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SUPREME COURT

of the

State of Connecticut

Judicial District of Bridgeport

S.C. 20632

STATE OF CONNECTICUT

V.

LARISE N. KING

Brief of the State of Connecticut–Appellee
with attached appendix

To be argued by:

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I. Nature of the proceedings

The state charged the defendant, Larise King, with conspiracy to commit murder, General Statutes §§53a-54a(a) and 53a-48, and murder as an accessory, General Statutes §§53-54a(a) and 53a-8(a). ClAppx 10. The defendant waived her right to a jury. T2/5/21 at 6-7. Following a trial to a three-judge panel, on May 5, 2021, the court majority, *Hernandez* and *Dayton,* Js., found the defendant guilty on both counts. ClAppx 11-22. The dissenter, *Richards*, J., agreed with the majority's historical fact-finding but would have convicted on lesser included offenses. ClAppx 23. The majority imposed a sentence of 50 years of incarceration. T6/6/21 at 52.

II. Counterstatement of the facts

A. Unanimous factual findings

The following account summarizes the unanimous factual findings of the three-judge panel, with citations to the Memorandum of Decision, ClAppx 11-20, and to supporting citations in the trial record.

1. The relationship between the defendant and the victim

The defendant and the victim, Dathan "Daedae" Gray, got married in October 2016, but they "had an acrimonious relationship and were separated approximately two years later," with continuing rancor. ClAppx 11; see T4/28/21 at 68, 93; T4/29/21 at 58; T5/3/21 at 23-26, 38-48. Early in 2019, for example, the defendant displayed her rage in a three-and-a-half-minute videotaped speech directed at the victim that she posted on social media**,** in which she screamed, in rising emotion, "Fuck me being your wife, Nigga"; StExh 115 at 00:10; "We not doing this. We not doing this. We not doing this"; id. 00:33; "Stop playing with me. Stop mother fucking playing with me"; id. 02:14; "I've been trying to hold my mother-fucking pain in for too fucking long"; id. 03:10; and ending with, "He's really got me to the

fucking point where I'm going to put my hands on him and I'm a lose everything"; id. 03:21-03:27. She warned, 'Whatever my family do to you is beyond me. . . They tired of you. They tired of you." ClAppx 11; see StExh 114 at 14:20 (defendant acknowledging making video), T4/29/21 at 116, 118.

2. The altercation on the night of the murder

At approximately 10 p.m. on July 26, 2019, Nosadee Sampson, a friend of the victim, drove to the Snack Shack, where the victim was employed, on the corner of Newfield Avenue and Revere Street in the East End of Bridgeport. Fatima Woodruff, who also worked at the Snack Shack, was yelling at the victim. Sampson convinced the victim to come sit in her car across the street in the victim's driveway. Once the victim was settled in her car, Sampson walked to a party at the BK Lounge. ClAppx 11-12; see StExh 1-10, T4/27/21 at 62-66 (showing locations); T4/29/21 at 52-55 (Sampson testimony).

At approximately midnight, Woodruff called the defendant, complaining that the victim had come to the Snack Shack too intoxicated to work and asking the defendant to come handle him. The defendant called her friend Janice Rondon for a ride. Rondon picked up the defendant from her home in the north end of Bridgeport and drove her to the Snack Shack. The defendant walked over to where the victim stood with his new girlfriend, Sakeryial Beverly. When Rondon also approached, the victim said to her, "Why the fuck you over here? Mind your own fucking business, bitch." The victim tried to spit on Rondon. Rondon spat back at him. The defendant and the victim then started fighting verbally and physically. ClAppx 12; see T4/28/21 at 76-86 (Rondon testimony); T4/29/21 at 26, 29.

Sampson learned of the fight, left the BK Lounge, walked to where she had left the victim, and saw him and the defendant wrestling on the ground. As Sampson and others tried to separate

them, Sampson heard the defendant "'ke[ep] saying' that it was 'going to be [the victim's] last day' and that [the victim] was 'going to breathe his last breath.'" ClAppx 12-13; T4/27/21 at 26-31 (police observed altercation); T4/29/21 at 56-61, 72-73 (Sampson testimony).

"Pole cameras and surveillance cameras in the vicinity of the Snack Shack video recorded part of the altercation. The defendant, who Sampson identified on the video, can be seen pacing around in an agitated manner." ClAppx 13; see StExh 98 (thumb drive of surveillance videos, including Camtasia sequential video compilation); T4/28/21 at 51-59 (process for making Camtasia compilation).

The defendant's boyfriend, Mike Edwards, arrived and calmed her down. Rondon then dropped off the defendant on 6th Street, where the defendant claimed she was going to meet Edwards, who had left separately. ClAppx 13; see T4/28/21 at 86-89 (Rondon testimony).

3. The defendant entering the getaway car, moving into the driver's seat, and preparing for a get-away

Shortly after the altercation, at approximately 12:57 a.m., a surveillance camera recorded a light-colored SUV driving on 6th Street. The SUV stopped across the street from 234 6th Street and picked someone up, whom the court finds, based on the totality of the evidence, including the defendant's admission, was the defendant. The SUV crossed from 6th Street to Newfield Avenue and drove past the Snack Shack, [the victim's] residence, and the BK Lounge. At approximately 12:59 a.m., another camera recorded the SUV continuing southbound on Newfield Avenue toward Orange Street. At approximately 1:10 a.m., a camera recorded the SUV driving northbound on Newfield Avenue. The SUV turned onto Beardsley Street and parked on the right side of the street

approximately four to five houses from the corner of Newfield Avenue.[1] The SUV was facing westbound toward the I-95 overpass.

After the SUV parked, the video shows a short male wearing a dark hooded sweatshirt get out of the driver's seat and a female … who[], based on the totality of the circumstances, the court finds to be the defendant – get out of the rear passenger seat on the driver's side of the vehicle.

The man walked toward the back of the car and continued on Beardsley Street toward Newfield Avenue. The defendant got in the driver's seat of the SUV and backed it up. The court finds that the defendant did this in order to put more room between the SUV and the car parked in front of it in order to facilitate a faster getaway. The defendant kept her foot on the brake causing the rear brake lights to remain illuminated.

ClAppx 13; see StExh 98, T4/28/21 at 54-60 (Camtasia showing defendant enter SUV, route taken by SUV, parking on Beardsley Street, driver exiting, defendant entering driver's seat).

4. The murder

Pole and surveillance cameras on Newfield Avenue showed that the short male in the dark hooded sweatshirt was accompanied by a taller man in a grey hooded sweatshirt. The two men rounded the corner onto Newfield Avenue. Sampson

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[1] Although the murder scene at the corner of Newfield Avenue and Revere Street was highly trafficked by cars and pedestrians, Beardsley Street, around the corner, was relatively quiet. T4/28/21 at 58-59, 61. The SUV parked on Beardsley Street six houses away from where the shooting occurred two minutes later. T5/3/21 at 13.

> saw the two men approaching and saw that they were wearing "hoodies." She immediately knew something was wrong because it was too hot to be wearing hooded sweatshirts. Sampson tried to warn [the victim], saying, "They got hoods on; they got hoods on." The two men approached [the victim]'s girlfriend. The men pushed [the victim]'s girlfriend aside. One of the men quickly said something to [the victim] and then the shorter man, who was wearing the black hooded sweatshirt, shot [the victim] in the face, head, neck, back, shoulder, arm, hip and abdomen. The shooter continued firing even after [the victim] was already on the ground.[2]

ClAppx 14; see StExh 98; T4/28/21 at 66; T4/29/21 at 63-65 (Sampson's account).

Shot Spotter[3] registered 16 gunshots at 1:13 a.m.. ClAppx. 14; see T4/27/21 at 36-38; T4/28/21 at 31. The victim "sustained 11 gunshot wounds and four graze wounds" and died from the wounds. ClAppx 15; see 4/27/21 at 99-106 (dead on arrival at hospital); T4/28/21 at 2-26 (findings of medical examiner).

"The court concludes that the defendant, from where she was waiting on Beardsley Street - approximately 226 meters away - would

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[2] Sampson saw that the men did not exchange anything by hand with the victim and instantly shot him. T4/29/21 at 65-66, 73. The 16 targeted gunshots caused minimal damage to nearby cars and none to bystanders. T4/27/21 at 76-77, 86.

[3] "Shot Spotter is a system of microphones around a city that uses sound to triangulate the location of gunshots and relays the information back to patrol officers." *State v. Jones*, 210 Conn. App. 249, 252, cert. denied, 343 Conn. 901 (2022); see T4/27/21 at 36-38; 4/28/21 at 31.

have heard the gunfire. Notably, rather than driving away or calling the police, the defendant simply turned off the headlights." ClAppx 14; see T4/27/21 at 22-23 (bystander heard shots and sped off); T4/28/21 at 90-91 (Rondon, parked near defendant while waiting for friend, heard gunshots and took off); T4/29/21 at 64 (Sampson testifying, "We all ran").

5. The getaway

> The two men ran back to Beardsley Street and got into the waiting SUV. The defendant turned the headlights back on and drove westbound on Beardsley Street and under the I-95 overpass. The time that elapsed from when the two men got out of the SUV to walk toward Newfield Avenue to the time they ran back, got into the SUV and drove off was two minutes and 22 seconds.

ClAppx 14; see StExh 98, T4/28/21 at 61-63 (Camtasia video); T4/29/21 at 20-21 (elapsed time).

6. The ballistic evidence

"Crime scene detectives recovered 15 cartridge casings, five bullets, and one bullet fragment from the scene of the shooting. [The medical examiner] also removed several bullet fragments and a bullet from [the victim]'s body." ClAppx 15; T4/27/21 at 68-88 (crime scene evidence); 92-95 (autopsy). The bullets were 9mm, all fired from the same gun. ClAppx 15; T4/29/21 at 38-46 (firearm examiner testimony).[4]

7. The defendant's first police statement

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[4] Testing excluded as the murder weapon two guns seized from the home of Andrew Bellamy, who police determined was one of two men with the defendant in the SUV. T4/29/21 at 12-13, 45. Police did not discover the murder weapon.

On July 28, 2019, Detective Jorge Cintron spoke with the defendant in a recorded interview. StExh 113, T4/28/21 at 69-72.

> The defendant stated that at approximately 11:17 p.m. [on July 26] she received a call from [Woodruff], who was yelling and screaming on the phone and saying something about "Daedae." … The defendant told Woodruff that she was "coming there." The defendant called Rondon and asked for a ride. Rondon picked the defendant up approximately 30 minutes later and drove her to the Snack Shack.
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> According to the defendant, when they arrived, she went inside and spoke to Woodruff. The defendant and Woodruff then went across the street to speak with [the victim], who was sitting in the backseat of someone's car. [The victim]'s girlfriend was there, as well. The defendant said that [the victim] got out of the car and was swearing at her and "disrespecting" her. Rondon stepped in and told [the victim] that he was disrespecting the defendant. [The victim] responded by spitting at Rondon; Rondon spat back at him. The defendant calmly explained to Detective Cintron, "That's when I just punched him in the face and we started fighting." The defendant said that she and [the victim] were fighting about their marriage. She denied telling [the victim] that he was going to take his last breath that day.
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> The defendant continued explaining to Cintron that she called her boyfriend …. Edwards, who showed up at the scene, spoke to [the victim], and diffused the situation. The defendant got back into Rondon's car and went to Edwards' family's house on 6th Street. [The defendant claimed that] Edwards then drove her home to Karen Street and dropped her off. She denied calling anyone else that night and also maintained that

she was at home during the shooting.

