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SUPREME COURT

of the

State of Connecticut

Judicial District of New Haven

S.C. 20802

STATE OF CONNECTICUT

V.

WILLIE McFARLAND

Brief of the State of Connecticut-Appellee
with attached appendix

To be argued by:

Robert J. Scheinblum
Senior Assistant State's Attorney
Office Of The Chief State's Attorney
Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067
Telephone: (860) 258-5807
Facsimile: (860) 258-5828
Juris Number: 410626
Robert.Scheinblum@ct.gov
Dcj.Ocsa.Appellate@ct.gov

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I. Nature of the proceedings

During the late evening of August 21 into the early morning of August 22, 1987, the defendant, Willie McFarland, killed Fred Harris and his son, Gregory Harris, in their apartment in Hamden. In 2019, following an investigation that spanned thirty-two years, police arrested the defendant and charged him with two counts of murder, in violation of General Statutes § 53a-54a. See Clerk Appendix ("C/App"): 3, 10, 62. On November 22, 2022, a jury convicted the defendant as charged. Id., 9, 79. On January 31, 2023, the trial court, *Vitale*, *J.*, imposed a total effective sentence of 120 years of incarceration. Id., 79. This appeal followed.

II. Counterstatement of the facts

On August 20, 1987, the defendant was released from custody on charges unrelated to this case. T. 11/14/22: 151, 153. Two days later, on the morning August 22, Hamden police arrested the defendant shortly after he sexually assaulted C.S.,[1] whom he knew, earlier the same morning. T. 11/15/22, 101-02. The defendant was covered in blood when the police encountered him.[2] Id.

One week later, on August 27, 1987, Hamden police received a call from a family member requesting a "welfare check" on Fred Harris, who was sixty years old, and his son, Gregory Harris, who was twenty-three years old, neither of whom had been seen or heard from

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[1] In accordance with General Statues § 54-86e, the state has not provided C.S.'s full name or the name of any individual through whom she might be identified.

[2] The defendant subsequently pleaded guilty to first-degree sexual assault and began serving a twenty-one year prison sentence at Northern Correctional Institution for the assault of C.S. T. 11/16/22: 55, 61.

for approximately one week. T. 11/14/22: 34-35. That evening, police went to the Harris residence, 655 Fitch Street, Apartment B6, entered the home, and discovered the badly decomposed bodies of both men. T. 11/14/22: 34-35, 44-45, 77. Both victims' hands and feet had been bound with electrical cord, their throats had been slashed, and each victim had been stabbed in the chest. T. 11/15/22: 32, 45, 47, 58, 60-61. Fred Harris' pants were unbuttoned, his zipper was down, and his belt was unbuckled. T. 11/15/22: 51; see State's Exhs. 38, 42. Gregory Harris was naked except for a white t-shirt. T. 11/15/22: 113-14; see State's Exhs. 28, 69, 74.

During the investigation, police recovered evidence from the crime scene, including a left work glove stained with blood, which was discovered near the victims' heads, and a matching right work glove, which was discovered outside their apartment near a fence. T. 11/14/22: 58-59, 77-78, 100, 103, 130-32; see State's Exh. 54. They also found the murder weapon, a kitchen knife, in the second-floor bathroom sink. Id., 66, 71-72, 126; see State's Exh. 45.

On September 4, 1987, detectives interviewed the defendant while he was in custody on the then-pending sexual assault charge involving C.S. T. 11/14/22: 141; see State's Exh. 67 (audiotaped interview). During the interview, the detectives showed the defendant photographs of Fred and Gregory Harris and told him their names, ages, and that both men had been killed. State's Exh. 67. Other than identifying the victims, the police did not provide the defendant with any details about the killing or the crime scene. Id. The defendant denied knowing either victim or having anything to do with their murders. T. 11/14/22: 150; see State's Exh. 67. The police asked the defendant if he had worked at a car wash in Hamden; he told them that he worked at the car wash in January, but he did not recall working there with Gregory Harris. T. 11/15/22: 100-01; see State's

Exh. 67. When the defendant asked the detectives why they were questioning him, they explained that he had a lot of blood on him when he was arrested. Id. The defendant told them that the blood was all his, that he did not kill anyone, and that he just stole cars. Id.

Approximately nine years later, in March 1996, department of correction officials contacted the Hamden police and told them that the defendant "wanted to discuss his involvement in the Harris murders." T. 11/16/22: 55. Consequently, on March 21, 1996, Hamden detectives went to Northern Correctional Institution and interviewed the defendant after he waived his constitutional rights in writing and agreed to speak with the police. Id, 56-58; See State's Exh. 79 (Miranda waiver). Although it was the detectives' ordinary practice to record interrogations, they did not record their interview with the defendant because he "did not want to give a formal statement on that date." Id., 61. Before questioning the defendant about his involvement in the Harris murders, the detectives asked him why he wanted to speak with the police. Id. The defendant told them that he "wanted to confess to the murders of Fred and Greg Harris" because "he was serving a twenty-one year prison sentence," "he had found religion," "he had HIV," and "he thought that he would die in prison." Id.

During the first interview, the defendant acknowledged that he was present for the murders, but he did not admit participating in them. Id., 63. He claimed that C.S. and several others, whom he knew by their nicknames, committed the murders. Id. Nevertheless, he provided the police with certain details of the crime that were corroborated by the crime scene evidence, had not been publicly disclosed, and only the culprit would know, including that: (1) both Fred and Greg Harris went into Greg's bedroom; (2) both men were forced to lie down on the floor side by side; (3) viewing the bedroom from the hallway, Greg was located to the right and Fred was to the

left; (4) both men had been stabbed in approximately the same position in the chest; (5) both men's throats had been slit; (6) both men had been bound with telephone cord or some type of wire; (7) the defendant had stabbed a boom box that he found in Greg's bedroom; (8) the defendant ransacked Greg's bedroom while searching a dresser and other areas for money and a gun; (9) when the defendant exited the house after the killings, he had locked the door behind him; and (10) before leaving, the defendant left the light on in the kitchen. Id., 62-64. After the interview, the detectives reexamined crime scene photos and corroborated the details that the defendant had provided. Id., 65.

From August 1996 through March 1997, the defendant continued to contact the Hamden police and express his desire to discuss the Harris murders. Id., 68. Consequently, the detectives returned to Northern Correctional Institution several times to question the defendant and also spoke with him by phone at the Hamden police department. Id., 68-125; T. 11/17/22: 25-27. Each time the detectives spoke with the defendant, he provided additional details of the murders that had not been publicly disclosed and that only the culprit would know. Id. Several of the prison interviews and the defendant's phone calls to the Hamden police department were recorded, and the recordings were introduced at trial and played for the jury. See State's Exh. 73 (audio recordings). During his interviews, the defendant accurately described certain details surrounding the presence and location of crime scene evidence, including the kitchen knife used to kill both victims, melted margarine in a pan and the color of its wrapper, puncture holes in the speakers of a boom box, Fred Harris's car keys, Fred Harris's wallet containing a badge, and swipe marks on furniture. T. 11/16/22: 68-125; T. 11/17/22: 25-27.

During his police interview on September 6, 1996, the defendant took sole responsibility for binding both victims with telephone wire,

stabbing them and slashing their throats. T. 11/16/22: 100-01; see State's Exh. 73. On September 17, 1996, the defendant called the Hamden police and told them that C.S. was not involved in the crime and that he initially had implicated her in the killings because she was responsible for his incarceration at Northern. T. 11/16/22: 103. On January 27, 1997, during a prison interview, the defendant told the detectives that he had had sex with Greg Harris before the murders. Id., 114-16. In February 1997, the Hamden police received a letter from the defendant in which he confessed in detail to the Harris murders, and his confession was largely consistent with his earlier statements and provided certain unique details that only the culprit would know. Id., 121-24; see State's Exh. 91 (letter). In addition to describing the manner in which he had bound both victims, stabbed them, and slashed their throats, the defendant went into greater detail about his sexual assault of Greg Harris, including that he had poured melted butter "on his butt" to facilitate sexual intercourse.[3] T. 11/16/22: 123; see State's Exh. 91.

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[3] The defendant's confession as to the manner in which he stabbed each victim and slashed their throats was consistent with the state medical examiner's findings that: (1) Fred Harris had two stab wounds to his chest, one of which was fatal, and a deep incised wound to his neck, which was also fatal; (2) Greg Harris had one fatal stab wound to his chest and a deep incised wound to his neck, which was also fatal; and (3) the kitchen knife that was discovered in the bathroom sink in the victim's apartment was capable of causing the fatal injuries to both victims. T. 11/15/22: 32, 42, 47, 59-60; see State's Exhs. 69-78 (autopsy photos). In addition, the medical examiner opined that the victims' deaths must have occurred at least several days before their autopsies on August 28, 1987, due to the presence of maggot infestation. Id., 31.

Although the defendant confessed to the murders in 1996, the police did not arrest him at that time.[4] T. 11/17/22: 28. There were other suspects at that time whom the police continued to investigate, including Lee Copeland, but the police made no arrests.[5]

Finally, although the autopsy of Greg Harris did not reveal physical signs of a sexual assault, the medical examiner explained that this did not mean that a sexual assault did not occur, as his body had significantly decomposed in the time between his murder and the discovery of the bodies. See id., 44, 57.

[4] As Judge Vitale noted in his memorandum of decision denying the defendant's motion to dismiss, although the defendant's "various statements were mostly consistent with one another and with the details of the crimes," "certain portions of his confession were inconsistent and/or never corroborated." C/App: 64. For example, in his earlier statements to the police: (1) the defendant indicated that three accomplices partook in the murders, but he ultimately recanted and took sole responsibility; (2) the defendant initially failed to indicate that he had sexually assaulted Greg Harris, but ultimately confessed in detail to having done so; (3) the defendant initially told police that the Latin Kings had hired him to commit the murder, but the police were unable to corroborate any Latin King involvement; and (4) the defendant initially claimed that he had taken a photo of the Harris bodies and stolen a car after the murder, which he abandoned in New Haven, but the police were unable to confirm either. Id., 64-65.

[5] In his appellate brief, the defendant points out that the Hamden police initially believed that Lee Copeland may have been involved in the Harris murders, based on certain hearsay statements by Veronica Saars-Doyle and Bruce Hankins, which the trial court excluded. See Defendant's Brief: 13-14; see also Part III.C., below. It is true that the

Subsequently, on December 21, 2006, pursuant to a search warrant authorizing the use of force, Hamden police detectives went to Garner Correctional Institution, where the defendant had been transferred, and attempted to collect a buccal sample from him so that the Connecticut Forensic Science Laboratory ("state lab") could compare his DNA to the crime scene evidence. T. 11/15/22: 68-72; see State's Exhibit 72 (video). The defendant refused to comply with the warrant and physically resisted, forcing correction officers to restrain him to his bed while detectives pried open his mouth and collected a sample. T. 11/15/22: 72; see State's Exhibit 72. The incident was captured on video, which was played for the jury.[6] Id., 78.

On November 3, 2009, the stab lab compared the defendant's DNA, which had been obtained from his buccal sample, to evidence found at the crime scene, including sample 5S1, which was a sample of

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authorities initially considered Copeland a suspect. Ultimately, however, police concluded that Copeland was not involved because: (1) unlike the defendant, who repeatedly confessed to the crime, Copeland spoke with the police and denied any involvement; (2) unlike the defendant, Copeland voluntarily provided police with a buccal sample to collect his DNA; (3) the state lab compared Copeland's DNA profile to the DNA profile in a four-person mixture on the left glove found at the crime scene and determined that he could not have been a contributor; and (4) there was no physical evidence connecting Copeland to the crime scene. See T. 11/16/22: 20, 23-26; T. 11/17/22: 148, 151, 183; State's Exh. 94 (lab report).

[6] During its final charge, the trial court instructed the jurors that they could consider whether "evidence of the defendant's alleged non-compliance with a search warrant authorizing the use of a buccal swab to obtain his DNA" manifested consciousness of guilt. T. 11/18/22: 119.

touch DNA found on the inside of the left work glove that had been discovered near the victims' bodies. T. 11/15/22: 100; 11/17/22: 153. The defendant was eliminated as a contributor to any of the items, including the left glove. Id. When the defendant was eliminated in 2009, the state lab had employed a DNA testing kit called Identifiler to develop the DNA profiles from unknown samples. T. 11/16/22: 44; T. 11/17/22: 83, 92, 119.

In 2018, however, due to intervening advancements in DNA testing capabilities, police resubmitted the left work glove to the state lab for further forensic analysis. T. 11/17/22: 142-3, 150. By then, the state lab was using a Fusion 6C DNA testing kit, which was far more sensitive than the DNA testing kit in 2009, could detect DNA from much smaller samples of genetic material, was far more effective at discriminating among different DNA profiles in a single sample containing a mixture of DNA profiles, and was "much, much better [at] generating data from degraded or compromised samples. . . ." Id., 118-20. The results of the testing, which was completed on January 11, 2019, revealed a DNA profile on the glove containing a mixture of four contributors, at least one of whom was male. Id., 152-53. Based on the state lab's analysis, assuming that there were four contributors to the mixture, the DNA profile from the glove would be at least 1.5 million times more likely to occur if it originated from the defendant and three unknown individuals than if it originated from four unknown individuals.[7] Id.

[7] The lab calculated the likelihood ratio with STRmix, a type of probabilistic genotyping software used in the qualitative interpretation of DNA mixtures. T. 11/17/22: 166. According to the STRmix software, approximately fifteen percent of the DNA in sample 5S1 "was consistent with profile elements of [the defendant]." Id., 167, 180.

In 2019, after obtaining these DNA results linking the defendant to the Harris homicides, police arrested him pursuant to a warrant charging him with murder.

III. Argument

A. The trial court properly concluded that the state did not violate the defendant's due process rights under the federal or state constitutions by prosecuting him thirty-two years after he murdered the victims.

The defendant claims that the state violated his federal and state due process rights based on the thirty-two year delay between the date of the murders in 1987 and his arrest in 2019. See Defendant's Brief: 25. As to his federal constitutional claim, the defendant acknowledges that: (1) this Court's decisions in *State* v. *Roger B.*, 297 Conn. 607 (2010), and *State* v. *Morrill*, 197 Conn. 507 (1985), "require the defense to show bad faith or bad motives [by the state] in order to prevail" on a federal due process claim; (2) the state did *not* act in bath faith or with improper motive in this case by waiting until 2019 to arrest him; and (3) thus, as the law now stands, the trial court was bound to apply this Court's decisions and reject his federal constitutional claim. See Defendant's Brief: 27. Nevertheless, the defendant asks this Court to "reconsider its interpretation" of federal constitutional law, overrule *Roger B.* and *Morrill*, and "adopt a balancing test under the federal constitution." Id.

As to his state constitutional claim, the defendant contends that the trial court properly adopted a balancing test under the Connecticut constitution, but nevertheless misapplied that balancing test to the facts and circumstances of his case and improperly concluded that the state's justification for its delay in prosecuting him outweighed any attendant prejudice. Id., 29, 33, 36.

The defendant's claim fails under both the federal and state constitutions. As to the defendant's federal claim, he has not established that the most cogent reasons or inescapable logic require that this Court overrule its decisions in *Roger B.* and *Morill*. If anything, the overwhelming weight of federal authority, including decisions by the Second Circuit Court of Appeals, supports this Court's previous interpretation of the federal constitution. Accordingly, this Court should reject the defendant's federal due process claim.

As to the defendant's state claim, it fails for two reasons. First, contrary to both the trial court's conclusion and the defendant's argument, the federal and state constitutions provide the same due process protection against prearrest delays. Alternatively, assuming that the trial court correctly adopted a balancing test under the independent due process protection of the state constitution, the court properly rejected the defendant's claim after concluding that the state's justification for the delay outweighed any attendant prejudice to the defendant. More specifically, the state's decision to continue to investigate the Harris murders until it obtained DNA evidence linking the defendant to the crime outweighed any prejudice caused by the death of Veronica Saars-Doyle, who told the police that Lee Copeland killed the victims, but whose credibility was dubious and whose testimony would have been speculative at best.

1. Additional facts and proceedings

On September 2, 2022, before trial commenced, the defendant filed a motion to dismiss the prosecution, claiming that the thirty-two year delay between the 1987 Harris murders and his 2019 arrest violated both the due process clause of the fourteenth amendment to the United States constitution and his independent right to due process under article first, § 8, of the Connecticut constitution. C/App: 42. In support of his motion, the defendant acknowledged that the

majority of federal circuits hold that bad faith by the state or improper prosecutorial motive is a prerequisite to a federal due process violation, but noted that a minority of circuits do not require such a showing and, instead, hold that the proper inquiry is to balance the prejudice to the defendant against the state's justification for the delay. Id: 43.

