STATE OF CONNECTICUT *v.* MARK A. TENAY
(AC 35045)

DiPentima, C. J., and Gruendel, Lavine, Beach, Sheldon, Keller, Prescott and Mullins, Js.*

*Argued November 18, 2014—officially released April 28, 2015***

(Appeal from Superior Court, judicial district of Ansonia-Milford, geographical area number twenty-two, Keegan, J.)

Jeremiah Donovan, for the appellant (defendant).

Harry Weller, senior assistant state's attorney, with whom, on the brief, were *Kevin D. Lawlor*, state's attorney, and *Kevin S. Russo*, supervisory assistant state's attorney, for the appellee (state).

Opinion

PRESCOTT, J. The defendant, Mark A. Tenay, appeals from the judgment of conviction, rendered after a jury trial, of operating a motor vehicle while under the influence of alcohol in violation of General Statutes § 14-227a (a) (1)[1] and, following a trial to the court on a part B information, of being a third time offender pursuant to General Statutes § 14-227a (g) (3). On May 13, 2014, a panel of three judges of this court affirmed the judgment of conviction of operating a motor vehicle while under the influence of alcohol. The panel, however, reversed that part of the judgment finding the defendant to be a third time offender on the ground that the trial court improperly admitted, pursuant to Connecticut Code of Evidence § 8-3 (7), the public records exception to the hearsay rule,[2] a case abstract from a Florida court allegedly evincing a prior conviction in Florida of driving under the influence. *State* v. *Tenay*, 150 Conn. App. 140, 153–63, 91 A.3d 483 (2014). Specifically, the panel concluded that although the state had met its burden to authenticate the Florida case abstract, the document was nonetheless inadmissible hearsay because the state failed to meet its burden to establish the foundational requirements for the admission of a document pursuant to the public records exception to the hearsay rule.

The state subsequently filed a motion for reconsideration or reargument en banc.[3] In its motion, the state asserted that this court's decision regarding the admissibility of the Florida abstract conflicts with other decisions of this court regarding the admissibility of public records, and would have the burdensome and unnecessary effect of forcing "parties to . . . fly in clerks from all over the country to testify that their court's certified record meet[s] the foundational requirements of [Connecticut Code of Evidence §] 8-3 (7) when the entire purpose of the rule is to eliminate the need to do so."

This court subsequently granted the state's motion for reargument en banc. Following reargument en banc, we again reverse the defendant's conviction of being a third time offender pursuant to § 14-227a (g), albeit on a different ground.[4] Specifically, we conclude that, even if we assume, without deciding, that the abstract properly was admitted pursuant to § 8-3 (7) of the Connecticut Code of Evidence, the abstract and a related fingerprint card were insufficient evidence to prove beyond a reasonable doubt that the defendant had been convicted in Florida of driving a motor vehicle while under the influence. We reverse the judgment only as to the defendant's conviction as a third time offender pursuant to the part B information and remand the case with direction to render a judgment of acquittal as to the defendant's being a third time offender, modify the conviction to reflect that he is a second time offender, and resentence him accordingly.

The relevant facts underlying the judgment of conviction, as they reasonably could have been found by the jury and the court on the part B information, were set forth in this court's prior opinion in *State* v. *Tenay*, supra, 150 Conn. App. 143–46. "Early in the morning of April 18, 2009, Officer Jeffrey Nelson of the Milford Police Department was dispatched to Naugatuck Avenue, where he observed a brown Jeep Cherokee with Vermont license plates partially on the front lawn of 1028 Naugatuck Avenue. Additional police officers, Matthew Mello and Gillian Gallagher, later arrived at the scene. The vehicle had considerable damage. The rear bumper was hanging off of the vehicle, the passenger side of the vehicle looked to have been sideswiped, the front passenger side window was broken, and the front passenger side fender and headlight were damaged. There was no tire on the front passenger side of the vehicle, and a gouge in the pavement, which extended back from the scene approximately one mile to the off ramp of Interstate 95, indicated that the vehicle had traveled for a considerable distance on its rim without the tire.

