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**SUPREME COURT  
OF THE  
STATE OF CONNECTICUT**

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**S.C. 20781**

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**STATE OF CONNECTICUT  
v.  
JEAN JACQUES**

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**REPLY BRIEF OF DEFENDANT-APPELLANT**

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### **Notation re. Transcript**

Transcript referred to in this brief is designated as follows:

- PCT Transcript from probable cause hearing on January 12, 2016, Strackbein, J.
- MT Transcript of motion proceedings on April 7, 2022, Murphy, J.
- 1MT Transcript of motion proceedings on April 8, 2022, Murphy J.
- 1T Trial transcript of May 16, 2022, Murphy, J.
- 2T Trial transcript of May 17, 2022, Murphy, J.
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- 12T Trial transcript of June 3, 2022, Murphy, J.
- 13T Trial transcript of June 6, 2022, Murphy, J.
- ST Transcript from sentencing proceedings of October 26, 2022, Murphy, J.

## **Reply to the state's arguments**

### **A. The trial court deprived defendant of his absolute right to a probable cause hearing.**

The state all but ignores the constitutional implications of depriving defendant of his right to a probable cause hearing and argues that defendant was not entitled to one because Gen. Stat. § 54-46a does not allow motions to suppress to be adjudicated at probable cause hearings. State's Brief ("SB") at 24-26. That is entirely beside the point. Defendant was not seeking to have the court resolve a motion to suppress when he requested a new probable cause hearing because this Court had already ruled that an illegal search had taken place. *State v. Jacques*, 332 Conn. 271 (2019). The limitation on suppression motions at probable cause hearings has nothing to do with the issue in this case.

As defendant stated in his brief, a probable cause hearing is a prerequisite for the court to have jurisdiction over the defendant. *State v. Mitchell*, 200 Conn. 323, 332 (1986). Once defendant's conviction was reversed, there had to be a finding of probable cause before defendant could be retried because the landscape of the case had changed. In other words, the original finding of probable cause was null and void because the trial court had relied on the evidence from the illegal search – the cell phone and drugs found in defendant's bathroom – to find probable cause. The state's position essentially means that this Court's directive in *Jacques* is meaningless, and that the state could still use this evidence even though this Court declared it should have been suppressed and that its use by the state warranted a new trial.

In addition, if this Court agrees that defendant was entitled to a new probable cause hearing, he does not have to show that the "improper consideration of the drug and cell phone evidence at the HPC tainted the fairness of the instant *retrial*." SB26 (emp. orig).

Because the court did not have jurisdiction over defendant and because it violated a mandatory statute (Gen. Stat. § 54-46a), harmless error review is inappropriate. See Def. Br. pp. 21-24.

**B. The state should not have been allowed to introduce a police statement when the witness did not remember making the statement or the underlying incident.**

**1. Defendant's right to confrontation was violated.**

The state takes a hardline position and argues that Tywan Jenkins was available for cross-examination because he was physically present in court and could answer questions despite not remembering giving a statement to the police, the events set forth in the statement, or even remembering defendant. SB30-34. It argues that Jenkins' lack of memory somehow benefitted defendant as he was able to effectively show that Jenkins had memory loss. SB34-35. These flawed arguments underscore the need for a prophylactic rule that a witness with total memory loss should not be considered available for cross-examination under *State v. Whelan*, 200 Conn. 743 (1986).<sup>1</sup>

Defendant acknowledges that the majority of jurisdictions follow *United States v. Owens*, 484 U.S. 554 (1988); however, not only is that case distinguishable because the witness remembered making the statement and part of the underlying event, but there is a recognition by courts and commentators that a witness with an actual inability to

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<sup>1</sup> Defendant addressed the admissibility of Jenkins' statement in Issue B in his brief, and whether *Whelan* should be modified in Issue C in his brief. The state addresses all of defendant's arguments in one issue (B). Accordingly, defendant will address the state's arguments in one section B.

