MCDONALD, C. J., dissenting. I do not agree that the interest of the defendant, Cesareo Hernandez, in obtaining the identity of the confidential informant outweighs the state's interest in protecting the informant and in maintaining the flow of valuable information to law enforcement agencies. I would therefore reverse the judgment of the Appellate Court.

I agree with the majority that '' '[w]here the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.' '' *State* v. *Richardson*, 204 Conn. 654, 658, 529 A.2d 1236 (1987), quoting *Roviaro* v. *United States*, 353 U.S. 53, 60–61, 77 S. Ct. 623, 1 L. Ed. 2d 639 (1957). The ''danger to an informant's life must be given significant weight in striking the *Roviaro* balance''; (internal quotation marks omitted) *United States* v. *Jackson*, 990 F.2d 251, 255 (6th Cir. 1993); between the state's interests in protecting the informant and the defendant's interest in disclosure. I would hold, therefore, that ''defendants face 'a heavy burden . . . to establish that the identity of an informant is necessary to [the] defense.' . . . Speculation as to the information the informant may provide is

insufficient.'' (Citation omitted.) *United States* v. *Warren*, 42 F.3d 647, 654 (D.C. Cir. 1994).

In applying this test to this or any case, we must start with the nature of the case brought against the defendant. In this case, the evidence would be that at 8:30 p.m. on February 18, 1995, the Hartford police broke into the defendant's apartment at 94 Whitmore Street in Hartford, found no one there and seized 100 bags of packaged heroin. Within a few minutes, while the officers were still searching his apartment, the defendant returned there. The defendant explained to the officers that just prior to the detectives' arrival Luis Santiago had left the apartment with a number of bags of narcotics. The defendant continued to explain that the 100 bags were dropped off for him by Santiago.

The officers had observed Louis Rosario and another man leave the apartment at 94 Whitmore Street at about 6 p.m. that same day. The officers also observed Rosario's vehicle parked at the apartment again at 6:30 p.m. Thereafter, the officers prepared a search warrant affidavit and obtained the search warrant used to conduct the raid.

With respect to the nature of the informant's need to testify, the facts were that the informant had called the officers at about 5 p.m. that day and reported that Rosario was packaging heroin at the apartment since Rosario had been arrested with a large amount of heroin at Rosario's home on February 10, 1995. Thereafter, the officers went to the premises at 6 p.m., observed Rosario's vehicle there and saw Rosario and another man leave the premises for Rosario's home. At 6:30 that evening, the officers met with the informant, who told them that Rosario had returned to the apartment and, with Luis Martinez, was packaging heroin at the apartment as the officers were speaking to the informant. The officers returned to the apartment and observed Rosario's vehicle parked there.

The charges against the defendant were, among other things, possession of narcotics with intent to sell by a person who is not drug-dependent and conspiracy. As the majority observes, the issue in this case was whether the defendant knew of the character of the heroin and its presence at the apartment and exercised dominion and control over it. The state would offer the defendant's statement that he knew that Santiago had left the 100 bags of heroin at the defendant's apartment after leaving with some other drugs just before the raid. The defendant would contest making such a statement and would prove that he was somewhere else just before the raid occurred.

The majority concludes that the informant might testify that Rosario and Martinez had left the drugs at the apartment and that the defendant was not present there when this occurred. The issue, however, concerns not

whether the defendant was present when the drugs were brought to his apartment, but the defendant's state of mind—his knowledge that he had a large amount of narcotics in his apartment.

The issue in this case, therefore, is not the truth of the defendant's statement that *Santiago* had just brought the drugs to his apartment, but whether he made the incriminating statement revealing his knowledge that the drugs were at his apartment and under his control. The informant could not by any stretch of the imagination give testimony as to what the defendant told the officers. There was simply no evidence or claim that the informant was present at the time of the drug raid.

Furthermore, if the defendant required evidence that he was not present when the heroin was brought to the apartment, the officers could simply be asked if they observed the defendant at the apartment when the drugs were delivered there. There is nothing in the record indicating that the state claimed to have any evidence that the defendant was so present.

Finally, the informant should be required to testify if he could be helpful to the defendant. I fail to see how evidence from the informant that Rosario was in and out of the defendant's apartment packaging heroin there and leaving behind valuable drugs in the apartment regularly occupied by the defendant would be helpful to the defendant, even if the defendant had not been present on one occasion while the drugs were being packaged. I would conclude that the state's interest in protecting the safety of the informant and preserving the flow of valuable information to law enforcement agencies, which is vital to effective narcotics enforcement, clearly outweighs the defendant's interest in disclosure. This case sets a precedent that will permit those who allow drug dealers to use their houses to escape prosecution, and that does not bode well for Connecticut cities struggling to overcome the scourge of narcotic drugs.