The defendant also claimed that the thirty-two-year delay in bringing a prosecution violated his independent right to due process under the Connecticut constitution, based on the test set forth in *State* v. *Geisler*, 222 Conn. 672, 685-86 (1992). See C/App: 44-47, 50. The defendant argued that the court should apply a balancing test under the state constitution, and further contended that although the state had a reasonable justification for waiting until 2019 to arrest him, that justification was outweighed by substantial prejudice because two witnesses, Veronica Saars-Doyle and Bruce Hankins, had died in the interim and each of them could have provided exculpatory testimony implicating Lee Copeland in the Harris murders. C/App: 46.

On September 27, 2022, the state filed an objection to the motion to dismiss. C/App: 52. The state argued that the defendant's due process claim failed under both the federal and state constitutions for several reasons: (1) the defense did not establish that the state intentionally delayed charging the defendant for an improper purpose, a prerequisite to a due process violation under both federal precedent and this Court's precedent; (2) Connecticut does not employ a balancing test, but rather, the state's reason for the delay in bringing a prosecution must be "wholly unjustifiable," which the defendant did not establish; (3) in this case, the delay was justified by the need to obtain additional evidence corroborating the defendant's confession; and (4) even if the trial court were to apply a balancing test, the reason for the delay in prosecuting the defendant outweighed the alleged prejudice to the defendant, because there was no physical evidence

connecting Saars-Doyle, Hankins, or Copeland to the Harris murders, and Saars-Doyle's and Hankins' statements to police were unreliable. Id., 54-59.

On November 10, 2022, the trial court heard argument on the defendant's motion. T. 11/10/22: 1-22. The defendant focused on his independent right to due process under the state constitution, arguing that he should not be required to demonstrate improper prosecutorial motive to prevail on a due process claim. Id., 10. The defendant acknowledged, however, that even under the balancing test he was proposing, lack of improper prosecutorial motive is relevant to whether a state due process violation has occurred. Id., 10. Additionally, the defendant acknowledged that a thirty-two year delay would not in and of itself establish a violation even if the court were to apply a balancing test under the state constitution. Id., 10.

On November 14, 2022, shortly before evidence began, the trial court denied the motion to dismiss on the record, noting that it subsequently would issue a written memorandum of decision articulating its reasons for denying the defendant's motion. T. 11/14/22: 1.

On January 19, 2023, the trial court issued its written decision denying the motion to dismiss. See C/App: 62-78. First, the court rejected the defendant's federal claim, noting that this Court has held "that in order to establish a federal due process violation based on prearrest delay 'the defendant must show both that actual substantial prejudice resulted from the delay *and* that the reasons for the delay were wholly unjustifiable, as where the state seeks to gain a tactical advantage over the defendant.' (Internal quotation marks omitted; emphasis in original.) *State* v. *Roger B.*, [supra, 297 Conn. 614, quoting *State* v. *Morrill*, supra, 197 Conn. 522]." C/App: 67. The court further noted that this Court's decisions in *Roger B.* and *Morrill* were

premised on the holdings of two Supreme Court decisions, *United States* v. *Lovasco*, 431 U.S. 783, 790 (1977), and *United States* v. *Marion*, 404 U.S. 307, 322 (1971). The court also noted that the overwhelming majority of federal circuits have reached the same conclusion as did this Court in *Roger B.* and *Morrill*—that a criminal defendant cannot establish a federal due process violation absent an improper prosecutorial motive for prearrest delay. C/App: 71-72. Accordingly, the court rejected the defendant's federal due process claim because the defendant conceded that the delay in prosecuting him was *not* due to bad faith or improper prosecutorial motive. Id., 67-68.

After rejecting the defendant's federal due process claim, the court turned to the defendant's state due process claim, engaged in a *Geisler* analysis, and concluded that the *Geisler* factors "weigh in favor of the defendant's position that under the Connecticut constitution, a criminal defendant need not establish that the state intentionally delayed arresting him so as to obtain a tactical advantage." C/App: 75. In support of its *Geisler* analysis, the court found that the text of the operative constitutional provisions, federal precedent, and sibling state precedent undermined the defendant's claim to independent meaning, but that relevant Connecticut decisions construing the state due process clause, Connecticut history, and policy considerations supported his claim of broader protection under the state constitution. Id., 70-74. The court adopted a balancing test under the Connecticut constitution whereby the "state's justification for the delay" in prosecuting the accused is weighed "against the attendant prejudice" resulting from the delay. Id., 75. The court, however, concluded that the defendant's state due process claim failed under the balancing test, for the following reasons:

As a threshold matter, irrespective of the analytical framework utilized, a criminal defendant bears an initial burden of establishing that he has actually been prejudiced by the prearrest delay at issue. . . . Specifically, although "the unavailability of a witness may be a source of prejudice . . . succeeding on such a claim requires the defendant to carry a heavy burden. . . . The defendant must identify the witness he would have called; demonstrate, with specificity, the expected content of that witness'[s] testimony; establish to the court's satisfaction that he has made serious attempts to locate the witness; and, finally, show that the information the witness would have provided was not available from other sources." (Citation omitted; internal quotation marks omitted.) *United States* v. *Harris*, 551 Fed. Appx. 699, 703 (4th Cir. 2014).

The defendant asserts that he has suffered prejudice by virtue of his inability to call as witnesses either Saars-Doyle or Hankins, both of whom are now deceased. Indeed, based on their respective police statements, the exculpatory nature of such hypothetical testimony is not purely speculative, if it can be *assumed* that both would have testified in an ostensibly favorable manner to the defendant's interests were they alive. Cf. *State* v. *Estrella*, [277 Conn. 458, 485 (2006)] (observing defendant must show purported testimony would be helpful); *United States* v. *Manning*, 56 F.3d 1188, 1194 (9th Cir. 1995) (observing prejudice mere conjecture where no specific showing made as to what deceased witness would have said). Nevertheless, significant problems with the credibility of both witnesses militate against the exculpatory force of any such hypothetical testimony. . . . Specifically, although Saars-Doyle and Hankins each implicated Lee Copeland, Saars-Doyle

nonetheless named Hankins as an accomplice. Furthermore, both provided several inconsistent and conflicting accounts of the murders, proffering certain facts that were either incoherent, verifiably inaccurate, or incapable of corroboration. Accordingly, any assumption that both would provide ostensibly favorable testimony to the defendant is undermined by the credibility deficiencies inherent in both Saars-Doyle and Ha[n]kins as evidenced in their statements to police.

Importantly, however, any prejudice suffered by the defendant is substantially outweighed by the state's justification for the delay. Indeed, notwithstanding the fact that probable cause likely existed to arrest the defendant following his 1996 confession, the state was under no obligation to immediately procure an arrest. As observed by the United States Supreme Court, "[t]he police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the [f]ourth [a]mendment if they act too soon, and a violation of the [s]ixth [a]mendment if they wait too long. Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction." *Hoffa* v. *United States*, [385 U.S. 293, 310 (1966)].

Notably, the defendant provided various contradictory statements to police that were of questionable veracity. Furthermore, three separate individuals—namely, Saars-Doyle, Hankins, and [David] Dowjat—each implicated Lee Copeland as the perpetrator. Consequently, prior to police

> procuring DNA evidence that linked the defendant to the scene of the crimes, reasonable grounds existed for the state to worry about its ability to obtain a guilty verdict based on the strength of its evidence. See *State* v. *Townsend*, 897 A.2d 316, 326 (N.J. 2006) (observing changing account of crime by key witness constituted reasonable basis for state to conclude evidence inadequate to obtain conviction).
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> Crucially, the significant length of time before the defendant's arrest is not reflective of the state's disregard for, or indifference to, his constitutional rights, but, instead, largely indicative of the fact that advancements in DNA science linking him to the crimes under investigation did not exist until relatively recently. . . . [I]t is in the interests of all parties to acquire, and thus, rely on more advanced scientific evidence, if and when available.

(Citations omitted; emphasis in original; footnotes omitted.) C/App: 75-78.

2. Standard of review

"Because a motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant, [appellate] review of the court's legal conclusions and resulting denial of the defendant's motion to dismiss is de novo. . . . Factual findings underlying the court's decision, however, will not be disturbed unless they are clearly erroneous." (Internal quotation marks omitted.) *State* v. *Schimanski*, 344 Conn. 435, 447 (2022).

3. The defendant's federal due process claim fails because he has not presented the most cogent reasons and inescapable logic for overruling this Court's decisions in *Roger B.* and *Morrill*, which hold that improper prosecutorial motive is a prerequisite to a federal due process violation.

In *State* v. *Morrill*, supra, 197 Conn. 522, this Court held that "[i]n order to establish a [federal] due process violation because of pre-accusation delay, the defendant must show *both* that actual substantial prejudice resulted from the delay *and* that the reasons for the delay were wholly unjustifiable, as where the state seeks to gain a tactical advantage over the defendant." (Emphasis added.) This Court reaffirmed its holding in *State v. Littlejohn*, 199 Conn. 631, 646 (1986), and *State* v. *Roger B.*, supra, 297 Conn. 614. As previously set forth, the defendant asks this Court to "reconsider its interpretation" of federal constitutional law, overrule *Roger B.* and *Morrill*, and "adopt a balancing test under the federal constitution." Defendant's Brief: 27. This Court should reject the defendant's request because this Court's interpretation of the United States constitution was correct in *Morrill* and remains correct today.

The doctrine of stare decisis "requires a clear showing that an established rule is incorrect and harmful before it is abandoned." *White* v. *Burns*, 213 Conn. 307, 335 (1990); see *George* v. *Ericson*, 250 Conn. 312, 318 (1999).

> [A]lthough not an end in itself, [stare decisis] serves the important function of preserving stability and certainty in the law; . . . a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it. . . .

(Citations and internal quotation marks omitted.) *State* v. *Lockhart*, 298 Conn. 537, 549-50 (2010). In this case, the defendant has not provided the most cogent reasons or inescapable logic for overruling this Court's interpretation of federal constitutional law in *Roger B.* and *Morrill*.

First, the Supreme Court repeatedly has recognized that a criminal defendant cannot prevail on a due process claim of unreasonable prearrest delay without proving that the delay was the result of improper prosecutorial motive. In *United States* v. *Gouveia,* 467 U.S. 180, 192 (1984), the Court explained that in order to establish a due process violation based upon preindictment delay, a defendant must show not only substantial prejudice, but also that the government deliberately caused the delay for tactical gain:

> [T]he Fifth Amendment [due process guarantee] requires the dismissal of an indictment, even if it is brought within the statute of limitations, if the defendant can prove that the Government's delay in bringing the indictment was a deliberate device to gain an advantage over him *and* that it caused him actual prejudice in presenting his defense.

(Emphasis added.); see also *United States* v. *Marion,* supra, 404 U.S. 324 ("[T]he [Due Process Clause] would require dismissal of the indictment if it were shown at trial that the pre-indictment delay . . . caused substantial prejudice to appellees' right to a fair trial *and* that the delay was an intentional device to gain tactical advantage over the accused." [Emphasis added.]); cf. *United States* v. *Lovasco,* supra, 431 U.S. 795 ("[i]nvestigative delay is fundamentally unlike delay undertaken by the Government solely 'to gain tactical advantage over the accused,'" quoting *Unites States* v. *Marion,* supra, 404 U.S. 324)).

Second, based on *Gouveia*, *Marion,* and *Lovasco,* the vast majority of the federal courts of appeals hold that, in order to establish that

preaccusation delay rises to the level of a due process violation, a defendant must show not only substantial prejudice, but also that "the government intentionally delayed the indictment to gain an unfair tactical advantage or for other bad faith motives." (Internal quotation marks omitted.) *United States* v. *Crooks,* 766 F.2d 7, 11 (1st Cir.) (Breyer, J.), cert. denied*,* 474 U.S. 996 (1985); see *United States* v. *Izizarry-Colon*, 848 F.3d 61, 70 (1st Cir. 2017); *United States* v. *Cornielle*, 171 F.3d 748, 752 (2d Cir. 1999); *United States* v. *Beckett*, 208 F.3d 140, 150-51 (3d Cir. 2000); *United States* v. *Jackson*, 549 F.3d 963, 969 (5th Cir. 2008), cert. denied, 558 U.S. 828 (2009); *United States* v. *Lively*, 852 F.3d 549, 566 (6th Cir.), cert. denied, 583 U.S. 933 (2017); *United States* v. *Jackson*, 446 F.3d 847, 849-50 (8th Cir. 2006); *United States* v. *Abdush-Shakur*, 465 F.3d 458, 465 (10th Cir. 2006), cert. denied, 549 U.S. 1238 (2007); *United States* v. *Barragan*, 752 Fed. Appx. 799, 800-01 (11th Cir. 2018); *United States* v. *Mills*, 925 F.2d 455, 464 (D.C. Cir. 1991), vacated on other grounds, 964 F.2d 1186 (D.C. Cir.), cert. denied, 506 U.S. 977 (1992).[8]

Third, the defendant's interpretation of federal constitutional law is at odds with the decisions of the Second Circuit Court of Appeals, which repeatedly has held that a criminal defendant must demonstrate

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[8] The Fourth Circuit Court of Appeals and the Ninth Circuit Court of Appeals apply a balancing test under the federal constitution. See *Howell* v. *Barker*, 904 F.2d 889 (4th Cir. 1990); *United States* v. *Moran*, 759 F.2d 777 (9th Cir. 1985). The Seventh Circuit Court of Appeals has its own unique test, requiring that the defendant first establish the existence of actual prejudice, and if the defendant does so, then the burden shifts to the government to establish "good cause" for any intentional delay. See *United States* v. *Hagler*, 700 F.3d 1091, 1099 (7th Cir. 2012).

both substantial prejudice and improper prosecutorial motive to establish a federal due process violation based on prearrest delay. See *United States* v. *Cornielle*, supra, 171 F.3d 752; accord *United States* v. *Hoo*, 825 F.2d 667, 671 (2d Cir. 1987) (noting that, in *United States* v. *Marion*, supra, 404 U.S. 324, "the Supreme Court held that the due process clause requires the dismissal of an indictment because of preindictment delay *only* when the delay causes 'substantial prejudice' to the defense *and* the delay is an 'intentional device to gain tactical advantage over the accused'" [Emphasis added.]) Decisions of the Second Circuit, although not binding on this Court, are especially persuasive when resolving issues of federal constitutional law. *State* v. *Langston*, 346 Conn. 605, 618-19 (2023), cert. denied, 144 S. Ct. 698 (2024).

Fourth, there is no merit to the defendant's assertion that this Court should reject "a rigid improper motive" test as a matter of federal constitutional law, based on the reasoning of the Fourth Circuit, because "[t]aking this position to its logical conclusion would mean that no matter how egregious the prejudice to defendant, and no matter how long the preindictment delay, if a defendant cannot prove improper prosecutorial motive, then no due process violation occurred." Defendant's Brief: 28 (quoting *Howell* v. *Barker*, supra, 904 F.2d 895). First, as both the Supreme Court and this Court have recognized, statutes of limitations provide the primary means of protecting an accused from having to defend against stale criminal charges. See *United States* v. *Marion*, supra, 404 U.S. 322; *State* v. *Littlejohn*, supra, 199 Conn. 646.

> Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they are made for the repose of society and the protection of those who may (during the limitation) . . .

> have lost their means of defence. . . . These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced.

United States v. *Marion*, supra, 404 U.S. 322. Moreover, the Fourth Circuit's reasoning is at odds with the Supreme Court's decision in *Lovasco*:

> The Due Process Clause does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor's judgment as to when to seek an indictment. Judges are not free, in defining due process, to impose on law enforcement officials [their] personal and private notions of fairness and to disregard the limits that bind judges in their judicial function. . . . [The Court's] task is more circumscribed. [It is] to determine only whether the action complained of here, compelling respondent to stand trial after the Government delayed indictment to investigate further[,] violates those fundamental conceptions of justice which lie at the base of our civil and political institutions . . . and which define the community's sense of fair play and decency. . . .
>
> It requires no extended argument to establish that prosecutors do not deviate from "fundamental conceptions of justice" when they defer seeking indictments until they have probable cause to believe an accused is guilty. . . . It should be equally obvious that prosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect's guilt beyond a reasonable doubt. To impose such a duty would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself. . . .

(Citations and internal quotation marks omitted.) *United States* v. *Lovasco*, supra, 431 U.S. 790-91.

In sum, the defendant's federal due process claim fails under stare decisis principles because he has not presented the most cogent reasons and inescapable logic for overruling this Court's decisions in *Roger B.* and *Morrill*. To the contrary, since *Morrill*, the overwhelming weight of federal authority confirms that this Court was correct in those cases. Because the defendant conceded that the state did not act in bad faith, he failed to show a due process violation.

4. The defendant's state due process claim fails because the federal and state constitutions provide the same due process protection against prearrest delay.

