No. 21-6502

IN THE

SUPREME COURT OF THE UNITED STATES

BOBBY GRIFFIN — PETITIONER
(Your Name)

vs.

MATTHEW WEINER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF CONNECTICUT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BOBBY GRIFFIN
(Your Name)

1153 East Street South
(Address)

Suffield CT, 06078
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

Both the State and Federal Constitutions equallyand cojointly prohibit unreasonable warrantless searches of private property. Under the Fourth Amendment of the United States Constitution,searches and seizures inside a home without a warrant are presumptively unreasonable. see State v. Reagon, 18 conn. App. 32 (1989) The three general categories of circumstances identified as exigent are those involving (1)Danger to human life, (2) Destruction of evidence and (3) Flight of a suspect. The United States Supreme Court has recognized in its watershed decision,Miranda v. Arizona, 384 U.S. 436, 455, 86 S.Ct 1602, 16 L.Ed. 2d 694 (1966)

1) Whether Griffins Constitutional rights were

violated by the Trial courts admittance of the evidence (e.g. the firearm) at the defendants trial.

2) Whether Griffins Constitutional rights were violated as that court also held, the defendant Griffins rights were not violated by the admittance of his confession at trial.

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BRIEF FOR THE DEFENDANT
INTRODUCTION

The petitioner Bobby Griffin was convicted of three offenses after the introduction of the confession and the weapon at trial. On appeal, the Connecticut Supreme Court cited with the District Court ruling of the introduction of the confession and the weapon, despite the Supreme Court ruling that the initial entry was improper, based on the totality of the circumstances. The defendant argues that this violated his Fourth Amendant rights. Also his fifth Amendment rights.

If the states were to place Griffin in a position such that this courts review could entitle him to a vacation of the conviction or a new trial, he stands ready to argue that the admission of his confession and evidence procured from an illegal search and seizure violated his due process (1) For the reasons set forth bythe Connecticut Supreme Court (2) And by the erroneous admittanceof the evidence at trial, stemming from evidence poisoned by the fruit of the poisonous tree.
If,however , this courts review could not effect the judgement of conviction, the procedural posture of this case makes certiorari inappropriate.

In a series of cases culminating in Hogan v. Cunningham, 722 F.3d 725, 732-33 (5th cir. 2013)

U.S. v. Saari, 272 F.3d 804, 812 (6th cir. 2001)

U.S. v. Curzi, 867 F.2d 36, 42 (1st cir.1989)

Singer v. Court of Common Pleas,879 F.2d 1203,1207 (3d cir.1989)

and U.S. v. Johnson, 22 F.3d 674,680 (6th cir.1994).
, This court set forth the rules for exigency circumstances.

NATURE OF THE PROCEEDINGS

Bobby Griffin, Jr. (Griffin) was arrested on October 13, 2013 (UAR), and ultimately charged with Felony Murder, in violation of General Statutes § 53a-54c; Murder, in violation of General Statutes § 53a-54a; attempted Robbery in the first degree, in violation of General Statutes § 53a-134(a)(2), § 54a-49; conspiracy to commit Robbery in the first degree, in violation of General Statutes § 53a-134(a)(2), § 53a-48; and Criminal Possession of a Firearm, in violation of General Statutes § 53a-217. (Informations)

Voir dire began on January 22, 2018. (Vitale, J.) The State began to present its evidence on February 6, 2018. Griffin testified. (T. 2/15[1] at 26-96)

The jury convicted Griffin of Felony Murder, Murder, and both Robbery counts. (T. 2/20) The trial court then convicted Griffin of Criminal Possession of a Firearm. (T. 2/20)

At sentencing, the trial court vacated his conviction for Felony Murder under *State v. Polanco*, 308 Conn. 242 (2013) and *State v. Benefield*, 153 Conn. App. 691 (2014). (T. 5/24 at 22) He was then sentenced to a total effective sentence of ninety (90) years. (T. 5/24 at 22)

This appeal followed.

STATEMENT OF FACTS

On the evening of October 14, 2013, a witness heard gunshots and came upon Nathaniel Bradley (Bradley) lying in the street next to a white car. (T. 2/6 at 23-32) She stopped her car, checked on him, then called 911. (T. 2/6 at 32-39; Ex. 1) Bradley died before the ambulance arrived. (T. 2/6 at 41-43; 2/8 at 174) He had been shot twice in the torso. (T. 2/6 at 58, 154; 2/8 at 174; 2/13 at 73, 82) Two 9mm casings were nearby. (T. 2/6 at 64, 112-14)

[1]All transcript references are to 2018 unless otherwise indicated.

Bradley had left his girlfriend's house, driving her car, at around 8:30 after he received a call. (T. 2/6 at 85, 87, 89) Police later found records of calls and texts between Bradley's phone and Ebony Wright (Wright)'s phone from 8:35 to 9:24 p.m. (T. 2/8 at 176-78; Ex. 145)

Griffin

In October, 2013, Griffin was 21 years old; living with his family (T. 2/15 at 26-27; 5/ 24 at 12, 14); and working as a Chipotle chef. (T. 2/15 at 27) He had three prior felony convictions. (T. 2/15 at 27-28, 55-56; 5/24 at 19)

On October 14th, Griffin worked from 7 a.m. to 4 p.m. (T. 2/15 at 28) After work, he arrived on Goffe St. at about 6 p.m. to visit a friend. (T. 2/15 at 28-30) Several people, including Nathan Johnson (Johnson)[2] and Wright[3] were on the porch. (T. 2/15 at 30-32) Griffin saw Johnson and Wright talking and using Wright's phone. (T. 2/15 at 32-33) He heard Wright asking the person she called for marijuana. (T. 2/15 at 34)

After waiting a while for the person on the phone to arrive, a group of people on the porch went for a walk. (T. 2/15 at 35-37) Griffin joined them, walking with Johnson and Wright. (T. 2/15 at 37) Johnson and Wright stopped on the sidewalk. (T. 2/15 at 38-39) A white car pulled up; Johnson walked to it with Wright. (T. 2/15 at 40, 88) Griffin kept walking. (T. 2/15 at 41, 62-63) He heard two gunshots and ran. (T. 2/15 at 41) When he got back to Goffe Street, he unlocked his bicycle to leave. (T. 2/15 at 44) He saw Johnson and Wright walking back; Wright had a cell phone in her hand. (T. 2/15 at 44) Johnson had a bulge under his jacket. (T. 2/15 at 44) Johnson handed him a blue and black bag with a gun in it – Griffin took

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[2]Johnson is awaiting sentencing for attempted first-degree robbery with a firearm and conspiracy to commit that offense. See *State v. Johnson*, CR 15–0155423.

[3]Wright plead nolo contendre to attempted second-degree robbery and was sentenced on 4/4/18 to four years, suspended, with three years probation. See *State v. Wright*, CR 14-0147657.

it because he was afraid of Johnson. (T. 2/15 at 45-46, 87, 90)

Griffin bicycled home and put the rifle and ammunition in his attic. (T. 2/15 at 46, 59-60, 72, 87) He tried to get rid of the rifle by selling it to Antwan Turner (Turner). (T. 2/15 at 47, 60-61, 63-64, 87) As discussed below, on the night of the 19th, police arrived at his house, arrested him, searched his home, and found the rifle and ammunition. (T. 2/15 at 48)

As further discussed below, the next morning, Griffin gave a statement to police at the station – he said at trial that he lied to police because he was afraid of being convicted of murder and sentenced to death, afraid that police would arrest his family, and because the police falsely told him they had other evidence against him. (T. 2/15 at 49-52, 69-72, 76)

Johnson

Johnson testified pursuant to a plea agreement. (T. 2/7 at 4-16) He said that on the night of the 14th, he went to Goffe Street to visit a friend. (T. 2/7 at 17-18) When he arrived, group of people, including Griffin, were hanging out on the front porch. (T. 2/7 at 21-22, 25-26) He claimed that Griffin, who he had seen around the neighborhood, but had not previously talked to, told Johnson that he was looking for someone to rob and asked if he knew someone. (T. 2/7 at 26-27, 70)

Johnson's response was

> First, I was like, I got people in my phone. I don't – I don't rob people, but he asked. I was trying to – I was there, like, I don't know, I probably got somebody for you. I got people inside my phone. I pulled out my phone and just strolled [sic]. I pulled my phone out. I strolled down. Had a touch – (indiscernable) – phone. Strolled down, gave him my phone.