remember might not be available for purposes of the Confrontation Clause. See *United States v. Shaffers*, 22 F.4th 655, 662 (7th Cir. 2022)(agreeing that presence in courtroom alone does not satisfy Confrontation Clause); *State v. Rodriguez*, 952 N.W.2d 244, 259 (S.D. 2020)(“Our holding does not announce a categorical rule that, so long as a witness is physically present for cross-examination, there is never a violation of the Confrontation Clause.”); Ann M. Murphy, *Vanishing Point: Alzheimer’s Disease and its Challenges to the Federal Rules*, 2012 Mich. St. L. Rev. 1245, 1271-72 (stating *Owens* did not involve total memory loss and that “it is difficult to imagine under current Confrontation Clause jurisprudence that this possibility [of admitting the out-of-court statement] would pass muster” and if allowed, “then the right to confront is certainly an empty promise, as all that is necessary is a live body on the stand”).

In addition, there is no merit to the state’s claim that the cross-examination of Jenkins benefitted defendant because he showed that Jenkins suffered from memory loss. SB34-35. That would be true only if defendant was able to show that Jenkins’ memory loss was feigned, thereby conveying that he or his prior statement was not credible or that he was biased in favor of the state. When a witness is recalcitrant or is feigning memory loss, courts reason that the “forgetful” witness’s presence in court is sufficient for cross-examination purposes. See *State v. Pierre*, 277 Conn. 42, 85-86 (2006)(adequate opportunity to cross-examine witness when he admitted giving statement to police but said it was false and did not remember hearing the statements made by the defendants that were contained in the statement – defendant was able to cross-examine him about his motive and interest in giving information to police); *State v. Goodson*, 84 Conn. App. 786, 799-97 (2004)(witness who was reluctant to testify and claimed he did not remember giving statement to police but admitted being near the

scene at the time of the shooting and that his initials were on police statement was available for cross-examination, and defendant was able to demonstrate his motive, bias and interest). That certainly was not the case here where Jenkins answered, “I don’t recall,” “I don’t know,” or otherwise indicated he did not remember 26 times during cross-examination. See Def. Brief pp. 93-105.<sup>2</sup>

The state also claims that defendant could have attempted to admit under *Whelan* portions of Jenkins’ prior testimony from the probable cause hearing or the first trial “that was inconsistent with his asserted lack of memory in the instant trial and/or assertions contained in his prior statement.” SB35. The biggest problem with this argument is that it would have opened the door to the state admitting other parts of his testimony as either a prior consistent statement to rehabilitate Jenkins, or under section 1-5(b) of the Connecticut Code of Evidence,<sup>3</sup> which could have introduced evidence that was damaging to the defense. See *State v. Norman P.*, 329 Conn. 440, 460 (2018)(“when a portion of a statement introduced by a party has been taken out of context such that it distorts the meaning of the entire statement and could mislead the jury, § 1-5 (b) of the Connecticut Code of Evidence requires that the relevant remainder be admitted—even if that

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<sup>2</sup> While the state claims defendant could have cross-examined Jenkins about his stroke, SB35, that is irrelevant because defendant did not contest that his memory loss was real.

<sup>3</sup> Conn. Code Evid. § 1.5(b) states:

“When a statement is introduced by a party, another party may introduce any other part of the statement, whether or not otherwise admissible, that the court determines, considering the context of the first part of the statement, ought in fairness to be considered with it.”

remainder would otherwise be inadmissible”); *Michael T. v. Comm’r of Corr.*, 319 Conn. 623, 635-37 (2015)(concluding it was reasonable defense strategy to not call an expert witness to cast doubt on reliability of child complainant’s disclosure of sexual abuse because state would have offered second forensic interview video as prior consistent statement which would have “added details to the sexual abuse, thereby bolstering E’s credibility”); Conn. Code Evid. § 6-11(b)(prior consistent statement admissible if credibility of witness impeached to rebut the impeachment). Simply because defendant did not try to introduce Jenkins’ prior testimony does not mean “he cannot claim that he was denied his right of confrontation” as the state argues. SB 35-36 (quoting *State v. Cameron M.*, 307 Conn. 504, 520 (2012)). Unlike in that case where the defendant did not conduct any cross-examination of the complainant, defendant did attempt to cross-examine Jenkins albeit to no avail.