Although the trial court ultimately reached the correct result in concluding that arresting the defendant thirty-two years after the Harris murders did not violate his independent right to due process under the Connecticut constitution, the court *incorrectly* concluded that our state constitution "likely affords criminal defendants greater protection [against] prearrest delays than the United States constitution" based on a flawed *Geisler* analysis. C/App: 69-74. Based on a correct *Geisler* analysis, the defendant's state constitutional claim fails because application of the *Geisler* factors demonstrates that the federal and state constitutions provide the same due process protection against prearrest delays. Accordingly, this Court should affirm the trial court's decision on the alternative ground that the due process clause of the Connecticut constitution does not afford criminal defendants greater protection against prearrest delay than the due process clause of the United States constitution.

In *State* v. *Geisler*, supra, 222 Conn. 685, this Court "set forth six factors that, to the extent applicable, are to be considered in construing

the contours of our state constitution so that [it] may reach reasoned and principled results as to its meaning. These factors are: (1) the text of the operative constitutional provision; (2) holdings and dicta of [our Supreme Court] and the Appellate Court; (3) persuasive and relevant federal precedent; (4) persuasive sister state decisions; (5) the history of the operative constitutional provision, including the historical constitutional setting and the debates of the framers; and (6) contemporary economic and sociological considerations, including relevant public policies." *Kerrigan* v. *Commissioner of Public Health*, 289 Conn. 135, 157 (2008). In performing a *Geisler* analysis, this Court has recognized that the six factors "may be inextricably interwoven" and "not every *Geisler* factor is relevant in all cases." (Internal quotation marks omitted.) Id.

A review of the relevant *Geisler* factors refutes the defendant's state constitutional claim. First, the text of "the due process clauses of the state and the federal constitutions are virtually identical." *State* v. *Lockhart*, supra, 298 Conn. 551. Accordingly, the text of the operative constitutional provisions undermines the defendant's claim to broader due process protection under the Connecticut constitution.

Second, the overwhelming majority of federal courts of appeals hold that, in order to establish a due process violation, the defendant must establish both actual substantial prejudice *and* that the prearrest delay resulted from bad faith or improper prosecutorial motive. See Part III.A.3., above; Defendant's Brief: 29. Accordingly, relevant federal precedent undermines the defendant's claim to broader due process protection under the Connecticut constitution.

Third, as the defendant acknowledges, "most state appellate courts have required a showing of bad faith in the context of prearrest delays." Defendant's Brief: 30; see also E. DuBosar, "Pre-Accusation Delay: An Issue Ripe for Adjudication by the United States Supreme

Court," 40 Fla. St. U. L. Rev. 659, 661 (2013) (collecting state cases). In his brief, however, the defendant has not identified which minority states support his due process claim, nor has he identified the reasoning on which those states relied. See Defendant's Brief: 30-36. Accordingly, relevant sibling state precedent undermines the defendant's claim to broader due process protection under the Connecticut constitution.

Fourth, the trial court incorrectly found that relevant Connecticut precedent favors broader due process protection under the Connecticut constitution. C/App: 73, citing *State* v. *Morales*, 232 Conn. 707, 720 (1995). In support of its *Geisler* analysis, the trial court cited several examples of broader protection under our state constitution, including the abolition of the death penalty, the rejection of the good faith exception to the exclusionary rule, and the state's failure to preserve exculpatory evidence. C/App: 72-74. The trial court's *Geisler* analysis is flawed, however, because none of these due process analogs qualifies as a *relevant* holding of this Court. Instead of cases involving matters such as the death penalty, the good faith exception, and the failure to preserve evidence, the trial court should have focused on Connecticut cases involving due process claims predicated on prearrest delay, such as *Roger B.*, *Morrill*, and *Littlejohn*, supra, all of which require a showing of bad faith or improper prosecutorial motive in order to establish a due process violation. To be clear, all three cases involved application of federal constitutional law to claims of improper prearrest delay, and none of them involved a claim to independent meaning under the state constitution. Nevertheless, these Connecticut precedents are more relevant than the due process analogs on which the trial court relied because they each involved due process claims premised on prearrest delay. Accordingly, relevant Connecticut

precedent undermines, rather than supports, the defendant's claim to broader protection under the Connecticut constitution.

Fifth, although the trial court found that the "historical insights into the intent of our constitutional forebears" supported its finding of independent meaning under the state due process clause; see C/App: 72-73 & n.15; neither the trial court nor the defendant identified anything in Connecticut's common law history that would suggest that the framers of our constitution meant to provide citizens with special protection against prearrest delay. See generally *State* v. *Morales,* supra, 232 Conn. 718 n. 13 (noting historical antecedents of state due process clause, from mid-seventeenth century). Accordingly, the "historical insights" *Geisler* factor does not support the defendant's claim to broader protection under the Connecticut constitution.

Finally, policy considerations undermine the trial court's conclusion that the Connecticut constitution affords criminal defendants broader protection against prearrest delay. First, as previously noted, statutes of limitations are the primary means of balancing the societal interest in punishing crime against the risk of prejudice to a defendant. *State* v. *Littlejohn*, supra, 199 Conn. 646. In Connecticut, however, there is no statute of limitations barring prosecutions for the crime of murder. See General Statutes § 54-193 (a) (1) (A). As Professor LaFave has noted, allowing the state the maximum amount of time to prosecute a murder is justified because "in such instances there is a greater need for deterrence, a greater likelihood the perpetrator is a continuing danger to society, and a lesser likelihood that the perpetrator would reform on his own." 5 W. LaFave, Criminal Procedure (4th Ed. 2021) § 18.5 (a). This justification is especially true in a cold case murder prosecution such as this one where: (1) the police have done nothing wrong by continuing to investigate the case after probable cause has arisen; (2) advancements

in DNA technology enabled law enforcement authorities to solve a horrific crime many years after its commission; and (3) the defendant could have been exonerated had the DNA test eliminated him as contributing to the mixture in the glove. Adopting the trial court's interpretation of the state constitution, however, would make it harder to prosecute unsolved homicides and thereby undermine our legislature's policy judgment that the state should have unlimited time to prosecute murder.

According to the defendant, advancement in DNA technology "is entirely to the prosecution's advantage in a delayed prosecution case—[he] would not have been arrested had a single DNA test not concluded that he could not be eliminated from contributing to a mixture in the glove." Defendant's Brief: 33. The defendant's policy argument is unavailing, however, because "the passage of time is a double-edged sword. While at once affecting the defense, delay in bringing a case to trial may also make it more difficult, sometimes impossible, for the prosecution to carry its burden of proof beyond a reasonable doubt." *Commonwealth* v. *Butler*, 985 N.E.2d 377, 387 (Mass. 2013); accord *State* v. *Banks*, 321 Conn. 821, 833 (2016), citing *Maryland* v. *King,* 569 U.S. 435, 442 (2013) ("[L]aw enforcement, the defense bar, and the courts have acknowledged DNA testing's unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices." [Internal quotation marks omitted.]).

In sum, based on a correct *Geisler* analysis, the state constitution does not provide broader protection against prearrest delay.

5. Alternatively, the trial court properly rejected the defendant's state due process claim after finding that the state's justification for the delay outweighed any attendant prejudice to the defendant.

The defendant claims that he suffered prejudice as a result of Saars-Doyle's death because she had implicated Copeland in the murders, but the trial court excluded her police statements under the residual exception to the hearsay rule and thereby prevented him from presenting a third-party culpability defense.[9] See Defendant's Brief:

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[9] In addition, for the first time on appeal, the defendant contends that he was prejudiced by the thirty-two year delay because Louise Salvati, the victims' neighbor in August 1987, "testified that she had told the police that she saw Greg [Harris] hours after [the defendant] had been arrested on unrelated charges, but she was no longer certain of that memory." Defendant's Brief: 22, 34. The defendant's argument is unavailing for two reasons. First, his argument is not properly before this Court because it was never presented to the trial court below. C/App: 76-77; see *State* v. *Brunetti*, 279 Conn. 39, 61 (2006) (discountenancing trial by ambush), cert. denied, 549 U.S. 1212 (2007). Second, if reviewed, the defendant's argument fails because the trial court permitted the defendant, over the state's objection, to introduce Salvati's written police statement, dated September 8, 1987, in which she indicated that she had seen Greg Harris on the morning after the murders. See T. 11/22/22: 14-23; Defense Exh. A (Salvati's statement). Thus, the defendant was not prejudiced given that the admission of Salvati's statement enabled him to argue that he could not have killed the victims because he had an alibi—he was in custody at the time.

34. Contrary to the defendant's assertion, the trial court properly rejected his state due process claim after reasonably determining that the state's compelling need to corroborate the defendant's confession with DNA evidence linking him to the murders outweighed any prejudice to the defendant caused by the death of Saars-Doyle,[10] who had told the police that Copeland killed the victims, but whose credibility was dubious and, therefore, whose testimony would be speculative at best.

To prevail on his due process claim under both the federal and state constitutions pursuant to his proposed test, the defendant first must establish that he suffered actual substantial prejudice from the delay. See *United States* v. *Uribe-Rios*, 558 F.3d 347, 358 (4th Cir. 2009); *United States* v. *Corona-Verbera*, 509 F.3d 1105, 1112 (9th Cir. 2007). If the defendant satisfies that threshold requirement, the court then considers "the Government's reasons for the delay, balancing the prejudice to the defendant with the government's justification for delay." (Internal quotation marks omitted.) *United States* v. *Uribe-Rios*, supra, 558 F.3d 358; see also *United States* v. *Corona-Verbera*, supra, 509 F.3d 1112 (same). Although "the unavailability of a witness may be a source of prejudice . . . succeeding on such a claim requires the defendant to carry a heavy burden. . . . The defendant must identify the witness he would have called; demonstrate, with specificity, the expected content of that witness'[s] testimony; establish

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[10] The defendant has abandoned any claim of prejudice with respect to the death of Bruce Hankins. See Defendant's Brief: 34 (noting that defendant "was prejudiced by [Saars-Doyle's] death and the neighbor's loss of memory"); see Part III.C., below (expressly abandoning residual hearsay exception claim as to Hankins and relying exclusively on exclusion of Saars-Dolye's hearsay statements).

to the court's satisfaction that he has made serious attempts to locate the witness; and, finally, show that the information the witness would have provided was not available from other sources." (Citation omitted; internal quotation marks omitted.) *United States* v. *Harris*, supra, 551 Fed. Appx. 703.

In this case, any prejudice to the defendant resulting from Saars-Doyle's death was minimal given her myriad credibility problems, including her alcohol and drug abuse at the time of the murders as well as when she gave her statements to the police, her admittedly poor memory at the time of the murders, her numerous inconsistencies and conflicting accounts of the murder, and the fact that she had provided the police with details of the crime that "were either incoherent, verifiably inaccurate, or incapable of corroboration." C/App: 76; see also Part III.C., below. Accordingly, because Saars-Doyle's testimony was speculative at best, the defendant did not carry his burden of showing actual, substantial prejudice. See, e.g., *United States* v. *Manning*, supra, 56 F.3d 1194 (prejudice mere conjecture where no specific showing made as to what deceased witness would have said); cf. *State* v. *Estrella*, supra, 277 Conn. 485 (defendant must show purported testimony would be helpful). It is also worth noting that there was no physical evidence linking Copeland to the crime scene, which further undermines any claim of prejudice from delay in prosecuting the defendant, who DNA evidence, as well as his confession, linked to the crime scene.

At any rate, even assuming that Saars-Doyle's testimony would have been helpful, the trial court properly determined that "any prejudice suffered by the defendant was substantially outweighed by the state's justification for the delay." C/App: 77. In this case, the justification for the delay was compelling. The delay was investigative confirmation, nothing else. The police may have had some basis to

suspect the defendant shortly after the crime was committed in 1987, but the police did not fully solve this case until 2019, when a comparison of the defendant's DNA with DNA obtained from the glove found at the crime scene corroborated the defendant's confession to the degree necessary to prove guilt beyond a reasonable doubt. See *United States* v. *Lovasco*, supra, 431 U.S. 790-91 ("obvious that prosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect's guilt beyond a reasonable doubt"); *Hoffa* v. *United States*, supra, 385 U.S. 310 (police "are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction").

Moreover, as the trial court correctly noted, "the significant length of time before the defendant's arrest is not reflective of the state's disregard for, or indifference to, his constitutional rights, but indicative of the fact that advancements in DNA science linking him to the crimes under investigation did not exist until relatively recently." C/App: 78. Other courts have rejected similar due process claims where advancements in DNA technology have led to arrests in very old unsolved murder cases. See, e.g., *People* v. *Nelson*, 185 P.3d 49, 58-59 (Cal. 2008) (26-year delay in charging defendant with murder did not violate his state and federal due process rights, even if forensic technology used to compare defendant's DNA to that found at crime scene existed for years before it was used in defendant's case, because prejudice to defendant from missing witnesses and lost evidence was minimal and delay was justified by insufficient evidence to charge defendant until advances in forensic technology and funding for cold case investigations made DNA comparison possible); *People* v. *Smothers*, 281 Cal. Rptr. 3d 409, 430-31 (Cal. App. 2021) (33-year

delay in prosecuting defendant for murder did not violate defendant's state and federal due process rights where: at time of offense, defendant was suspect but there was insufficient evidence to charge him; delay was justified until advances in forensic technology and funding for cold case investigations made DNA comparison possible; and no evidence of prosecutorial negligence or that prosecution caused delay to take advantage of defendant); *State* v. *Watson*, 827 N.W.2d 507, 515 (Neb. 2013) (33-year delay in charging defendant with murder did not violate his due process rights where "the length of time before [defendant] was charged with murder was largely caused by the fact that the [DNA] technology used to link [defendant] with the murder was not available in 1978 when the crimes were committed").

Accordingly, the trial court properly denied the defendant's motion to dismiss after concluding that the state's compelling justification for the delay in prosecuting him outweighed any attendant prejudice.

B. The trial court reasonably exercised its discretion in finding the defendant competent to stand trial.

The defendant claims that that the trial court "abused its discretion when it denied [defense counsel's] multiple requests for an in-hospital competency evaluation due to [the defendant's] inability to assist or participate in this case." (Capitalization altered.) Defendant's Brief: 36. In support of his claim, the defendant contends that: (1) the court improperly relied on a two-year-old competency report based on counsel's representations about the defendant's inability to assist in his defense; id., 46; (2) the court improperly found him competent to stand trial based on his unwillingness to cooperate with psychiatric evaluations; id., 49; and (3) the court had no substantive interaction with the defendant. Id., 50.

Contrary to the defendant's assertion, the trial court reasonably exercised its discretion in denying the defendant's request for an in-hospital competency examination based on substantial evidence that the defendant understood the charges he was facing and that he was able to assist his attorneys, but he was uncooperative with counsel in order to prevent his prosecution from proceeding. Moreover, contrary to the defendant's assertion: (1) in addition to allowing the defendant to present evidence of incompetency at a hearing in 2022, shortly before the trial began, the court properly relied on the defendant's competency evaluations from 2020 and 2021 to support its conclusion that the defendant remained competent and that no further evaluation was necessary; (2) in ascertaining whether the defendant remained competent, the court properly took into account the defendant's unwillingness to cooperate with psychiatric evaluators; and (3) although the court made a concerted effort to interact with the defendant, the defendant's persistent refusal to cooperate supports, rather than undermines, the basis for the trial court's determination that the defendant remained competent at the time of trial.

1. Additional facts and proceedings

On January 21, 2020, the trial court, *Clifford*, *J.*, conducted a competency hearing. T. 1/21/20: 1-3. After the defendant indicated that he refused to participate and left the courtroom, Judge Clifford found that he had waived his right to be present, appointed a public defender to represent him, and conducted the hearing. Id. Following the hearing, Judge Clifford found that the defendant was not competent to stand trial based on evidence of psychosis, but that he could be restored to competency with inpatient hospitalization and treatment. Id., 13-14. Accordingly, Judge Clifford referred the defendant to the Whiting Forensic Division of Connecticut Valley Hospital for a period of sixty days to attempt to restore his competency. Id., 14-15.

Subsequently, on July 16, 2020, the trial court, *Spallone*, *J.*, conducted another competency hearing, at which he considered the competency evaluation conducted by Whiting staff and the testimony of Susan McKinley, a member of the evaluation team. T. 7/16/20: 7-28. The defendant, however, once again refused to participate in the hearing. Id., 7. According to McKinley, the evaluation team observed the defendant "day in and day out for several months" and concluded, among other things, that: (1) his competency had been restored with medication, which he took "willingly"; (2) he no longer exhibited any symptoms of psychosis; (3) his mental health was "intact"; and (4) although the defendant had refused to participate in the present competency hearing, he had "certainly demonstrated his ability to cooperate and collaborate with [his evaluation team] in a variety of other circumstances during the hospitalization." Id., 7-29. Based on their evaluation, the Whiting team concluded that the defendant understood the nature of the charges and proceedings he was facing and was fully able to assist defense counsel, if he so desired. Id., 10, 20, 28. McKinley also noted that the defendant was adamant that he had been wronged by the judicial system. Id., 11.

