SUPREME COURT

OF THE

STATE OF CONNECTICUT

GEOGRAPHICAL AREA NO. 1 AT STAMFORD

S.C. 20246

STATE OF CONNECTICUT

v.

RICARDO CORREA

REPLY BRIEF OF THE DEFENDANT-APPELLANT

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INTRODUCTION

The defendant appeals from the denial, *Blawie, J*, of his motion to suppress evidence, The Appellate Court affirmed the trial court's ruling, State v. Correa 185 Conn. App. 108 (2019) and this Court granted the defendant's petition for certification as to two issues:

1. Did the Appellate Court properly determine that a police canine sniff that took place outside of the defendant's motel room was not a search that violated the defendant's rights under article first, § 7, of the Connecticut constitution?
2. Did the Appellate Court properly conclude that the visual sweep of the defendant's motel room was justified by exigent circumstances?

The defendant argues in this appeal that, pursuant to State v. Kono, 324 Conn. 80 (2016), he had a reasonable expectation of privacy in his motel room that is equal to the expectation of privacy that he would have in a house or apartment. The defendant rented his motel room in order to obtain the privacy he needed to engage in all his most personal activities, including eating, sleeping, showering, changing his clothes, and resting. The police violated his reasonable expectation of privacy when they conducted a warrantless dog sniff on the outside of his motel room door from the walkway during which the police dog alerted to the presence of contraband.

The state argues that people who rent motel rooms have a lesser expectation of privacy in their motel room than they would in a house or apartment because motels are "transitory" and "its contents are akin to private possessions in a public sphere." The state does not explain why a citizen's expectation of privacy is lesser in a motel even though the purpose of a motel room is privacy and people engage in their personal activities there.

I. THE DOG SNIFF WAS A SEARCH BECAUSE THE DEFENDANT'S EXPECTATION OF PRIVACY IN HIS LAWFULLY RENTED MOTEL ROOM IS EQUAL TO THE EXPECTATION OF PRIVACY OF PEOPLE WHO INHABIT AN APARTMENT OR SINGLE FAMILY HOME. (State's Brief 7-30)

The state argues that the canine sniff was not an unreasonable search because a motel room is not a home and therefore the defendant had a "diminished" expectation of privacy in it. Alternatively, the state argues that if the warrantless dog sniff is a search, it is

justified if it is based only on a reasonable and articulable suspicion. Finally, the state argues that if the dog sniff of the outside of a motel room door does require probable cause and a warrant, this dog sniff was justified under the independent source doctrine and the inevitable discovery doctrine. These claims are without merit.

A. A motel room is a home.

The state claims that State v. Kono, 324 Conn. 80 (2016) does not control this case because a motel room is not a home. St. Br. 12. Relying on United States v. Mankani, 738 F.2d 538, 544 (2d Cir. 1984), the state argues that "the transitory nature of a motel room" affords motel room occupants a lesser expectation of privacy than those who occupy an apartment or boarding house. St. Br. 13, 14. The state claims that society does not usually expect motel room inhabitants to live or keep personal items in a motel room and therefore "its contents are akin to private possessions in a public sphere." Id. 14. The state also points to the fact that staff routinely enter motel rooms to clean or do repairs and former occupants may even retain a key to the room. Id. The state's arguments do not withstand close scrutiny.

The reasoning in Mankani is flawed. People rent motel rooms in order to have privacy so that they can relax, shower, and change clothes outside the public view. They keep items there that they need on a daily basis. When they choose to sleep, they may do so without fearing for their safety. A breach of this area is an invasion. See Minnesota v. Olson, 495 U.S. 91, 99 (1990) ("We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend."); State v. Brosnan, 221 Conn. 788, 807 (1992).

Moreover, sometimes people are forced to live in hotels and motels when job loss, illness, or natural disaster compels them to move out of their home or apartment. Relocation to a new area sometimes requires people to temporarily live in a motel. The idea that people in such circumstances are not "living" in hotels or motels and are not keeping personal items

there is simply untenable. Under such circumstances, a person may not only be living in their motel room, they may have everything they own there.

