
SUPREME COURT

OF THE

State of Connecticut

JUDICIAL DISTRICT OF DANBURY

S.C. 20195

STATE OF CONNECTICUT

v.

BRUCE JOHN BEMER

SUPPLEMENTAL BRIEF OF THE STATE OF CONNECTICUT-APPELLEE
WITH ATTACHED APPENDIX

To Be Argued By:

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STATEMENT OF THE ISSUE

- I. WHETHER THE DEFENDANT'S CONVICTIONS HAVE ANY EFFECT ON THIS COURT'S JURISDICTION OVER THE APPEAL

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NATURE OF THE PROCEEDINGS AND STATEMENT OF THE FACTS

As set forth fully in the state's main brief, pp. 1-2, on March 28, 2017 the defendant, Bruce Bemer, was arrested by warrant. Defendant's Appendix, ("D.App."), A002 (Docket Entries), A036 (Arrest Warrant Application).¹ Thereafter, the state charged the defendant with patronizing a prostitute who was the victim of human trafficking, in violation of General Statutes (Rev. to 2016) § 53a-83(c)(2)(A), and of conspiracy to commit human trafficking, in violation of General Statutes §§ 53a-48 and 53a-192a. D.App., A003 (Docket Entries). The defendant entered not guilty pleas and elected a jury trial. D.App., A003 (Docket Entries).

On October 18, 2017, the state, on behalf of the victims, filed a Motion for Venereal Examination and HIV testing pursuant to General Statutes § 54-102a. D.App., A006. On January 16, 2018 and January 28, 2018 numerous victims filed similar requests pursuant to General Statutes §§ 54-102a(a) and (b). D.App., A025, A028. On March 2, 2018 the trial court, Shaban, J., granted the foregoing motion and requests. D.App., A007, A026, A029.

On March 20, 2018, the defendant commenced this appeal and, on October 25, 2018, this Court granted his motion to transfer from the Appellate Court to this Court. This Court further ordered the parties to address whether the trial court's order for VD/HIV testing constitutes an appealable final judgment. The defendant filed his supplemental brief in response to this Court's order on November 6, 2018, arguing that a defendant "may bring an immediate appeal" from an order issued pursuant to General Statutes § 54-102a. The state filed its brief on January 18, 2019 arguing, on pages 9-10, that the trial court's order

¹ The state's references are to the appendix to the defendant's main brief.

is an appealable interlocutory judgment under State v. Curcio, 191 Conn. 27, 463 A.2d 566 (1983).²

Thereafter, the parties proceeded to trial on April 1, 2019. On April 10, 2019 the jury, Pavia, J., presiding, found the defendant guilty of four counts of patronizing a prostitute who was the victim of human trafficking, in violation of General Statutes (Rev. to 2016) § 53a-83(c), and of one count of accessory to trafficking in persons, in violation of General Statutes §§ 53a-8 and 53a-192a. State's Supplemental Appendix, A-4 (Substitute Long Form Information). On June 17, 2019, the trial court imposed a total effective sentence of twenty years of incarceration, execution suspended after ten years, and five years of probation. Tr. 6/17/19, pp. 60-62; State's Supplemental Appendix, A-9 - A-11. On July 3, 2019, the defendant commenced a separate appeal challenging his convictions, which is pending before the Appellate Court, A.C. 43174. None of the four issues identified in the defendant's Preliminary Statement of Issues, dated July 3, 2019, pertain to the trial court's order granting the motions for venereal disease examination and AIDS/HIV testing.³

On July 30, 2019, this Court ordered the parties to file simultaneous supplemental briefs, of no more than five pages,

addressing the effect, if any, of the defendant's conviction on the Supreme Court's jurisdiction over the appeal.

² The defendant filed his reply brief on February 13, 2019 and the victims filed a brief, as amicus curiae, on March 6, 2019.

³ After the clerk's office notified the parties that, in accordance with Practice Book § 61-9 the defendant's July 3, 2019 appeal from his convictions was being treated as an amendment to the instant appeal, the defendant filed a Motion to Brief and Hear Amended Appeal Separately from Original Appeal. This Court granted the defendant's motion on July 12, 2019 and, additionally, transferred the new appeal from this Court to the Appellate Court.