(T. 2/7 at 28, see 2/7 at 28-30, 67, 111-13) He said that Griffin picked someone listed as "Playboy" (Bradley), who Johnson bought marijuana from. (T. 2/7 at 28-29) Griffin then asked

Wright[4] to call Bradley from her phone. (T. 2/7 at 30-32, 112-13) Wright arranged to buy marijuana from Bradley. (T. 2/7 at 32-34) At some point, Johnson saw that Griffin had a rifle in a bag while they were on the porch. (T. 2/7 at 49-51)

After 30 minutes to an hour, Bradley had not come. (T. 2/7 at 34-35) Johnson went for a walk with Wright and her aunts to the nearby store. (T. 2/7 at 36-37) As they were walking, Bradley called Wright to say he was coming to meet her. (T. 2/7 at 37-39)

Bradley pulled up in a white car. (T. 2/7 at 39-40) Wright turned away so Bradley could not see her answer the phone. (T. 2/7 at 40-41) Bradley got out of his car and opened the trunk. (T. 2/7 at 41-43) He and Wright began to talk. (T. 2/7 at 46) Johnson said that Griffin was hiding in an alley; he saw Griffin put on a mask and take out the rifle. (T. 2/7 at 48-49) Griffin walked up to Bradley and said "run everything". (T. 2/7 at 51-54) Bradley put his hands up, and started to walk to the driver's side door. (T. 2/7 at 53-54) Johnson said that Griffin then shot Bradley twice in the back and ran away after Bradley fell. (T. 2/7 at 56, 61-62, 66-67)

Johnson and Wright ran away together. (T. 2/7 at 63) As they ran, Wright realized that her number was in Bradley's phone. (T. 2/7 at 64-65) At her urging, Johnson ran back to the body, left on a busy street with people pulling up, to help her retrieve it. (T. 2/7 at 64) Johnson picked it up and handed it to Wright, then they walked away so as not to draw attention. (T. 2/7 at 65-66) Wright destroyed Bradley's phone's memory card. (T. 2/7 at 90-91) Johnson went to a store and bought some cigarettes to create an alibi. (T. 2/7 at 108)

Johnson briefly saw Griffin later that night (T. 2/7 at 68-69) and did not see him again until he was arrested in this case. (T. 2/7 at 70) Johnson said that Griffin knew that he talked

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[4]Johnson knew Wright as his friend's cousin who he socialized with. (T. 2/7 at 22-23, 94)

to police, and tried to influence his testimony. (T. 2/7 at 70-87)

Turner

On October 18th, Turner, a confidential informant, told police about someone trying to sell a rifle. (T. 2/7 at 143, 152-56; 2/8 at 8, 11, 13-14) Turner went to Griffin's home on October 19th to try to purchase the rifle. (T. 2/7 at 156-160; 2/8 at 24-25) Turner said that Griffin showed him a black rifle, ammunition, and some latex gloves. (T. 2/7 at 160-62) Turner gave Griffin some money to hold the rifle, and said he was going to try to find a handgun to complete the deal. (T. 2/7 at 162-63)

The Search and Griffin's Interrogation

Police put Griffin's house under surveillance. While police were drafting a search warrant application, a car left the parking lot of Griffin's house. (T. 2/8 at 25, 32, 35, 87-88) Police stopped the car because they were concerned that the rifle might be in it. (T. 2/8 at 27, 30, 88-89) It was not. In order to protect any evidence in the house, police next executed a "hit-and-hold" – they entered the house, seized the residents, and saw the rifle during a "protective sweep". (T. 2/8 at 33-34, 55, 58, 91-92, 114) Eventually, a magistrate granted the warrant. (T. 2/8 at 36, 55, 114-15) Police found a 9mm High Point rifle, a magazine, and ammunition in the attic. (T. 2/8 at 40, 48-49, 98, 106-07, 116-17; Ex. 134) The rifle fired the two casings found on the street. (T. 2/13 at 96-97)

Griffin had been put in the back of a police vehicle during SWAT's "hold". (T. 2/8 at 38, 42, 60) Police interviewed him at the scene. (T. 2/8 at 44-45, 60-61, Ex. 114) He was arrested and taken to the station. (T. 2/8 at 48, 69) The next morning he was interviewed by detectives. (T. 2/8 at 186-190; Ex. 149)

ARGUMENT

Before trial, Griffin moved to suppress his statement to detectives at the station and the rifle and ammunition found in his home after the SWAT team's warrantless entry. The trial court (Vitale, J.) denied both motions by written memoranda. Griffin asks this Court to reverse both decisions as violations of his federal and state constitutional rights.

I. GRIFFIN'S FEDERAL AND STATE DUE PROCESS RIGHTS WERE VIOLATED BY THE ADMISSION OF HIS STATEMENT TO POLICE WHERE OFFICERS LIED TO HIM REPEATEDLY, AND USED A VARIETY OF OTHER COERCIVE TACTICS, AND WHERE HE WAS SLEEP DEPRIVED WHEN QUESTIONED.

In 1996, this Court found that false evidence ploys did not make a confession involuntary in *State v. LaPointe*, 237 Conn. 694, 732 (1996) (*LaPoint I*), which has its origins in *Frazier v. Cupp*, 394 U.S. 731, 739 (1969). In the twenty-three years since *LaPointe I* was decided and fifty years since *Frazier*, there has been a significant change in this Court's understanding of the prevalence and causes of false confessions. Griffin urges this Court to limit or overturn *LaPointe I*, and conclude that false evidence ploys, combined with other coercive interrogation methods, raise serious questions about the voluntariness of the resulting confession. In this case, the combination of coercive tactics and sleep deprivation led to an involuntary statement that should not have been admitted at trial.

State v. Ramos, 317 Conn.19, 30-31 (2005)

A. Facts and Standard of Review.

Motion Hearing Evidence

After police entered his house and seized a rifle and ammunition, Griffin was arrested and put into a police cruiser. (T. 1/16 at 80-81) At about 3 a.m., Detective Podsaid (Podsiad) and an officer read Griffin his *Miranda* rights and then questioned him. (T. 1/16 at 80-81, 89; MEx. 2) After police threatened to arrest his family, Griffin said the rifle was his. (MEx. 2)

Griffin was taken to the police station where he was questioned by Detectives Zaweski

and Natal starting around 10:30 a.m. on the 20th. (T. 1/16 at 158, 161, 164; MEx. 3) He signed a *Miranda* waiver. (T. 1/16 at 164-66, MEx. 1[5])

During the interrogation, Natal lied to Griffin about the existence of witnesses and other evidence. (T. 1/16 at 170-71, 173-74, 178-80; see 2/13 at 6-9, 17-18, 23-24, 30-34, 49) She threatened Griffin, told him he'd "fry" and threatened to arrest his family for the rifle. (T. 1/16 at 186; 2/13 at 35-39) The detectives suggested various scenarios about the shooting, implying that if Griffin adopted one he'd be treated more leniently. (T. 1/16 at 172-73, 187-89) Griffin told them he was tired, and at one point they recalled that his eyes were closed, but Griffin didn't ask to stop the interrogation. (T. 1/16 at 174, 180; see 2/13 at 25-27; see Ex. 149 at 12:06, 12:41, 12:59, 13:00, 13:15, 13:26)

After about three hours, Griffin told the detectives that he had shot Bradley. (T. 1/16 at 175-76) Griffin said he showed "King" his rifle; King said he knew someone they could rob. (Ex. 151 at 132) King used Wright's phone to text and call Bradley while they were on Goffe street. (Ex. 151 at 126-27) Wright told Bradley she wanted to buy some "weed"; twenty minutes later, King, Griffin, and Wright went to meet him at Boulevard and Goffe. (Ex. 151 at 127) When Bradley pulled up, King and Griffin ran up on the car, and told him to "run everything". (Ex. 151 at 128, 135-36, 143) Bradley told them to get the fuck out of here, and turned his back. (Ex. 151 at 128, 136) Griffin said he didn't mean to shoot him, it just happened. (Ex. 151 at 128, 131, 144) Wright and King ran in one direction; Griffin ran in another. (Ex. 151 at 129, 136-37) King and Wright took Bradley's phone from the crime scene.

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[5]Two transcripts of Griffin's interrogation are in the record. At the motion hearing, a 135 page transcript and a 16 page addendum were offered as MEx. 1. (See T. 1/16 at 4-5, 184-85) At trial, a 149 page transcript was offered as Ex. 151. To avoid confusion, all references in this brief are to Ex. 151. The recording should control in the event of any discrepancy between it and the transcriptions.

(Ex. 151 at 127, 133, 137)

Trial Evidence

Detective Zaweski testified at trial about Griffin's interrogation. (T. 2/8 at 168-190; 2/9 at 3-22; 2/13 at 4-66) The recording was played for the jury. (Ex. 149; see 2/9 at 13-14)

Griffin also testified. After his arrest, he was held in the lockup – which did not have a mattress – and did not get any sleep, and fell asleep during the interrogation. (T. 2/15 at 49, 52-53) On the video, Griffin is yawning when he enters (Ex. 149 at 10:23-10:26) and yawns off and on throughout the recording. He pulls his arms into his shirt at 10:32 and keeps them there for most of the rest of the interrogation – often resting chin on one hand with his eyes downcast. (see e.g. Ex. 149 at 11:21, 11:59, 13:23) There are numerous points where he tucks his face into his shirt – when one or both detectives leave the room, he seems to nod off – often hiding his face in his shirt (examples start around 11:22, 11:25, 12:02, 12:12, 12:51, 13:50, 14:08; 14:46). The exhibit shows that he's exhausted.