"When Nelson arrived, the defendant was seated in the driver's seat of the vehicle with the door open. He was confused and disoriented. His eyes had a glassy appearance, and he smelled strongly of alcohol. When Nelson inquired about the condition of the vehicle, the defendant responded that he may have struck a curb a couple of blocks away, although the damage to the vehicle did not support that scenario. The defendant later indicated that he may have struck a mailbox or something else. Nelson had to repeat his request for the defendant's driver's license, registration and insurance card a few times before the defendant complied.

"On the basis of initial observations, the defendant was asked to perform certain field sobriety tests: the alphabet test, the walk and turn test, the one leg stand test, the horizontal gaze nystagmus test, and the finger dexterity test.

* * *

"Having failed to perform adequately any of the roadside sobriety tests administered to him, the defendant was arrested for operating his motor vehicle while under the influence, and he was transported to the Milford Police Department. While at the police department, the defendant refused to take a Breathalyzer or a urine test to determine his blood alcohol content. The defendant was given a summons and released. The next day, he reported for medical treatment to the emergency room at Yale-New Haven Hospital." Id.

The state subsequently charged the defendant in a two part substitute information. In the first part, the state charged the defendant with the crimes of operating a motor vehicle while under the influence of

intoxicating liquor or drugs pursuant to § 14-227a, and reckless driving pursuant to General Statutes § 14-222. In the part B information, the state accused the defendant of being a subsequent offender on the ground that he previously had been convicted of driving under the influence of intoxicating liquor or drugs. Specifically, the state alleged in the part B information that the defendant had been convicted on May 9, 2002, in the judicial district of Danbury, of the offense of driving under the influence of intoxicating liquor or drugs, and, on February 13, 1996, had been "convicted of the offense of driving while under the influence in the State of Florida, pursuant to [Fla. Stat. §] 316.193, whose substantial elements are essentially the same as [§] 14-227a of the Connecticut General Statutes . . . ."

The defendant elected a jury trial with respect to the first part of the information and a court trial with respect to the charge of being a subsequent offender. On May 16, 2012, following a trial, the jury found the defendant guilty of driving under the influence of intoxicating liquor or drugs and reckless driving.

After a bench trial on August 28, 2012, in a written memorandum of decision dated September 5, 2012, the court concluded that the state had proven beyond a reasonable doubt that the defendant previously had been convicted of driving under the influence in Danbury in 2002, and in Florida pursuant to Fla. Stat. § 316.193 in 1996. The court also concluded that the elements of § 316.193 are essentially the same as those of § 14-227a. Accordingly, the court found that the defendant "has been twice convicted of operating under the influence within ten years of the present conviction on May 16, 2012."[5] The court subsequently sentenced the defendant as a third time offender, pursuant to § 14-227a (g) (3), to a total effective term of three years incarceration, execution suspended after eighteen months, and three years of probation. This appeal followed.

On appeal, the defendant raised four principal issues: whether the trial court improperly (1) excluded from evidence during the jury trial portions of certain hospital records that pertained to medical treatment that he received following his arrest; (2) admitted into evidence during the jury trial the results of a finger dexterity roadside sobriety test without first determining the scientific validity of that particular test in accordance with *State* v. *Porter*, 241 Conn. 57, 80–90, 698 A.2d 739 (1997) (en banc), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998); (3) admitted into evidence during the trial to the court on the part B information a certified copy of a case abstract that sets forth some case history regarding a Florida criminal action involving the defendant and a related fingerprint card; and (4) concluded that the state had proven beyond a reasonable doubt that the defendant had been convicted

of driving under the influence in Florida and that the statute under which the defendant was convicted contains substantially the same essential elements as § 14a-227a.

