STATE OF CONNECTICUT *v.* TRAVIS LANIER (SC 20620)

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker and Alexander, Js.

Syllabus

Convicted of the crime of burglary in the second degree, the defendant appealed to the Appellate Court, claiming, inter alia, that the trial court had violated his constitutional rights to confrontation, to present a defense, and to a fair trial when it limited defense counsel's cross-examination of the victim with respect to matters pertaining to the victim's bias and motive to fabricate allegations against the defendant. The victim, who had been serving probation for a felony conviction, encountered the defendant, with whom he was acquainted, and another individual, M, at a bar, when the defendant asked the victim if he could borrow some money. The victim gave the defendant twenty dollars and remarked that he had additional money at home that he was saving for his rent. When the bar closed, they all went to the defendant's apartment, where M struck the victim several times and accused him of stealing his wrist watch. The defendant and M then ordered the victim to take them to the victim's apartment, and, when they arrived, the defendant demanded that the victim give him his money. The victim gave the defendant an envelope containing $800 in $100 and $50 bills. The defendant took some of the money and told the victim that he would hurt him if he contacted the police. Once the defendant and M departed, the victim called 911. A police officer responded to the call and encountered the defendant and M walking near the victim's apartment. The defendant continued to disregard the officer's multiple orders to stop and continued walking around a corner and onto a side street. A second police officer arrived on the scene, and, while that officer secured the defendant and M, the first officer searched the side street and discovered two $100 bills. In anticipation of trial, the defendant sought permission to question the victim concerning his prior felony conviction, his probationary status at the time of the incident, his arrests while on probation, and the specific conditions of his probation, which required that the victim undergo substance abuse treatment and that he not be arrested. The defendant argued that the victim's probationary status was a legitimate area of inquiry because the jury reasonably could infer from it that the victim had an interest in currying favor with the state and that the specific conditions of the victim's probation were relevant to his state of mind at the time of the incident and his motive to fabricate the allegations against the defendant. Specifically, the defendant argued that the victim was motivated to fabricate the allegations to avoid being accused of stealing M's watch and to recover the money that was taken

from him as payment for M's watch. The trial court ultimately permitted defense counsel to question the victim about his prior felony conviction, his probationary status, and his financial concerns and hardships at the time of the incident but prohibited her from cross-examining the victim about his recent violation of probation, his arrests while on probation, or the specific conditions of his probation. In doing so, the trial court determined that the defendant's proffered theory in support of the prohibited lines of questioning, namely, that the victim had fabricated his allegations to recover the money the defendant took from him and to avoid being arrested for stealing M's watch, which could have affected his probationary status, was too speculative. The Appellate Court affirmed the judgment of conviction, concluding that, because the trial court had allowed defense counsel to conduct an extensive and robust cross-examination of the victim, during which she emphasized the victim's felony probationary status and the many inconsistencies in the victim's testimony, the trial court did not violate the defendant's constitutional rights or otherwise abuse its discretion by limiting defense counsel's cross-examination. On the granting of certification, the defendant appealed to this court. *Held*:

1. The trial court did not violate the defendant's constitutional rights to confrontation, to present a defense, or to a fair trial:

   The trial court's restriction on defense counsel's cross-examination did not foreclose her from cross-examining the victim on matters tending to show the victim's motive, bias, or interest to fabricate his allegations against the defendant but merely set reasonable limits on the scope of that inquiry, and defense counsel was permitted to expose facts from which the jury could have appropriately drawn inferences relating to the victim's credibility.

   Defense counsel was afforded an adequate opportunity to cross-examine the victim, which included questions about M's allegedly stolen watch and the victim's financial difficulties, and to present the defense's theory of the case, namely, that the victim was motivated to fabricate the allegations against the defendant so that he could recover the money the defendant had taken from him and avoid arrest for allegedly stealing M's watch.

2. The defendant could not prevail on his claim that the trial court had abused its discretion by limiting defense counsel's cross-examination of the victim because, even if the trial court had abused its discretion, the defendant failed to demonstrate that the error was harmful:

   Although the victim's testimony was critical to proving that the defendant had committed the burglary, the state's case was strong, and there was ample corroborating evidence demonstrating that the defendant had unlawfully entered and remained in the victim's apartment while placing the victim under threat of physical harm and with the intent of stealing the

victim's money, and that evidence included photographs of the victim's injuries, medical records, and testimony from emergency room personnel; M's testimony that the victim had been assaulted, that the defendant was present for the assault, and that the defendant and M walked the victim to his apartment to get his money; and dispatch call sheets, testimony from a police dispatcher, and 911 call transcripts all indicating that the victim had not led the defendant and M back to the victim's apartment voluntarily.

Moreover, the defendant's conduct upon encountering the police, including his ignoring the officers' commands, his walking away from one of the officers, and his disposal of two $100 bills on the sidewalk before returning to the officers, supported the inference that the defendant had acted in that manner because the money was evidence of the burglary, and he did not want the police to find it on his person or to observe him disposing of it.

Defense counsel was otherwise permitted to conduct cross-examination and to introduce evidence to adequately advance the defense's theory that the victim had fabricated the allegations against the defendant, as counsel elicited testimony from the victim that he had been convicted of a certain felony, that he was on probation, and that he faced certain financial difficulties at the time of the incident, counsel impeached the victim's credibility by highlighting the many inconsistencies in his statements, M's testimony provided a basis for the defendant's claim that the victim had stolen M's watch and offered him money as compensation for the theft, and defense counsel's closing argument, which drew from the testimony elicited during cross-examination of the victim and direct examination of M, demonstrated that counsel was able to cogently present the defense's theory of the case.

Furthermore, there was no merit to the defendant's contention that the prosecutor's rebuttal argument that the defendant had failed to show any motive for the victim to fabricate his allegations compounded the harm allegedly caused by the trial court's limits on defense counsel's cross-examination of the victim, as the trial court mitigated any potential harm by instructing the jury that statements made by counsel during closing arguments are not evidence and by reminding the jury to draw its own conclusions concerning the credibility of the witnesses, and the prosecutor's rebuttal argument did not change the fact that defense counsel, during her own closing argument, relied on the evidence that she was able to introduce to argue that the victim had been motivated to fabricate the allegations against the defendant due to the victim's probationary status.

In addition, this court could not conclude that the trial court's limits on defense counsel's cross-examination would have had any meaningful impact on the jury's verdict, as it was unlikely that testimony regarding

the specific conditions of the victim's probation would have made defense counsel's presentation of the defense's theory of the case any more persuasive, as the jurors reasonably could have surmised, on the basis of their own common knowledge, that a probationer would seek to avoid arrest.

Argued October 11, 2022—officially released July 11, 2023

Procedural History

Two part substitute information charging the defendant, in the first part, with the crimes of robbery in the first degree, robbery in the second degree, conspiracy to commit robbery in the first degree, conspiracy to commit robbery in the second degree, assault in the second degree, and burglary in the second degree, and, in the second part, with being a persistent felony offender, brought to the Superior Court in the judicial district of Middlesex, where the first part of the information was tried to the jury before *Suarez*, *J.*; verdict of guilty of burglary in the second degree; thereafter, the defendant was tried to the court on the second part of the information; finding of guilty; subsequently, the court, *Suarez*, *J.*, rendered judgment in accordance with the verdict and the finding, from which the defendant appealed to the Appellate Court, *Bright*, *C. J.*, and *Moll* and *Bear*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Pamela S. Nagy, supervisory assistant public defender, for the appellant (defendant).

Melissa L. Streeto, senior assistant state's attorney, with whom were *Russell Zentner*, senior assistant state's attorney, and, on the brief, *Michael A. Gailor*, state's attorney, for the appellee (state).

Opinion

ALEXANDER, J. In this certified appeal, the defendant, Travis Lanier, challenges the judgment of the Appellate Court, which affirmed the defendant's convic-

tion of burglary in the second degree in violation of General Statutes § 53a-102 (a). The defendant claims that the Appellate Court incorrectly concluded that (1) the trial court did not violate his constitutional rights to confrontation, to present a defense, and to a fair trial under the sixth and fourteenth amendments to the United States constitution, and (2) the trial court did not abuse its discretion when it limited defense counsel's cross-examination of the victim, Alejandro Marrinan.[1] We affirm the judgment of the Appellate Court.

The jury reasonably could have found the following facts. On the evening of January 28, 2018, the victim went to the Corner Pocket, a bar in Middletown, where he encountered the defendant, who was there with a small group, including Mason Moniz. The defendant, who was acquainted with the victim, bought him a drink and, at some point, asked if he could borrow some money. The victim gave the defendant $20 and remarked that he had additional money at home that he was saving for his rent. After the bar closed at 1 a.m., the defendant invited the victim and Moniz back to his apartment. When they arrived at the defendant's apartment, Moniz struck the victim several times[2] and accused

[1] We granted the defendant's petition for certification to appeal from the judgment of the Appellate Court, limited to the following issue: "Did the Appellate Court properly uphold the trial court's restriction of defense counsel's cross-examination of the complainant about matters relevant to the complainant's motive to fabricate his allegations?" *State* v. *Lanier*, 338 Conn. 910, 910–11, 258 A.3d 1280 (2021). We agree with the state that the certified issue is imprecisely worded in that it presumes to resolve in the defendant's favor the central issue raised by this appeal, the relevance of the line of questioning defense counsel sought to introduce during cross-examination. Accordingly, we reword the certified issue to add "allegedly" before "relevant." See, e.g., *State* v. *Lavigne*, 307 Conn. 592, 594 n.1, 57 A.3d 332 (2012) ("this court may modify certified [issues] to render them more accurate in framing issues presented" (internal quotation marks omitted)).

