SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20195

STATE OF CONNECTICUT,

v.

BRUCE JOHN BEMER

BRIEF OF *AMICI CURIAE* THE VICTIMS WITH ATTACHED APPENDIX

Amicl Curiae,

THE VICTIMS

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I. INTEREST OF THE AMICI CURIAE[1]

The Victims are the individuals referred to as Victims 1 through 5 in the arrest warrant, as well as victims who were not specifically identified in the Warrant Application, but were also victims of the trafficking conspiracy. The focus of this appeal is the Victims' application for the defendant to be tested for HIV/AIDS and other sexually transmitted infections (STIs). For that reason, that the Victims have a unique and acute interest in the issues raised in this appeal. The law and procedure at issue in this case were intended and designed specifically for people, like the Victims, who have been subjected to sex crimes. The basic testing rights that are afforded to such victims under Connecticut law serve a number of public policy goals and allow the Victims to learn whether their perpetrator may have potentially infected them with serious STIs. And the outcome of such testing provides victims with critical and essential information that they need in order to undertake any necessary and appropriate personal health decisions, in consultation with their respective health care providers. All told, it is difficult to conceive of a party with a more pertinent interest in the question presented in this appeal.

II. FACTUAL BACKGROUND

The defendant is charged with both patronizing a prostitute who was the victim of human trafficking, *see* Conn. Gen. Stat. § 53a-83(c)(2)(A), and conspiracy to commit human trafficking, *see* Conn. Gen. Stat. §§ 53a-48 and 53a-192a. The defendant's arrest was based on a detailed arrest warrant, which attested to a joint state-federal investigation into a

[1] Pursuant to Practice Book § 67-7, undersigned counsel hereby states that this brief was written by undersigned counsel on behalf of the amicus curiae without contribution from any other persons.

prostitution ring in and around Danbury. That investigation began after a probation officer reported learning of an organized effort to engage in "sexual exploitation of mentally disabled persons." A036. The investigation eventually identified 15 males who had been lured into prostitution by the conspirators, the vast majority of whom had at least "significant" mental health issues, and two of whom identified in the warrant application had such severe psychological disorders that they had conservators appointed on their behalves. A037. The investigators learned that this conspiracy targeted young men who were believed to have mental disabilities, then promised them work and money before plying them with drugs in order to "build a debt." *Id.* The conspirators thereafter prompted the young men to engage in sexual acts for money with the defendant and another man, in an effort to pay down this "debt." *Id.* In statements to the authorities that are set forth in the warrant, the defendant acknowledged that one of the other co-conspirators had, for the past 20 to 25 years, brought him "younger adult males" with whom he engaged in sex for money. A038. The defendant admitted having had sex with 8 to 10 such "boys" on multiple occasions over this time period. *Id.*[2]

Pursuant to Section 54-102a, both the State and counsel for the Victims sought testing for HIV/AIDS and other STIs. *See* A006, A025, A028. The requests were not made lightly. Counsel for the Victims indicated that several of the Victims were minors and/or conserved persons at the time of the alleged sexual acts, *see* A025, and that they had a good faith basis to believe that the defendant was infected with HIV/AIDS, and he had failed to disclose this

[2] For a more detailed recitation of the underlying conduct, the arrest warrant is included in the defendant's appendix. *See* A036-45.

information. *See* A028.

Over the defendant's objection, the trial court exercised its discretion to order the testing, and ensured that the treatment provider administering the test would not "interrogate or inquire of the defendant, in any fashion, [regarding] any matter relating to the pending case." *E.g.*, A007. The defendant refused to submit to the required testing, and instead filed the instant appeal.

For a more detailed summary of the facts and procedural history of this case, the Victims respectfully refer this Court to the Brief of the State. *See* State Br. at pp. 1-5.

III. ARGUMENT

A. The Alleged Criminal Activity Is More Extensive than the Defendant Suggests.

The defendant claims that the "specific allegations" in this case relate to oral sex, and that suggests this somehow undercuts the necessity of testing for HIV/AIDS. *See* Def. Br. at pp. 7-8. The defendant is wrong on both points.