A panel of this court rejected the defendant's first two claims, but agreed with his claim that the Florida case abstract improperly was admitted into evidence. *State* v. *Tenay*, supra, 150 Conn. App. 143. Accordingly, the panel reversed that part of the judgment finding the defendant to be a third time offender pursuant to § 14-227a (g). The panel did not, however, remand the case for a new trial, as is typically done following a conclusion that the trial court erred in its evidentiary rulings, but instead remanded the case with direction to modify his conviction on the part B information to reflect that he is a second time offender and to resentence him accordingly.[6] Id., 163.

The state subsequently filed its motion for reconsideration or reargument en banc, which this court granted. In our order granting the motion, we limited the scope of our reargument en banc to issues raised by the defendant in "[parts] three through six of the appellant's brief . . . the responsive arguments contained in the appellee's brief . . . and what remedy would be appropriate if the court finds for the defendant on those issues in whole or in part." Parts three through six of the appellant's brief contain the defendant's claims that the trial court improperly admitted the Florida abstract and fingerprint card, that the admission of those documents was harmful, and that the evidence was insufficient to prove beyond a reasonable doubt that he was a third time offender. Following reargument en banc, we now conclude that, even if we assume that the Florida abstract and fingerprint card properly were admitted into evidence, there was insufficient evidence to prove beyond a reasonable doubt that the defendant had been convicted in Florida of driving under the influence in violation of Fla. Stat. § 316.193.

I

Before adjudicating the merits of the defendant's insufficiency of the evidence claim, it is necessary to address why we have chosen to review that claim rather than simply reconsidering en banc the question of the admissibility of the Florida abstract and fingerprint card. As our Supreme Court stated in *State* v. *Padua*, 273 Conn. 138, 179, 869 A.2d 192 (2005), "a reviewing court must address a defendant's insufficiency of the evidence claim, if the claim is properly briefed and the record is adequate for the court's review, because resolution of the claim may be dispositive of the case and a retrial may be a wasted endeavor." (Internal quotation marks omitted.) "[A] defendant is entitled to a judgment of acquittal and retrial is barred if an appellate court determines that the evidence is insufficient to support the conviction." Id., 178. Thus, in the present

case, if the abstract, fingerprint card, and any other evidence admitted during the trial to the court on the part B information are insufficient to prove beyond a reasonable doubt that the defendant was a third time offender, then the defendant would be entitled to a judgment of acquittal and a retrial would be barred irrespective of any error by the trial court in admitting the abstract and fingerprint card.

During oral argument following this court's grant of the state's motion for reconsideration or reargument en banc, the state claimed that we should not decide this issue because the defendant failed to raise and preserve it before the trial court and has not raised it on appeal.[7] We disagree with both of these contentions.

At the outset, it is important to recognize that even if we agreed with the state that the defendant had not preserved this claim at trial, we would conclude that he is entitled to review of this issue. *State* v. *Roy*, 233 Conn. 211, 212, 658 A.2d 566 (1995) (defendant on appeal entitled to review of unpreserved challenge to sufficiency of evidence despite failure to invoke guidelines set forth in *Golding*).

As to the substance of the state's claim that the defendant failed to raise this issue at trial, the state argues that the defendant conceded to the trial court that the evidence was sufficient to establish his guilt when his counsel stated: "I recognize that there are inferences that Your Honor might reach from the written documents that might cause you to believe that [the defendant] was the person who was . . . convicted in Danbury . . . and if he was, then I think it's proved that he was also the person who was convicted in Florida." We do not construe this concession as broadly as the state urges. Instead, we view it simply as a recognition by defense counsel that the defendant was convicted of *some* crime in Florida, but not as a concession that he was convicted in Florida of driving under the influence or that the Florida statute contains substantially the same elements as § 14-227a.

Moreover, the defendant plainly asserted in the memorandum of law in support of his motion for a judgment of acquittal, filed with the trial court on September 10, 2012, that the case abstract and fingerprint card from Florida were insufficient to prove beyond a reasonable doubt that he was convicted of any particular offense, and consequently, that the court lacked a basis upon which it could conclude that he was convicted pursuant to a statute that has the same essential elements as § 14-227a. Additionally, during the trial to the court on the part B information, the defendant argued on relevance grounds that the document should not be admitted because it did not contain information as to what crime the defendant had been convicted of. Accordingly, we conclude that the defendant raised and preserved this claim at trial.