## **2. The abuse of discretion claim is reviewable.**

The state argues defendant’s claim that the trial court abused its discretion in admitting the statement under *Whelan* is somehow unreviewable. SB39. According to the state, defendant only objected on constitutional grounds and “never asked the trial court to exercise ‘its discretion on the ground that the statement was not inconsistent’ with Jenkins’ testimony.” SB39 (citing Def. Br. 47, n.9). The state has misconstrued defendant’s claim. First, defendant did object on evidentiary grounds that the statement did not fall within *Whelan*. Second, the state is using a footnote in defendant’s brief that pertains to the supervisory authority claim – an entirely separate issue – to suggest that defendant is raising an unpreserved claim that the statement was not inconsistent with Jenkins’ testimony, which is not what he is claiming on appeal.

At trial, not only did defendant argue that the admission of Jenkins' statement was a constitutional violation, but he also argued it was inadmissible under *Whelan*, which is an evidentiary claim. He objected on the ground that the statement was hearsay and argued that Jenkins' situation differed than other cases under *Whelan* because he had a physical impairment. 7T103 (in Def. Br. p.77). He argued "there's a difference between forgetting and being stoned, or drunk. There's a significant difference in having a stroke or a physical injury." 7T108; Def. Br. p.82. The state clearly knew defendant was also challenging the admission of the statement under *Whelan* because it argued that it was a prior inconsistent statement which was an exception to hearsay under *Whelan*. 7T104; Def. Br. p.78. The court was also aware of the evidentiary claim—when making its ruling, the court stated it was admissible under both *Whelan* and *Crawford v. Washington*, 541 U.S. 36 (2004). 7T112; Def. Br. p.86.

"Appellate review of evidentiary rulings is ordinarily limited to the specific legal [ground] raised by the objection of trial counsel." *State v. Marshall*, 87 Conn. App. 592, 598 (2005)(emp. added, cit. omit). When there is a question about whether a claim was preserved, "as long as it is clear from the record that 'the trial court effectively was alerted to a claim of potential error while there was still time for the court to act'... the claim will be considered preserved." *State v. Francis D.*, 75 Conn. App. 1, 8-9 (2003)(cit. omit). There is a difference, however, between the legal ground raised at trial and arguments made on appeal. As the Supreme Court explained,

[w]e properly can review the respondent's argument because it is an *argument*, not a *claim*. We will not review a claim unless it was distinctly raised at trial...We may, however, review legal arguments that differ from those raised before the trial court if they are subsumed within or

intertwined with arguments related to the legal claim raised at trial.

*Michael T. v. Comm'r of Corr.*, 319 Conn. 623, 635 n.7 (2015)(emp. orig., cit. & int. quot omit). See also *State v. Fernando A.*, 294 Conn. 1, 33 n.26 (2009)(recognizing distinction between argument and claim and stating Justice Palmer's restrictive interpretation of preservation rules would mean that “a reviewing court may consider only those specific *arguments* made before the trial court on the given *issue*”)(itals. orig); *State v. Vere C.*, 152 Conn. App. 486, 498, *cert. denied*, 314 Conn. 944 (2014)(reviewing defendant's claim about admission of uncharged misconduct and addressing his argument, raised for the first time on appeal, that the evidence was unduly prejudicial because the instructions were inadequate). As Justice Palmer aptly noted in his dissent in *Fernando A.*, 294 Conn. at 116:

Generally speaking, an argument is a point or line of reasoning made in support of a particular claim. Only claims are subject to our rules of preservation, not arguments. In the present case, the sole claim that the defendant raised in the trial court - and the sole claim he raises on appeal - is entitlement to a full evidentiary hearing. Contrary to the majority's assertion, I do not suggest that, on appeal, the defendant is barred from raising arguments in support of that claim that he did not raise in the trial court.

