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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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SULLIVAN, C. J., with whom VERTEFEUILLE, J., joins, dissenting. I disagree with parts II and III of the majority opinion. Thus, I believe that the Appellate Court properly concluded that the defendant, Scott Smith, was not entitled to the instruction he requested on manslaughter in the first degree as a lesser included offense of the crime of murder, and, accordingly, I dissent.

As the majority correctly notes, under *State* v. *Whistnant*, 179 Conn. 576, 588, 427 A.2d 414 (1980), ''[a] defendant is entitled to an instruction on a lesser offense if, and only if, the following conditions are met: (1) an appropriate instruction is requested by either the state or the defendant; (2) it is not possible to commit the greater offense, in the manner described in the information or bill of particulars, without having first committed the lesser; (3) there is some evidence, introduced by either the state or the defendant, or by a combination of their proofs, which justifies conviction of the lesser offense; and (4) the proof on the element or elements which differentiate the lesser offense from the offense charged is sufficiently in dispute to permit the jury consistently to find the defendant innocent of the greater offense but guilty of the lesser.''

In the present case, there is no dispute that the defendant did not explain to the trial court why he believed that his requested charge was proper. For this reason, I believe that the defendant failed to satisfy the first prong of the *Whistnant* test. ''The first prong of *Whistnant* requires that the defendant request 'an appropriate instruction,' and a proposed instruction on a lesser included offense, like any other proposed jury instruction, is not appropriate unless made in compliance with [the Connecticut Practice Book].'' *State* v. *McIntosh*, 199 Conn. 155, 158, 506 A.2d 104 (1986). Practice Book § 42-18 provides in relevant part: ''(a) When there are several requests, they shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, *and the evidence to which the proposition would apply*. . . .'' (Emphasis added.)

As the majority notes, quoting *State* v. *Corbin*, 260 Conn. 730, 746, 799 A.2d 1056 (2002), ''[w]e previously have held, in the context of a written request to charge on a lesser included offense, [that the] requirement of [§ 42-18] is met only if the proposed request contains such a complete statement of the essential facts as would have justified the court in charging in the form requested.'' (Internal quotation marks omitted.) Page 465 of the majority opinion. As the majority further notes, the defendant concedes that he did not comply with § 42-18 because his written request for an instruc-

tion on the lesser included offense of manslaughter did not explain how the requested charge was justified by the evidence before the court. Page 466 of the majority opinion.

The majority, however, states further that "even partial compliance with § 42-18, accompanied by substantial additional support in the record for either party, such as detailed colloquies with the court and opposing counsel and a postcharge exception, will also satisfy the first prong of *Whistnant*. *This is true as long as the trial court is informed adequately of the factual and legal bases for the instructional request*." (Emphasis added.) Page 466 of the majority opinion.

The majority cites as evidence that the court was adequately informed of the factual basis for the requested charge a discussion between the court and the attorneys for both the state and the defendant. Footnote 15 of the majority opinion. At no point in that discussion, however, did the defendant explain any possible factual basis for the requested manslaughter charge, even after the court explained its decision not to give the requested charge by stating that it did not believe that there was any evidence of an intent to cause serious physical injury to the victim. Thus, although, as the majority states, the court engaged in "some discussion about the facts of the case and the differing mental states of murder and manslaughter as applied to the evidence of the defendant's conduct"; pages 464–65 of the majority opinion; I believe that this colloquy, rather than indicating that the trial court was apprised of the basis for the requested charge, clearly indicates that that court did not believe that there was any evidence of the state of mind required for a manslaughter conviction.

Similarly, although, as the majority indicates, the defendant's taking of an exception to the court's charge to the jury "further alert[ed] the trial court to [the defendant's] disagreement with the refusal to give the lesser included offense instruction"; page 468 of the majority opinion; the defendant did not at that time explain to the court how the requested charge could be justified by the evidence. Neither the defendant nor the majority maintain otherwise.

The trial court is not required to speculate as to how the evidence could fit a charge requested by the defendant where the state asserts that the evidence does not fit that charge and the defendant's attorney provides no explanation whatsoever of how the evidence could fit that charge. The fact that this court can devise a possible explanation that *could* have been provided to the trial court by the defense counsel does not mean that the trial court should have divined that hypothetical defense argument on its own. Nor does the fact that the court knows what evidence is before it—as, presumably, courts always do—mean that the court is charged

with knowing how that evidence might justify a requested charge. This is particularly so where the justification for the requested charge requires the drawing of inferences from the evidence, such as inferences regarding a state of mind, and where the issue of whether the evidence can justify the charge at all is disputed.

Thus, in the present case, I believe that the defendant did not comply with the first prong of the *Whistnant* test, either in form or in substance, because at no time did the defendant apprise the trial court of any basis in the evidence for his requested charge, even when the trial court affirmatively indicated that it was aware of no such basis and was refusing to make the requested charge for that reason.

In addition, I disagree with part III of the majority opinion, regarding the third and fourth prongs of the *Whistnant* test. I believe that the trial court is in the best position to evaluate the evidence before it and to determine whether that evidence justifies a requested charge on a lesser included offense. In the present case, the trial court determined that the issue of whether the defendant acted with the mental state necessary to justify a conviction for manslaughter was not sufficiently in dispute so as to justify the requested instruction. I believe that this determination by the trial court is adequately justified by the evidence and should not be overturned.

Accordingly, I respectfully dissent.