The argument that people have less privacy because the motel staff has access to the room to clean it and make repairs is likewise without merit. The staff is only authorized to enter the room during the day; they are certainly not licensed to enter in the middle of the night when everyone is asleep. Motel guests have the authority to exclude the staff from the room if they wish by hanging a do not disturb sign on the outside of the door. While the staff is licensed to enter the room and perform certain tasks, they are not licensed to rummage through the guests' items. When someone lives in an apartment, the landlord also has some authority to enter and make repairs. This does not deprive apartment dwellers of a reasonable expectation of privacy in the area they are renting. The motel staff's limited authority to enter the motel room does not lessen the defendant's reasonable expectation of privacy in his motel room, and does not provide the police with the authority to bring a drug detection dog to the door to discover what is in there.

Mankani is also distinguishable from this case on factual grounds. In Mankani, the defendant was staying in a hotel room with a co-defendant. Federal agents rented the adjoining room and eavesdropped on the defendants' conversations through a "preexisting hole in the wall between the two homes." Mankani, 738 F.2d at 541. Because these agents did not use "sensory enhancing devices" and were present lawfully in the adjoining hotel room, there was no fourth amendment violation. Id. 543. In contrast, in the present case, the officers did use a sensory enhancing canine to find the drugs in the motel room. There is a big difference between overhearing a conversation from the next room over, and using a sensory enhancing dog to discover information that is otherwise undiscoverable.

The state also cites to State v. Benton, 206 Conn. 90, cert. denied, 486 U.S. 1056 (1988) in support of its position. Benton, like Mankani, involved a police detective in an adjoining apartment overhearing the defendant make incriminating statements just by listening. This Court held that because the officer was in the adjoining apartment lawfully,

did not use any sound enhancing devices, and heard everything with his unaided ear, the defendant's rights were not violated. Benton, 206 Conn. at 93-94. The Court held: "[p]ersons...residing in an apartment, or persons staying in a hotel or motel have the same fourth amendment rights to protection from *unreasonable* searches and seizures and the same *reasonable* expectation of privacy as do the residents of any dwelling." (Emphasis in original)(Citations omitted) Benton, 206 Conn. at 96.

The state cites to Benton for the argument that a motel room's close proximity to neighbors and its "shared atmosphere…diminish the degree of privacy that one can reasonably expect or that society is prepared to recognize as reasonable." Id. 93-94; St. Br. 14. This proposition is questionable, at the very least, since Kono was decided, as this Court in Kono unambiguously reasserted the equal rights of people who live in multiunit buildings.

The state argues that the record is inadequate to address the issue of whether the dog sniff violated the defendant's reasonable expectation of privacy. The state posits that it is the defendant's burden to prove that room 118 "was more than a transitory place of abode and that it should be treated as his 'home' in assessing the reasonableness of the canine sniff;" St. Br. 14-15; and the defendant did not do so.[1] The state appears to concede that if the defendant was living in the motel room, Kono applies and the warrantless dog sniff of room 118 violated the defendant's state constitutional rights.

It is not necessary for the defendant or anyone else to try to distinguish between when someone is merely "staying" in a motel as opposed to "living" in a motel. Such a distinction is unfounded because anyone who is "staying" in a motel is "living" there. See Green v. State,

[1] The state's claim that the defendant has the burden to prove that the motel room was his home does not appear to be a correct statement of the law. The state cites to State v. Colvin, 241 Conn. 650, 658, n. 5 (1997) in support of this claim. However, the issue in Colvin was whether drugs found in the defendant's car were the fruit of his allegedly unlawful arrest. The Court found that it is the defendant's burden to present evidence that demonstrates the discovery of the drugs was tainted by the illegality. Id. The issue the state raises in the present case is the narrow issue of whether the defendant needs to prove that the motel room was his home. The state cites to no other case which raises this specific issue.

824 So. 2d 311, 314 (Fla. Dist. Ct. App. 2002)("As homes to the peripatetic, hotel and motel rooms are legally imbued with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection.")(citation omitted; internal quotation marks omitted). The fact that the motel room was the defendant's home illustrates that sometimes people's only home, permanent or otherwise, is a motel room, a fact that strengthens the defendant's argument that anyone who lawfully rents a motel room is entitled to the same expectation of privacy as someone who rents an apartment.

