

## “Informant Industrial Complex” On Trial

by Nora Grace-Flood



Defense attorney Kevin Smith.

A New Haven-based criminal defense attorney took aim at the so-called “jailhouse informant industrial complex” as he sought to convince the state Supreme Court to overturn a Church Street South murder conviction.

Defense attorney Kevin Smith made that argument Thursday morning during oral arguments before a panel of state Supreme Court judges in a courtroom on Capital Avenue in Hartford.

Smith and his colleague Norm Pattis are representing Christopher Calhoun, who was arrested in 2018 and found guilty by a jury in 2020 of the 2011 murder of Isaiah Gantt

at the now-demolished Church Street South housing complex. Calhoun is currently serving a 45-year prison sentence for that murder.

At a hearing attended by 10 of Calhoun’s family members and closest friends who had traveled to Hartford on Thursday, Smith took the lead before the Supreme Court judicial panel in arguing Calhoun’s appeal of the murder conviction.

In particular, Smith—just as Pattis did in legal papers filed in the runup to Thursday’s hearing—argued that the original trial court judge got it wrong when he declined to give special instructions to Calhoun’s jury that two key witnesses were “jailhouse informants,” even though they brokered deals with state prosecutors while they were incarcerated to testify against Calhoun in exchange for favorable treatment from the state.

Senior Assistant State’s Attorney Nancy Chupak, meanwhile, argued before the Supreme Court judges in favor of upholding Calhoun’s conviction. (Read more about the appeal and the underlying legal debate [here](#).)

During his time before the judges on Thursday, Smith criticized the process by which two key witnesses—both of whom were incarcerated on unrelated matters at the time—came forward to testify against Calhoun.

“This is a case about what happens when a jury is confronted,” Smith said in his opening remarks, with “the dirty business of the jailhouse informant industrial complex.”

Failing to identify two core witnesses as “jailhouse informants,” he said, meant robbing the jury of important information that could have changed their final verdict.

Chupak, however, said that the jury was given all the information it needed to accurately assess the case. The witnesses were thoroughly examined, she said, and any changes in semantics would only lead to the same outcome.

In other words, both attorneys offered different arguments as to what it takes to fully inform and guide a jury—without leading them in a biased direction.

### **Smith: Witnesses Were “Inherently Unreliable”**

During Calhoun’s original 2020 trial, the court recognized two men, Jules Kierce

**“Smith said the two witnesses were ‘inherently unreliable’ due to the fact that the pair did not come forward to testify until 2016 and 2017, respectively, while both were incarcerated.”**

and Eric Canty, who came forward with information while incarcerated as “cooperating witnesses” rather than as “jailhouse informants.”

Before the Supreme Court judges on Thursday, therefore, was the question of not just what constitutes a jailhouse informant, but whether or not the difference of labeling the witnesses as such could have affected the outcome of the case.

Smith contended that the jury should throw out the four-year-old conviction and hold a new trial because he believes the court erred procedurally while presenting testimony from the case’s two key witnesses, Kierce and Canty.

All four men—Kierce, Canty, Calhoun and Gantt—were supposedly well-acquainted with one another because they spent time dealing drugs together at Church Street South.

Smith said the two witnesses were “inherently unreliable” due to the fact that the pair did not come forward to testify until 2016 and 2017, respectively, while both were incarcerated.

Canty, in particular, testified to having come forward after noticing a request for information on playing cards displaying the photographs of victims of unsolved homicides while imprisoned inside the Cheshire Correctional Institute.

“Everything you just said was before the jury, right?” one judge inquired.

Yes, Smith said. And that’s why identifying the witnesses as jailhouse informants was important—that label could justify and trigger the deliverance of specialized instructions to jury members to help them consider key questions regarding the reliability of the witnesses.

Connecticut General Statutes Section 54–860 defines a jailhouse informant as: “A person who offers or provides testimony concerning statements made to such person by another person with whom he or she was incarcerated, or an incarcerated person who offers or provides testimony concerning statements made to such person by another person who is suspected of or charged with committing a criminal offense.”

