STATE OF CONNECTICUT *v.* DOMINIC BADARACCO
(AC 36087)

DiPentima, C. J., and Sheldon and Mihalakos, Js.

Argued September 18, 2014—officially released April 21, 2015

(Appeal from Superior Court, judicial district of Fairfield, Devlin, J.)

Richard T. Meehan, Jr., with whom, on the brief, was *Edward J. Gavin*, for the appellant (defendant).

Leonard C. Boyle, deputy chief state's attorney, with whom, on the brief, was *John C. Smriga*, state's attorney, for the appellee (state).

Opinion

DiPENTIMA, C. J. The defendant, Dominic Badaracco, appeals from the judgment of conviction, rendered after a jury trial, of bribery in violation of General Statutes § 53a-147. On appeal, the defendant claims that (1) there was insufficient evidence to support his conviction of bribery as charged on the theory that he offered money to a Superior Court judge to influence a grand jury, (2) the court made improper evidentiary rulings related to the disappearance of the defendant's former wife, and (3) the court improperly limited his cross-examination of a state's witness.[1] We disagree, and, therefore, affirm the judgment of conviction.

The jury reasonably could have found the following facts. In August, 1984, Mary Badaracco, the then wife of the defendant, disappeared from her home in Sherman, Connecticut. She did not notify her family as to her whereabouts and has not been seen or heard from since. In May, 2010, the chief state's attorney applied for the empanelment of an investigating grand jury[2] to examine the circumstances surrounding the disappearance of Mary Badaracco. This application was approved that same month, and the target of the investigation was the defendant. The investigation was to be conducted in private.[3] The grand jury issued subpoenas[4] in September, 2010, and began hearing evidence in October, 2010. On October 18, 2010, a subpoena was served upon Joan Perrone, the daughter of the defendant's current wife, Joan Badaracco, ordering her to appear before the grand jury at the New Britain courthouse on October 22, 2010.

The defendant learned of the grand jury's investigation, and spoke to his friend and former business partner, Ronald Richter, about it.[5] Richter, in turn, communicated with his childhood friend, the Honorable Robert C. Brunetti, then a judge of the Superior Court (Brunetti), who was assigned to the New Britain judicial district and hearing cases in the Bristol courthouse. The defendant had asked Richter to speak with Brunetti to obtain information about the grand jury.[6] Richter explained that the defendant had known Brunetti for years through Richter, and that the defendant was not as close to Brunetti as Richter was.[7]

One morning in October, 2010, after his conversation with the defendant, Richter called Brunetti and asked if he knew anything about a grand jury sitting in New Britain investigating the defendant. Brunetti replied that he had no knowledge of such a grand jury. When Richter inquired if Brunetti could find out any information regarding such a grand jury, Brunetti replied, "Probably not, but I will see what I can find out." Despite this statement, Brunetti "made no attempts to find out anything." Nevertheless, as a result of conversation during a lunch with other judges assigned to the New Britain

judicial district, Brunetti became aware of the existence of the grand jury. Four or five days later, when Richter telephoned him again, Brunetti confirmed for him the existence of the grand jury.

On November 17, 2010, the defendant, using Richter's telephone, spoke with Brunetti at his home at approximately 7:40 a.m. The defendant stated: "Bobby [meaning Brunetti] I need your help, they've all been subpoenaed for Friday." Brunetti replied: "[T]here's nothing I can do. I can't get involved in this. There's nothing I can do to help you . . . . You're just going to have to wait and see what happens." The defendant responded: "[L]isten, I'm only going to say this once, it's worth 100 Gs." Brunetti testified that he was stunned by what he interpreted as an offer of money for interfering with the grand jury investigation and hung up the telephone. The next day, Brunetti reported the defendant's actions to the chief court administrator, who notified the chief state's attorney.

On the afternoon of November 18, 2010, Brunetti met with two inspectors from the Office of the Chief State's Attorney, Robert Hughes and Jay St. Jacques. At the request of the inspectors, Brunetti made a recorded telephone call to Richter as part of the investigation into the circumstances surrounding the defendant's call to Brunetti, which had been made from Richter's phone.[8] Thereafter, on December 2, 2010, also at the inspectors' request, Brunetti telephoned the defendant to arrange a meeting with him for the following day.[9] Although the defendant agreed to the proposed meeting, he did not appear for it.[10]

The state presented evidence regarding the defendant's access to, and therefore his ability to pay Brunetti, the sum of $100,000. Elaine Johnson, the branch manager of the Webster Bank in Shelton, testified that the defendant had moved separate sums of $57,617 and $127,411.37 from two different IRA accounts into the checking account of Joan Badaracco on November 15, 2010. This money, totaling approximately $185,000, was transferred from Joan Badaracco to the defendant on December 10, 2010.

The jury found the defendant guilty of bribery, and the court sentenced him to seven years incarceration, followed by three years of special parole. This appeal followed. Additional facts will be set forth as necessary.

I

The defendant first claims that the evidence was insufficient to support his conviction for bribery.[11] Specifically, the defendant argues that the court improperly denied his motion for a judgment of acquittal that was made after both sides had rested at trial[12] and his postverdict motion for a judgment of acquittal and amended motion for a new trial. On appeal, he contends that the jury could not reasonably have found that he offered

a bribe to Brunetti because the evidence did not show that he had expressed an ability and a desire to pay him money to influence the grand jury investigation. We are not persuaded.