It makes no sense to ask the police to determine whether a motel room dweller is "living" there or merely "staying" there. Such line drawing invites subjective assessments inconsistent with the constitutional preference for warrants issued by a neutral and detached magistrate. This Court should therefore establish a clear rule that a warrant is necessary for a dog sniff of any lawfully occupied motel room.

The state's argument fails in any event because there is sufficient evidence in the record that the defendant was living in room 118. The police testified, and the trial court found, that the defendant had rented the motel room for one week and had paid in advance. Memo of Decision 4. And, as the state acknowledges, the defendant told the police he was living in the motel room, which they accepted as true; the police noted his comment in both the search warrant and in direct testimony. This evidence was not contested; in fact, the police used it as proof of defendant's connection to room 118.

The length of the rental does not weaken the defendant's position. Whether by choice or necessity, when a person rents a motel room for one night, during that night it is his home. Moreover, the Cove Street address on the UAR form in the file proves nothing about the defendant's living situation. The defendant told the police that he was living in the motel room and these facts do not weaken that claim.

The state challenges the defendant's claim that the Appellate Court improperly focused upon the accessibility of the walkway. Correa, 185 Conn. App. at 330. The state notes that the "location of the officers is a relevant component in the 'fact-specific inquiry into all the

relevant circumstances.'" St. Br. 13 (citing Kono, 324 Conn. at 90). It is true that the location of the officers is part of the traditional search and seizure analysis. However, the Appellate Court failed to recognize that, despite the fact that the hallway in Kono was closed and locked, this Court found that it was a common area and the defendant had no more authority to exclude the police from it than did the defendant in this case. Kono, 324 Conn. at 88. It was the defendant's right to privacy inside his condominium that was critical in Kono. Id. 94, n. 10.

The state relies on cases that either require a person to prove a property right to invoke privacy protections or which reason there never is a reasonable expectation of privacy contraband. Defendant relies on State v. Lindsey, 118 N.E. 3d 723 (Ill. App. 3d Cir. 2018), appeal allowed, 116 N.E.3d 907 (2019). St. Br. 16, which held that a dog sniff search of the outside door of a motel room violated the defendant's privacy rights on the inside of the room.

Some of the state's cases reason that because there is no trespass, there is no intrusion on a protected interest. United State v. Legall, 585 Fed. App. 4 (4th Cir. 2014), *cert. denied,* 135 S. CT. 1471 (2015); United States v. Roby, 122 F.3d 1120 (1997); State v. Foncette, 238 Ariz. 42 (2016); Sanders v. Commonwealth, 64 Va. App. 734 (2015). Other cases reason that although a dog sniff revealed information about items within the room, there was no protected reasonable expectation of privacy in contraband, which is the only thing that a dog can detect inside the home. United States v. Lewis, No. 1:15-CR-10-TLS, 2017 WL 2928199 (N. D. Ind. Jul 10, 2017); Wilson v. State, 98 S.W. 3d 265 (Tx. App. 2002).

The reasoning of both types of cases is flawed. Sanders, like Roby and United States v. Marlar, 828 F. Supp. 415 (N.D. Miss. 1993), which were discussed in the defendant's main brief (p. 17), espouses the theory that the molecules that make up the odor of the drug have travelled into the common area that the officer is standing in and therefore are no longer private. Sanders, 64 Va. App. at 755. This rationale was rejected by Kono, 324 Conn. at 128, n. 30, and it is illogical because the whole purpose of using the police dog is to discover what is *inside* the room, not what is in the walkway. It is analogous to the police holding a stethoscope to the door to hear the conversation going on inside the room and then claiming

the sound waves travelled to the outside of the door. Such an action would doubtlessly be a violation of a defendant's right to privacy; bringing a drug detection dog to the outside of a motel room door is no different.

The cases that adopt the rationale that the dog can only smell contraband, which the defendant has no constitutional right to possess, are similarly without merit. Legall, 585 Fed. App. 4, Foncette, 238 Ariz. 42, and Wilson v. State, 98 S.W.3d 265 (Tx. App. 2002) fail to take into account the heightened expectation of privacy that people have in their motel room, which is equal to that of a home. Nelson v. State, 867 So.2d 534 (Fla. App. 2004) holds that the "no right to contraband" rule also applies to apartments, a rationale that the Court rejected in Kono.