On August 6, 2020, after considering two reports from the Whiting evaluation team dated April 13 and July 10, 2020, as well as McKinley's testimony, Judge Spallone found that the defendant was competent to stand trial because he understood the nature of the charges against him and was able to assist in his defense. T. 8/6/20: 4-7.

On May 26, 2021, the trial court, *Harmon*, *J.*, conducted a hearing into whether the defendant was competent to represent himself. T. 5/26/21: 1-21. When the defendant refused to participate, Judge Harmon appointed Attorney W. Theodore Koch III as standby counsel. Id. After conducting a hearing and considering mental health

evaluation reports from the Connecticut Mental Health Center ("CMHC"), Judge Harmon found that, although the defendant remained competent to stand trial, he was not competent to represent himself based on the seriousness of the murder charges and his "extreme distrust of the legal system." Id., 19-20. Consequently, Judge Harmon appointed Attorney Koch as full counsel for the defendant. Id.

On September 8, 2022, the day jury selection was scheduled to commence, Attorney Koch informed the trial court, *Vitale, J.*, that he did not believe the defendant was competent to stand trial. T. 9/8/22: 1-2, 7-10. The defendant personally addressed the court, informed Judge Vitale that he refused to participate in the court proceedings, and left the courtroom. Id. Koch then advised the court that, other than his first meeting with the defendant in prison in 2020, the defendant had completely refused to meet with him to discuss his case. Id. Koch further indicated that he was concerned that the defendant's psychotic thinking was preventing him from assisting counsel in defending against the murder charges; the defendant was convinced that he could resolve the criminal charges in a civil lawsuit "that does not exist"; and the defendant would not interact with the court or counsel unless a "grand jury" was present. Id., 9-12. Accordingly, Koch moved for a competency evaluation. Id.

The state objected to another competency evaluation, noting that a defendant can be mentally ill and yet still be competent to stand trial; there is a distinction between being unable to assist your attorney and being unwilling to do so; the defendant was unhappy that he had been adjudged incompetent to represent himself; and nothing of significance with the defendant's mental status had changed in the two years since he previously had been found competent to stand trial. Id., 13.

After hearing from counsel, Judge Vitale noted for the record that he had attempted to conduct an independent inquiry into the defendant's competence to stand trial, but the defendant had prevented him from doing so by refusing to participate in the proceedings or answer the court's questions. Id., 16. Nevertheless, based on the defendant's history of mental illness and Attorney Koch's representations, Judge Vitale granted counsel's request for a competency hearing and ordered that a team from CMHC evaluate the defendant and prepare a report for the court. Id., 16-17; T. 9/28/22: 2.

On October 19, 2022, the parties appeared before the court to review a letter that had been submitted by CMHC in lieu of a competency report. T. 10/19/22: 2. Judge Vitale noted that the evaluation team's letter stated that the defendant had refused to cooperate with all attempts to interview him. Id. Attorney Koch acknowledged that the letter also stated that "at no time did [the defendant] . . . appear to be experiencing psychiatric symptoms or cognitive impairment." Id., 4. Despite CMHC's opinion, Koch asked the court to make a finding, based on the present state of the record, that the defendant was incompetent to stand trial. Id., 4-8. The state objected because there was no new evidence to cast doubt on CMHC's reports from April and May 2021, which had been submitted in connection with the proceedings before Judge Harmon on self-representation, and consequently, there was nothing to contradict the prior courts' findings that the defendant was able to assist his counsel and understood the proceedings against him. Id., 7-8.

Although Judge Spallone had found the defendant competent to stand trial in 2020, and notwithstanding that CMHC had opined that the defendant was competent in its reports in April 2021 and May 2021, Judge Vitale nevertheless gave counsel another opportunity to attempt to demonstrate that the defendant was no longer competent to

stand trial by presenting any additional evidence at a hearing the next day.

Accordingly, on October 20, 2022, the court held a hearing at which two witnesses testified. First, the state called Paolo Santilli, a counselor who had interacted with the defendant daily at Cheshire Correctional Center, where the defendant had been incarcerated since 2019. T. 10/20/22: 12. According to Santilli, during that time, the defendant was always cordial, well-behaved, got along well with other inmates, and maintained proper hygiene. Id., 14-17. Santilli never observed the defendant engage in aggressive or violent behavior. Id., 15. Santilli also believed that the defendant was taking his psychiatric medication. Id., 21.

The defense called Dr. Howard Zonana, who testified that he was concerned that the defendant's delusional thoughts "might" be driving his behavior in court—i.e., his refusal to participate in the criminal proceedings—but he acknowledged that a person can be mentally ill and yet competent to stand trial. Id., 37, 58-59. On cross-examination, Zonana acknowledged that he had never met the defendant, performed a psychological evaluation of him, or observed him while he was at Whiting. Id., 38. Zonana testified that the various mental health reports from Whiting and CMHC indicated that the defendant had been taking 54 milligrams of Trilafon daily, which is a "substantial dose" of anti-psychotic medication that can help alleviate symptoms of schizophrenia. Id., 39-41. Zonana also acknowledged that it is conceivable that someone charged with a double murder would distrust the legal system regardless of his mental health status. Id., 47.

After the parties concluded their questioning of witnesses, Judge Vitale asked Attorney Koch whether the defendant "has a fairly extensive criminal history prior" to the crimes charged in this case, to which he replied, "Yes." Id., 65.

On October 25, 2022, Judge Vitale attempted to canvass the defendant on his right to be present for jury selection, in accordance with Practice Book § 44-8, but the defendant repeatedly talked over the judge and refused to answer the court's questions. T. 10/25/22: 2-5. Judge Vitale found that the defendant had voluntarily decided not to be present for his trial, and allowed the defendant to leave the courtroom based on his obstreperous behavior. Id., 5. Based on his personal observations of the defendant's behavior and the defendant's refusal to participate in the proceedings, Judge Vitale found that he was pursuing a deliberate strategy to prevent his trial from moving forward and thereby thwart his prosecution. Id., 7-8. Judge Vitale made arrangements with court marshals to place the defendant in a holding cell equipped with an audio/video system to enable the defendant to hear and watch his trial should he so choose. Id., 9-10; T. 11/8/22:1.

Judge Vitale then issued a detailed ruling from the bench, finding that the defendant was competent to stand trial. T. 10/25/22: 10-30; see State's Appendix: 83-103. In pertinent part, Judge Vitale found as follows: (1) based on his daily interactions with Santilli in prison since 2019, the defendant's mental health did not impede his ability to assist his defense attorneys or understand the charges and proceedings; (2) based on Defense Exhibit C, a report of the evaluation performed by Whiting staff in 2020, the defendant's mental health did not impede his ability to assist his defense attorneys or understand the charges and proceedings; (3) based on Defense Exhibit E, a report of the evaluation performed by CMHC in April 2021, the defendant's mental health did not impede his ability to assist his defense attorneys or understand the nature of the charges and the proceedings; (4) based on Defense Exhibit D, a supplemental report by CMHC detailing its evaluation of the defendant on May 10, 2021, his mental health did not

impede his ability to assist his defense attorneys or understand the nature of the charges and proceedings; and (5) the opinions of the psychiatrists and other mental health professionals who evaluated the defendant at Whiting and CMHC "have more persuasive weight than . . . Dr. Zonana, who did not" evaluate the defendant. Id., 19-28; State's Appendix: 92-101.

After Judge Vitale had issued his decision, Attorney Koch requested that the court reconsider its ruling and return the defendant to Whiting for additional psychiatric evaluation. Id., 31-32. The trial court denied the defendant's reconsideration request. Id.

2. Governing law and standard of review

The conviction of a defendant "who is not legally competent to stand trial violates the due process of law guaranteed by the state and federal constitutions." *State* v. *Garcia*, 233 Conn. 44, 67 (1995), on appeal after remand, 235 Conn. 671 (1996). This mandate is codified in General Statutes § 54-56d (a), "which provides that [a] defendant shall not be tried, convicted or sentenced while he is not competent." (Internal quotation marks omitted.) *State* v. *Johnson*, 253 Conn. 1, 20 (2000). Under Connecticut law, however, the defendant is presumed competent and "[t]he burden of proving that the defendant is not competent by a preponderance of the evidence and the burden of going forward with the evidence are on the party raising the issue." General Statutes § 54-56d (b).

A "defendant is not competent if he is unable to understand the proceedings against him or to assist in his own defense." General Statutes § 54-56d (a). "This statutory definition mirrors the federal competency standard enunciated in *Dusky* v. *United States*, 362 U.S. 402 (1960) (per curiam)." *State* v. *Johnson*, supra, 253 Conn. 20-21. The test for competency "must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable

degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him." (Internal quotation marks omitted.) *Dusky* v. *United States*, supra, 362 U.S. 402; see also *Drope* v. *Missouri*, 420 U.S. 162, 172 (1975). Accordingly, "[c]ompetence to stand trial . . . is not defined in terms of mental illness. An accused may be suffering from a mental illness and nonetheless be able to understand the charges against him and to assist in his own defense. . . ." (Citation omitted.) *State* v. *DeAngelis*, 200 Conn. 224, 230 (1986); see also *State* v. *Connor*, 292 Conn. 483, 524 (2009) ("the standard governing the determination of competency to stand trial is a relatively low one and . . . mental illness or reduced mental capacity does not alone provide a basis for concluding that a defendant is not competent to stand trial").

This Court has recognized that the "trial judge is in a particularly advantageous position to observe a defendant's conduct during a trial and has a unique opportunity to assess a defendant's competency. A trial court's opinion, therefore, of the competency of a defendant is highly significant." (Internal quotation marks omitted.) *State* v. *Connor*, supra, 292 Conn. 523-24. Accordingly, this Court reviews a determination of competency for an abuse of discretion. See *State* v. *Johnson*, supra, 253 Conn. 25-29 & n.26. "In the application of that standard, [this Court] make[s] every reasonable presumption in favor of the correctness of the action of the trial court." *State* v. *Bagley*, 101 Conn. App. 653, 655 (2007); see also *State* v. *Cancel*, 275 Conn. 1, 18 (2005) (under abuse of discretion standard, inquiry limited to "whether the trial court's ruling was arbitrary or unreasonable").

3. The trial court properly declined to order another competency evaluation after finding the defendant fully able to assist his defense counsel but unwilling to do so.

When a trial court has previously found a defendant competent and that determination is premised on proper consideration of the relevant factors, "the court's inquiry when deciding whether to order another competency evaluation is whether the defendant's condition has materially changed since [the] previous finding of competency." (Internal quotation marks omitted.) *State* v. *Jordan,* 151 Conn. App. 1, 37, cert. denied, 314 Conn. 909 (2014).

Here, contrary to the defendant's assertion, the trial court reasonably exercised its discretion in denying the defendant's request for another competency evaluation based on substantial evidence that nothing had materially changed in the two years since the defendant had been adjudged competent by Judge Spallone.

First, Judge Vitale allowed the defendant to present any new evidence of incompetence at the hearing on October 20, 2022, but nothing he presented cast doubt on the earlier competency rulings by Judge Spallone and Judge Harmon, nor did any evidence at the October 20 hearing cast doubt on the psychiatric evaluations performed by Whiting and CMHC in 2020 and 2021.

Second, contrary to the defendant's assertion, the trial court was entitled to rely on the defendant's competency evaluations from 2020-2021 to support its conclusion that he was still competent on the eve of trial in 2022 and that no further evaluation was necessary. See, e.g., *State* v. *Jordan*, supra, 151 Conn. App. 36-37 (rejecting argument that court "improperly relied on" first competency evaluation report when denying request for second competency evaluation because first evaluation had occurred nearly one year before request for second

evaluation); *State* v. *Norris*, 213 Conn. App. 253, 275 (rejecting argument that court should not have considered defendant's prior competency evaluation "because it was one year old"), cert. denied, 345 Conn. 910 (2022).

Third, in ascertaining whether the defendant remained competent when jury selection began in October 2022, Judge Vitale properly took into account the defendant's unwillingness to cooperate with his psychiatric evaluations. *State* v. *Glen S.*, 207 Conn. App. 56, 76 (2021) ("Because of his failure to cooperate with the competency evaluators, the presumption of competency to stand trial was not rebutted."); see § 54-56d (b).

Fourth, although Judge Vitale made a concerted effort to interact with the defendant, the defendant's persistent refusal to cooperate supports, rather than undermines, the basis for the trial court's determination that the defendant remained competent at the time of trial. In his ruling, Judge Vitale specifically referenced the defendant's behavior, which it had observed firsthand on multiple occasions, and at no time refused to provide the defendant an opportunity to address the court on the issue of his competency. "In fact, the defendant had voluntarily absented himself from the courtroom due to his disruptive behavior, and thus the court's inability to canvass him directly was a situation created by his own design." (Footnote omitted.) *State* v. *Jordan*, supra, 151 Conn. App. 35-36; see also *State* v. *Bigelow*, 120 Conn. App. 632, 643 (2010) (upholding trial court's competency finding where "defendant's mistrust of the judicial system was not a product of a mental illness."). A defendant's obstreperous behavior or unwillingness to cooperate with counsel and mental health professionals does not render him incompetent to stand trial. See *State* v. *Johnson*, 22 Conn. App. 477, 489 (defendant's "obstreperous, uncooperative or belligerent behavior" including refusal to return to

court and hostility toward attorney did not necessarily indicate defendant's incompetency), cert. denied, 216 Conn. 817 (1990); *Commonwealth* v. *Logan*, 549 A.2d 531, 539 (Pa. 1988) (refusal to cooperate with defense strategy and display of childish behavior at trial does not necessarily constitute incompetence).

In sum, Judge Vitale did not abuse his discretion in denying defense counsel's motion for another competency evaluation because counsel failed to raise a "reasonable doubt concerning the defendant's competency. . . ." (Internal quotation marks omitted.) *State* v. *Johnson,* supra, 253 Conn. 21.

C. The trial court reasonably exercised its discretion in excluding hearsay statements by Veronica Saars-Dolye after concluding that they did not satisfy the residual exception to the hearsay rule under Code of Evidence § 8-9.

The defendant claims that the trial court abused its discretion by excluding hearsay statements by Saars-Doyle inculpating Copeland in the Harris murders after concluding that they were not sufficiently trustworthy and reliable to permit their admission under Code of Evidence § 8-9, the residual exception to the hearsay rule.

Contrary to the defendant's assertion, the trial court acted well within its discretion in excluding Saars-Doyle's hearsay statements after finding that they were neither reliable nor trustworthy where: (1) Saars-Doyle could not be cross-examined about her ability to perceive or recall the 1987 murders; (2) her statements were internally inconsistent and contradicted by the crime scene evidence; and (3) Saars-Doyle admitted to having memory problems and abusing alcohol and drugs at the time of the murders in 1987 and when she spoke to the police in 1990.

1. Additional facts and proceedings

During the state's case, the defendant attempted to question Detective Sean Dolon about Saars-Doyle's hearsay statements to the Hamden police that inculpated Copeland in the Harris murders. T. 11/15/22: 115-35, 148-52. The state objected, the court excused the jury and the defendant proffered Saars-Doyle's statements under Code of Evidence § 8-9, the residual exception to the hearsay rule. Id., 153. The defendant argued that Saars-Doyle's statements fit within the residual exception for two reasons. First, the defendant claimed that Saars-Doyle's hearsay statements met the necessity prong of the residual exception because she had died before the defendant's arrest, and therefore, her statements were necessary to establish a third-party culpability defense. Second, he claimed that Saars-Doyle's statements were reliable because they were given to police in 1990, three years after the murders, at a time when her memory would still have been fresh. Id., 154, 158-59.

The state objected, arguing that: (1) the hearsay statements involved three or more layers of hearsay, each of which independently had to satisfy a hearsay exception; (2) Saars-Doyle's statements were inconsistent with each other as well as the crime scene evidence; (3) Saars-Doyle admitted to the police that her memory was poor and that she was abusing drugs and alcohol at the time of the murders and when she spoke to the police; and (4) Saars-Doyle had never been subjected to cross-examination. T. 11/15/22: 162-63.

After hearing from the parties and reviewing Saars-Doyle's statements, Judge Vitale sustained the state's objection to their admission under the residual exception, concluding that they were neither reliable nor trustworthy. T. 11/16/22: 4. In support of his ruling, Judge Vitale found, in pertinent part, as follows:

[T]urning first to Saars-Doyle, Defendant's G for ID reflects that on February 9th of 1988 she denied any firsthand knowledge of the deaths of either of the Harrises and claimed to have been driving around Wallingford and North Guilford at relevant times. She claims that she got details of their deaths from her sister and indicated . . . that those details were provided by her sister; mentioned that the victims were, quote, gagged. No evidence of that has been presented from the crime scene.

She also denied specifically speaking to Lee Copeland about the crimes. She also mentioned Copeland's participation which she characterized as satanic rituals. And she swore to the truth of the contents of that statement. And she discussed going to Florida. This interview occurs . . . many months after the crimes were committed.