Before addressing the substance of the defendant's appellate argument, we set forth our standard of review and identify the relevant legal principles that guide our analysis. "In reviewing the sufficiency of the evidence to support a criminal conviction we apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . .

"Finally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [finder of fact], would have resulted in an acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [finder of fact's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Chase*, 154 Conn. App. 337, 354–55, A.3d (2014); see also *State* v. *Crenshaw*, 313 Conn. 69, 93, 95 A.3d 1113 (2014); *State* v. *Rodriguez-Roman*, 297 Conn. 66,

73–74, 3 A.3d 783 (2010).

We now set forth the applicable law regarding the crime of bribery, focusing on the specific question raised in this appeal, that is, whether the state met its burden of proof that the defendant made an offer to pay Brunetti money in exchange for Brunetti's influencing the grand jury investigation. General Statutes § 53a-147 (a) provides: "A person is guilty of bribery if he promises, *offers*, confers or agrees to confer upon a public servant or a person selected to be a public servant, *any benefit as consideration* for the recipient's decision, opinion, recommendation or vote as a public servant or a person selected to be a public servant." (Emphasis added.) See generally *State* v. *Carr*, 172 Conn. 458, 468, 374 A.2d 1107 (1977). This statute has been construed broadly to prevent corruption in public service. Id.; see also *State* v. *Rado*, 14 Conn. App. 322, 329, 541 A.2d 124, cert. denied, 208 Conn. 813, 546 A.2d 282, cert. denied, 488 U.S. 927, 109 S. Ct. 311, 102 L. Ed. 2d 330 (1988); see generally *State* v. *Bergin*, 214 Conn. 657, 662, 574 A.2d 164 (1990) (bribery is crime involving violation of public's trust in elected officials). The statute thus may be violated even if the public servant, in his or her official capacity, does not have the authority to do or refrain from doing the act to which the bribe relates. *State* v. *Fox*, 22 Conn. App. 449, 455, 577 A.2d 1111 (1990).

As stated previously, the defendant's sufficiency claim challenges only the "offer" requirement of § 53a-147. Our General Assembly, our Supreme Court, and this court have not defined or construed the term "offer" as used in § 53a-147. We, therefore, must interpret that term in the context of our bribery statute in order to determine whether the defendant's conviction was supported by sufficient evidence.[13] As the federal bribery statute, 18 U.S.C. § 201 (b) (2009),[14] contains language similar to that used in § 53a-147, we use federal law interpreting that statute in our analysis. See *State* v. *Assuntino*, 180 Conn. 345, 350–51, 429 A.2d 900 (1980); see generally *State* v. *Elliott*, 177 Conn. 1, 5, 411 A.2d 3 (1979); *Vollemans* v. *Wallingford*, 103 Conn. App. 188, 210, 928 A.2d 586 (2007), aff'd, 289 Conn. 57, 956 A.2d 579 (2008). Under federal law, a bribery conviction must be based on more than evidence of mere preparation. It must progress to the point that the defendant made an offer that consisted of an expression of a desire and an ability to pay the public official for performing a proscribed act. The defendant has included in his appellate brief an analysis of the relevant federal cases interpreting an "offer" under 18 U.S.C § 201 (b), and whether his conduct in this case satisfied that element.

Specifically, the defendant argues that the evidence showed only acts of preparation to commit bribery; see *United States* v. *Shulman*, 624 F.2d 384, 387 (2d Cir. 1980); and thus was insufficient to support his convic-

tion for bribery. In other words, according to the defendant, the evidence did not establish that the defendant expressed an ability and a desire to pay Brunetti. See *United States* v. *Jacobs*, 431 F.2d 754, 760 (2d. Cir. 1970), cert. denied, 402 U.S. 950, 91 S. Ct. 1613, 29 L. Ed. 2d 120 (1971). We are not persuaded.

In *Jacobs*, the United States Court of Appeals for the Second Circuit observed that a violation of the federal bribery statute does not require acceptance of the bribe. "It is also perfectly plain that the crime is consummated irrespective of whether an offer of an amount of money to influence an official's behavior is accepted by the official. . . . *The crime was complete when* [*the defendant*] *expressed an ability and a desire to pay* [the official] $5,000 . . . as a bribe for disposing of the case . . . . " (Emphasis added.) Id. In *United States* v. *Hernandez*, 731 F.2d 1147, 1149 (5th Cir. 1984), the United States Court of Appeals for the Fifth Circuit noted that the crime of bribery requires either the actual giving or the offer to give or transfer money or something of value. Applying the *Jacobs* standard that an offer is made when there has been an expression of the ability and desire to pay, the Fifth Circuit considered whether a statement from a third party asking if the offeree " 'can be bought' " so that he would change his testimony was sufficient to sustain a conviction for bribery. Id., 1150. It concluded that such a statement did not express "an ability and a desire to pay . . . a bribe. At most, the phrase 'they want to know' constitutes mere preparation to commit the crime—a preliminary 'feel out' of [the offeree]." Id.