Griffin said he made up a story for police because "I felt like I had no choice but to say somebody else did it, because they kept telling me I did it, and I kept over and over * * * again saying I didn't and I had nothing to do with this crime." (T. 2/15 at 49-50) He believed the story about having witnesses who identified him. (T. 2/15 at 50) He believed the threat to arrest his family. (T. 2/15 at 51) He understood the remark about being fried as meaning the electric chair. (T. 2/15 at 50) He didn't tell police what actually happened because he felt they would have still charged him with the crime regardless of what he said. (T. 2/15 at 51)

Dr. Hirsch testified for the defense about the circumstances that can give rise to a false confession. (T. 2/15 at 2-21) Hirsch explained that the typical police interrogation process has two steps – confrontation and minimization. (See T. 2/14 at 71, 119, 158, 2/15 at 6-7) The

interrogators confront the suspect with their certainty that he's guilty, often supported with real or false claims about the evidence. (T. 2/14 at 71; 2/15 at 6-7) This is accompanied by minimization – telling the suspect that if he confesses, he'll be treated leniently, often accompanied by suggestions that there are mitigating circumstances – like someone else was the main culprit, or the victim was asking for it. (T. 2/14 at 71-72; 2/15 at 6-8)

Griffin appended a psychological evaluation report to his Supplemental Defense Sentencing Memorandum – cognitive tests showed he had an IQ between 80 and 85 – Low Average, with mild intellectual impairments, and a tendency to cede to authority or social pressure. (Supplemental Defense Sentencing Memorandum Regarding *Miller/Graham*)

Standard of Review – Trial

The use of an involuntary confession is a denial of due process. See *State v. Correa*, 241 Conn. 322, 327 (1999). The State has the burden to prove the voluntariness of a confession by a preponderance of the evidence. *State v. Lawrence*, 282 Conn. 141, 177 (2007).

The trial court's written memorandum of decision (Memo: Statement) considered "the youth of the accused; his lack of education; his intelligence; the lack of any advice as to his constitutional rights; the length of detention; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as the deprivation of food and sleep" – factors originally listed by this Court in *State v. Toste*, 198 Conn. 573, 584 (1986)[6].

[6]As Justice Palmer noted in his concurring opinion in *State v. Lockhart*, 298 Conn. 537, 590 (2010) there has been a great deal of research into the counter-intuitive phenomena of false confessions in recent years. See also *State v. Purcell*, 331 Conn. 318, 361 (2019); *State v. Collins*, 154 Conn. App. 102 (2014). This research underlies the statutory recording requirement for some interrogations. Gen. Stat. § 54-1o.

The Court found that Griffin was 22 years old when he was interrogated.[7] (Memo:Statement at 15) There was no finding about his education or his intellectual development. He had been read his *Miranda* rights twice – once when questioned after the rifle was seized from his home and again at the start of the interrogation. He had been detained for several hours prior to the three-and-a-half hour recorded interrogation. (Memo:Statement at 3) The trial court was concerned about a detective's remark that after hearing Griffin's denial of involvement, they're going to "Fry you? They're gonna put you in the chair. You gotta at least admit that story's crazy. Whether its's true or not doesn't it sound silly?" (Ex. 151 at 101) It said the remark was "plainly ill-advised", but concluded it was isolated and did not render the confession involuntary. (Memo:Statement at 9-11) The trial court mentioned other references to lengthy sentences and lesser punishments if Griffin confessed, but did not find that they, or threats to prosecute Griffin's family, rendered his confession involuntary. Finally, the trial court concluded that Griffin was not impaired by his lack of sleep, repeatedly characterizing him as calm, collected, and "jousting" with officers.

Standard of Appellate Review

This issue is preserved by the defendant's motion to suppress the statement. If this Court disagrees, Griffin raises this issue under the familiar four prongs of *State v. Golding*, 213 Conn. 233, 239-40 (1989). The record is adequate for review. The trial court's actions implicate the defendant's rights under the Fifth Amendment to the United States Constitution and article first, § 8 of the Connecticut Constitution. The remaining *Golding* criteria involve an analysis of the merits of the claim and are presented below.

The appellate court will not disturb a trial court's findings "unless it is clearly erroneous

[7]Griffin said he was 21. (Ex. 151 at 46)

in view of the evidence and pleadings in the whole record.... [W]here the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision.... Although the ultimate question of voluntariness is one of law over which our review is plenary, the factual findings underpinning that determination will not be overturned unless they are clearly erroneous.... The determination of whether a confession is voluntary must be based on a consideration of the totality of circumstances surrounding it." *State v. Ramos*, 317 Conn. 19, 30-31 (2015).

"[A]lthough we give deference to the trial court concerning these subsidiary factual determinations, such deference is not proper concerning the ultimate legal determination of voluntariness.... we review the voluntariness of a confession independently, based on our own scrupulous examination of the record." (Citations and internal quotation marks omitted.) *State v. Andrews*, 313 Conn 266, 321 (2014).

B. The Trial Court Did Not Properly Weigh the Coercive Techniques and Evident Sleep Deprivation in Determining that Griffin's Statement was Voluntary.

Looking at the *Toste* factors in light of the whole record, the defendant was 21 when he was questioned. He had a high school education and was taking community college classes. He had an IQ between 80 and 85, with mild intellectual impairments, and a tendency to cede to authority or social pressure. He was twice read his *Miranda* rights, and he had previously been arrested. He had been detained without sleep since police put him in the police cruiser at around 11 p.m. – nearly 12 hours before the start of the interrogation.[8] The

[8]The informant told police that he could not meet with Griffin about the rifle until after he left work. Griffin left his house at 7 a.m. and worked from 8 a.m. to 4 p.m. on most days, suggesting that he may not have slept for over a day when the interrogation began.

interrogation itself lasted 3 ½ hours, during which Griffin can be seen yawning and nodding off and was told by detectives to keep his eyes open.

The trial court also addressed some of the coercive techniques used by the officers, but minimized their extent and importance. While individual components of the interrogation, viewed in isolation, might not render a statement involuntary, the overall impact of multiple coercive techniques could do so. See *State v. Fernandez-Torres*, 337 P.3d 691 (Kan. App. 2014).

1. Interrogators Repeatedly Lied to Griffin about their Evidence.

The detectives told Griffin an elaborate false story about two witnesses who unambiguously identified as the shooter him from a photo array and who would be believed because they didn't know him. (Ex. 151 at 22, 27-30, 35-36, 45, 89) Detectives also told him that they had fingerprints on shell casings found at the scene. (Ex. 151 at 24, 84) Late in the interrogation, detectives told him that they knew there was a second person, Wright[9], who admitted that she was there and said Griffin was as well. (Ex. 151 at 78, 85, 92, 117, 120)

Police lies "designed to lead a suspect to believe that the case against him is strong are common investigative techniques and would rarely, if ever, be sufficient to overbear the defendant's will and to bring about a confession to a serious crime that is not freely self-determined, particularly if * * * there was only one false representation made." *LaPointe I* at 732. *LaPointe I* has its origins in *Frazier v. Cupp*, 394 U.S. 731, 739 (1969), where police falsely told Frazier that his codefendant had confessed. The *Frazier* court concluded that "[t]he fact that the police misrepresented the statements that [Frazier's companion] had made is, while relevant, insufficient in our view to make this otherwise voluntary confession

[9]Police had not yet interviewed Wright.

inadmissible. These cases must be decided by viewing the 'totality of the circumstances.'"

In this case, detectives repeatedly lied to Griffin. When *LaPointe I* was decided twenty years ago, this Court knew far less about the risks and causes of false confessions. *LaPointe v. Commissioner*, 316 Conn. 225, 326 (2015) (*LaPointe II*). See *State v. Purcell*, 331 Conn. 318, 361 (2019).The United States Supreme Court had even less information about false confession available to it in 1969 – it has since recognized that "'the pressure of custodial interrogation is so immense that it can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States*, 556 U.S. 303, 321 (2009) . . . ." (Citations and internal quotation marks omitted) *J. D. B. v. North Carolina*, 564 U.S. 261, 269 (2011).

A few Connecticut cases have upheld confessions despite police false evidence ploys, assuming that such techniques would "rarely, if ever, be sufficient to overbear the defendant's will". See e.g. *State v. Lawrence*, 282 Conn. 131, 176-77 (2007); *State v. Pinder*, 250 Conn. 385, 423 (1999); *State v. Bjorklund*, 79 Conn. App. 535, 552-53 (2003). See also *State v. Doyle*, 104 Conn. App. 4, 17 (2007) (false evidence "ruse" did not make interview custodial). Researchers and commentators, conversely, have raised concerns about how false evidence ploys risk creating false confessions. See generally, Garett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051 (2010); Hritz, *"Voluntariness with a Vengeance": The Coerciveness of Police Lies in Interrogations*, 102 CORNELL L. REV. 487 (2017); Kassin, *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73:1 AM. PSYCH. 63 (2018); Wynbrandt, *From False Evidence Ploy to False Guilty Plea: An Unjustified Path to Securing Convictions*, 125 YALE L.J. 545 (2016).