On appeal, defendant has challenged the court's evidentiary ruling by indicating that the facts in this case are distinguishable from those in *Whelan* and its progeny because of Jenkins' total memory loss, and because Jenkins did not even acknowledge that he signed or

initialed the statement that he did not remember giving.<sup>4</sup> These are *arguments* why *Whelan* is inapplicable, which is the claim that defendant made below. The state is wrong that defendant's claim cannot be reviewed.

### **3. *Whelan* should be modified.**

The state contends that this Court should decline to limit *Whelan* so that it does not apply when a witness has total memory loss because “the proposed rule relates to a matter of substantive law,” SB40, and this Court does not exercise its supervisory authority in such situations. SB40-41. However, the use of supervisory powers is not limited solely to cases where procedural rules are created as the state claims. As this Court explained in *State v. Elson*, 311 Conn. 726, 768 n.30 (2014), there are two categories of cases where the Court's supervisory powers have been used. The first is where the Court articulates a procedural rule as a matter of policy and without reversing the judgment, *id.*, which is not the type of claim here. The second is where the Court uses its “powers to articulate a rule or otherwise take measures necessary to remedy a perceived injustice with respect to a preserved or unpreserved claim on appeal.” *Id.* (cit. omit).

[T]here is no principle that would bar us from exercising our supervisory authority to craft a remedy that might extend beyond the constitutional minimum because

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<sup>4</sup> The only evidence that Jenkins made or signed the statement came from Detective Gomes, whose testimony the state relied on when offering the statement under *Whelan*. 7T102; Def. Br. p.76. The state never showed Jenkins his statement on direct examination or asked him if his initials or his signature were on the statement.

articulating a rule of policy and reversing a conviction under our supervisory powers is perfectly in line with the general principle that this court ordinarily invoke[s] [its] supervisory powers to enunciate a rule that is not constitutionally required but that [it] think[s] is preferable as a matter of policy.

*Id.* at 765 (int. quot. & cit. omit).

The *Elson* Court provided a “comprehensive catalog of cases” to show examples of where the Court used its supervisory powers in both categories. *Id.* at 768 n.30. Cases in the second category were those where the courts invoked their supervisory powers in matters dealing with substantive law and not merely to establish a “simple, prophylactic judicial procedure.” SB41. For instance, in *State v. Rose*, 305 Conn. 594, 605-06 (2012), the Court used its supervisory powers to reverse the defendant’s conviction and to create a rule that a defendant who is compelled to stand trial in prison clothing is an error that is reversible per se. In that case, the Appellate Court had reversed the defendant’s conviction based on constitutional grounds and concluded that it was inappropriate to apply harmless error review, but that if it did apply, the state failed to prove the error was harmless beyond a reasonable doubt. *Id.* at 600-01. This Court affirmed the Appellate Court’s decision but did so under its supervisory authority and did not resolve the issue of whether the constitutional error was structural or was subject to harmless error analysis. *Id.* at 606. In rejecting the state’s argument that the Court could not exercise its supervisory authority unless it first concluded that harmless error analysis applied and that the error was harmless beyond a reasonable doubt, the Court stated:

Although it might well be true that we ordinarily invoke our supervisory authority to grant relief to defendants

whose constitutional claims are unavailing, we on several previous occasions have declined to address a defendant's constitutional claim precisely because we elected to exercise our supervisory authority....Not only is there no ironclad requirement that we refrain from granting a defendant relief pursuant to our supervisory authority unless we first reject any relevant constitutional claim, but such a requirement would function as an improper restraint on that authority.

*Id.* at 606-07 (cits. omit); see also *State v. Polanco*, 308 Conn. 242 (2013)(cited by *Elson* Court as case in second category which overruled *State v. Chicano*, 216 Conn. 699 (1990) and created rule that when a defendant is convicted of greater and lesser offenses, the lesser offense must be vacated).

If this Court can exercise its supervisory authority to create a rule of per se reversal for defendants who must stand trial while wearing prison clothes, and reverse a defendant's conviction on that basis, it can certainly carve out an exception to *Whelan* under its supervisory powers.