In the present case, the defendant argues that his statement "listen, I'm only going to say this once, it's worth 100 Gs," constituted mere preparation to commit the crime of bribery, and not an offer[15] to Brunetti to obtain his assistance with the grand jury. Specifically, the defendant contends that his statement was akin to the question held not to constitute the offer of a bribe in *United States* v. *Hernandez*, supra, 731 F.2d 1150.[16] We are not persuaded.

We are guided in our analysis by the decision from the United States Court of Appeals for the Seventh Circuit in *United States* v. *Synowiec*, 333 F.3d 786, 787 (7th Cir. 2003), where the defendant was convicted of bribing a federal immigration agent. In that case, the defendant asked the agent if " 'anything . . . could be done' " regarding the arrest of a person who was illegally in the United States. Id. The defendant further stated that he would " 'take care' " of the agent, and "rubbed his thumb and index figure together . . . ." Id. On appeal, the court rejected the defendant's insufficiency claim based on his failure to suggest a price in his conversation with the agent. Id., 789. The court reasoned: "[The defendant's] view of what is necessary for an offer under the bribery statute is too rigid and

formalistic. It is not necessary for a briber to be familiar with Williston on Contracts in order to make an illegal offer. Under the statute, it is sufficient if a defendant expresses an ability and a desire to pay the bribe. . . . This can be done in the often clandestine atmosphere of corruption with a simple wink and a nod if the surrounding circumstances make it clear that something of value will pass to a public official if he takes improper, or withholds proper, action. . . . The requirement that a defendant expresses an ability and [a] desire to pay a bribe in order to satisfy the bribery statute is a less demanding requirement than what the civil law requires for an enforceable offer." (Citation omitted; internal quotation marks omitted.) Id. The court further reasoned that its view was consistent with the legislative purpose of deterring corruption[17] and specifically distinguished the facts before it from those at issue in *Hernandez*. Id., 790.

In the present case, the defendant called Brunetti and told him that he needed his help because of the subpoenas issued in connection with the grand jury investigation into the disappearance of Mary Badaracco. The defendant then stated that he was "only going to say this once, it's was worth 100 Gs." The jury was free to reject the defendant's noncriminal interpretation of this statement and to accept the state's theory, which was that the defendant, by those words, had offered Brunetti $100,000 to improperly influence the investigation by the grand jury. The jury also heard testimony from Richter that the defendant previously stated that he had to give Brunetti something. Additionally, the state presented evidence that the defendant had made more than $100,000 immediately available to himself for what could fairly be viewed as the purpose of making a large payment. The evidence, so construed, showed more than mere planning or preparation. The defendant's statement and actions in the surrounding circumstances amply supported the jury's verdict on the theory that the defendant had expressed an ability and a desire to pay Brunetti a $100,000 bribe. Accordingly, we conclude that the court properly denied his motions for a judgment of acquittal and amended motion for a new trial.

II

The defendant next claims that the court made improper evidentiary rulings related to the disappearance of Mary Badaracco. The defendant's argument is twofold: first, he contends that the court should have precluded the jury from hearing any evidence regarding the disappearance or death of Mary Badaracco because the prejudicial effect of such evidence outweighed its probative value; and second, that after the court permitted the jury to hear about the disappearance of Mary Badaracco, he should have been permitted to present evidence that the grand jury had made no findings as

to either the death of Mary Badaracco or his own involvement in her death. We are not persuaded.

The following additional facts are necessary for our discussion. In a pretrial motion in limine, the defendant sought an order instructing counsel and the witnesses "to avoid references, direct or indirect, in the presence of the jury regarding the death of Mary Badaracco . . . ." The defendant claimed that the prejudicial nature of this information far outweighed its probative value. The state filed an objection, dated June 3, 2013, in which it argued that evidence of the grand jury's investigation was relevant to establish a material element of the charged offense and to the defendant's motive.[18]

On June 10, 2013, the court heard argument on the defendant's motion. The defendant iterated that information as to Mary Badaracco's death had no probative value in this case and that the jurors inevitably would speculate as to what had happened to her. After hearing from the state, the court denied the defendant's motion in limine, but agreed that a limiting instruction was required. The defendant then requested that the court inform the jury that no probable cause finding had been made by the grand jury implicating him in her disappearance or pertaining to the manner of her death. The court denied the defendant's request, explaining that such information was not relevant to the bribery charge.

The state's first witness was St. Jacques, one of the inspectors from the Office of the Chief State's Attorney who had investigated Brunetti's report of the defendant's alleged bribe. During his testimony, the court gave the jury a limiting instruction.[19] St. Jacques testified that members of his office learned of an open investigation into the disappearance of Mary Badaracco. He further explained that Mary Badaracco had disappeared in 1984, at a time when she was married to and resided with the defendant at their home in Sherman. She had disappeared in 1984 without giving anyone notice and had not been seen or heard from ever since. St. Jacques stated that at some point his office successfully applied for the empanelment of a grand jury to investigate the disappearance of Mary Badaracco, and that the defendant was a target of the grand jury's investigation.

We begin our analysis by setting forth our standard of review. "We review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law . . . for an abuse of discretion. . . . We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . The trial court has wide discretion to determine the relevancy [and admissibility] of evidence . . . . In order to establish reversible error on an evidentiary impropriety . . . the defendant must prove both an abuse of discretion and a harm that resulted from such abuse. . . . [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." (Citation omitted; internal quotation marks omitted.) *State* v. *Alex B.*, 150 Conn. App. 584, 593, 90 A.3d 1078, cert. denied, 312 Conn. 924, 94 A.3d 1202 (2014); see also *State* v. *Brown*, 153 Conn. App. 507, 525, 101 A.3d 375 (2014); *State* v. *Graham S.*, 149 Conn. App. 334, 341–42, 87 A.3d 1182, cert. denied, 312 Conn. 912, 93 A.3d 595 (2014).