The trial court was bound by *LaPointe I*. Griffin asks this Court to reconsider *LaPointe*

I. See Woody, et al., *Effect of False-Evidence Ploys and Expert Testimony on Jurors, Juries, and Judges*, 5 COGNENT. PSYCH. __ (2018) (judges appeared unaffected by recent findings regarding potentially coercive effects of false evidence ploys). Griffin is not asking this Court to completely prohibit the use of ruses and ploys in interrogations. Instead he asks it to discourage the practice by concluding that false statements about evidence, combined with other coercive tactics like minimization, may undermine the defendant's will, and result in a false confession. See *Com. v. DiGiambattista*, 442 Mass. 423, 524-25 (2004) (*DiGiambattista*); See also *Com. v. Rosario*, 477 Mass. 69, 80 (2017).

The cases *LaPointe I* relied on pre-date routine recording of custodial interrogations. Trial court no longer need weight the relative credibility of detectives and defendants about whether and how often false claims were made. Here, the recording and accompanying transcript reveal the many instances in which police maintained that they had fictitious evidence that would inevitably lead to Griffin being convicted for murder, spending the rest of his life in jail, or being executed if he did not cooperate and tell police that he was involved in the shooting.

In this case, the detectives' elaborate ruse created the risk that "an innocent defendant, confronted with apparently irrefutable (but false) evidence of his guilt, might rationally conclude that he was about to be convicted wrongfully, and give a false confession in an effort to salvage the situation".[10] See *DiGiambattista* at 435). See also *State v. Eskew*, 386 Mont. 324,

[10]Much of what Griffin ultimately told the interrogators was based on information first provided to him. Natale told Griffin that Bradley was a drug dealer; (Ex. 151 at 149) had been shot twice in the back (Ex. 151 at 34, 40); and that a white car pulled up, Bradley was shot, and something was taken from him. (Ex. 151 at 27, 37) She was the first to suggest that Wright was there, and later that Wright was involved. (Ex. 151 at 63-64, 69-70, 78-79) Natale claimed that there were texts on Griffin's phone luring Bradley to come over and later hinted that the call to Bradley was made by Wright. (Ex. 151 at 66, 78, 100)

329-32, 390 P.3d 129 (2017) (court will not condone use of deception to obtain confession).

2. Interrogators Repeatedly Maximized the Consequences if Griffin did not Confess, Including Saying that he would "Fry" if he Maintained his Innocence.

Police repeatedly told Griffin that he could be sentenced to sixty-five years and spend the rest of his life in jail. (Ex. 151 at 26, 28, 31, 37, 46, 66-67, 71, 95, 117, 121, 124-125) Natale told him that he needed to confess because if she told a judge the next day that Griffin was maintaining his innocence "the judge is gonna smack it right up on you." (Ex. 151 at 75, see *id.* at 93) Natale said that if he maintained his innocence he would fry in the chair. (Ex. 151 at 101) She threatened to arrest his family (Ex. 151 at 39); earlier, Podsiad and Feliciano had made a similar threat to coerce an admission that Griffin possessed the rifle. (MEx. 2)

The trial court held that Natale's threat that he would fry in the chair was "plainly ill-advised", but did not find it coercive. The State, likewise, conceded at oral argument that the remark was "inappropriate" and "shouldn't have been said", but argued it was not coercive. (T. 2/16 at 43-44) Griffin disagrees. In some known cases of false confessions, detectives threatened the defendant with execution. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1097 (2010). The cases the trial court relied on in its memorandum are older – the most recent was decided in 2000 – decided before much of the research into the causes and prevalence of false confessions. This Court should conclude that maximization techniques, especially threats that the defendant would be sentenced to death if he does not confess, are highly coercive. If combined with false evidence ploys and other coercive tactics, such threats raise serious questions about voluntariness .

3. Interrogators Threatened Griffin's Family with Arrest.

The detectives and officers at the scene made threats against the defendant's family.

This Court has permitted such threats in the past. In *State v. Lawrence*, 282 Conn 141, 155 (2007), the trial court and this Court believed the detectives' account that they had not threatened his family and did not reach the effect of such a threat on voluntariness. See also *LaPointe I* at 718 n. 29 (detective denied threatening to arrest defendant's wife). There is no doubt here that the threats were made. U.S. V. Finch, 998 F.2d 349,355- 56 (6th cir. 1993)

In *State v. Stephenson*, 99 Conn. App. 591, 598 (2007), a threat to arrest the defendant's wife on its own was deemed insufficient to make his confession involuntary. Griffin urges this Court to follow New York in concluding that threats to arrest or charge the defendant's family, combined with other coercive tactics, raise serious questions about voluntariness. See *People v. Thomas*, 22 N.Y.3d 629 (2014).

4. Interrogators Repeatedly used "Minimization" Tactics – Offering Ways to Minimize or Avoid Punishment if Griffin Confessed.

When Natale confronted Griffin with her belief that he was guilty and with the false claim that she had witnesses to prove it, she began to suggest ways he could minimize his guilt. She told him that the fictitious witnesses said there was someone else there too and that he could "get yourself out of this mess" by telling her who else was there. (Ex. 151 at 22-23, see *id.* at 26-28, 30, 36, 38, 40) Griffin, she suggested, "might have just been in the wrong place at the wrong time." (Ex. 151 at 33) She implied there was a difference between "felony murder or being in the wrong place at the wrong time murder." (Ex. 151 at 45) Later, the detectives suggested that the shooting was a split-second bad decision, that Griffin pulled the trigger by accident, or that it was self-defense. (Ex. 151 at 64-67, 72-74, 76, 86, 89, 93, 95, 97)

Detectives told him that they knew there was a second person there, "we already talked to that person and they admitted they were there. Guess what, they're not locked up. Cuz they

had a good enough story." (Ex. 151 at 78) They later said the person was Wright, and that "obviously what she told us got her out of this mess." (Ex. 151 at 85) This implied that if Griffin told them the proper story, he could reduce the charges he faced.

This Court has not discussed minimization tactics and their effect on voluntariness. Massachusetts notes that "common sense tells us that a person being asked by an interrogator to confess to a crime that is repeatedly described as understandable, justifiable, and not particularly serious would likely assume that giving the requested confession will result in lenient treatment. Scientific research has now confirmed the truth of that commonsense observation." *DiGiambattista* at 438. The *DiGiambattista* court concluded that minimization tactics, combined with false evidence ploys, raised serious questions about the voluntariness of the defendant's confession.

Griffin urges this Court to follow *DiGiambattista* and conclude that minimization tactics, combined with other coercive tactics raise serious questions about voluntariness.

5. Griffin was Deprived of Sleep by his Late-Night Arrest and Incarceration.

This Court has considered a suspect's fatigue in a few cases. In *State v. Andrews*, 313 Conn. 266, 318 (2014), the defendant began to nod off and to fall asleep. The interrogation was suspended until the next day, after he'd had an opportunity to rest. In *State v. Hafford*, 252 Conn. 274, 288 (2000), the defendant had been awake for 72 hours, but the detective recalled that he hadn't seemed sleepy. In *State v. DeAngelis*, 200 Conn. 224, 234 (1986), the detective "was aware that the defendant had said that he had not slept the night before, but he testified the defendant appeared fresh and alert throughout the questioning". In *State v. Carter*, 189 Conn. 631, 637 (1983), the defendant "appeared sleepy and tired at a point near the end of the interrogation, but never requested that the questioning be terminated"; police

recalled he was alert and responsive.

The video (Ex. 149) shows Griffin yawning off-and-on from the start, resting his chin on his hands, sometimes resting his head on the wall, and tucking his head into his shirt to sleep whenever there's a lull in the interrogation. (See pg. 17; see also Ex. 151 at 78, 104-05; T. 1/16 at 180; 2/13 at 25-27) He's exhausted. However, the detectives would not have stopped the interrogation, unless Griffin had specifically said, not that he was tired, but that he wanted to leave the room to sleep. (T. 2/13 at 27) In other words, the detectives believed it was up to the person who may be impaired by sleep deprivation to realize that he's impaired and ask for the interrogation to stop.

Sleep deprivation can cause the defendant to be as impaired as if he were intoxicated. See Duffy et al, *The Case for Addressing Operator Fatigue*, 10 REVIEW OF HUMAN FACTORS & ERGONOMICS 29 (2015); Williamson & Fever, *Moderate Sleep Deprivation Produces Impairments in Cognitive and Motor Performance Equivalent to Legally Prescribed Levels of Alcohol Intoxication*, 57:10 OCCUPATIONAL ENVIRONMENTAL MED. 649 (2000). It can lead to false confessions through various mechanisms – impairing cognition, decreasing ability to assess risk and consequences, and potentially producing false and distorted memories that make sleep-deprived people especially vulnerable to suggestion and coercion. Frenda, et al, *Sleep Deprivation and False Confessions*, 113:8 PNAS 2047, 2047 (2016). Had Griffin been awake all night, if not for nearly a full day, it would be unwise for him to drive. It was equally unwise for him to be interrogated. The trial court should have considered his evident fatigue as significant to whether his will was overborne by the detective's tactics.

6. The Trial Court's Assumptions about how a Suspect Making a False Confession would Behave may not be Based on Comparisons of True and False Confessions.