When discussing the defendant's reliance on Lindsey, 118 N.E. 3d 723, the state contrasts it with United States v. Lewis, No. 1:15-CR-10-TLS, 2017 WL 2928199, at *8. Lindsey is the better-reasoned decision. The Court in Lindsey determined that, although "a motel occupant's reasonable expectation of privacy is *reduced* with regard to the area immediately adjoining the room…." (emphasis in original) 118 N.E. 3d 728; the use of "a sophisticated sensing device not available to the general public…to explore the details previously unknown in [the] motel room…." Id., 730.; violates his fourth amendment rights. In contrast, in Lewis the Court followed the rationale of Illinois v. Caballes, 543 U.S. 405 (2005), where the Court held that a warrantless dog sniff of the trunk of a car during a lawful motor vehicle stop did not violate the defendant's fourth amendment rights. Id. 409-410. Part of its rationale was that a drug detection dog detects only contraband; therefore the search does not intrude on innocent people. Id. In applying the rationale of Caballes, the Court in Lewis failed to consider that, even if a defendant's reasonable expectation of privacy in a motel room is less than in a free standing home or apartment, it is still greater than in a car or a suitcase. People engage in intimate activities in a motel room that are simply impossible to do anywhere else other than a home. The defendant's expectation of being free of a dog sniff search from

the outside of the intimate space of his motel room is one that society would consider more than reasonable.[2]

There are other reasons why the argument that the dog sniff can only detect contraband is not sound. Drug detection dogs have a wide range of accuracy levels. State v. Nguyen, 726 N.W.2d 871, 876 (S.D. 2007)(dog had failure rate of over 50% for detecting drugs in the field). Sometimes dog handlers unconsciously cue dogs to alert where the handler believes there are drugs. United States v. Trayer, 898 F.2d 805, 809 (D.C. Cir. 1990). The residue of narcotics contaminates a good percentage of the United States currency that is circulating throughout the country. United States v. $506,231 in U.S. Currency, 125 F.3d 442, 453 (7th Cir. 1997). All of these factors can lead to innocent people being subjected to a dog sniff search targeting their motel room.

Connecticut's legalization of medical marijuana also undercuts the "contraband" argument. General Statute § 21a-408a (a).[3] A drug detection dog would not be able to

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[2] The state challenges the defendant's reliance on the dissent in Roby, which determined that people's expectation of privacy is greater in a hotel room than in a "public airport or commercial bus." Roby, 122 F.3d at 1126 (Healey, J, dissenting). The dissent relied upon United States v. Thomas, 757 F.2d 1359 (2d Cir. 1985), which held that a dog sniff of an apartment door violated the fourth amendment. The state argues that the holding in Thomas was later curtailed by United States v. Hayes, 551 F.3d 138 (2d Cir. 2008). Hayes is not applicable to this case. The question in Hayes was whether scrub brush 65 feet from Hayes' home was curtilage. Id. 145-148. The defendant in this case has made no claim that the drugs here were found in the curtilage of the motel room. Moreover, Hayes did not curtail Thomas. The court in Hayes deferred to the Thomas Court's determination that a warrantless dog sniff of the inside of a home is a violation of the defendant's constitutional rights. Id. 144.

[3] 21a-408a. Qualifying patient not subject to arrest, prosecution or certain other penalties. Requirements. Exceptions. (a) A qualifying patient shall register with the Department of Consumer Protection pursuant to section 21a-408d prior to engaging in the palliative use of marijuana. A qualifying patient who has a valid registration certificate from the Department of Consumer Protection pursuant to subsection (a) of section 21a-408d and complies with the requirements of sections 21a-408 to 21a-408n, inclusive, shall not be subject to arrest or prosecution, penalized in any manner, including, but not limited to, being subject to any civil penalty, or denied any right or privilege, including, but not limited to, being subject to any disciplinary action by a professional licensing board, for the palliative use of marijuana if:

distinguish illicit marijuana from marijuana that one legally possesses for palliative care. A search that is unsupported by probable cause and a warrant may therefore lead to the discovery not only of non-contraband, but also of legal activity. See People v. McKnight, 2019 CO 36 Par. 7, 43 (dog sniff of exterior of car is a search because it violates reasonable expectation of privacy in possessing a small amount of marijuana).