And Saars-Doyle, in declarations contained in Defendant's K for ID contained in a police report dated July 24th of 1990, it's indicated she came to the police department to quote, sign a statement. The officer . . . attempts to question her about the veracity of . . . that statement, particularly a component of that statement where she apparently claimed that she could hear a hairdryer from her car while the hair dryer was being used allegedly, from what I can gather, inside 655 Fitch Street, claimed to be able to hear that from her car while the radio was on. She agreed to answer questions but insisted this account not be tape recorded. Her declarations to police in this report in the Court's view strain credulity with respect to how and why she claims to be inside the apartment. There's no explanation as to how the apartment was entered.

The Court will note that from what the Court's heard so far when police entered, they found a T.V. on and pizza box on the table. There's no mention of where the Harrises were at the time they entered. She claims to witness certain things while [in] the second-floor bathroom. Claims that Mr. Copeland used an eight to ten-inch knife and there was no explanation for the material found in the kitchen sink.

Regarding Defendant's I for ID, a July 23rd, 1996 taped statement, so almost ten years after the crimes, she described that at the time of the crimes she had major medical issues including problems with her ears, eyes, nose, throat, respiratory, epileptic problems and that that her memory of that night was quote, kind of blank. She used to drink a lot . . . . But now her memory is, she says, totally clear.

I am [not] going to go into exquisite detail about the narrative portions of this statement, particularly on pages four, five, and six. Suffice it to say, the Court finds this account to be not only disjointed but largely incoherent as she rebuffs efforts by the interviewer to clarify. She claimed Copeland, for example, was wearing a white t-shirt, but noticed no blood which is odd given the nature and extent of the stab wounds the Court has heard about.

On page nine, for example, she indicated Mr. Copeland's pants had what she said were red spots that she at one point characterized as rust stains and then mentioned that they could have been dried with a hair dryer after being prompted by the interviewer to describe the clothing.

She also said Mr. Copeland hit Mr. Harris with a pipe over the head and gagged him and then she denied going into the apartment in contrast to a previous statement. Also for the

first time she mentions a random person named Gus who she says was there because she could see shadows. And that Mr. Copeland mentioned a machete. She also noted she had started taking epileptic pills about two to two and a half months ago. And another point mentioned Mr. Copeland being in possession of a crowbar.

Defendant's Exhibit C for ID, which was an interview of July 23rd, [1990], she claims Mr. Copeland brought yellow gloves to the scene but also mentions various other gloves as well which would appear to be at odds with the testimony the Court is aware of regarding the presence of one of the victim's DNA on the inside of that glove as a major contributor.

Defendant's J which is her then boyfriend, he tells the police that Miss Saars-Doyle told him that she was in the car and never went in and that this was about a debt collection.

The Court concludes that because of the existence of internal inconsistencies within these statements by Miss Saars-Doyle, whether oral or tape recorded, the obvious inconsistencies between her statements over the years, the length of time gaps between the statements themselves and the gap between the first statement and the crime, her stated mental, physical, and substance abuse infirmities. She mentions drinking alcohol in many of these statements, that these declarations lack sufficient guarantees of trustworthiness, in addition, I'll note to actually being hearsay within hearsay as being offered through Detective Dolan.

T. 11/16/22: 5-8; see State's Appendix: 110-112.

2. Governing law and standard of review

The fourteenth amendment to the United States constitution does not confer upon an accused the right to present any and every piece of

evidence that he or she wishes. *State* v. *Bennett*, 324 Conn. 744, 760-61 (2017). A criminal defendant's constitutional rights are subject to appropriate supervision by the trial court and properly may be restricted in accordance with established rules of procedure and evidence. *State* v. *Bova*, 240 Conn. 210, 219 (1997). A hearsay challenge is a claim of an erroneous evidentiary ruling and as such does not implicate the constitution. *State* v. *Bennett*, supra, 324 Conn. 761.

> The defendant, however, is entitled to review of his claim that the trial court improperly precluded admission of the statement under the residual hearsay exception. . . . [This Court] review[s] that decision for an abuse of discretion, making every reasonable presumption in favor of upholding the trial court's ruling. . . .
>
> The legal principles guiding the exercise of the trial court's discretion regarding the admission of hearsay evidence under the residual exception are well established. An [out-of-court] statement is hearsay when it is offered to establish the truth of the matters contained therein. . . . As a general rule, hearsay evidence is not admissible unless it falls under one of several well established exceptions. . . . The purpose behind the hearsay rule is to effectuate the policy of requiring that testimony be given in open court, under oath, and subject to cross-examination. . . . The residual, or catchall, exception to the hearsay rule allows a trial court to admit hearsay evidence not admissible under any of the established exceptions if: (1) there is a reasonable necessity for the admission of the statement, and (2) the statement is supported by the equivalent guarantees of reliability and trustworthiness essential to other evidence admitted under the traditional

> hearsay exceptions. . . . [This Court has] recognized that [t]he residual hearsay exception [should be] applied in the rarest of cases. . . .

(Citations and internal quotation marks omitted.) *State* v. *Bennett*, supra, 324 Conn. 761-62; see Conn. Code Evid. § 8-9.

3. Saars-Doyle's statements were neither reliable nor trustworthy.

Here, even assuming arguendo that the proffered statements met the necessity requirement, the defendant cannot prevail because the trial court properly assessed and resolved the issue of the statements' trustworthiness.

In *Bennett*, this Court considered whether the trial court abused its discretion in denying the admission, pursuant to § 8-9 of the Code of Evidence, of a recorded statement made by a purported eyewitness to the police on the same day that the victim had been murdered. *State* v. *Bennett*, supra, 324 Conn. 760. There, the trial court "rested its decision solely on the ground that [the witness's] statement lacked sufficient reliability and trustworthiness." Id., 763. This Court concluded that the trial court did not abuse its discretion in denying the admission of the witness's statement because:

> [The witness] had never been subjected to cross-examination regarding the circumstances surrounding her observations of the incident. A declarant's availability for cross-examination has been deemed particularly significant in determining whether hearsay evidence is supported by guarantees of trustworthiness and reliability. . . . [The witness] conceded in her statement that the lighting was too limited to make out any distinguishing features of the people at the scene. [The witness] was never subject to cross-examination to further explore her ability to properly observe

> the events that she reported or her ability to accurately hear the sounds and statements that she had reported (i.e., how far she was from the incident, whether she has any visual or hearing impairments, whether there were obstructions or distractions at the time). . . .
>
> Additionally, the evidence at trial not only failed to materially corroborate [the witness's] statement, it contradicted her statement in part. . . . None of the witnesses reported hearing any gunshots, and [the victim's] injuries were inflicted by a knife. [The witness's] report that a man in a yellow shirt was kneeling beside the victim stating, Oh, I killed him. I killed him, was consistent with the other witnesses only insofar as they reported that [the victim's friend] wore a yellow shirt as he knelt by [the victim]; no one reported that anyone had made statements remotely consistent with that statement or any others recounted by [the witness]. Given that [the witness's] report of this inculpatory statement constituted hearsay within hearsay, the lack of corroboration bore significantly on its indicia of reliability.

(Citations and internal quotation marks omitted.) Id., 763-64.

In this case, as in *Bennett*, Saars-Doyle never was subjected to cross-examination, and, as Judge Vitale recognized, all of her statements constituted hearsay within hearsay. Thus, the reliability and trustworthiness of Saars-Doyle's hearsay statements was undermined by the parties' inability to question her about her ability to perceive the events on the night of the Harris murders.

Moreover, as Judge Vitale explained in great detail, Saars-Doyle's statements were internally inconsistent and contradicted by the crime scene evidence, which further undermined their reliability and trustworthiness. See, e.g., *State* v. *Burton*, 191 Conn. App. 808, 840-41

(2019) (videotaped police interview of eyewitness to shooting not sufficiently reliable and trustworthy, and thus inadmissible under residual exception, where: eyewitness never was subjected to cross-examination; eyewitness gave multiple inconsistent statements about incident; and trial evidence failed to corroborate in many respects, and actually contradicted, eyewitness's version of events).

Finally, Saars-Doyle admitted to having memory problems and engaging in alcohol and drug abuse at the time of the murders in 1987 and when she spoke to the police in 1990, which seriously undermined the reliability and trustworthiness of her hearsay statements. See, e.g., *State* v. *Rodriguez*, 39 Conn. App. 579, 604-05 (1995) (victim's tape recorded interview with police not admissible under residual exception to hearsay rule, due to lack of reliability, where victim was very ill at time of robbery and died three weeks later, might have been on medication, and stress of event might have impaired his powers of observation and communication), rev'd on other grounds, 239 Conn. 235 (1996).

In sum, the trial court acted well within its discretion in excluding Saars-Doyle's hearsay statements after finding that they were neither reliable nor trustworthy.

4. Alternatively, any error was harmless.

This Court has observed that "a confession, if sufficiently corroborated, is the most damaging evidence of guilt . . . and in the usual case will constitute the overwhelming evidence necessary to render harmless any errors at trial." (Internal quotation marks omitted.) *State* v. *Iban C.*, 275 Conn. 624, 645 (2005); see also *Milton* v. *Wainwright*, 407 U.S. 371, 372-73 (1972). In this case, the defendant's multiple confessions, some of which were recorded and all of which were signed, were corroborated by unique details about the Harris murders that were not publicly available and that only the perpetrator

of the crime would know. The defendant's "intimate knowledge of the details of this crime . . . provide[s] strong corroboration for his confession." *State* v. *Shifflett*, 199 Conn. 718, 752 (1986).

More importantly, the defendant's confessions were corroborated by DNA evidence linking him to a bloody glove that was discovered next to the victims' bodies. The defendant's confessions also were corroborated by the defendant's refusal to allow the Hamden police to take a buccal sample from his mouth pursuant to a search warrant, from which the jury reasonably could have inferred that the defendant was trying to prevent the police from discovering evidence linking him to the murders.

Because the evidentiary ruling in question is not constitutional in nature, the defendant bears the burden of demonstrating harmful error. See *State* v. *Bonner*, 290 Conn. 468, 500-01 (2009). In light of his multiple confessions, the DNA evidence linking him to the Harris murders, and the consciousness of guilt evidence, the defendant has failed to establish the harmfulness of the court's allegedly improper evidentiary ruling.

IV. Conclusion

The judgment of conviction should be affirmed.

Respectfully submitted,
State of Connecticut

By: /s/ Robert J. Scheinblum
Senior Assistant State's Attorney
Office of the Chief State's Attorney
Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067
Tel: (860) 258-5807
Fax: (860) 258-5828
Juris No.: 410626
Email: Robert.Scheinblum@ct.gov
Dcj.Ocsa.Appellate@ct.gov

John Doyle
State's Attorney
Judicial District of New Haven

Seth Garbarsky
Supervisory Assistant State's Attorney
Judicial District of New Haven

Lisa M. D'Angelo
Executive Assistant State's Attorney
Office of the Chief State's Attorney

May 2024

SUPREME COURT

of the

State of Connecticut

Judicial District of New Haven

S.C. 20802

STATE OF CONNECTICUT

V.

WILLIE McFARLAND

Appendix

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Statutory Provisions

General Statutes § 53a-54a. Murder.

(a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that in any prosecution under this subsection, it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(b) Evidence that the defendant suffered from a mental disease, mental defect or other mental abnormality is admissible, in a prosecution under subsection (a) of this section, on the question of whether the defendant acted with intent to cause the death of another person.

(c) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a-35a unless it is (1) a capital felony committed prior to April 25, 2012, by a person who was eighteen years of age or older at the time of the offense, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder with special circumstances committed on or after April 25, 2012, by a person who was eighteen years of age or older at the time of the offense, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder under section 53a-54d committed by a person who was eighteen years of age or older at the time of the offense.

General Statutes § 54-56d (a) & (b). Competency to stand trial.
(a) Competency requirement. Definition. A defendant shall not be tried, convicted or sentenced while the defendant is not competent. For the purposes of this section, a defendant is not competent if the defendant is unable to understand the proceedings against him or her or to assist in his or her own defense.
(b) Presumption of competency. A defendant is presumed to be competent. The burden of proving that the defendant is not competent by a preponderance of the evidence and the burden of going forward with the evidence are on the party raising the issue. The burden of going forward with the evidence shall be on the state if the court raises the issue. The court may call its own witnesses and conduct its own inquiry.

***

General Statutes § 54-86e. Confidentiality of identifying information pertaining to victims of certain crimes. Availability of information to accused. Protective order information to be entered in registry.
The name and address of the victim of a sexual assault under section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 53a-70, 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or family violence, as defined in section 46b-38a and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections,

the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

General Statutes § 54-193. Limitation of prosecution for certain violations or offenses.

(a) There shall be no limitation of time within which a person may be prosecuted for (1) (A) a capital felony under the provisions of section 53a-54b in effect prior to April 25, 2012, a class A felony or a violation of section 53a-54d or 53a-169, or (B) any other offense involving sexual abuse, sexual exploitation or sexual assault if the victim of the offense was a minor at the time of the offense, including, but not limited to, a violation of subdivision (2) of subsection (a) of section 53-21, (2) a violation of section 53a-165aa or 53a-166 in which such person renders criminal assistance to another person who has committed an offense set forth in subdivision (1) of this subsection, (3) a violation of section 53a-156 committed during a proceeding that results in the conviction of another person subsequently determined to be actually innocent of the offense or offenses of which such other person was convicted, or (4) a motor vehicle violation or offense that resulted in the death of another person and involved a violation of subsection (a) of section 14-224.

(b) (1) Except as provided in subsection (a) of this section or subdivision (2) of this subsection, no person may be prosecuted for a violation of a (A) class B felony violation of section 53a-70, 53a-70a or 53a-70b, (B) class C felony violation of section 53a-71 or 53a-72b, or (C) class D felony violation of section 53a-72a, except within twenty years next after the offense has been committed.

(2) Except as provided in subsection (a) of this section, no person may be prosecuted for any offense involving sexual abuse, sexual exploitation or sexual assault of a victim if the victim was eighteen,

nineteen or twenty years of age at the time of the offense, except not later than thirty years next after such victim attains the age of twenty-one years.
(3) No person may be prosecuted for a class A misdemeanor violation of section 53a-73a if the victim at the time of the offense was twenty-one years of age or older, except within ten years next after the offense has been committed.
(c) No person may be prosecuted for any offense, other than an offense set forth in subsection (a) or (b) of this section, for which the punishment is or may be imprisonment in excess of one year, except within five years next after the offense has been committed.
(d) No person may be prosecuted for any offense, other than an offense set forth in subsection (a), (b) or (c) of this section, except within one year next after the offense has been committed.
(e) If the person against whom an indictment, information or complaint for any of said offenses is brought has fled from and resided out of this state during the period so limited, it may be brought against such person at any time within such period, during which such person resides in this state, after the commission of the offense.
(f) When any suit, indictment, information or complaint for any crime may be brought within any other time than is limited by this section, it shall be brought within such time.

Rules of Court

Practice Book § 44-8. When Presence of Defendant is and is Not Required at Trial and Sentencing.

The defendant must be present at the trial and at the sentencing hearing, but, if the defendant will be represented by counsel at the trial or sentencing hearing, the judicial authority may:

(1) Excuse the defendant from being present at the trial or a part thereof or the sentencing hearing if the defendant waives the right to be present;
(2) Direct that the trial or a part thereof or the sentencing hearing be conducted in the defendant's absence if the judicial authority determines that the defendant waived the right to be present; or
(3) Direct that the trial or a part thereof be conducted in the absence of the defendant if the judicial authority has justifiably excluded the defendant from the courtroom because of his or her disruptive conduct, pursuant to Section 42-46.

Constitutional Provisions

Article First, § 8 of the Connecticut Constitution. Rights of accused in criminal prosecutions. What cases bailable. Speedy trial. Due process. Excessive bail or fines. Probable cause shown at hearing, when necessary. Rights of victims of crime.
Sec. 8. [As amended] a. In all Criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. No person shall be held to answer for any crime, punishable by death or life imprisonment, unless upon probable cause shown at a hearing in accordance with procedures prescribed by law, except in the armed forces, or in the militia when in actual service in time of war or public danger.

b. In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: (1) the right to be treated with fairness and respect throughout the criminal justice process; (2) the right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged; (3) the right to be reasonably protected from the accused throughout the criminal justice process; (4) the right to notification of court proceedings; (5) the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony; (6) the right to communicate with the prosecution; (7) the right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused; (8) the right to make a statement to the court at sentencing; (9) the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and (10) the right to information about the arrest, conviction, sentence, imprisonment and release of the accused. The general assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case.

Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment to the United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Connecticut Code of Evidence § 8-9. Residual Exception.

A statement that is not admissible under any of the foregoing exceptions is admissible if the court determines that (1) there is a reasonable necessity for the admission of the statement, and (2) the statement is supported by equivalent guarantees of trustworthiness and reliability that are essential to other evidence admitted under traditional exceptions to the hearsay rule.