ClAppx 15-16; see State's Exh 113.

8. Police locate the getaway car and owner

Reviewing video footage, police "concluded that the white Ford Explorer depicted on the videos was involved in the incident." They saw that car in daylight footage from the day before that captured the license plate and determined that it was registered to the defendant's cousin, Oronde Jefferson, at 247 6th Street in Bridgeport. Thereafter,

> [o]n July 31, 2019, [police] saw Jefferson's white Ford Explorer driving in the area of Newfield Avenue and Stratford Avenue. [Police] conducted a motor vehicle stop. Jefferson was alone in the vehicle.[5] They confirmed that Jefferson's 2002 white Ford Explorer had all of the same external features … as the SUV that was used during the homicide.

ClAppx 16-17; see T4/27/21 at 112-58 (retrieval and time-accuracy adjustments of surveillance videos); T4/28/21 at 36 (police focus on Ford Explorer); 41-50 (city pole cameras); T4/28/21 at 99-103 (police stop Ford Explorer, driven by Jefferson); T4/29/21 at 5-6, 31-32 (Jefferson's Ford Explorer same as getaway car in videos).

9. The defendant's second police statement

On August 1, 2019, the defendant participated in a second recorded police interview. StExh 114; T4/28/21 at 103-07.

> The defendant repeated the version of the events that she gave on July 28, 2019, during her first interview, but added that she actually called Edwards because she wanted him to fight [the victim] and that he instead told her that she needed to "stop making a scene in public." The defendant

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[5] Jefferson was 5'5" tall. StExh 116. Bellamy was at least 6' tall. T4/29/21 at 10.

again stated that Edwards drove her home and dropped her off before the shooting occurred. The defendant said that she first learned of the shooting when "Ala Carter" called her via Facebook Messenger at 1:32 a.m.

Officers then asked the defendant if she knew anyone who drove a white Ford Explorer. The defendant said no. They asked if there might be a video of her getting into a white Ford Explorer. Again, the defendant said no. When explicitly told that there was a video of her getting into such a vehicle, the defendant replied,[6] "I did."

The defendant then admitted that her cousin Oronde Jefferson … had a white Ford Explorer. The defendant said that Jefferson and one of his friends, who she could not identify, picked her up on 6th Street between Connecticut Avenue and Stratford Avenue. The defendant got into the back seat behind Jefferson. When asked if she had called Jefferson, the defendant said no. She said that Jefferson was already in Bridgeport and that "he just saw me" and they "linked up out of the blue" despite it being almost 1 a.m. The defendant claimed that she went for a ride with Jefferson and that they drove down Newfield Avenue, turned left on Orange Street, and then returned via Central Avenue to 6th Street.

The officers advised the defendant that the surveillance video showed that they did not drive down Central Avenue. Rather, the video showed that the SUV stopped on Beardsley Street immediately before the shooting. It further showed two

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[6] After police told her that a video showed her entering the Ford Explorer and asked her if she did so, the defendant paused for twelve seconds of silence, then admitted, "I did." StExh 114 at 16:21-16:33.

men getting out of the front of the car and the defendant getting out of the back seat of the car and into the driver's seat. The defendant denied that she got into the driver's seat. She then stated that she was not in the car and that they had dropped her off on 6th Street. The officers asked the defendant four questions: (1) "Did they tell you where they were going?" (2) "Did they tell you why they were going to get out of the car?" (3) "Did you have any idea?" and (4) "Did they tell you to drive?" The defendant did not respond to any of the questions.

ClAppx 17-18; see State's Exh 114.[7]

10. Police interviews of Andrew Bellamy

The police interviewed Andrew Bellamy three times. StExh 130.[8] In these interviews,

> Bellamy admitted that he and Jefferson were in Jefferson's white Ford Explorer on the evening of July 26,

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[7] The interview ended because the defendant's aunt told police that the conversation was over and told the defendant to go outside to get some air. StExh 114 at 32:16-33:50.

[8] After asserting a fifth amendment privilege, Bellamy testified at trial under a grant of immunity. T4/30/20 at 47-57. In his testimony, he said that Jefferson was shorter than he, Jefferson drove the SUV, he sat in the passenger seat, they picked up the defendant near 6th Street and Stratford Avenue, they drove around the area, and they parked on a side street. He claimed, however, that no one got out of the car, he did not see anyone get killed, he did not hear gunshots, he did not see Jefferson with a gun, and he did not put on a hooded sweatshirt or see Jefferson do so. Id. 47-85. Bellamy's recorded police statements were admitted as *Whelan* statements, *State v. Whelan*, 200 Conn. 743 (1986). Id. 81-90.

2019, and into the early morning hours of July 27, 2019. At some point, they picked up Jefferson's female cousin, who, based on the totality of the circumstances, the court finds to be the defendant. The defendant sat in the back seat of the SUV and the three drove to Newfield Avenue to go to a party at the BK Lounge. [Bellamy admitted that] he, Jefferson, and the defendant were the only three people in the SUV all night. Rather than go to the BK Lounge, Jefferson parked the car on Beardsley Street and the three had some drinks. When asked why the defendant got out of the back seat and into the driver's seat of the SUV, Bellamy responded that it was likely because she was "nicer," meaning less intoxicated. He later changed that story and said that no one ever got out of the SUV. He maintained that story despite the video footage [showing three people getting out, two leaving, and the defendant getting into the driver's seat] and despite the fact that Bellamy's cell phone recorded him taking 240 steps right at the time of the homicide. Bellamy also said that after sitting in the parked car for some time, he, Jefferson, and the defendant went to his (Bellamy's) girlfriend's house on Hawthorne Street and stayed there until 5 a.m. on July 27, 2019.

ClAppx 18-19; StExh 130; T4/30/21 at 88-91.

11. Cellphone records contradicting the defendant's statements

Special Agent James Wines of the Federal Bureau of Investigation testified regarding cell phone records and cell site location information obtained for the defendant's two cellular telephones (Verizon cell phone 203-953-8073 and Sprint cell phone 203-859-1845 [her "job" phone]) and for

Jefferson's cellular telephone (TMobile phone 203-727-5275). ...

The cell records show that the defendant and Rondon called each other approximately one dozen times between 11:20 p.m. and 11:41 p.m. [on July 26, 2019]. The cell site location information establishes that during each of these calls, the defendant's Verizon cell phone was accessing a cell site in the vicinity of her residence. Beginning at 12:20 a.m. [on July 27], the defendant made several calls using her Verizon cell phone. Despite the defendant's claim to the contrary, during this time period, she called Jefferson four times - at 12:44 a.m., 12:45 a.m.,12:46 a.m. and 12:51 a.m. The cell site location information establishes that during each of these calls, the defendant's cell phone was accessing a cell site on Newfield Avenue in the East End of Bridgeport in the vicinity of [the victim]'s homicide. The records further show that during the first three calls, Jefferson was in the North End of Bridgeport. By the time of the fourth call at 12:51 a.m., Jefferson's phone had begun moving south toward the defendant in the East End of Bridgeport.

At 1:10 a.m., the defendant placed a call to Rondon. During the call, the defendant's Verizon phone accessed the same cell site on Newfield Avenue in the vicinity of [the victim]'s homicide. At 1:15 a.m., Rondon called the defendant. Once again, the defendant's Verizon phone accessed the cell site on Newfield Avenue in the vicinity of [the victim]'s homicide. Thereafter, the defendant placed and received several calls on both of her cellular telephones. The cell site location information shows the defendant's telephones accessing cell sites first heading westbound, in the same direction that the defendant and the shooter fled the scene of

the shooting and then heading north toward the defendant's residence. Between 1:41 a.m. and 1:46 a.m., the defendant's Sprint phone and Jefferson's cell phone both accessed cell towers in the same locations. From this information and Agent Wines' testimony, the court concludes that the defendant and Jefferson were traveling together toward her residence.

ClAppx 19-20; see T4/30/21 at 2-45 (Agent Wines' testimony), 45 (Rondon phone number); StExh 129 (data power point).

B. The panel majority's findings of guilt

From these agreed background facts, the majority found these facts beyond a reasonable doubt:

> The defendant repeatedly told [the victim] that it was his last day and he was going to take his last breath. He was murdered within the hour. The defendant then made numerous false exculpatory statements in an effort to distance herself from the crime. Specifically, she lied about whom she called after the altercation with [the victim]. She lied about where she was at the time of the shooting. She lied about knowing anyone who owned a white Ford Explorer. She then lied about being in the Explorer with Jefferson. She lied about driving by [the victim]'s location ten minutes before the murder. She lied about driving the car away from the scene. And when given the opportunity to deny knowing that Jefferson was going to shoot [the victim], she declined to do so.
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> The evidence establishes that the defendant was not an unknowing or unwilling participant in the crime. Rather, she called Jefferson four times in a seven-minute period right after her fight with [the victim]. She was the one who knew where to find [the victim] and the only reasonable inference to draw is that she directed Jefferson to [the victim]'s location. The

defendant did not direct Jefferson to stop and beat [the victim] up despite claiming that is what she wanted her boyfriend, Michael Edwards, to do earlier. In fact, the evidence is clear that the defendant and [the victim] regularly and publicly engaged in verbal and physical altercations, and that the defendant, by her own admission, was the one who punched [the victim] in the face earlier in the evening. Instead, she directed Jefferson onto a dark side street. When Jefferson and Bellamy got out of the car, the defendant got into the driver's seat and backed the car up giving herself plenty of room to pull out quickly. She then sat waiting in the car with her foot on the brake while Jefferson went to kill [the victim]. Jefferson did not have an issue with [the victim]. The defendant had an issue with [the victim] - many of them going back several years. Yet Jefferson walked up to [the victim] and shot him in the face. He then shot him another 14 times. This was not a spur of the moment decision. It was a plan. Tellingly, when the shots were fired, the defendant did not take off running or drive away like Janice Rondon and everyone else within hearing range of the gunfire. Instead, she turned off the headlights and waited for Jefferson and Bellamy to return.

In short, based upon the defendant's stated threats to [the victim] before his murder, and all of the circumstances and events leading up to and immediately following the murder, the defendant's physical acts, the manner in which the murder was committed, and the defendant's serial, false exculpatory statements, the court finds that the defendant and the assailants shared the common intent to cause [the victim]'s death. Further, based upon the foregoing and the timing of her calls to Oronde Jefferson after the fight and before the murder,

the court finds that the defendant solicited and requested him to commit the murder.