With respect to whether he raised an insufficiency claim on appeal, we note that the defendant plainly argues in his brief that "even if the abstract and fingerprint card were properly admitted, it is impossible, without a certified judgment of conviction, or at least some reference in the abstract to the number of the statute of conviction, to reach a determination—beyond a reasonable doubt—that [the defendant] was convicted of violating Fla. Stat. § 316.193." In its brief, the state concedes that the defendant is claiming on appeal that "nothing on the court abstract indicates that he was convicted of violating Fla. Stat. § 316.193, so the court's finding that he was convicted of DUI in Florida cannot stand." Accordingly, we conclude that this insufficiency claim has been properly raised on appeal and that the record is adequate to afford it review.

II

We turn to the issue of whether the Florida abstract and fingerprint card are, as a matter of law, sufficient evidence to prove beyond a reasonable doubt that the defendant was convicted of violating Fla. Stat. § 316.193. For the following reasons, we conclude as a matter of law that these documents are insufficient to prove beyond a reasonable doubt that the defendant was convicted of violating Fla. Stat. (Supp. 1994) § 316.193[8] and, therefore, that he was a third time offender pursuant to § 14-227a (g) (3).

We first set forth our well established standard of review applicable to claims of insufficiency of the evidence. "Whether we review the findings of a trial court or the verdict of a jury, our underlying task is the same. . . . We first review the evidence presented at trial, construing it in the light most favorable to sustaining the facts expressly found by the trial court or impliedly found by the jury. We then decide whether, upon the facts thus established and the inferences reasonably drawn therefrom, the trial court or the jury could reasonably have concluded that the cumulative effect of the evidence established the defendant's guilt beyond a reasonable doubt. (Citation omitted.) *State* v. *Jarrett*, 218 Conn. 766, 770–71, 591 A.2d 1225 (1991). "Our standard in reviewing the conclusions of the trier of fact is limited. . . . We will construe the evidence in the light most favorable to sustaining the trial court's judgment and will affirm the court's conclusions if reasonably supported by the evidence and logical inferences drawn therefrom. . . . The question on appeal is not whether we believe that the evidence established guilt beyond a reasonable doubt, but rather whether, after viewing the evidence in the light most favorable to sustaining the judgment, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Etienne*, 103 Conn. App. 544, 557, 930 A.2d 726 (2007).

The following additional facts and procedural history are relevant to the defendant's insufficiency claim. The state alleged in the substitute part B information that the defendant had previously been convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in Danbury in 2002 and in Florida in 1996. The state had the burden of proving beyond a reasonable doubt the existence of these prior convictions and that the essential statutory elements of the Florida crime of which the defendant was allegedly convicted were substantially the same as those of subdivision (1) or (2) of subsection (a) of § 14-227a.

In attempting to meet this burden, the state called as a witness Ian Shackleton, a secretary who worked in the Office of the State's Attorney for the judicial district of Ansonia-Milford. Shackleton testified that he conducted a computer search of certain on-line federal and state databases for criminal and motor vehicle records pertaining to the defendant. Shackleton used the defendant's name, date of birth, gender, race, and social security number to conduct this search.

As a result of information obtained during this search, Shackleton identified a motor vehicle case arising in Florida that may have involved the defendant. After conducting additional research, Shackleton contacted a deputy clerk within the archives division of the Santa Rosa County, Florida, Clerk of Courts. Shackleton asked the clerk to send him a certified copy of the disposition of the motor vehicle case that appeared to involve the defendant. In a letter dated May 10, 2012, the clerk indicated that, due to Florida's record retention rules, the only remaining record with respect to the defendant's motor vehicle case was an abstract containing some information about the history of the case. In her letter, the clerk attached a certified copy of the case abstract.