The trial court seemed most persuaded by its own observations and conclusion that Griffin was calm, composed, and "jousting"[11] with the officers. (Memo:Statement at 8, 14) Griffin agrees that early in the interrogation, he falsely told police that the gun belonged to Quan Bezzle (Ex. 151 at 5-6) and later blamed the shooting on Bezzle. (Ex. 151 at 47-63, 73, 80, 110) This Court[12] has not discussed the weight a trial judge should put on his or her observations of a defendant's behavior in a recording – until the enactment of General Statues § 54-1o, trial courts rarely had a recording to review.

Ex. 149 shows several hours of an exhausted young man, often with his arms tucked in his shirt, eyes downcast, speaking softly and without much affect, answering the detectives' questions. Absent expert testimony that could provide a framework or standards for distinguishing between defendants who are being pressured, but making a voluntary, true confession, and those who are being pressured and making an involuntary, false confession, a judge has nothing but his or her own intuition to use in evaluating a defendant's behavior. That is not enough to protect the defendant's due process rights against a false confession. The State has the burden of showing that the confession was voluntary – it should provide the trial court with appropriate expert testimony, based on comparisons of known false and known true confessions, about any behaviors that might help distinguish the two. See generally, *State v. Lawrence*, 282 Conn. 141, 201-02 (2007) (Katz, J. dissenting) (jurors' inability to detect false

[11]What the trial court saw as "jousting" may be a common interrogation tactic of detectives rejecting a suspect's claims of innocence and confronting him with real or false evidence of guilt.

[12]In *United States v. Jacques*, 744 F.3d 804, 809 (1st Cir. 2014), the court relied in part on the "defendant's calm demeanor and the lucidity of his statements" in a recorded interrogation. The trial court had disallowed an expert's testimony about false confession, *United States v. Jacques*, 784 F.Supp.2d 59, 63 (D.Mass. 2011), concluding that jurors were "particularly well positioned" to determine voluntariness by observing the recorded interrogation unaided by an expert.

confessions). The trial judge in this case presumably had some mental image of how a defendant whose will is being overborne by coercive police methods would act, but that standard was not unarticulated in his decision and may not be based on comparisons of false and true confessions.

C. Griffin's Federal Constitutional Rights were Violated.

In sum, the trial court did not give sufficient weight to the various coercive techniques used by police in this case – false evidence ploys, maximization techniques, a threat of execution, threats to Griffin's family, minimization tactics, and Griffin's lack of sleep. It relied heavily on older case law pre-dating much of the research into the causes and frequency of false confessions, even while quoting from this Court's more recent decisions in *Lockhart* and *LaPointe II* that acknowledge that research. It placed too much weight on its own observations – which were not supported by any evidence regarding the behavior of suspects in known false confession cases. In doing so, it violated Griffin's federal constitutional rights.

Griffin's conviction should be reversed and the case remanded for new trial.

D. Griffin's Connecticut Constitutional Rights were Violated.

If this Court concludes that federal case law requires it to find that Griffin's confession was voluntary, then Griffin urges this Court to set a higher standard under its state case law. "It is well settled that the federal constitution sets the floor, not the ceiling, on individual rights", *State v. Purcell*, 331 Conn. 318, 341 (2019). This Court may "craft prophylactic constitutional rules to prevent the significant risk of a constitutional violation". *Id.* at 342-44.

In *State v. Geisler*, 222 Conn. 672, 684-86 (1992), this Court created a six factor test to determine whether the Connecticut Constitution affords its citizens greater individual liberties than the federal constitution. The six factors are: (1) the text of the state constitution;

(2) historical analysis; (3) federal precedent; (4) precedent of other jurisdictions; (5) related Connecticut precedent; and (6) public policy.

This Court has previously concluded that neither the textual differences between the federal and state constitutions, nor Connecticut's historical treatment of confessions support a higher state constitutional standard for voluntariness. See *State v. Lockhart*, 298 Conn. 537, 555-58 (2010); *State v. James*, 237 Conn. 390, 413-426 (1996). After the *Lockhart* decision rejected a requirement for recording custodial interrogations under the state constitution, the Legislature acted to require recorded interrogations under many circumstances. This Court should not rely on older federal and Connecticut precedent that (1) predates much of the research into false confession and most of the findings in the DNA exoneration cases and (2) predates routine recording of custodial interrogations negating the need to rely on the interrogators and defendant's recollections. The older cases make assumptions about voluntariness that are not supported by current research.

As to sister state holdings, Massachusetts has found confessions obtained by false evidence ploys combined with minimization tactics in *DiGiambattista* at 436-40 should worsen, not dispel, a trial court's doubt as to voluntariness as a matter of state constitutional law.

The strongest argument for a higher standard is policy. *LaPointe I* is an example of how assumptions about voluntariness and, in particularly, false evidence ploys, led this Court to uphold the admission of a confession which it questioned, decades later, in *LaPoint II*. That appeal turned on a *Brady* issue, not on the advances in research into false confession, but the Court noted in its opinion its concerns about the confession.

Many principles of false confession research are generally accepted. See Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*,

73:1 AM. PSYCH. 63-80 (2018). There is general acceptance that false evidence ploys increase false confession rates; such ploys are "equally perilous" as explicitly coercive tactics. *Id.* at 75. There are also commonly accepted concerns about minimization tactics increasing false confession rates. *Id.*

In sum, there are excellent policy reasons for this Court to reconsider *LaPointe*'s approval of false evidence ploys, to conclude that the various coercive tactics used in this case raise serious questions about voluntariness, and create a prophylactic constitutional rule requiring trial courts to strongly consider whether such techniques raise questions about the voluntariness of a confession.

Under a more strict standard of scrutiny of the interrelated coercive factors in this case, the trial court should have found Griffin's interrogation was involuntary and suppressed it.

E. Griffin was Harmed by the Admission of the Recorded Interrogation by Police.

The State bears the burden of proving that the improper admission of an involuntary statement was harmless beyond a reasonable doubt. It cannot do so here.

The recorded interrogation was devastating to Griffin's defense. The prosecutor's cross-examination and closing argument repeatedly used excerpts from the interrogation to make its case that Griffin killed Bradley. The State may argue that the statement was cumulative of Johnson's testimony, but Johnson was testifying under a favorable plea agreement – his credibility was in question and his story doesn't make sense.

As this Court has observed, "a plea agreement is likely to bear on the motivation of a witness who has agreed to testify for the state" *Adams v. Commissioner*, 309 Conn. 359, 370 (2013). A witness "who has been promised a benefit by the state in return for his or her testimony has a powerful incentive, fueled by self interest, to implicate falsely the accused."

State v. Patterson, 276 Conn. 452, 469 (2005). "[A] witness' motivation to avoid prison time is invariably a strong one". *Adams* at 386.

Johnson claimed that a virtual stranger (Griffin) asked him for the phone number of drug dealer to rob, that he knew the stranger had a rifle in a bag, and that he gave that stranger the number of someone who he sold to. He then claimed that this stranger then asked Wright, a casual acquaintance, to become involved in the robbery by texting and calling the dealer. Other than having the rifle in his house days after the robbery, there was nothing to link Griffin to this crime. He didn't know Bradley. He didn't call Bradley. Griffin was allegedly carrying a nearly 3-foot-long heavy rifle around, on his bicycle, in hopes of being able to find two strangers to help him rob someone. Johnson claimed that Griffin was the prime-mover in this scheme – Johnson does not say that he or Wright expected a share of the proceeds. Wright didn't testify. She allegedly didn't realize that, even if the robbery were successful, Bradley would have her phone number and might try to find out who robbed him. It was only after Bradley was shot, and she and Johnson were fleeing together that she became concerned about Bradley's phone. Johnson also thought to go to a store to create an alibi. The jury might have rejected Johnson's story and acquitted Griffin if it had not been for Griffin's recorded interrogation, which lead him to testify to try to explain why he did so.

If the recorded interrogation had been suppressed, Griffin may have chosen not to testify because doing so would have risked opening the door to the State offering portions of the recording for impeachment. Instead, the jury would have been left to decide whether it believed Johnson's incredible tale.

The State may also point out that if this Court concludes that the police validly searched Griffin's house and seized the rifle, the jury would have also heard Turner's testimony about

an overheard conversation with Griffin, and about the rifle having been found in Griffin's house. The jury also could have considered Griffin's letters, which the State argued were efforts to influence the witness' testimony.

This evidence had it been standing alone with Johnson's testimony is not enough to make harmless Griffin's own involuntary statement used against him in cross and closing argument and his testimony, given to explain why the statement was involuntary and false.

II. GRIFFIN'S FEDERAL AND STATE DUE PROCESS RIGHTS WERE VIOLATED BY THE ADMISSION OF THE RIFLE AND AMMUNITION OBTAINED AS A RESULT OF A WARRANTLESS ENTRY INTO HIS HOME AND A FLAWED SEARCH WARRANT.

