BERDON, J., dissenting. I disagree with the majority opinion. In my opinion, police Officers Orlando Rosado and David Riehl of the Bridgeport police department violated the federal constitutional rights[1] of the defendant, Jarrell Richards, when they ordered the defendant's vehicle to be stopped,[2] because they lacked a reasonable and articulable suspicion that the defendant or the other occupants of his vehicle were engaged in criminal activity. In other words, "[a]n investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be engaged in criminal activity." *United States* v. *Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981).

"Our review of the defendant's claim is governed by well established principles. Under the exclusionary rule, evidence must be suppressed if it is found to be the fruit of prior police illegality. . . . On appeal, we apply a familiar standard of review to a trial court's findings and conclusions in connection with a motion to suppress. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [W]here the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . . Whether the trial court properly found that the facts submitted were enough to support a finding of probable cause is a question of law. . . . The trial court's determination on the issue, therefore, is subject to plenary review on appeal. . . . Because a trial court's determination of the validity of a . . . search [or seizure] implicates a defendant's constitutional rights, however, we engage in a careful examination of the record to ensure that the court's decision was supported by substantial evidence. . . . However, [w]e [will] give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses." (Citations omitted; internal quotation marks omitted.) *State* v. *Reynolds*, 264 Conn. 1, 42–43, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004).

In *State* v. *Santos*, 267 Conn. 495, 509, 838 A.2d 981 (2004), our Supreme Court concluded that "the defendant's presence in a high crime area at night, without any other facts, cannot form the basis for a reasonable and articulable suspicion that the defendant had engaged or was about to engage in criminal activity." Certainly, the police had no reason to stop the defendant's automobile on the ground that it had Vermont license plates, was parked at 1:30 a.m. in a high crime area known for its narcotics and prostitution activities

and that there were three men (including the defendant) in the vehicle. Even Rosado conceded that these facts provided an insufficient basis for an investigatory stop.[3]

There had to be something more. The something more that the majority depends on and that the court found is the "mystery woman."

The court found credible a mystery woman who was walking on the street at 1:30 a.m. in this high crime area known not only for its narcotics activities but also for prostitution. The mystery woman approached the defendant's vehicle on her own volition[4] shortly before it drove off. It was not until after the officers approached the mystery woman that she stated (in slang language) that one or more of the men in the defendant's vehicle offered to sell her narcotics. It is more reasonable and logical to conclude, however, that the mystery woman, whose name is unknown because she refused to give it to police, was probably offering her services to the men in the defendant's vehicle, rather than to conclude that the men were attempting to sell her narcotics when she approached the vehicle. This must be viewed in the context that this mystery woman was walking in an area known for its prostitution at 1:30 in the morning and, as found by the court, that she approached the vehicle. One would not expect her to confess to the police that she was soliciting business but, rather, to give some other excuse.

It is well established that the level of scrutiny that a reviewing court must employ when evaluating the credibility of an anonymous witness depends on the nature of the witness. See *State* v. *Barton*, 219 Conn. 529, 542, 594 A.2d 917 (1991). Courts have properly distinguished between a "confidential informant," the term usually used in a more restricted sense "to describe a person who is himself in the underworld," and a "citizen informer," the term used to describe an "average citizen who, as a victim or a witness, happens to have information useful to the police. Such 'citizen informers' are considered more deserving of credibility than are underworld informers, and courts have accordingly tended to examine the basis and sufficiency of a citizen informer's information more closely than his credibility." Id., 542 n.10. On the other hand, "confidential informants are . . . often criminals, drug addicts, or even pathological liars . . . ." (Internal quotation marks omitted.) Id., 542. For a court to assess the reliability of information obtained from a confidential informant, it must consider how the informant gained the information and why the police officer believes that the information is reliable. Then, the court independently must decide whether the police officer's inferences from the informant's statements are reasonable. Id., 542–43.

I would conclude that the mystery woman in this case is more like a confidential informant than a citizen

informer and, further, that the police did not demonstrate that she was credible. She did not approach the police voluntarily, and she was walking the streets in the early hours of the morning in a high crime area known for narcotics and prostitution activities. Additionally, the police had no information that would verify the alleged information from the mystery woman. They never obtained her name, and they never had past dealings with her to verify that she was credible and dependable. There was no evidence about her demeanor or any evidence describing her facial expressions or any other matter to form a basis of her veracity. "[A]n anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity . . . ." *Alabama* v. *White*, 496 U.S. 325, 329, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990).

At the very best, for the state, this is a close case. "In a close case . . . the balance ought to be struck on the side of the freedom of the citizen from governmental intrusion. To conclude otherwise would be to elevate society's interest in apprehending offenders above the right of citizens to be free from unreasonable stops." *State* v. *Oquendo*, 223 Conn. 635, 657, 613 A.2d 1300 (1992).

I would reverse the judgment of the trial court and remand the case with direction to vacate the conditional guilty plea and to dismiss the case.

Accordingly, I respectfully dissent.

[1] Although the defendant also raises in his brief the issue under our state constitution, which at times our courts have determined affords greater rights than the federal constitution; *State* v. *Oquendo*, 223 Conn. 635, 649–50, 613 A.2d 1300 (1992); at oral argument he agreed that he was not pursuing his claim under the state constitution.

[2] Activities or movements by the occupants in the automobile that may have occurred subsequent to the stop are irrelevant to determining whether the initial stop was constitutional.

[3] Question by defense counsel: "So, basically, when the [defendant's] car pulled away, you had absolutely no reason to stop that car; did you?" Answer by Rosado: "No." Additionally, although Riehl claimed that the defendant did not have a seat belt on, the court made no such finding, and, regardless, Officer Carl Bergquist did not stop the defendant's vehicle on that basis.

[4] There was no finding that "[o]ne of the officers observed someone in the automobile motion to the . . . [mystery woman] inviting her to approach the automobile"; rather, the court found that "she approached the vehicle."