As an initial matter, the allegations in this case go well beyond what the defendant suggests. Although some of the alleged conduct involves oral sex, the arrest warrant repeatedly indicates other forms of sexual contact. The defendant himself "acknowledged having sex with eight or ten of these boys." A038.[3] Victim 2 told police that one of the other co-conspirators plied him with cocaine before bringing him to the defendant's office for "sex with Bruce Bemer" and that he had "sex for money" with the defendant on two occasions over a few months. A041. Victim 3 indicated that he had "had sex with [the defendant] for money" at several different locations, and that "after having sex with Bemer in the office," the

[3] Unless otherwise indicated, all emphases in materials quoted herein have been added.

defendant would pay money to Victim 3, a portion of which Victim 3 had to pay to one of the other co-conspirators. A042. The Victims will testify at trial that they were subjected to much more than oral sex. Any claim that the allegations in this case are limited solely to "fellatio" is wrong.

While the conduct in this case goes beyond oral sexual contact, it bears emphasis that such actions still exposed the Victims to HIV/AIDS. Even though the transmission risks related to oral sexual contact may be lower than other forms of sexual contact, the risk remains. The risk of transmission also increases where there are "sores in the mouth . . . or on the penis, bleeding gums, . . . and the presence of other sexually transmitted diseases[.]" *See* Centers for Disease Control and Prevention, "Oral Sex and HIV Risk," online available https://www.cdc.gov/hiv/risk/oralsex.html (last visited 26 Feb. 2019). And there are precautions that can be taken to prevent infection, but only if an infected individual is forthcoming about his or her status. *See id.* Simply put, the particular form of unprotected sexual contact should not have any bearing on the analysis of the multitude of policy justifications that support Section 54-102a.

B. Section 54-102a Serves Numerous Public and Private Interests.

We will not repeat the State's thorough analysis of the numerous sound principles that underlie Section 54-102a, *see* State Br. at pp. 22-23, 25-31, but instead will focus on the very real and significant benefits that such testing offers to both the public and to the individual victims of sexual violence.

Victims of sex crimes have endured uniquely devastating and traumatic experiences. Such crimes and the physical and psychological injuries that follow "involve matters of the most sensitive and personal nature." *State v. Burney*, 276 S.E.2d 693, 698 (N.C. 1981). *See*

also Plaintiff B v. Francis, 631 F.3d 1310, 1317 (11th Cir. 2011) (effects of sexual abuse of minors "could not be of a more sensitive and highly personal nature"). Victims who endure such experiences have been subjected to a "historic social stigma" and all too often are faced with the ugly "tradition of 'blaming the victim[.]'" *Bloch v. Ribar*, 156 F.3d 673, 685 (6th Cir. 1998). Because of the fear, shame, irrational guilt, and range of other emotions that sex crimes foist upon their victims, modern public policy attempts to address these uniquely personal injuries and limit any further trauma in the course of the judicial process, including by enacting rape shield laws, *see, e.g.,* Conn. Gen. Stat. § 54-86f, and ensuring that victims' names and personal information remain confidential, *see, e.g.,* Conn. Gen. Stat. § 54-86e.

Thus, Section 54-102a goes beyond the laudable public health goal of stemming the spread of serious infections, including HIV/AIDS – which, despite medical advances, remains "a fatal, incurable disease." *Matson v. Bd. of Educ. of City Sch. Dist. of New York*, 631 F.3d 57, 64 (2d Cir. 2011). *See also Dunn v. White*, 880 F.2d 1188, 1195 (10th Cir. 1989) (recognizing strong governmental interest in controlling spread of AIDS). The statute also reaches the physical and psychological health of those who suffered such heinous and deeply personal invasions. The law simply allows a trial judge to exercise his or her discretion in appropriate circumstances to direct a criminal defendant, against whom there has been a showing of probable cause, to undergo a simple blood test to determine whether a victim has been exposed to infection. That common sense process addresses victims' "legitimate fear of contracting a life-threatening sexually transmitted disease," thereby serving the "understandable and real" interest of providing a recognized "psychological benefit" for the "unwilling victims" of sex crimes. *State v. Handy*, 44 A.3d 776, 784 (Vt. 2012).