NNH-CR19-0342524-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT NEW HAVEN
v.	:	AT NEW HAVEN, CONNECTICUT
WILLIE MCFARLAND	:	OCTOBER 25, 2022

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ELPEDIO N. VITALE, JUDGE

A P P E A R A N C E S :

Representing the State of Connecticut:

ATTORNEY SETH R. GARBARSKY
ATTORNEY LISA M. D'ANGELO
Office of the State's Attorney
235 Church Street
New Haven, CT 06510

Representing the Defendant:

ATTORNEY W. THEODORE KOCH
ATTORNEY MICHAEL W. BROWN
Koch, Garg & Brown, LLP
8 West Main Street
Suite 2-10
Niantic, CT 06357

Recorded and Transcribed By:
Christine Bachman
Court Recording Monitor
235 Church Street
New Haven, CT 06510

THE COURT: Good morning. Thank you, marshal. Good morning everybody.

ATTY. KOCH: Good morning.

THE COURT: And no luck, I take it? No luck, I take it?

ATTY. KOCH: No luck, your Honor.

THE COURT: All right.

THE MARSAHL: A couple of minutes, your Honor.

THE COURT: Okay. Okay. Your -- your partner or associate, Mike Brown, is going to be doing this with you; is that right?

ATTY. KOCH: He's going to be, yeah, with me intermittently throughout jury selection.

THE COURT: All right. I just wanted -- Because when I mention -- mention to the jurors, you know, the lawyers, I'll mention his name too.

ATTY. KOCH: Thank you.

THE COURT: All right. Good morning, counsel. Before the Court is the matter of State versus Willie McFarland. Could counsel identify themselves for the record, please?

ATTY. GARBARSKY: Yes, your Honor. Seth Garbarsky for the State of Connecticut.

ATTY. KOCH: Theodore Koch for Willie McFarland.

THE COURT: All right. Mr. McFarland is present. Okay.

MR. MCFARLAND: I want to be downstairs.

THE COURT: All right. Good morning, Mr. McFarland.

MR. MCFARLAND: No. No. No. I want to be downstairs. I don't want none of this here. It's going be if you all talk like that, I want to be downstairs.

THE COURT: Okay. I recall what you said the last two times you were here and last week and early September, that you don't wish to be present in the courtroom during any of the proceedings. I understand that.

MR. MCFARLAND: And I --

THE COURT: So and I hear this morning, and I understand that that's still what you'd like to do; is that correct?

MR. MCFARLAND: Yeah. I want to be downstairs. Yeah.

(The following portion, the Court and Mr. McFarland were talking simultaneously.)

THE COURT: Okay. But I must advise you first that we are starting your jury trial today on two counts of murder. I will first be issuing a ruling --

MR. MCFARLAND: Okay. I --

THE COURT: -- on a motion your lawyer made.

MR. MCFARLAND: I don't -- I don't --

THE COURT: Then potential jurors will be --

MR. MCFARLAND: I want to be downstairs.

THE COURT: -- entering the courtroom.

MR. MCFARLAND: I don't care nothing about that.

THE COURT: And your lawyer and the State will ask them questions --

MR. MCFARLAND: I want to be downstairs.

THE COURT: -- in order to choose the jurors who will decide this case.

MR. MCFARLAND: (Indiscernible.)

THE COURT: The jurors are the people --

MR. MCFARLAND: You're not listening.

THE COURT: -- who decide whether the State has proven --

MR. MCFARLAND: Your Honor -- I mean, Judge, I want to be downstairs.

THE COURT: -- the case beyond a reasonable doubt or not.

MR. MCFARLAND: I don't care about none of that crap. I want to be downstairs.

THE COURT: Do you understand all that, Mr. McFarland?

MR. MCFARLAND: I don't care about none of that. (Indiscernible).

THE COURT: All right.

MR. MCFARLAND: I want to go back downstairs. I (indiscernible).

THE COURT: You have a constitutional right --

MR. MCFARLAND: I'm not doing it. (Indiscernible).

THE COURT: -- to be present at all stages of the proceedings, including hearing the Court's ruling, jury selection and then trial. It's important for you to be here --

MR. MCFARLAND: I don't -- I don't care (indiscernible). I don't care about all that.

THE COURT: -- in order to hear and see what is happening.

MR. MCFARLAND: Why do you keep going on?

THE COURT: See and hear the witnesses, the jurors, and assist your lawyer.

MR. MCFARLAND: This guy's a fucking clown.

THE COURT: Not being in the courtroom can be detrimental to you for those reasons. If you voluntarily decide not to attend jury selection and trial, --

MR. MCFARLAND: Yeah. Yeah. Yeah. Yeah. You do whatever you think you can do.

THE COURT: -- the jury selection and trial will continue --

MR. MCFARLAND: I want to be downstairs.

THE COURT: -- even though you are not here. You can always request to be brought back into --

MR. MCFARLAND: What are you an idiot or something? I just told you I want to go downstairs.

Why don't you give it up?

THE COURT: -- the courtroom at any point even if you previously decided not to be here.

MR. MCFARLAND: (Indiscernible.)

THE COURT: Do you still wish to leave the courtroom and give up --

MR. MCFARLAND: I don't -- I don't even remember what you got to say. Nothing you say mean nothing to me, man. You are a pheasant to me, man. Nothing you say means nothing to me.

THE COURT: Okay. All right. The record --

MR. MCFARLAND: I want to be downstairs.

THE COURT: -- will reflect the Court has advised --

MR. MCFARLAND: (Indiscernible.)

THE COURT: -- Mr. McFarland of his rights pursuant to case law and Practice Book Sections 44-8. So with that --

MR. MCFARLAND: Yeah. (Indiscernible.)

THE COURT: -- he has decided to voluntarily absent himself from the courtroom. Marshals, you can bring him into the --

MR. MCFARLAND: Yeah. Yeah. Yeah. Yeah. Yeah.

THE COURT: -- empty room. Thank you, Mr. McFarland, for your attention.

MR. MCFARLAND: Tell somebody -- tell somebody

who cares.

(Mr. McFarland was escorted out of the courtroom.)

THE COURT: All right. Just leave him right in there. All right. Thank you, marshal. All right. Mr. Koch, before I begin with some remarks, did you make an effort today to consult with Mr. McFarland and alert him to the fact that in addition to the Court issuing a ruling this morning on your request to have him found incompetent, that we'd also potentially be starting jury selection and hence trial in his matter?

ATTY. KOCH: I did, your Honor.

THE COURT: And can you tell me the outcome of that?

ATTY. KOCH: It was about like it was here.

THE COURT: All right. So meaning that he refused to converse with you in any sense?

ATTY. KOCH: Yes. I think the main difference is he -- he pretends that I'm not there.

THE COURT: Okay. All right. Thank you, Mr. Koch. I need to note all that for the record pursuant to Practice Book Section 44-8, 44-47, and cases discussing the situation and analogous situations, including State versus Edwards, 150 -- 158 Conn. App. 119, cert denied 318 Connecticut 906; State versus Hines, 165 Conn. App. 1, cert denied 321

Connecticut 920; State versus Wood, 159 Conn. App. 424. Cases cited in each of those matters. And also State versus Crawley, 138 Conn. App. 124, cert denied 307 Connecticut 925. The Court finds that under the totality of the circumstances for the defendant's acts and conduct he has waived his right to be present at trial. His absence is self-imposed. The Court further finds based on the representations of -- of his attorney, who has placed his interactions with the defendant this morning and on prior court appearances on the record, the defendant was told that jury selection is commencing this morning on the long form Information filed by the State alleging two counts of murder, which the Court also did place on the record in his presence this morning. The defendant was also informed by his attorney and officer of the court that the trial would commence and continue in his absence. That was done today as well as in the past. The defendant being adequately aware -- being made adequately -- The defendant being made aware of our trial posture, nevertheless is refusing to remain in the courtroom and to participate. The defendant has been represented by Attorney Koch since his appointment as a Special Public Defender many months ago. He has been incarcerated on these charges since November of 2019. Our Connecticut Appellate Courts have held

that there is no requirement that the trial court personally inform the defendant of his right to return to the courtroom as long as the defendant is made aware of his right to return, which his lawyer will be doing. In State versus Edwards, 158 Conn. App. 119 at 142, a similar situation arose in which a defendant argued that a valid waiver of the right to be present requires the defendant to be brought up personally before the Court and advised of his right to be present and then permitted to make a waiver in light of that advisement. The Appellate Court citing Talton versus Warden held that no such procedure is required under Connecticut law. The record reflects that the defendant has been given ample opportunity to be present; yet, he chose to remain -- he chooses to remain in the lockup. As Edwards instructs, the Court cannot be permitted -- excuse me -- the defendant cannot be permitted by his disruptive conduct to indefinitely avoid being tried on the charges brought against him. It is the defendant's apparent strategy by his voluntary absence to choose to protest the proceedings against him on what he perceived to be procedural deficiencies or on fairness in his prosecution or as part of a strategy to prevent his prosecution from moving forward. The defendant has previously been found competent to stand trial, but not competent to represent himself.

State versus Gonzalez, 205 Connecticut 673, discussed in Footnote 17 of State versus Edwards, instructs that this Court at this point and on the record has no further obligation to inquire in that regard. The Court will instruct the venire panel that the defendant's absence from the courtroom must be disregarded. The Court will further at regular intervals during jury selection and trial, if need be, require defense counsel to again meet with the defendant, inquire of his willingness to attend the proceedings, explain that jury selection or trial is continuing in his absence, and the progress of the proceedings, and report to the Court the defendant's position on the record after being so informed, and if he wishes to return to the courtroom. The record should also reflect that the Court did inquire as to whether the courthouse lockup was technologically equipped to broadcast audio of the proceedings or visual of the proceedings to the defendant, and was told that it was not possible in the lockup. However, the record should also reflect that the Court inquired as to whether the locked anteroom, adjacent to defense counsel's table, which has an elevator down to the courthouse lockup, had the technological capability of broadcasting audio of the proceedings, and it was told that it did have that capability. So the Court has arranged for that

system to be activated so that the defendant while he's in that anteroom, while he be out of the presence of the jurors and he will not be able to see the proceedings, he will in fact be able to hear what is transpiring here in the courtroom. Thus, the defendant (as stated) has taken steps to allow the defendant, who is able to sit, to be in close proximity to the proceedings, to hear all the proceedings related to his case, including jury selection, the Court's rulings and so forth. The jurors will not be able to see him in that room but he can hear everything, and counsel will have the opportunity to confer with Mr. McFarland at regular intervals to advise him of his right to be present and certainly his right to come back any time he wishes to if he's able to comport himself appropriately.

Okay. Turning to the immediate issue at hand. With respect to the defendant's motion made for a competency examination, there's a request that the Court issue a finding that he is incompetent to stand trial. I'll apologize for this in advance. The Court is going to read its decision into the record. This matter was originally scheduled to commence trial, specifically jury selection on September the 8th of 2022. On that date, the record will reflect, that after an on-the-record discussion with Attorney

Koch and State's Attorney Garbarsky regarding the start of the trial, the Court granted Attorney Koch's request for a competency examination pursuant to Connecticut General Statute 54-56d. The defendant himself engaged the Court at that time, and as he had with prior court appearances before other judges, and as he has again demonstrated yet again this morning, wished to voluntarily absent himself from the proceedings. For the reasons I will not again belabor for the record, the Court granted the defendant's request and ordered a competency examination be conducted. An evidentiary hearing was conducted on October 20, 2021 in connection with the results of the requested competency examination. The Court received exhibits into evidence and heard testimony from Paolo Santilli from the Department of Corrections and Dr. Howard Zonana. The Court also heard oral argument that day on the question of the defendant's competency to stand trial. In reaching its conclusions, the Court has fairly and impartially considered all the evidence received at trial, evaluated the credibility of the witnesses, assessed the weight, if any, to be given specific evidence, and measured the probative force of conflicting evidence, reviewed all exhibits, relevant statutes, and caselaw, and has drawn such inferences from the evidence or facts established by the evidence that it

deems reasonable and logical. To the extent it is necessary to further amplify, the Court's credibility determinations for each witness were made among other things on the basis of the conduct, demeanor, and attitude of the witness -- witnesses, as well as all the other factors relevant for each witnesses -- each witness with respect to the credibility evaluation. LaPointe versus Commissioner of Corrections, 316 Connecticut 225, 268 to 271. Additionally, any other evidence on the record not specifically mentioned in the Court's decision that would support a contrary conclusion, whether said evidence was contested or uncontested by the parties was considered and rejected by the Court. State versus Edmonds, 323 Connecticut 34. Preliminarily, the Court notes that the Defendant's -- excuse me -- that Defendant's Exhibit A is the report from the CMHC team task to evaluate the defendant's competency based on this Court's September 8, 2022 order. The defendant declined to participate in the evaluation. Exhibit A contains a synopsis of the team's observations. The defendant was, quote, adamant he was not going to participate in the competency evaluation. However, the team, consisting of Lisa Blumenthal, Madelon Baranoski, and Dr. Olalekan O-l-a-o-l-u, madam monitor, pointed out that the defendant was not agitated or disorganized in his interactions with the

team. At no point during their, quote, brief interaction the team indicated did the -- did the defendant appear to be experiencing psychiatric symptoms or cognitive impairment, and his grooming, hygiene, appearance, and demeanor were all within normal limits. The defendant's appearances before this Court on September 8, 2022 and October 20, 2022 are consistent with the conduct and observations documented by the team in Defendant's Exhibit A. The Court in reaching its conclusions carefully reviewed the July 10, 2020 report generated by the Whiting Forensic Hospital in connection with competence to stand trial, which was marked by this Court -- I just want to make sure I get this right -- as Court's Exhibit 1, but had been introduced for purposes of an earlier hearing in -- with respect to a competency to stand trial hearing as an exhibit on July 10, 2020. It was I believe marked as Defendant's Exhibit A at that particular hearing, but it has been marked as Court's Exhibit 1 by this Court in connection with the hearing this Court conducted on October the 20th. The defendant's initial presentation, as documented in Defendant's Exhibit B, while he was incarcerated at Garner C.I., is noteworthy for the following indications. Reports from staff of disorganized thinking, irritable mood, would not leave his cell, very, quote, paranoid, very, quote, psychotic. Had

not showered in weeks, poor hygiene. Had not been returning -- Excuse me. Had been refusing his medications while at Cheshire Correctional Institute before being sent to Garner. Acute psychiatric symptoms. He was transferred to Whiting and engaged in a course of treatment concluding -- including, I should say, medication. And as the July 20, 2020 report, marked as Court's Exhibit -- Just a second. Excuse me. The July 10, 2020 report from Whiting, which has been marked as Court's Exhibit 1, documents his progress and their conclusion that he was restored to competency. I will not place on the record the entirety of the findings and observations of Whiting at that time, but the salient sections note as follows in Court's Exhibit 1. Mr. McFarland followed the unit rules and routines, and he was able to approach staff with concerns in order to have his needs met. For the most part, he was polite, conversational, and enjoyed good nature and exchanges with patients and staff alike. When he was not in structured groups, he filled his time by reading, listening to music, playing board games, and talking on the telephones. Although he agreed to meet with staff members, including this writer, he refused to comply with our efforts to conduct a formal evaluation of his competency. In doing so, he was polite and respectful, but remained adamant that he

would not discuss legal matters in detail with staff in the hospital. Mr. McFarland remains on the same medication regimen, as indicated in our original report, and his mental status has remained stable. He has not exhibited any signs of psychosis or mood disturbance. His attention, concentration, and memory are excellent. His thinking is logical, relevant, and goal directed. During this lengthy hospitalization, we have had the opportunity to observe and to interact with Mr. McFarland on a daily basis, which has served to further inform our assessment. Mr. McFarland persists in his assertion that the Judicial System is conspiring against him, and he bitterly complains about the injustices that he believes exist. However, there have been no indications that he is suffering from true paranoia or delusions that affect any aspect of his thinking or functioning. He has shown that he has the capacity to understand his current circumstances and the court process and that he is capable of participating in it to the extent necessary to resolve his legal matters. He has managed to resolve numerous court cases in the past, and it is our opinion that he still possesses those capacities at this time. Based on all available information, it remains the opinion of this evaluator and the treatment team that Willie McFarland still

demonstrates a sufficient understanding of the proceedings against him and has the capacity to assist in his defense should he choose to do so. It continues to be the recommendation of Whiting Forensic Hospital that Willie McFarland be found competent to stand trial at the next hearing on this matter. In our opinion, he is not in need of hospital level care at this time. The Court did reference State versus Campbell, 328 Connecticut 444, in considering whether to grant the defendant's request for another competency examination in order to attempt to gain additional information as to whether the defendant's refusal to cooperate with his attorney and efforts to voluntarily absent himself in the proceedings was volitional or the product of a cognitive deficit suggestive of a lack -- suggestive of a lack of competence to stand trial. The burden of proving that the defendant is not competent by a preponderance of the evidence and the burden of going forward with the evidence are on the defendant, having raised the issue. The defendant is statutorily presumed competent. State versus Johnson, 253 Connecticut 1, pages 30 to 31. The defendants obstreperous, uncooperative, or belligerent behavior and hostility toward his attorney did not necessarily indicate the defendant's incompetency. State versus DeAngelis, 200