The court has considered the proffered defenses urged by defense counsel. Primarily, counsel argues the fact that the two suspected assailants, Oronde Jefferson and Andrew Bellamy, have not been arrested and charged raises a reasonable doubt about the defendant's guilt. General Statutes §53a-48, however, is a unilateral, rather than a bilateral, conspiracy statute, meaning that a conspirator may be prosecuted for conspiracy despite the non-prosecution or acquittal of the alleged co-conspirators. *State v. Colon*, 257 Court 587, 600-601 (2001).

Based on the evidence presented, Judge Hernandez and [Judge Dayton] find that the state has proven beyond a reasonable doubt[] each of the elements of Conspiracy to Commit Murder, in violation of Sections 53a-54a and 53a-48 of the Connecticut General Statutes and that the state has proven beyond a reasonable doubt[] each of the elements of Murder, in violation of Sections 53a-54a(a) and 53a-8(a) of the Connecticut General Statutes.

ClAppx 20-22.

C. The dissent

The dissenting judge agreed "with the historical facts unanimously found by the trial court." ClAppx 23. On the accessory count, the judge found insufficient evidence that "the defendant had a specific intent to murder [the victim] concomitantly with the intent to assist the two gunmen in carrying out the crime" but found the evidence "sufficient to support a conviction of the lesser included offense of Manslaughter in the First Degree." Id. On the conspiracy count, the judge found the evidence insufficient to prove "that the

defendant had the specific intent to murder" but sufficient to support the lesser included offense of conspiracy to commit assault in the first degree. Id.[9]

III. Argument

A. The defendant's jury waiver satisfied constitutional and judicial criteria

Although defense counsel approved the trial court's jury-waiver canvass and, based on his consultation with the defendant, assured the court that the waiver was knowing and intelligent, the defendant now claims that her jury waiver "was invalid under the federal and state constitutions because the court's canvass failed to ascertain whether [she] understood the role of the jury in a criminal case and the consequences of waiving the jury trial right[.]" Defendant's brief (DB) 11, 20-38. She seeks review of her unpreserved constitutional claim under *State v. Golding*, 213 Conn. 233 (1989). DB 24. Alternatively, she requests that this Court exercise supervisory authority to heighten the criteria for jury-waiver canvasses. DB 37-38.

This claim lacks merit. The federal and Connecticut constitutions require only that a defendant indicate on the record that she has decided to waive the right to a jury, and that the court determine that the waiver is knowing, intelligent, and voluntary. As a matter of supervisory authority, this Court requires trial courts to engage in a brief canvass to ascertain that the defendant understands her choice. The defendant's waiver satisfied constitutional and supervisory-rule standards.

1. Principles of law and standard of review

The sixth amendment to the United States Constitution and

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[9] The parties submitted lesser-included offenses for the panel to consider on each count. DAppx 81-82; T5/3/21 at 57-59; T5/4/21 at 1.

article first §§8 and 19 of the Connecticut Constitution provide a right to a jury trial. Our decisions treat these federal and state constitutional rights as coextensive. *State v. Gore*, 288 Conn. 770, 776 n.7 (2008).

"Any defendant may waive that right [to a jury] but only if he does so knowingly and intelligently." *State v. Shockley*, 188 Conn. 697, 706 (1982). Because courts "'indulge every reasonable presumption against [the] waiver of fundamental constitutional rights'"; *Gore*, 288 Conn. 783-84; there must be "some affirmative indication from the defendant … herself on the record that … she knowingly, intelligently and voluntarily has decided to waive a jury trial." (Internal quotation marks omitted) Id. 777-78.

A court's determination that a jury waiver is valid incorporates "the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused." (Internal quotation marks omitted) *Gore*, 288 Conn. 777. "[T]he fact that [a] defendant was represented by counsel at the time of the waiver and stated on the record that [s]he (1) had sufficient time to discuss the matter with h[er] attorney, and (2) was satisfied with h[er] attorney's advice, support[s] a finding that the waiver was constitutionally valid." *State v. Kerlyn T.*, 337 Conn. 382, 394 (2020).

"Although the constitution requires an affirmative indication of a jury trial waiver on the record from the defendant personally, the constitution does not mandate the particular form that this personal waiver must take." *Gore*, 288 Conn. 786. "'[I]t is not unreasonable for courts to refrain, in the case of the jury right, from constitutionalizing a particular means of demonstrating the legality of the waiver[.]'" Id. (quoting *State v. Crump*, 201 Conn. 489, 503 (1986)). "Courts that have recommended or required a colloquy or canvass have done so not as a constitutional imperative, but as an exercise of supervisory authority."

Id. 786 n.16.

In *Gore*, the Court exercised its supervisory authority to adopt a protocol by which, absent a written waiver, "the trial court must canvass the defendant to ensure that his personal waiver of the fundamental right to a jury trial is knowing, intelligent and voluntary." 288 Conn. 778. Specifically, *Gore* directed that "the trial court should engage in a brief canvass of the defendant," which

> need not be overly detailed or extensive, … but it should be sufficient to allow the trial court to obtain assurance that the defendant: (1) understands that he or she personally has the right to a jury trial; (2) understands that he or she possesses the authority to give up or waive the right to a jury trial; and (3) voluntarily has chosen to waive the right to a jury trial and to elect a court trial.

Id. 788–89

In *State v. Kerlyn T.*, 337 Conn. 396, the Court adopted the Appellate Court's decision, *State v. Kerlyn T.*, 191 Conn. App. 476 (2019), rejecting the claim that the jury waiver canvass was constitutionally inadequate for lack of explanations of differences between jury and court trials. The decision reconfirmed that a jury-waiver canvass "need not be overly detailed or extensive'" and "'[need not] be as extensive as [for example] the canvass constitutionally required for a valid guilty plea because in pleading guilty, a defendant forfeits a number of constitutional rights.'" *Kerlyn T.*, 191 Conn. App. 487 (quoting *Gore*, 288 Conn. 788-89 & n.18). The Court "decline[d] the defendant's invitation to exercise [its] supervisory authority to 'mandate a more particularized canvass' requiring our trial courts to inform a defendant, prior to accepting a waiver of his right to a jury trial, of a litany of facts delineating the differences between a bench trial and a jury trial." 337 Conn. 396 n.10.

"The standard by which the trial court determines the validity of a jury trial waiver is a question of law that is subject to de novo review. … Once that standard has been established, '[w]hether a party has waived his right to a jury trial presents a question of fact for the trial court[.]'" *L & R Realty v. Connecticut Nat. Bank*, 246 Conn. 1, 8 (1998). An invalid jury waiver is structural error, requiring a new trial. *Gore*, 299 Conn. 790 n.20.

2. Procedural background amidst the onset of the pandemic and suspension of jury trials

At the defendant's arraignment on September 23, 2019, the court set bond at one million dollars, resulting in the defendant's incarceration. T9/23/19 at 2-3. After half a year of court dates, on March 10, 2020, defense counsel moved to reconsider the bond amount, noting that the defendant was in her mid-thirties, did not have a criminal record, graduated high school, attended a technical college, and worked throughout her adult life. T3/10/20 at 1-2. The court denied the motion. Id. 3-4. It set the next court date for the next month. T3/10/20 at 4.

That same day, however, Governor Ned Lamont declared an emergency due to the Covid-19 pandemic. On March 12, 2020, the Judicial Branch suspended all jury trials for thirty days. On March 19, 2020, the Judicial Branch suspended jury trials indefinitely. *State v. Washington*, 345 Conn. 258, 285 (2022).

The next court date in the defendant's case occurred almost half a year later. The judge appeared alone on the record and, without considering any matters, simply continued the case to the end of September. T8/26/20 at 1. On September 30, 2020, October 13, 2020, and January 25, 2021, the judge appeared alone and continued the case.

On January 26, 2021, the Governor extended the state of

emergency to April 20, 2021. https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/01-2021/Governor-Lamont-Extends-Connecticuts-State-of-Emergency-for-the-COVID-19-Pandemic-To-April-20. The Judicial Branch suspended jury service until April 30, 2021, and thereafter extended the suspension until May 31, 2021. https://jud.ct.gov/COVID19.htm#Matters

In the midst of this situation, on February 5, 2021, counsel for both sides in this case appeared in court, and the defendant participated remotely from prison, for two purposes. The parties put on the record that the state had made a final plea offer which the defendant had rejected. T2/5/21 at 2. Defense counsel also informed the court that the defendant wanted to waive her right to a jury trial and stand trial before a court. Id. 1. He explained her motivation: she had been waiting in prison for trial almost a year and a half and defense counsel "[did not] know when I can tell her that … she'd ever have a jury trial." Id. The court replied, "I'm in no better position to do that than you are, sir." Id.[10]

The court canvassed the defendant in tandem on her rejection of the state's offer; T2/5/21 at 3-6; and her waiver of a jury trial; id. 6-8. In the portion of the canvass on the plea offer, the defendant stated that she understood the offer, wanted to reject it, was able to understand the proceeding, had enough time to speak with her attorney, was satisfied with his advice, and was rejecting the offer of her own free will. Id. 3-4. She said that, until her arrest, she had been working two jobs including as a manager of a group home. Id. 4. She related that she had graduated high school, went to college for two years, and was trained in phlebotomy but ended up working with

[10] Connecticut jury trials resumed four months later, on June 1, 2021. https://jud.ct.gov/COVID19.htm#Matters.

people with special needs. Id. 4-5. The court told her she could take whatever time she needed to talk with defense counsel. Id. The defendant reiterated that she wanted to reject the offer and said she had no questions for the court. Id. The court found that her rejection of the offer was voluntary and made with the advice of competent counsel. Id. 6.

The court turned to canvass the defendant on the right to a jury.

> THE COURT: Now, there's a second issue that you and I are going to address now, Ms. King, and that is your election for either a jury trial or a courtside trial.
>
> Now, statutorily and you have a constitutional right to what we call a trial by jury, a jury of your peers, Ma'am, or we'll go through the process of selecting a jury and a trial will be presented before a jury, a jury will deliberate and arrive at verdicts. I don't know what those verdicts would be. Those verdicts could be guilty, they could be not guilty, or a mix of the two. Do you understand that, Ms. King?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Now, you have a constitutional right and a statutory right, Ma'am, to a trial by jury. Do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Similarly, you also have a right to waive that jury trial and you can elect … what's called a courtside trial. A courtside trial does not involve jurors as you and I typically understand that. It would involve what we call a three Judge panel, three Superior Court judges that would sit as a jury and then would have evidence presented before them and they would arrive at verdicts and they would perform a sentencing, if any of the verdicts resulted in a verdict of guilty.

Do you understand that, Ma'am?

THE DEFENDANT: Yes, I do.

THE COURT: Now, I've asked you already the questions regarding your ability to understand today's hearing and your school and work history and your relationship with your attorney[.] So I don't have to ask those questions again because I'm satisfied with your answers, but I do have to ask this question, would you prefer to have a jury trial, Ma'am, or would you elect to waive that jury trial and would rather have a trial before a three Judge panel?