A

The defendant first argues that the prejudicial effect of the evidence regarding the disappearance and death of Mary Badaracco outweighed its probative value, and therefore that the court should not have allowed the jury to hear it. The state counters that the evidence in question was important to establish the defendant's motive and that the court provided a strong limiting instruction. For those reasons, the state argues, the prejudicial effect of the evidence regarding the purpose of the grand jury investigation did not outweigh its probative value. We agree with the state.

Our Supreme Court has stated "[a]lthough relevant, evidence may be excluded by the trial court if the court determines that the prejudicial effect of the evidence outweighs its probative value. . . . Of course, [a]ll adverse evidence is damaging to one's case, but it is inadmissible only if it creates undue prejudice so that it threatens an injustice were it to be admitted. . . . The test for determining whether evidence is unduly prejudicial is not whether it is damaging to the defendant but whether it will improperly arouse the emotions of the jur[ors]. . . . The trial court . . . must determine whether the adverse impact of the challenged evidence outweighs its probative value. . . . Finally, [t]he trial court's discretionary determination that the probative value of evidence is not outweighed by its prejudicial effect will not be disturbed on appeal unless a clear abuse of discretion is shown. . . . [B]ecause of the difficulties inherent in this balancing process . . . every reasonable presumption should be given in favor of the trial court's ruling. . . . Reversal is required only [when] an abuse of discretion is manifest or [when] injustice appears to have been done." (Citations omitted; internal quotation marks omitted.) *State* v. *Kalil*, 314 Conn. 529, 548, A.3d (2014); see also *State* v. *Reynolds*, 152 Conn. App. 318, 325–26, 97 A.3d 999, cert. denied, 314 Conn. 934, 102 A.3d 85 (2014).

The state directs our attention to *State* v. *Peeler*, 267 Conn. 611, 614, 841 A.2d 181 (2004), where the defendant, Adrian Peeler, was convicted of conspiracy to commit murder. Adrian Peeler and his brother, Russell Peeler, operated a drug trafficking business. Id., 615.

Russell Peeler shot and wounded a former partner over a dispute involving drug money. Id. A seven year old boy witnessed Russell Peeler's attempted murder of the former partner. Id., 615. After learning of the boy's identity and his cooperation with the police, the Peeler brothers conspired to kill the boy. Id., 615–18. At his criminal conspiracy trial, Adrian Peeler filed a motion in limine to exclude all evidence relating to the initial assault and subsequent murder of the former partner. Id., 634. On appeal, he claimed that the trial court improperly had denied this motion because that evidence was not relevant and was too prejudicial. Id. In rejecting this claim, our Supreme Court ruled that the evidence was highly probative as to motive and that the trial court sufficiently had mitigated any possible prejudice with a limiting instruction. Id., 637–38; see also *State* v. *Wilson*, 308 Conn. 412, 428–31, 64 A.3d 91 (2013) (probative value of evidence of defendant's gang affiliation outweighed risk of unfair prejudice).

The state argues that, in the present case, "[t]he existence of the grand jury was an essential element of the case because it established the official conduct that the defendant sought to influence." It further contends that the purpose of the grand jury investigation established the corrupt purpose of the defendant's offer to Brunetti, as a well as his motive for the crime. "It is not essential that the state prove a motive for a crime. . . . But it strengthens its case when an adequate motive can be shown." (Internal quotation marks omitted.) *State* v. *Reynolds*, supra, 152 Conn. App. 325; see also *State* v. *Wilson*, supra, 308 Conn. 430 (recognizing significance that proof of motive may have in criminal case); *State* v. *Peeler*, supra, 267 Conn. 636 (evidence of motive is desirable and important, can strengthen state's case, and often forms important factor in inquiry as to guilt or innocence).

The evidence that the grand jury was investigating the defendant in the disappearance and death of Mary Badaracco was highly probative with respect to the bribery charge. Additionally, the court's limiting instruction served to minimize its prejudicial effect. See *State* v. *Feliciano*, 256 Conn. 429, 454, 778 A.2d 812 (2001); *State* v. *Peeler*, supra, 267 Conn. 638; *State* v. *Bennett-Gibson*, 84 Conn. App. 48, 66, 851 A.2d 1214, cert. denied, 271 Conn. 916, 859 A.2d 570 (2004). As stated in footnote 19 of this opinion, the court instructed the jury to consider evidence regarding the disappearance of Mary Badaracco only with respect to the defendant's alleged motive and intent to commit bribery and for no other purpose. Finally, we note that the court considered the parties' arguments prior to ruling on the defendant's motion and issued a contemporaneous limiting instruction to the jury, and we will presume, in the absence of evidence to the contrary, that the jury followed that instruction. *State* v. *Reynolds*, supra, 152 Conn. App. 326; see also *State* v. *Paul B.*, 315 Conn. 19,

32, A.3d (2014) (in absence of contrary evidence, appellate courts presume jury followed limiting instruction); *State* v. *James G.*, 268 Conn. 382, 397–98, 844 A.2d 810 (2004) (same). For these reasons, we conclude that the court did not abuse its discretion in denying the defendant's motion in limine.