[2] There was conflicting evidence as to whether the defendant also struck the victim. The victim claimed that both Moniz and the defendant assaulted him. According to Moniz, however, he alone assaulted the victim. Moniz testified that, prior to the defendant's trial, he had pleaded guilty to the assault under the *Alford* doctrine. See *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

him of stealing his watch. Moniz testified that, about two weeks prior to the night in question, the victim had been at his apartment and stolen a watch while Moniz' back was turned. Moniz further testified that, when he confronted the victim about the watch, the victim had denied taking it but offered to pay Moniz $300 as compensation for it. The victim testified that he "had no idea what [the defendant and Moniz] were talking about" when they confronted him about the watch. He further testified that the defendant and Moniz had demanded that he take them to his apartment to get money or they were going to hurt him.

While the three men walked to the victim's apartment, the victim secretly dialed 911 on his cell phone in his pocket, hoping that the call would alert the police to his location.[3] When the three men arrived at the victim's apartment, the defendant ordered him to open the door, and the defendant and Moniz forced him inside. Once inside, the defendant demanded that the victim give him his money. The victim had $800 in a bank envelope in his bedroom closet, in denominations of $100 and $50 bills, that he was saving for his rent payment. After the victim removed the envelope from the closet, the defendant grabbed it, removed a portion of the money, and told the victim that he would hurt him if he talked to the police. He then invited the victim back to his apartment to drink some more beer, which the victim declined to do.

After the defendant and Moniz left the apartment, the victim again called 911 and told the operator that two individuals had just robbed him and that these individuals were walking down the street. The victim said that he was afraid for his life because one of them

[3] Dispatch call sheets and testimony from a Middletown police dispatcher presented at trial corroborated the victim's testimony that he had made this 911 call without speaking to an operator.

had threatened to shoot him if he talked to the police. He also informed the operator that, before leaving his apartment, the individuals had invited him back to their apartment. After receiving the 911 dispatch, Officer Kyle Pixley of the Middletown Police Department encountered the defendant and Moniz walking down Main Street, a short distance from the victim's apartment. When Pixley ordered them to stop, both men continued walking. After Pixley ordered them to stop several more times, Moniz complied, but the defendant continued to disregard Pixley's orders and walked around the corner from Main Street onto Rapallo Avenue. A second officer arrived and ordered the defendant to comply several times, after which the defendant walked back toward Main Street. While the second officer secured the defendant and Moniz, Pixley walked over to Rapallo Avenue to see whether the defendant had disposed of something when he had walked around the corner. Pixley discovered two $100 bills on the sidewalk.[4] The officers also found two $50 bills on Moniz.

Middletown police officers interviewed the victim at his apartment and then took him in a police cruiser to the area where the defendant and Moniz had been detained. After the victim identified the defendant and Moniz as the individuals who stole his money, the police took him back to his apartment. He subsequently was transported by ambulance to a hospital after complaining to an officer about a head injury. The hospital medical staff observed blunt trauma to the victim's face and determined that he had a broken nose. At the hospital, the victim conveyed to the emergency department staff that he was concerned that he might have been drugged.

The defendant was arrested and charged in a six count information with committing various crimes.[5]

[4] Moniz' testimony at trial confirmed that the defendant had had two $100 bills on him.

[5] "[I]n a third substitute information [the defendant was charged] with . . . committ[ing] the following crimes: in count one, conspiracy to commit

"[I]n count six, the state alleged that the defendant committed burglary in the second degree [in violation of § 53a-102 (a)] by entering or remaining unlawfully in the victim's apartment sometime between 1 and 2:50 a.m. on January 29, 2018, while the victim was present, with the intent to commit a crime therein . . . ." *State* v. *Lanier*, 205 Conn. App. 586, 594, 258 A.3d 770 (2021). "Following a jury trial . . . the defendant [was found] guilty of burglary in the second degree as alleged in count six and not guilty of the charges in counts one through five." Id.

The victim was the state's key witness at trial. At the time of the incident, the victim was on probation for a 2017 felony conviction for operating a motor vehicle while under the influence of intoxicating liquor or drugs (felony DUI conviction). Id., 595. Prior to trial, the defendant filed a motion in limine, seeking permission to question the victim concerning (1) his 2017 felony DUI conviction, (2) his probation status during the events underlying the defendant's criminal charges, (3) his arrests while on probation and his violation of probation,[6] and (4) the specific conditions of his probation.

In the motion in limine, the defendant argued that the jury reasonably could infer that the victim may "wish to curry favor with the prosecuting authorities"

robbery in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-134 (a) (1); in count two, conspiracy to commit robbery in the second degree in violation of General Statutes §§ 53a-48 (a) and 53a-135 (a) (1) (A); in count three, robbery in the first degree in violation of § 53a-134 (a) (1); in count four, robbery in the second degree in violation of § 53a-135 (a) (1) (A); in count five, assault in the second degree in violation of General Statutes § 53a-60 (a) (1); and in count six, burglary in the second degree in violation of § 53a-102 (a)." *State* v. *Lanier*, 205 Conn. App. 586, 593–94, 258 A.3d 770 (2021).

[6] The record indicates that the victim was arrested twice while on probation, that he was charged with violation of probation on October 20, 2017, and that he admitted the violation and was resentenced on January 8, 2018. See *State* v. *Lanier*, supra, 205 Conn. App. 596 n.4.

because of his probation status, and, therefore, it was a legitimate area of inquiry for cross-examination. He further argued that the specific conditions of the victim's probation were relevant to the victim's state of mind at the time of the incident and his motive to fabricate the allegations against the defendant. Specifically, the defendant sought to ask the victim "whether . . . he knew that one of the conditions of his probation was substance abuse treatment" and that the authorities could find that he violated his probation if they became aware that he had been intoxicated on the night in question. He also sought to ask the victim "whether one of the standard conditions of his probation was not to be arrested." The defendant argued that this question was relevant because, if the victim knew that one of the conditions of his probation was not to have any new arrests, he may have been motivated to fabricate his allegations against the defendant to avoid being accused of "stealing [Moniz'] watch." In addition to establishing any concerns the victim may have had due to his probationary status, the defendant sought to establish that the victim fabricated his allegations to recover the money that the defendant and Moniz took from him as payment for the allegedly stolen watch.

At trial, the prosecutor moved to preclude defense counsel from cross-examining the victim on whether he believed that his consumption of alcohol on the night in question could result in a violation of his probation. The prosecutor also objected, on relevancy grounds, to defense counsel's questioning the victim on whether an arrest would violate the victim's probation.

The trial court allowed defense counsel to question the victim about his prior felony conviction, his current probation status, and his financial concerns and hardships at the time of the incident, but prohibited him from cross-examining the victim about his recent violation of probation, his prior arrests while on probation, or the

specific conditions of his probation. The court reasoned that the defendant's proffered theory in support of those lines of questioning was "too speculative." As to the questions regarding the victim's possible fear of a future violation of probation, the court observed that "[t]here are many reasons why somebody can get violated [on] probation" and that the proposed questions were "speculative."[7]

Consistent with the court's rulings, during cross-examination of the victim, defense counsel elicited testimony that, at the time of the incident, the victim had been on probation for a prior felony DUI conviction and that he was still on probation at the time of the trial. Defense counsel also asked questions eliciting responses revealing that, at the time of the incident, the victim had been experiencing financial difficulties arising from an "expensive" divorce, a desire to provide for his son, and employment that he believed "wasn't giving [him] what [he] needed for money." Additionally, defense counsel drew attention to several inconsistencies in the victim's testimony, including what beverages he drank

[7] We address two ancillary rulings by the trial court regarding the cross-examination sought by the defendant. First, the trial court evaluated the admissibility of the requested cross-examination under § 6-7 of the Connecticut Code of Evidence, which governs the admissibility of evidence of a prior conviction. Although the trial court's ruling under that section was pertinent to questions about the victim's prior felony conviction, it was inapposite in determining the admissibility of the additional inquiries sought by the defendant. Second, notwithstanding its ruling that the defendant's proffered line of inquiry was inadmissible, the trial court also ruled that the probative value of the proposed cross-examination was outweighed by its prejudicial effect. Given the trial court's determination that the evidence was inadmissible, it was unnecessary for the court to take the additional step of weighing its probative value against any prejudicial effect. Cf. *State* v. *Hill*, 307 Conn. 689, 698, 59 A.3d 196 (2013) ("evidence is admissible . . . if, *first*, it is relevant, and second, its probative value outweighs its prejudicial effect" (emphasis added)); *State* v. *Pappas*, 256 Conn. 854, 887, 776 A.2d 1091 (2001) ("evidence . . . is properly excluded if its prejudicial impact outweighs its probative value, even if it is *otherwise admissible*" (emphasis added; internal quotation marks omitted)).

on the evening in question, how many drinks he consumed, how much money was actually stolen from him, and the fact that the victim told hospital staff that he might have been drugged but never brought that concern to the attention of the 911 operator or the police.