In addition, this Court has the authority to create rules that amend or modify provisions in the Code of Evidence. See *State v. Gore*, 342 Conn. 129 (2022)(amending section 7-3(a) of the Code of Evidence); *State v. DeJesus*, 288 Conn. 418, 454 (2008)(stating Code of Evidence "was not intended to divest this court of its inherent authority to change and develop the rules of evidence through case-by-case common law adjudication" and creating limited exception to section 4-5(a) of the Code of Evidence). Thus, there is no doubt that this Court can modify *Whelan* and section 8-5(1) of the Code of Evidence and can use its supervisory authority to do so.

There also is no merit to the state's claim that defendant's rule is unnecessary because the trial court's gatekeeping function in determining whether a witness's testimony is inconsistent adequately protects a defendant's rights. SB41-42. If a trial court determines that a witness has memory loss whether real or feigned, that testimony is considered to be inconsistent for purposes of *Whelan*. That hardly protects a defendant who is unable to elicit any facts from a witness who does not remember making the statement and the underlying incident.

The state also claims this is not an appropriate case to modify *Whelan* because "the distinction between a diminished witness and a turncoat witness has no bearing on the perceived fairness of the judicial system as a whole." SB43. In the state's view, the fact that both types of witnesses are unable to explain the incident or the prior statement somehow means there is no reason to modify *Whelan*. SB43. However, there is a big difference between a witness who only remembers certain things, or is feigning a lack of memory, and one like Jenkins who had no memory whatsoever. With the former two types of witnesses, they can still be cross-examined about the things they remember (the partial memory loss witnesses) or to show that their lack of memory is not real, which would impact their credibility. The same is not true when a witness has a valid medical or physical reason for the total memory loss.

Surprisingly, the state then argues the record is inadequate to demonstrate that Jenkins was a "diminished witness" because defendant never argued that the difference between a diminished witness and a turncoat was legally consequential, and therefore, there was no finding that Jenkins was a diminished witness. SB44. This argument is nonsensical. First, as stated above, defendant did argue that this case was different for purposes of cross-examination because

of Jenkins' medical condition. See 7T108; Def. Br. p.82 ("there's a difference between forgetting and being stoned, or drunk. There's a significant difference in having a stroke or a physical injury. There's a huge difference in that situation.").

Second, there was no need to make a factual finding that Jenkins was diminished because ***the state represented that he was***. Prior to calling him as a witness, there was a discussion outside the presence of the jury, and defendant indicated he was going to object to him testifying because "I presume he's still incapable of recalling anything or has anything changed?" 7T98.<sup>5</sup> The state's attorney responded that she spoke to Jenkins briefly and he "indicated that there's been no medical change. To answer that question that there has been no change in his memory or his medical condition." *Id.* The state then elicited evidence on direct examination from Jenkins that he had memory loss as a result of a stroke and that his wife was in court so that she could help him. *Id.* at 101-02. In light of the state's own representations at trial, this claim is baseless.

There also is no merit to the state's claim that if an exception to *Whelan* was made, it would result in a minitrial because the court would have to decide if someone truly could not remember or if he was feigning. SB44. First, the number of cases where a witness truly cannot remember would be small as evidenced by the very few cases in Connecticut dealing with memory loss and *Whelan*. Second, it would require no more than an offer of proof for the court to make a determination. Courts routinely hold hearings to determine the

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<sup>5</sup> There had previously been a discussion on the record about Jenkins having a stroke before the hearing on defendant's motion to exclude Jenkins' testimony because he was a jailhouse informant. 1MT9-10. The state chose not to call him as a witness at that hearing. 1MT7.

admissibility of evidence, such as whether a child is able to testify, whether scientific evidence is reliable and whether a jailhouse informant can testify. As the state remarked, this is part of the court's gatekeeping function, SB41, and it is not a reason for this Court to decline to limit *Whelan*.