B

The defendant next argues that the court improperly precluded him from presenting evidence that the grand jury had made no findings relating to the death of Mary Badaracco. The state counters that the result of the investigation conducted by the grand jury was irrelevant to the bribery charge. We conclude that the court did not abuse its discretion in not allowing the defendant to present the result of the grand jury investigation to the jury.

The following additional facts will facilitate our discussion. After the court denied the defendant's motion in limine, defense counsel requested that when the limiting instruction was given to the jury, the court also inform "the jury that there was no finding of probable cause that Mary Badaracco's death was a homicide and no finding of probable cause that [the defendant] was implicated in her disappearance." Defense counsel argued that providing this information to the jury would serve to blunt the prejudicial effect of the evidence regarding the existence and purpose of the grand jury. The state opined that the finding of the grand jury played "no role" in the bribery trial, and the limiting instruction would be sufficient to prevent unfair prejudice.

The court ruled that such information was not relevant to the bribery charge. The court stated: "What difference does that make? That—that—I mean, this really is focused on . . . November 17, 2010. It's really—it's right about there. Had they—look, your client wouldn't be more guilty of bribery if they had made a finding of probable cause. And he's not less guilty of bribery if there wasn't a finding of probable—it's not relevant. It's not material. It's really what was [his] state of mind then. That's how I see this." Later, at the conclusion of the defendant's offer of proof, the court stated: "I've ruled that I thought that the findings of the grand [jury], which occurred far beyond or later than the events around this trial, are not relevant because whatever the grand jury found doesn't make it either more or less likely that . . . Brunetti was the recipient of an attempted bribe."

"Section 4-1 of the Connecticut Code of Evidence provides: Relevant evidence means evidence having any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence. As it is used in our code, relevance encompasses two distinct concepts, namely, probative value

and materiality. . . . Conceptually, relevance addresses whether the evidence makes the existence of a fact material to the determination of the proceeding more probable or less probable than it would be without the evidence. . . . In contrast, materiality turns upon what is at *issue* in the case, which generally will be determined by the pleadings and the applicable substantive law. . . . If evidence is relevant and material, then it may be admissible." (Emphasis in original; internal quotation marks omitted.) *State* v. *Maner*, 147 Conn. App. 761, 768, 83 A.3d 1182, cert. denied, 311 Conn. 935, 88 A.3d 550 (2014); see also *State* v. *Davis*, 298 Conn. 1, 23, 1 A.3d 76 (2010) (evidence is irrelevant or too remote if there is such want of open and visible connection between evidentiary and principal facts that, all things considered, former is not worthy or safe to be admitted in proof of latter).

In the present case, the court determined that evidence regarding the grand jury's findings was not relevant, and therefore not admissible. On appeal, however, the defendant's argument is focused on the premise that not providing that information to the jury was too prejudicial. This argument, however, fails to address the trial court's reason for disallowing its admission into evidence. We will not reverse the judgment of the trial court where the party has not challenged or briefed the basis for the court's ruling. See, e.g., *State* v. *Beckerman*, 145 Conn. App. 767, 797, 85 A.3d 655 (2013), cert. denied, 311 Conn. 938, 89 A.3d 349 (2014). We conclude, therefore, that this claim is without merit.

III

The defendant's final claim is that the court improperly limited his cross-examination of Brunetti.[20] He first argues that the court improperly prevented him from questioning Brunetti about whether he had violated the the Code of Judicial Conduct when he had informed Richter of the existence of the grand jury. The defendant further contends that Brunetti's exposure to possible censure from the Judicial Review Council (council), or the possibility of a complaint to the council, was admissible on the issue of bias, prejudice or motive to testify falsely. The defendant's second argument is that the court prevented him from questioning Brunetti regarding the ethical restriction on contacting a represented party. The state responds that the defendant failed to demonstrate that the rulings constituted an abuse of discretion or that he was harmed by these rulings, and, therefore, this claim must fail. We agree with the state that the defendant has failed to establish reversible error.

The following additional facts are necessary for our analysis. During cross-examination, Brunetti acknowledged that the existence of the grand jury was a secret. He further stated that he had told Richter of the existence of the grand jury when its existence was not

public knowledge. Defense counsel asked Brunetti if he knew that what he did was improper, and Brunetti responded: "I probably should not have done it. But at that point, it was really clear that they knew there was a grand jury, so I just confirmed it, yes." Brunetti then testified that he was required to adhere to the Rules of Professional Conduct that govern attorney conduct, as well as the Code of Judicial Conduct. After some preliminary dialogue regarding the Code of Judicial Conduct, Brunetti, in response to a question of whether he had violated canon 1[21] by revealing the existence of the grand jury to Richter, stated: "I would say I would—I probably should—I should probably not have done it. But I did do it and then that might—that could be a considered a violation of a canon, yes." Brunetti further stated that he had told the chief court administrator about his statements to Richter regarding the existence of the grand jury. Defense counsel then asked Brunetti if he had been subject to any type of discipline by the council,[22] to which he replied in the negative. After defense counsel asked Brunetti about the membership of the council, the state objected on the basis of relevancy. Defense counsel offered that the question went to Brunetti's bias, prejudice, and motive. The court replied: "You've established it. I'm going to sustain the objection."