The abstract, which was admitted into evidence over the defendant's objection, consists of two pages, and contains basic information about the case to which it relates. It identifies the defendant by name and address and the date on which the offense allegedly occurred. The abstract indicates that on August 18, 1995, an "INFORMATION DUI" was filed. It also appears to indicate that on February 13, 1996, a nolo contendere plea was entered and that the defendant was adjudicated guilty. As to the disposition of the case, it indicates that a fine of $476 was imposed, the defendant was placed on probation, and his driver's license was suspended. Finally, it contains a notation of "DUI SCHOOL," "50 HRS CSW," and some unspecified form of evaluation and counseling. As we will subsequently discuss in greater detail, the abstract did not set forth critical information regarding the defendant's case, including any reference to the statute pursuant to which the defendant had been convicted.

During the part B trial, the state also offered, through the testimony of Shackleton, a two page printout of a fingerprint card that Shackleton had obtained from the Santa Rosa County, Florida Sheriff's Office. Shackleton testified that he first received an electronic file of what purported to be a scan of both sides of the FBI fingerprint card. Upon receiving the electronic file, Shackleton then contacted an employee of the sheriff's office and requested that she certify that the digital record was the same as the printout of the digital file. Shackleton subsequently received in the mail an affidavit from the representative indicating that the "previously provided document is a true and correct scanned copy of the fingerprint card provided to Ian Shackleton . . . ." Shackleton then attached the affidavit to the two page printout of the fingerprint card, and the three pages were admitted into evidence over the defendant's objection.

The first page of the fingerprint card contains the defendant's name, date of birth, social security number, other information describing the defendant's physical characteristics, and his fingerprints. The second page of the document sets forth the defendant's Florida address and indicates that "316.193" is the statute under which the defendant was arrested or cited.

The state also presented the testimony of Lieutenant Bruce Carney, a Milford police officer. Carney testified that he compared the fingerprints on the fingerprint card to the fingerprints on a similar card obtained during a prior arrest of the defendant in Connecticut. Carney testified that the fingerprints matched and that they belong to the defendant. Although the defendant objected to the admission of the Florida fingerprint card, he subsequently conceded that the "Mark Tenay who was arrested in Florida was the same Mark Tenay who was arrested in Newtown."

In its memorandum of decision issued following the court trial, the court concluded beyond a reasonable doubt that the defendant had been convicted on March 14, 2002, of operating under the influence in the Danbury judicial district. With respect to the defendant's Florida case, the court simply stated: "The state submitted a certified Florida court record, indicating the date of conviction and the disposition of the case, together with a certified copy of the fingerprint card and arrest information for the crime of driving under the influence in violation of [Fla. Stat. §] 316.193." The court did not note in its memorandum of decision that the abstract was silent as to the particular Florida statute pursuant to which the defendant was convicted or the specific inferences the court drew to conclude that the defendant was convicted of violating Fla. Stat. § 316.193.

The court then took judicial notice of *Tyner* v. *State*, 805 So. 2d 862, 865–67 (Fla. App. 2001), review denied,

817 So. 2d 852 (Fla. 2002), a 2001 decision by a Florida appeals court, in which that court recited the statutory elements of § 316.193 of the Florida statutes. The trial court in this case then concluded, without analysis, that the elements of the Florida statute are essentially the same as those of § 14-227a.[9] As a result, the court found proven beyond a reasonable doubt that the defendant had twice been convicted of operating under the influence within ten years of the May 16, 2012 conviction in this case and thus, by necessary inference, within ten years of the conduct underlying his present conviction.