A. Facts and Standard of Review.

Motion Hearing Evidence

Four days after Bradley's death, Detective Podsiad received a call from a confidential informant, who was not identified at the hearing.[13] The informant had had a conversation with Griffin, who admitted to being part of Bradley's homicide and was trying to sell the rifle used in it. (T. 1/16 at 14, 16, 19, 36, 84-85) Podsiad told the informant to make arrangements to purchase the rifle. (T. 1/16 at 16, 85-86) The next day, the informant said Griffin wanted both money and a handgun in exchange for the rifle. (T. 1/17 at 20, 45) At some point, Podsiad learned that Griffin had a felony record. (T. 1/16 at 22)

Griffin had invited the informant to his house – Podsiad wanted the informant to see the firearm in order to secure a search warrant. (T. 1/16 at 24, 29) Podsiad dropped the informant off for the meeting at some time between 6:30 and 8:30 p.m.. (T. 1/16 at 30-33, 46, 86) Podsiad gave the informant $200 to hold the rifle while the informant promised to find a

[13]Podsiad said he had used the informant for information, but had not previously used him for an arrest. (T. 1/16 at 83, 100-01) The informant was later paid $1,500 for this case. (T. 1/16 at 83)

handgun to complete the deal. (T. 1/16 at 44-46) After a few minutes, the informant texted Podsiad that he was done; Podsiad picked him up. (T. 1/16 at 33) The informant told him that he saw a rifle and boxes of ammunition in Griffin's bedroom. (T. 1/16 at 35, 89)

Police set up surveillance around Griffin's house to prevent the rifle from being moved while the search warrant application was being drafted. (T. 1/16 at 37-38, 86) They were using at least one unmarked white car that the public might recognize as a police car. (T. 1/16 at 40, 52, 118) At about 10:30 p.m., the surveillance officers stopped a departing car containing Griffin's sister and another person. (T. 1/16 at 47-48, 50, 52, 55-56, 86, 116-19; MEx. 9) Police were concerned that Griffin would learn about the stop and move or use the rifle. (T. 1/16 at 59-61, 67, 91, 97-98)

A SWAT team entered the house at 11:34 p.m.. (T. 1/16 at 63-65, 90-91; MEx. 9) Initially, they entered the wrong apartment. (T. 1/16 at 65-68, 86) Griffin called the informant to tell him not to come, the police were raiding the house next door. (T. 1/16 at 66) The team realized their error, called for the residence's occupants to voluntarily exit, and then entered Griffin's apartment after he had been seized. (T. 1/16 at 68-69) Griffin's sister was released at 12:15 a.m. (T. 1/16 at 92-93; MEx. 9) See U.S. v. Mallory, 765,F.3d 373,386(3d cir. 2014)

During the entry before the warrant was signed, the SWAT team directed an officer to go into Griffin's attic to see if anyone was hiding in it. (T. 1/16 at 123, 129-30) Near the attic opening, the officer saw a hole in the ceiling and fallen sheet rock. (T. 1/16 at 124, 130, 135-36; MEx. 12-15) The officer looked into the attic and saw the rifle. (T. 1/16 at 127-30)

Podsiad obtained a search warrant at 2:35 a.m. on the 20th. (T. 1/16 at 71-72; MEx. 11) Pursuant to the warrant, police sized the 9mm rifle, ammunition, and $200. (T. 1/16 at 77-78)

Trial Evidence

At trial, Turner, who had five prior felony convictions and was then serving a sentence in an unrelated matter, identified himself as the confidential informant. (T. 2/7 at 141-146, see 2/8 at 8-9, 11) He had been providing information to Podsiad starting in October, 2013 – the month he provided information in this case. (T. 2/7 at 143-44) Over the next two years, he received a total of $14,000-$15,000 for his information. (T. 2/7 at 145, 165)

Turner said that he saw Griffin[14] on the night of October 18, 2013. (T. 2/7 at 148) Griffin, Turner said, told him that Goffe Terrace was his work, which Turner understood to mean Griffin had killed Bradley. (T. 2/7 at 150-51, 165) Griffin wanted to sell a rifle. (T. 2/7 at 151-52) Turner called Podsiad with this information. (T. 2/7 at 153) Turner continued to communicate with Griffin to try to purchase the rifle at Podsiad's request. (T. 2/7 at 154-55)

Eventually, Turner made arrangements to meet at Griffin's house. (T. 2/7 at 156-57) Podsiad drove him there and gave him $200 to buy it. (T. 2/7 at 159) Griffin showed Turner the rifle, magazines, and ammunition on a bed in his house. (T. 2/7 at 160-62) Turner gave him some money and promised to try to find a handgun to complete the trade. (T. 2/7 at 163) When Turner left, he told Podsiad what he saw. (T. 2/7 at 164)

Podsiad (T. 2/8 at 2-77, 162-67) and Officer Cameron's (T. 2/8 at 78-103) trial testimony substantially repeated their testimony at the motion hearing. Other officers testified about the search of Griffin's home after the warrant had been obtained. (T. 2/8 at 105-158) The rifle, magazines, and ammunition, and additional photographs of them were introduced into evidence. (Ex. 115-18, 133-36, 143)

The Trial Court's Decision on the Motion to Suppress

[14]Turner claimed to have known Griffin prior to the October 18th conversation. (T. 2/8 at 147-48) He did not provide Griffin's name to police. (See T. 1/16 at 19, 22)

This issue is preserved by the defendant's motion to suppress the firearm and ammunition. If this Court disagrees, Griffin raises this issue under the familiar four prongs of *State v. Golding*, 213 Conn. 233, 239-40 (1989). The record is adequate for review. The trial court's actions implicate the defendant's rights under the Fourth Amendment to the United States Constitution and article first, §7 of the Connecticut Constitution. The remaining *Golding* criteria involve an analysis of the merits of the claim and are presented below.

The trial court denied Griffin's motion to suppress the firearm and ammunition in a memorandum dated February 2, 2018. (Memo re: Gun) The trial court concluded that an exigency justified the warrantless entry into Griffin's home, that the police did not provoke the exigency, that the rifle was discovered during a protective sweep, that there was sufficient probable cause for the warrant, and that the rifle and ammunition would have been independently discovered under the warrant absent the warrantless entry. Griffin's federal constitutional rights, it concluded, had not been violated. (Memo re: Gun)

Appellate Review

In reviewing a trial court's findings and conclusions in connection with a motion to suppress "[a] finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record.... [W]here the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision..." (Internal quotation marks omitted) *State v. Winfrey*, 302 Conn. 195, 200-201 (2011).

"Whether the trial court properly found that the facts submitted were enough to support a finding of probable cause is a question of law.... The trial court's determination on the issue, therefore, is subject to plenary review on appeal.... Because a trial court's determination of the

validity of a ... search [or seizure] implicates a defendant's constitutional rights ... we engage in a careful examination of the record to ensure that the court's decision was supported by substantial evidence.... However, [w]e [will] give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses." (Internal quotation marks omitted) *State v. Brown*, 279 Conn. 493, 514 (2006).

B. Asserting that a Confidential Witness had Provided Information that "has been proven true and reliable" Was Insufficient in the Context of the Six Paragraph Search Warrant Application to Provide Probable Cause.

Griffin begins with the validity of the search warrant – if the warrant was properly supported by probable cause, then the trial court had concluded that the firearm would have inevitably been discovered. The six page warrant was not sufficient supported by probable cause because it does not provide sufficient information to establish the informant's reliability.

This Court's review of the question of whether an affidavit in support of an application for a search warrant provides probable cause for the issuance of the warrant is plenary. *State v. Buddhu*, 264 Conn. 449, 459 (2004). This Court considers the four corners of the affidavit and, giving deference to the issuing magistrate, determines whether the magistrate reasonably could have concluded that probable cause existed. See *State v. Flores*, 319 Conn. 218, 225-26 (2015).

Here, the six paragraph long warrant said, inter alia, that:

> 3. In the last (24) twenty four hours, this affiant was contacted by a cooperating witness (CW) whose information has proven true and reliable. At this time the Cooperating Witness is kept anonymous for his/her safety, but in the future will be willing to testify in court. The CW had spoke to an individual within the last (5) five days who he knows as Bobby Griffin. Griffin had told the CW that he was responsible for the homicide that took place on 10/14/13 on 1617 Ella T. Grasso Blvd (CN #13-48936). Griffin also tells the CW that he still has possession of the

firearm which he used in the homicide and that he is trying to get rid of it. Griffin also told the CW that the firearm is a 9mm. I contacted Sgt K. Jacobsen who confirmed that the weapon allegedly used in the homicide was a 9mm.

4. Within the last (24) twenty hour hours the CW was inside Griffin's residence at 374 Peck St New Haven CT. Griffin's residence at 374 Peck St is a (2) floor apartment. Griffin's bedroom is located on the upper floor of the two story apartment at 374 Peck St. The CW confirmed that Griffin was in possession of a black rifle type firearm. The firearm was located in Griffin's bedroom on the upper floor of the two story apartment at 374 Peck St. There were also (2) two magazines in the bedroom a box containing ammunition, caliber unknown and drug bags and drug paraphenalia on top of his bed.