Defense counsel then asked Brunetti if he had thought that there was anything improper with having a direct conversation with the defendant. Brunetti stated: "I had some questions as to whether or not I should be making that kind of a phone call, yes." Brunetti expounded on his answer as follows: "Well, I had some question in my mind, and I'm—I had been contacting a person who's a target of a grand jury investigation and whether or not I should be speaking to him, is that something I should or should not be doing." Brunetti then admitted that he knew that the defendant was represented by counsel, and then was asked "can you tell me whether there is, as far as you know, any ethical proscription about a member of the bar, whether a judge or a lawyer, making contact or initiating contact with somebody who is represented by counsel?" The state objected, and the court excused the jury.

The state argued that the question called for a legal conclusion on whether it was improper for Brunetti to contact the defendant. It further contended that there had been no evidence that the defendant had been represented by counsel in connection with the bribery investigation. Finally, the state noted that there was a split of authority on whether such contact was improper. The court inquired whether defense counsel was asking Brunetti to give the jury his "opinion on the ethics of the phone call . . . ." Defense counsel responded in the affirmative. After further dialogue, the court stated that defense counsel was asking Brunetti to draw a legal conclusion and that this area of the law

was "murky" and "unsettled in many respects." The court also noted that this would confuse the jury. Accordingly, the court sustained the state's objection.

We now set forth the relevant law that guides our analysis. "The primary interest secured by confrontation is the right to cross-examination . . . and an important function of cross-examination is the exposure of a witness' motivation in testifying. . . . Cross-examination to elicit facts tending to show motive, interest, bias and prejudice is a matter of right and may not be unduly restricted." (Internal quotation marks omitted.) *State* v. *McClain*, 154 Conn. App. 281, 286–87, 105 A.3d 924 (2014). "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 may wish. . . . Every reasonable presumption should be made in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion." (Internal quotation marks omitted.) *State* v. *Rose*, 132 Conn. App. 563, 575, 33 A.3d 765 (2011), cert. denied, 303 Conn. 934, 36 A.3d 692 (2012); see also *State* v. *White*, 139 Conn. App. 430, 438–39, 55 A.3d 818 (2012), cert. denied, 307 Conn. 953, 58 A.3d 975 (2013).

We further note that the defendant bore the burden of establishing harm from any evidentiary error. "A defendant is not entitled to appellate relief on the basis of an erroneous evidentiary ruling, however, without demonstrating that the ruling was harmful to him in that it affected the verdict. When an improper evidentiary ruling is not constitutional in nature, the defendant bears the burden of demonstrating that the error was harmful. . . . [A] nonconstitutional error is harmless when an appellate court has a fair assurance that the error did not substantially affect the verdict. . . . [O]ur determination that the defendant was harmed by the trial court's [evidentiary rulings] is guided by the various factors that we have articulated as relevant [to] the inquiry of evidentiary harmlessness . . . such as the importance of the [evidence] in the prosecution's case, whether the [evidence] was cumulative, the presence or absence of evidence corroborating or contradicting the [evidence] 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." (Internal quotation marks omitted.) *State* v. *Gallo*, 135 Conn. App. 438, 443–44, 41 A.3d 1183 (2012), appeal dismissed, 310 Conn. 602, 78 A.3d 854 (2013) (certification improvidently granted).

A

On appeal, the defendant argues that the court improperly sustained the state's objection to his question regarding the council, as well as a further inquiry

to establish that Brunetti faced possible censure from the council, or the possibility of a complaint made to the council, and, therefore, it should have been permitted. The state correctly notes that the defendant never informed the trial court that he wanted to pursue additional questions regarding the council. To permit a party to raise a claim on appeal that was not properly presented at trial is unfair to both the trial court and the parties, and amounts to trial by ambuscade. *State* v. *Holloway*, 117 Conn. App. 798, 814, 982 A.2d 231 (2009), cert. denied, 297 Conn. 925, 998 A.2d 1194 (2010). Therefore, we decline to consider it on appeal.

"The proffering party bears the burden of establishing the relevance of the offered testimony." (Internal quotation marks omitted.) *State* v. *Benedict*, 313 Conn. 494, 511, 98 A.3d 42 (2014). At trial the defendant failed to explain why who was on the council was relevant, especially after Brunetti testified that he had not been subjected to any type of discipline by the council. See, e.g., *State* v. *McPhee*, 58 Conn. App. 501, 513, 755 A.2d 893, cert. denied, 254 Conn. 920, 759 A.2d 1026 (2000). Accordingly, we conclude that the court did not abuse its discretion in sustaining the state's objection.

B

The defendant also argues that the court improperly prevented him from asking if Brunetti felt that he acted improperly or unethically by contacting the defendant, a represented party. Specifically, he contends that this topic was a proper basis for impeachment. The state counters, inter alia, that any error was harmless. Even if we were to assume that the court improperly precluded the defendant from pursuing this topic, we agree with the state that any error was harmless.