At the outset, we note that in most cases requiring the state to prove beyond a reasonable doubt that the defendant previously has been convicted of a prior offense, that burden will be met by the admission of a certified copy of a judgment of conviction that contains the critical information giving rise to the conviction, including identification of the particular statute pursuant to which the defendant was convicted.[10] See, e.g., *State* v. *Nichols*, 81 Conn. App. 478, 482, 840 A.2d 54 (2004). In such cases, there is no need to infer from other court records that the defendant was convicted of a specific offense. In this case, however, the record retention policies of the state of Florida complicated the court's task because no such record of conviction was apparently available. Instead, the records in this case offered by the state and admitted by the court required the court to make one or more inferences in order to reach the ultimate legal conclusion that the state had met its burden to prove a conviction of the specific offense beyond a reasonable doubt.[11]

We also emphasize the weighty burden imposed on the state by the standard of proof beyond a reasonable doubt. Under bedrock principles of our criminal justice system, it is obviously not sufficient for the state to prove simply that it is more likely than not that the defendant was convicted of violating Fla. Stat. § 316.193, or even that the evidence is clear and convincing that he was so convicted. See *State* v. *Jackson*, 283 Conn. 111, 116–17, 925 A.2d 1060 (2007). Our Supreme Court has described the beyond a reasonable doubt standard as a "subjective state of near certitude . . . ." (Internal quotation marks omitted.) Id., 117.

We begin our analysis by reviewing the fingerprint card that was admitted as a full exhibit. It is true that "DUI" is listed as the charge on the front side of the fingerprint card, and that, on its reverse side, "316.193" is listed in a field entitled "STATUTE CITATION." The fingerprint card, however, is only a record pertaining to the defendant's arrest on June 21, 1995.[12] The fingerprint card is not a formal charging document and certainly does not provide information as to which statute, if any, the defendant was ever convicted under.

We turn next to the Florida abstract, which is missing critical information about the disposition of the defen-

dant's case. Nowhere on the document does it indicate the particular Florida statute pursuant to which the defendant was either charged or convicted. Indeed, on the first page of the abstract, under the section heading "OFFENSE INFORMATION," the abstract has specific subheadings for the statute number, the statute description, and offense level. In each instance, the field on the abstract for the corresponding information is blank.

The only evidence on the abstract that suggests that the defendant was *charged* with committing an alcohol related motor vehicle offense is a docket description notation for June 21, 1995, that states "BAC RESULTS PENDING," and a docket description notation for August 18, 1995, that states "FILED INFORMATION DUI." Although these notations are probative of the fact that the defendant may have been charged with an offense involving driving under the influence, the notations do not by themselves establish that the defendant was charged and *convicted* of DUI, or, more particularly, convicted of violating Fla. Stat. § 316.193, as alleged by the state in its part B information in this case.

With respect to the disposition of the defendant's Florida case, the abstract again is missing critical information necessary to support a conclusion beyond a reasonable doubt that the defendant was convicted of violating Fla. Stat. § 316.193. Although the abstract indicates that the defendant pleaded nolo contendere and was adjudicated guilty, it does so without any reference to a particular statutory offense. The abstract also indicates that the defendant was assessed a fine of $476, placed on probation for one year, ordered to attend "DUI SCHOOL," and "50 HRS CSW, EVAL & COUNSELING." Although the court is authorized by Fla. Stat. § 316.193 to impose each of those sanctions as part of the disposition for a driving under the influence conviction, Florida's reckless driving statute, Fla. Stat. (Supp. 1994) § 316.192 (4) also authorized the court to craft a sentence including most, if not all, of these sanctions "if the court has reasonable cause to believe that the use of alcohol [or other controlled substances] contributed to a violation of this section . . . ."

Moreover, the abstract's generic reference to probation raises more questions than it answers, casts additional doubt on the document's reliability, and, as a result, undermines the conclusion that it constitutes sufficient evidence to prove beyond a reasonable doubt that the defendant was convicted of violating § 316.193. The abstract's isolated reference to probation contains no corresponding information regarding whether it was imposed in lieu of a term of imprisonment or in conjunction with a suspended sentence.[13] This raises the additional question as to whether the term "probation" is being used by the Florida court in some other way than is typically used in Connecticut's court system. The absence of any indication regarding whether the defen-

dant received a jail sentence also leads us to question whether other important information is missing from the abstract, including whether a substitute information was filed charging the defendant with some offense other than driving under the influence.