THE DEFENDANT: I would waive the jury trial. I would rather have the three Judge panel.

THE COURT: All right and have you had enough time to discuss that election with [your attorney]?

THE DEFENDANT: Yes, sir.

THE COURT: Now, [defense counsel], I turn to you, sir, and I ask you, have you consulted – your client has consulted you on this issue. Are you satisfied, sir, that she understands the election that she has made?

[DEFENSE COUNSEL]: I am satisfied that she is making the election knowingly and voluntarily, yes.

THE COURT: All right, anything further from the State?

[THE PROSECUTOR]: No, Your Honor.

THE COURT: The [court] does find that Ms. King has had enough time to speak with her attorney, her attorney is present and her attorney is certainly more than competent to make the representation that he has made this morning and I also find that Ms. King is more than competent and understands the proceedings today and … understands the

> charge against her and the Court does find that her choice, her election for a courtside trial rather than a jury trial is voluntarily, understandingly made and has been made with the assistance of competent counsel and a waiver may be recorded.

T2/5/21 at 6-7.

Noting that the Governor's order was set to expire regarding court trials on April 20, 2021, the court set a trial date of April 27, 2021. T2/5/21 at 9. The defendant's trial, the first Connecticut criminal trial since the onset of the pandemic, took place as scheduled, in a courtroom specially retrofitted with Covid protections. T4/27/21 at 1.

3. The waiver satisfied constitutional and judicial criteria

The defendant's jury waiver satisfied constitutional requirements. By stating on the record that she wanted to waive her right to a jury and stand trial by a three-judge panel; T2/5/21 at 6-7; the defendant provided the "affirmative indication of a jury waiver on the record from the defendant personally" that the constitution requires. *State v. Gore*, 288 Conn. 786.

Furthermore, the trial court fulfilled its constitutional and supervisory-rule duty of determining that the waiver was knowing and intelligent. It ascertained the three points the *Gore* canvass requires – the defendant:

(1) "underst[ood] that … she personally ha[d] the right to a jury trial"; *Gore*, 288 Conn. 789, see T2/5/21 at 6 ("[Y]ou have a constitutional right and a statutory right, Ma'am, to a trial by jury. Do you understand that?" "Yes");

(2) "underst[ood] that … she possess[ed] the authority to give up or waive the right to a jury trial"; *Gore*, 288 Conn. 789, see T2/5/21 at 6-7 ("you also have a right to waive that jury trial and you can

elect … what's called a courtside trial. .... Do you understand that, Ma'am?" "Yes, I do"); and

(3) "voluntarily [chose] to waive the right to a jury trial and elect a court trial"; *Gore*, 288 Conn. 789, see T2/5/21 at 7 ("[W]ould you prefer to have a jury trial, Ma'am, or would you elect to waive that jury trial and would rather have a trial before a three Judge panel?" "I would waive the jury trial. I would rather have the three Judge panel").

Based on the defendant's and her counsel's answers in this and the preceding canvass, as well as the surrounding facts and circumstances, the trial court was able to conclude that the waiver was valid. *State v. Gore*, 288 Conn. 777. There was "no evidence to suggest that the defendant was not of ordinary intelligence or educational background … or that [s]he lacked meaningful life experience. To the contrary, the defendant's personal characteristics suggest a valid waiver." (Internal quotation marks omitted) *State v. Rizzo*, 303 Conn. 71, 92 (2011) ("defendant was twenty-six years old, a high school graduate, and had several years of steady employment history"). Here, the defendant was 35 years old, a high school graduate with two years of college, and worked throughout her adult life, most recently in a position of responsibility managing a group home. T2/5/21 at 4; T3/10/20 at 1-2. She "confirmed multiple times that [s]he understood" the canvass questions and "unambiguously confirmed that [s]he wanted to waive [her] right" with "no indication of any hesitancy or indecision." *State v. Scott*, 158 Conn. App. 809, 818, cert. denied, 319 Conn. 946 (2015); see *Kerlyn T.*, 337 Conn. 394 (unequivocal answers suggest knowing waiver). In the standstill brought about by the pandemic, her choice had sound support, as she waited in prison and courts closed, jury trials were suspended, and the suspensions were extended, with no knowing when they would resume and, once they did, when her trial

would come. By her jury waiver she was able to set in rapid motion obtaining a trial – the first criminal trial since the start of the pandemic.

Furthermore, the defendant's expression of the adequacy of her opportunity to consult with counsel, and counsel's assurance that the waiver was knowing; T2/5/21 at 3-4, 7; bolstered the reasons for the court to find it valid. *Kerlyn* T., 337 Conn. 396 n.10 (court can rely on counsel to have explained differences between jury and court trials); *Rizzo*, 303 Conn. 104 n.26 (court can rely on defendant's indication that she was advised by counsel and satisfied with advice); *State v. Woods*, 297 Conn. 569, 586 (2010) (fact that defendant conferred with counsel supports conclusion that jury waiver sound); *State v. Marino*, 190 Conn. 639, 646 (1983) ("There is nothing before us to indicate that … the choice of court or jury was not fully discussed with [the defendant] by his counsel"). For these reasons, constitutional and judicial criteria for a valid waiver were satisfied.

The defendant contends, nonetheless, that the court did not inform her that a jury is composed of twelve members of the community, a defendant can participate in jury selection, the jury's verdict must be unanimous, and if a defendant waives a jury trial, a panel of judges will decide guilt by a verdict that, pursuant to General Statutes §§53a-45 and 54-82, need not be unanimous. DB 28. However, "'[o]ur courts '[repeatedly] have declined to require [such] a formulaic canvass and have rejected claims that an otherwise valid waiver of the right to a jury is undermined by the trial court's failure to include a specific item of information in its canvass.'" *Kerlyn T.*, 337 Conn. 395 (quoting *Kerlyn T.*, 191 Conn. App. 490). "'[A] trial court's failure to include in its canvass [certain information, such as] the number of jurors to which the defendant would be entitled and the requirement that the jury's verdict be unanimous does not compel the conclusion

that the defendant's waiver was constitutionally deficient.'" Id. See id. 396 n.10 (declining to require that trial court explain "a litany of facts delineating the differences between a bench trial and a jury trial"); *State v. Cobb*, 251 Conn. 285, 374 (1999) (finding argument that trial court improperly failed to advise defendant that he could participate in jury selection "unpersuasive. In canvassing the defendant, it was not the function of the court to provide an analysis of the strategic advantages and disadvantages to him of a jury trial, as opposed to a trial to a panel of judges. That is the function of the defendant's counsel, not the court").

The defendant notes that "at least 8 [federal] Circuits either require or encourage a colloquy between the defendant and the court explaining the material differences between a bench and a jury trial." DB 25-26. Her authorities do little to advance her argument. The most recent, *United States v. Boynes*, 515 F.3d 284, 286 (4th Cir. 2008), for example, states, "[the defendant] contends that without a 'formal court inquiry' he could not have knowingly, intelligently, and voluntarily waived his right to a jury trial.… Although we reiterate our view that it is much preferable for a district court to insure itself on the record before accepting the defendant's jury waiver, it is not a constitutional imperative. The constitutional imperative is this, no less and no more: the waiver must be knowing, intelligent, and voluntary." Furthermore, the cited federal cases precede *Gore*, in which the Court, citing some of them, determined the appropriate extra-constitutional requirements for jury-waiver canvasses. *Gore*, 288 Conn. 788 n.17.

The defendant's assertion that she was "not in a position to make an informed risk/benefit calculation" or, "Put simply, she did not know what she was doing – because the trial court failed to provide her with that information"; DB at 29; is meritless. First, it ignores the role of her counsel. *Kerlyn* T., 337 Conn. 396 n.10. Moreover, regarding her

claim that she was not informed that it is "demonstrably" more likely that two judges rather than twelve jurors would find her guilty; DB at 29; not only was risk-assessment not the trial court's role; *State v. Cobb*, 251 Conn. 374; but the defendant's math ignores real and perceived advantages of court trials. See *Williams v. Fla.*, 399 U.S. 78, 101–02 (1970) (12-person jury not necessarily more beneficial to defendant than 6-person jury); *Santos v. Comm'r*, 151 Conn. App. 776, 790 (2014) (counsel's advice to waive jury objectively reasonable). She specifically ignores her own thinking, in prison, as the public emergency suspended her constitutional guarantee to a "speedy trial by an impartial jury," making the option to waive the jury right particularly advantageous. Her trial counsel did not "wrongly impl[y] that [she] had no choice and might **never** obtain a jury trial." (Bold in original) DB 29. Rather, he related the state of affairs in February 2021, a strong motivation to waive the right to a jury.

Finally, the defendant contends that the canvass was confusing in stating that a jury's verdicts "could be guilty, they could be not guilty, or a mix of the two" because a "layperson could have easily misinterpreted this to mean that the jury did not need to be unanimous in its findings." DB at 28. The defendant fails to give the words their natural meaning in the context of a trial on two counts. Moreover, she repeatedly stated that she understood and had enough time to speak with counsel, and her attorney assured the court that she understood the decision. The court thus reasonably determined that her waiver was "understandingly made and has been made with the assistance of competent counsel[.]" T2/5/21 at 7. See *State v. Jeremy D.*, 149 Conn. App. 583, 596 (court's canvass, "although not the clearest term it could have employed, was not sufficiently confusing" to invalidate waiver, a conclusion "only reinforced given the fact … that the defendant was represented by counsel"), cert. denied, 312 Conn.

913 (2014).

4. The Connecticut constitution does not set a heightened standard

The defendant contends that, by application of the *Geisler* test, *State v. Geisler*, 222 Conn. 672, 684–86 (1992), this Court should find that the Connecticut constitution has higher jury-waiver standards than the federal constitution. DB 29-37. The *Geisler* factors to consider in reviewing claims that the state constitution provides greater protection than the federal constitution are: (1) the constitutional texts; (2) Connecticut constitutional history; (3) Connecticut precedents; (4) federal precedents; (5) other states' precedents; and (6) contemporary understandings. Id. A *Geisler* analysis demonstrates no variance between federal and state constitutional jury-waiver criteria.

a. Constitutional texts and history

This Court has determined that the jury right provisions of sections 8 and 19 of article first of the Connecticut constitution "are almost identical in substance to their federal counterparts." *State v. Langston*, 346 Conn. 605, 626 (2023). As the defendant notes, the 1972 amendments to section 19 guarantee facets of the jury right – the number of jurors, right to question jurors, and right to preemptory challenges – on which the sixth amendment is silent.[11] DB 30-31. These guarantees, however, "do not apply" to the question here, the standard for waiving the right to a jury in favor of a court trial. *Langston*, 346 Conn. 626 (differences irrelevant to specific question). Indeed, in one respect, it is the Connecticut constitution that expressly envisions the right to waive its jury provisions. Stating that "no person

[11] Prior to Amendment IV in 1972, section 19 (which had been section 21 until 1965) read simply, "The right of trial by jury shall remain inviolate."

shall, for a capital offense, be tried by a jury of less than twelve jurors **without his consent**," (bold added), section 19 explicitly anticipates waiver. But on the narrow issue of the standard for a valid waiver of a jury in favor of a court trial, both constitutions are silent.