Outside of the presence of the jury, the court asked defense counsel if he was asking Brunetti to give an opinion on the ethics of the telephone call made to the defendant. Defense counsel replied in the affirmative. After the court sustained the state's objection and the jury returned, defense counsel asked Brunetti if he had concerns about whether it was appropriate to contact the defendant. Brunetti explained those concerns as follows: "Well, I had concerns, and I told [the investigators], as early as December, that I was—in my mind it was a really fine ethical line that I was walking here as far as cooperation and doing things in furtherance of the investigation, that I was aware of the judicial canons, and I just—I'm really in a grey area of a fine line." The answer given by Brunetti was the response to the question that defense counsel previously had sought, namely, Brunetti's opinion that he had violated an ethical rule by contacting the defendant.

"[T]he appellate harmless error doctrine is rooted in [the] fundamental purpose of our criminal justice system—to convict the guilty and acquit the innocent.

The harmless error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence . . . and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error. . . . In order to establish the harmfulness of a trial court ruling, the defendant must show that it is more probable than not that the improper action affected the result. . . . The question is whether the trial court's error was so prejudicial as to deprive the defendant of a fair trial, or, stated another way, was the court's ruling, though erroneous, likely to affect the result? . . . [A]ny error in the admission of evidence does not require reversal of the resulting judgment if the improperly admitted evidence is merely cumulative of other validly admitted testimony." (Citations omitted; internal quotation marks omitted.) *State* v. *James H.*, 150 Conn. App. 847, 866, 95 A.3d 524, cert. denied, 314 Conn. 913 100 A.3d 404 (2014). Put another way, "[o]ne factor to be considered in determining whether an improper ruling on evidence is a harmless error is whether the testimony was cumulative . . . ." (Internal quotation marks omitted.) *State* v. *Rolli*, 53 Conn. App. 269, 276, 729 A.2d 245, cert. denied, 249 Conn. 926, 733 A.2d 850 (1999). On the basis of the facts and circumstances of the present case, we conclude that the defendant was not harmed when the court sustained the state's objection, because the jury subsequently heard Brunetti's testimony regarding his opinion of the ethics of his actions in cooperating with the investigation. The verdict, therefore, was not affected by the court's ruling. Accordingly, the defendant's argument must fail.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] In his appellate brief, the defendant also claimed that the court improperly admitted certain evidence pursuant to *State* v. *Whelan*, 200 Conn. 743, 513 A.2d 86, cert. denied, 479 U.S. 994, 107 S. Ct. 597, 93 L. Ed. 2d 598 (1986). At oral argument before this court, the defendant withdrew this claim.

[2] "Investigating grand juries neither *try* nor *condemn* nor *accuse*; they only *inquire* and *report*." (Emphasis in original; internal quotation marks omitted.) *In re Final Grand Jury Report Concerning the Torrington Police Dept.*, 197 Conn. 698, 707, 501 A.2d 377 (1985); see also *State* v. *Rado*, 14 Conn. App. 322, 327, 541 A.2d 124 (sole purpose of grand jury was to determine if there was probable cause that crimes had been committed), cert. denied, 208 Conn. 813, 546 A.2d 282, cert. denied, 488 U.S. 927, 109 S. Ct. 311, 102 L. Ed. 2d 330 (1988).

[3] General Statutes § 54-47e provides in relevant part: "Any investigation by the investigatory grand jury shall be conducted in private, provided that the panel, by a majority vote, may order the investigation or any portion thereof to be public when such disclosure or order is deemed by the panel to be in the public interest."

[4] See General Statutes § 54-47f (b).

[5] Richter testified that the defendant had stated that a grand jury was investigating the defendant and that the defendant's daughter had been subpoenaed by the grand jury.

[6] Richter further testified that he wanted to speak with Brunetti about the grand jury to find out if he would be subpoenaed as part of the investigation.

[7] Brunetti described his relationship with the defendant as a "casual friendly basis," but he did not see him on a social basis, meaning that he did not go out to dinner or play golf with the defendant, as he did with Richter.

[8] The recording of this telephone conversation was played for the jury during Richter's testimony. Brunetti informed Richter that the defendant had offered him money and that this conduct was unacceptable. The conversation between Brunetti and Richter included the following exchange:

"Richter: What's going on? What's going on with Badaracco?

"Brunetti: I don't know. It's a grand jury, it's secret. I can't get involved in that. You know that. I told him that.

"Richter: He called you—did he call you yesterday?

"Brunetti: He called me yesterday. Did he call me from your cell phone?

"Richter: Yeah.

"Brunetti: What are you crazy giving him the phone?

"Richter: Yeah. No more.

"Brunetti: Yeah.

"Richter: [inaudible].

"Brunetti: Did you give him the number?

"Richter: What'd he say?

"Brunetti: Well, he offered me money. Can't fucking do that.

"Richter: No. Don't do—don't—don't take it.

"Brunetti: Well, I'm not—

"Richter: He wanted me to do that last week. He wanted me to do it. He says, I got to give Brunes something. No. He—I—I told him I wouldn't call you. I wouldn't even—I wouldn't—I—I wouldn't even—you know what . . .

"Brunetti: But you know, he's fucking calling me, and he's offering me fucking money. What's he—what's he expect me to do?"

[9] This conversation between the defendant and Brunetti was recorded and played for the jury during the trial.

[10] While he was en route to the meeting, Brunetti received a telephone call from Richter, who stated that the defendant was not coming to the meeting.