Connecticut 224 at 230. Competence to stand trial is not defined in terms of mental illness. An accused may be suffering from a mental illness and nonetheless be able to understand the charges against him and assist in his own defense. The fact that the defendant was or is receiving medication and would require medication during the course of the trial does not render him incompetent. Illness, if any, is not per say evidence of incompetence. State versus Ross, 269 Connecticut 213 at 273. In order to overcome the presumption of competency, the defendant was required to demonstrate that there was a reasonable doubt about his competence and reasonable doubt is established by substantial evidence, not mere allegations of incompetence or mere legal conclusions offered by counsel. Jarrett versus Commissioner of Corrections, 108 Conn. App. 59, cert denied, 288 Connecticut 910. State versus Ross cited in Jarrett stated that a competent but mentally ill criminal defendant can choose not to follow the advice of counsel and choose a course others think clearly is not in best interest. And that's State versus Ross at page 273. This Court has also reviewed in connection with this issue State versus Bagley, 101 Conn. App. 653; State versus Jordan, 151 Conn. App. 1, cert denied at 314 Connecticut 909; State versus Hines, 165 Conn. App. 1, cert denied at

321 Connecticut 920. State versus Frances 148 Conn. App. 788, cert was granted, and it was reversed on other grounds, however. As well as State versus Campbell and State versus Dort, which I previously noted in my September 8, 2022 remarks. The Court concludes that it has not been presented with any evidence or testimony that establishes by a preponderance of the evidence that the defendant's failure to communicate with counsel or cooperate fully with the team tasked with evaluating him as a result of this Court's September 8, 2022 order was a result of a lack of competency to stand trial. Again, I am not going to go over line by line the entirety of all the reports introduced into evidence, but I will refer to certain salient parts of those exhibits. The case law instructs that there is no single approach or factor that is most important in establishing competency. The Court has considered the testimony from Paolo Santilli and Dr. Zonana, as well as the exhibits introduced and discussed at the hearing. As stated in State versus Jordan, 151 Conn. App. 1, cert denied 314 Connecticut 909, there is no case law that establishes a bright line rule as to when a competency report becomes stale. According to State versus Hines at 165 Conn. App. 1, cert denied at 321 Connecticut 920, the standard to be applied is the same regardless of whether the defendant was

previously found incompetent. Mr. Santilli, who is employed as a correctional counselor at the Department of Corrections and is assigned to Cheshire Correctional Institution, has had essentially day-to-day contact with the defendant since 2019 while the defendant has been placed in the institution's Protective Custody Unit, because the defendant's case is considered, quote, high profile. His, quote, regular contact with the defendant has included not only observations but also face-to-face interactions and communications with the defendant during that time. In summary, his interactions and observations of the defendant have shown him to be very cordial and very, quote, to the point. No aggressive behavior or violence. He provided appropriate and contextual responses during conversations they've had. He tells jokes. Holds -- This is meaning the defendant. Holds conversations with other inmates, sits with others inmates, read books -- reads books, watches TV, writes, maintains good hygiene, asks for soap, asked about commissary money, and also generally keeps a low profile. Mr. Santilli is aware that the defendant takes medication which is administered by a nurse following a routine, sometimes twice -- sometimes twice a day following that routine. There is no evidence that the defendant failed to take his medication. And

according to Mr. Santilli, quote, as far as he knows, the defendant does take it. He has not, meaning Mr. Santilli, seen any evidence of thought disturbance, mental disorganization, or confusion on the part of the defendant based on his conversations and communications. Dr. Zonana acknowledged that he did not personally participate in any of the prior hearings involving the defendant, but merely was part of a, quote -- was really part of, quote, reviewing evaluations and reports. He has never met the defendant, never done any psychological testing of the defendant, nor has he observed the defendant while the defendant was at Whiting. Although Dr. Zonana spoke merely in general terms of delusions, Dr. -- Dr. Zonana indicated that people with delusions can nevertheless act volitionally or purposefully. When asked about the impact of a delusion related to what was called and the question, quote, a legal case with respect to someone's choice to cooperate or not with his attorney, Dr. Zonana said that you, quote, try to explore that, and quote, to see if there is a particular reason involved with that choice. He stated, quote, if you get some kind of a rationale that may be based on reality, then sometimes they are correct too, end quote. And has been placed on the record a number of times and it's contained in the reports, the defendant has had what

he considers negative experiences with the Criminal Justice System based on his lengthy criminal record and his disciplinary tickets while in corrections. Although, Dr. Zonana referenced the reports as indicating, quote, delusional thoughts over a number years, he conceded that the staff at Whiting in Defendant's Exhibit C indicated no evidence of delusional thinking after four months of observation. He also conceded that, quote, it could occur, and quote, that individuals charged with serious offenses would have some distrust and paranoia about the Criminal Justice System. He also said, quote, it was possible, and quote, that someone's hatred or animosity toward the judicial system could interfere with that person's reluctance or inability to work with his attorney. As was the case in State versus Campbell, a somewhat analogous -- somewhat analogous to this situation, the Whiting team did not indicate that the defendant's silence was due to a cognitive deficit or an irrational psychotic process. His testimony conveyed varying -- meaning Dr. Zonana's. His testimony conveyed varying levels of certainty regarding a possible link between the defendant's behavior and any mental disorder, compounded by the fact that he was merely testifying from a review of certain reports and not personal knowledge of having interacted with the defendant. When asked directly

by defense counsel in the following question, quote: You cannot make a conclusion here today as to whether Mr. McFarland is or is not competent to stand trial; is that right? End quote. Dr. Zonana expressly indicated that, quote, on the basis of me not having done the evaluation myself, I can just say what I think about the reports, but I generally don't make opinions if I haven't, end quote. Dr. Zonana agreed that many of the tools and techniques used during an ordinary competency evaluation were utilized on the defendant during the competency to represent himself evaluation. Of particular interest to this Court, as referenced by Dr. Zonana is Defendant's Exhibits C and E, reports from CMHC dated April 13, 2020 and April 19, 2021, respectively, and signed by Dr. Lori Hauser from Whiting and Dr. Vitiello, who is a colleague of Dr. Zonana.

Defendant's Exhibit C, and evaluation by the Whiting Forensic Team, the defendant was observed at Whiting for about three to four months. Some salient aspects of that report are as follows. According to the observations of the team, Dr. Hauser and Susan McKinley, a licensed clinical social worker forensic monitor, indicated with regard to Mr. McFarland, his thought processes were logical, organized, and goal directed with no evidence of paranoia or delusional thinking. His attention, concentration, and memory

were excellent. His mood was generally bright and stable. As he became familiar with staff and patients alike, he engaged in good natured banter with occasional loud and boisterous exchanges. Mr. McFarland consistently reverted to the same persecutory things. He expressed mistrust of the court system, except to indicate that he would not provide detailed explanations, except to indicate that it stemmed from abuse and mistreatment that he had suffered as an inmate in the DOC. And that was in connection with a -- a question about a civil suit which he references throughout the evaluation. Apart from those ideas, Mr. McFarland exhibited no difficulty in functioning. He demonstrated that he understand and was quite capable of complying with the unit rules and routines. Psychological testing was not conducted during the course of the hospitalization. The team's psychologist approached Mr. McFarland on several occasions in an attempt to engage him in that aspect of the evaluation. On those occasions, he politely but adamantly refused testing. Throughout this period of hospitalization, Mr. McFarland's mental status was evaluated daily by multiple staff across all shifts. He was known to be guarded at times, but he did not display symptoms that were indicative of florid psychosis. His mood was stable and at no time did he appear dysregulated.

In fact, there was no evidence that there were any symptoms interfering with Mr. McFarland's ability to understand the proceedings or participate in a defense of his charges. During continued attempts to engage him on a formal competency interview, Mr. McFarland was consistently polite but adamant in his refusal. Based on the above information, it is the opinion of this evaluator and the treatment team that Mr. Willie McFarland demonstrates a sufficient understanding of the proceedings against him and has the capacity to assist in his defense should he choose to do so. He did throughout this -- He did not express other notions that suggested he was paranoid or delusional. In fact, there were no other indications that he was experiencing psychiatric symptoms that would prevent him from considering his options and moving forward with resolving his legal matters. Mr. McFarland has extensive experience with the Criminal Justice System, and on that basis possess the knowledge necessary to make reasoned decision about proceeding with his pending charges. In light of these conclusions, it is the recommendation of the Whiting Forensic Hospital that Mr. Willie McFarland be found competent to stand trial at the next hearing on this matter.

Turning now to Defendant's Exhibit E, dated April 9, 2021, the conclusions of CHMC regarding an

assessment of the defendant's ability to represent himself in a murder trial with consequences as serious as that of a murder trial. And in that report, the Whiting findings are discussed as well. In that report it is noted, psychological testing was also attempted on several occasions, but he quietly but adamantly refused testing, noting that it was not necessary. It was felt that there was no evidence that there were any symptoms interfering with Mr. McFarland's ability to understand the proceedings or participate in a defense of his charges. He expressed ideas of suspiciousness -- His expressed ideas of suspiciousness appeared to be a function of his character in which he cast himself as the victim and a world view borne of a lifetime of interfacing with the Criminal Justice System. He accepted all prescribed medications, cooperated with unit rules, and complied with medical assessments. He further did not endorse any auditory or visual hallucinations, stating my mind doesn't play tricks on me. He then appeared to respond to internal stimuli during the evaluation. On formal cognitive evaluation, Mr. McFarland was alert and oriented with respect to his name, date of birth, location, date, and context for the evaluation. He exhibited some deficits in his attention and concentration. Mr. McFarland's overall fund of knowledge was assessed to

be in the average range. He performed simple calculations correctly. He was -- Mr. McFarland was able to identify similarities between multiple paired items, stating dog and lion are animals, orange and banana are fruit, coat and suit are clothes, table and chair are furniture. When asked for the meaning of the common proverb what goes around comes around, Mr. McFarland stated you're going to get yours. He stated no -- no sense crying over spilled milk. Spilled milk meant it happened, let it go, don't worry about. He gave appropriate responses to various situations assessing social awareness. Mr. -- With respect to the section captioned understanding of proceedings, Mr. McFarland reported that he is facing, quote, murder, two people, end quote, and further described that it was a, quote, cold case. Mr. McFarland reported that, quote, a felony is more serious, higher crime. He identified his charges are felonies. When asked to describe the role of a defense attorney, Mr. McFarland stated I don't like attorneys. They are supposed to represent you to the fullest, help you out. Mr. McFarland described the role of the prosecutor as, quote, want to be held responsible for actions on state side. Mr. McFarland was able to identify various pleas. He stated guilty means the defendant did it and not guilty means didn't do it. He could further describe

Alford as not saying you did it but the evidence is there enough to convict. When asked to describe plea bargaining, Mr. McFarland stated in involves, quote, making a deal, compromise. Mr. McFarland described that certain people could not serve in a jury, including felons and friends. He was also aware -- Excuse me. He was aware that jurors are selected, stating, quote, it's between you and the prosecutor to select jurors. When asked to describe what evidence means, Mr. McFarland stated there is no evidence. He expects distrust that I was seeking for specifics about his case that could be shared with the Court. Mr. McFarland shared many beliefs regarding the unfair practices of the Court and the, quote, system in general as it relates to leadership or, quote, the top. Of particular relevance giving -- Of particular relevance given Dr. Zonana's acknowledgement that many of the tools and techniques used during an ordinary competency examination are utilized in a competency to represent himself, evaluation of a following indication is noted in sections captioned understanding of the proceedings, which I've just gone through. He has a -- He has an extreme suspiciousness and distrust of the legal system borne of his lifetime of interface with that system.

Defendant's Exhibit D, dated May 21, 2021, which

is an addendum of -- to the 4-9-21 report, indicates as follows. A -- In salient parts. A repeat mental status examination was attempted on May 10, 2021. Mr. McFarland was minimally cooperative with cognitive testing. In a psychiatric review assistance, he stated that he was taking some medications but he could not remember the names. He did not endorse any auditory or visual hallucinations. He did not appear to respond to internal stimuli during the evaluation as some people with psychosis will do. He stated his civil rights were violated, specifically his 8th and 14th Amendment rights. He provided a factually correct understanding of those two amendments. Mr. McFarland stated that my evaluation was an attempt by the State to obtain facts about his case that could be used against him. The Court finds the opinions of the experts who actually performed or attempted to perform competency evaluations of the defendant, both at Whiting and CHMC, to have more persuasive weight than the expert Dr. Zonana who did not. Dr. Zonana conceded consistent with the case law that someone suffering from a mental illness can nevertheless be competent to stand trial, and further acknowledged that his testimony was not simply because someone has delusions they are automatically not competent. He also recognized with respect to Defendant's Exhibit C

that a team found him competent not just one individual after observing him for approximately four months. He also acknowledged that the defendant was motivated to cooperate with the evaluators when he deemed it to be in his own self-interest with respect to the issue of whether he could proceed as a self-represented party. Thus, the defendant did demonstrate an ability to participate in the proceedings and chooses not to because of what he believes to be his own self-interest, a position arguably borne of his lengthy past and presumably negative interactions with the Criminal Justice System and periods of incarcerations which has created a mistrust of the legal system in him. The defendant presents much differently at present in Corrections than he did upon initial admission to Whiting, as discussed earlier by the Court, in connection with Court's Exhibit 1. That -- Or excuse me. In connection with the report dated January 16, 2020. The defendant has the ability to participate but chooses not to. The defendant did not produce any evidence that the defendant's condition has changed at all, let alone materially, since the dates of his most recent competency evaluations dated July of 2020, April 13, 2020, April 9, 2021, and May 21, 2021. Although, this Court has attempted to canvass the defendant personally on 9-8 and 10-20 and then

again today, State versus Hines and other cases hold that a trial court is not required to canvass the defendant personally as part of this independent inquiry into his competency to stand trial. The defendant's demeanor and position has remained essentially unchanged since the most recent evaluations I have just referenced in that he distrusts a system which he feels has treated him unfairly in the past and has consequently refused to cooperate with evaluators. State versus Edwards, 158 Conn. App. 119, cert denied 318 Connecticut 906. The testimony of Mr. Santilli in conjunction with the opinions and observations of the evaluators who actually met with and interacted with the defendant does not demonstrate confusion, thought disturbance, or any form of mental illness impairing the defendant's ability to understand his legal predicament and to assist in his own defense. State versus Jordan, 151 Conn. App.

Based on what has been presented to the Court, there is no substantial evidences that raises a reasonable doubt as to the defendant's competency. The defendant has failed to overcome the statutory presumption of competency by a preponderance of the evidence. Therefore, for the reasons I have articulated, the Court finds the defendant competent to stand trial.

NNH-CR19-0342524-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF NEW HAVEN
v.	:	AT NEW HAVEN, CONNECTICUT
WILLIE MCFARLAND	:	NOVEMBER 16, 2022

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ELPEDIO VITALE, JUDGE

A P P E A R A N C E S :

Representing the State of Connecticut:

ATTORNEY SETH GARBARSKY
ATTORNEY LISA D'ANGELO
State's Attorney's Office
235 Church Street
New Haven, Connecticut 06510

Representing the Defendant:

ATTORNEY W. THEODORE KOCH, III
ATTORNEY MICHAEL BROWN
Koch, Garg & Brown, LLP
8 West Main Street
Suite 2-10
Niantic, Connecticut 06357

Recorded By:
Kathyrn Darling

Transcribed By:
Mary Labasi
Court Recording Monitor
235 Church Street
New Haven, Connecticut 06510

THE MARSHAL: All rise. The Honorable Superior Court for the Judicial District of New Haven at New Haven for the transaction of criminal business is now open and in session in its place.

The Honorable Judge Vitale presiding.

Good morning, your Honor.

THE COURT: Good morning. Thank you, Marshal.

Good morning, everyone.

ATTY. KOCH: Good morning, your Honor.

ATTY. D'ANGELO: Good morning.

THE COURT: All right. Excuse me.

Mr. Koch, have you had an opportunity to meet with Mr. McFarland here and any news to report?

ATTY. KOCH: Yes. And he does not want to come up.

THE COURT: All right. And as I've indicated throughout, that despite Mr. McFarland's unwillingness to be present, he has been afforded, through technology which has been employed throughout since it's been put in place, the ability to see and hear all of the proceedings that are taking place in the courtroom.

All right. The Court is prepared to rule on certain claims that were made late yesterday afternoon. And the claims have to do with certain questions that the defendant wanted to ask of Detective Dolan which the State has objected to as

calling for hearsay.