5. At 2230 hours this evening, during the writing of this search warrant * * * The New Haven Police Department SWAT team made entry into 374 Peck St and secured the residents. Inside the residence was Bobby Griffin (08/05/92) an NCIC check revealed Griffin is a convicted felon.

(MEx. 11 at 2-3) The trial court felt that the warrant showed the informant's reliability because "Importantly, the C.W. was not an anonymous informant. His identity was known to police and the affidavit contained an averment that the informant was willing to 'testify in court' in the future." (Memo: Gun at 19-20) In addition the warrant asserted that the informant's information "has proven true and reliable." (Memo: Gun at 20)

Griffin disagrees. Asserting that the informant is known and has provided reliable information "does not itself give the issuing judge a basis upon which to infer reliability." *State v. DeFusco*, 224 Conn. 627, 643-44 (1993). This Court has explained, "[w]hen a search warrant affidavit is based on information provided to the police by confidential informants, the magistrate should examine the affidavit to determine whether it adequately describes both the factual basis of the informant's knowledge and the basis on which the police have determined that the information is reliable. If the warrant affidavit fails to state in specific terms how the informant gained his knowledge or why the police believe the information to be trustworthy, however, the magistrate can also consider all the circumstances set forth in the affidavit to

determine whether, despite these deficiencies, other objective indicia of reliability reasonably establish that probable cause to search exists." *State v. Barton*, 219 Conn. 529, 544 (1991).

Here, as in *Flores* and *State v. Rodriguez*, 163 Conn. App. 262, 270 (2016), police knew the informant's identity. While they could assess his demeanor, and there might be consequences if he was wrong; there is nothing to suggest the statement was against the witness' penal interest.

The level of detail in a confidential informant's tip can be a factor to consider in assessing reliability. See *Illinois v. Gates*, 462 U.S. 213, 234 (1983). There is nothing in the affidavit indicating how the informant knew Griffin, or why Griffin might trust him with incriminating information and evidence about a murder.

Police did corroborate that Bradley was killed with 9mm ammunition. However, 9mm is one of the most common ammunition types and appears in many Connecticut homicide cases. There is no indication that the witness learned information only the shooter might know, like how many times the victim was shot, or where he was hit. The affidavit does not indicate whether the police had corroborated any communication between the informant and the defendant or that a rifle rather than a handgun had been used in the murder.

The affidavit only offers a general, conclusory, assertion of the informant's reliability. There is no indication that he had provided, for example, information leading to arrests, or previously provided information leading to the seizure of evidence, or that the information he provided that "has proven true and reliable" related to homicides or firearms. In other Connecticut cases, there is more specific information about the informant. See *State v. Rodriguez*, 223 Conn. 127, 131 (1992) (informants had given information involving narcotics cases that led to arrests and convictions); *State v. Morrill*, 205 Conn 560, 563-64 (1987) (the

informant was "extremely credible, reliable and confidential," and "knowledgable in the area of drug activity and sales and trafficking and has in the past given ... information on drug activities that have resulted in arrests and convictions including a seizure of 32 pounds of marihuana.") See also *State v. Radicioni*, 32 Conn. App. 267, 275 (1993) (informant provided reliable information that led to arrests, but not convictions insufficient); *State v. Brown*, 14 Conn. App. 605, 616 (1988) (informants reliability established by track record of information leading to arrests, convictions, & seizure of evidence, & statements against penal interest).

An assertion that the informant is reliable "does not itself give the issuing judge a basis upon which to infer reliability." *State v. DeFusco*, 224 Conn. 627, 643-44 (1993). In *DeFusco*, describing the witness as a "known and reliable informant" was not itself sufficient. The Court concluded that adding that the informant had been "utilized numerous times in narcotics cases" combined with the information the police learned during their investigation was sufficient. Here, the affidavit asserts only that the CW's information has proven true and reliable – but no context is given for that statement. Saying that the witness provided true and reliable information is little different from saying that witness is reliable. The affidavit needed to say more – that the information such as that the information had led to the seizure of evidence, or had led to arrests and convictions.

Confidential informants are often "criminals, drug addicts, or even pathological liars whose motives for providing information to the police may range from offers of immunity or sentence reduction, promises of money payments, or such perverse motives as revenge or the hope of eliminating criminal competition." (footnote and internal quotation marks omitted) *State v. Barton*, 219 Conn. 529, 542 (1991). The affidavit does not state whether the informant had a criminal record, or a motive for providing information.

The affidavit does not include information about the reputation and past criminal behavior of the suspect. According to the affidavit, police learned that Griffin was a felon after the SWAT team had seized him – information potentially tainted by the warrantless entry (see infra p. 33).

Here, the affidavit does not show independent corroboration of the informant's statements, nor information about the defendant's past criminal behavior obtained prior to the warrantless entry that might bolster the reliability of the informant's statement. Here, as *Flores*,[15] these facts present "a particularly close case as to whether the issuing judge reasonably could have concluded that the information relayed by [the informant] was reliable, and that his statement therefore supported a finding of probable cause." Here, the balance tips in Griffin's favor – unlike *Flores* and *Rodriguez*, the information does not implicate himself, or provide a basis for believing he is so well acquainted with Griffin that Griffin would entrust him with such incriminating information.

If this Court upholds this warrant as providing sufficient probable cause to search Griffin's home, then it will lower the bar of Connecticut's probable cause jurisprudence even lower than the level that concerned the *Flores* dissent. Asserting that a witness is known and reliable is not enough – the affidavit should assert that the witness' information has been significant enough to lead to the seizure of evidence, to arrests, and/or to convictions. It should assert some basis for how or why a witness would be entrusted with incriminating information

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[15]Three justices dissented in *Flores*. The dissenters noted that "Allowing government agents to intrude into an individual's home on the basis of the information contained in the affidavit at issue in the present case significantly lowers the bar in our probable cause jurisprudence. To my knowledge, this court has never upheld the issuance of a search warrant using such insubstantial information to establish the reliability of the information given by an informant." *State v. Flores*, 319 Conn. 218, 234 (2015) (Zarella, J, dissenting.)

– in cases where the witness is a participant in narcotics sales providing information on his supplies, the link is obvious. Not so in this case. It should assert some effort to corroborate information beyond asserting that the firearm being sold shares a very common caliber with the murder weapon.

This Court should reverse the trial court's conclusion that the search warrant was supported by adequate probable cause within the four corners of the affidavit. The harm caused by the seizure of a rifle linked by firearms identification to the casings found at the scene of Bradley's murder; the consequent arrest of Griffin; and his subsequent incriminating statements to police is evident. Griffin's conviction should be reversed and the case remanded for new trial.

C. Police Were Not Justified in Making a Warrantless Entry into Griffin's Home Hours Before the Search Warrant was Granted.

It is axiomatic that the police may not enter the home without a warrant or consent, absent an established exception to the warrant requirement. (Memo re: Gun at 9-13) See *Kentucky v. King*, 563 U.S. 452, 459-60 (2011). "Physical entry of the home is the chief evil against which the wording of the fourth amendment is directed." *State v. Ryder*, 301 Conn. 810, 821 (2011). "Nighttime intrusions into the home are examined with particularly intense scrutiny." *Jones v. United States*, 357 U.S. 493, 498 (1958). One of the established exceptions authorizing entry is the exigent circumstances doctrine. *State v. Kendrick*, 314 Conn. 212, 255 (2014)[16] (*Kendrick*).

> The term, exigent circumstances, does not lend itself to a precise definition but generally refers to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure, for which probable

[16]*Kendrick* does not addresses whether there is any distinction between the federal and state constitution with regard to exigency. (See p. 38)

> cause exists, unless they act swiftly and, without seeking prior judicial authorization. There are three categories of circumstances that are exigent: those that present a risk of danger to human life; the destruction of evidence; or the flight of a suspect. The exigent circumstances doctrine, however, is limited to instances in which the police initially have probable cause either to arrest or to search.

(internal citations, quotation marks omitted) *Kendrick* at 227.

> In determining whether exigent circumstances existed, the Court considers whether, under the totality of the circumstances, the police had reasonable grounds to believe that if an immediate arrest [or entry] were not made, the accused would be able to destroy evidence, flee or otherwise avoid capture, or might, during the time necessary to procure a warrant, endanger the safety or property of others. This is an objective test; its preeminent criterion is what a reasonable, well-trained police officer would believe, not what the ... officer actually did believe. Put simply, given probable cause to arrest or search, exigent circumstances exist when, under the totality of the circumstances, the officer reasonably believed that immediate action was necessary to protect the safety of those present, or to prevent the flight of a suspect, or the destruction of evidence.

(internal citations, quotation marks omitted) *Id.* at 227-28.