B. This Court should not hold that police should be able to conduct a dog sniff of the outside of a motel room door based solely upon a reasonable and articulable suspicion.

The state argues that if a dog sniff of a motel room door is a search, then "[b]ased on the defendant's lesser expectation of privacy in his motel room,…the less intrusive nature of a canine sniff and the state's interest in using narcotics-detection dogs in combating drug crimes,… such a sniff is lawful if based upon reasonable and articulable suspicion." St. Br. 20-21. The state's position is without merit.

The state's assertion that a canine sniff is less intrusive than other types of searches is incorrect. As discussed in the defendant's main brief, a drug detection dog's false alert inevitably leads to the search of innocent people's private spaces. Perhaps even more disturbing, police officers and police dogs are bound to intimidate and frighten the occupants of motel rooms. Police dogs are large and very strong. They are selected because they are capable of intimidating suspects and of capturing them if they run away. These dogs can and do inflict great damage. https://www.npr.org/2017/11/20/563973584/videos-reveal-a-close-

(1) The qualifying patient's physician or advanced practice registered nurse has issued a written certification to the qualifying patient for the palliative use of marijuana after the physician or advanced practice registered nurse has prescribed, or determined it is not in the best interest of the patient to prescribe, prescription drugs to address the symptoms or effects for which the certification is being issued;

(2) The combined amount of marijuana possessed by the qualifying patient and the primary caregiver for palliative use does not exceed an amount of usable marijuana reasonably necessary to ensure uninterrupted availability for a period of one month, as determined by the Department of Consumer Protection pursuant to regulations adopted under section 21a-408m; and

(3) The qualifying patient has not more than one primary caregiver at any time.

gory-view-of-police-dog-bites; see also Maney v. Garrison, 681 Fed. Appx. 210, 231 (2017)(Harris, J, dissenting)(police dog tore a two inch section of hair, skin and tissue requiring a skin graft; also inflicted a brachial artery blood clot); Vathkean v. Prince George's County, 154 F.3d 173 (1998)(police dog bite to skull and face of innocent victim crushed the bones of her face). It must be terrifying for an occupant of a motel room to wake up at 2:00 A.M. to find that police and police dogs are outside of their motel room conducting an investigation.

Furthermore, such dog sniff searches are accusatory and embarrassing. They occur in the vicinity of the other motel guests as well as the staff. "[S]uch searches are highly visible and readily identifiable…. '[s]uch a public spectacle…will invariably entail a degree of public opprobrium, humiliation and embarrassment for the resident, for such dramatic government activity in the eyes of many—neighbors, passers-by, and the public at large—will be viewed as an official accusation of crime.'" Kono, 324 Conn. at 114-115, citing Jardines v. State, 73 So.3d 34, 36 (Fla. 2011), aff'd, 569 U.S. 1 (2013). Contrary to the state's position, a search that incites fear and embarrassment is not minimally intrusive.

C. The independent source doctrine does not justify the dog sniff because police unambiguously decided to get a search warrant after the dog sniff.

The state argues that the record is inadequate for review as to the question of whether the dog sniff was justified under the independent source doctrine. St. Br. 24-26.[4] The state does not contest the trial court's finding that the officers decided to apply for a warrant after the dog sniff. The state claims that in addition to making the decision to apply for a warrant after the dog sniff, the police may have also decided to apply for a warrant before the dog sniff. The state argues that because it was not on notice that it would need to establish this on the record, it did not do so and therefore the record is inadequate to review this claim. As

[4] Evidence seized is admissible under the independent source doctrine when "(1) the warrant [is] supported by probable cause derived from sources independent of the illegal entry; and (2) the decision to seek the warrant [was not] prompted by information gleaned from the illegal conduct."(citation omitted) State v. Vivo, 241 Conn. 665, 673 (1997).

noted in the defendant's main brief, it is very clear that the police did not decide to apply for the warrant until after the dog sniff. Def. Br. 22-23.

