lodged a complaint with former Chief Cochran. The complaint states, in part:

Per the approved policy signed and dated by Chief Cochran on 10/04/2016, it is the responsibility of the appointed Evidence Officer, to record in writing and provide that report to his Direct Supervisor of any discrepancy between items listed on the evidence/property form and those delivered into the evidence room .. The discrepancy here is between what was known to be seized at the time the incident occurred and what was placed into the evidence room and recorded.

c. On May 11, 2011, a change to the agency's evidence policy was made, specifically addressing circumstances where a civil violation relating to underage possession of alcohol was involved;<sup>1</sup>

d. On May 12, 2021 the officer who took the bottle updated the entries in Valcour to log the evidence and to make an entry to reflect the evidence had been disposed of. The actions were consistent with the revised policy;

Thereafter, a significant period of time elapsed until the issue was again addressed – specifically, on or about September 30, 2021 when Chief Cochran, State's Attorney Zaleski, and the Hardwick Town Manager discussed the officer responsible for the mishandling of the evidence. From this exchange, the most notable issue is Chief Cochran's statement that he had conducted an internal investigation.

The investigation, completed in August 2022, found that the ostensible documentation of an internal investigation by Chief Cochran was prepared or digitally created in October 2021, contemporaneous to Chief Cochran's first direct access to the Valcour data on the underlying incident. The conclusion of the investigating officer is that the document was created after the fact.<sup>2</sup> Chief Cochran's direct or indirect suggestion that a formal internal affairs investigation

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<sup>1</sup> Multiple officers interviewed believed the policy was already clear and did not need revision. The revision of the policy and determination by former Chief Cochran that "policy failure" excused the mishandling of the evidence by the officer who effectuated seizure appears to have given rise to the sentiment that former Chief Cochran engaged in a "cover up."

<sup>2</sup> From my military service, I am familiar with this concept – the so called "pencil whipping" of records.

had been conducted appears to be the gravamen of State's Attorney Zaleski's determination that was dishonest.

### *Assessment*

It is not the role of my office to second guess my colleague or to critique the conclusions of the investigating officer. Nevertheless, some aspects of the investigation are open to different conclusions and it is this office that must determine whether to accept his cases referred for prosecution.

As a threshold matter, there is adequate information to warrant the *Brady/Giglio* disclosure as has been done by State's Attorney Zaleski. The allegations are sufficiently supported to require disclosure (i.e. materiality is established). This ensures defendants and their counsel may assess whether the acts and omissions bear upon truthfulness or could cast a substantial doubt upon the accuracy of any evidence in their respective cases. Further, the investigative materials raise an allegation of failure to follow agency requirements relating to the collection and handling of evidence (or supervision thereof) and/or the utilization of an effective internal affairs program.

The more complicated question centers on whether the information is sufficiently detrimental to preclude or limit acceptance of cases for prosecution. This office's policy, "Assessment, management, and disclosure of exculpatory and impeachment information in criminal prosecutions (with special emphasis on law enforcement)," effective March 15, 2021, provides a framework of analysis when deciding whether to categorically decline or to restrict case submissions from officers. The following considerations are relevant, here:

First, the acts or omissions of former Chief Cochran do not appear to constitute a criminal offense and no charges appear to have been pursued or referred by any agency. Further, the alleged conduct does not appear to constitute a *prima facie* case of unprofessional conduct under 20 V.S.A. § 2401.<sup>3</sup>

Second, the original issue involving the mishandling of evidence had no impact on a pending criminal or juvenile case. The absence of legally sufficient chain of custody had no legal bearing on any proceeding and constituted a violation of agency policy, not statute. There is an absence of evidence to demonstrate a culture of mishandling evidence or overlooking such violations within the agency.

Third, it is clear from the record that former Chief Cochran responded to the mishandling of the evidence. The situation was ultimately addressed by electronic logging and disposal of the liquor, and a clarification or change in the wording of the

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<sup>3</sup> Because of the confidentiality concerning Act 56 investigations, it is unknown whether any such referral was made to the Vermont Criminal Justice Council, notwithstanding my interpretation of the statutory classes of unprofessional conduct.

agency's evidence policy. The core issues of concern, arising in October 2021, relate to the lack of contemporaneous documentation of the results of Chief Cochran's actions (or ostensible internal investigation) and the perception that the officer's mishandling of the evidence was "white washed" or "covered up." Whether the response was procedurally sufficient or constituted an "effective" internal affairs process is distinct from whether the deficiency was actually acknowledged and addressed.