The Appellate Court concluded that, because the trial court allowed defense counsel to conduct an "extensive and robust cross-examination of the victim," during which she emphasized the victim's felony probationary status and the "many inconsistencies in the victim's testimony," the court did not violate the defendant's constitutional rights by declining to permit cross-examination regarding the victim's recent violation of probation, his prior arrests while on probation, or the specific conditions of his probation. *State* v. *Lanier*, supra, 205 Conn. App. 614. The Appellate Court also held that the trial court had not abused its discretion in excluding the line of inquiry as speculative and, consequently, irrelevant. Id., 613–15.

I

We first address the defendant's claim that the trial court's limitations on defense counsel's cross-examination of the victim violated the defendant's constitutional rights. "[T]he sixth amendment to the [United States] constitution guarantees the right of an accused in a criminal prosecution to confront the witnesses against him.[8] . . . The primary interest secured by confrontation is the right to cross-examination . . . . [P]reclusion of sufficient inquiry into a particular matter tending to show motive, bias and interest may result in a violation of the constitutional requirements of the sixth amendment. . . . Further, the exclusion of defense

[8] The sixth amendment right to confrontation is made applicable to the states through the due process clause of the fourteenth amendment to the United States constitution. See, e.g., *Pointer* v. *Texas*, 380 U.S. 400, 403, 406, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965).

evidence may deprive the defendant of his constitutional right to present a defense. . . .

"However, [t]he [c]onfrontation [c]lause guarantees only an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. . . . Thus, [t]he confrontation clause does not . . . suspend the rules of evidence to give the defendant the right to engage in unrestricted cross-examination. . . .

"Although [t]he general rule is that restrictions on the scope of cross-examination are within the sound discretion of the trial [court] . . . this discretion comes into play only *after* the defendant has been permitted cross-examination sufficient to satisfy the sixth amendment. . . . The constitutional standard is met when defense counsel is permitted to expose to the jury the facts from which [the] jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness. . . . Indeed, if testimony of a witness is to remain in the case as a basis for conviction, the defendant must be afforded a reasonable opportunity to reveal any infirmities that cast doubt on the reliability of that testimony. . . . [A] claim that the trial court unduly restricted cross-examination generally involves a two-pronged analysis: whether the aforementioned constitutional standard has been met, and, if so, whether the court nonetheless abused its discretion . . . ." (Emphasis added; footnote added; internal quotation marks omitted.) *State* v. *Leconte*, 320 Conn. 500, 510–12, 131 A.3d 1132 (2016).

Our review of the record reveals that the trial court's restriction of defense counsel's cross-examination of the victim did not violate the defendant's constitutional rights. The trial court did not foreclose defense counsel from cross-examining the victim on matters tending to

show motive, bias, or interest, but merely set reasonable limits on the scope of that inquiry regarding the victim's probationary status, conditions, and the like. Compare *State* v. *Francis*, 228 Conn. 118, 122–24, 635 A.2d 762 (1993) (trial court's prohibiting all inquiry into probationary status of state's witness to show bias violated defendant's constitutional rights), with *State* v. *Gibson*, 340 Conn. 407, 422–23, 264 A.3d 83 (2021) (limiting defense counsel's cross-examination of state's witness regarding his pending criminal charges to show bias was appropriate when trial court did not prohibit all inquiry about them). In cases such as the present one, in which the trial court did not foreclose cross-examination of the witness to show motive, bias, or interest, we inquire whether the limitations imposed by the trial court permitted defense counsel to expose facts from which the jury could appropriately draw inferences relating to the witness' credibility or reliability. See, e.g., *State* v. *Bermudez*, 341 Conn. 233, 271, 267 A.3d 44 (2021).

In the present case, the trial court allowed defense counsel an adequate opportunity to cross-examine the victim and to introduce evidence supporting the defense's theory of the case—that the victim fabricated his allegations against the defendant to recover the money the defendant took from him and to avoid being arrested for stealing Moniz' watch, which could have affected the victim's probationary status. See, e.g., *State* v. *Torres*, 343 Conn. 208, 218, 273 A.3d 163 (2022) ("[i]n order to determine whether a defendant's constitutional right to cross-examination has been satisfied, [w]e consider . . . whether the field of inquiry was adequately covered by other questions that were allowed" (internal quotation marks omitted)). Defense counsel also cross-examined the victim about the stolen watch and his financial difficulties at the time of the incident to show that the victim was motivated to make false allegations

against the defendant to recover his money and to avoid arrest. The trial court also permitted defense counsel to cross-examine the victim about his felony DUI conviction, as well as the victim's current probationary status.

During closing argument, defense counsel relied on this testimony and other evidence to make the very argument that the defendant now claims the trial court's rulings prevented him from being able to make. Specifically, defense counsel argued: "[The victim] testified that, at the time this happened, he was on a supervised probation for a felony DUI [conviction]. He testified that he had been drinking that night. . . . He owed money. His rent was due. He was so concerned about money . . . . How badly did he need that $300 back? . . . He had been accused of stealing some watch, and what if [Moniz] had reported the stolen watch to the police? What would happen if [the victim] had been arrested and charged with stealing that watch? What would be the consequence to him? Does it make sense that he'd want to get ahead of it? Now, he didn't know that [Moniz] wasn't going to report the stolen watch because [Moniz] had [outstanding] warrants [for his arrest]. [The victim] had no way of knowing that."

Thus, the evidence of the victim's prior felony conviction, his probationary status, his financial difficulties, and his inconsistent statements were sufficient to allow the jury to draw appropriate inferences relating to the victim's alleged bias and motive to fabricate his allegations against the defendant. See, e.g., *State* v. *Mark R.*, 300 Conn. 590, 614–15, 17 A.3d 1 (2011) (restriction on cross-examination of state's witness for alleged motive to fabricate was not constitutional violation when permitted cross-examination and closing argument gave jury fair opportunity to consider facts supporting defendant's theory of case); see also *Barresi* v. *Maloney*, 273 F. Supp. 2d 144, 154 (D. Mass. 2003) ("[w]hen a [wit-

ness'] credibility is at issue, the trial court may impose limits on [cross-examination] without violating a defendant's confrontation right so long as the court grants the defendant sufficient leeway to establish a reasonably complete picture of the [witness'] bias and motivation to fabricate" (internal quotation marks omitted)). A court is not constitutionally obligated to permit a defendant to present *every* piece of evidence that might support his theory of defense. See, e.g., *State* v. *Jordan*, 329 Conn. 272, 287 n.14, 186 A.3d 1 (2018) ("[t]he constitutional right to present a defense does not include the right to introduce any and all evidence claimed to support it"). Because the trial court permitted defense counsel sufficient latitude in her cross-examination of the victim to present evidence that the victim was motivated to fabricate the allegations due to his probationary status, the trial court's ruling permitted the defendant to expose to the jury the facts from which it could appropriately draw inferences relating to the victim's credibility or reliability. Accordingly, we conclude that the defendant's constitutional rights were not violated.

II

We next address the defendant's evidentiary claim that the trial court abused its discretion in limiting defense counsel's cross-examination of the victim on the ground that the proffered line of questioning was speculative. We need not consider whether the trial court's restriction on defense counsel's cross-examination of the victim constituted an abuse of discretion because, assuming, without deciding, that the trial court abused its discretion, we conclude that the defendant has failed to satisfy his burden of proving harm.

"When an improper evidentiary ruling is not constitutional in nature, the defendant bears the burden of demonstrating that the error was harmful. . . . [W]hether

[an improper ruling] is harmless in a particular case depends [on] a number of factors, such as the importance of the witness' testimony in the [defendant's] case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. . . . Most importantly, we must examine the impact of the . . . evidence on the trier of fact and the result of the trial. . . . [T]he proper standard for determining whether an erroneous evidentiary ruling is harmless should be whether the jury's verdict was substantially swayed by the error. . . . Accordingly, a nonconstitutional error is harmless when an appellate court has a fair assurance that the error did not substantially affect the verdict." (Internal quotation marks omitted.) *State* v. *Mark T.*, 339 Conn. 225, 251, 260 A.3d 402 (2021).

The defendant claims that the trial court's restriction on defense counsel's cross-examination of the victim was harmful because it prevented him from demonstrating to the jury that the victim was motivated to fabricate his allegations against the defendant, which was central to the defendant's defense. The defendant contends that the state's case was weak, relying primarily on the victim's testimony, which exhibited several inconsistencies.[9] Lastly, the defendant contends that

[9] The defendant further asserts that the fact that the jury found him not guilty on five out of the six charges illustrates that it did not find the victim's testimony to be reliable, undermining the strength of the state's case. We are unpersuaded. We have repeatedly recognized that a split verdict does not necessarily signal that the state's case against a defendant is weak but may instead indicate that a defendant was not prejudiced by the conduct that is challenged as harmful on appeal. See, e.g., *State* v. *David N.J.*, 301 Conn. 122, 154, 19 A.3d 646 (2011) ("[W]e disagree with the defendant's claim . . . that [a] split verdict, acquitting the defendant of [some] charges . . . but convicting him on the other counts, demonstrates the weakness of the state's case and prejudice to the defendant from the impropriety. In the absence of reports of deadlock . . . our cases have relied on split verdicts as evidence that a jury was not so prejudiced . . . that it could

the harm resulting from the trial court's restriction was compounded by the prosecutor's rebuttal argument insofar as he emphasized that the defendant had failed to present any such motive, thereby capitalizing on the defendant's inability to fully expose the victim's motive to fabricate. We disagree.