In support of its position, the state claims that Sergeant O'Brien specifically testified that the police had probable cause based on the events that occurred prior to the dog sniff. The state writes that O'Brien testified: "they had probable cause to obtain a search warrant based on Broems' seeing Taveras go in and quickly out of room 118, Taveras' possession of marijuana and heroin as discovered during the motor vehicle stop, seeing drug related items in Taveras' room on Charles Street, and the discovery that the registration card contained what he considered to be Tavares' name." St. Br. 25. This is not what the evidence shows. O'Brien was responding to the state's specific question asking him to explain "the probable cause you had in order to apply for the search warrant?" 2/29/16T101.

O'Brien responded:

> From the very beginning, just the totality of the whole thing; the fact that Sergeant Broems had said he saw Taveras go into to that hotel room, to that specific hotel room. He made the motor vehicle stop, they located the marijuana on Taveras, as well as that bag of heroin or suspected heroin.
> You know, the fact that we then searched his room and saw the additional baggie corners. And then going back and, I mean, just everything -- and leading up to, you know, to seeing the registration card with a Taveras on it.
> I mean, up until that point, even -- even prior to seeing Correa's name, and we were getting ready to, obviously, go that route as far as the search warrant is concerned. And then the K-9, obviously, the K-9 alert helped confirm things with -- with that specific room.
> So up until that point, you know, and again with Sergeant Broems conferring with another, you know, ex-narcotics sergeant and the shift commander, you know, everybody's collective mind is that was the approach, let's -- let's apply for a search warrant for that room.

Id. 101-102. In this testimony, O'Brien includes the dog sniff in the probable cause calculation and explains that once it occurred, the officers and the other agents Broems was conferring with made the collective decision to get the search warrant.

Furthermore, when the state asked Sergeant Broems the same question about what probable cause they had, he also recounted all the evidence they had collected up to that point, including the dog sniff. 2/29/16T180-181. He then added:

> And then we're speaking with people making sure we have enough, because I'd have to wake up Your Honor or a judge at that time. So that's really what my concerns were, or was decision making at that time.
> So I believed I had enough to get a search warrant after discussing it with the shift lieutenant. And we were basing all of that probable cause on the fact of getting a search warrant for that room.

Id. 181. This passage makes it entirely clear that the decision to get the search warrant was not made until after the dog sniff.

It is worth noting that throughout this investigation, these officers were aggressive. Broems believed he had reasonable suspicion to stop The Yukon based on Tavares going in and out of the room and the fact that he considered the ABV a high crime area. The officers all showed up in the second floor bedroom of an elderly woman who did not speak English at 2:00 A.M. and woke her up. They searched Tavares' bedroom without his consent. Undoubtedly, if the officers really believed they had probable cause to get a warrant prior to the dog sniff, they would have done so rather than continuing to hang around the motel room.

II. BROEMS' VISUAL SWEEP OF ROOM 118 WAS NOT JUSTIFIED BY EXIGENT CIRCUMSTANCES OR INEVITABLE DISCOVERY. (State's Brief 30-36)

The state argues that the officers' encounters with other people during the investigation, the lack of surveillance on the motel room for a period of time, and the possibility that someone other than the defendant was in the motel room were exigent circumstances that justified Broems' second warrantless search, the visual sweep of the motel room. The state also argues that the independent source doctrine justifies the warrantless visual sweep. These claims are without merit.

A. Exigent Circumstances

The state argues that Broems' warrantless search was justified by the officers' years of experience which taught them that extra people besides the registered parties are often

present in motel rooms when illegal activity is going on and from the officers' concerns that the driver of the Yukon or Tavares' brother could have made calls to warn those additional people. St. Br. 33; 2/29/16T149-150. The exigent circumstances rule is fashioned to prevent the police from using these precise reasons for executing a warrantless search. These reasons cannot suffice in law, or the exception would swallow the rule, and police would always be permitted to enter a motel room without a warrant.