The defendant erroneously claims that the word "inviolate" in section 19 shows a "commitment to ensuring that a defendant fully understand what it means to waive her right to a jury trial" beyond that of the federal constitution. DB 31; To the contrary, the term "inviolate," while "reflect[ing] the "importance of the jury right in Connecticut"; *Langston*, 346 Conn. 626-27; neither proscribes nor regulates waiver of the right. Rather, it guarantees that "the institution of jury trial in all its essential features as derived from our ancestors, and now existing by force of our common law as a political right, shall not be changed, but shall remain inviolate." *State v. Gannon*, 75 Conn. 206, 232 (1902). Notably, our common law tradition allowed that, "even in criminal cases, although the accused was entitled to the privilege of a jury, he was not compelled to be so tried." *State v. Worden*, 46 Conn. 349, 357 (1878); see 1 Z. Swift, A Digest of the Laws of the State of Connecticut (1822) p. 737 ("When an issue in fact, is to be tried, **and the parties do not agree to put it to the judges**, it must, of course be tried by a jury") (bold added).

Thus, our constitutional history supports both rights to a jury and to waiver of that right. The guarantee that "the right of trial by jury shall remain inviolate … is a right which, like other rights, may be waived." *Noren v. Wood*, 72 Conn. 96, 98 (1899). Compare *State v. Purcell*, 331 Conn. 318, 342 n.15 (2019) (in analyzing under *Geisler* whether to expand state constitutional protections in waiving *Miranda* rights, historical insights irrelevant because *Miranda* rights unrecognized when constitution adopted).

Waiver of the right to a jury was not initially possible following

enactment of the Connecticut constitution, however, not because the constitution foreclosed it but for lack of statutory authority for a court to try cases:

> Court trials of criminal cases were not permissible until authorized by statute. … This authority was first granted by chapter 56 of the Public Acts of 1874. Prior to the enactment of that statute, any determination of guilt on a trial could be made only by a jury. … The … statutory change was the provision for court trials in criminal cases upon the election of the accused. … It has been carried over into what is now §54-82 of the General Statutes. It conferred on the court the powers and duties of the jury in a trial on the merits.

McBrien v. Warden, 153 Conn. 320, 326-28 (1966).

As for the requirements for a valid jury-waiver, the 1874 statute permitting court trials provided, simply, that "every person charged with an offence * * * **may, if he so elect**, when called upon to plead, be tried by the court instead of the jury, and the court may in such case try said cause and render judgment thereon." (Bold added) *State v. Worden*, 46 Conn. 349, 355 (1878). This terminology did not suggest a mandated canvassing formula.

Indeed, this Court upheld the constitutionality of the 1874 statute against a challenge that the jury right was "inviolate," reasoning, "It cannot be denied but that the right remains to [the accused], unless he *elects* to be tried by the court." (Italics in original) *State v. Worden*, 46 Conn. 355. "[T]he accused may have his choice of two modes of trial, either by jury or by the court, as he may think proper, and if he supposed the court the safer mode of trial, and expressly waived his right of trial by jury, and requested that the court should try the issue as he did, it is hard to see how his right of trial by jury was violated." Id. 360. Accord Z. Swift, supra, p. 737 ("it has been

provided by statute that the parties may, by agreement, put themselves on the court, for the trial of a matter of fact").

Our early precedents specified only that the right to a jury is "a right, the waiver of which is not to be inferred without **reasonably clear evidence** of the intent to waive." (Bold added) *Noren v. Wood*, 72 Conn. 98. Accordingly, courts declined to construe ambiguous statutes to deprive a party of the right to a jury; id. (not interpreting unclear timeframes for requesting jury so as to find waiver); but "a party who does not comply with" a clear timeframe for placing a case on the jury docket "may justly be held to have voluntarily relinquished his [constitutional] right to a jury trial." Id. Requiring a party to take timely action to obtain a jury and needing only an "infer[ence]" from "reasonably clear evidence" to show a waiver does not connote a constitutionally-mandated canvass.

Connecticut constitutional texts and their history refute the defendant's claim.

b. Connecticut precedents

In recent decades, this Court has addressed state and federal standards for jury waivers in tandem. *State v. Gore*, 288 Conn. 776 n.7 (treating as coextensive in absence of showing to contrary); *State v. Crump*, 201 Conn. 499 (analyzing under both constitutions without distinction); *State v. Marino*, 190 Conn. 646 ("We … see no reason to demand as a constitutional necessity a more elaborate procedure for an effective waiver of the right of jury trial as guaranteed by our state constitution. Conn. Const., art. I, §19")[12]; *State v. Shockley*, 188 Conn.

[12] In *State v. Ouellette*, 271 Conn. 740, 757 (2004), the Court reviewed *Marino* because it predated *Geisler* but, presented with "no persuasive federal or sister state precedent," concluded that "in the

704-08 (rejecting federal and state constitutional claims with same analysis). Furthermore, in shaping *Gore*'s supervisory rule and reconfirming its limits in *Kerlyn T.*, this Court enacted the prophylactic protection it deems necessary for waiver of the constitutional jury right.

Connecticut precedents refute the defendant's claim.

c. Other states

Among the states historically, as in Connecticut, "in every case where a question has been raised, statute[s] empowering … the accused to waive a jury trial and elect to be tried by the court, ha[ve] been decided constitutional." *State v. Worden*, 46 Conn. 361; see *Hallinger v. Davis*, 146 U.S. 314, 318 (1892) ("numerous decisions by state courts upholding the validity of such proceeding"). Courts have required a clear indication by the defendant on the record, but no formulaic questioning. See, e.g. *Simmons v. State*, 75 Ohio St. 346, 351-55 (1906) (mere silence insufficient: "Waiver of such right by act of the party is not to be assumed unless his act clearly and necessarily involves such waiver").

To this day, no state has interpreted its constitution as the defendant claims the Connecticut constitution should be read.[13] See

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absence of any substantial reason to revisit our holding in *Marino*, we decline to do so."

[13] Acknowledging that "most states have not constitutionalized the requirements for a valid waiver," DB 34, the defendant points to none that have, and misconstrues *New Hampshire v. Hewitt*, 128 N.H. 557 (1986), which held that a defense attorney could not waive a client's right to a 12-person jury and elect an 11-person jury on the client's behalf, a set of issues not presented here.

generally 6 Wayne R. LaFave, Criminal Procedure §22.1(h) (4th ed.) (citing range of state's requirements, none constitutionally mandated beyond sixth amendment requirements).[14]

Sister state court decisions do not support finding a heightened Connecticut constitutional right to a jury-waiver canvass.

d. Federal precedents

Federal precedents do not suggest any special state constitutional standard for jury waivers. The defendant cites to *non*-constitutional rules – Federal Rule of Criminal Procedure 23(a) (applicable only to federal district courts, requiring, inter alia, written waiver and prosecutorial consent), and supervisory rules for federal district courts. DB 33-34. These rules are means to produce valid waivers, not constitutional dictates in and of themselves. "'[A] court is not constitutionally required to conduct an on the record colloquy with a defendant prior to a waiver of the right to a jury trial.' … All that the

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[14] The defendant cites states' supervisory rather than constitutional rules. DB 34-35. These supervisory rules range from detailed mandates; e.g. *State v. Blann*, 217 N.J. 517, 518 (2014) (both written form and court colloquy must instruct on jury composition, defendant's participation in selection, unanimity requirement, court trial procedure); to flexible suggestions; e.g., *People v. Sivongxxay*, 3 Cal. 5th 151, 170 (2017) ("we emphasize that our guidance is not intended to limit trial courts to a narrow or rigid colloquy. We agree with the Connecticut Supreme Court that ultimately, a 'defendant's rights are not protected only by adhering to a predetermined ritualistic form of making the record'"); *Ballard v. State*, 501 P.3d 1269, 1272 (Wyo. 2022) (not mandating particular colloquy, noting that "representation by counsel at the time of waiver is evidence of an intelligent and knowing waiver").

Constitution requires is that a waiver of the right to a jury trial be knowing, voluntary, and intelligent." *United States v. Carmenate*, 544 F.3d 105, 108 (2d Cir. 2008). See *United States v. Boynes*, 515 F.3d 284, 286 (4th Cir. 2008) (same). Indeed, in federal habeas review of state court practices, neither an "oral colloquy, nor any other particular form of waiver, is required for a valid waiver as a matter of federal constitutional law." *Fitzgerald v. Withrow*, 292 F.3d 500, 504 (6th Cir. 2002).

The *Gore* Court considered federal precedents when it found no constitutional infirmity and fashioned a fitting supervisory rule. *Gore*, 288 Conn. 788 n.17. Federal precedents do not show a heightened state constitutional right to a particularized canvass.

e. Contemporary understandings

In arriving at its supervisory rule, the *Gore* Court balanced the level of protections needed to ensure valid jury waivers against the costs of shifting responsibility from defense counsel to trial courts and adding mandated generic proceedings. The defendant shows no error in *Gore*'s calibration. Her policy arguments are particularly unpersuasive in a case with no indication that she did not knowingly and intelligently choose a court trial.

The defendant first claims that "our current procedure is severely lacking" as shown by "the litigation this issue continues to generate." DB 35. Reasserting rejected claims is not a measure of their merit. In *Kerlyn*, most recently, this Court rejected the need for a new rule.

The defendant claims that individuals might not be aware of differences between jury and court trials. DB 35-36. For represented defendants, however, this Court can count on counsel's role – here, assuring that counsel advised the defendant and was satisfied that she understood her choice. *Kerlyn T.*, 337 Conn. 394. Compared to a trial

court giving an on-the-sport generic script, "'[d]efense counsel is in a much better position … to ascertain the personal circumstances of his client.'" *Maia v. Comm'r*, 347 Conn. 449, 473 (2023).

The defendant asserts that, without constitutionalized canvass guidelines, counsel might not convey adequate information distinguishing jury and court trials. DB 35-36. This Court, by contrast, trusts that "competent counsel is capable of explaining those basic differences sufficiently to enable a defendant to make an informed decision when selecting one over the other." *Kerlyn* T., 337 Conn. 396 n.10.

The defendant warns that "a defense attorney may advise the client to waive the jury trial as a cost-saving measure, without full explanation of the right," or might "downplay the benefits of a jury trial" for counsel's own financial or scheduling benefit. DB 36. Any such conduct should be litigated in habeas, and if a pattern of self-dealing or inadequate advisement were to emerge, it should be addressed through standards for counsel rather than a constitutionalized mandate for trial courts.

None of the *Geisler* factors support the defendant's claim.