[11] We review the defendant's sufficiency claim first due to the nature of the remedy. "We begin with this issue because if the defendant prevails on the sufficiency claim, she is entitled to a directed judgment of acquittal rather than to a new trial. See *State* v. *Calabrese*, 279 Conn. 393, 401, 902 A.2d 1044 (2006); see also *State* v. *Smith*, 73 Conn. App. 173, 178, 807 A.2d 500, cert. denied, 262 Conn. 923, 812 A.2d 865 (2002); *State* v. *Theriault*, 38 Conn. App. 815, 823 n.7, 663 A.2d 423 ([a]lthough we find the defendant's [jury charge claim] dispositive, we must address the sufficiency of the evidence claim since the defendant would be entitled to an acquittal of the charge if she prevails on this claim), cert. denied, 235 Conn. 922, 666 A.2d 1188 (1995)." (Internal quotation marks omitted.) *State* v. *Moore*, 100 Conn. App. 122, 126 n.2, 917 A.2d 564 (2007).

[12] See Practice Book §§ 42-40 and 42-42.

[13] We employ the plenary standard of review in interpreting the term "offer." See *State* v. *Graham S.*, 149 Conn. App. 334, 343, 87 A.3d 1182 (2014).

[14] Section 201 (b) of title 18 of the United States Code provides in relevant part: "Whoever . . . (1) directly or indirectly, corruptly . . . *offers or promises anything of value to any public official . . . or offers* or promises any public official . . . *to give anything of value . . . with intent . . . (A) to influence any official act* . . . or (C) to induce such public official . . . to do or omit to do any act in violation of the lawful duty of such official or person . . ." has violated this subsection. (Emphasis added.)

[15] The state argued during its closing argument at trial that evidence regarding the defendant's ability to pay $100,000 supported its theory of the case that the defendant had made an offer to Brunetti.

During its instructions to the jury, the court read the pertinent part of the bribery statute and then stated: "So, for you to find the defendant guilty of this charge, the state must prove the following three elements beyond a reasonable doubt. So, element one, the first element is that the defendant offered a benefit. Benefit means a monetary advantage or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity whose welfare the beneficiary is interested. In this case, [the] state alleges the benefit to be money.

"The second element is that at the time that the benefit was offered, the person who was to receive that benefit was a public servant. A public servant is an officer or employee of government or a quasi-government agency either elected or appointed, and any person participating as an advisor, consultant, other otherwise, paid or unpaid, in performing a government function. In this case, the state alleges the public servant to be Superior Court Judge Robert Brunetti.

"And the third element is this, that the offered benefit was consideration for the recipient's decision, opinion, or recommendation as a public servant.

The state need not, however, show that the public servant could actually have rendered the decision, opinion, or recommendation requested. Similarly, the state need not show that the public servant officially took any action in response to the offer of a benefit. In this case the state alleges that the benefit was offered for Judge Brunetti's help in connection with a grand jury investigation."

[16] The defendant also maintains that his statement had another possible meaning, namely, that posting a bond and hiring an attorney would cost the defendant $100,000. The jury rejected this interpretation of the events, and we decline to revisit that determination.

[17] Albeit in different factual circumstances, our Supreme Court reached a similar conclusion in *State* v. *McGann*, 199 Conn. 163, 178, 506 A.2d 109 (1986), where it noted that "[i]n deciding whether a person has been hired to commit a murder for pecuniary gain we are concerned principally with adopting a construction of subsection (2) of [General Statutes] § 53a-54b that effectuates the legislative intention, not with the technical niceties of contract law."

[18] The state also requested that the court provide a limiting instruction to the jury that such evidence was "offered only for the purpose of establishing that the defendant sought to influence the public servant's official conduct and as evidence of the defendant's motive." The court provided such an instruction. See footnote 19 of this opinion.

[19] The court instructed the jury as follows: "Normally evidence is admitted without restriction as to its use. But sometimes your use of evidence is limited and may not be considered for purposes other than those authorized. And the evidence I'm talking about concerns a woman named Mary Badaracco and the formation of a grand jury to investigate her disappearance.

"Now, this evidence, like all evidence, is subject to review by you and may either be accepted or rejected by you. If, however, you accept the evidence it may only be considered by you in so far as it related to the defendant's motive and intent regarding the alleged bribery.

"This trial is not about the circumstances surrounding Mary Badaracco's disappearance. And the defendant is not charged here with any wrongdoing concerning Mary Badaracco. This evidence, if you choose to accept it, may be used only for the permitted purpose, mainly the defendant's motive and intent regarding the alleged bribery and for no other purpose."

[20] We note that the defendant raised only an evidentiary claim and does not claim that the court's ruling violated his constitutional right to cross-examine Brunetti.

[21] Canon 1 of the Code of Judicial Conduct provides: "A Judge Shall Uphold and Promote the Independence, Integrity, and lmpartiality of the Judiciary, and Shall Avoid lmpropriety and the Appearance of lmpropriety." Rule 1.1 of the Code of Judicial Conduct provides that "[a] judge shall comply with the law."

[22] See General Statutes §§ 51-51g through 51-51t; see also State of Connecticut Office of Government Accountability, Judicial Review Council, available at http://www.ct.gov/jrc/site/default.asp (last visited on April 10, 2015).