The state's case for burglary was strong. In order to prove that the defendant committed burglary in the second degree in violation of § 53a-102 (a), the state had to prove that the defendant entered or remained unlawfully in a dwelling, while a person other than a participant in the crime was actually present in such dwelling, with the intent to commit a crime therein. Undoubtedly, as the state's key witness, the victim's testimony was critical to proving that the defendant had committed the offense. Ample evidence introduced at trial, however, corroborated his testimony, demonstrating that any error in excluding the testimony sought by the defendant was harmless.

The state produced evidence demonstrating that the defendant had unlawfully entered and remained in the victim's apartment by forcing the victim to provide the defendant and Moniz access under threat of physical harm with the intent of stealing the victim's money. Photographs of the victim's injuries, medical records, and testimony from emergency room personnel indicated that the victim had shown signs of blunt trauma and sustained a broken nose, substantiating the victim's testimony that he had been assaulted. Moniz provided testimony confirming that the victim had been assaulted, that the defendant was present for the assault, and that the defendant and Moniz walked the victim to his apartment to get his money. Dispatch call sheets, testi-

not treat the defendant fairly." (Internal quotation marks omitted.)); *State* v. *Long*, 293 Conn. 31, 52–53, 975 A.2d 660 (2009) (jury's finding of not guilty of more serious charge indicated that defendant was not prejudiced).

mony from the Middletown police dispatcher, and 911 call transcripts confirmed that the victim had made a silent 911 call, followed by a second call immediately after the defendant and Moniz left his apartment, indicating that the victim had not led Moniz and the defendant back to his apartment voluntarily.

Furthermore, the defendant's actions upon encountering police officers—ignoring commands to stop, walking away from Pixley and around the corner, and disposing two $100 bills on the sidewalk—supported the inference that the defendant had entered and remained in the victim's apartment with the intent to unlawfully obtain the victim's money. It is reasonable to infer that the defendant disposed of the $200 because it was evidence of the burglary that he did not want to have found on his person. Moreover, the defendant continued walking to round the corner on Main Steet, in defiance of several orders to stop, only to turn back around and to comply after dropping the two $100 bills, which created a strong inference that he did so to dispose of the money without being observed by the police.

Notwithstanding the trial court's restriction of portions of defense counsel's cross-examination of the victim, she was otherwise permitted to conduct cross-examination and to introduce evidence to adequately advance the defense's theory that the victim had fabricated the allegations against the defendant. To demonstrate the victim's motive to fabricate, defense counsel elicited testimony from the victim that he had been convicted of a felony DUI in 2017 and was on probation. Defense counsel was also permitted to cross-examine the victim about the financial difficulties he faced at the time of the incident. Moniz' testimony provided the basis for the defendant's claim that the victim had stolen a watch from Moniz and offered him money as compensation for the theft. Defense counsel also highlighted many inconsistencies in the victim's statements, includ-

ing his testimony relating to the amount of money taken and his consumption of alcohol, and that he did not tell the 911 operator or the police that he believed that he may have been drugged, but only made the assertion to medical personnel. By exposing these inconsistencies, defense counsel impeached the victim's credibility, thereby strengthening the defense's theory that the victim had fabricated his allegations. See, e.g., *State* v. *Bermudez*, supra, 341 Conn. 278 (exclusion of testimony was harmless when defense counsel was granted ample opportunity to impeach witness). Moreover, defense counsel's closing argument, which drew from the testimony she had elicited during cross-examination of the victim and direct examination of Moniz, demonstrated that she was able to cogently present the defense's theory that the victim was motivated to fabricate his allegations. See, e.g., *State* v. *Lugo*, 266 Conn. 674, 696, 835 A.2d 451 (2003) (erroneous exclusion of testimony to support defendant's theory of defense was harmless when defense counsel presented theory of defense through other testimony and closing argument).

Additionally, the prosecutor's rebuttal argument, that the defendant had failed to show any motive for the victim to lie, did not compound the harm that the defendant claims he suffered.[10] The prosecutor specifically argued: "What possible motive or reason did [the defense] try to explore through either [the victim's or Moniz'] testimony as to why [the victim] would accuse the defendant . . . of these crimes if it didn't happen? There's no motive presented. You know why? Because they have none, why [the victim] would make it up." The prosecutor further argued: "When you look at all [the evidence] and key here, no motive was ever brought out through the cross-examination or questioning of [the victim] or . . . Moniz as to what motive [the vic-

[10] The defendant has not challenged the prosecutor's remarks on the basis of prosecutorial impropriety.

tim] would have [had] to accuse [the defendant] of crimes like this if it didn't happen. No motive was ever presented through their testimony. You know why? I would respectfully submit they have none. They have no motive for him to fabricate that."

The defendant correctly notes that "it [is] significant in evaluating harm to look to see how the state use[s] . . . evidence in its closing argument." *State* v. *Ayala*, 333 Conn. 225, 235, 215 A.3d 116 (2019). Here, the prosecutor was clearly responding to defense counsel's assertion that a motive, in fact, existed—namely, the victim's desire "to get ahead of" the situation by reporting the defendant and Moniz to the police before they could report him for stealing the watch, which could have affected the victim's probationary status. See, e.g., *State* v. *Singh*, 259 Conn. 693, 717, 793 A.2d 226 (2002) ("[t]he state may . . . properly respond to inferences raised by the defendant's closing argument" (internal quotation marks omitted)). The jury, however, would have recognized that the prosecutor's argument that the defense had presented no motive as to why the victim would fabricate his charges was incorrect. The defense did present a motive—the victim's precarious financial situation and desire to get ahead of any allegations about the watch. It would have been more accurate for the prosecutor to argue that the defense had presented no *persuasive* argument as to motive. In any event, the trial court mitigated any potential harm by instructing the jury that statements made by counsel during closing arguments are not evidence and reminding the jury to draw its own conclusions concerning the credibility of witnesses.[11] See, e.g., *State* v. *Daniel W. E.*, 322 Conn.

[11] The trial court instructed the jury: "You should keep in mind that arguments and statements by the attorneys in final arguments or during the course of the case are not evidence. You should not consider as evidence their recollection of the facts nor their personal belief as to any facts or as to the credibility of any witness nor any facts that any attorney may have presented to you in argument from the attorney's knowledge that was not presented to you as evidence during the course of this trial."

593, 613, 142 A.3d 265 (2016) ("[t]he jury is presumed, in the absence of a fair indication to the contrary, to have followed the court's instructions" (internal quotation marks omitted)). Importantly, the prosecutor's rebuttal does not change the fact that defense counsel, during her closing argument, relied on the evidence she was able to introduce to make the very argument that the defendant is *now* claiming the trial court's evidentiary rulings precluded him from presenting to the jury.

We cannot conclude that the excluded cross-examination would have had any meaningful impact on the jury's verdict. It is unlikely that testimony regarding the specific conditions of the victim's probation would have made defense counsel's presentation of the defense's theory any more persuasive, as the jury reasonably could have surmised that a probationer would seek to avoid arrest. We have repeatedly stated that "[j]urors are not expected to lay aside matters of common knowledge or their own observations and experiences, but rather, to apply them to the facts as presented to arrive at an intelligent and correct conclusion." (Internal quotation marks omitted.) *State* v. *Abraham*, 343 Conn. 470, 478, 274 A.3d 849 (2022). The notion that a probationer would have been motivated to avoid an arrest—a point that defense counsel was given adequate opportunity to make—was within the jurors' common knowledge. Indeed, defense counsel leveraged this precise intuition in asking the jury, "[w]hat would happen if [the victim] had been arrested and charged with stealing that watch? What would be the consequence to him? Does it make sense that he'd want to get ahead of it?" For the foregoing reasons, we conclude that the defendant has failed to prove that the trial court's restriction on defense counsel's cross-examination of the victim was harmful.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* JOHN A. MASSARO (SC 20653)

Robinson, C. J., and McDonald, D'Auria, Mullins and Ecker, Js.

Syllabus

Convicted of the crime of the sale of a narcotic substance, the defendant appealed. F, a police officer, had observed M and her boyfriend, R, engage in what F believed to be a hand-to-hand narcotic transaction with the defendant. After the transaction, F confronted M and R, and M surrendered the cocaine that she was holding in her hand. M also emptied her purse, which contained drug paraphernalia used to smoke cocaine. At the defendant's trial, M testified that she had bought cocaine from the defendant. On cross-examination, M denied that she told the defense's private investigator, P, that she had provided drugs to the defendant on the day in question. After the state rested its case, defense counsel notified the trial court that he would be calling P to testify regarding M's prior oral inconsistent statement. Defense counsel sought to introduce, but failed to disclose to the state, a memorandum P created after meeting with M months after the alleged drug sale but prior to trial. In that memorandum, P memorialized that, when he interviewed M, she admitted that she had given the defendant drugs. The trial court sanctioned the defendant for the failure to timely disclose the memorandum to the state by precluding him from admitting it as evidence. The defendant appealed from the judgment of conviction to the Appellate Court, claiming that the trial court had improperly imposed a discovery sanction precluding the admission of P's memorandum and had improperly permitted the prosecutor to elicit expert opinion testimony from P during cross-examination when P had been neither offered nor qualified as an expert witness. The Appellate Court concluded that any error was harmless and affirmed the judgment of conviction. On the granting of certification, the defendant appealed to this court. *Held*:

1. The Appellate Court correctly concluded that the trial court's improper discovery sanction precluding the admission of P's memorandum was harmless:

   The jury was presented with substantial, independent evidence, including physical evidence and testimony, demonstrating that the defendant had sold cocaine to M, and, therefore, this case did not turn on a credibility contest between M and P, as the defendant claimed.