Finally, the statement of the Hardwick Town Manager appears to best capture the core of the issue:

After the three-way phone conversation, Chief Cochran and I spoke briefly in my office. I asked him if the internal was documented in writing. Chief Cochran replied "no". I subsequently told him that it needed to be and that he should document it as soon as possible and if he could find a way to interview Ofc. Marcoux, who was still on ML, to do that as well, and based on that information, **I didn't feel like his investigation was to the standard that it needed to be.**

The root of distrust may be, in part, premised on semantics and assumptions. State's Attorney Zaleski's concerns appear based on an assumption that former Chief Cochran's representation that he completed an internal investigation connotated preparation of a *formal written report* or materials that could serve as the basis for consideration of a *Brady/Giglio* letter for the officer who mishandled the evidence. The investigative materials do not disclose that former Chief Cochran ever directly asserted that he had prepared a written report.

The Town Manager's concerns over the handling of the incident may also have been exacerbated by the resignation of two officers in a small department, ostensibly because of the handling of this incident. He placed significant weight on the absence of questioning the second officer involved in the original incident involving the seized liquor. However, in my view the necessity and utility of such an interview is questionable given the apparently clear admission by the officer at fault and agreement to immediately address the situation. There do not appear to have been any contested material facts to be adduced by further investigation – at least with respect to the original incident.

The extent to which the internal personnel dynamics and external relationships with stakeholders influenced perceptions of former Chief Cochran's acts or omissions is difficult to gauge – but for purposes of accepting or declining cases there is a distinction between a loss of confidence in one's supervisory performance versus a bona fide credibility issue.<sup>4</sup> The full context of the internal investigation

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<sup>4</sup> The internal investigation focused on Chief Cochran's conduct and does not assess or analyze other concerning behavior within his former agency. The investigation paints a clear picture of an agency with personnel issues and internal conflict. Most notably, the Valcour log relating to the incident

suggests this incident was just a part of dissatisfaction with former Chief Cochran's leadership and that the assessment of his acts and omissions was colored by the overall status of the department in the fall of 2021.

Under the office's *Brady/Giglio* policy, the conduct at issue is must be considered as either "Conduct of Concern" or "Conduct of Significant Concern." The former characterization includes scenarios such as: (1) failure to follow proper procedure or protocol for the handling of evidence or reports, where no prejudice ensues to a defendant; or mistake of law based on genuine misapprehension or misunderstanding of rule or requirement. The latter characterization includes: (1) A deceptive statement made in an effort to conceal minor unintentional misconduct (such as negligent loss of equipment).

On balance, the absence of prejudice to a particular defendant and the fact that the triggering incident was dealt with in some manner – even if not through a "complete" or "effective" internal affairs process means "Conduct of Concern" is the appropriate classification. "Conduct of Concern" is defined as:

Careless or negligent conduct that is not malicious, but nevertheless creates a risk of undermining the credibility of a law enforcement officer, at least in a particular case, and could cause a reasonable person to question the reliability of statements made in other matters.

There is some risk that the issues presented here will be used to attempt to impeach the credibility of Sgt. Cochran, however, the risk is primarily related to supervisory functions and internal controls versus a broader view of competence and credibility. Accordingly, there is not a basis for the categorical declination of cases sub

Other factors that weigh in favor of this decision include the ability to mitigate risk through use of body worn cameras and the ability to audit Valcourt entries (as highlighted in the investigation). The age, experience, level of training/certification, and past performance of Sgt. Cochran compared with the nature/extent of the unprofessional or deceptive conduct also weigh in his favor (i.e. that lack of other substantiated credibility or truthfulness concerns).

### *Conclusion*

Pursuant to the Office of the Washington County State's Attorney Policy  
Memorandum on Assessment, management, and disclosure of exculpatory and

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indicates that four officers accessed and read the file – two before the complaint was made to Chief Cochran, and two thereafter, including up to a week following the corrected entries being made. The investigation focused on Chief Cochran's belated access to the incident in October 2021, without attempting to address why multiple officers accessed the file (in some cases multiple times). Multiple inferences may be drawn as to why officers with no direct involvement in the case accessed the information, and what motivated them to do so.

impeachment information in criminal prosecutions (with special emphasis on law enforcement), effective March 15, 2021, the following protocol will be followed with respect to Sgt. Cochran's cases:

1. The *Brady/Giglio* letter prepared by the Office of the Caledonia County State's Attorney shall be disclosed in all cases or matters in which Sgt. Cochran is to be relied upon as a State's witness.
2. Cases submitted by Sgt. Cochran will be accepted, subject to the regular case by case assessment that is conducted prior to the filing of cases. The Northfield Police Department is free to implement any other internal controls or processes it sees fit.

The management and supervisory decisions of the Northfield Police Department are beyond the scope of my role or authority; however, I encourage the Northfield Police Department and Town of Northfield to ensure Sgt. Cochran is afforded training opportunities, that he is subject to regular evaluations of his duty performance, and that any assigned roles relating to custody/logging of evidence or involvement in internal affairs processes be closely monitored.

Finally, it should be noted that my term of office expires in 60-days. My successor in office may take a different position, or other modify this position based upon other information or assessment.

Please let me know if you have any questions or concerns. Thank you.

Very Respectfully,



Rory T. Thibault  
State's Attorney

cc: Jeff Schulz  
Northfield Town Manager