The defendant has argued that the questions and answers are admissible for three different reasons which I will address in turn. Looking back at what the questions were initially to Detective Dolan that Mr. Koch wished to pose, those questions are as follows: Did you read that Veronica Sars-Doyle told police she was present for the murders? Did you read that she told police Bruce Hankins committed the murders. Did you read that she said Lee Copeland wore yellow work gloves at the scene. Did you read she told police she used the bathroom? Did you read she said the murder weapon was left in the sink?

With respect to Mr. Hankins, the questions to be posed were: Did you read that Bruce Hankins said Lee Copeland confessed? Did you read Hankins said Copeland was looking for money? Did you read that Hankins was a suspect? Did you read that Hankins was a street person? Did you read that Hankins used knives? Did you read Hankins received a large amount of money shortly after the murders? And I think the -- there was a general question thereafter, what did you do?

The Court conducted a hearing yesterday regarding the defendant's proffer of certain hearsay statements, I'll just put on the record, alleged to have been made by Veronica Sars-Doyle and Donald

Bruce Hankins in connection with the deaths of Fred and Gregory Harris. The defendant seeks to introduce said statements as relevant to third-party guilt. The Court heard testimony yesterday generally from Detective Sean Dolan about the contents of certain taped statements in all declarations and memorialized in police reports. In the absence of the jury, the defendant introduced certain exhibits. Defendant's Exhibit A though L for ID only for purposes of the hearing. The Court has thoroughly reviewed all of the exhibits introduced at the hearing. Mr. Hankins and Ms. Sars-Doyle are now deceased.

Although Detective Dolan testified as to the contents of certain of these exhibits, he was merely repeating what was in those reports and statements as told by Hankin and Sars-Doyle to other police officers. In other words, Detective Dolan was not the direct recipient of the information allegedly provided by Hankins or Sars-Doyle. Other officers authored the reports and interviewed both of these individuals. The defendant seeks to have Detective Dolan, nevertheless, testify as to the contents of said statements and reports.

It asserts, first, that they are admissible under Connecticut Code Evidence 8-9, the residual hearsay exception. As State v. Bennett, 324 Conn. 744 at 762, a 2017 case noted, as a general rule

hearsay is not admissible unless it falls under one of several well-established exceptions. The purpose behind the hearsay rule is to effectuate the policy of requiring testimony be given in open court under oath and subject to cross-examination. The residual exception allows the admission of hearsay evidence not admissible under any of the established exceptions if one, there is a reasonable necessity for the admission of the statement; and two, the statement is supported by equivalent guarantees of reliability and trustworthiness essential to other evidence admitted under traditional hearsay exceptions.

State v. Bennett goes on to say that the residual hearsay exception should be applied in the quote, rarest of cases. The defendant's claim that the residual hearsay exception founders with respect to the prong which requires equivalent guarantees of reliability and trustworthiness for the following reasons: Neither Sars-Doyle or Hankins had ever been subjected to cross-examination regarding the circumstances surrounding their observations or recollection of alleged statements made by Lee Copeland. Particularly with respect to Sars-Doyle given the state of her overall mental and physical health at the time of the crime at issue, which I'll get to in a minute, she was never subject to cross-

examination to further explore her ability to properly observe or hear events she claims to have seen and heard.

So turning first to Sars-Doyle, Defendant's G for ID reflects that on February 9th of 1988 she denied any firsthand knowledge of the deaths of either of the Harrises and claimed to have been driving around Wallingford and North Guilford at relevant times. She claims that she got details of their deaths from her sister and indicated -- indicates that those details were provided by her sister; mentioned that the victims were, quote, gagged. No evidence of that has been presented from the crime scene.

She also denied specifically speaking to Lee Copeland about the crimes. She also mentioned Copeland's participation which she characterized as satanic rituals. And she swore to the truth of the contents of that statement. And she discussed going to Florida. This interview occurs at, obviously, many months after the crimes were committed.

And Sars-Doyle, in declarations contained in Defendant's K for ID contained in a police report dated July 24th of 1990, it's indicated she came to the police department to quote, sign a statement. The officer goes -- attempts to question her about the veracity of the that statement, particularly a

component of that statement where she apparently claimed that she could hear a hairdryer from her car while the hair drying was being used allegedly, from what I can gather, inside 655 Fitch Street, claimed to be able to hear that from her car while the radio was on. She agreed to answer questions but insisted this account not be tape recorded. Her declarations to police in this report in the Court's view strain credulity with respect to how and why she claims to be inside the apartment. There's no explanation as to how the apartment was entered.

The Court will note that from what the Court's heard so far when police entered, they found a T.V. on and pizza box on the table. There's no mention of where the Harrises were at the time they entered. She claims to witness certain things while on the second-floor bathroom. Claims that Mr. Copeland used an eight to ten-inch knife and there was no explanation for the material found in the kitchen sink.

Regarding Defendant's I for ID, a July 23rd, 1996 taped statement, so almost ten years after the crimes, she described that at the time of the crimes she had major medical issues including problems with her ears, eyes, nose, throat, respiratory, epileptic problems and that her memory of that night was quote, kind of blank. She used to drink a lot. And I'll

note parenthetically Mr. Hankins claimed she was a cocaine user. But now her memory is, she says, totally clear.

I am going to go into exquisite detail about the narrative portions of this statement, particularly on pages four, five, and six. Suffice it to say, the Court finds this account to be not only disjointed but largely incoherent as she rebuffs efforts by the interviewer to clarify. She claimed Copeland, for example, was wearing a white t-shirt, but noticed no blood which is odd given the nature and extent of the stab wounds the Court has heard about.

On page nine, for example, she indicated Mr. Copeland's pants had what she said were red spots that she at one point characterized as rust stains and then mentioned that they could have been dried with a hair dryer after being prompted by the interviewer to describe the clothing.

She also said Mr. Copeland hit Mr. Harris with a pipe over the head and gagged him and she then denied going into the apartment in contrast to a previous statement. Also for the first time she mentions a random person named Gus who she says was there because she could see shadows. And that Mr. Copeland mentioned a machete. She also noted she had started taking epileptic pills about two to two and a half months ago. And another point mentioned Mr. Copeland

being in possession of a crowbar.

Defendant's Exhibit C for ID, which was an interview of July 23rd, '90, she claims Mr. Copeland brought yellow gloves to the scene but also mentions various other gloves as well which would appear to be at odds with the testimony the Court is aware of regarding the presence of one of the victim's DNA on the inside of that glove as a major contributor.

Defendant's J which is her then boyfriend, he tells the police that Miss Sars-Doyle told him that she was in the car and never went in and that this was about a debt collection.

The Court concludes that because of the existence of internal inconsistencies within these statements by Miss Sars-Doyle, whether oral or tape recorded, the obvious inconsistencies between her statements over the years, the length of time gaps between the statements themselves and the gap between the first statement and the crime, her stated mental, physical, and substance abuse infirmities. She mentions drinking alcohol in many of these statements, that these declarations lack sufficient guarantees of trustworthiness, in addition, I'll note to actually being hearsay within hearsay as being offered through Detective Dolan. I'll make reference with respect to that Connecticut Code of Evidence 8-7 and also the Court will note State v. McClendon 248

Conn. 572.

The Court is well aware with respect to the defendant's claims that the overarching claim here with respect to both Miss Sars-Doyle and Mr. Hankin with respect to third party guilt, and what is argued to be the interest of fairness but is noted in State v. Hines, 243 Conn. 796 at page 11, footnote 9. That is not an overriding test. This is a situation where the Court, as a gatekeeper, determines that under the totality of the circumstances equivalent guarantees of trustworthiness do not exist. To satisfy the Court that these statements are reliable enough to be admitted as noted in State v. Rosario, 99 Conn. App. 92, cert was denied. It is not the case that any exculpatory evidence is required to be admitted regardless of its admissibility under evidentiary rules.

Turning now to claims regarding Mr. Hankins, the Court reaches a similar conclusion for the same general reasons and others. As I already noted, there's no cross-examination and as noted for Veronica Sars-Doyle, the same principles apply with respect to cross-examination.

Defendant's Exhibit L for ID is an interview that took place apparently on September the 2nd of '87. Mr. Hankin is alleged to have said that he last saw Mr. Copeland on September 1st and that prior that

it had been I believe six to eight weeks earlier. At one point, I believe he said he had last seen Copeland one time in the last three months and said he saw Copeland six times in the past year only. He also claimed he heard about the murder from T.V. and newspaper accounts.

The Court already yesterday from -- as did the jury, from Detective Dolan that general details had been released to the public. And also recounted a conversation he heard -- he had with Mr. Copeland. The Court notes that at this point, the account claimed to have originated from Mr. Copeland contained in the exhibit, the Court believes is nebulous at best. Meaning that immediately after telling the police that he, meaning Mr. Hankins, heard about the crime from T.V. and newspapers, the interviewer then asks, what did Lee tell you. Response is he told me, quote, Greg got hurt but he didn't say he was stabbed and stuff, end quote. Hankins asked if it was the same Greg. He said, yeah, I turned around and said, the father was -- I turned around and he said the father was bound and gagged, throat clashed -- slashed and got stabbed, that's all I know. Hankins asked why. In the report there's no answer given.

It isn't clear to the Court whether Mr. Hankins is referencing some kind of admission, claimed

admissions by Mr. Copeland or whether Mr. Copeland is merely parroting media reports despite the effort by the defense in a question calling this a quote, confession. Unhelpfully, the police did not ask any follow up questions to clarify what the Court believes to be a statement that is ambiguous at best.

Mr. Hankins, at least according to Defendant's Exhibit L for ID, at that time does -- does not appear to have been overly close to Mr. Copeland based on the number and nature of their contact and their apparent differences over women over the years. It's unclear where this conversation with Mr. Copeland occurred based on Defendant's Exhibit L for ID. For what it's worth, it's also inconsistent with Veronica Sars-Doyle. And I'll note that Mr. Copeland merely says Greg got, quote, hurt. And obviously he got more than hurt, he was killed. And again, there's a reference to gagging for which the crime scene developed no evidence of.

This also once again hearsay within hearsay coming from Detective Dolan, Connecticut Code of Evidence 8-7 and again noting State v. McClendon at 248 Conn.

The Court also observes that the alleged comments by Mr. Copeland to Mr. Hankin were made as they talked about quote, getting high and, quote, we talked about Greg. The nature of the drug was not

explored. He denied getting high with Mr. Copeland often. But he said that he did not have occasion to get high -- excuse me. But he said that he did have occasion to get high with him. Saw him periodically. I don't want to be bothered, he said. I don't want to get high with him, according to Mr. Copeland.

It would appear that at least according to Defendant's L, Mr. Hankin would be -- excuse me. It would not appear that at least according to Defendant's L, Mr. Hankin would be a person Mr. Copeland would suddenly make an alleged admission to if that's in fact what it was. And again, the Court has no idea based on the state of the evidence with respect to Mr. Copeland's -- excuse me. Mr. Hankins' overall state, meaning whether he suffered any infirmities related to his health or mental health at the time this alleged statement was made.

So based on the legal principles already articulated, the Court finds that that account, limited as it is from Mr. Hankins still lacks sufficient guarantees of trustworthiness to satisfy the residual hearsay exception. Parenthetically, I'll note there is no physical evidence that links Mr. Copeland to the crime.

With respect to the claim advanced that the statements from Miss Sars-Doyle and Mr. Hankin are merely being offered for their effect on the hearer

and thus so characterized do not constitute hearsay, the Court concludes as well that that claim must fail. The defendant by making such a claim of admissibility by definition is asserting that the statements by Sars-Doyle and Miss Hankins, are not being offered for the truth of what they assert.

The defense has already argued that those very same statements were admissible as residual hearsay and relevant to third-party guilt. Meaning, substantive evidence the defendant demonstrates a direct connection to a third party's culpability for these crimes. The state of mind of the officers who received this information is not relevant to the issue the jury has to decide in this case, whether the State has met its burden of proof beyond a reasonable doubt with respect to the defendant, Willie McFarland. The issue for the jury is not why the police did or did not do something. The officer's state of mind is not relevant to the guilt of a defendant. As a result, the substance of the statements are thus -- are thus relevant only if they are true.

The proffering party bears the burden of establishing the relevance of the offered testimony. The Court has considered and found instructive language in State v. Cruz, 212 Conn. 351 to 357, State v. Collymore, 168 Conn. App. 487, cert granted

on other grounds. And it was affirmed. That is a case where the substance of a witness' statements that came in through a police witness only because those witnesses had already testified and had been cross-examined at trial. And that's obviously not the case here. And State v. Armadore, 338 Conn. 407, 2021 case.

The Court also finds the language in State v. Ramos, 182 Conn. -- excuse me. Sorry, Madam Monitor. -- State v. Ramos, 182 Conn. App. 604, 619, 2018, cert denied, to be instructive in an analogous situation where the Court, in footnote 12, noted an attempt to backdoor third party -- a third-party culpability defense by other means.

I will also note in my 39 years of practice, either as a lawyer or as a Judge, I have never before heard in connection with a hearsay objection either the name of Sir Walter Raleigh or the -- the concept of ancient documents used which I'm now gonna get to.

In terms of the ancient document claim under Connecticut Code of Evidence 8-3(9), the document must be in existence for more than thirty years if produced from proper custody and, quote, otherwise free from suspicion. The contents of the reports regarding Veronica Sars-Doyle and Mr. Hankins, the Court has already determined to not contain sufficient guarantees of trustworthiness, to be

reliable. Which of course impacts the requirement that the writer be, quote, free from suspicion. Most cases dealt with, that I researched, ancient deeds and maps. And the Court was not directed to any authority referencing police reports or witness' statements as is the case here.

With respect to the teletype, that -- that claim involves multiple layers of hearsay and it has not been demonstrated to be even relevant to this case.

With respect to Dr. Lee, there has been no showing that he is unavailable. And again, you seem, meaning the defense to link it -- link it to Mr. Copeland. So unless there's some other admissible evidence with respect to Mr. Copeland, I don't know that Dr. Lee is necessarily going to be relevant in connection with this, if he does appear. But as it was also noted, apparently Mr. McFarland is left-handed as well. The -- if the claim was, as I understood it, that he was able to divine, apparently, that the perpetrator was left-handed, that's -- anyway. So I'll leave it at that.

So for all those reasons, the objection is sustained to the series of questions that were asked in the absence of the jury which I've already placed on the record.

Obviously, you know, he's still on the stand, meaning Detective Dolan. I'm not sure, what other

avenues are going to be pursued. I'm just dealing with what was presented to me at that time.

The Court is also, because there's was a question, Madam Monitor, that was asked, I believe at 2:41:11 of Detective Dolan, which incorporated in the question what Ms. Sars-Doyle said to other police. The Court is gonna order that stricken for the reasons I've just articulated.

Anything else I need to address before I summon the jury?

ATTY. KOCH: Yes, your Honor.

THE COURT: Okay.

ATTY. KOCH: Just very quickly, I just want to reassert that this information that I -- I know you just denied it. I just want to say it -- I still think it's admissible under State v. Prudhomme, 210 Conn. App. 176. That use of evidence of the allegedly incomplete and biased police investigation in determining whether the -- the defendant was guilty of the charged offenses is -- is relevant.

THE COURT: Well let me stop you there. I have not addressed any claim or any question related to what is being characterized, I think by that comment as the adequacy of the police investigation. So --

ATTY. KOCH: That was my --

THE COURT: -- I have not -- I have not, nor should it be interpreted as foreclosing questions

Order On Request for Additional Pages/Words in Motion, Petition or Brief SC 230267

Docket Number: SC20802
Issue Date: 5/22/2024
Sent By: Supreme/Appellate

Order On Request for Additional Pages/Words in Motion, Petition or Brief SC 230267

SC20802 STATE OF CONNECTICUT v. WILLIE MCFARLAND

Notice Issued: 5/22/2024 2:03:59 PM

Notice Content:

Motion Filed: 5/22/2024
Motion Filed By: State Of Connecticut

Order Date: 05/22/2024

Order: Granted

Granted for an additional 2,000 words, which are to be used for state constitutional grounds only.

By the Court
Notice sent to Counsel of Record

Certification

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2A, that May 29, 2024:

(1) the electronically submitted e-brief and appendix have been delivered electronically to Lisa J. Steele, Assigned Counsel, P.O. Box 547, Shrewsbury, MA 01545, Tel. (508) 925-5170, Email: steelelaw@earthlink.net;

(2) the electronically submitted e-brief and appendix and the filed paper e-brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statue, court order or case law;

(3) a copy of the e-brief and appendix have been sent to each counsel of record in compliance with Section 62-7, on May 29, 2024;

(4) the e-brief and appendix being filed with the appellate clerk are true copies of the e-brief and appendix that were submitted electronically;

(5) the e-brief and appendix are filed in compliance with the e-briefing guidelines and no deviations were requested; and

(6) the e-brief contains 14,924 words; and

(7) the e-brief and appendix comply with all provisions of this rule.

/s/ Robert J. Scheinblum
Senior Assistant State's Attorney