In sum, we conclude that the fingerprint card and abstract, taken together, are insufficient as a matter of law to prove beyond a reasonable doubt that the defendant was convicted of violating Fla. Stat. § 316.193. Accordingly, it is unnecessary for us to reach the defendant's claim that Fla. Stat. § 316.193 does not have substantially the same elements as § 14a-227a.

The judgment is reversed only as to the defendant's conviction as a third time offender and the case is remanded with direction to render a judgment of acquittal as to the defendant's being a third time offender, modify his conviction of the part B information to reflect that he is a second time offender and to resentence the defendant accordingly. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

* Following reargument en banc, Judge Alvord recused herself and did not participate in the consideration or decision of the case.

** This case originally was decided on May 13, 2014, by a three judge panel. See *State* v. *Tenay*, 150 Conn. App. 140, 91 A.3d 483 (2014). Thereafter, on July 23, 2014, this court granted the state's motion for reconsideration or reargument en banc. This opinion supersedes only part III of the prior decision.

[1] The jury also found the defendant guilty of reckless driving in violation of General Statutes § 14-222; however, he does not challenge his reckless driving conviction in the present appeal.

[2] Section 8-3 of the Connecticut Code of Evidence provides in relevant part: "The following are not excluded by the hearsay rule, even though the declarant is unavailable as a witness . . . (7) Public records and reports. Records, reports, statements or data compilations, in any form, of public offices or agencies, provided (A) the record, report, statement or data compilation was made by a public official under a duty to make it, (B) the record, report, statement or data compilation was made in the course of his or her official duties, and (C) the official or someone with a duty to transmit information to the official had personal knowledge of the matters contained in the record, report, statement or data compilation."

[3] The motion sought reconsideration by the original panel or reargument en banc. The original panel declined to reconsider its decision.

[4] This opinion supersedes part III of the panel's opinion in *State* v. *Tenay*, supra, 150 Conn. App. 156–63. We express no view as to the accuracy of the state's assertions made in its motion for reconsideration or reargument en banc regarding whether the panel's decision conflicts with other precedent or on the practical effects of the decision if it were to remain undisturbed. We leave undisturbed the panel's resolution of the defendant's other claims on appeal. See id., 146–56.

[5] See *State* v. *Kratzert*, 70 Conn. App. 565, 569–71, 799 A.2d 1096 (only most recent conviction need comply with ten year rule), cert. denied, 261 Conn. 932, 806 A.2d 1069 (2002). To be precise, the ten year rule applies to the length of time between the most recent prior *conviction* of operating under the influence and the *conduct* giving rise to the present violation of § 14-227a, not the present conviction itself. *State* v. *Burns*, 236 Conn. 18, 26, 670 A.2d 851 (1996).

[6] The panel chose not to address the defendant's fourth claim, which challenged the sufficiency of the evidence. *State* v. *Tenay*, supra, 150 Conn. App. 143 n.3. For the reasons we discuss elsewhere in this opinion, a reviewing court is obligated, pursuant to *State* v. *Padua*, 273 Conn. 138, 179, 869 A.2d 192 (2005), to address an insufficiency of the evidence claim before remanding the case for a new trial. Although the panel should have addressed the defendant's insufficiency of the evidence claim, we recognize

that the panel in this case did not violate the rule set forth in *Padua* because it did not order a new trial.

[7] The state does not contend that the record is inadequate to review this claim.