To find exigent circumstances, the police must point to facts that are specific to the case. The officers' general experience in investigating crimes in motel rooms is not information that is specific to this case. Harris v. O'Hare, 770 F.3d 224, 235 (2d Cir. 2014), as amended (Nov. 24, 2014). Additionally, the police had no evidence that the driver of the Yukon or Tavares' brother were connected to room 118 or any illicit activities taking place there. In fact, these individuals were completely cooperative with the police. In particular, Tavares' brother fully cooperated even when the police showed up at his door in the middle of the night and demanded to confront his grandmother in her bedroom. Almost all arrested people have friends and family who know what is happening to the arrested person. This does not mean they are going to aid and abet their family member. The state cannot prevail by speculating that the other people with whom the police interacted might make phone calls and arrange for the unknown person in room 118 to destroy drugs. The state needs a specific reason grounded in the facts to support this argument. State v. Peterson, 525 S.W.2d 599, 607 (Mo. App. 1975)(the state did not establish "one scintilla of evidence that defendant's parents were other than law abiding citizens" who would destroy their son's marijuana while the police sought a warrant).

The rest of the state's arguments center upon the possibility that there may have been another unknown person in room 118 beyond the defendant or Tavares. St. Br. 34. The state argues that the room had not been surveilled for a period of time while the investigation was going on. This does not reveal any information about potential third parties that might be in the room. The state also argues that the police did not know if Tavares was picking up drugs

or buying drugs, and if he were buying drugs, the seller might still be in the room. This argument is based upon what the police did not know, rather than what they did know. Finally, the state argues that anyone who was in the room likely would have seen the police activity outside the room and destroyed all the evidence prior to the police obtaining the search warrant. This argument is based upon no specific facts, but is grounded in speculation. This is probably true in a significant percentage of police investigations. If this Court were to adopt this reasoning, the police would have carte blanche in any investigation where their actions took place on the street to search for contraband under the exigent circumstances doctrine.

B. The Independent Source Doctrine.

The state asserts that "Tavares' statement to the police was not derived from Broems' opening the door." St. Br. 36. The state argues that O'Brien's testimony that he asked Tavares about his association with room 118 when taking Tavares' statement does not show that the statement was derived from the visual sweep. According to the state, the police had been investigating Tavares and the locations with which he was connected and, therefore, the statement came from that investigation and not the visual sweep. Id.

The state's argument is without merit. The state was far more interested in room 118 than in Tavares, as evidenced by their delay in processing his arrest because of their extended investigation of room 118. It is clear that O'Brien's focus on the room derived from the information gathered from the dog sniff and the visual sweep. Otherwise, they would have asked Tavares about his own activities.

The state does not appear to contest the defendant's position that, if this Court believes that both the dog sniff and the visual sweep were illegal, the information derived from both of these searches should be excised from the warrant for purposes of the independent source doctrine. The state argues that the investigation of Tavares and the police encounter with the defendant were not derived from either the dog sniff or the visual search and provide adequate probable cause "even absent Cooper's positive alert and Broems' observation of a scale and plastic bag inside room 118." Id. Based upon the arguments in the defendant's main brief, he

reasserts that the police must not be allowed to benefit from the two illegal searches. Once all the evidence that is the product of these two searches is excised from the warrant, there is no longer probable cause to sustain the legality of the search. See U.S. v. Johnson, 380 F.3d 1013, 1017–18 (7th Cir. 2004)(state may not use the results of one illegal search to justify a second illegal search); State v. Ackward, 281 Kan. 2 (2006) (same).

Respectfully Submitted,
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STATE OF CONNECTICUT	:	SUPREME COURT
V.	:	STATE OF CONNECTICUT
RICARDO CORREA	:	JANUARY 17, 2020

CERTIFICATION

Pursuant to Conn. Prac. Bk. §§ 62-7 and 67-2 the undersigned certifies that the reply brief is a true copy of the electronically submitted reply brief, and that a true copy was mailed first class postage prepaid this 17th day of January 2020, to: Michele C. Lukban, Senior Assistant State's Attorney, Juris No. 409700, Office of Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Tel. (860) 258-5807, Fax (860) 258-5828, DCJ.OCSA.Appellate@ct.gov.

It also is certified that a true copy was mailed first class postage prepaid to my client, Ricardo Correa.

It also is certified that the reply brief complies with all the provisions of Conn. Prac. Bk. § 67-2 including electronic delivery to all counsel of record.

The undersigned attorney hereby certifies that this reply brief does not contain any name or other identifying information that is prohibited from disclosure by rule, statute, court order or case law; and that the reply brief complies with all provisions of this rule pursuant to Conn. Prac. Bk. § 67-2.

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