   Moreover, although the trial court precluded the admission of P's memorandum, defense counsel nevertheless was able to challenge M's credibility on the basis of her prior, allegedly inconsistent statement to P and had

ample opportunity to cross-examine witnesses and challenge physical evidence that was contrary to the defense's theory that M had given drugs to the defendant.

Furthermore, the state presented a strong case, as it introduced incriminating statements from M and R that they had met with the defendant to purchase drugs and that M had purchased drugs from the defendant; physical evidence, including recovered narcotics, drug paraphernalia and text messages between M and the defendant indicating M's request to purchase from the defendant; and eyewitness testimony from F confirming M's and R's testimony regarding the hand-to-hand exchange with the defendant and their interaction with the police immediately thereafter.

In addition, the excluded evidence was of questionable reliability, as P admitted that, when he interviewed M, she was under the influence of what he believed to be heroin, and P did not record M's statement or ask M for a written and sworn statement.

Accordingly, the improper exclusion of P's memorandum did not substantially sway the jury's verdict.

2. The Appellate Court correctly concluded that any error in allowing the prosecutor, during cross-examination of P, to convert him into an expert witness regarding the general characteristics of the narcotics trade was harmless:

Although the prosecutor's cross-examination of P regarding the general characteristics of the narcotics trade may have bolstered M's testimony that she was the buyer and, in turn, diminished the importance of P's testimony in the defendant's case, the significance of P's testimony to the defendant's case was that M told P that she had given the defendant drugs, and the prosecutor's questions about the general characteristics of the narcotics trade did not prevent the admission of or undermine P's testimony about what M had told him.

Moreover, P's testimony about the general characteristics of the narcotics trade was largely cumulative of the testimony of M, R and F, P gave the jury reason to believe that he could not be relied on as an expert in the narcotics trade, as some of his answers to the prosecutor's questions did not weigh in the state's favor or reveal that he had extensive knowledge of the narcotics trade, some of P's testimony on cross-examination supported the defense's theory that M was the drug dealer, and the state's case against the defendant was strong.

Accordingly, the defendant did not meet his burden of proving that any error in allowing the prosecutor to convert P into an expert witness substantially swayed the jury's verdict.

Argued December 14, 2022—officially released July 11, 2023

Procedural History

Substitute information charging the defendant with the crime of sale of narcotics, brought to the Superior Court in the judicial district of Litchfield, geographical area number eighteen, and tried to the jury before *Danaher*, *J.*; verdict and judgment of guilty, from which the defendant appealed to the Appellate Court, *Moll*, *Alexander* and *DiPentima*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Lisa J. Steele, assigned counsel, for the appellant (defendant).

Nancy L. Chupak, senior assistant state's attorney, with whom, on the brief, was *David R. Shannon*, state's attorney, for the appellee (state).

Opinion

MULLINS, J. After a trial, a jury found the defendant, John A. Massaro, guilty of the sale of a narcotic substance in violation of General Statutes (Rev. to 2017) § 21a-277 (a). The trial court rendered a judgment of conviction in accordance with the jury's verdict and imposed a total effective sentence of ten years of imprisonment, execution suspended after six years, followed by five years of probation.

The defendant appealed to the Appellate Court, raising three claims, two of which are relevant to this appeal. See *State* v. *Massaro*, 205 Conn. App. 687, 690, 258 A.3d 735 (2021). First, he claimed that the trial court erred in imposing a discovery sanction precluding the admission of a written memorandum that contained the inconsistent statement of one of the state's main witnesses. See id., 692–93. Second, he claimed that the trial court erred in permitting the prosecutor to elicit

expert opinion testimony on cross-examination of defense counsel's private investigator, Benjamin Pagoni, who had been neither offered nor qualified as an expert witness. See id., 704. The Appellate Court agreed with the parties that the discovery sanction was improper, but it concluded that such error was harmless. See id., 699, 701. Likewise, with regard to the second issue, the Appellate Court concluded that the cross-examination of Pagoni, even if improper, was also harmless. See id., 704, 707. As a result, the Appellate Court affirmed the judgment of conviction. Id., 690, 718. We thereafter granted the defendant's petition for certification to appeal.[1] In this appeal, the defendant asserts that the Appellate Court's judgment must be reversed because any errors related to the improper discovery sanction and expert testimony were harmful. We disagree. Accordingly, we affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts that the jury reasonably could have found. "On July 13, 2017, Matthew Faulkner, a Torrington police officer assigned to the narcotics division, was on duty when he observed two known narcotics users, Sarah Mikuski[2] and her boyfriend, Anthony Roig,

[1] We granted the defendant's petition for certification to appeal, limited to the following issues: "(1) Did the Appellate Court correctly conclude that any sanction the trial court improperly imposed on counsel for violating discovery rules was harmless?" And "(2) [e]ven if, as the Appellate Court assumed, the trial court's rulings on the [prosecutor's] cross-examination of the defendant's investigator improperly permitted the prosecutor to convert him into an expert witness regarding the narcotics trade after the parties had agreed not to present expert testimony on that topic, did the Appellate Court correctly conclude that any such error was harmless?" *State* v. *Massaro*, 340 Conn. 908, 264 A.3d 1001 (2021). As these questions demonstrate, we do not address the Appellate Court's conclusions with respect to whether the trial court's rulings on these evidentiary claims were erroneous. In this appeal, we address only the question of harm as reflected in the two certified questions.

[2] Mikuski testified that, at the time of the transaction with the defendant, she was using cocaine or heroin. She also admitted that, during this time, she was not working and stole money for the purpose of using drugs daily, namely, heroin and cocaine.

walking on East Main Street. Faulkner then saw the defendant approaching Mikuski and Roig. Faulkner continued his surveillance of these individuals and watched as the defendant exchanged 'something' with Mikuski. After this brief exchange, the defendant travelled in an opposite direction away from Mikuski and Roig.[3] Believing that a 'hand-to-hand' illegal narcotic transaction had just occurred, [Faulkner followed Mikuski and Roig because he believed they had received an illegal narcotic substance from the defendant.] Faulkner called for assistance, requesting that the responding officer intercept the defendant before he returned to his residence. The police, however, were unable to locate the defendant that day.

"Faulkner approached Mikuski and Roig. He instructed Mikuski to surrender the item that the defendant had given her. She complied and placed a small, clear plastic bag containing a white powdery substance, later determined to be . . . cocaine, on the wall next to them. Mikuski also emptied her purse, which contained an assortment of used drug paraphernalia, including empty wax packets, needles, crack pipes containing a burnt residue, and Brillo pads used to filter . . . cocaine when it is smoked. Mikuski admitted [to Faulkner] that she handed the defendant a cigarette packet with $26 tucked inside it and purchased $30 worth of . . . cocaine from the defendant.[4] Mikuski also admitted that she had purchased illegal substances from the defendant in the past. Mikuski did not have any other

[3] "Mikuski had planned to walk to her mother's home, which was nearby, where she and Roig [intended to] smoke the . . . cocaine purchased from the defendant." *State* v. *Massaro*, supra, 205 Conn. App. 691 n.2.

[4] "Faulkner stated that . . . cocaine was sold at a rate of $10 per one tenth of a gram, so that a '30' meant 0.3 grams of . . . cocaine and would sell for $30, [whereas] 0.2 grams of the narcotic substance, often referred to as a 'doub,' would sell for $20." *State* v. *Massaro*, supra, 205 Conn. App. 691 n.4.

illegal substances or cash in her possession."[5] (Footnote altered; footnotes in original; footnote omitted.) Id., 690–91.

Additional facts and procedural history will be set forth as necessary.

I

The first issue on appeal is related to the trial court's improper discovery sanction. This claim arises from the fact that, when the defense disclosed Pagoni as a witness who would testify at trial, defense counsel failed to disclose to the state a memorandum Pagoni created after meeting with Mikuski. In that memorandum, Pagoni memorialized that, when he interviewed Mikuski prior to trial, she stated that she was the one who gave the drugs to the defendant. Because this memorandum was not timely disclosed to the state, the trial court sanctioned the defendant by precluding him from admitting the memorandum as evidence. We now address whether the Appellate Court correctly concluded that the trial court's improper sanction was harmless. The following facts are relevant to this claim.

Before trial began, the state filed a motion, pursuant to Practice Book §§ 40-7, 40-13, 40-18 and 40-27, "requesting that the defendant disclose any statements of the witnesses other than the defendant in his possession or in the possession of an agent of the defendant which statement relates to the subject matter about which such witness will testify . . . ." (Internal quotation marks omitted.) Id., 692. Defense counsel disclosed the defendant and Pagoni as potential witnesses but disclosed no statements. See id.

At trial, the state called Mikuski to testify.[6] She testified that, around the time of this incident, she was

[5] Mikuski was arrested and charged with possession of narcotics.

[6] At the time of the defendant's trial, Mikuski had pleaded guilty to, but had not yet been sentenced for, the sale of narcotics in a matter unrelated to this case. In exchange for that plea and providing truthful, sworn testimony

addicted to heroin and cocaine, and, on the day in question, she bought cocaine from the defendant. On cross-examination, Mikuski testified that, prior to trial, she met and had spoken with Pagoni. Defense counsel asked Mikuski if she had told Pagoni during their meeting that she had drugs on her prior to meeting the defendant and that she was the one who provided drugs to the defendant. Mikuski denied ever saying that to Pagoni.