5. The defendant does not show a need for this Court to revise its supervisory rule

The defendant asks this Court to revoke the supervisory rule of *Gore* and adopt and retroactively apply to her case a new rule by which trial courts would be required to spell out the composition of a jury, the defendant's role in jury selection, the requirement of jury unanimity, and the operations of a three-judge panel. DB 37-38. "Supervisory authority is an extraordinary remedy that should be used sparingly[.]" *State v. Kerlyn T.*, 191 Conn. App. 486 n.11. The defendant fails to show any change or emergence of a pervasive problem since *Gore*, 288 Conn. 787-89, when this Court fixed the appropriate parameters for a

canvass, and *Kerlyn T.*, 337 Conn. 396 n.10, when this Court declined to alter the *Gore* rule. The defendant also offers no reason to upend this Court's longstanding conclusion that counsel can be relied on to provide the information that she seeks to legislate into courts' waiver canvasses. *Kerlyn T.*, 337 Conn. 396 n.10 and cased cited therein. As it did in *Kerlyn T.*, this Court should "decline the invitation" to replace the *Gore* rule. Id.

B. Sufficient evidence supports the convictions

The defendant claims that the state failed to prove that she was an accessory to a crime, agreed to commit a crime, or intended that the crime be murder. DB 11, 38-50. The arguments rely on the mistaken premises that there must be direct evidence of agreement, aid, and intent, and that this Court should review the evidence as if it were the factfinder. The panel majority properly found guilt on both charges.

1. Principles of law and standard of review

"A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person[.]" General Statutes §53a-54a(a).

For accessorial liability, "[a] person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender." General Statutes §53a-8(a).

For conspiratorial liability, "[a] person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy." General Statutes §53a-48(a).

Reviewing the sufficiency of evidence before a three-judge panel,

courts engage in "the same limited review of the panel's verdict, as the trier of fact, as we would with a jury verdict." *State v. Bennett*, 307 Conn. 758, 764 (2013); see *State v. Evans*, 203 Conn. 212, 238–39 (1987) (same standard for review of panel-majority decision with dissent).

> In reviewing a sufficiency of the evidence claim, we construe the evidence in the light most favorable to sustaining the verdict, and then determine whether from the facts so construed and the inferences reasonably drawn therefrom, the trier of fact reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. … On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [trier's] verdict of guilty.

(Quotation marks omitted) *Bennett*, 307 Conn. 764.

2. Sufficient evidence supported the verdicts

Refutation of the defendant's three claims of insufficiency – proof that she was an accessory,[15] proof of an agreement, and proof of intent to kill – draws on the totality of interrelated pieces of evidence and reasonable inferences, summarized in the following categories, that collectively support a finding that the defendant solicited and requested Jefferson to commit murder, reached an agreement with

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[15] The defendant's argument about the accessory charge is that the evidence did not show that she "aided" in the murder. DB 41-43. Accessory liability is not limited to aiding but includes soliciting and requesting a person to engage in the crime; General Statutes §53a-8(a); all of which occurred.

him, and aided him by driving the getaway car.

a. Motive

Evidence of a defendant's involvement in a murder is "buttressed immeasurably" when there is no indication that anyone else had a motive but there is evidence that the defendant and her "trusted confederates" had reason to want the victim dead. *State v. Peeler*, 267 Conn. 611, 636 (2004). The evidence showed that the defendant felt longstanding rage toward the victim. In her own words, she was near the point where she would put her hands on him and "lose everything," and her family too might harm him. An hour before the murder, the defendant fought with the victim and, as she was being pulled away, warned him that this would be his last day. Her boiling animosity and prescient warning support a finding of guilt.

b. Soliciting and reaching agreement with Jefferson

The evidence showed that the defendant reached out to Jefferson four times in seven minutes after being forcibly extracted from the altercation with the victim. By these calls she activated him to drive from the other side of Bridgeport to pick her up. They did not then drive away; rather, they circled the area and parked around the corner from the victim. "Although mere presence at a crime scene, standing alone, generally is insufficient to infer an agreement, 'a defendant's knowing and willing participation in a conspiracy nevertheless may be inferred from his presence at critical stages of the conspiracy that could not be explained by happenstance.'" *State v. Rosado*, 134 Conn. App. 505, 511, cert. denied, 305 Conn. 905 (2012). The defendant's and Jefferson's linkup and placement at the crime scene show guilt.

c. Lies to police

"It is well settled under our law that lies told to the police are

evidence that create an inference of guilt." *State v. Slater*, 285 Conn. 162, 191 (2008). The defendant untruthfully divorced herself from Jefferson, his car, and her presence at the murder scene. The panel could conclude that the reason she told police that she did not call anyone after fighting with the victim, know anyone who owned a Ford Explorer, or enter a Ford Explorer, and that she met Edwards who took her directly home, was to hide her role in the murder. Additional incrimination came from the fact that, once confronted with the video, the defendant fell silent, then admitted getting into Jefferson's Ford Explorer, which she could no longer dispute, but, unaware of other video evidence and phone records, lied to explain this fact by stating that she had not phoned Jefferson, they met "out of the blue" and they left the area.

"The state of mind that is characterized as … 'consciousness of guilt' is strong evidence that a defendant is indeed guilty." *State v. Moody*, 214 Conn. 616, 626 (1990). Although the defendant is correct that such evidence is contextual and subject to counter-explanations; DB 46; the majority reasonably found that, in trying to persuade police that she did not call Jefferson, was not in the getaway car, and went straight home rather than waiting in the getaway car at the scene as the murder occurred, the defendant was concealing having enlisted Jefferson in and fulfilled an agreement to kill the victim. "'[M]isstatements of an accused, which a jury could reasonably conclude were made in an attempt to avoid detection of a crime or responsibility for a crime or were influenced by the commission of the criminal act, are admissible as evidence reflecting a consciousness of guilt.'" Id.

d. The defendant's role as an accessory

The evidence showed that Jefferson and the defendant, after circling the area, parked around the corner from where the victim

stood and where the murder would occur. The defendant then moved into the driver's seat as Jefferson exited it, evincing a coordinated plan. She backed up the car so she could pull out quickly and sat with her foot on the brake, showing she was ready and waiting to drive off. After the gunshots, she did not drive away but instead turned off the headlights, showing an intent to stay put and wait without being noticed. Just two minutes and twenty-two seconds after leaving the car, immediately after the murder, Jefferson and Bellamy entered the car and the three drove away. This timing and synchronized behavior shows an agreement between the principals and the defendant as an accessory. *See State v. Gosselin*, 169 Conn. 377, 380-81 (1975) (by waiting ready in car and picking up principals when they ran from house, defendant guilty of conspiracy and accessory to attempted burglary).

e. Jefferson's role as principal

The evidence supports the panel's finding that Jefferson committed the murder.[16] Two men, one short and one tall, appeared

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[16] As the panel explained, the defendant's focus on the fact that Jefferson has not been prosecuted; DB at 42, 47; is irrelevant to the sufficiency of evidence of her guilt. "In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person under section 53a-8 it shall not be a defense that: … (2) such other person has not been prosecuted for or convicted of any offense based upon the conduct in question[.]" General Statutes §53a-9; see *State v. Santiago*, 275 Conn. 192, 204 (2005) (unilateral approach applies to both accessorial and conspiratorial liability). Contrary to the defendant's argument that the state's "disparate treatment" shows "fatal weaknesses in its case"; DB 47; "[t]he criminal justice system

and the short man shot and killed the victim. That Jefferson was the gunman is shown by his meeting the defendant after her altercation; parking around the corner from the murder; leaving the car for the very two minutes and twenty-two seconds in which the murder occurred while the defendant waited with the car ready to go; meeting the description of the shorter man (5'5") who appeared with a taller man (Bellamy 6'); and returning to the car seconds after the murder; as well as the defendant's attempts to dissociate herself from him and his car; and Bellamy's admission that he and Jefferson were the men in the car and fabrications, contradicted by video surveillance, including that no one exited the car.

The defendant's arguments improperly ask this Court to retry the facts. She argues, for example, that the driver captured on the video exiting the car and the two people seen reentering it were not wearing hoodies. DB 43 & n.5. The trier reasonably could determine that the culprits put on hoodies, perhaps retrieved from the trunk, en route to the murder, and "[c]ommon knowledge and experience inform us that people often discard inculpatory evidence, such as distinctive clothing or weapons, when they flee the scene of a crime." *State v. Abraham*, 343 Conn. 470, 478 (2022). Similarly, Bellamy's denial of the state's theory despite a grant of immunity; DB 43; was a matter for the trier to consider and reasonably find incredible in light of other evidence, his changing story and claims that events captured on video

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gives prosecutors a wide latitude and broad discretion in determining when, who, why and whether to prosecute for violations of criminal law"; *State v. Anonymous*, 36 Conn. Supp. 338, 339 (Super. Ct. 1980); and "[i]t is legally irrelevant to the defendant's conviction that the state never charged" other participants. *State v. Asberry*, 81 Conn. App. 44, 56, cert. denied, 268 Conn. 904 (2004).

did not occur.

f. Intent to kill

The defendant contends that the evidence at most shows that she and Jefferson agreed that he would assault the victim and Jefferson, on his own initiative, shot the victim. DB 44, 48, 49-50. The evidence supports the majority's finding that the defendant had the intent to kill.

In the context of murder,

> [t]o act intentionally, the defendant must have had the conscious objective to cause the death of the victim.... Because direct evidence of the accused's state of mind is rarely available ... intent is often inferred from conduct ... and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom.... Intent to cause death may be inferred from … the events leading to and immediately following the death…. [I]ntent to kill may be inferred from evidence that the defendant had a motive to kill.

(Quotation marks omitted) *State v. Gary*, 273 Conn. 393, 406–407 (2005).

Within an hour of the murder, the defendant expressed her motive and threat to kill. See *State v. Juan J.*, 344 Conn. 1, 19 (2022) (prior threats evince intent and motive to kill). The circumstances of the murder show a planned execution, not a misunderstanding or spontaneous escalation. The principals approached, instantly blocked in, and shot the victim sixteen times methodically and pointedly without causing collateral damage. As the majority found, "This was not a spur of the moment decision. It was a plan." ClAppx 21. Had the understanding been that Jefferson would simply "rough up" the victim, the defendant, who had exhibited no qualms about publicly fighting with him**,** would have had no reason to sit clandestinely with the car

running. Her furtive conduct bespoke a different intent. Furthermore, as the majority found, she must have heard the sixteen gunshots, yet she did not call 911 or flee in shock as others did. Rather, she turned off the headlights and waited for the principals to return to the car to drive off, showing that matters had gone as planned.

Sufficient evidence supports the convictions of accessory to murder and conspiracy to commit murder.