Regardless of the outcome of a defendant's testing, a victim will gain an

understandable “peace of mind” in knowing whether or not he or she has been exposed to HIV/AIDS. *See United States v. Ward*, 131 F.3d 335, 342 (3d Cir. 1997). People who have reason to fear HIV infection “suffer extreme anxiety” as a result of the fatal nature of the condition, and, even in circumstances where the likelihood of transmission is remote, that empty statistical consideration “provides little comfort in the face of a lethal disease.” *Johnetta J. v. Mun. Court*, 267 Cal. Rptr. 666 (Ct. App. Cal. 1990). Victims of sex crimes are justifiably “anxious to know the HIV status of the person” who assaulted them. *Id.* Allowing for a routine test to provide victims with that information is one of the most direct ways that the judicial system can address these victims’ psychological trauma.

Although the defendant seeks to muddy the waters by criticizing the ability of such testing to conclusively establish whether a victim has actually been infected, *see, e.g.,* Def. Br. at pp. 6-7, that does nothing to undercut the medical and psychological efficacy of such tests. The fact remains that, whether or not a victim’s perpetrator is infected with a serious sexually-transmitted condition, that information is essential knowledge for the victim’s efforts to seek appropriate medical treatment. “[T]here is considerable medical utility in examining the blood of the putative source of HIV infection, even though the results are not dispositive.” *Gov’t of Virgin Islands v. Roberts*, 756 F. Supp. 898, 903 (D.V.I. 1991) (internal quotation marks and citation omitted). The test can establish the potential transmission of a deadly disease, which allows victims to proceed accordingly, to the benefit of both their own health and that of the public at large. *See id.* (“[P]roviding all relevant information to victims and their doctors about possible exposure aids them in fashioning a proper medical regimen.”). When taken together with the significant psychological benefits that such testing provides to victims of sexual trauma, the full sum of interests served by Section 54-102a demonstrate

that it is an eminently reasonable, prudent, and constitutional exercise of government policy.

C. An Overwhelming Majority of Jurisdictions Allow Pretrial Testing.

Given the myriad of policy reasons in support of this common sense law, *see* section III-B, it is no surprise that almost every state and territory requires HIV/AIDS testing of sex crime defendants at some point in the process. An overwhelming majority of those jurisdictions – at least thirty-seven states and territories – join Connecticut and the federal government in permitting such testing before conviction. *See* Ala. Code § 15-23-101; Alaska Stat. § 18.15.300; Ariz. Rev. Stat. § 13-1415; Ark. Code § 16-82-101; Colo. Rev. Stat. § 18-3-415; Del. Code, tit. 10, § 1076; Fla. Stat. 960.003; Ga. Code § 17-10-15; Haw. Rev. Stat. § 325-16.5; Idaho Code § 39-604; Ill. Comp. Stat. § 5/11-1.10; Ind. Code § 16-41-8-5; Iowa Code § 915.42; Kansas Stat. § 65-6009; La. Rev. Stat., tit. 15, § 535; Md. Code, Crim. Proc., § 11-110; Mich. Comp. Law § 333.5129; Mo. Stat. § 545.940; Nevada Rev. Stat. § 441A.320; N.J. Code of Criminal Justice § 2C:43-2.3; New Mexico Stat. § 24-2B-5.2; N.Y. Crim. Proc. § 210.16; N.C. Gen. Stat. § 15A-615; Ohio Rev. Code § 2907.27; Okla. Stat. § 1-524.1; Or. Rev. Stat. § 135.139; Pa. Stat. §§ 7620.301, 7620.302; S.C. Code § 16-3-740; S.D. Codified Laws § 23A-35B-3; Tenn. Code § 39-13-521; Tex. Penal Code Art. 21.31; Utah Code § 76-5-502; V.I. Code §§ 3910, 3911; Va. Code § 18.2-62; W.V. Code § 16-3C-2; Wisc. Stat. § 968.38; Wyo. Stat. § 7-1-109.[4] *See also* 34 U.S.C. § 12391. Although individual approaches and covered crimes may vary among the jurisdictions, all follow the same essential policy path as Connecticut.