After the state rested its case, defense counsel notified the trial court that he would be calling Pagoni to testify regarding a prior oral inconsistent statement of Mikuski. As an offer of proof, defense counsel stated that Pagoni would testify that Mikuski had told him that she was carrying narcotics on her person prior to meeting with the defendant on July 13, 2017, and that she gave narcotics to the defendant prior to her arrest. Defense counsel represented that he had communicated this information via email to the prosecutor the day before. Defense counsel mentioned that Pagoni had provided him with a memorandum detailing his conversation with Mikuski and that this memorandum had been in counsel's possession since approximately March 12, 2018.[7]

in the present case, Mikuski reached an agreement with the state that her maximum exposure would be a sentence of five years of imprisonment, execution suspended after twelve months, followed by a three year period of probation. Per the agreement, the ultimate decision regarding her sentence would be made by the sentencing judge.

[7] The record reflects that the memorandum was sent to defense counsel on or around March 12, 2018, about seven days after Pagoni interviewed Mikuski. This memorandum stated in relevant part: "On March 5, 2018, at approximately 1300 [hours], this [i]nvestigator met [Mikuski] . . . . The interview was conducted away from her home, within the [i]nvestigator's vehicle, specifically the Wendy's restaurant parking area . . . .

"In her verbal statement, [Mikuski] stated that she met up with [the defendant] on the day of her arrest, but [she] had the drugs on her already. She stated she walked east on East Main Street with Roig to meet with [the defendant] to provide him some drugs. She stated at the time she did not see the officer or his unmarked vehicle. She stated she and Roig did meet with [the defendant] and gave some drugs to him. They turned around and headed west on East Main Street, at which point the officer stopped them.

The prosecutor objected to the introduction of the memorandum and argued that Pagoni's memorandum was inadmissible because it was a statement of a trial witness in defense counsel's possession that had not been disclosed to the state and thereby constituted a violation of the rules of discovery, specifically, Practice Book § 40-15 (2).[8] The trial court inquired whether defense counsel had provided Pagoni's memorandum to the state. He replied in the negative, indicating that, in his view, this document constituted protected attorney work product and, thus, was exempt from disclosure. The trial court rejected defense counsel's position and held that the memorandum was a statement by Mikuski and should have been disclosed pursuant to Practice Book §§ 40-13 (b)[9] and 40-15 (2).[10] Consequently, the trial court sanctioned the defendant by precluding him

"When questioned if Roig would support her statement, [Mikuski] said yes, that he was presently in a rehabilitation facility . . . . When questioned again who had the drugs, she confirmed she had them, not [the defendant].

"When questioned where the police found the drugs on her, she stated they were in her hand at the time she was stopped."

[8] Practice Book § 40-15 provides: "The term 'statement' as used in Sections 40-11, 40-13 and 40-26 means:

"(1) A written statement made by a person and signed or otherwise adopted or approved by such person; or

"(2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by a person and recorded contemporaneously with the making of such oral statement."

[9] Practice Book § 40-13 (b) provides in relevant part: "Upon written request by the prosecuting authority . . . the defendant . . . *shall* . . . *disclose to the prosecuting authority any statements of the witnesses other than the defendant in the possession of the defendant or his or her agents, which statements relate to the subject matter about which each witness will testify*." (Emphasis added.)

[10] Pursuant to Practice Book § 40-15, the trial court determined that Pagoni's memorandum constituted a substantially verbatim recital of Mikuski's oral statement that had been recorded sufficiently contemporaneously. *State* v. *Massaro*, supra, 205 Conn. App. 696. As a result, the trial court "ordered defense counsel to provide the prosecutor with a redacted copy of the Pagoni memorandum and to make Pagoni available for questioning." Id., 694–95.

from introducing Pagoni's memorandum, stating that "evidence . . . as to the existence of that written statement is not admissible, and it will not be the subject of testimony by Pagoni or questioning by any attorney or argument by any attorney." The trial court concluded that the testimony of Pagoni, if permitted, would be limited to impeaching Mikuski's testimony that she had purchased the cocaine from the defendant and could not be used for the purpose of establishing that she had sold it to him.[11]

Defense counsel then called Pagoni as a witness. Pagoni testified that he had met with Mikuski on March 5, 2018, and drove her to a nearby Wendy's restaurant. They ordered food and spoke for approximately ten minutes. He testified that, during their meeting, Mikuski told him that she had provided narcotics to the defendant on July 13, 2017.

On cross-examination, the prosecutor inquired about the circumstances of the interview. Pagoni testified that Mikuski appeared to be under the influence of a drug, most likely heroin. He acknowledged that people under the influence of drugs tend to be less accurate. He testified that he did not record Mikuski's statement or take a written, signed statement under oath, despite his extensive training as a state trooper teaching him that doing so is the best way to ensure the accuracy and truth of a statement. Pagoni acknowledged that he had

[11] The trial court instructed the jury in relevant part: "Some testimony has been allowed for a limited purpose. Testimony that was limited to a specific purpose can be considered only as it relates to the limits for which it was allowed and cannot be considered in finding any other facts as to any other issue. Specifically, the testimony offered through . . . Pagoni is limited to the purpose of impeaching . . . Mikuski's testimony that she bought cocaine from the defendant. It is not admissible and may not be used to find that . . . Mikuski sold cocaine to the defendant." We note that the memorandum did not state that Mikuski *sold* the defendant drugs; rather, it stated that she *gave* the defendant drugs. See footnote 7 of this opinion.

not asked Mikuski whether she had purchased narcotics from the defendant in the past or why she would have given narcotics to the defendant. He testified that he never interviewed Roig to verify any of Mikuski's statements.

Pagoni was also asked how many hours he had worked on this case. Pagoni replied that he was uncertain. The prosecutor then asked: "So, as you sit here today, you remember specifically what . . . Mikuski said to you, but you can't remember—you can't even approximat[e]—how many hours you worked on the case?" Pagoni, referring to his memorandum, answered: "I can remember what . . . Mikuski said to me because it's written down." The prosecutor objected on the ground that Pagoni's answer was nonresponsive.[12] The trial court subsequently instructed the jury to disregard any reference in Pagoni's testimony to a written memorandum.

After the cross-examination resumed, the prosecutor asked Pagoni whether defense counsel discussed with him what other witnesses had said in court just one day prior. Pagoni said "I don't know," "I don't recall," and then, "I have no recollection of him talking to me about [what witnesses said in court]." Subsequently, Pagoni was asked, "[d]o you have any problems with your memory?" Pagoni answered, "[w]ell, as [I] approach seventy, yes, I do." Pagoni then proceeded to give conflicting testimony regarding how long his interview with Mikuski lasted. Initially, he testified that he met with Mikuski for approximately ten minutes. After being questioned about his memory, Pagoni testi-

[12] "The [trial] court excused the jury and reminded counsel that, during conversations in chambers and on the record, it had indicated that the Pagoni memorandum would not [be admitted] into evidence. The court then admonished Pagoni and directed him to refrain from mentioning that he had written down or memorialized Mikuski's statements during his testimony." *State* v. *Massaro*, supra, 205 Conn. App. 697.

fied that he met with Mikuski for a total of around fifteen minutes, and, when asked again, he changed his answer and said the meeting was around thirty-five minutes long.

In the Appellate Court, the defendant "claim[ed] that the [trial] court abused its discretion when it determined that defense counsel had violated discovery rules and by imposing a sanction as a result of that violation." *State* v. *Massaro*, supra, 205 Conn. App. 692. The Appellate Court agreed that "the trial court [incorrectly had] determined that the Pagoni memorandum constituted Mikuski's statement"; however, it concluded that the evidentiary error and the resulting sanction were harmless. Id., 701.

On appeal to this court, the defendant claims that the improper preclusion of Pagoni's memorandum substantially swayed the jury's verdict, rendering the trial court's error harmful. Specifically, the defendant asserts that, because Pagoni was unable to verify, with his written recollection, that Mikuski told him that she had provided drugs to the defendant, Pagoni's testimony was undermined, and the defense was weakened in a manner that substantially swayed the jury's verdict. The defendant also claims that the trial court's ruling prohibiting him from admitting the memorandum into evidence made Pagoni appear to have selective memory, and, as a result, it bolstered Mikuski's testimony.

Our review of the record assures us that, although the error was not insignificant to the defendant's case, ultimately, the error was harmless. The defendant argues that Pagoni's memorandum was direct evidence to support his theory that Mikuski gave drugs to the defendant, and that the court's error was magnified because the case turned on this credibility contest between Mikuski and Pagoni. We are mindful that, if this case presented the jury purely with a credibility contest char-

acterized by equivocal evidence, then "an error affecting the jury's ability to assess a [witness'] credibility is not harmless error." (Internal quotation marks omitted.) *State* v. *Fernando V.*, 331 Conn. 201, 223–24, 202 A.3d 350 (2019); see, e.g., id., 203, 215–16, 224 (concluding that exclusion of testimony in child sexual assault case was improper and not harmless because state's case was not exceedingly strong considering absence of physical evidence). Here, however, the case was not solely "a credibility contest characterized by equivocal evidence . . . ." (Internal quotation marks omitted.) Id., 215. Indeed, the jury was presented with substantial, independent physical and eyewitness testimonial evidence establishing that the defendant had sold cocaine to Mikuski, allowing the jury to return a verdict that was not contingent on a credibility contest. Accordingly, we conclude that the improper exclusion of Pagoni's memorandum did not substantially sway the jury's verdict and render the trial court's error harmful.