[8] The fingerprint card and abstract both indicate an offense date of June 21, 1995, and, therefore, we are obligated to apply the revision of Fla. Stat. § 316.193 that was in effect on that date. In this regard, we note that the trial court in this case, in order to compare the statutory elements of Fla. Stat. § 316.193 with the statutory elements of § 14a-227a, relied upon *Tyner* v. *State*, 805 So. 2d 862, 862–67 (Fla. App. 2001), review denied, 817 So. 2d 852 (Fla. 2002), a Florida judicial decision quoting § 316.193, rather than relying directly on the statute itself. This reliance was problematic because the revision of Fla. Stat. § 316.193 that was quoted by the court in *Tyner* does not appear to be the revision of the statute that was in effect on the date of offense, i.e., June 21, 1995, that is listed on the fingerprint card and abstract. Indeed, Fla. Stat. § 316.193 was amended by the Florida legislature on four separate occasions in 1995, with an effective date of July 1, and July 10, 1995, for some of the amendments, and an effective date of October 1, 1995, for other statutory changes. Although, in this instance, the statutory amendments to Fla. Stat. § 316.193 in 1995 did not change the essential elements of a violation for driving under the influence, a court must be sure when comparing the essential elements of an out-of-state statute to our own statute that it is reviewing the revision of the out-of-state statute that was in effect on the date of the offense.

[9] The court did not expand on its analysis in its memorandum of decision denying the defendant's motion for a judgment of acquittal.

[10] Again, we express no view regarding the foundation necessary to admit properly a certified copy of a judgment of conviction.

[11] In the present matter, the state concedes that the entire evidentiary record on which the court reached its conclusion that the state had proven beyond a reasonable doubt that the defendant was a third time offender consists of the Florida abstract, the fingerprint card, and the court's judicial notice of a Florida decision that sets forth the elements of the Florida statute upon which the state claims the defendant was convicted. No witness with knowledge of the recordkeeping practices of the Florida court system testified on behalf of the state as to how the information contained on the abstract and fingerprint card should or should not be interpreted by the fact finder. The only two witnesses presented by the state during the part B trial were (1) Shackleton, who attempted to provide information necessary for the admission of certain documents; and (2) Carney, who testified that the fingerprints on the Florida fingerprint card match the fingerprints of the defendant taken when he was arrested in Connecticut. During closing argument to the court, the defendant, in essence, stipulated that the fingerprints from the Florida case belong to him. Accordingly, the trial court's ultimate legal conclusion that the state had proven beyond a reasonable doubt that he was a third time offender was drawn solely from its construction of these documents, unaffected by the testimony of any witnesses that it could choose to credit or reject, and its comparison of § 14-227a and Fla. Stat. § 316.193.

In similar circumstances, our appellate courts have determined that the trial court's conclusions as to the meaning and effect of documents are best characterized as conclusions of law and therefore are subject to plenary review. For example, in *Morton Buildings, Inc.* v. *Bannon*, 222 Conn. 49, 53–54, 607 A.2d 424 (1992), the trial court did not need to assess the credibility of any witnesses because the parties had stipulated to the relevant facts. In light of that procedural posture, our Supreme Court recognized that "[t]he record before the trial court was . . . identical with the record before [the reviewing court]. In these circumstances, the legal inferences properly to be drawn from the parties' definitive stipulation of facts raise questions of law rather than of fact." Id.

[12] The fingerprint card is signed and dated by the official taking the fingerprints. The printout of the fingerprint card that was admitted into evidence does not appear to be a complete and accurate copy of the original because the left hand margin of the printout cuts off some of the words and notations contained on the original. For this reason, the date the fingerprint card was signed by the official is partially obscured. It reads, "22-95," but the month is not visible.

[13] Unlike Connecticut, where a court can only impose probation if it is tethered to a term of incarceration that is fully or partially suspended; see General Statutes § 53a-28; Florida appears to grant a sentencing court the

authority to place an offender on probation with or without an adjudication of guilt and, "[i]f the offender does not receive a state prison sentence . . . 4. [i]mpose a fine and probation . . . when the offense is punishable by both a fine and imprisonment and probation is authorized." Fla. Stat. § 921.187 (1) (a). Thus, it appears that a defendant may be sentenced to probation without any term of imprisonment, suspended or otherwise, for a violation of § 316.193. Because the document, however, is missing substantial information that the abstract itself seems to require, such as the statutory charge, we cannot reach any definitive conclusion as to the precise disposition of the defendant's case.