C. This Court should not remand to require the panel to answer questions regarding the defendant's conjecture of pre-submission deliberations so as to create a record for her unpreserved claim

The defendant asserts that she "presented prima facie evidence that the panel deliberated before [her] case was submitted, and therefore, pursuant to *State v. Washington*, 182 Conn. 419, 425-28 (1980), the case should be remanded to determine whether any member of the panel 'evaluated or stated an opinion on the evidence, in which case a new trial is required.' *State v. Castonguay*, 194 Conn. 416, 437 (1984)." DB 11, 50-61.

As the defendant notes, Connecticut courts have not determined whether *State v. Washington*, which prohibits courts from instructing juries that they may discuss evidence prior to submission of the case, prohibits pre-submission discussion by a three-judge panel. She wants to litigate that question of first impression, starting in this Court, on what she concedes is an inadequate record due to her failure to raise the question and obtain a ruling below. DB 50, 56. When she states that she "presented prima face evidence" of pre-submission discussion, she means that, after filing her appeal, she filed a motion noting the timing of the verdicts and seeking "rectification" in the form of the trial judges answering 13 questions about their off-the-record conduct. The

panel denied her motion.

The defendant asserts that, to allow her to develop the record she needs to pursue her claim, this Court should "order the trial court to supplement the record"; DB 57; indeed, that this Court would violate due process if it fails to do so. DB 60-61. The rectification procedure is not a tool to force a trial court to "supplement" the record through answers to questions that should have been raised below to allow the court to respond as it deemed appropriate, create a record, and issue a ruling. This Court should deny the defendant's request.

1. Procedural background

a. Trial proceedings

The parties presented evidence on April 27, 28, 29, and 30 and on May 3,[17] when the panel denied a motion for judgment of acquittal. T5/3/21 at 17.[18] After closing arguments and submission of the case on May 4, 2021, the court heard playback of Sampson's direct examination. T5/4/21 at 55. The next day, the panel announced its findings and conclusions. T5/5/21 at 1-20. The presiding judge then determined that the parties had no concerns:

> JUDGE RICHARDS: Anything else we need to - …
>
> [DEFENSE COUNSEL]: Nothing, Your Honor.

Id. 20.

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[17] Of relevance to the defendant's premature-deliberation claim, the trial judges sat six feet apart, masked, with plexiglass dividers. T4/27/21 at 1.

[18] The presiding judge denied the motion. The record does not establish whether he did so unilaterally or in consultation with the other judges. If the latter, the ruling entailed pre-submission discussion of the evidence. Yet the defendant raised no issue in this regard.

The panel stated that it would file written decisions within a week. T5/5/21 at 20-21. Later that day, the majority filed a 12-page Memorandum of Decision and the dissent filed an opinion agreeing with the majority's historical fact-finding.

At sentencing, defense counsel commended the court for "carrying out a state of the art trial in terms of its fairness, in terms of … its efficiency and in terms of giving every party … a chance to be heard[.]" T6/30/21 at 43. After imposition of the sentence, the court twice asked if defense counsel had any questions or comments and he said he did not. Id. 54, 56.

Throughout trial, the defense did not suggest that the judges could not discuss the evidence, claim that premature discussion occurred, ask the court to place anything on the record concerning its off-the-record conduct, or move for a new trial.

b. Appellate proceedings

After filing this appeal, the defendant filed a motion for rectification and augmentation pursuant to Practice Book §66-5. DAppx 97-106. The motion claimed that the timing of the panel's decision "suggests that discussion and/or examination of this matter occurred off the record prior to the start of the trial court's deliberations." Id. 97. The motion contended that, in order to pursue a novel claim of right against pre-submission discussion of evidence by a three-judge panel, the defendant was entitled to create a record of the panel's conduct by requiring the judges to answer thirteen questions, such as whether any judge examined exhibits before the case was submitted and, if so, which judge and which exhibit; whether any judge discussed the merits of the case during trial and, if so, with whom; and when the memorandum of decision was prepared. Motion at 9.

The panel heard oral argument and denied the motion. DAppx 118-47 ("9/13/22 MOD"**)**. In its denial, the panel noted time-stamped

notations from the courtroom monitor:

On May 4, 2021, the panel

- began its deliberations at 12:25 p.m.;
- listened to a playback 2:09 p.m.- 2:13 p.m.; and
- continued deliberations 2:13 p.m.- 5:00 p.m.

On May 5, 2021,

- Judge Dayton announced the majority's verdict and factual findings 11:39 a.m.-11:59 a.m.;
- Judge Richards announced his dissent 12:03 p.m.-12:06 p.m.;
- Judge Richards filed his written dissent12:32 p.m.; and,
- the majority filed its Memorandum of Decision 2:39 p.m.

9/13/22 MOD 2-3.

The panel observed that, in argument on the motion, defense counsel: (1) stated that the verdict on the merits did not itself need rectification; (2) disavowed any claim of misconduct under existing law but sought to develop a record for a novel claim; (3) stated that she had no evidence of pre-submission deliberations but claimed to have a good faith basis for speculation, grounded in her own experience as a "slow writer"; and (4) acknowledged that no Practice Book rule squarely applied. 9/13/22 MOD 5-7.

The panel determined that the motion fell outside the plain meaning of Practice Book §66-5,[19] in that it did not seek "corrections in the transcript" or a "further articulation" of the court's decision. 9/13/22 MOD 7. Rather, it sought the "extraordinary relief" of

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[19] Practice Book §66-5 provides, in relevant part, "A motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the decision of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable."

"inquiring into the confidential, deliberative proceedings of the factfinder," particularly extraordinary given no claim of misconduct. Id.

The panel reviewed caselaw on proper uses of Practice Book §66-5 motions. 9/13/22 MOD 9-10. It quoted *State v. Walker*, 319 Conn. 668, 680 (2015), for the principle that rectification is not a vehicle to "'add matters to the record that were not presented at trial.'" Id. 9. It noted that examples of proper rectification cited in *Walker* involved matters to which the parties were privy but that were not manifest in the record. Id. The court distinguished one contrary example, *State v. Floyd*, 253 Conn. 700, 730-32 (2000), where rectification of information not known to the defense during trial was proper because the state had withheld it. In this case, the defendant presented no newly discovered evidence and claimed no impropriety under existing law. Id. 10.

This Court granted the defendant's Motion for Review of the panel's denial but denied relief, without prejudice, specifying that the parties could argue whether this Court should "order the trial court to supplement the record by way of articulation" or whether "any such articulation is unnecessary, inappropriate, or contrary to law." Id. 204.[20]

2. Principles of law

"A motion seeking corrections in the transcript or the trial court record … shall be called a motion for rectification[.]" Practice Book §66-5. Rectification is "the appropriate method of perfecting the record" of known events. *State v. Walker*, 319 Conn. 681. "'A motion for

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[20] Pursuant to her rectification motion, the defendant disavowed seeking an "articulation," which she conceded "would not be appropriate in this instance." Defendant's Motion for Reconsideration of Motion for Rectification, DAppx 152.

rectification … cannot be used to add new matters to the record that were not presented at trial.' (Footnotes omitted.) C. Tait & E. Prescott, Connecticut Appellate Practice and Procedure (4th Ed.2014) § 6–2:3.3." Id. 680.

Augmentation, another term for rectification, refers to completing the record with matters that occurred in the presence of the parties, such as confirming whether an issue was discussed in an in-chambers conference *Walker*, 319 Conn. 681 (citing *State v. Shashaty*, 251 Conn. 768, 785 (1999)). Augmentation also can denote a procedure by which an appellate court orders a trial court to find facts necessary to review a claim on which the trial court ruled without doing necessary fact-finding. See *State v. Pollitt*, 199 Conn. 399, 407, 415 (1986) (ordering court which denied *Brady* motion to hold hearing and find facts to determine whether state violated *Brady*).

"Any party aggrieved by the action of the trial judge regarding rectification … under Section 66-5 may … file a motion for review with the appellate clerk, and the court may, upon such a motion, direct any action it deems proper." Practice Book §66-7.

c. This Court properly denied relief on the defendant's motion for review of the denial of her motion for rectification

The defendant's motion for rectification was an attempt to sidestep her failure at trial to give the trial court notice of her novel theory about the court's duty, failure to object when the court announced its verdict, failure to object when it filed its memorandum, and failure to move for a new trial prior to sentencing. Any of these actions would have permitted the court to reflect and respond to the issue in a manner it deemed appropriate, make findings it deemed necessary, and issue a ruling for review. The "rectification" sought by the defendant is not a substitute. "The defendant bears the

responsibility for providing a record that is adequate for review of his claim of constitutional error. If the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred, [this Court] will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the defendant's claim." *State v. Golding*, 213 Conn. 240.

The defendant is not seeking to perfect the record with known matters, as the rectification process permits. Whereas the defendant claims that "[u]nder *Walker*, supplementation of the record is appropriate and required" in her case lest she be unable to pursue her claim; DB 58; *Walker* does not authorize "supplementation" in the form of ascertaining new information. *Walker* concerned the failure to create an adequate record through rectification as to whether or not certain discussions occurred between defense counsel and the trial court and, if so, whether the defendant was present. 319 Conn. 677-78. *Walker*'s citations to cases illustrating proper uses of rectification also do not support the "supplementation" sought by the defendant. *Walker*, 319 Conn. 680-81 (citing, e.g., *Kalams v. Giacchetto*, 268 Conn. 244, 252–53 (2004) (rectification to show that request to charge had been presented to court in chambers); *State v. Lopez*, 235 Conn. 487, 491 (1995) (rectification to correct inaccurate transcription of trial court's instruction); *State v. Benitez*, 122 Conn. App. 608, 614 (2010) (rectification regarding guided jury visit to crime scene). See also *State v. Mejia*, 233 Conn. 215, 230–31 (1995) (rectification to show steps trial court took in open court with regard to juror note-taking); *State v. Williams*, 227 Conn. 101, 105-07 (1993) (rectifying proceedings where court reporter's tapes lost); *Welsh v. Martinez*, 157 Conn. App. 223, 236 n.8 (rectifying "precisely what was played for the jury during its deliberations"), cert. denied, 317 Conn. 922 (2015).

The defendant relies on *State v. Castonguary*, but the

distinctions show the faultiness of her claim. In *Castonguary*, 194 Conn. 431, over defense objection, the trial court instructed jurors that they could discuss evidence as it emerged. On appeal, with no dispute that the instruction failed under *State v. Washington*, the Court addressed the proper remedy and remanded for an evidentiary hearing on harm, in which the trial court would ask jurors whether they discussed evidence and, if so, whether the discussion included evaluation and opinions. Id. 434-38. In this case, the defendant did not notify the trial court of her claim that *Washington* applied or object to what occurred. The panel did not expressly sanction pre-submission discussion. The defendant did not object or obtain a ruling for review. What the defendant seeks is what the rectification tool does not permit, "'to add new matters to the record that were not presented at trial.'" *Walker*, 319 Conn. 680.