And yet, under the defendant's theory, each and every one of these thirty-seven other statutory schemes would also be unconstitutional. It would be inconceivable that so many

[4] The state laws cited herein are included in the Amici Appendix at AA1-50.

state legislatures would have enacted legislation that runs afoul of constitutional protections. The weight of the authority is as close to unanimous as one can imagine. After all, the sheer number of states that pretrial testing exceeds what is required to pass a federal constitutional amendment. The idea that so many jurisdictions have enacted constitutionally infirm legislation is simply untenable.

Unsurprisingly, every court that has heard a constitutional challenge to a testing statute has rejected it. *See* State Br. at pp. 26-27 (citing cases). *See also State v. Parr*, 513 N.W.2d 647 (Ct. App. Wisc. 1994) (affirming pretrial testing statute, as applied post-conviction to a defendant who was acquitted of a sexual intercourse charge but convicted of second-degree sexual assault, against a challenge that did not claim constitutional infirmity). The defendant asks this Court become the very first to nullify a well-accepted and widely-utilized statutory scheme that both furthers significant public health benefits and aids victims of horrific sexual trauma in the long and difficult healing process. When weighed against the relatively minimal imposition that a blood test will place upon the defendant, *see* section IV-D, the benefits served by the statute far exceed any countervailing concerns.

D. Section 54-102a Imposes a Minimal Imposition on the Defendant.

Against the numerous interests served by Section 54-102a, *see* section III-B, and the overwhelming acceptance of pretrial testing across the United States, *see* section III-C, the defendant claims only the most minimal of intrusions. A blood test has long been a "commonplace" and routine undertaking that requires only the smallest amount of blood and "involves virtually no risk, trauma, or pain." *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 625 (1989) (quoting *Schmerber v. California*, 384 U.S. 757, 771 (1966)). The defendant's test will be taken by a medical professional, *see State v. Parisi*, 875 N.W.2d 619,

627 n.11 (Wis. 2016), and will not be used "to further a criminal investigation, but rather, . . . to promote other important state interests," as discussed above. *State in Interest of J.G.*, 701 A.2d 1260, 1266 (N.J. 1997) (citing cases). In fact, the trial court's order specifically prohibited anyone involved in the testing process from inquiring of the defendant with respect to any matter related to the pending criminal proceedings, *see* A007, thus fully protecting the defendant's Fifth Amendment rights. The mere fact that the blood test will prick the defendant's skin does not meaningfully shift the balance of interests served by Section 54-102a.

It cannot go unremarked that the test at issue in this case involves "the testing of bodily fluids [that were] forced upon [the defendant's] unwilling victims," *Handy*, 44 A.3d at 784, and that the defendant himself admitted to police that he had sexual contact with "eight or ten of the[] boys" who were victimized. *See* A038. Nor did the Victims request testing on a mere whim, but rather after their trial counsel developed good faith basis to believe that the defendant was infected with HIV/AIDS, and had failed to disclose this information to the Victims. *See* A028. Given the indisputably "routine nature, minimal intrusion and virtual absence of risk or pain involved in a blood test," *In Interest of J.M.*, 590 So. 2d 565, 567 (La. 1991), the interest that the defendant advances pales in comparison to the critical role that testing has on overall public health and the psychological benefit to the victims.

IV. CONCLUSION

The Victims respectfully request that this Court affirm the decision of the Superior Court.

Respectfully Submitted,

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COMPLIANCE CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that on March 6, 2019:

1. the electronically submitted brief and appendix have 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 have 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 and Rule 67-7.

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