"When an improper evidentiary ruling is not constitutional in nature, the defendant bears the burden of demonstrating that the error was harmful." (Internal quotation marks omitted.) *State* v. *Favoccia*, 306 Conn. 770, 808, 51 A.3d 1002 (2012); see, e.g., *State* v. *Cavell*, 235 Conn. 711, 721, 670 A.2d 261 (1996) (improper discovery sanction was nonconstitutional in nature, and, therefore, defendant bore burden of proving harm). It is well settled that "[w]hether [an improper evidentiary ruling] is harmless in a particular case depends [on] a number of factors, such as the importance of the witness' testimony in the [defendant's] case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. . . . Most importantly, we must examine the impact of the . . .

evidence on the trier of fact and the result of the trial. . . . [T]he proper standard for determining whether an erroneous evidentiary ruling is harmless should be whether the jury's verdict was substantially swayed by the error." (Internal quotation marks omitted.) *State* v. *Qayyum*, 344 Conn. 302, 316, 279 A.3d 172 (2022). "Accordingly, a nonconstitutional error is harmless when an appellate court has a fair assurance that the error did not substantially affect the verdict." (Internal quotation marks omitted.) *State* v. *Favoccia*, supra, 809.

Pagoni's primary importance to the defendant was that, nearly eight months after the drug sale, Mikuski told Pagoni, during their meeting, that she gave the drugs to the defendant. Pagoni was able to testify to that. At trial, Pagoni testified that Mikuski had told him "that she was walking . . . with . . . Roig and that . . . she met the defendant, and they made an exchange. And that [Mikuski] was the one [who] gave [the defendant] the drugs." On cross-examination, in response to different questions asked by the prosecutor, Pagoni affirmed several times that Mikuski told him that she "gave [the defendant] drugs . . . ." Thus, although the trial court precluded admission of the memorandum, the defendant was able to challenge Mikuski's credibility on the basis of her prior, allegedly inconsistent statement to Pagoni.

The defendant contends that, without the memorandum, Pagoni appeared to have selective memory because he could remember what Mikuski told him but not, in response to the prosecutor's question, how many hours he worked on the case. This argument carries some force. Indeed, after admitting that he could not recall whether defense counsel talked to him about what witnesses had said in court just one day prior, Pagoni also admitted that, as he approached seventy years of age, he had problems with his memory. He then proceeded to give conflicting accounts of how long his meeting

with Mikuski lasted, ranging from ten minutes to more than one-half hour. In light of this testimony, we can appreciate that the memorandum would have bolstered Pagoni's credibility and strengthened his testimony. It was evidence recorded prior to trial suggesting that Mikuski had provided the drugs to the defendant. The defendant's inability to present this evidence makes the harmless error determination a closer question. However, after assessing the other harmless error factors, the other testimonial, as well as physical, evidence considered by the jury, and, most important, the overall strength of the state's case, we are confident that the defendant has not met his burden of proving that the trial court's improper exclusion of the memorandum substantially swayed the jury's verdict.

We recognize that the state presented a strong case. See, e.g., 3B C. Wright et al., Federal Practice and Procedure (4th Ed. 2019) § 854 ("[p]erhaps the single most significant factor in weighing whether an error was harmful . . . is the strength of the case against the defendant"). At trial, the state introduced (1) incriminating statements from Mikuski and Roig that they met with the defendant to purchase drugs and that Mikuski did purchase drugs, (2) physical evidence, including recovered narcotics, drug paraphernalia and text messages between Mikuski and the defendant, and (3) eyewitness testimony from Officer Faulkner confirming Mikuski's and Roig's testimony regarding their hand-to-hand exchange with the defendant and interaction with the police immediately thereafter.

Mikuski testified at trial that she was a daily user of cocaine and heroin and that she had previously bought drugs from the defendant. She testified that, on the day in question, she contacted the defendant via text message and asked him if he would "do a 30 for $26 . . . ." They agreed to meet by the stone wall near his apartment building. When they met, she gave him a

cigarette package with $26 in it, and he gave her a baggie of cocaine.

On cross-examination, defense counsel asked Mikuski if she told Pagoni that she had given drugs to the defendant. Mikuski responded, while under oath, that the assertion was not true and denied telling Pagoni as much. Defense counsel also asked Mikuski if she told Pagoni that she had drugs on her before meeting the defendant. Mikuski responded, "[n]o." She further stated that she used any income to buy drugs and that her only income derived from shoplifting items and then returning them with receipts that were thrown away.

Roig testified at trial and corroborated Mikuski's testimony. Roig testified that, on the day of the transaction, he and Mikuski planned to get drugs and immediately consume them. Roig testified that Mikuski had no drugs on her before walking up the hill to meet with someone. Roig also provided the state with a sworn statement a few days before his testimony in which he said, "I went with [Mikuski] to the area of, I think, East Main Street, Torrington . . . so she could buy crack from someone . . . and [Mikuski bought] the crack from him. I don't know how much [Mikuski] paid for the crack or how much crack she got." When asked at trial whether he actually saw a transaction, Roig, who was nearby when the exchange occurred, testified that "there had to be a transaction" because Mikuski had money before meeting with the man, but, when she returned to Roig, she only had drugs that she did not possess beforehand. Roig further testified that the person Mikuski *bought* drugs from was an older male with gray hair—a physical description matching the defendant's description.

Both Roig's and Mikuski's testimony was corroborated by Officer Faulkner's recollection of events. Specifically, Faulkner testified that he knew that Mikuski and Roig were heavy drug users. Faulkner testified that

he observed a quick hand-to-hand transaction in which, he believed, the defendant gave Mikuski "product." Faulkner testified that he kept a visual on Mikuski and Roig from the time of the transaction to the point in time that he recovered narcotics from Mikuski and that he "never lost sight of [Mikuski] or [Roig]." He then followed Mikuski and Roig, and confronted them, demanding that Mikuski give him what the defendant had given her. According to Faulkner, Mikuski opened the same hand involved in the hand-to-hand transaction with the defendant and placed the cocaine that she was holding in that hand on top of the nearby wall.

The testimony provided by the state's witnesses was also corroborated by physical evidence recovered in this case. When the police apprehended Mikuski, they recovered 0.218 grams of cocaine, all of which Mikuski had been holding in her hand when Faulkner stopped her.[13] The police also recovered drug paraphernalia on Mikuski's person, including crack pipes with burnt residue and steel wool pads.[14] Notably absent from the police search of Mikuski and Roig was any money, which contradicts the theory that the defendant paid Mikuski for cocaine.[15] The fact that Mikuski possessed drugs but not money supports Roig's testimony and his statement to the police that Mikuski had money before

[13] "Joseph Voytek, a forensic examiner employed by the Department of Emergency Services and Public Protection, testified that he had examined the seized substance and determined that it was cocaine in a rock form and weighed 0.218 grams." *State* v. *Massaro*, supra, 205 Conn. App. 691 n.3.

[14] At trial, Faulkner and Mikuski testified that the crack pipes and steel wool pads were used to smoke cocaine.

[15] The defendant surmises, without referring to any evidence in the record, that Mikuski transferred the money to Roig. This assertion is unsupported by any physical evidence and is discredited by Faulkner's testimony regarding his search on scene. Specifically, Faulkner testified that the officers on scene patted down Roig and found no money inside his pockets. Considering Faulkner testified that he never lost sight of Mikuski and Roig, it is doubtful that the money could have been hidden in the short period of time between the transaction and the search of Roig and Mikuski moments thereafter.

meeting with the defendant and intended to use the money to buy cocaine that she did not possess prior to meeting the defendant. The physical evidence also corroborates Faulkner's testimony that he saw Mikuski take something from the defendant with the hand that she revealed, moments later, to be holding cocaine.

Furthermore, the state presented evidence of text messages between Mikuski and the defendant. Most relevant were text messages that Mikuski sent to the defendant, asking if he would "do a 30 for $26" and where he wanted to meet. Viewed in context and considering that Mikuski was arrested moments after the transaction with only cocaine and no money on her person, these texts tend to suggest that Mikuski was asking to buy a "30," or 0.3 grams of cocaine, as Faulkner testified, for $26. If it were the other way around, and Mikuski was the seller, as the defendant asserts, it makes little sense that Mikuski and Roig would possess cocaine but not money *after* their exchange with the defendant.

One of the factors we consider in assessing the impact of the excluded evidence on the jury is the extent of cross-examination otherwise permitted. See, e.g., *State* v. *Qayyum*, supra, 344 Conn. 316. In the present case, we note that defense counsel had ample opportunity to cross-examine witnesses and to challenge physical evidence that was contrary to the defense's theory that Mikuski had given drugs to the defendant. Besides asking Mikuski, while she was under oath, if she gave or sold drugs to the defendant, which she answered in the negative, defense counsel was also able to challenge her credibility by attempting to show that she had a motive to deny being the seller because her testimony in this case was part of the plea agreement to sale of narcotics in an unrelated case. Defense counsel also cross-examined Roig, who was subpoenaed to testify in court, and asked him whether he felt forced to pro-

vide the police with a written statement before trial stating that Mikuski bought drugs moments before she and Roig were apprehended by Faulkner. Roig answered, "I don't feel like I was forced to do that . . . ."