Our precedents exemplify the need to raise the concern when a suggestion of improper deliberations allegedly arises, let the trial court fashion a response, and obtain a ruling. In *State v. Washington*, 345 Conn. 288-89, the record was inadequate to review a claim that was not raised until sentencing that the onset of the Covid-19 pandemic caused jurors to rush their deliberations. The Court noted that when, prior to discharging the jury, the trial court asked counsel whether anything should be addressed, "it was incumbent on defense counsel to timely alert the court regarding [his] concern[.]" Id. 288. The Court explained, "preservation requirements 'serve to alert the trial court to potential error while there is still time for the court to act.'" Id. 288–89. Without a record showing that the pandemic impacted deliberations, "as an appellate court, '[o]ur role is not to guess at possibilities, but to review claims based on a complete factual record developed by the trial court.'" Id. 289.

State v. Owens, 100 Conn. App. 619, cert. denied, 282 Conn. 927

(2007), as well, demonstrates the trial court's necessary primary role in responding to a concern about premature deliberations. The defendant filed a motion for a new trial claiming premature deliberations, which the trial court denied. Id. 627. On appeal, the defendant claimed that the trial court failed to investigate adequately. The Appellate Court noted that the form and scope of inquiry regarding claimed jury misconduct are fact-specific and within the trial court's discretion and that its role was limited "'to a consideration of whether the trial court's review of alleged [or possible] jury misconduct can fairly be characterized as an abuse of its discretion[.]'" Id. at 627-29.

The defendant claims, however, that she has a right "consistent with" *State v. Floyd*, 253 Conn. 700, to obtain facts to support her claim. DB 58-59. Under *Floyd*, an appellate court can direct a trial court to "conduct a posttrial evidentiary hearing to explore claims of potential *Brady* violations when 'a defendant was precluded from perfecting the record due to new information obtained after judgment.'" *State v. Ouellette*, 295 Conn. 173, 182 n.7 (2010)). The defendant here was not precluded from perfecting the record. The facts prompting her rectification motion were known at trial. Nothing prevented her, for example, from filing a motion for a new trial prior to sentencing, which would have enabled – indeed required – the trial court to respond in the form it deemed appropriate, make factual findings as needed, and issue a ruling. *State v. Asherman*, 193 Conn. 695, 735-42 (1984). Had it been given this opportunity, the court could have ruled on two questions essential to assessing a claim of premature deliberations: whether anything improper occurred and, if so, whether the defendant was harmed. *Castonguay*, 194 Conn. 436. These necessary questions are not appropriate for a reviewing court to decide as an original matter through answers to an interrogatory of trial judges.

The defendant tries to shift responsibility, claiming that, just as

the state has an independent *Brady* obligation, the three-judge panel had an "independent obligation to be alert to and raise issues that potentially undermine the fairness of [her] trial." DB 59. This notion would eviscerate preservation requirements and the *Golding* doctrine.

A motion for rectification does not substitute for the essential processes of giving notice, raising a claim, permitting the court to determine how to respond, and obtaining a ruling. No relief is appropriate.

d. Due process does not require a different result

The defendant contends that due process requires this Court to remand for fact-finding because "a defendant is entitled to an adequate record on appeal" and, under *Matthews v. Eldridge*, 424 U.S. 319 (1976), her liberty interest outweighs interests in preservation requirements. DB 60-61. "*Matthews*, however, pertains to whether there is a constitutional right to an evidentiary hearing under the due process clause," whereas when a "constitutional claim … was unpreserved for appellate review because the [defendant] failed to raise such a claim before the trial court[,] [w]e review unpreserved constitutional claims pursuant to [*Golding*.]" *St. Denis-Lima v. St. Denis*, 190 Conn. App. 296, 303 n.4, cert. denied, 333 Conn. 910 (2019). Under *Golding*, when "facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred, [this Court] will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the defendant's claim." 213 Conn. 240.

This Court properly denied the motion to review the denial of

the rectification motion.[21]

IV. Conclusion

The state respectfully requests that this Court affirm the judgment of conviction.

[21] Because the defendant acknowledges that the record is inadequate, the state does not address the merits in the abstract. *State v. Washington*, 345 Conn. 289 ("Without the necessary factual and legal conclusions furnished by the trial court" any decision "would be entirely speculative"'). Should this Court grant the defendant's request for a remand for fact-gathering, additional briefing in light of those facts would be required to address the merits.

Respectfully submitted,

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August 2023

SUPREME COURT

of the

State of Connecticut

Judicial District of Bridgeport

S.C. 20632

STATE OF CONNECTICUT

V.

LARISE N. KING

Appendix

Table of contents

Statutory provisions

General Statutes § 53a-8. Criminal liability for acts of another.

(a) A person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender.

(b) A person who sells, delivers or provides any firearm, as defined in subdivision (19) of section 53a-3, to another person to engage in conduct which constitutes an offense knowing or under circumstances in which he should know that such other person intends to use such firearm in such conduct shall be criminally liable for such conduct and shall be prosecuted and punished as if he were the principal offender.

General Statutes § 53a-9. Lack of criminal responsibility; absence of prosecution or conviction not a defense.

In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person under section 53a-8 it shall not be a defense that: (1) Such other person is not guilty of the offense in question because of lack of criminal responsibility or legal capacity or awareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or because of other factors precluding the mental state required for the commission of the offense in question; or (2) such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has been acquitted thereof, or has legal immunity from prosecution therefor; or (3) the offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not

belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

General Statutes § 53a-45. Murder: Penalty; waiver of jury trial; finding of lesser degree.

(a) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a-35a unless it is a capital felony committed prior to April 25, 2012, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, murder with special circumstances committed on or after April 25, 2012, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, or murder under section 53a-54d.

(b) If a person indicted for murder or held to answer for murder after a hearing conducted in accordance with the provisions of section 54-46a waives his right to a jury trial and elects to be tried by a court, the court shall be composed of three judges designated by the Chief Court Administrator or his designee, who shall name one such judge to preside over the trial. Such judges, or a majority of them, shall have power to decide all questions of law and fact arising upon the trial and render judgment accordingly.

(c) The court or jury before which any person indicted for murder or held to answer for murder after a hearing conducted in accordance with the provisions of section 54-46a is tried may find such person guilty of homicide in a lesser degree than that charged.

General Statutes § 53a-48. Conspiracy. Renunciation.

(a) A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

(b) It shall be a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

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 § 54-82. Accused's election of trial by court or by jury. Number of jurors

(a) In any criminal case, prosecution or proceeding, the accused may, if the accused so elects when called upon to plead, be tried by the court instead of by the jury; and, in such case, the court shall have jurisdiction to hear and try such case and render judgment and sentence thereon.

(b) If the accused is charged with a crime punishable by death, life imprisonment without the possibility of release or life imprisonment and elects to be tried by the court, the court shall be composed of three judges to be designated by the Chief Court Administrator, or the Chief Court Administrator's designee, who shall name one such judge to preside over the trial. Such judges, or a majority of them, shall have power to decide all questions of law and fact arising upon the trial and render judgment accordingly.

(c) If the accused does not elect to be tried by the court, the accused shall be tried by a jury of six except that no person charged with an offense which is punishable by death, life imprisonment without the possibility of release or life imprisonment, shall be tried by a jury of less than twelve without such person's consent.

Practice Book § 66-5. Motion for Rectification; Motion for Articulation

A motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the decision of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk. Any other party may oppose the motion by filing an opposition with the appellate clerk within ten days of the filing of the motion for rectification or articulation. The trial court may, in its discretion, require assistance from the parties in providing an articulation. Such assistance may include, but is not limited to, provision of copies of transcripts and exhibits.

The appellate clerk shall forward the motion for rectification or articulation and the opposition, if any, to the trial judge who decided, or presided over, the subject matter of the motion for rectification or articulation for a decision on the motion. If any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved. The trial court may make such corrections or additions as are necessary for the proper presentation of the issues. The clerk of the trial court shall list the decision on the trial court docket and shall send notice of the court's decision on the motion to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

Nothing herein is intended to affect the existing practice with respect to opening and correcting judgments and the records on which they are

based. The trial court shall file any such order changing the judgment or the record with the appellate clerk.

Corrections or articulations made before the clerk appendix is prepared shall be included in the clerk appendix. Corrections or articulations made after the clerk appendix is prepared but before the appellant's brief is prepared shall be included in the appellant's party appendix. Corrections or articulations made after the appellant's brief has been filed, but before the appellee's brief has been filed, shall be included in the appellee's party appendix.

The sole remedy of any party desiring the court having appellate jurisdiction to review the trial court's decision on the motion filed pursuant to this section or any other correction or addition ordered by the trial court during the pendency of the appeal shall be by motion for review under Section 66-7.

Upon the filing of a timely motion pursuant to Section 66-1, the appellate clerk may extend the time for filing briefs until after the trial court has ruled on a motion made pursuant to this section or until a motion for review under Section 66-7 is decided.

Any motion for rectification or articulation shall be filed at least ten days prior to the deadline for filing the appellant's brief, unless otherwise ordered by the court. If a final order has been issued for the appellant's brief, no motion for rectification or articulation shall be filed without permission of the court. No motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown.

A motion for further articulation may be filed by any party within twenty days after issuance of notice of the filing of an articulation by

the trial judge. A motion for extension of time to file a motion for articulation shall be filed in accordance with Section 66-1.

Practice Book § 66-7. Motion for Review of Motion for Rectification of Appeal or Articulation

Any party aggrieved by the action of the trial judge regarding rectification of the appeal or articulation under Section 66-5 may, within ten days of the issuance of notice by the appellate clerk of the decision from the trial court sought to be reviewed, file a motion for review with the appellate clerk, and the court may, upon such a motion, direct any action it deems proper. If the motion depends upon a transcript of evidence or proceedings taken by an official court reporter or court recording monitor, the procedure set forth in Section 66-6 shall be followed. Corrections or articulations which the trial court makes or orders made pursuant to this section shall be included in the appendices as indicated in Section 66-5.

Constitutional provisions

Article First § 8 to 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.

Article First, § 19 to the Connecticut Constitution. Trial by jury. Challenging of jurors.

Sec. 19. [As amended] The right of trial by jury shall remain inviolate, the number of such jurors, which shall not be less than six, to be established by law; but no person shall, for a capital offense, be tried by a jury of less than twelve jurors without his consent. In all civil and criminal actions tried by a jury, the parties shall have the right to challenge jurors peremptorily, the number of such challenges to be established by law. The right to question each juror individually by counsel shall be inviolate.

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.

Certification

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2A, that on August 30th, 2023:

(1) the electronically submitted e-brief and appendix have been delivered electronically to Erica A. Barber, Assistant Public Defender, Office of the Chief Public Defender, 55 West Main Street, Suite 430, Waterbury, CT 06702, Tel. (203) 574-0029; Fax. (203) 574-0038, email: erica.barber@pds.ct.gov; legalservicesunit@jud.ct.gov;

(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 August 30th, 2023;

(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 deviations were granted for 2,000 extra words; and

(6) the e-brief contains 15,403 words; and

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

/s/ Laurie N. Feldman
Assistant State's Attorney