The state also argues that if this Court creates an exception to *Whelan*, it should apply prospectively and not to defendant's case. SB44-45. Clearly, if this Court agrees that an exception is necessary, then it recognizes that this is the type of case where the constitutional and procedural protections do not adequately protect the rights of defendants. In addition, as stated above, this case falls within the second category of cases where our courts exercise their supervisory powers. While in the first category of cases there is no remedy and the courts "employ only the rule-making power of our supervisory authority; in the second category we employ our rule-making power *and* our power to reverse a judgment." *In re Daniel N.*, 323 Conn. 640, 647 (2016)(emp. orig., cit. omit). It would make no sense for this Court to create an exception to *Whelan* because of a recognition that a witness with total memory loss cannot be cross-examined adequately, and at the same time not apply the rule to defendant.

Finally, the state is wrong that a new rule should not apply to defendant because he "was able to probe Jenkins and expose infirmities during cross-examination which provided strong support for the defense to argue to the jury that the prior statement was unworthy of belief." SB44-45. That clearly was not the case as the cross-examination of Jenkins shows. See Def. Brief pp.125-37. Indeed, the state's claim is belied by defendant's closing argument. Defense counsel stated:

And then Mr. Jenkins. **Nothing**. This guy comes up. I do feel badly for him. I don't want to – apparently he had a

stroke and forgot and it's sad. But I would suggest to you that you got to go with what you see and hear and **he couldn't totally tell you anything of importance about Mr. Jacques.** 11T62 (emp. added).

There simply is no reason to apply the rule on a prospective only basis.

#### **4. The admission of the statement was extremely harmful.**

The state claims defendant has failed to demonstrate that the admission of Jenkins' police statement was harmful. SB45. Although defendant disagrees that this is a nonconstitutional error, even if it is, the admission of the statement undoubtedly affected the verdict to a significant degree. First, the state completely overlooks that Jenkins was the state's most important witness who, as the state claimed during closing argument, provided in his statement "details that nobody else would know." 11T76. According to the state, the material facts contained in the statement – "the nature and location of the victim's stab wounds, the placement of her body in a closet, the existence of cuts on both of defendant's hands – were independently corroborated, and not public knowledge in July, 2015." SB46. That actually shows how weighty Jenkins' police statement would have been in the eyes of the jurors (and harmful to defendant) and that they likely gave his statement extra consideration.

While the state argues that the statement was cumulative to the testimony of Vazquez that defendant confessed to him, SB46, that is not true given the state's admission that Jenkins' statement contained details not known to the public. In addition, the state's vague claim there was "a mountain of evidence of guilt," without ever specifying what that was hardly shows the admission of the statement was harmless. SB47. The state ignores there was substantial evidence that

was favorable to defendant in terms of the third-party culpability evidence concerning Casey's boyfriend Eddy, and the evidence about his motive to kill her. Finally, one of the most important details for assessing harm – “the extent of cross-examination otherwise permitted,” *State v. Massaro*, 347 Conn. 200, 211 (2023) – is a critical reason why the error was harmful given that cross-examination of Jenkins was an exercise in futility, and that defendant was unable to counter the state's gratuitous statements during closing argument that it gave Jenkins no benefits.

### **C. It was improper to admit the testimony of jailhouse informant Danny Vazquez.**

The state first argues that defendant applied “de novo” review of the evidence, and that because defendant did not move for articulation, it can be assumed that any underlying factual disputes were resolved against him. SB50. These claims are unfounded. In reaching its decision, the trial court failed to give adequate consideration to the factors that weighed against the reliability of Vazquez's testimony, and for that reason, the court abused its discretion. Cf. *State v. Ledbetter*, 275 Conn. 534, 556 (2005), *cert. denied*, 547 U.S. 1082 (2006)(finding no abuse of discretion where court adequately considered factors that weighed against reliability of the identification). Moreover, the state's claim that defendant did not seek articulation of the court's decision is a red herring. There was no need to move for articulation given that the court filed a nine-page memorandum of decision on this issue. See CA57-65.

It is well established that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification.... [P]roper utilization of the motion for articulation serves to

dispel any ... ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal....In other words, an articulation elaborates upon, or explains, a matter that the trial court decided.