Finally, we consider the quality of the excluded evidence. The circumstances under which Pagoni secured the excluded memorandum were questionable. Indeed, Pagoni himself admitted that, when he interviewed Mikuski, she was under the influence of what he believed to be heroin. He told the jury that people under the influence tend to be less accurate than sober people. Pagoni also told the jury that, although recordings or written and sworn statements are typically the best evidence, he did not record Mikuski's statement or ask Mikuski for a written and sworn statement. Thus, even if the memorandum had been admitted into evidence, given the inadequacies of the interview, the jury would still have had reason to question the accuracy of what Mikuski allegedly told Pagoni.

On the basis of the foregoing, considering the excluded memorandum in juxtaposition with the nature and quality of the evidence that was admitted, we have a fair assurance that the trial court's ruling did not substantially affect the verdict. The state's case was strong. It consisted of independent evidence, separate from Mikuski's testimony, demonstrating that the defendant was the seller and that the excluded evidence was of questionable reliability. Furthermore, despite the preclusion of Pagoni's written memorandum, Pagoni was able to impeach Mikuski by testifying that she told him she had given drugs to the defendant. Ultimately, we agree with the Appellate Court that any error by the trial court in precluding Pagoni's memorandum was harmless.

II

The defendant next claims that the Appellate Court incorrectly concluded that any error in allowing the prosecutor to convert Pagoni into an expert witness regarding the narcotics trade during cross-examination was harmless. The defendant contends that Pagoni's expert testimony about the general characteristics of narcotics dealers bolstered Mikuski's testimony and credibility, and, therefore, the jury was substantially swayed by it. The state responds that questions about the general characteristics of the narcotics trade did not substantially sway the jury's verdict because the importance of Pagoni's testimony was diminished by all of the other evidence, which independently showed that Mikuski was the buyer and, thus, that her statements were credible.

The opinion of the Appellate Court sets forth the following additional facts necessary for our consideration of this claim. "During the trial, the defense called Pagoni as a witness. He stated that he had been a Connecticut state trooper for approximately thirty-four years and that in his career he had worked in a variety of assignments, including the narcotics division. During cross-examination, the prosecutor asked if people who possessed drugs normally carried them in their hands while walking down the street. The [trial] court overruled an objection based on speculation, and Pagoni responded that sometimes that does, in fact, occur. . . .

"After the cross-examination addressed other topics, the prosecutor asked Pagoni whether drug dealers generally prefer not to conduct sales inside their homes or apartments. Defense counsel objected, arguing that it called for speculation and improper opinion testimony, as Pagoni had not been offered as an expert

witness.[16] The [trial] court overruled the objection, stating that defense counsel had questioned Pagoni about his law enforcement background on direct examination. The prosecutor then asked a series of questions regarding the sale and use of drugs." (Footnote added.) *State* v. *Massaro*, supra, 205 Conn. App. 704–705.

Defense counsel again objected, this time to the entire line of questioning, and that objection also was overruled.[17] After trial, the defendant filed a motion for a new trial. In that motion, he challenged the following topics that Pagoni was questioned about: (1) drug dealers do not sell in their homes, (2) drug users become " 'dope sick' " if they are unable to obtain drugs for some period of time, (3) street level addicts are not wealthy, (4) dealers sometimes carry scales, more than one cell phone, cash in various small denominations, and weapons to protect themselves, (5) users carry drug paraphernalia such as crack pipes and a "Chore Boy" to smoke cocaine and needles to inject heroin, and (6) the power lies with the dealer in a dealer/addict relationship.[18]

[16] Prior to trial, the parties reached an agreement that the state "would not present expert testimony from its witnesses regarding narcotics trafficking." *State* v. *Massaro*, supra, 205 Conn. App. 704.

[17] Upon defense counsel's objection to the entire line of questioning, the trial court excused the jury to hear arguments pertaining to the legal issues underlying the objection. The trial court ruled that Pagoni had not testified as an expert for the defense or the state. It further determined that the prosecutor was entitled to cross-examine Pagoni to challenge his credibility regarding his law enforcement background and, specifically, his experience in the narcotics division.

[18] On appeal to this court, the defendant challenges questions asked earlier in the cross-examination by claiming that defense counsel challenged the "whole line of questioning . . . ." The questions asked earlier in the cross-examination were not challenged with any specificity in his motion for a new trial or in his brief to the Appellate Court. The Appellate Court thus did not consider any claims beyond those identified in the motion for a new trial and raised in his appellate brief. See *State* v. *Massaro*, supra, 205 Conn. App. 703 and n.17, 705 and n.18. Because our certified question is limited to whether the Appellate Court correctly concluded that the error was harmless, we do not consider claims not raised in the Appellate Court. See, e.g., *State* v. *Turner*, 334 Conn. 660, 686 n.13, 224 A.3d 129 (2020).

The Appellate Court assumed that the trial court's evidentiary rulings regarding the prosecutor's cross-examination of Pagoni constituted an abuse of discretion but concluded that any such error was harmless. *State* v. *Massaro*, supra, 205 Conn. App. 707. The Appellate Court reasoned that the jury's verdict was not substantially swayed given the testimony of Faulkner, Mikuski, and Roig, and the accompanying evidence, particularly the text message from Mikuski to the defendant, asking, "[h]ey u do a 30 for $26?" (Internal quotation marks omitted.) Id., 702; see also id., 708. After reviewing the record in the present case, we agree with the Appellate Court that, even if the trial court's rulings were improper, the admission of Pagoni's testimony regarding the general characteristics of the narcotics trade was not harmful.

"If we determine that a court acted improperly with respect to the admissibility of expert testimony, we will reverse the trial court's judgment and grant a new trial only if the impropriety was harmful to the appealing party." (Internal quotation marks omitted.) *State* v. *Edwards*, 325 Conn. 97, 123, 156 A.3d 506 (2017); see also, e.g., id., 133–34 (concluding that improper admission of expert testimony was harmless). In part I of this opinion, we outlined the factors that we consider in determining whether an erroneous evidentiary ruling substantially swayed a jury's verdict. See, e.g., *State* v. *Qayyum*, supra, 344 Conn. 316; see also, e.g., *State* v. *Edwards*, supra, 133. We consider those factors as they relate to the defendant's claim.

First, we acknowledge that the prosecutor's cross-examination of Pagoni, regarding the general characteristics of the narcotics trade, may have bolstered Mikuski's testimony that she was the buyer and, in turn, diminished the importance of Pagoni's testimony in the defendant's case. However, as we previously explained in this opinion, in light of the defendant's theory of the

case, the significance of Pagoni's testimony to the defendant's case was that Mikuski told Pagoni that she had given drugs to the defendant. The prosecutor's questions about the general characteristics of the narcotics trade did not prevent the admission of or undermine Pagoni's testimony about what Mikuski had told him. During closing arguments, the prosecutor referenced only one relevant portion of Pagoni's testimony as it related to the general characteristics of the narcotics trade, stating that "the defense's own witness agreed with . . . the state . . . [that the drug dealer] generally holds the power in this situation . . . [over] the addict."

Second, Pagoni's testimony about the general characteristics of the narcotics trade was largely cumulative of other evidence. Indeed, Faulkner, Mikuski, and Roig testified about many of the same characteristics of drug dealers to which Pagoni testified. Specifically, Faulkner testified that the stone wall in front of the church where Mikuski and the defendant met is a common location used to facilitate drug deals, signaling to the jury that drug transactions typically happen outside of the dealer's home. Mikuski explained that addicts become "dope sick" when withdrawing from heroin. Roig testified that drug users often do not hold onto drugs for very long, using them "[v]ery soon after getting them . . . ."

Third, Pagoni gave the jury reason to believe that he could not be relied on as an expert in the narcotics trade. Indeed, Pagoni's answers to the prosecutor's questions about the general characteristics of drug dealers did not all weigh in the state's favor or reveal that he had extensive knowledge in the area. For instance, Pagoni did not know whether cocaine is generally sold in $10 increments or the term "Chore Boy . . . ." If these are actual characteristics of narcotics dealers that the state wished to prove, Pagoni did not do so. Pagoni also rebutted the prosecutor's assumption that dealers

carry scales or weapons, stating that very rarely do dealers carry scales and that he is aware of very few dealers who carry weapons. Pagoni's testimony regarding these facts actually lends support to the *defendant's* theory that Mikuski was the dealer considering that the police did not recover any scale or weapon from her person.

Fourth, as analyzed in part I of this opinion, the state's case was strong. Specifically, the state introduced testimonial and physical evidence supporting the conclusion that the defendant had sold Mikuski the narcotics. Mikuski testified and admitted that she had paid the defendant and received cocaine in exchange. The state introduced evidence of texts between Mikuski and the defendant in which she asked him whether he can "do a 30 for $26 . . . ." When stopped by the police moments after making a transaction with the defendant, Mikuski was apprehended with more than two tenths of a gram of cocaine in her hand and paraphernalia used to smoke cocaine on her person, but the police did not find any money. This essentially confirms that Mikuski's text to the defendant was a request to buy drugs from him. The testimony of Faulkner and Roig also confirmed that Mikuski had engaged in a transaction with the defendant to purchase cocaine.

Thus, because Pagoni's responses to the challenged topics did not all weigh in the state's favor and the state's case was strong, the defendant has not met his burden of proving that any error by the trial court in allowing the prosecutor to convert Pagoni into an expert witness substantially swayed the jury's verdict. Accordingly, we agree with the Appellate Court that allowing Pagoni to testify regarding the general characteristics of the narcotics trade, even if improper, was harmless.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.