The state's short answer to this supplemental question is that the defendant's convictions have no effect on this Court's jurisdiction.

ARGUMENT

I. THE DEFENDANT'S CONVICTIONS HAVE NOT DEPRIVED THIS COURT OF JURISDICTION OVER THIS APPEAL

Since the beginning of the underlying criminal prosecution, the defendant has been charged with violating General Statutes (Rev. to 2016) § 53a-83. In "any case involving a violation of any provision of sections 53a-65 to 53a-89, inclusive" and, in "any case involving a violation of . . . any provision of sections 53a-65 to 53a-89, inclusive, that involved a sexual act, as defined in section 54-102b," the trial court has the authority pursuant to General Statutes § 54-102a(a) and (b), to order "testing of the accused person . . . to determine whether or not the accused person . . . is suffering from any sexually transmitted disease," and "testing of the accused person . . . for the presence of the etiologic agent for acquired immune deficiency syndrome or human immunodeficiency virus." Under both subsections, the request for, order and testing is authorized to occur "before final disposition" of any case falling within the enumerated statutory provisions. General Statutes § 54-102b, however, provides for AIDS/HIV testing of persons convicted of certain sexual offenses and mandates the trial court, upon request, to order such testing. The orders from which the defendant has appealed are pre-conviction orders issued pursuant to General Statutes § 54-102a.

As fully discussed on pages 9-10 of the state's main brief, this appeal meets both criteria set forth in State v. Curcio, 191 Conn. at 31. The first prong of the Curcio test requires that the order or action appealed from terminates a separate and distinct proceeding, and the second prong requires that the order or action so concludes the rights

of the parties such that further proceedings cannot affect them. State v. Curcio, 191 Conn. at 31. Because the challenge presented here meets both prongs, it necessarily is not affected by subsequent occurrences in the underlying criminal proceeding.

Additionally, this Court has previously determined that “[i]n permitting a defendant to protect his rights through an interlocutory appeal, [it] cannot permit the defendant automatically to escape that which he asks [this Court] to undo.” State v. Garcia, 233 Conn. 44, 92, 658 A.2d 947 (1995) (defendant appealed involuntary medication order; eighteen month period of maximum commitment under General Statutes § 54-56d consumed during interlocutory appeal; because “defendant set[] in motion a process that will consume the available time for . . . treatment, it is equitable that the time period for treatment be stayed during the pendency” of appeal), *overruled in part on other grounds sub silentio* Sell v. United States, 539 U.S. 166, 123 S. Ct. 2174 (2003). In other words, the defendant cannot deprive the state and the victims of a statutory right by pursuing an interlocutory appeal. Although § 54-102a and § 54-102b both provide for AIDS/HIV testing, on its face § 54-102b is seemingly incongruous because, unlike § 54-102a, it does not identify § 53a-83 as a criminal offense that entitles victims to test results. Therefore, it is unclear as to whether the order on appeal could now fall under the post-conviction testing statute and the state and victims should not be deprived of the ability to obtain the medical information and/or test results as ordered by the trial court.

Moreover, although upon information and belief it is not uncommon for victims of sex crimes to request pre-conviction testing pursuant to General Statutes § 54-102a, this appeal appears to be the first time that a defendant has fully litigated a challenge to an

order for testing.⁴ The state, and the current and future victims of sexual crimes enumerated in Chapter 952, Pt. VI of the General Statutes, therefore have an interest in obtaining this Court's guidance as to how to construe and implement this statute.

Accordingly, as set forth in the defendant's November 6, 2018 supplemental brief and pages 9-10 of the state's main brief, and consistent with State v. Curcio and State v. Garcia, this Court has jurisdiction over this appeal and the defendant's subsequent convictions do not affect this Court's jurisdiction.

CONCLUSION

For the foregoing reasons, the State of Connecticut-Appellee maintains that the defendant's convictions have no effect on this Court's jurisdiction over the appeal.

⁴ The state is aware of only one other appeal challenging a testing order issued in accordance with General Statutes § 54-102a(b). On February 6, 1998, the defendant commenced an interlocutory appeal in State v. DeJesus, A.C. 18081. This appeal, however, was withdrawn on November 20, 1998.

Respectfully submitted,

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that

(1) the electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

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

(3) a copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; and

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

(5) the brief complies with all provisions of this rule.


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