As the trial court explained, the police were aware that Bradley had been killed with a firearm six days before the warrantless entry; that an informant said that Griffin had claimed responsibility for the shooting; that Griffin was a convicted felon; and that hours earlier the informant had seen a rifle and ammunition in Griffin's bedroom, which he was trying to sell and for which the informant had given him $200 to hold. (Memo re: Gun at 11) The informant also said that Griffin was planning to leave his home soon. (Memo re: Gun at 11) Finally, Griffin was aware that police had just entered a neighboring apartment and had warned the informant not to come. (Memo re: Gun at 11) Police had also recently stopped the defendant's sister's car and were concerned that Griffin would learn of the stop. (Memo re: Gun at 12)

The exigent circumstances doctrine justifies a warrantless search when the police conduct is "reasonable" – the police cannot create the exigency by engaging or threatening

to engage in conduct that violates the Fourth Amendment. *Kentucky v. King*, 563 U.S. 452, 461 (2011). Here, the trial court asserted that the police had not provoked the exigency by their actions. (Memo: Gun at 12-13) It does not address the legality of stopping Griffin's sister's car. In *State v. Reagan*, 18 Conn. App. 32, 34 (1989), police had observed the driver of a car engage in a drug transaction and stopped his car to prevent him from transferring or destroying that evidence. In *State v. Bardales*, 164 Conn. App. 582 (2016), police seized the defendant outside his home, pursuant to a warrant, then conducted a "protective sweep"[17] of his home. Here, police offered no justification for stopping Griffin's sister's car and detaining her and her passenger for hours, other than suspicion that the car might contain evidence in this case.[18] Had the police not stopped Griffin's sister's car, they would not have provoked the risk that Griffin might flee, destroy evidence, or endanger the police or public safety if police did enter his house without a warrant an hour later. (See Memo re: Gun at 11)

In addition to concerns about the police having created their exigency, the trial court relied on *State v. Reagan* to justify entering to prevent the destruction of evidence. *Reagan* involves narcotics, which can readily be destroyed. See also *State v. Correa*, 185 Conn. App. 308 (2018) cert. granted 330 Conn. 959 (2019) (concern about destruction of narcotics). But see *Com. v. Arias*, 481 Mass. 604, 617 (2019) (no exigency to prevent destruction of

[17]In that case, the trial court found that the police did not have reasonable grounds to believe that evidence would be destroyed if they did not conduct an immediate search of the defendant's home – the search was not legal. See *State v. Bardales*, 2013 WL 4046699 (Conn. Super. 2013).

[18]Podsiad said that he did not want to detain Griffin's sister until the warrant was signed because "then I would have to have this car either sit there at the side of the road for that amount of time, which is kind of unfair. If I let them go, now I have to deal with basically them calling back to the house and that firearm possibly leaving or any other thing that may happen from that." (T. 1/16 at 91) On re-direct, Podsiad also said he was concerned that Griffin's sister might call him or that someone might see the stopped car and call Griffin. (T. 1/16 at 98)

gun).(See Ex. 133 (photo), Ex. 143 (rifle))

Connecticut has not thusfar extended the destruction of evidence doctrine to durable evidence which is not readily disposable, and should not do so in this case. Finding an exigency in this case risks sanctioning warrantless entry in every firearms case. See *Price v. State*, 93 S.W.3d 358, 368 (Tex. App. 2002) (declining to extend destruction of evidence doctrine to every drug case unless police can show specific facts to justify concern about evidence disposal).

Second, police already had Griffin's home under surveillance, and had demonstrated the effectiveness of that surveillance in stopping and seizing Griffin's sister's car. There was no indication that Griffin could have fled his home unobserved, or have sent the rifle away with someone else without detection[19]. See *Com. v. Arias*, 481 Mass. 604, 617 (2019) ("because the building was surrounded by officers, there was little risk of a suspect's flight from within").

Finally, police concerns that Griffin might engage in armed resistance to police seems speculative. There are thousands of illegal firearms in Connecticut and, doubtless, dozens in New Haven. There is nothing to show an exigency here that differed from the typical circumstances surrounding every violent felony investigated by the police, or, indeed, every homicide. Vague and generalized assertions about danger to the public or to officer safety should not suffice to justify the complete disregard of the federal and state constitutions' stringent restrictions on the warrantless entry of a private residence. There is no evidence that Griffin had ever resisted arrest or been violent towards officers in his prior encounters with

[19]The events occurred on the night of October 19-20 – not the time of year when one might expect bulky winter coats to be worn. Anyone wearing unusually bulky clothing or carrying a container large enough to conceal a rifle would have been obvious to police surveillance experienced in spotting concealed weapons.

police. His reaction when police entered the neighboring apartment was to call the informant and warn him away. Police entered the neighboring apartment, but called the occupants of Griffin's apartment out to the street. Griffin and the other occupants voluntarily exited.

In addition, the trial court does not discuss the lengthy delay in obtaining the warrant. "When there are reasonable alternatives to a warrantless search, the state has not satisfied its burden of proving exigent circumstances." (quotation marks and citations omitted) *State v. Gant*, 231 Conn. 43, 68 (1994). While police are not required to stop an investigation to seek a warrant as soon as they establish probable cause, *Kentucky v. King*, 563 U.S. 452, 467 (2011), the officers in this case knew that there was a risk that someone would recognize their unmarked, but distinctive, cars in the neighborhood and warn Griffin. (T. 1/16 at 39-41) They knew once they stopped Griffin's sister's car that he might learn of the stop from his sister or from neighbors. (T. 1/16 at 59-60) Every hour of delay risked creating the very danger that was used to justify the warrantless entry.

Turner went into Griffin's home and returned to Podsiad's car some time between 6:30 and 8:30 p.m. Two to four hour later, at 10:30, police stopped Griffin's sister's car. An hour after the stop, at 11:34, the SWAT team mistakenly entered the neighboring apartment. Police finally obtained their search warrant at 2:35 a.m. four to six hours after Turner saw the rifle in Griffin's house. Had police more promptly drafted the search warrant application, then there would have been no potential exigency for warrantless entry.

In sum, this Court should reverse the trial court's denial of the motion to suppress the search of Griffin's home. In *State v. Geisler*, supra, 222 Conn. at 690, this Court held that under the Connecticut Constitution, evidence derived from a warrantless entry into the home must be suppressed and excluded unless the taint of the illegal entry is attenuated by the

passage of time or intervening circumstances. There was no attenuation in this case. The warrantless entry into Griffin's home and the seizure of the rifle under the flawed warrant lead to (1) the introduction of the rifle and ammunition at trial; (2) firearms identification testimony linking the rifle to the casings found at the scene of Bradley's murder; (3) the consequent arrest of Griffin; and (4) Griffin's subsequent incriminating statements to police in the police cruiser and later at the station.

Griffin's conviction should be reversed and the case remanded for new trial.

D. Griffin's State Constitutional Rights were Violated.

In *State v. Geisler*, 222 Conn. 672, 684-86 (1992), this Court created a six factor test to determine whether the Connecticut Constitution affords its citizens greater individual liberties than the federal constitution. The six factors are: (1) the text of the state constitution; (2) historical analysis; (3) federal precedent; (4) precedent of other jurisdictions; (5) related Connecticut precedent; and (6) public policy.

OPINIONS BELOW

The opinion of the Supreme Court of Connecticut is reported as State v. Bobby Griffin (SC 20439) and is in the appendix, of the defendan's petition, infra.

JURISDICTION

The Supreme Court of Connecticut entered Judgement on July, 22, 2021 as a slip opinion. The jurisdiction of this court to review the judgement of the Supreme Court of Connecticut is invoked under 28 U.S.C.§ 1257 (a)

REASONS FOR GRANTING THE PETITION

The United States Supreme Court has reminded us that the rules that we adopt to prevent the admission of involuntary confessions apply even when it is clear that the defendant confessed to the truth: "[C]onvict-tions following the admission into evidence of confessions which are involuntary, i.e., the pfoduct of coercion, either physical or psychological, cannot stand. This is so not because such confessions are unlikely to be true but because the method used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system a system in which the [s]tate must establish guilt by evidence independently and freely secured and may not be by coercion prove its charge against an accused out of his own mouth...To be sure, confessions cruelly extorted may be and have been, to an unascertained extent, found to be untrustworthy.

We condemn lying in personal affairs and criminalize it in many contexts...We condemn lying in part because we recognize that lying manipulates. If we want people to make free choices, we do not want them manipulated through lying, (footnotes omitted)

Darity v. State, 220 P.3d 731,738 n.1 (Okla.crim.App.2009) (Chaple, J., dissenting) ("Courts have opened a pandora box by sanctioning police lie. The ends justify the means rationale employed by most courts is very difficult to limit, and thus, the circumstances of permissible deceit have increased. So too has the evidence of unlawful deceit. How does a law enforcement officer accept a message that is permissible to lie to obtain evidence, but not permissible to lie in a suppression hearing when the conviction or release of a murderer is in the balance. Legitimizing this unethical conduct also could encourage the police to adopt the pernicious attitude that the end justifies the means, which in turn, could be used to justify other dishonest acts when the police are equally convinced of a suspects guilt, such as lying in affidavits to support search or arrest warrants, planting evidence, and offering false testimony.

Again I refer to kentucky v. King, 131 S.Ct 1849(2011) (Holding that the police cannot deliberately create exigent circumstances with bad faith intent to avoid getting a warrant) And I hold that they created this exact circumstance in this present case by the stopping of the defendant sister based on speculations that evidence pertaining to this case might be leaving at that exact moment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bobby Griffin

Date: 10-12-21