The original trial court judge did not, however, identify these two as jailhouse informants and give special instructions to the jury accordingly. Instead, these witnesses were identified as “cooperating witnesses.” So the jury was informed that both men had entered into agreements with the state while in prison and had reaped certain benefits from those agreements. The jury was also told that the witnesses could face some sort of punishment if they lied in their testimony.

However, because they weren’t identified as jailhouse informants, the jury didn’t receive a list of guidelines requested by the defense that would have encouraged them to specifically ask questions such as how important the testimonies were to the case or whether their statements were corroborated by substantial independent evidence.

### **”Over-Guiding The Jurors?”**

Chief Justice Richard Robinson questioned the unreliability of certain jailhouse informant testimonies, saying “I thought courts were particularly worried about jailhouse informants because informants would sit together and talk to each other.”

He suggested that jailhouse informants were defined as individuals who heard incriminating information about another

person while the two were incarcerated together.

Smith said that he viewed the question as less about where an individual heard the information, but rather where they were when they decided to bring that information to the police.

In other words, he said, the real question was: “Why did you come forward?”

Smith said that he considered the cards picked up by Canty in prison as “leading,” arguing that they clearly implied that “if you help us, we’ll help you.”

So, Robinson questioned, is the idea that “once you touch a jailhouse, you’re no longer credible?”

No, Smith said, the unreliability stems from the fact that “you’re in a jailhouse and you want to get out... it’s a powerful incentive unlike any other.”

OK, Judge Gregory D’Auria said, but “don’t you think jurors get the point?” from the evidence itself. “Are we doubling up on the instructions?”

The specialized letter, Smith insisted, would have “drill(ed) down on a number of factors that are specific and peculiar to jailhouse informants,” he said.

“I don’t think it would be over instructing or over-guiding the jurors,” he stated, to make sure they were told to be properly skeptical of such statements.

After the judges questioned Smith as to whether or not additional information about jailhouse informants would have been redundant to a jury, they focused on interrogating State Attorney Chupak about whether or not the state’s decision to inform the jurors about the witnesses’ promise to tell nothing but the truth was also unnecessary—to the point of being misleading.

That was in response to a second claim made by Calhoun’s defense team in their appeal that the state had multiple times told the jury while making their case that the witnesses had committed to tell the truth at the risk of later punishment.

Why, Judge Andrew McDonald inquired, would there be a need to say that to the witnesses before the credibility of the witnesses had even been questioned by the defense?

“The jury needs to have the full understanding of the agreement to assess their credibility,” Chupak said.

“So it is to show his credibility?”

McDonald followed up.

Chupak replied that ensuring that the jurors were aware of all of the stakes of the witnesses' testimonies, "both the benefits and consequences" was necessary. Otherwise, jurors could be left with "the skewed view that the state just bribed the defendant."

Just as there was an incentive to testify, she suggested, there was also "an incentive to tell the truth."

If an expert was paid \$25,000 to testify in front of a trial court, McDonald pitched as an alternative example, "does that have to be put before a jury?"

"I think it's apples and oranges," Chupak said. "I don't think it's as important."

Why? McDonald asked. "Your whole point is that the jury should know the whole story."

Chupak then tried to couch her statement, saying that if the witnesses' payment was necessary to know in "fully and fairly" assessing the case, then that information should be made known.

The judges did not issue a decision on the appeal during Thursday's hearing.

After the hearing, family and friends of Calhoun said they "felt good" about how the trial went and the prospect of their son's verdict ultimately being overturned. Smith agreed.

"The arc of justice is long, but it bends towards freedom," he told the crew. "I think our case is stronger and I think our case is right."

Denise Mead, Calhoun's mother, attended the hearing along with her husband, two close friends, Calhoun's father, Calhoun's brother, and four out of five of Calhoun's children.

She said she thought Smith has "proved that the prosecution did not prove" her son was "guilty without a shadow of a doubt."

"Without these informants' testimonies, there is nothing," she said. "And what would possess them after five to six years to come forward?"

"I'm at peace," she said. "I believe justice will be served." ■