*State v. Walker*, 319 Conn. 668, 680 (2015)(cits. & int. quot. omit). There was no confusion about the court’s decision—it simply was unreasonable.

“In general, abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors.” *State v. Peeler*, 271 Conn. 338, 416 (2004), *cert. denied*, 546 U.S. 845 (2005). The court’s decision is flawed because the factors set forth in General Statutes § 54-86p weighed heavily against reliability.<sup>6</sup>

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<sup>6</sup> These factors are:

- (1) The extent to which the jailhouse witness's testimony is confirmed by other evidence;
  - (2) The specificity of the testimony;
  - (3) The extent to which the testimony contains details known only by the perpetrator of the alleged offense;
  - (4) The extent to which the details of the testimony could be obtained from a source other than the defendant; and
  - (5) The circumstances under which the jailhouse witness initially provided information supporting such testimony to a sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a prosecutorial official, including whether the jailhouse witness was responding to a leading question.
- Gen. Stat. § 54-86p(a).

First, regarding the “specificity of the testimony,” the court (as well as the state) admitted that the information Vazquez provided was “rather general.” CA64. Second, regarding the “extent to which the details of the testimony could be obtained from a source other than the defendant,” the court failed to consider that Vazquez only came forward after defendant’s conviction was reversed in 2019. Although Casey’s cell phone was missing the SD card and not the SIM card as the court inaccurately found,<sup>7</sup> the other details Vazquez provided were readily available to the public (the mop, the blood on defendant’s shoe), and the court’s failure to consider that in applying the fourth factor was unreasonable.

Third, the court’s finding regarding the fifth factor was also unreasonable. While the court noted that Vazquez sent a letter to the state on his own accord without the lure of any promises, the letter the court relied on was the biggest red flag that he was not reliable. See Def. Br. pp. 181-86 (Vazquez’s letter). He clearly did not contact the state out of the goodness of his heart. Rather, he was a professional snitch, something the court severely downplayed, stating it was “unaware of any situation in which Vazquez recanted his proposed testimony,” and “***despite having spoken to authorities on two other matters***, Mr. Vazquez has not provided any additional jailhouse testimony against other defendants.” CA64-65 (emp. added). To conclude that Vazquez was reliable despite having spoken to the authorities about three different defendants and in light of his letter where he bragged about being a “pretty good” confidential informant

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<sup>7</sup> The state claims defendant did not challenge any of the court’s factual findings as clearly erroneous; SB50, however, he made it clear in his brief that the court’s finding that the phone was missing a SIM card was inaccurate. See Def. Brief p.57.

for DOC, and wrote “how can the state help me, if I help the state,” is utterly illogical. It also defies logic that the court would recognize that Vazquez “has a history of convictions and arrests that include crimes involving truth and veracity,” yet discount that fact because they occurred during a time when he was addicted to narcotics. CA64.

Overall, the trial court’s decision to allow Vazquez to testify was an abuse of discretion, and for the reasons set forth in defendant’s brief, the error was harmful.

**D. Conclusion:** Defendant’s conviction should be reversed and the case should be remanded for a new probable cause hearing or a new trial.

Respectfully submitted,  
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February 5, 2024

## **CERTIFICATION OF SERVICE AND FORMAT**

Pursuant to Conn. Practice Book sections 62-7 and 67-2A(g), defendant hereby certifies that:

- 1) The reply brief has been redacted and does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law;
- 2) A copy of the reply brief was sent electronically to: Timothy Sugrue, A.S.A., Juris No. 410858, Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, tel. no. (860) 258-5807, fax (860) 258-5828, email: timothy.sugrue@ct.gov; and a copy of the brief was mailed to the defendant;
- 3) The reply brief filed with the appellate clerk is a true copy of the brief that was submitted electronically;
- 4) The reply brief complies with all provisions of Practice Book § 67-2A;
- 5) The word count of this reply brief is 5,147 words;
- 6) No deviations from the rules were requested or approved;
- 7) The electronic brief is filed in compliance with the guidelines.

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